



Reports of Cases

Judgment of the General Court (Third Chamber) of 12 December 2012 — Evropaïki Dynamiki v EFSA

(Case T-457/07)

(Public procurement — Tender procedure — Provision of IT consultancy assistance services — Rejection of a tender and decision to award the contract to another tenderer — Admissibility — Obligation to state reasons — Selection criteria — Award criteria — Compliance with award criteria laid down in the tender specifications — Manifest error of assessment)

1. *Actions for annulment — Actionable measures — Measures producing binding legal effects — Act adopted by the European Food Safety Authority — Decision to award a public contract — Included (Art. 230 EC; Art. 263, first para., TFEU; European Parliament and Council Regulation No 178/2002, Art. 47) (see paras 24, 26)*
2. *Actions for annulment — Natural or legal persons — Interest in bringing proceedings — Action against a decision which has been implemented — Action of a tenderer, in a public contract award procedure, against an award decision implemented in favour of another tenderer — Admissibility (Art. 230 EC; Art. 263 TFEU) (see para. 27)*
3. *Judicial proceedings — Application initiating proceedings — Formal requirements — Identification of the subject-matter of the dispute — Summary statement of pleas (Statute of the Court of Justice, Arts 21, first para., and 53, first para.; Rules of Procedure of the General Court, Art. 44(1)(c)) (see paras 28, 57, 225)*
4. *EU public contracts — Tender procedure — Applicability of the principles laid down or identified under directives concerning the award of public contracts for works, supply and services — Express reference to those directives by the rules governing the said procedure — Requirement for uniform application of EU law (European Parliament and Council Directive 2004/18) (see para. 36)*
5. *EU public contracts — Conclusion of a contract following a call for tenders — Discretion of the institutions — Judicial review — Limits (Council Regulation No 1605/2002; Commission Regulation No 2342/2002) (see paras 40, 138)*

6. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decision to award a public contract to a tenderer other than the applicant — Information, made available to the latter after the decision, clearly showing the reasons for rejecting its tender — Lawfulness (Art. 253 EC; Council Regulation No 1605/2002, Art. 100(2); Commission Regulation No 2342/2002, Art. 149(3); European Parliament and Council Directive 2004/18, Art. 41) (see paras 42-46, 52, 173)*
7. *EU public contracts — Tender procedure — Award of contracts — Most economically advantageous tender — Award criteria — IT consultancy assistance services — Criteria linked to assessment of the technical and professional capacity of the tenderers to carry out the contract in question — Criteria normally used for the selection of tenderers — Application to the award of the contract — Lawfulness — Conditions (Council Regulation No 1605/2002, Art. 97(1); Commission Regulation No 2342/2002, Art. 138(2)) (see paras 61-82, 88, 91)*
8. *EU public contracts — Tender procedure — Award of contracts — Assessment of tenders on the basis of their content and not on the basis of previous experience with the same awarding authority (Commission Regulation No 2342/2002, Art. 138) (see para. 104)*
9. *EU public contracts — Tender procedure — Award of contracts — Award criteria — Duty to comply with the principles of equal treatment of tenderers and transparency — Criteria having to be formulated in the tender specifications or the contract notice — Assessment factors attaching to those criteria (Commission Regulation No 2342/2002, Art. 147(3)(e)) (see paras 111-135)*
10. *EU public contracts — Tender procedure — Award of contracts — Applicant's tender — Manifest error of assessment — Annulment of the decision rejecting its tender (see paras 136-306)*

Re:

APPLICATION for annulment of the decision of EFSA of 1 October 2007 rejecting the tender submitted by the applicant in response to Call for Tenders EFSA/IT/2007/14 for IT Consultancy Assistance (OJ 2007/S 97-118626) and awarding the contract to another tenderer.

Operative part

The Court:

1. Annuls the decision of the European Food Safety Authority (EFSA) rejecting the tender submitted by Evropaiki Dynamiki – Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE in response to Call for Tenders EFSA/IT/2007/14 for IT Consultancy Assistance and awarding the contract to another tenderer;

2. Orders EFSA to pay the costs.