

The applicants also submit a violation of the principle of legal certainty. According to the applicants, the Commission did not act in a timely manner while it had all relevant information at its disposal. The applicants submit that the Commission only started its inquiries in 1999, even though it was, according to the applicants, fully informed of all relevant facts in early 1996. The procedure opened in February 2000 would also have been extended to new elements that were never investigated before, and for which the approval decisions did not provide a legal basis.

Finally, as a subsidiary ground, the applicants submit that the Commission failed to take all restructuring costs into account when determining the amount to be recovered. According to the applicants, much more was spent on the restructuring than the amount of aid received for that purpose.

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**Action brought on 11 February 2005 by European Dynamics S.A. against the European Food Safety Authority**

(Case T-69/05)

(2005/C 106/70)

(Language of the case: English)

An action against the European Food Safety Authority was brought before the Court of First Instance of the European Communities on 11 February 2005 by European Dynamics S.A., established in Athens (Greece), represented by N. Koroziannakis, lawyer.

The applicant claims that the Court should:

- annul the decision of EFSA, to evaluate the applicant's bid as not successful and award the contract to the successful contractor as well as all other later decisions of EFSA related to the above;
- order the EFSA to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

*Pleas in law and main arguments*

The applicant company filed a bid in response to EFSA's call for tenders EFSA/IT/00012<sup>(1)</sup> for the software and services for establishing an Extranet between the Members States' national agencies, EFSA and the European Commission. By the contested decision the applicant's bid was rejected and the contract awarded to another bidder.

In support of its application to annul the contested decisions the applicant contends that the defendant violated the Financial Regulation<sup>(2)</sup> as well as Article 17(1) of Directive 92/50<sup>(3)</sup> by using evaluation criteria, that were not well specified in the call for tenders. According to the applicant, by accepting without any further processing and cross-checking the opinion of officers of the tenderer's clients, EFSA attributed part of its evaluation rights to third parties. The applicant further argues that under Directive 92/50 the satisfaction of a bidder's clients cannot be taken into account in order to exclude the bidder but can only be used as an 'award criterion'.

The applicant also claims that the defendant committed manifest errors of appreciation in the evaluation of the bid it had submitted. The applicant contests certain statements contained in the report of the Evaluation Committee, regarding the fact that one of the applicant's clients had neither purchased nor used the product offered by the applicant and the fact that another Community institution was not satisfied with the applicant's product. The applicant also considers, in the same context, that the method used by EFSA during the evaluation procedure, consisting in simple telephone calls without any official requests nor cross-checks of the information received, was inadequate and in itself suffices in order to establish a manifest error of assessment.

The applicant finally submits that the defendant failed to provide adequate reasons for its decision, in violation of Article 253 EC.

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<sup>(1)</sup> OJ 2004/S 153-132262.

<sup>(2)</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, OJ L 248, 16/09/2002, p. 1.

<sup>(3)</sup> Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, OJ L 209, 24/07/1992, p. 1.

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