

Decision of the European Ombudsman on complaint 1199/2000/GG against the European Commission

Decision

Case 1199/2000/GG - Opened on 03/10/2000 - Decision on 30/04/2001

Strasbourg, 30 April 2001

Dear Dr. S.,

On 23 September 2000, you lodged a complaint with the European Ombudsman against the European Commission which concerned the way in which the Commission handled a call for tenders.

On 3 October 2000, I forwarded the complaint to the Commission for its comments.

The Commission sent its opinion on your complaint on 1 December 2000. I forwarded the Commission's opinion to you on 7 December 2000 with an invitation to make observations, if you so wished. On 15 December 2000, you sent me your observations on the Commission's opinion.

On 17 January 2001, I wrote to the Commission in order to ask for further information in relation to your complaint. The Commission replied on 20 February 2001, and I forwarded this reply to you on 26 February 2001, with an invitation to submit observations, if you so wished, by 31 March 2001 at the latest. No observations were received by me.

I am now writing to you to let you know the results of the inquiries that have been made.

THE COMPLAINT

In February 2000, the complainant (a retired civil servant of the European Parliament) submitted a proposal in reply to a call for tenders published by the European Commission's Directorate-General Competition that concerned consultancy services in respect of state aids.

No acknowledgement of receipt was sent by the Commission. After the complainant had telephoned on several occasions in order to ask for information, the Commission informed him in a letter of 14 September 2000 that the tender had been cancelled "on procedural grounds". The complainant considered this to be insufficient. He thus telephoned in order to obtain more



specific reasons for cancelling the tender. However, no further information was provided by the Commission.

The complainant's allegations can be summarised as follows:

- The Commission failed to inform the complainant of the specific reasons for cancelling the tender.
- The Commission should have informed the applicants earlier so as to save the latter expense and effort

THE INQUIRY

The opinion of the Commission

In its opinion, the Commission made the following comments:

The Commission followed the provisions set out in Council Directive 92/50/EEC of 18 June 1992 relating to the co-ordination of procedures for the award of public service contracts. This Directive stipulates, inter alia, in its Article 12 (1) that the "*contracting authority shall, within 15 days of the date on which a written request is received, inform any eliminated candidate or tenderer of the reasons for rejection of his application or his tender*". No such request was received from the complainant. Moreover, in its letter of 14 September 2000 the Commission had explained that the tender had been cancelled on procedural grounds.

The service responsible had done all that was in its power to inform the participants of the call for tender as quickly as possible. The formal report of the CCAM (the committee in charge of matters relating to tenders) was received on 17 July 2000. After the unexpected cancellation of the tender the responsible service had to determine first how to proceed further. In view of the holiday period, the time involved to translate the information letters and the need to consult other services before the letters were sent out on 14 September 2000, an earlier reaction was unfortunately not possible.

The complainant's observations

In his observations, the complainant pointed out that the Commission had not explained the concrete grounds that had led to the cancellation of the tender. He also wondered whether the service responsible of the Commission could not have realised these grounds in advance and thus saved costs and effort for all participants.

Further inquiries

In view of the above, the Ombudsman concluded that he needed further information in order to deal with the complaint. He therefore asked the Commission (1) to explain the specific reasons that had led it to cancel the relevant tender and (2) to explain when exactly it had decided to cancel the tender.

In its reply, the Commission explained that the tender had been withdrawn after the CCAM had given a negative advice, arguing that inconsistencies had been found in the information published in the Official Journal on the call for tender. According to the CCAM these errors might have discouraged potential applicants to participate. The CCAM had also questioned the procedural grounds for excluding some of the applicants. The Commission pointed out that only



at the CCAM meeting on 4 and 5 July 2000 it had become evident that its proposal would not be accepted by the CCAM. The Commission had been formally informed by the report from the CCAM that it had received on 17 July 2000. The service had then had to determine how to proceed further.

No observations on this reply were received from the complainant.

THE DECISION

1 Failure to provide specific reasons

1.1 The complainant submitted a proposal in reply to a call for tenders published by the Commission. He was subsequently informed by the Commission that this tender had been cancelled "on procedural grounds". The complainant claimed that the Commission failed to inform him of the specific reasons for cancelling the tender although he had asked it to do so.

1.2 In its opinion, the Commission claimed that it had not received a written request as required by Article 12 (1) of Directive 92/50/EEC. It also pointed out that it had informed the complainant that the tender had been cancelled on procedural grounds.

1.3 The Ombudsman was not convinced that Article 12 (1) of Directive 92/50/EEC is applicable in the present case. This provision grants a tenderer the right to be informed of the reasons "for rejection" of his tender. It does not expressly cover the case where a tender is cancelled. The Commission had in any event received such a written request since the complaint that was forwarded to the Commission by the Ombudsman made it clear that the complainant wished to be informed of the reasons for cancelling the tender.

1.4 The Ombudsman also considered that the Commission's letter of 14 September 2000 did not set out the reasons for cancelling the tender with sufficient precision. It is good administrative practice to inform persons who have replied to a call for tender of the reasons why this tender was ultimately cancelled. A general reference to "procedural grounds" cannot be regarded as sufficient in this context since it does not allow the tenderer to identify the specific reason for the cancellation.

1.5 However, in its reply to the Ombudsman's request for further information the Commission explained in more detail the reasons that had led it to cancel the tender. This reply was forwarded to the complainant who did not submit any observations.

1.6 In these circumstances, the Ombudsman considers that the Commission has taken steps to settle the matter and has thereby satisfied the complainant in so far as his first allegation is concerned.

2 Failure to inform the applicants earlier

2.1 The complainant argues that the Commission should have informed the persons who submitted proposals in reply to the call for tenders earlier of the cancellation of the tender so as to save cost and effort.



2.2 The Commission claims that it was only at the meeting of the CCAM (the committee in charge of matters relating to tenders) on 4 and 5 July 2000 that it became apparent that its proposal would not be accepted by the CCAM. The Commission was formally informed by the report from the CCAM that it received on 17 July 2000. It had then had to determine how to proceed further. In view of the holiday period, the time involved to translate the information letters and the need to consult other services before the letters were sent out on 14 September 2000, an earlier reaction was unfortunately not possible.

2.3 The Ombudsman concludes from the comments of the Commission that the decision to cancel the tender was taken on or after 17 July 2000. Although it would have been preferable if the Commission had informed the tenderers more quickly, the Ombudsman considers that in view of the arguments referred to by the Commission there was no undue delay in the present case.

2.4 On the basis of the above, there appears to have been no maladministration on the part of the Commission in so far as the second allegation is concerned.

3 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it appears that the Commission has taken steps to settle the matter and has thereby satisfied the complainant in so far as his first allegation is concerned and that there appears to be no maladministration in so far as the second allegation is concerned. The Ombudsman therefore closes the file.

The President of the European Commission will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN