

**Action brought on 22 October 2009 — Berenschot Groep v Commission**

(Case T-428/09)

(2010/C 11/57)

*Language of the case: English*

**Parties**

*Applicant:* Berenschot Groep BV (Utrecht, Netherlands) (represented by: B. O'Connor, solicitor)

*Defendant:* Commission of the European Communities

**Form of order sought**

- declare the application admissible;
- annul unreasoned decision of the Commission of 11 August 2009 not to rank the tender submitted by the applicant as one of the seven most economically advantageous tenders and in consequence no to retain the consortium led by the applicant in respect of the service tender procedure “Multiple Framework contract to recruit short-term services in the exclusive interest of third countries benefiting from European Commission External Aid”;
- enquire into the conduct of the tender and the exercise of the vigilance in relation to tenderers suspected of fraud;
- annul the decision of 21 October 2009;
- make any additional order which the Court considers necessary;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

In the present case, the applicant seeks the annulment of the defendant's decision not to retain the bid it submitted as a part of consortium in response to a call for an open tender (EuropAid/127054/C/SER/multi) for service provision for “Multiple Framework contract to recruit short-term services in the exclusive interest of third countries benefiting from European Commission External Aid” (1). Furthermore, the applicant seeks annulment of the Commission decision of 21 October 2009 granting partial access to the evaluation reports regarding the said tender procedure.

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

First, it submits that the evaluation committee did not assess properly the experts included in the applicant's tender. In its view, the evaluation committee made a manifest error of assessment by marking the experts of the consortium led by

the applicant unreasonably. Furthermore, the applicant argues that the evaluation committee and the Commission did not provide any explanation on the grading system for individual curriculum vita nor did they explain why the applicant's experts have scored so poorly. If the evaluation committee used no objective criteria when making its assessments, the Commission has not ensured that the principles of equal treatment of the tenderers, transparency, fair competition and good administration have been complied with. The evaluation report provided by the Commission on 21 October 2009 did not remedy the lack of information, as it was limited to the presentation of the final scores obtained by the applicant.

Second, the applicant claims that the Commission infringed Article 7(1) of Regulation 1049/2001 (2) in that it did not respond to the applicant's request to access the documents in the time-limits set by this article. It also contends that the Commission infringed the principle of good administration, as the evaluation report has not been provided timely enough to enable the applicant to properly exercise its rights under Article 230 EC.

Third, the applicant submits that the Commission has not complied with its obligations under Article 94 of the financial regulation (3) and under Decision 2008/969 (4) in that it did not take steps to protect the integrity of the Community's budget by not excluding the tenderers suspected of fraud from the award of the contract in question.

(1) OJ 2008/S 90-121428

(2) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43

(3) 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)

(4) Commission Decision of 16 December 2008 on the Early Warning System for the use of authorising officers of the Commission and the executive agencies (OJ L 2008 344, p. 125)

**Action brought on 22 October 2009 — GL2006 Europe v Commission and OLAF**

(Case T-435/09)

(2010/C 11/58)

*Language of the case: English*

**Parties**

*Applicant:* GL2006 Europe Ltd (Birmingham, United Kingdom) (represented by: M. Gardenal and E. Belinguier-Raiz, lawyers)