

## **Decision In case 1448/2018/PB on the European Commission's rejection of an offer made in response to a call for tenders**

Decision

**Case 1448/2018/PB - Opened on 25/09/2018 - Decision on 25/09/2018 - Institution concerned** European External Action Service ( No maladministration found ) |

### **The complaint to the European Commission**

1. The complainant, a German medium-sized company, submitted an offer in response to a Commission call for tenders [1] (hereinafter 'the Call'). In relation to certain heating requirements ("Heating: 20V at 24 VDC"), the complainant submitted in its offer a different range. The Commission rejected the offer as not being in compliance with the technical specifications set out in the call. The complainant requested a review, arguing that the different range constituted a technical improvement compared to what was requested, namely energy savings, and should for that reason have been accepted. The complainant also alluded to the possibility that the heating requirement in the call could only be met by one provider who in the region concerned already has a quasi-monopoly.

### **The European Commission's response to the complainant**

2. The Commission's response to the complainant's request for review did not contest that improvements can be accepted in principle. However, the complainant had not made use of the two usual possibilities for addressing this issue, that is, (a) asking for clarifications during the early phase of the tender procedure, and/or (b) submitting supporting documents with its offer to show that the suggested improvement also fulfilled the minimum requirements set out in the technical specifications. Moreover, the Commission pointed out that 'energy saving' did not, as such, form part of the objectives or requirements of the tender.

3. With regard to the complainant's understanding that only one provider could comply with the technical specifications, the Commission informed the complainant that several tenderers participating in the Call had made offers compliant with the technical specifications.



4. In its complaint to the European Ombudsman, the complainant maintained that the Commission was wrong to have rejected its offer. The complainant did not, however, question the Commission's factual statement that several other tenderers had been able to comply with the specifications.

## **The European Ombudsman's finding**

5. The equal and consistent assessment of offers is a fundamental principle in EU tender procedures. This is why prior questions about tender specifications, and the corresponding clarifications, are published in full transparency for all tenderers to consult. Moreover, as mentioned above, tenderers have a final opportunity in their offer to add explanations, when needed, regarding the compliance of their offer.

6. In light of the above and on the basis of the text of the Call, the Commission certainly had the possibility of concluding that the alleged improvement in relation to the technical specifications should have been presented and/or discussed through the means referred to in paragraph 5 above. Had the Commission accepted the complainant's offer here in question, it would likely have created a risk of inequality towards the other tenderers. In addition, the complainant has not put forward any evidence to suggest that one tenderer only was in a position to comply with the particular requirement.

7. In conclusion [2] , there does not appear to have been maladministration by the European Commission, based on the information provided in the complaint .

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Strasbourg, 25/09/2018

[1] Europe Aid/138452/SUP/BA, Reference EC/Baha/TEN/16/018: Supply of equipment for the development of hydrological flood forecasting system for Sava River Basin in Bosnia and Herzegovina.

[2] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of the [Decision of the European Ombudsman adopting Implementing Provisions \[Link\]](#)