

2. *Orders Bart Nijs to bear his own costs and to pay those incurred by the Court of Auditors of the European Communities in the present proceedings.*

(¹) OJ C 301 of 22.11.2008.

Order of the President of the Court of First Instance of 10 July 2009 — TerreStar Europe v Commission

(Case T-196/09 R)

(Application for interim measures — Decision on the selection of operators of pan-European systems providing mobile satellite services — Application for suspension of operation of the measure and interim relief — No urgency)

(2009/C 233/33)

Language of the case: English

Parties

Applicant: TerreStar Europe Ltd (London, United Kingdom) (represented by: R. Olofsson, lawyer and J. Killick, Barrister)

Defendant: Commission of the European Communities (represented by: G. Braun, A. Nijenhuis, K. Platteau and D. Van Liedekerke, lawyers)

Re:

In essence, application for suspension of operation of Commission Decision 2009/449/EC of 13 May 2009 on the selection of operators of pan-European systems providing mobile satellite services (MSS) (OJ 2009 L 149, p. 65).

Operative part of the order

1. *The application for interim measures is dismissed.*
2. *The costs are reserved.*

Action brought on 22 July 2009 — Evropaiki Dynamiki v EASA

(Case T-297/09)

(2009/C 233/34)

Language of the case: English

Parties

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

Defendant: European Aviation Safety Agency

Form of order sought

- annul the EASA's decisions to select the bids of the applicant, filed in response to the open Call for Tenders EASA.2009.OP.02 Lot 1, Lot 2, Lot 3 and Lot 5 on ICT services (OJ 2009/S 22-030588) as second and third contractor in the cascade mechanism, communicated to the applicant by four separate letters dated 12 May 2009, 8 July 2009, 13 July 2009 and 15 July 2009 and all further related decisions of EASA including the one to award the contract to the successful contractors;
- order the EASA to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 6 100 000;
- order the EASA to pay the applicant's legal 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 to select its bids submitted in response to a call for an open tender for ITC services (EASA.2009.OP.02) as second and third contractor in the cascade mechanism and to award the contract to the successful contractors. The applicant further requests compensation for the alleged damages in account of the tender procedure.

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

First, the applicant claims that the defendant infringed the principle of good administration and equal treatment as it failed to observe the exclusion criteria provided for by Articles 93(1) and 94 of the financial regulation (¹) by not excluding from the tender proceeding one of the members of the winning consortium being accused by national authorities and even accepting to be guilty for illegal activities and specifically for fraud, corruption, bribery, in the context of contract awarded from public authorities in the European Union and internationally, as well as for falsifying its books and one other winning contractor being in serious breach of its contractual obligations in its relations with the European Commission. By doing so, the defendant infringed as well Articles 133a and 134 of the implementing rules (²) and Article 45 of directive 2004/18/CE (³).

Furthermore, the applicant invokes the defendant's alleged professional misconduct arising from the potential usage of non WTO/GPA subcontractors by one of the winning tenderers.

Second, the applicant submits that the defendant committed manifest errors of assessment and that it failed to state reasons in breach of the financial regulation and its implementing rules as well as in breach of directive 2004/18/CE⁽³⁾ and of Article 253 EC. It states that the defendant also infringed the principle of equal treatment as one of the winning tenderers had not complied with the tender specifications.

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- (¹) 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).
- (²) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).
- (³) 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 22 July 2009 — Evropaiki Dynamiki v Commission

(Case T-298/09)

(2009/C 233/35)

Language of the case: English

Parties

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

Defendant: Commission of the European Communities

Form of order sought

- annul the Commission's decisions to select the bids of the applicant, filed in response to the open Call for Tenders EAC/01/2008 for external service provision for educational programmes (ESP-ISEP) Lot 1 'IS Development and Maintenance' and Lot 2 'IS Studies, Testing, Training and Support' (OJ 2008/S 158-212752) second contractor in the cascade mechanism, communicated to the applicant by two separate letters dated 12 May 2009 and all further related decisions of Commission including the one to award the respective contracts to the successful contractors;
- order the Commission to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 9 554 480;
- order the Commission to pay the applicant's legal 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 to select its bids, submitted in response to a call for an open tender for external service provision for educational programmes (ESP-ISEP) (EAC/01/2008), as second contractor in the cascade mechanism and to award the respective contracts to the successful contractors. The applicant further requests compensation for the alleged damages in account of the tender procedure.

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

First, the applicant claims that the defendant infringed the principles of good administration and equal treatment as it failed to observe the exclusion criteria provided for by Articles 93(1) and 94 of the financial regulation⁽¹⁾ by not excluding from the tender proceeding one of the members of the winning consortium being in breach of its contractual obligations to the defendant. By doing so, the defendant infringed as well Articles 133a and 134 of the implementing rules⁽²⁾.

Second, the applicant submits that the defendant infringed Article 100(2) of the financial regulation as it failed to properly state reasons. In the applicant's opinion, the comments given by the Commission were generic, misleading and vague.

Third, the applicant contends that the Commission has illegally extended the validity of the tenders in violation of Article 130 of the financial regulation and in violation of the principles of good administration, transparency and equal treatment.

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- (¹) 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).
- (²) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended by Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 (OJ 2007 L 111, p. 13).

Action brought on 30 July 2009 — Italy v Commission

(Case T-308/09)

(2009/C 233/36)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, lawyer)

Defendant: Commission of the European Communities