

Action brought on 26 September 2010 — Evropaiki Dynamiki v Commission

(Case T-474/10)

(2010/C 346/93)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

- annul DIGIT's decision to: (a) select the bid of the applicant, filed in response to the open call for tenders DIGIT/R2/PO/2009/45 "External service provision for development, studies and information systems" (OJ 2009/S 198-283663), for Lot 1A, as second contractor in the cascade mechanism, (b) select the bid of the applicant filed in response to the aforementioned open call for tenders Lot 1B, as third contractor in the cascade mechanism, (c) select the bid of the applicant filed in response to the aforementioned open call for tenders Lot 1C, as second contractor in the cascade mechanism, (d) select the bid of the applicant filed in response to the aforementioned call for tenders Lot 3 as third contractor in the cascade mechanism, instead of first contractor in all Lots, as communicated to the applicant by four separate letters (one for each Lot) dated 16 July 2010 and all the related decisions of DIGIT including those to award the respective contracts to the first and second cascade contractors;
- order DIGIT to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 242 000 000 (EUR 122 000 000 for Lot 1A, EUR 40 000 000 for Lot 1B, EUR 30 000 000 for Lot 1C and EUR 50 000 000 for Lot 3) and the amount of EUR 24 200 000 for damages for loss of opportunity and damage to its reputation and credibility; and
- order DIGIT 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

In the present case the applicant seeks the annulment of the defendant's decision of 16 July 2010 to select its bid in the context of the call for tenders DIGIT/R2/PO/2009/45 "External service provision for development, studies and information systems" ⁽¹⁾, for Lots 1A, 1B, 1C and 3, as second or third contractor in the cascade mechanism instead of first contractor and all the related decisions of DIGIT, including those to award the respective contracts to the first and second cascade

contractors. The applicant further requests compensation for the alleged damages on account of the tender procedure.

In support of its claims the applicant puts forward the following grounds.

Firstly, the applicant argues that the Commission has infringed Articles 93 and 94 of the financial regulation ⁽²⁾ and the principles of good administration and transparency as well as Articles 106 and 107 of the financial regulation because several members of the winning consortium did not comply with the exclusion criteria since they should have been found to be in serious breach of previous contracts, and one member of the winning consortium was involved in fraud, corruption and bribes, while several members of the winning consortia use non WTO/GPA based subcontractors.

Furthermore, the applicant argues that the principle of good administration and the principle of equal treatment as well as Articles 89 and 98 of the financial regulation and Article 145 of its implementing rules were infringed since a conflict of interest existed in the person of several evaluators.

The applicant further contends that vague and irregular award criteria were used during the evaluation thus infringing Article 97 of the financial regulation and Article 138 of the implementing rules.

Finally, the applicant claims that the contracting authority has failed to disclose the relative merits of the successful tenderer and has committed several manifest errors of assessment while evaluating its tender as well as the one of the winning consortia. In the applicant's opinion, the contracting authority has also used vague and unsubstantiated comments in its evaluation report.

⁽¹⁾ OJ 2009/S 198-283663

⁽²⁾ 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)

Action brought on 9 October 2010 — SE — Blusen Stenau v OHIM (SPORT EYBL & SPORTS EXPERTS (SE© SPORTS EQUIPMENT))

(Case T-477/10)

(2010/C 346/94)

Language in which the application was lodged: German

Parties

Applicant: SE — Blusen Stenau GmbH (Gronau, Germany) (represented by: O. Bischof, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)