

Commission to give bidders time to challenge contract award decisions in court

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The European Ombudsman, **P. Nikiforos Diamandouros**, has welcomed the European Commission's move to give unsuccessful bidders in its tender procedures time to challenge contract award decisions. The Commission adopted the new procedure in response to an own initiative inquiry by the Ombudsman.

The Commission agreed to inform unsuccessful bidders rapidly and provide for a reasonable delay before the contract is signed. This is to give bidders time to request the reasons for the award decision and challenge the decision through legal proceedings. The new procedure is outlined in a Commission Communication dated 3 July 2003 (1).

Welcoming the move, the Ombudsman said that it appears to provide access to a review procedure of the kind foreseen by the case law of the Court of Justice.

The Ombudsman also suggested that the Commission should systematically inform unsuccessful tenderers of their right to challenge award decisions through legal proceedings. To provide such information would be in accordance with the Code of Good Administrative Behaviour.

Background

The Ombudsman opened the inquiry because he was concerned about a possible failure by the Commission to provide bidders with access to a review procedure of the kind foreseen by the case law of the Court of Justice (2). The Ombudsman's decision can be found on his website at:

<http://www.ombudsman.europa.eu/decision/en/02oi2.htm> [Link]

For further information, please call Ian Harden, Head of the Legal Department: +32 2 284 38 49.

(1) Communication from the Commission. COM(2003)395 final (03.07.03). Procedure for informing candidates and tenderers, after a contract has been awarded and before the actual contract has been signed, in respect of public procurement contracts awarded by the Commission under Article 105 of the Financial Regulation.

(2) Case C-81/98, *Alcatel Austria v Bundesministerium für Wissenschaft und Verkehr*, [1999] ECR I- 7671.