

Judgment of the Court (Second Chamber) of 13 July 2017 (request for a preliminary ruling from the Najvyšší súd Slovenskej republiky — Slovak Republic) — Ingsteel spol. s r. o., Metrostav a.s. v Úrad pre verejné obstarávanie

(Case C-76/16) ⁽¹⁾

(Reference for a preliminary ruling — Public procurement — Directive 2004/18/EC — Article 47(1), (4) and (5) — Economic and financial standing of the tenderer — Directives 89/665/EEC and 2007/66/EC — Judicial review of a decision to exclude a tenderer from a tendering procedure — Charter of Fundamental Rights of the European Union — Article 47 — Right to an effective remedy)

(2017/C 293/06)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicants: Ingsteel spol. s r. o., Metrostav a.s.

Defendant: Úrad pre verejné obstarávanie

Intervener: Slovenský futbalový zväz

Operative part of the judgment

1. Article 47(1)(a) and (4) 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 must be interpreted as meaning that a contracting authority may exclude a tenderer from a tendering procedure on the ground that it does not fulfil the criterion regarding economic and financial standing laid down in the contract notice with respect to the provision of a statement given by a bank undertaking to grant credit in the amount specified in the contract notice and to guarantee that that amount will be available to the tenderer throughout the period of performance of the contract.
2. Article 47(5) of Directive 2004/18 must be interpreted as meaning that, when a contract notice requires the provision of a statement given by a bank undertaking to grant credit in the amount specified in the contract notice and to guarantee that that amount will be available to the tenderer throughout the duration of the performance of the contract, the fact that the banks approached by the tenderer consider themselves unable to provide the tenderer with a statement in the terms specified by the contract notice may constitute a 'valid reason', within the meaning of that article, allowing the tenderer, where appropriate, to prove its economic and financial standing by any other document considered appropriate by the contracting authority, provided that it was objectively impossible for the tenderer to provide the references required by the contracting authority, which is a matter for the referring court to determine.

⁽¹⁾ OJ C 270, 25.7.2017.