

Action brought on 3 February 2014 — Secolux v Commission and CdT**(Case T-90/14)**

(2014/C 135/64)

*Language of the case: French***Parties**

Applicant: Secolux, Association pour le contrôle de la sécurité de la construction (Capellen, Luxembourg) (represented by: N. Prüm-Carré, lawyer)

Defendants: Translation Centre for the Bodies of the European Union (CdT) and the European Commission

Form of order sought

The applicant claims that the Court should:

- annul the decision of 3 December 2013 of the European Commission — acting both for itself and on behalf of other contracting authorities, namely the Translation Centre for the Bodies of the European Union and the Publications Office of the European Union — rejecting the tender submitted by the applicant for Lot 1, ‘Statutory environmental checks and checks relating to safety and welfare’, in the context of call for tenders No 02/2013/OIL ‘Safety checks’, and awarding the contract at issue to another tenderer;
- order the European Commission to pay the sum of EUR 467 186,08 in damages as compensation for the harm sustained, together with statutory interest accrued from the date on which the contract was awarded until payment of the sums due;
- order the European Commission to pay the entire costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging procedural irregularities, since contradictory information was brought to the applicant’s knowledge concerning the amount of the successful tender for Lot No 1. The applicant submits that:
 - the amount of the tender of the successful tenderer, referred to in the Commission’s letter dated 11 December 2013 informing the applicant of the characteristics and relative advantages of the successful tender, is inaccurate because it is too low. In that case, the applicant did not have access to sure information on the price of the successful tender, which infringes the obligation to state reasons; or
 - the value of the contract awarded, contained in the contract award notice published on 24 December 2013, ⁽¹⁾ is incorrect because it is too high. In that case the contract award notice does not reflect the value of the successful tender, which constitutes a breach of the obligation of transparency; or
 - the amount of the successful tender as stated in the Commission’s letter of 11 December 2013 and the value of the contract as stated in the contract award notice are correct. In that case, the contract was awarded for an amount greater than the successful tender, which constitutes a serious infringement of the principles of transparency, equal treatment and non-discrimination.
2. Second plea in law, alleging an irregularity in the successful tender, in so far as the successful tenderer could not, at the price tendered, carry out correctly all the services requested with staff having the required qualifications.
3. Third plea in law, alleging that there was an abnormally low tender. The applicant submits that there is a body of evidence indicating that the successful tender does not accord with any economic reality. The Commission ought therefore to have requested details from the successful tenderer of the constituent elements of its tender, pursuant to Article 151 of delegated regulation No 1268/2012. ⁽²⁾

4. Fourth plea in law alleging breach of the principles of equal treatment and non-discrimination during both the preparation and the evaluation of the tenders. The applicant submits:
 - first that, since the successful tenderer was also awarded the earlier contracts, it had privileged information in relation to locations, services to be performed and amounts actually sought by the Commission, which ought to have led the Commission to request details from the applicant on the basis of Article 160(3) of delegated regulation No 1268/2012;
 - and, secondly, that the Commission took into account the quality of the services previously provided by the tenderer awarded the earlier contracts when evaluating the tenders submitted in respect of the contract to be awarded.

⁽¹⁾ OJ 2013/S 249-433951.

⁽²⁾ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1).

Action brought on 10 February 2014 — St'art and Others v Commission

(Case T-93/14)

(2014/C 135/65)

Language of the case: French

Parties

Applicants: St'art — Fonds d'investissement dans les entreprises culturelles (Mons, Belgium); Stichting Cultuur — Ondernemen (Amsterdam, Netherlands); and Angel Capital Innovations Ltd (London, United Kingdom) (represented by: L. Dehin and C. Brûls, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- declare the application to be admissible and well founded and consequently annul the contested measure:
 - namely the decision of an unknown date formalised on 29 November 2013 by the European Commission to reclaim the sum of EUR 140 500,01 from the company EDC in the context of the tender 'Factor SI.2.609157-2/G/ENT/CIP/11/C/N03C011' and to require, if necessary, for that purpose, the joint and several liability of the other members of the consortium.

Pleas in law and main arguments

In support of the action, the applicants rely on two pleas in law.

1. First plea in law, alleging infringement of the right to sound administration and inter alia of the obligation to state reasons and infringement of the principle of lawfulness, in so far as the Commission's decision to recover the advances paid to the company EDC in the context of the project 'C-I Factor' and to claim the joint and several liability of the applicants, members of the consortium, in that regard is based on an unlawful decision to terminate the subsidy contract.
2. Second plea in law, alleging exceeding and misuse of powers and infringement of the right to sound administration, of the principle of an adversarial process and of the general principle *patere legem quam ipse fecisti*, the Commission not providing information to make it possible, first, to know whether it examined the observations made by the consortium of which the applicants were a part and, second, to know the grounds on which it had rejected those observations. The applicants also complain that the Commission did not give them the opportunity to carry out, themselves, the obligations arising from the contract in order to remedy any possible shortcomings of the company EDC.