

In its second plea, the applicant claims that the decision violates Article 253 EC in that it fails to state reasons as to the following points:

- the statement of reasons regarding the assessment of the general reference system under its analysis of the existence of a selective advantage is contradictory;
- with regard to analysis of the condition on selectivity, in particular by not carrying out in detail the three step analysis provided for by the relevant case-law;
- the Commission has allegedly insufficiently justified why it considers that the additional liabilities borne by BT upon privatisation are irrelevant for the purpose of considering BT's overall position on the market in comparison with its competitors;
- the Commission allegedly failed to explain how the transfer of State resources pertaining to the Crown guarantee could constitute the relevant transfer of State resources for several exemptions (under the Pensions Act 2004 provisions) which follow from the existence of Crown guarantees.

In its third plea, the applicant claims that the decision violated the notion of unlawful aid pursuant to Article 88(3) EC in combination with Articles 1 f) and 14 of Council Regulation (EC) No 659/1999<sup>(1)</sup> in that there is no aid to be recovered, either from BT or the BTPS and its Trustee, the alleged aid not having been put into effect, as a result of an escrow agreement.

<sup>(1)</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1)

## Action brought on 8 June 2009 — *Evropaiki Dynamiki v Commission*

(Case T-236/09)

(2009/C 193/42)

*Language of the case: English*

### Parties

*Applicant:* Evropaiki Dynamiki — Proigmena Systimata Tilepi-koinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis and M. Dermitzakis, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

- annul Commission's decision to reject the bid of the applicant, filed in response to the open Call for Tenders

RTD-R4-2007-001 Lot 1 for the 'On-site development expertise (intra-muros)' and for Lot 2 Off-site development projects (extra-muros) (OJ 2007/S 238-288854) communicated to the applicant by two separate letters dated 27 March 2009 and all further decisions of the Commission including the one to award the contract to the successful contractor;

- order the Commission to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 69 445 200 (33 271 920 for Lot 1 and 36 173 280 for Lot 2);
- order the Commission to pay the applicant's legal costs and expenses incurred in connection with this application, even if current application is rejected.

### Pleas in law and main arguments

In the present case the applicant seeks the annulment of the defendant's decisions to reject its bid submitted in response to a call for an open tender for external service provision for development, studies and support of information systems (RTD-R4-2007-001-ISS-FP7) both for Lot 1 for the 'On-site development expertise (intra-muros)' and for Lot 2 Off-site development projects (extra-muros) and to award the contract to the successful contractor. The applicant further requests compensation for the alleged damages in account of the tender procedure.

In support of its claims the applicant puts forward following pleas in law.

First, the applicant claims that the defendant committed various and manifest errors of assessment and that it refused to provide any justification or explanation to the applicant in breach of the financial regulation<sup>(1)</sup> and its implementing rules as well as in breach of directive 2004/18<sup>(2)</sup> and of Article 253 EC.

Second, the applicant claims that the defendant infringed the financial regulation by obliging tenderers to extend their tenders against their will. In addition, the applicant argues that even if one assumed that the defendant had right to do so, *quod non*, it was in violation of the principles of good administration, transparency and equal treatment that it decided to proceed with the completion of the award process even after the expiration of the extension as, in the applicant's opinion, no contract can be signed when one or more tenders are not valid anymore.

Third, the applicant claims that the outcome of the procedure laid down by the call for tenders was distorted by leakage of information associated with an attempt to impede the applicant from exercising its rights.

Further, the applicant puts forward specific arguments in respect of each lot.

In respect of the Lot 1, the applicant claims that the defendant infringed the principles of equal treatment and of good administration as it failed to observe the exclusion criteria provided for by Articles 93(1) and 94 of the financial regulation regarding one of the members of the winning consortium which was in breach of its contractual obligations to the defendant. Furthermore, the applicant submits that the winning tenderer was allowed illegally to use resources from companies based in non WTO/GPA countries and that this practice is illegal.

In respect of the Lot 2, the applicant argues that the defendant should not allow tenderers subcontracting to non WTO/GPA countries to participate in the bidding proceedings; should it do so, the applicant contends that it should proceed on a fair, transparent and non discriminatory manner, clarifying the selection criteria it would use for excluding certain companies or accepting others. Therefore, in the applicant's opinion, the defendant applied particularly discriminatory approach failing to describe the selection criteria it used to select tenderers. Furthermore, it submits that the defendant failed to observe the exclusion criteria provided for by Articles 93(1) and 94 of the financial regulation and Articles 133a and 134 of the implementing rules and Article 45 of Directive 2004/18 and intending to exclude from public procurement companies that have either been condemned or that have been involved in illegal activities such as fraud, corruption, bribes and professional misconduct. The applicant submits that in the present case the winning tenderer has acknowledged its involvement to the above activities and has been condemned by the German courts.

Finally, the applicant also claims that the defendant committed several manifest errors of assessment in respect of both lots and regarding the quality of the tenderer's proposal for the overall management of the service, for ordering services and for delivery of services as well as the tenderer's technological proposal in the domain of the lots.

(<sup>1</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 2002 L 248, p. 1)

(<sup>2</sup>) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114)

**Action brought on 17 June 2009 — Région Wallonne v Commission**

(Case T-237/09)

(2009/C 193/43)

*Language of the case: French*

**Parties**

*Applicant:* Région Wallonne (represented by: J.-M. De Backer, A. Lapière, and I.-S. Brouhns, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

— An order annulling the Commission's decision of 27 March 2009 concerning the Belgian National Allocation Plan on the ground that the decision rejects the allocation of allowances to installation No 116 for the period 2008 — 2012, and permitting allocation by annual tranches in accordance with Annex Va to the NAP;

— An order that the Commission pay the costs.

**Pleas in law and main arguments**

The applicant claims annulment of the Commission's decision of 27 March 2009 concerning the national plan for allocation of greenhouse gas emission allowances for Belgium for the period from 2008 to 2012, by which the Commission refused the correction to the 'National Allocation Plan table' according allowances to installation No 116.

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

— breach of Article 44(2) of Commission Regulation (EC) No 2216/2004, (<sup>1</sup>) since the Commission relied on grounds which were not provided for by the applicable provision;

— breach of its obligation to state reasons for the contested decision, from which it cannot be ascertained in what way the correction to Belgium's 'National Allocation Plan table' in respect of installation No 116 is not based on the national plan for allocation of greenhouse gas emission allowances notified by Belgium and approved by the Commission beforehand;

— breach of the principle of legal certainty and of legitimate expectations, on the ground that the contested decision is contrary to the national plan for allocation of greenhouse gas emission allowances approved by the Commission;

— breach of the principle of good faith in Community matters and of sound administration, since the Commission adopted a decision which is contrary to a previous decision adopted six months earlier.

(<sup>1</sup>) Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council (OJ 2004 L 386, p. 1)