

Decision of the European Ombudsman in the case 8/2020/DL on the EU Delegation to Nigeria's withholding of payments for delivered services under a framework contract

Decision

Case 8/2020/DL - Opened on 31/01/2020 - Decision on 31/01/2020 - Institution concerned
European Commission (No maladministration found) |

Dear Mr X,

On 27 December 2019, you submitted a complaint to the European Ombudsman on behalf of JCP Srl. The complaint concerned the EU Delegation to Nigeria's ('EU Delegation') withholding of payments for delivered services under the framework contract "event organisation and media events services".

The Ombudsman has asked me to deal with the complaint and reply to you on her behalf.

I regret to inform you that, based on the information you provided to us, the Ombudsman finds no maladministration. [1]

The reason for this finding is primarily that the relevant contract is very clear in that, to be paid, you have to provide *original* supporting documents with your invoices and you have not done so.

The contract that you entered into with the European Commission falls under the framework contract COM 11, Lot 2. The special conditions of this framework contract provide that, in fee-based specific contracts, "*the actual amount payable after the pre-financing payment (and interim payment when relevant) must be based on the Framework Contractor's invoice accompanied by original supporting documents*" [...]. [2]

The EU Delegation has repeatedly asked you to provide the original documents. It has also explained that scanned paper versions of original documents, sent electronically, do not constitute e-invoices and are therefore not eligible. This position is reasonable.

In light of the above, the EU Delegation's withholding of the payment is not maladministration.



You argue that your contestation of the EU Delegation's administrative order of 16 March 2016 on subcontracting is the reason for the EU Delegation withholding the payment. You have provided no evidence to substantiate your argument in this regard. The fact remains that the EU Delegation has a valid reason to withhold the payments under the contract (as set out above).

If you wished to formally contest the administrative order of the EU Delegation, you should have done so within 30 days, in accordance with the general rules of the framework contract [3] . It appears from the information you have provided that you did not follow this procedure. As you have not exhausted the appropriate steps under the contract to resolve this issue with the EU Delegation, the Ombudsman is not in a position to inquire into it [4] .

I realise that this decision will disappoint you, but I hope that the above information and explanations are nevertheless helpful.

Yours sincerely,

Tina Nilsson

Head of Inquiries - Unit 4

Strasbourg, 31/01/2020

[1] Full information on the procedure and rights pertaining to complaints can be found at <https://www.ombudsman.europa.eu/en/document/70707> [Link]

[2] See Article 8(2), option 1, of the special conditions of Framework Contract COM 2011 Lot 2.

[3] Article 7(3) of the general conditions of Framework Contract COM 2011 Lot 2.

[4] See Article 2(4) of the Ombudsman's Statute:
<https://www.ombudsman.europa.eu/en/legal-basis/statute/en>