

Judgment of the Court (Fourth Chamber) of 15 October 2009 (reference for a preliminary ruling from the Fővárosi Ítéltábla (Republic of Hungary)) — Hochtief AG, Linde-Kca-Dresden GmbH v Közbeszerzések Tanácsa Közbeszerzési Döntőbizottság

(Case C-138/08) ⁽¹⁾

(Procedures for the award of public works contracts — Procedures initiated after the entry into force of Directive 2004/18/EC and before the expiry of the period for transposition of that directive — Negotiated procedures with publication of a contract notice — Obligation to admit a minimum number of suitable candidates — Obligation to ensure genuine competition)

(2009/C 297/06)

Language of the case: Hungarian

Referring court

Fővárosi Ítéltábla

Parties to the main proceedings

Applicant: Hochtief AG, Linde-Kca-Dresden GmbH

Defendant: Közbeszerzések Tanácsa Közbeszerzési Döntőbizottság

Intervening party: Budapest Főváros Önkormányzata

Re:

Reference for a preliminary ruling — Fővárosi Ítéltábla — Interpretation of Article 22(2) and (3) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54), and of Article 44(3) of 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) — Whether it is possible to continue a negotiated procedure with publication of a contract notice where the number of suitable candidates is less than the minimum number of the range prescribed in the contract notice, and less than the minimum number prescribed for that purpose in the abovementioned directives

Operative part of the judgment

1. 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 is not applicable to a decision taken by a contracting authority when awarding a public works contract before the period for transposition of that directive has expired;
2. Article 22(3) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, as amended by Directive 97/52/EC of the

European Parliament and of the Council of 13 October 1997, must be interpreted as meaning that where a contract is awarded by a negotiated procedure and the number of suitable candidates is below the lower limit prescribed for the procedure in question, the contracting authority may, nevertheless, continue with the procedure by inviting the suitable candidate or candidates to negotiate the terms of that contract;

3. Council Directive 93/37, as amended by Directive 97/52, must be interpreted as meaning that the obligation to ensure that there is genuine competition is satisfied where the contracting authority has recourse to the negotiated procedure under the conditions referred to in Article 7(2) of that directive.

⁽¹⁾ OJ C 183, 19.07.2008.

Judgment of the Court (Third Chamber) of 15 October 2009 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Sicilia (Italy)) — Acoset SpA v Conferenza Sindaci e Presidenza Prov. Reg. ATO Idrico Ragusa, Comune di Comiso (RG), Comune di Modica (RG), Provincia Regionale di Ragusa, Comune di Acate (RG), Comune di Chiaramonte Gulfi (RG), Comune di Giarratana (RG), Comune di Ispica (RG), Comune di Monterosso Almo (RG), Comune di Pozzallo (RG), Comune di Ragusa, Comune di Vittoria (RG), Comune di Santa Croce Camerina (RG), Comune di Scicli (RG)

(Case C-196/08) ⁽¹⁾

(Articles 43 EC, 49 EC and 86 EC — Award of public contracts — Award of water service to a semi-private company — Competitive procedure — Appointment of the private partner responsible for operating the service — Award made without regard to the rules governing the award of public contracts)

(2009/C 297/07)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Sicilia

Parties to the main proceedings

Applicant: Acoset SpA

Defendants: Conferenza Sindaci e Presidenza Prov. Reg. ATO Idrico Ragusa, Comune di Comiso (RG), Comune di Modica (RG), Provincia Regionale di Ragusa, Comune di Acate (RG), Comune di Chiaramonte Gulfi (RG), Comune di Giarratana (RG), Comune di Ispica (RG), Comune di Monterosso Almo (RG), Comune di Pozzallo (RG), Comune di Ragusa, Comune di Vittoria (RG), Comune di Santa Croce Camerina (RG), Comune di Scicli (RG)