

K E N D E L S E

Garanti Giyim Kompozit Teknojileri Sanayi ve Ticaret A.S.
(selv)

mod

Forsvarsministeriets Materiel- og Indkøbsstyrelse
(advokat Niels Karl Heilskov Rytter, København)

Ved udbudsbekendtgørelse nr. 2019/S 066-155893 udbød Forsvarsministeriets Materiel- og Indkøbsstyrelse ("FMI") efter forsvars- og sikkerhedsdirektivets artikel 26 (direktiv 2009/81/EF af 13. juli 2009) et udbud med forhandling af to rammeaftaler vedrørende køb af henholdsvis ballistiske og ikke ballistiske hjelme samt reservedele, uddannelse, træning og vedligeholdelse.

Seks ansøgere, heriblandt Garanti Giyim Kompozit Teknojileri Sanayi ve Ticaret A.S. ("Garanti") og Galvion Ballistic Ltd. ("Galvion"), blev prækvalificeret til at deltage i udbuddet.

FMI modtog efter gennemførte forhandlinger endelige tilbud fra de tre tilbudsgivere. Tilbuddene blev alle vurderet konditionsmæssige.

Ved brev af 10. marts 2020 til Garanti meddelte FMI, at FMI havde besluttet at tildele rammeaftalerne til Galvion.

Den 20. marts 2020 indgav Garanti klage til Klagenævnet for Udbud over FMI.

Garanti fremsatte ved klagens indgivelse ikke anmodning om, at klagenævnet skulle beslutte, at klagen blev tillagt opsættende virkning. Da klagen blev indgivet i standstill-perioden, var klagenævnet efter klagenævnslovens § 12, stk. 2, forpligtet til at tage stilling til spørgsmålet alligevel.

Den 17. april 2020 besluttede klagenævnet ikke at tillægge klagen opsættende virkning. Klagen har været behandlet skriftligt.

Garanti har nedlagt følgende påstand:

”Klagenævnet bør træffe afgørelse om, at det danske forsvarsministeriums erhvervs- og logistikorganisation har krænket princippet om ligebehandling og åbenhed i § 2, stk. 1, i loven om offentlige indkøb eller 18, stk. 1, i direktivet om offentlige indkøb og har tildelt kontrakten til Galvion Ballistic Ltd. selv om vores tilbudspris var i alt 32.604.766 DKK lavere end deres tilbud.”

FMI har nedlagt påstand om, at klagen ikke tages til følge.

Sagens nærmere omstændigheder

Ved udbudsbekendtgørelsen udbød FMI som anført et udbud med forhandling af to rammeaftaler vedrørende køb af henholdsvis ballistiske og ikke ballistiske hjelme samt reservedele, uddannelse, træning og vedligeholdelse.

I udbudsbekendtgørelsen står der blandt andet:

”II.1.4) Information on framework agreement

Framework agreement with a single operator

Duration of the framework agreement

Duration in years: 14

Justification for a framework agreement, the duration of which exceeds seven years: The framework agreement for the helmets has a duration period for 7 years. The framework agreement regarding the spare parts and life extension has a duration period for 14 years because the helmets have a duration period for up till 14 years, if they are being properly maintained and the Supplier warrants for the lifetime.

Estimated total value of purchases for the entire duration of the framework agreement

Estimated value excluding VAT: 150 000 000 DKK

II.1.5) Short description of the contract or purchase(s):

This purchase consist of 2 framework agreements. The executive framework agreement is about the purchase of ballistic and non ballistic helmets with a duration for 7 years. The second framework agreement, which is an appendix to the executive framework agreement, is about the purchase of spare parts to the ballistic and non ballistic helmets, education and training as well as the purchase of life extension for the purchased ballistic and non ballistic helmets. This framework agreement has a duration for 14 years.

The life extension will be a part of the negotiation, why this might be removed from the framework agreement before the best and final offer (BAFO) is provided to DALO.

The Danish soldier will use the Ballistic helmets and NON ballistic helmets in the solution of common educational and operational tasks, both nationally and internationally. The ballistic helmets and NON ballistic helmets shall protect the soldiers head from fragments, projectiles, fallen objects and similar foreign objects. The ballistic helmet and NON ballistic helmet solution shall contain: Helmet Basic, Helmet Operative, Helmet NON Ballistic HIGH CUT, Helmet NON Ballistic HIGH CUT Maritime and Helmet Ballistic HIGH CUT. The requirements for each type of helmet is described in the requirement specification.

Helmet Basic:

Helmet Basic has none to low ballistic protection, but shall protect against falling objects. Helmet Basic will primarily be used by conscripts as an exercise helmet. Helmet Basic is a low price helmet, which shall look similar in design, shape and weigh as Helmet Operative. Helmet Basic does not have bracket for Night Vision Goggle on the helmet and is only intended to be used nationally.

Helmet Operative:

Helmet Operative has high ballistic protection, low weight and has bracket for night vision goggles and rails on both sides of the helmet for option to mount equipment. The helmet will be used in national and international training and operational situations.

Helmet Ballistic HIGH CUT:

Helmet Ballistic HIGH CUT has high ballistic protection, low weight and has bracket for night vision goggles and rails on both sides of the helmet. The helmet will primarily be used by special operation soldiers and soldiers in special functions. The helmet will be used in national and international training and operational situations.

Helmet NON ballistic High CUT and Helmet NON ballistic HIGH CUT Maritime:

Helmet NON ballistic HIGH CUT has the possibility of adding supplementary ballistic add-on protection, has bracket for night vision goggle, rails on both sides of the helmet. The NON ballistic HIGH CUT helmet will primarily be used by special operation soldiers and by soldiers in the

maritime branch. The helmet will be used in national and international land and maritime training and operational situations.

The helmets must be fully functional with the accessories listed in Special Appendix 18. Special Appendix 18 will be made available after the prequalification.

The Danish Police and Ministry of Foreign Affairs of Denmark are also entitled to use the framework agreements.

Candidates are made aware that it is mandatory to deliver test specimens to DALO and The Danish Army in connection with the first indicative offer (INDO) and for the best and final offer (BAFO). The test specimens will be subject to a subject matter expert evaluation at the INDO, and a test at the BAFO. The test is described in more detail in Enclosure 4 which will be available after the prequalification.

For INDO there must be delivered 8 helmets and for BAFO there must be delivered 57 helmets (in differentiated sizes and types). Furthermore there must be delivered various types of accessories/spare parts for BAFO.

The test is expected to be conducted from week 40 - 48, 2019 (after BAFO). However, this may be subject to change. More information will be available after the prequalification.

The candidates shall not deliver test specimens in order to participate in the prequalification, however the candidates are encouraged to utilize the time during the prequalification period to insure timely delivery of the test specimens.”

I Appendix A Requirements Specification (Helmets) står der blandt andet:

“1.5 Definitions and abbreviations

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For each requirement it is specified in the “Documentation” column how the tenderer should describe or document compliance with the requirement. Several categories for each requirement may be indicated. The following categories apply to the column "Documentation":

Documentation ID	Description
Y/N	Tenderer must answer with Y (yes) or N (no) if the requirement is fulfilled. If necessary with comments. Please observe that if it is a Mandatory Requirement answering ‘No’ results in an unconditional offer
D	The offer must include a description or attached valid documentation.

TD	The offer will be tested by DALO in connection with the tender procedure. The test will be performed by a subject matter expert panel (SME). See enclosure 4 for additional information.
TU	The offer will be tested by DALO in connection with the tender procedure. The test will consist of a user field test and a SME test. See enclosure 4 for additional information.

1.6 Test

In connection with the evaluation of the materiel offered, DALO will test compliance with some of the requirements in a user test or other type of evaluation, and this will be stated in the column "Documentation requirement", cf. section 1.5 above. The user test, however, will not be restricted to the requirements alone but will also contain a broader perspective, such as for instance testing of convenience, safety, and quality.

2 Use Cases

This paragraph describes different use cases. The description of the use cases are intended as examples of how the Basic, Operative, Ballistic and NON ballistic helmets solution can be used. They are meant to give an idea about the expected durability and functionality.

Case

Helmet Basic – This helmet is for a conscript who is in the field wearing combat uniform, helmet, combat equipment and back pack. The main task for the conscript is to learn how to solve basic military tasks in the field as guard duty, shooting with weapons, patrol duty etc.

Helmet Basic shall protect conscript's head from falling objects as bricks, stones, branches and similar items.

Helmet Operative and Helmet Ballistic HIGH CUT - This Helmet is for a soldier who is on patrol in various weather conditions e.g. sunny summer days with no wind in hot dry countries. The soldier is wearing combat uniform, personal protection equipment including helmet, vest and a small backpack with a water bladder drinking system. Furthermore the soldier is carrying a radio, wears an on-ear headset and ballistic eye wear protection as spectacles or low profile goggles. When the soldier is dismounted, he can carry up to in total of 30 KG of water, weapons, ammunition and equipment.

A normal patrol can take up to 9 hours during which the soldier walks 5 KM and exits and enters a vehicle up to 10 times. When it gets dark, the soldier mounts night vision equipment on his helmet and uses it for at least two hours of the patrol. During the patrol the soldiers drink up to 6 liters of water and sweat a lot.

Helmet NON Ballistic HIGH CUT – CASE 1 Maritime branch – This Helmet is for a soldier who is sailing in small High-speed boats in various sea and weather conditions. The soldiers are wearing combat uniform, personal protection equipment including helmet NON Ballistic HIGH CUT and a small backpack with a water bladder drinking system. The soldiers are using the small High-speed boats for sailing up along the side of neutral or enemy ships and boarding them with the possibility of falling off the small High-speed boat or ladder when boarding them. It is important that the helmet under this operation is not torn off the soldiers head by the water pressure and that the helmet has drain holes in its shell. When the soldiers are returning from the operation they are being picked up by a lift with a hook on the side of their home ship. The hook weighs about 7 kg and the helmet NON ballistic HIGH CUT shall protect the soldier's head from impact when the hook is being lowered and fixed to the small High-speed boats hoist system especially during high seas.

Helmet NON ballistic HIGH CUT - Case 2 Special Operation branch – This Helmet is for a special operation soldier who is on patrol on a sunny summer day with no wind in a hot dry country. The special operation soldier is wearing combat uniform, personal protection equipment including helmet, vest and a small backpack with a water bladder drinking system. Furthermore the special operation soldier is carrying a radio, wears an on-ear headset and ballistic eye wear protection as spectacles or low profile goggles. When the special operation soldier is dismounted, he can carry up to in total of 30 KG of water, weapons, ammunition and equipment.

When the special operation soldier is on patrol and approaching enemy territory, it shall be possible to take supplementary ballistic add-on protection from his back pack and mount it on the helmet and thereby reach the same level of ballistic protection or better than the helmet ballistic HIGH CUT and Helmet Operative.

A normal patrol can take up to 9 hours in which the special operation soldier walks 5 KM and exits and enters a vehicle up to 10 times. When it gets dark, the special operation soldier mounts night vision equipment on his helmet and uses it for at least two hours on the patrol. During the patrol the soldiers drinks up to 6 liters of water and sweats a lot.

3 Operational requirements

This paragraph describes operational requirements.

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Id. No	Requirement description	Classification	Documentation	Requirement weight	Requirement compliance	Tender description
7.	It shall be possible for the users to change helmet cover on helmets without the need for tools.	M	Y/N			
8.	All parts of the helmet shall be made of materials that do not melt in case of fire or heat.	M	Y/N			Maximum 4 second exposure.
9.	Helmets shall not have a shade.	M	Y/N			
10.	Helmets shall be delivered with a helmet cover in MTC or equivalent with the possibility of applying camouflage materials, natural and artificial.	M	Y/N			The color MTC or equivalent. The overall camouflage achieved by the use of MTC NIR must not be compromised in the visual spectrum according to Special Appendix 15.
11.	It shall be possible to change the pattern for the helmet cover after the contract signing, if decided by DALO	M	Y/N			The pattern is delivered by DALO
12.	Helmets covers for all type of helmets shall comply with the NIR (IRR) requirements or equivalent.	M	Y/N			In order to reduce the risk of recognition of the soldiers in night observation and night aiming devices of light amplification type, as defined in STANAG 2311 Edition 4 Principle covering the design of individual

						load carrying equipment of the combat soldier.
13.	The various helmets solutions shall fit mandatory accessories described in Special App. 18.	M	Y/N			See Special App. 18 for information on accessories

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22.	Helmet Basic shall meet the requirements in DS/EN 397 – 5.1.4 Chin strap evaluation or equivalent.	M	Y/N			If the supplier uses an equivalent standard, the supplier shall document and explain the difference between the two standards.
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56.	The cover of the Helmet NON ballistic High Cut shall be identical to the cover delivered to Helmet ballistic HIGH CUT	M	Y/N			
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Id. No	Requirement description	Classification	Documentation	Requirement weight	Requirement compliance	Tender description
87.	Test category FIT – Helmet Basic Test will focus on how well the helmet is fitted to the head.	E	TD	2		DALO will test the fit on the following parameters: - Adjustable to the head. - Helmet shell is as close to head skull as possible.

						<ul style="list-style-type: none"> - Use, fit and maintenance of the Quick grip neck tightening solution. - Retention system is able to be adjusted and operated with one hand. - Retention system is able to be adjusted with and without fingers gloves. - Retention system does not leave loose-hanging straps. <p>0 – 4 points.</p>
88.	<p>Test category FIT – Helmet Operative</p> <p>Test will focus on how well the helmet is fitted to the head.</p>	E	TD	2	<p>DALO will test the fit on the following parameters:</p> <ul style="list-style-type: none"> -Adjustable to the head. -Helmet shell is as close to head skull as possible. -Use, fit and maintenance of the Quick grip neck tightening solution. -Retention system is able to be adjusted and operated with one hand. -Retention system is able to be adjusted with and without fingers gloves. -Retention system does not leave loose-hanging straps. <p>0 – 4 points.</p>	

Id. No	Requirement description	Classification	Documentation	Requirement weight	Requirement compliance	Tender description
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89.	<p>Test category FIT – Helmet Ballistic HIGH CUT</p> <p>Test will focus on how well the helmet is fitted to the head.</p>	E	TD	2	<p>DALO will test the fit on the following parameters:</p> <ul style="list-style-type: none"> -Adjustable to the head. -Helmet shell is as close to head skull as possible. -Use, fit and maintenance of the Quick grip neck tightening solution. -Retention system is able to be adjusted and operated with one hand. -Retention system is able to be adjusted with and without fingers gloves. -Retention system does not leave loose-hanging straps. <p>0 – 4 points.</p>
90.	<p>Test category FIT – Helmet NON Ballistic HIGH CUT</p> <p>Test will focus on how well the helmet is fitted to the head.</p>	E	TD	2	<p>DALO will test the fit on the following parameters:</p> <ul style="list-style-type: none"> -Adjustable to the head. -Helmet shell is as close to head skull as possible. -Use, fit and maintenance of the Quick grip neck tightening solution. -Retention system is able to be adjusted and operated with one hand. -Retention system is able to be adjusted with and without fingers gloves. -Retention system does not leave loose-hanging straps. <p>0 – 4 points.</p>

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Id. No.	Requirement description	Classification	Documentation	Requirement weight	Requirement compliance	Tender description
92.	<p>Test category Functionality 1 – Helmet Operative</p> <p>Test category FUNCTIONALITY 1 will focus on the helmet’s functionality.</p>	E	TU	3		<p>DALO will test the functionality 1 on the following parameters:</p> <ul style="list-style-type: none"> - The helmet cover in the pattern MTC should be compatible with Pattern MULTI-CAM®. Black is not considered compatible with MULTI-CAM®. - The inside of the helmet shell should enable detachable name tagging. - The helmet cover should be as tight as possible to the helmets shell. - The helmet cover should have areas with Velcro fasteners to allow attachment of various objects. <p>0 – 4 points.</p>

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Id. No.	Requirement description	Classification	Documentation	Requirement weight	Requirement compliance	Tender description
94.	<p>Test category Functionality 1 – Helmet NON Ballistic HIGH CUT</p>	E	TU	3		<p>DALO will test the functionality 1 on the following parameters:</p> <ul style="list-style-type: none"> - The helmet cover in the pattern MTC should be compatible

	Test category FUNCTIONALITY 1 will focus on the helmet's functionality.					<p>with Pattern MULTI-CAM®. Black is not considered compatible with MULTI-CAM®.</p> <ul style="list-style-type: none"> - The inside of the helmet shell should enable detachable name tagging. - The helmets cover should be as tight as possible to the helmets shell. - The helmet cover should have areas with Velcro fasteners to allow attachment of various objects. <p>0 – 4 points.</p>
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Id. No.	Requirement description	Classification	Documentation	Requirement weight	Requirement compliance	Tender description
95.	<p>Test category Functionality 3 – Helmet Operative</p> <p>Test category FUNCTIONALITY 3 will focus on the helmet's functionality to be able to use accessories as described in Special App. 18.</p>	E	TD	3		<p>DALO will test the functionality 3 on the following parameters:</p> <ul style="list-style-type: none"> - Headset can be mounted in rail system and fits tightly around the ear. - Helmet can be adjusted when wearing headset. - There should be no Slack in the NVG brackets when equipment is mounted in NVG brackets. - The Night vision goggles can be adjusted and are useable when mounted in NVG Brackets. - Helmets can be adjusted with the use of

						strap kit when wearing various masks. - Camera can be mounted and is useable. - Light can be mounted and is useable - Eye wear can be worn under the helmet without creating discomfort for the soldier eg. pressure marks on the nose 0-4 Points
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Id. No.	Requirement description	Classification	Documentation	Requirement weight	Requirement compliance	Tender description
98.	Test category Comfort – Helmet Basic Test category COMFORT will focus on how well the soldier experiences the helmet's comfort.	E	TU	4		DALO will test the comfort on the following parameters: - The helmet's shell and retention system and inner assembly, should be as light-weight as possible. - The 4-point suspension system should be designed with a chin piece that feels comfortable around the chin with or without beard eg. does not have sharp edges, scratches the skin. - The helmets should not give the user physical discomfort for prolonged continuous use (4 hours) such as headache, soreness, neck pain,

						<p>a tingling feeling on the skull and discomfort around the ears.</p> <ul style="list-style-type: none"> - The helmets should not reduce the ability for the soldier to shoot in a lying shooting position. - The helmet should not reduce the ability for movement and observation. - The helmet should allow the use of weapons for right as well as left handed shooters. - Helmet, when adjusted to the soldier is stable on the head. <p>0-4 point</p>
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Id. No.	Requirement description	Classification	Documentation	Requirement weight	Requirement compliance	Tender description
99.	<p>Test category Comfort – Helmet Operative</p> <p>Test category COMFORT will focus on how well the soldier experiences the helmet’s comfort with and without accessories (Special App. 18).</p>	E	TU	4		<p>DALO will test the comfort on the following parameters:</p> <ul style="list-style-type: none"> - The helmet’s shell and retention system, inner assembly, rail System and NVG Mount should be as lightweight as possible. - The 4-point suspension system should be designed with a chin piece that feels comfortable around the chin with or without beard eg. does not have sharp edges, scratches the skin.

						<ul style="list-style-type: none"> - The helmets should not give the user physical discomfort for prolonged continuous use (4 hours) such as headache, soreness, neck pain, a tingling feeling on the skull and discomfort around the ears. - The helmets should not reduce the ability for the soldier to shoot in a lying shooting position. - The helmet should not reduce the ability for movement and observation. - The helmet should allow the use of weapons for right as well as left handed shooters. - Helmet, when adjusted to the soldier is stable on the head. <p>0-4 point</p>
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I Annex A Requirements Specification (Spare parts and life extension) står der blandt andet:

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Id. No.	Requirement description	Classification	Documentation	Requirement weight	Requirement compliance	Tender description
74.	Test category Functionality 2 – Helmet Operative	E	TD	3		DALO will test the functionality 2 on the following parameters:

	Test category FUNCTIONALITY 2 will focus on the helmet's functionality with visor, jaw protector and supplementary protection.					<ul style="list-style-type: none"> - The Visor should be close fitted to the helmet edge so that, for example, water cannot run from the helmet down into the operator's eyes. - The jaw protector should be quick to mount and un-mount without the need for tools. -7.62mm supplementary protection area should not be significantly less than for the specified helmets. -7.62mm supplementary protection should be quick to mount and un-mount without the need for tools. - Protection of eyes against 100% linearly and horizontally flying fragments. <p>0-4 Points</p>
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Id. No.	Requirement description	Classification	Documentation	Requirement weight	Requirement compliance	Tender description
75.	Test category Functionality 2 – Helmet Ballistic HIGH CUT Test category FUNCTIONALITY 2 will focus on the helmet's functionality with visor, jaw protector and supplementary protection.	E	TD	3		<p>DALO will test the functionality 2 on the following parameters:</p> <ul style="list-style-type: none"> - The Visor for the helmet should be quick to mount and dismount without the use of tools. - The Visor for the helmet should have a coverage area that protects eyes against 100% linearly and horizontally flying fragments.

						<ul style="list-style-type: none"> - The Visor should be close fitted to the helmet edge so that, for example, water cannot run from the helmet down into the operator's eyes. - The jaw protector should be quick to mount and un-mount without the need for tools. - 7.62mm supplementary protection area should not be significantly less than for the specified helmets. - 7.62mm supplementary protection should be quick to mount and un-mount without the need for tools. - The ballistic supplementary protection, Side Guard, for the helmet should be designed so it does not reduce movement, observation and use of weapons. - The ballistic supplementary protection, Side Guard, for the helmet should be similar to the helmet's ballistic protection as possible. - Protection of eyes against 100% linearly and horizontally flying fragments. <p>0-4 Points.</p>
76.	<p>Test category Functionality 2 – Helmet NON Ballistic HIGH CUT</p> <p>Test category FUNCTION- ALITY 2 will focus on the</p>	E	TD	3		<p>DALO will test the functionality 2 on the following parameters:</p> <ul style="list-style-type: none"> -The Visor for the helmet should be quick to mount and dismount without the use of tools.

	helmet's functionality with visor, jaw protector and supplementary protection.				<ul style="list-style-type: none"> - The Visor for the helmet should have a coverage area that protects eyes against 100% linearly and horizontally flying fragments. - The Visor should be close fitted to the helmet edge so that, for example, water cannot run from the helmet down into the operator's eyes. - The jaw protector should be quick to mount and un-mount without the need for tools. <p>0-4 Points.</p>
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I udbudsbetingelsernes Enclosure 4 – Evaluation method er det blandt andet fastsat:

”General:

The Danish Defence Acquisition and Logistics Organization (DALO) will choose a winning tender based on an evaluation of the incoming tenders. In order to choose the most economically advantageous tender, DALO has established an evaluation model and method which creates the basis for DALO to make the decision. Only tenders that comply with all the mandatory requirements will proceed to further evaluation.

Test:

The tenderer must according to clause 10.3 in The Instruction to tenderers have provided DALO with test specimens for the BAFO no later than 27th September 2019 at 13.00 hrs. local time.

The test will be performed as follows:

For Evaluation Requirements ID. no 87 – 90 and 95 – 97 (Appendix A) and ID no. 74 – 76 (Annex A) marked “TD” the test will consist of a subject matter expert (SME) panel evaluation. The SME will consist of

relevant experts appointed by DALO and the SME will evaluate all conditional tenderers "Test Specimens". The SME evaluation is a line up see, feel and use test (performed at a desk) of the listed Evaluation Requirements. The "Test Specimens" will be rated on a scale from 0-4 on the Evaluation Requirements.

For Evaluation Requirements ID. no. 91 – 94 and 98 - 101 (Appendix A) marked "TU" the test will be performed as described for the Evaluation Requirements marked "TD".

But before the SME makes their evaluation the "Test Specimens" will be exposed to a user field test conducted by a group of relevant soldiers appointed by DALO. The user field test will be performed by a group of soldiers using the ballistic helmet and NON Ballistic helmet solution for different tasks within the area of intended use. The soldiers are asked to comment on the Evaluation Requirements marked "TU", These comments are hereafter made available for the SME to take into consideration when rating the Evaluation Requirements on a scale from 0-4.

Criteria:

The main criterion for awarding the contract is "the best price-quality ratio".

In the evaluation of the tenders DALO will use the following sub-criteria with the specified weighting:

- *Price (40%)*

This sub-criterion measures the cost for the Danish Defense associated with the acquisition. This should not be taken as a commitment or plan on the part of DALO to make any purchase at any time. It is for evaluation purposes only.

- *Functionality (60%)*

This sub-criterion measures the operative and technical functionality of the products offered in the tender.

The sub-criteria are described in more detail below.

Evaluation of criteria:

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Functionality (weight 60%)

In the column "documentation" in Appendix A and Annex A it is indicated how the tenderer should document compliance with the requirement in question.

Each tender is graded under this criterion based on the level of the tender's compliance with a requirement marked with 'E' as laid out in Appendix A and Annex A. All these requirements will be evaluated using a scale from 0-4 points.

Points	Meaning
4	State of the art performance with great added value to the Danish Defence
3	Good performance with added value to the Danish Defence
2	Performance as expected from the Danish Defence
1	Performance not quite up to Danish Defence expectations
0	Minimal accepted performance/Not accomplished

Points may be given as decimal numbers in cases where the performance of a tender for a given criterion is assessed to fall between two of the grades.

For ID no. 102 - 103 in Appendix A and ID no. 68 – 70 and 72 – 73 in Annex A the tender will be graded 0 points if the Evaluation Requirement is not fulfilled and 4 points if the Evaluation Requirement is fulfilled. For ID no. 87 101 in Appendix A and ID no. 74 – 76 in Annex A the tender will be graded on the scale from 0 – 4 points.

For ID no. 71 in Annex A the tender will be graded 0, 1, 2, 3 or 4 points.

The points achieved per Evaluation Requirements will be multiplied with the weights listed in the column "Requirement weights".

All points are then added up to give the total achieved points for the "Functionality" of the tender. A tender can maximum achieve 240 points.

Each tender will achieve a Grade for "Functionality" based on the achieved points.

The Grade is given on the basis on a difference model where tenders with the maximum possible points (240 points) will achieve the Grade 5 and the tenders with the minimum possible points (0 points) will achieve the Grade 1.

This means that a tender that has achieved S out of 240 points is calculated as $Grade = 1 + 4*S/240$.

Overall:

When each tender has been evaluated for each sub-criterion as described above, a final overall evaluation for each tender will be made based on the evaluation for each sub-criterion and the weighting of the sub-criteria.

The framework agreement will be awarded to the tenderer whom has achieved the highest total Grade.”

Seks ansøgere, heriblandt Garanti og Galvion Ballistic Ltd. (”Galvion”), blev prækvalificeret til at deltage i udbuddet.

Efter at have modtaget indledende tilbud fra tre tilbudsgivere, herunder fra Garanti og Galvion, afholdt FMI den 16. august 2019 et forhandlingsmøde med Garanti. Af et referat fra mødet fremgår blandt andet:

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Document	Discussed at the meeting
...	
Appendix C – ID no. 61	<p>Garanti confirms that drain holes can be cut for maritime use.</p> <p>Garanti states that it is possible to offer a lighter option for non-ballistic high cut helmets with the option of adding ballistic armor.</p> <p>DALO states that non-ballistic high cut helmet does not have to be two different versions with and without drain holes. One version with drain holes will be sufficient.</p>

...”

FMI modtog efter gennemførte forhandlinger endelige tilbud fra de tre tilbudsgivere. Tilbuddene blev alle vurderet konditionsmæssige.

I forbindelse med evalueringen udfærdigede FMI’s ekspertpanel en skriftlig kvalitativ evaluering af Garantis tilbud.

Ved brev af 10. marts 2020 til Garanti meddelte FMI, at FMI havde besluttet at tildele rammeaftalerne til Galvion. I brevet står der blandt andet:

”DALO has completed the evaluation of the three (3) offers received on the basis of the requirements and the award criteria stated in the Instructions to Tenderers.

DALO regrets to inform you that you have not been awarded the contract.

DALO has found that Galvion Ballistic Ltd. (formerly Revision Military "Ltd) has submitted the most economically advantageous offer.

DALO's award decision is based on the following:

	Garanti	Galvion Ballistic
Grade – Price	5,00	4,19
Weighted grade Price (40%)	2,00	1,68
Grade Functionality	3,56	4,46
Weighted grade Functionality (60%)	2,14	2,68
Total grade	4,14	4,35

...

Regarding criteria Functionality

Your offer was graded for the criteria Functionality based on the evaluation method stated in Enclosure 4 – Evaluation Method. For each evaluation requirement the tenderer has been given points from 0 to 4 in accordance with the description stated in Appendix A and Annex A.

Document	ID no.	Description of evaluation requirement	Points Garanti	Points Galvion Ballistic
Appendix	87	Test category FIT – Helmet basic	3,03	3,45
Appendix	88	Test category FIT – Helmet operative	3,03	3,48
Appendix	89	Test category FIT – Helmet Ballistic HIGH CUT	2,72	3,55
Appendix	90	Test category FIT – Helmet NON ballistic HIGH CUT	2,72	3,55
Appendix	91	Test category Functionality 1 – Helmet Basic	4	3,7
Appendix	92	Test category Functionality 1 – Helmet Operative	3,5	3,8

Appendix	93	Test category Functionality 1 – Helmet Ballistic HIGH CUT	3,2	3,8
Appendix	94	Test category Functionality 1 – Helmet NON Ballistic HIGH CUT	1	3,8
Appendix	95	Test category Functionality 3 – Helmet Operative	2,26	3,31
Appendix	96	Test category Functionality 3 - Helmet Ballistic HIGH CUT	3,06	3,81
Appendix	97	Test category Functionality 3 - Helmet NON Ballistic HIGH CUT	3,06	3,81
Appendix	98	Test category Comfort – Helmet Basic	1,06	3,14
Appendix	99	Test category Comfort – Helmet Operative	1,14	3,14
Appendix	100	Test category Comfort - Helmet Ballistic HIGH CUT	2,79	3,54
Appendix	101	Test category Comfort – Helmet NON Ballistic HIGH CUT	2,71	3,57
Appendix	102	Buoyancy	4	4
Appendix	103	Maintenance manual – helmets	4	4
Annex	68	Industrial washing – retention system	4	4
Annex	69	Visor – protection against fragments	4	4
Annex	71	Paint kits	4	4
Annex	72	Maintenance manual – spare parts	4	4
Annex	74	Test category Functionality 2 – Helmet Operative	2	3
Annex	75	Test category Functionality 2 – Helmet Ballistic HIGH CUT	1,75	2,48
Annex	76	Test category Functionality 2 – Helmet NON Ballistic HIGH CUT	1,5	2,45

The points that were given for each of the requirements, as stated above, were then multiplied with the weights stated in the column “Requirement weights” in Appendix A and Annex A. The total points were thereafter calculated into a total grade based on the description in Enclosure 4 – Evaluation Method.

Garanti received the total grade 3,56 for Functionality, in comparison Galvion Ballistic received the total grade 4,46 for Functionality.

In the following DALO has described the reasons for the received scores.

Evaluation requirement 87 – Test category FIT – Helmet Basic

Garanti received 3,03 points as the Helmet Basic for this requirement was evaluated to be good and would add value to the Danish Defence.

The helmets possibility to be adjusted to the head was highlighted as being good due to the design of the retention system. The possibility of adjusting the retention system with one hand and with gloves where evaluated to be more than what could be expected. It was also evaluated positive that there are no loose straps on the retention system. The quick grip in the neck tightening solution was evaluated to be a little hard to use, especially when the fingers were cold, which was due to the design of the quick grip.

Galvion Ballistic received 3,45 points as the Helmet Basic for this requirement was evaluated to be very good and would add great value to the Danish Defence.

The helmets possibility to be adjusted to the head was highlighted as very good as the offered helmet has a lot of inner pads that give the user a very good possibility of adjustment and the buckles on the retention system make it easy to adjust the helmet. The buckles on the retention system were also highlighted as being good, as the design of them made them easy to use both with and without gloves. It was also evaluated positive that there are no loose straps on the retention system. The quick grip in the neck was evaluated to be very good due to the design and surface of the grip.

Evaluation requirement 88 – Test category FIT – Helmet Operative

Garanti received 3,03 points as the Helmet Operative for this requirement was evaluated to be good and would add value to the Danish Defence.

The helmets possibility to be adjusted to the head was highlighted as being good especially due to the design of the retention system, the helmet could be adjusted so it was close to the skull which was evaluated positively. The possibility of adjusting the retention system with one hand and with gloves where evaluated to be more than what could be expected. It was also evaluated positively that there are no loose straps on the retention system. The quick grip in the neck tightening solution was evaluated to be a little hard to use, especially when the fingers were cold, which was due to the design of the quick grip.

Galvion Ballistic received 3,48 points as the Helmet Operative for this requirement was evaluated to be very good and would add great value to the Danish Defence.

The helmets possibility to be adjusted to the head was highlighted as very good as the offered helmet has a lot of inner pads that give the user a very good possibility of adjustment and the buckles on the retention system make it easy to adjust the helmet. The buckles on the retention system

where also highlighted as being good, as they are easy to use both with and without gloves. It was also evaluated positively that there are no loose straps on the retention system. The quick grip in the neck was evaluated to be very good due to the design of the grip which makes it easy to adjust.

Evaluation requirement 89 – Test category FIT – Helmet Ballistic HIGH CUT

Garanti received 2,72 points as the Helmet Ballistic HIGH CUT for this requirement was evaluated to be somewhat more than could be expected and would add some value to the Danish Defence. The helmets possibility to be adjusted to the head was evaluated to be good, though the SME panel found the fact that you initially have to use a screwdriver to adjust the helmet was a bit inconvenient. The possibility of adjusting the retention system with one hand and with gloves was evaluated to be as could be expected, but it was highlighted that the material of the retention system made the adjustment a bit hard as it gives resistance. It was evaluated positively that there are no loose straps on the retention system. The quick grip in the neck tightening solution was evaluated to be a good as it could be adjusted both ways but there was a bit of slack in the grip.

Galvion Ballistic received 3,55 points as the Helmet Ballistic HIGH CUT for this requirement was evaluated to be very good and would add great value to the Danish Defence.

The helmets possibility to be adjusted to the head was highlighted as very good as the offered helmet has a lot of inner pads that give the user a very good possibility of adjustment and the buckles on the retention system make it easy to adjust the helmet for the user. The buckles on the retention system where also highlighted as positive as well as the material of the retention system as both buckles and the material makes it easy to adjust with and without gloves. It was also evaluated positively that there are no loose straps on the retention system. The quick grip in the neck was evaluated to be very good due to the design of the grip which makes it easy to adjust.

Evaluation requirement 90 – Test category FIT – Helmet NON Ballistic HIGH CUT

Garanti received 2,72 points as the Helmet NON Ballistic HIGH CUT for this requirement was evaluated to be somewhat more than could be expected and would add some value to the Danish Defence. The helmets possibility to be adjusted to the head was evaluated to be good, though the SME panel found the fact that the user initially has to use a screwdriver to adjust the helmet was a bit inconvenient. The possibility of adjusting the retention system with one hand and with gloves was evaluated to be as could be expected, but it is highlighted that the material of the retention system made the adjustment a bit hard as it give resistance. It

was also evaluated positively that there are no loose straps on the retention system. The quick grip in the neck tightening solution was evaluated to be a good as it could be adjusted both ways but there was a bit of slack in the grip.

Galvion Ballistic received 3,55 points as the Helmet NON Ballistic HIGH CUT for this requirement was evaluated to be very good and would add great value.

The helmets possibility to be adjusted to the head was highlighted as very good as the offered helmet has a lot of inner pads that give the user a very good possibility of adjustment and the buckles on the retention system make it easy to adjust the helmet for the user. The buckles on the retention system were also highlighted as being very good as well as the material of the retention system, as both buckles and the material makes it easy to adjust with and without gloves. It was also evaluated positively that there are no loose straps on the retention system. The quick grip in the neck was evaluated to be very good due to the design of the grip which makes it easy to adjust.

...

Evaluation requirement 92 – Test category Functionality 1 – Helmet Operative

Garanti received 3,5 points as the Helmet Operative was evaluated to fulfill this requirement to great extent, the SME panel evaluated that the cover was not as tight as to be expected which was evaluated negatively.

Galvion Ballistic received 3,8 points as the Helmet Operative was evaluated to fulfill the requirement to great extent, the SME panel evaluated that the solution for the name tag in the helmet was not optimal.

...

Evaluation requirement 94 – Test category Functionality 1 – Helmet NON Ballistic HIGH CUT

Garanti received 1 point as the Helmet NON Ballistic HIGH CUT was not delivered with a cover which means that three of the focus areas of the requirement could not be evaluated. The name tag in the shell fulfills this requirement.

Galvion Ballistic received 3,8 points as the Helmet NON Ballistic HIGH CUT was evaluated to fulfill the requirement to great extent with the exception of the name tag focus area, as the helmet did not have a detachable name tag.

Evaluation requirement 95 – Test category Functionality 3 – Helmet Operative

Garanti received 2,26 points as the Helmet Operative for this requirement was evaluated to be what could be expected by the Danish Defence.

It was evaluated that the design of the helmet was problematic in connection with mounting the headsets as the retention system and quick grip mechanism in the neck made it very hard to use the headsets and adjust the helmet. The design of the helmet also made it problematic to use eye wear, this was due to the wire in the helmet, which gave pressure on the eye wear that gave discomfort as well as impacted the position of the eye wear.

The NVG was quite hard to mount and it was noted that it was hard to be sure that the NVG was mounted correctly in the bracket which was evaluated negatively, there was some slack experienced in the NVG mount but it was still possible to use the NVG. The helmet was evaluated to be very good in connection with mounting and using camera and light.

Galvion Ballistic received 3,31 points as the Helmet Operative for this requirement was evaluated to be very good and would add value to the Danish Defence.

There were no problems with mounting and using the headsets and there were no problems and no discomfort experienced in connection with the eye wear which was evaluated very positively. Mounting and using NVG was evaluated to be very good and without any problems which was evaluated to be very positive. The helmet was evaluated to be very good in connection with mounting camera and light.

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Evaluation requirement 98 – Test category Comfort – Helmet Basic

Garanti received 1,06 points as the Helmet Basic for this requirement was evaluated no to live up to the expectations of the Danish Defence.

The weight of the helmet is low weight and this evaluated positively in this requirement.

The chin piece was evaluated negatively as its design made it impossible to adjust and the chin piece was not centered on the chin, which influenced the comfort of the helmet. The buckle on the retentionsystem was very weak and kept opening and therefore it was not possible to evaluate the focus areas continuous use of the helmet and shooting position due to the lack of possibility to asses the areas was evaluated negatively. The weak buckle also made it hard to evaluate the focus areas stability of the helmet on the users head, the possibility of observation and movement and shooting with both hands and therefore these areas where also evaluated negatively.

Galvion Ballistic received 3,14 points as the Helmet Basic for this requirement was evaluated to be very good and would add value to the Danish Defence.

The weight of the helmet is low weight and was evaluated positively. The helmets retention system was evaluated to be very comfortable as it has no sharp edges etc. The helmet is very comfortable also upon continuous use, which is due to allot of inner pads in the helmet. In general the helmet was evaluated very positively on all focus areas in this requirement.

Evaluation requirement 99 – Test category Comfort – Helmet Operative
Garanti received 1,14 points as the Helmet Operative for this requirement was evaluated no to live up to the expectations of the Danish Defence.

The weight of the helmet is low weight and this evaluated positively in this requirement.

The chin piece was evaluated negatively as the chin piece was not centered on the chin, which influenced the comfort of the helmet. The buckle on the retention system was very weak and kept opening and therefore it was not possible to evaluate the focus areas continuous use of the helmet and shooting position due to the lack of possibility to asses the areas was evaluated negatively. The weak buckle also made it hard to evaluate the focus areas stability of the helmet on the users head, the possibility of observation and movement and shooting with both hands and therefore these areas where also evaluated negatively.

Galvion Ballistic received 3,14 points as the Helmet Operative for this requirement was evaluated to be very good and would add value to the Danish Defence.

The weight of the helmet is low weight which was evaluated positively. The helmet's retention system was evaluated to be very comfortable as it has no sharp edges etc. The helmet is very comfortable also upon continuous use, which is due to allot of inner pads in the helmet. In general the helmet was evaluated very positively on all focus areas within this requirement.

...

Evaluation requirement Annex A 74 – Test category Functionality 2 – Helmet Operative

In connection with this requirement DALO has only evaluated the visor, as the evaluation requirement was not adjusted after INDO due to an error. In the BAFO the jaw protector and supplementary protection for the Helmet Operative was deleted by DALO in the tender material hence they have not been evaluated in the requirement.

Garantis received 2 points for the requirement as the offered visor had a fit to the helmet as expected by the Danish Defence

Galvion Ballistic received 3 points for the requirement as the offered visor had a very good fit to the helmet.

Evaluation requirement Annex A 75 – Test category Functionality 2 – Helmet Ballistic HIGH CUT

Garanti received 1,75 points as the requirement was evaluated to be fulfilled to some extent.

In connection with the visor it was evaluated that it was not easy to mount and unmount, but that the coverage area and the fit to the helmet of the visor was as could be expected by the Danish Defence. The jaw protector could be mounted and unmounted, but this was very difficult to do, so it was evaluated negatively. The 7,62 mm. supplementary protection had a good coverage area and was easy to mount and unmount and was evaluated positively. The side guard was extremely hard to mount and when trying the side guard broke, therefore it was not possible to evaluate if it reduced the mobility, usage of weapon etc.

Galvion Ballistic received 2,48 points as the requirement was evaluated to be fulfilled to somewhat more than could be expected by the Danish Defence.

The visor was evaluated positively as it was easy to mount and unmount from the helmet, the coverage area and the fit to the helmet were evaluated to be as could be expected by the Danish Defence. The jaw protector could be mounted and unmounted, though not very quickly. The 7,62 mm. supplementary protection had a very good coverage area and was easy to mount and unmount, which was evaluated positively. The side guard did not affect the movement, observation or use of weapons more than could be expected and it was evaluated to be similar to the helmets ballistic protection.

Evaluation requirement Annex A 75 – Test category Functionality 2 – Helmet NON Ballistic HIGH CUT

Garanti received 1,5 points as the requirement was evaluated to be fulfilled to a lesser extent than expected by the Danish Defence. In connection with the visor it was evaluated that it was not easy to mount and unmount, but that the coverage area and the fit to the helmet of the visor was as could be expected by the Danish Defence. The jaw protector could be mounted and unmounted, but this was very difficult to do so it was evaluated negatively.

Galvion Ballistic received 2,45 points as the requirement was evaluated to be fulfilled to somewhat more than could be expected by the Danish Defence.

The visor was evaluated positively as it was easy to mount and unmount from the helmet, the coverage area and the fit to the helmet were evaluated to be as could be expected by the Danish Defence. The jaw protector could be mounted and unmounted, though not very quickly.

Conclusion

In accordance with the award decision, DALO intends to enter into a contract with Galvion Ballistic Ltd.”

Parternes anbringender

Garanti har til støtte for den nedlagte påstand gjort gældende, at funktionaliteten af de produkter, som Galvion tilbød, ikke var overlegen i forhold til Garantis produkter. De point, som Garanti blev tildelt på nedennævnte områder, er ikke korrekte, og de bør derfor revurderes. Vurderingen er sket på baggrund af en subjektiv vurdering af funktionaliteten, da det danske forsvar i mange år har brugt produkter fra den vindende tilbudsgiver og derfor finder, at produkter herfra er nemmere at montere og afmontere. Dette har medført en forskelsbehandling.

FMI bemærkede i forhold til ER (Evaluation Requirements) ID no. 87 og 88, at det var lidt svært at anvende tilspændingsmekanismen, når fingrene var kolde. Tilspændingsmekanismen ligner meget et internationalt brugt og verdensomspændende kendt produkt. Der var ikke stillet krav om brugbarhed, når fingrene var kolde. For disse evalueringskrav bør Garanti derfor tildeles 3,40 point.

Vedrørende evalueringen af ID no. 89 og 90 bestrides det, at der var behov for en skruetrækker for at justere hjelmen. Skruetrækker var kun nødvendig, når man skulle udskifte sideskinnerne. Dette design var det samme i alle ballistiske hjelme. Der anvendes således de samme spændebånd og justerings-spænder i fastholdelsessystemet i alle hjelme. FMI accepterede fastholdelsessystemet for så vidt angår hjelm basic og hjelm operativ, men i forhold til ID no. 89 og 90 anførte FMI, at det for ”high cut helmets” medførte ”resistance.” For disse evalueringskrav bør Garanti derfor tildeles 3,20 point.

For så vidt angår ID no. 92 var alle basic hjelme og operative hjelme fremstillet i den samme form. FMI anførte for så vidt angår Helmet Operative, at stofomslaget ikke var tæt som forventet. Dette er ikke logisk, da det samme stofomslag skulle passe på samme måde til enhver hjelm, som fremstilles i

samme form. For dette evalueringskrav bør der tildeles 4 point, som også blev tildelt for så vidt angår ID no. 91.

I forhold til ID no. 94 nævnte FMI på et møde, at Helmet NON Ballistic HIGH CUT skulle være et testeksemplar af maritim version med drænhuller. Det var tydeligt, at de maritime hjelme ikke havde et stofomslag, da de havde drænhuller. Det blev ikke angivet under mødet, at de maritime hjelme skulle sendes med stofomslag. Det var også tydeligt angivet i Appendix C-1, at maritime versioner ikke skulle indeholde stofomslag. Der bør derfor tildeles Garanti 3,20 point.

Vedrørende ID no. 95 bemærkes, at selvom der blev anvendt det samme hylster på alle hjelme, blev der givet en forskellig bedømmelse. For Helmet Operative blev det nævnt, at "NVG [Night Vision Goggle] var meget svær at bruge, og det var vanskeligt at være sikker på, om den er korrekt monteret", mens det for hjelm ballistisk højsnit blev anført, at "NVG kunne monteres og indstilles på hjelmen uden problemer". Logisk skal samme hylster være vært for samme NVG-beslag på samme måde uden problemer. Garanti bør for dette evalueringskrav tildeles 3,06 point.

For så vidt angår ID no. 98 var der tale om en hjelm, som havde et hagespænde i henhold til DS/EN397, som der blev anmodet om i specifikationerne. Det er normalt, at dette spænde åbner under en vis belastning. Testrapporten fra fabrikanten var afleveret i et vedhæftet bilag. Derudover kunne hageremmen justeres på 4 måder, så det var ikke logisk, at hagekoppen ikke var centreret. Den kunne flyttes op og ned, til venstre og højre gennem justeringsspænderne på fastholdelsessystemet. Garanti bør for dette evalueringskrav tildeles 2,90 point.

I forhold til ID no. 99 bemærkes som anført ovenfor, at Chinstrap-systemet kunne justeres på 4 måder, så det var ikke logisk, at hagekoppen ikke var centreret. Den kunne flyttes op og ned, til venstre og højre gennem justeringsspænderne på fastholdelsessystemet. Garanti bør for dette evalueringskrav tildeles 2,90 point.

Vedrørende ID no. A74 anført FMI, at visirets pasform var "som forventet", og at konkurrentens visir havde en "meget god" pasform. Der var kun stillet krav om vandtæt pasform og 100 % øjenbeskyttelse. Begge disse krav var

opfyldt. Der var derfor ikke grundlag for at reducere i pointene. Der bør tildeles Garanti 3 point for dette evalueringskrav.

For så vidt angår ID no. A75 og 76 bemærkes, at det danske militær i det sidste årti har anvendt produkter fra Galvion (tidligere Revision Military Ltd.) og derfor er bedre bekendt med SMV-panelet og deres produkter, hvilke man finder lettere at montere og afmontere. Dette har givet Galvion en konkurrencemæssig fordel. Garanti fremsendte brugermanualer, som viste, hvordan produkterne skulle samles, men Garanti fik aldrig en chance for at demonstrere eller uddanne deltagerne i ekspertpanelet/deltagere i brugertesten. Derfor havde disse personer ikke den fornødne viden og træning til at kunne teste Garantis produkter. Garantis underkæbebeskytter og visirer er meget lette at montere og afmontere. Disse produkter bruges af tyrkisk militær i felten. Sidebeskyttelsen skal også placeres som vist i manualen, før armene låses. Hvis den ikke placeres korrekt, og man fortsætter med at tvinge låsearmene, kan låsearmene brække, men sideværnet kan aldrig brække. For disse evalueringskrav bør Garanti derfor tildeles 2 point.

FMI har til støtte for den nedlagte påstand gjort gældende, at det følger af fast klagenævnspraksis, at klagenævnet alene tilsidesætter det skøn, som ordregiver har udøvet ved sin kvalitative bedømmelse, hvis ordregiver åbenbart har overskredet den vide grænse, der gælder for skønnet, eller hvis ordregiver har handlet usagligt.

Garanti synes ikke at gøre gældende, at FMI handlede usagligt ved evalueringen af Garantis tilbudte produkter. Spørgsmålet er derfor alene, om FMI ved sin evaluering åbenbart overskred skønnets vide grænse. FMI gør gældende, at dette ikke er tilfældet.

Garantis tilbud blev evalueret i overensstemmelse med retningslinjerne i udbudsmaterialet, og Garanti har ikke dokumenteret, at FMI begik fejl i evalueringen.

Ad evaluering af ID 87 og ID 88

Som FMI forstår Garantis indsigelser, består de i, at FMI evaluerede Garantis tilbud forkert i henhold til evalueringskriterierne ID 87 og ID 88, fordi ekspertpanelet tillagde det betydning, at drejeknappen (på tilspændingsmekanismen) var svær at anvende, når fingrene var kolde.

Det, som FMI først og fremmest tillagde vægt, var, at drejeknappen var svær at bruge, og at dette især gjorde sig gældende, når fingrene var kolde. FMI var berettiget til at lægge vægt på dette forhold, da det netop anføres i kravet, at der ville blive lagt vægt på ”Use, fit and maintenance of the Quick grip neck tightening solution”.

Ad evaluering af ID 89 og ID 90

Som FMI forstår Garantis indsigelser, består de i, at der ifølge Garanti ikke var behov for en skruetrækker ved initialjusteringen af hjelmen, og at FMI's vurdering vedrørende fastholdesystemet ikke var korrekt. Garanti gør nærmere bestemt gældende, at der på en række andre tilbudte hjelme blev anvendt de samme spændebånd og justeringsspænder, uden at FMI fandt anledning til at kritisere dette.

Et enigt ekspertpanel fandt imidlertid, at de pågældende forhold vedrørende spændebånd og justeringsspænder gjorde sig gældende ved de tilbudte hjelme, der indgik ved testen af de to omhandlede krav. I øvrigt bemærkes det, at forholdet vedrørende behovet for en skruetrækker til initialjusteringen samlet set ikke blev tillagt negativ værdi, da ekspertpanelet fandt, at denne justeringsmetode gav yderligere mulighed for tilpasning af hjelmene. Der er derfor ikke grundlag for at tilsidesætte FMI's vurdering på dette punkt.

Ad evaluering af ID 92

Som FMI forstår Garantis indsigelser, består de i, at FMI ikke evaluerede parameteret vedrørende hjelmens stofomslag korrekt, fordi ”Helmet Operative” fik en lavere score for samme parameter end for ”Helmet Basic”, hvor Garanti blev tildelt 4 point.

FMI's vurdering af parameteret vedrørende hjelmens stofomslag var berettiget. Det var ekspertpanelets oplevelse, at der var forskel på de tilbudte stofomslag til ”Helmet Basic” og til ”Helmet Operative”. Ved ”Helmet Operative” var det således tydeligt, at stofomslaget ikke sluttede så tæt, som man kunne forvente.

Ad evaluering af ID 94

Som FMI forstår Garantis indsigelser, består de i, at FMI skulle have oplyst Garanti om, at testeksemplaret af ”Helmet NON Ballistic HIGH CUT” ikke skulle leveres med omslag.

Garantis opfattelse må bero på en misforståelse. Det fremgik af kravets evalueringsparametre, at der ville blive lagt vægt på egenskaberne ved omslaget, hvorfor hjelmen skulle leveres med omslag. Dertil kommer, at det var et ufravigeligt krav, at pågældende hjelm blev leveret med et omslag, jf. Appendix A ID 10-12 samt ID 56.

I udbudsmaterialet var der efterspurgt hjelmtypen "Helmet NON Ballistic HIGH CUT", som bruges til forskellige typer af opgaver, herunder landoperationer, hvor der skal være stofomslag på hjelmen, og maritime operationer, hvor stofomslaget ikke er nødvendigt, jf. nærmere de to "Use cases" i Appendix A. FMI pointerede til forhandlingsmødet med Garanti, at Garanti kunne nøjes med at byde én "Helmet NON Ballistic HIGH CUT", hvis den opfyldte kravene til begge disse "Use Cases". Dette kunne ske ved at tilbyde en hjelm, som havde drænhuller. FMI drøftede ikke brugen af stofomslag på "Helmet NON Ballistic HIGH CUT" med Garanti til forhandlingsmødet. De to øvrige tilbudsgivere leverede også testeksemplaret af den omhandlede hjelm med stofomslag.

Ad evaluering af ID 95

Som FMI forstår Garantís indsigelser, består de i, at FMI har evalueret parametrene vedrørende montering af NVG (forkortelse for "Night Vision Goggle") forkert, da hjelmen anvender samme beslag som andre hjelme, som Garanti havde tilbudt, og som ikke fik en tilsvarende kritik i evalueringen. Ekspertpanelet oplevede imidlertid en klar forskel på beslagene til de forskellige hjelme, som Garanti havde tilbudt. På "Helmet Operative" blev der således oplevet store udfordringer med montering og tilpasning af NVG som nærmere redegjort for i afslagsbrevet. Forskellen kan muligvis skyldes, at selve hjelmene er forskelligt udformet. Der er ikke grundlag for at tilsidesætte FMI's vurdering.

Ad evaluering af ID 98

Som FMI forstår Garantís indsigelser, består de i, at FMI ikke var berettiget til at tillægge det vægt, at spændet (hjelms remsystem) blev åbnet under en vis belastning, og at det ikke var korrekt, at hageremmen ikke fremstod centreret.

FMI havde stillet som et mindstekrav, at remsystemet på den pågældende hjelm skulle opfylde DS/EN 397, afsnit 5.1.4, eller tilsvarende, jf. Appendix A, ID 22. Det følger heraf, at remsystemet skal åbnes under en vis belastning

for at forhindre arbejdsulykker. Det blev dog oplevet både i brugertesten og i den efterfølgende ekspertvurdering, at spændet sprang op, blot brugeren rykkede med hagen eller indtog en anden position end oprejst, hvorfor remsystemet ikke var anvendeligt i henhold til den operative brug beskrevet under kolonnen "Use Cases" for "Helmet Basic" jf. Appendix A.

Hvad angår hageremmen, var det vurderingen fra ekspertpanelet og de soldater, som deltog i brugertesten, at selvom hageremmen kunne justeres, var den meget svær at centrere til hagen. Hageremmen kunne således kun centreres på hagen, når siderne på remsystemet sad skævt i forhold til hinanden, hvilket blev vurderet at påvirke komforten i væsentlig grad. Der er ikke grundlag for at tilsidesætte ovenstående vurderinger.

Ad evaluering af ID 99

Som FMI forstår Garantis indsigelser, består de i, at det var uberettiget, at FMI fandt, at hagekoppen (hageremmen) på chin strap-systemet ikke var centreret. FMI skal heroverfor blot henvise til det anførte ovenfor vedrørende ID 98.

Ad evaluering af ID A74

Som FMI forstår Garantis indsigelser, består de i, at FMI ikke var berettiget til at give Garanti en lavere karakter end Galvion (som fik 3 point), da det tilbødte visir opfyldte de to parametre vedrørende vandtæt pasform og 100 % øjenbeskyttelse.

Hertil bemærkes, at ekspertpanelet ganske vist vurderede, at Garantis tilbødte visir tilsikrede, at vandet blev holdt ude, men at der dog var et mellemrum mellem visir og hjelm, hvilket trak ned i evalueringen. Galvion havde til sammenligning tilbudt et visir, der lukkede helt tæt, og fik derfor en højere karakter. Der er ikke grundlag for at tilsidesætte denne evaluering.

Ad evaluering af ID-A75 og ID-A76

Som FMI forstår Garantis indsigelser, består de i, at FMI's ekspertpanel og deltagere under brugertesten ikke havde den fornødne viden og træning til at kunne teste Garantis produkter, og at Galvion havde haft en uberettiget fordel, idet forsvaret tidligere havde anvendt dennes produkter.

Heroverfor gør FMI gældende, at de pågældende personer havde de fornødne kompetencer til at foretage en retvisende test. Der var tale om kyndige og

erfarne eksperter og brugere, som ved testens udførelse fulgte de fremsendte manualer.

Tilbudsgiverne havde ikke i henhold til udbudsbetingelserne mulighed for at demonstrere de tilbudte produkter eller gennemføre træning; hverken af soldaterne, som udførte brugertesten, eller af ekspertpanelet. Det var FMI's vurdering, at der ikke var behov for en sådan demonstration eller træning, da skriftlige manualer mv. udgjorde tilstrækkelig instruktion.

Havde FMI åbnet op for at tillade, at Garanti kunne give demonstrationer eller instruktioner, uden at tillade de andre tilbudsgivere tilsvarende, ville det have været i strid med ligebehandlingsprincippet. Det var derfor berettiget, at FMI undlod dette.

Galvion har tidligere leveret produkter til det danske forsvar, men der er tale om andre modeller og produkter end dem, som Galvion bød ind med i dette udbud. Galvion har derfor ikke draget nogen utilbørlig konkurrencemæssig fordel heraf under testen i udbuddet.

Klagenævnet udtaler:

I kendelse af 17. april 2020, hvorved klagenævnet ikke tillagde klagen opsættende virkning, da betingelsen om ”fumus boni juris” ikke var opfyldt, udtalte klagenævnet blandt andet:

”...at klagenævnet efter fast praksis alene kan tilsidesætte det skøn, som den ordregivende myndighed har udøvet ved bedømmelsen af tilbudsgivernes opfyldelse af kvalitative kriterier, hvis ordregiveren har overskredet den grænse, der gælder for ordregiverens evalueringsskøn, eller har handlet usagligt. Klagenævnet erstatter herved ikke ordregiverens skøn med sit eget.

Tilbudsgiverne skulle ifølge udbudsbekendtgørelsen indlevere 57 hjelme i forskellige størrelser og typer ved afgivelsen af det endelige tilbud. Hjelmene skulle anvendes i forbindelse med en test ved et ekspertpanel og/eller en bruger felttest for derved at vurdere funktionaliteten i forhold til de fastsatte krav i kravspecifikationen.

Efter en gennemgang af de dele af Garantis tilbud, som Garanti har fremhævet under klagesagen, finder klagenævnet ikke grundlag for at tilside-

sætte FMI's evaluering af underkriteriet Functionality, som efter indholdet af underretningsbrevet og evalueringsrapporten findes at være sket i overensstemmelse med den fastsatte evalueringsmetode og det fastsatte i udbudsmaterialets kravspecifikation, og som er udtryk for et sagligt og lovligt skøn.

Klagenævnet har herved blandt andet lagt vægt på følgende:

Efter beskrivelsen af evalueringskriterierne ID no. 87 og 88 lå det ikke uden for de rammer, som kravspecifikationen fastlagde, at tillægge det negativ betydning, at drejeknappen på tilspændingsmekanismen var svær at bruge, og at dette især gjorde sig gældende, når fingrene var kolde, da det fremgik af kravbeskrivelsen, at der ville blive lagt vægt på "Use, fit and maintenance of the Quick grip neck tightening solution".

Det følger af kravspecifikationen ID no. 10-12 og 56, at også "Helmet NON Ballistic HIGH CUT" skulle leveres med omslag. Det fremgik endvidere under krav ID no. 94, at evalueringsparametrene omfattede egenskaberne ved omslaget. Efter indholdet af referatet fra forhandlingsmødet med FMI er der ikke grundlag for at antage, at FMI til Garanti skulle have oplyst, at testeksemplaret af "Helmet NON Ballistic HIGH CUT" for så vidt angår krav ID no. 94 ikke skulle leveres med omslag.

FMI har under sagen for så vidt angår kravspecifikation ID no. 74 supplerende oplyst, at ekspertpanelet vurderede, at Garantis tilbudte visir tilsikrede, at vandet blev holdt ude, men at der var et mellemrum mellem visir og hjelm, hvilket trak ned i evalueringen. Det fremgår af kravspecifikationen vedrørende ID no. 74, at FMI blandt andet ville lægge vægt på, at "the visor should be close fitted to the helmet edge so that, for example, water cannot run from the helmet down into the operator's eyes." FMI har på den baggrund kunnet tillægge det betydning, hvorvidt der var et mellemrum mellem visir og hjelm, selv om visiret holdt vandet ude.

Vedrørende kravspecifikation ID no. 75 og 76 bemærkes, at tilbudsgiverne i henhold til udbudsbetingelserne ikke havde mulighed for at demonstrere de tilbudte produkter eller gennemføre træning. I det omfang Garanti som den eneste tilbudsgiver var blevet givet adgang hertil, ville det have været i strid med ligebehandlingsprincippet.

Der er ikke grundlag for at antage, at Galvion, som tidligere har leveret andre produkter til det danske forsvar, har haft en konkurrencemæssig fordel heraf under testen i udbuddet.

Der er på den baggrund efter de foreliggende oplysninger ikke grundlag for at fastslå, at FMI's evaluering er sket i strid med principperne om ligebehandling og gennemsigtighed i forsvarsdirektivets artikel 4. Det er

således klagenævnets foreløbige vurdering, at FMI i forbindelse med evalueringen af Garantis tilbud og pointtildelingen i relation til underkriterium Functionality ikke er gået ud over det skøn, det tilkommer FMI at udøve.

Der er herefter på det foreløbige grundlag, der foreligger, ikke udsigt til, at Garantis påstand vil blive taget til følge.

Garanti har ikke nedlagt påstand om annullation af tildelingsbeslutningen, og klagen kan heller ikke efter sin ordlyd forstås sådan.

Betingelsen nr. 1 om ”fumus boni juris” er derfor ikke opfyldt.”

Der er under den efterfølgende behandling af sagen ikke fremkommet nye oplysninger eller indlæg.

På den baggrund og i øvrigt af de grunde, der er angivet i klagenævnets delkendelse af 17. april 2020, tages påstanden ikke til følge.

Herefter bestemmes:

Klagen tages ikke til følge.

Garanti Giyim Kompozit Teknojileri Sanayi ve Ticaret A.S. skal i sagsomkostninger til Forsvarsministeriets Materiel- og Indkøbsstyrelse betale 15.000 kr., der betales inden 14 dage efter modtagelsen af denne kendelse.

Klagegebyret tilbagebetales ikke.

Jesper Stage Thusholt

Genpartens rigtighed bekræftes.

Dorthe Hylleberg
kontorfuldmægtig