

Action brought on 13 October 2005 — Tea-Cegos and STG v Commission

(Case T-376/05)

(2005/C 315/32)

Language of the case: French

Parties

Applicant(s): TEA-CEGOS (Madrid, Spain) and Services Techniques Globaux (STG) (Brussels, Belgium) (represented by: G.Vandersanden and L. Levi, lawyers)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant(s) claim(s) that the Court should:

- annul the decision of 12 October 2005 rejecting the candidature and bid of the TEA-CEGOS consortium and withdrawing the decision awarding the framework contract to the TEA-CEGOS consortium under the call for tenders EuropeAid -2/119860/C-LOT No 7;
- annul all the other decisions taken by the defendant under that call for tenders following the decision of 12 October 2005 and, in particular, the award decisions and the contracts concluded by the Commission implementing those decisions;
- order the Commission to pay all the costs.

Pleas in law and main arguments

The applicants in these proceedings are members of the consortium constituted for the purposes of the call for tenders 'EuropeAid/119860/C/SV/MULTI' launched by the defendant. It tendered for lot No 7 'Culture, Governance and Home Affairs'.

On 20 May 2004, the consortium was informed by post that its candidature had been accepted. By letter of 18 July 2005, the defendant informed it that it considered it necessary to review its decision awarding it the framework contract, and justified that change by the fact that the decision in question had been taken on the basis of inaccurate information communicated during the procedure. On 12 October 2005, the Commission took a decision confirming rejection of the applicant's candidature and bid on the basis of the exclusion clause provided for in Article 13 of the contract notice ⁽¹⁾. To justify its decision, it relied on the fact that one of the members of the consortium was part of another group, one of the members of which was taking part in another candidature for the same contract. That is the contested decision.

In support of their action for annulment, the applicants rely on several pleas in law.

By the first, they claim that the defendant was in breach of the contractual documents inasmuch as it misapplied Article 13 of the contract notice and Article 14 of the instructions to tenderers. The applicants claim that Article 13 of the contract

notice was not applicable when an award decision had already been taken. They also submit that they did not fail to communicate the documents requested by the defendant or supply false information, so the conditions for applying Article 14 of the instructions to tenderers, which would alone justify the decision awarding the contract being challenged at that stage of the procedure, had not been fulfilled.

Secondly, the applicants claim that the defendant made a manifest error of assessment of the concept of 'legal group' in Article 13 of the contract notice, by taking into account only the structural criterion and excluding application of the test of conflict of interest between candidates in the same call for tenders. In the applicants' opinion, the defendant's assessment is such as to undermine the principles of legal certainty. The applicants also rely on a plea alleging breach of the duty to state reasons.

The third plea raised by the applicants relates to the alleged breach of the principle of good administration and a failure to take steps. The applicants claim that, where there is uncertainty, the defendant ought to have informed the consortium within a reasonable time, and questioned them during the tendering procedure and not after its decision awarding the contract, which would have made it possible to save the costs associated with their participation in the later stages of the procedure.

By the final plea, the applicants submit that regard was not had to their legitimate expectations and also rely on the theory of *retrait des actes administratifs* (cancellation of administrative acts). They claim that, in this case, the decision awarding the contract was not unlawful and, accordingly, could not be withdrawn by the defendant.

⁽¹⁾ Contract notice for a multiple framework contract 'Multiple framework contract to recruit technical assistance for short-term expertise for the exclusive benefit of third countries benefiting from the European Commission's external aid' 2004/S 132-111932, OJ S 132.

Action brought on 20 October 2005 — GHK Consulting/ Commission

(Case T-383/05)

(2005/C 315/33)

Language of the case: English

Parties

Applicant(s): GHK Consulting Limited (London, United Kingdom) [represented by: J-E. Svensson, M. Dittmer, lawyers]

Defendant(s): Commission of the European Communities

Form of order sought

- Annul the European Commission's Decision of 12 October 2005 excluding the candidacy and the offer of the consortium headed by the applicant, whereby the Commission revoked its decision on allocating the framework contract to the consortium, in relation to Tender EuropeAid//119860/C/ — Lot No. 7;
- annul any decision by the Commission following the Commission's Decision of 12 October 2005 and, in particular, any decision by the Commission to enter into contract with other tenderers;
- order the Commission to pay all costs related to the case.

Pleas in law and main arguments

The Commission issued, under reference EuropeAid//119860/C — Lot No. 7, an invitation to tender for a multiple framework contract to recruit technical assistance for short-term expertise for the exclusive benefit of third countries benefiting from European Commission external aid. The applicant, acting as leader of a consortium, submitted a bid.

By the contested Decision the Commission excluded the applicant's consortium on the grounds that the Danish Institute of International Studies ('DIIS'), a member of the applicant's consortium, was part of the same group as the Danish Institute of Human Rights ('DIHR'), which participated in another consortium bidding for the same contract. Article 13 of the public procurement notice in question prohibited legal persons within the same legal group from submitting more than one application per lot.

In support of its request to annul the contested Decision the applicant disputes the Commission's conclusion that DIIS, DIHR and a third institute constitute a legal group. According to the applicant, none of these entities controls the others as the institutes are completely self-governing and each have a separate statute, share no academic staff, have their own management and board elected by completely different bodies, and share no common economic interests or objectives. The applicant further submits that any unclear points in the procurement notice must be interpreted in favour of the tenderers and that the Commission is responsible for not making the conditions for participation clear beforehand.

Order of the Court of First Instance of 29 September 2005 — BIC v Commission**(Case T-270/04)** ⁽¹⁾

(2005/C 315/34)

Language of the case: French

The President of the Second Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 262, 23.10.2004.

Order of the Court of First Instance of 7 October 2005 — Umwelt- und Ingenieurtechnik v Commission**(Case T-125/05)** ⁽¹⁾

(2005/C 315/35)

Language of the case: German

The President of the Fifth Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 115, 14.5.2005.

Order of the Court of First Instance of 13 October 2005 — Milella and Campanella v Commission**(Case T-289/05)**

(2005/C 315/36)

Language of the case: French

The President of the Court has ordered that the case be removed from the register.