



C/2024/1883

11.3.2024

**Action brought on 26 January 2024 — LGAI Technological Center and jtsec Beyond IT Security v
EUSPA**

(Case T-41/24)

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Language of the case: Spanish

Parties

Applicants: LGAI Technological Center, SA (Cerdanyola del Vallés, Spain), jtsec Beyond IT Security, SL (Granada, Spain) (represented by: X. Codina García-Andrade, J. Martínez Gimeno and M. Vélez Fraga, lawyers)

Defendant: European Union Agency for the Space Programme

Form of order sought

The applicants claim that the Court should:

- annul the decision of the executive director of the European Union Agency for the Space Programme (EUSPA) of 16 January 2024, taken in respect of invitation to tender EUSPA/OP/01/23;
- order EUSPA to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on five pleas in law.

1. First plea in law, alleging infringement of Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter').

In support of this plea, the applicants submit that EUSPA did not give them the opportunity to make submissions before adopting the decision not to select their tender. Since it is an individual decision that is unfavourable to the applicants, EUSPA should have identified its concern and given the applicants the opportunity to assert their rights.

2. Second plea in law, alleging breach of the obligation to state reasons enshrined in Article 170 of the Financial Regulation,⁽¹⁾ Article 296 TFEU and Article 41 of the Charter.

In support of this plea, the applicants submit that the reasoning of the decision is insufficient and vague since it does not state which specific points led EUSPA to conclude that the participation condition was not satisfied, resulting in exclusion from the procurement process. The contested decision also provides a dual statement of reasons, the parts of which are inconsistent.

3. Third plea in law, alleging breach of the obligation to evaluate the tenders in accordance with the criteria set out in the tender specifications, as provided for in Articles 160, 167 and 170 of the Financial Regulation and point 29.3 of the annex thereto, in respect of the principle of good administration under Article 41 of the Charter.

In support of this plea, the applicants submit that EUSPA adopted the decision not to select the tender on the basis of a condition that is not covered by the tender specifications. The decision stated that their tender was not selected because the applicants 'appear' not to satisfy the participation condition. The tender specifications permit a decision not to select a tender only if it does not satisfy the participation condition, and not if it 'appears' not to satisfy that condition.

⁽¹⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1).

4. Fourth plea in law, alleging a manifest error of assessment in applying the participation condition relating to tenderers being subject to control by a third-country entity (Article 160, Article 167(2) and Article 170 of the Financial Regulation and point 29.3 of the annex thereto).

In support of this plea, the applicants submit that the contested decision appears to indicate that the reason that led to the applicants' tender not being selected is that the applicants have not demonstrated that they satisfied that condition. However, in the light of all the documents provided, it is not possible to assert that the applicants are subject to control by a third-country entity.

5. Fifth plea in law, alleging failure to observe the principle of proportionality in respect of (i) the principle of the maximisation of competition, laid down in Article 160(1) and (2) of the Financial Regulation, (ii) the procurement principles deriving from primary law, and (iii) the exercise of freedom of movement guaranteed by the Treaty (Articles 18, 49, 56 and 63 TFEU).

In support of this plea, the applicants submit that EUSPA should have taken into consideration less onerous alternatives provided by the sector-specific rules applicable to the tender, such as requesting specific clarifications from the applicants or assessing whether it was necessary to apply the mechanism provided in Article 24(4) of Regulation (EU) 2021/696 ⁽²⁾ establishing the Union Space Programme and the European Union Agency for the Space Programme.

⁽²⁾ Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013 and (EU) No 377/2014 and Decision No 541/2014/EU (OJ 2021 L 170, p. 69).