

Decision on the European Global Navigation Satellite Systems Agency's (GSA) rejection of a submission in a contest to design a logo (case 423/2021/OAM)

Decision

Case 423/2021/OAM - Opened on 29/03/2021 - Decision on 03/03/2022 - Institution concerned European GNSS Agency (No further inquiries justified) |

The European Global Navigation Satellite Systems Agency (GSA) rejected the complainant's submission in a contest to design a logo because there was a technical problem with the submission.

The Ombudsman's view is that the GSA should have dealt with the matter differently and in accordance with the standards that citizens are entitled to expect from the EU administration. It should also have communicated in a more consistent and timely way with the complainant about the technical problem. However, as the contest procedure has now ended, the Ombudsman considered that further inquiries in this case are not justified.

Background to the complaint

1. The European Global Navigation Satellite Systems Agency (GSA) was the EU agency responsible for European satellite navigation programmes. In May 2021, the GSA was replaced by the European Union Agency for the Space Programme (EUSPA). [1]

2. Ahead of this change, in July 2020, the GSA organised a contest to design a logo for the EUSPA, which was carried out in the form of a procurement procedure. [2] According to the invitation notice, the submitted design projects would be evaluated by a jury, and five projects would be selected to proceed to the next stage. From the contractual offers proposed by these five candidates, the GSA would select one to award a contract for the design of the logo. Design projects had to be submitted to a specific e-mail address. The project files had to be protected by a password. The password had to be sent to the same e-mail address only after the deadline for submitting the design projects, that is, after 14 August 2020.

3. The complainant submitted his design project on 13 August 2020 and sent the password on 15 August 2020. On 4 September 2020, the GSA asked the complainant for the password, which he re-sent on 5 September 2020. On 2 October 2020, the GSA informed the complainant



that “*after an internal verification of uploads*”, it appeared that he had not uploaded his proposal “*in the form of the original email with the original attachment(s)*” to an online server. He needed to do so by 7 October 2020 and then send the password again by e-mail. The complainant complied with the request within the set deadline.

4. On 4 December 2020, the GSA informed the complainant that his proposal had been rejected at the ‘opening stage’ [3] because it had not been able to open the files included in his e-mail.

5. The complainant requested explanations. He was dissatisfied with the fact that, although he submitted his application on time and had followed all the steps set out by the GSA, his design project was rejected without having been assessed.

6. The GSA told the complainant that it was unable to open the file sent by e-mail on 13 August 2020. It therefore asked the complainant to resubmit the file by uploading it to an online server. However, despite the best efforts of its IT team, the GSA was still unable to open the file and it therefore rejected the complainant’s project as inadmissible.

7. Dissatisfied with this reply, the complainant turned to the Ombudsman.

The inquiry

8. The Ombudsman opened an inquiry into how the GSA dealt with the complainant’s submission to the design contest.

9. In the course of the inquiry, the Ombudsman received the GSA’s reply on the complaint and, subsequently, the comments of the complainant in response to the GSA’s reply.

Arguments presented to the Ombudsman

By the GSA

10. The GSA said that it had received 637 submissions. To facilitate the processing of the projects, it had asked all candidates that had submitted their projects by e-mail within the set deadline to upload the exact same file on an internal FTP server [4]. This request was made by e-mail to all candidates, including the complainant.

11. The GSA acknowledged that the complainant had followed all the instructions. Nevertheless, it was not able to open his project file.

12. The GSA argued that it made reasonable efforts to open the complainant’s file, given the circumstances. It said that attempting to solve individual technical issues or engaging individually with each candidate would be disproportionate and contrary to the principle of sound



financial management, having regard to the total number of submitted applications and the value of the contract. The GSA opened all the project files through the same means, thereby observing the principle of equal treatment. It also had to ensure the authenticity of the original proposals submitted within the deadline. Allowing the complainant to resubmit his project would have given him the possibility to submit a design created *after* the deadline for submission, resulting in unequal treatment of candidates.

13. The GSA said that, when dealing with the complainant's proposal, it applied the standard procedure for dealing with technical issues, which involved the GSA's IT staff.

By the complainant

14. The complainant considered that the GSA's reply to the Ombudsman was inconsistent with the information previously given. The GSA had told him that his project file could not be opened and that he therefore had to upload it on a server. However, in the reply to the Ombudsman, the GSA said that it had asked *all* participants to upload their project files on the server.

15. By not offering him a solution, the GSA deprived him of equal treatment. As the GSA was able to verify the authenticity of the projects uploaded on the server, it should have also been able to verify the authenticity of his project if he were allowed to resubmit it.

16. In the complainant's view, the GSA failed to prepare the logo contest adequately as it had no protocol in place to resolve technical issues. He argued that the GSA's system caused the technical issue, and the GSA did not make an effort to resolve it.

The Ombudsman's assessment

17. The Ombudsman has no reason to doubt that the means of submission chosen by the GSA were non-discriminatory, generally available, interoperable and not restricting participants' access to participate. [5] Nevertheless, the issue is whether the GSA complied with the principles of good administration when it encountered problems in opening the submission of the complainant.

18. Principles of good administration include not only the principles of proportionality, of sound financial management, and of equal treatment but also the principle of due diligence which implies in particular that the administration must take the action needed to address a matter appropriately and to safeguard the rights of citizens. The fact that it may be cumbersome to address a matter does not exonerate the administration from its duty to address the matter appropriately. The fact that all citizens should receive the same treatment does not exclude that factual situations may be different and therefore should be treated differently. Principles of good administration also require the administration to communicate clearly with citizens.

19. In the case at hand, the complainant complied with all the arrangements for submitting



projects. His project was submitted on time and correctly. He rightly expected that his project would be assessed.

20. The complainant's design project was not assessed because of the problem the GSA encountered when opening it. The GSA did not inform the complainant of that problem until the selection had been made. The GSA has not provided the Ombudsman with a record of the details of the problem encountered and the solutions it explored. Before the GSA concluded that the principle of equal treatment prevented it from seeking a solution to the problem, it could have explored, as a matter of fact, the possible solutions and then take a position as to whether there would be an issue with the principle of equal treatment.

21. The GSA provided inconsistent, and possibly untimely, information to the complainant on the means for transmitting the design projects. The invitation notice for the contest stated that projects should be submitted to a dedicated e-mail address only. The GSA then informed the complainant that he had to upload his project to an online server. In its direct contact with the complainant, the GSA said that it did so *to resolve the technical issue*. However, in its reply to the Ombudsman, the GSA said that it had asked *all* candidates to upload their projects to the server. It would appear that the complainant did not receive the first e-mail that the GSA says it sent to all candidates, but only a reminder. The complainant therefore became aware of this requirement only at a later stage.

22. Against this background, the Ombudsman takes the view that the GSA should have dealt with the matter differently and in accordance with the standards that citizens are entitled to expect from the EU administration. However, as the contest procedure has now ended, the Ombudsman considers that further inquiries in this case are not justified.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion [6] :

The GSA should have dealt with the matter differently and in accordance with the standards that citizens are entitled to expect from the EU administration. It should also have communicated in a more consistent and timely way with the complainant about the technical problem. However, as the contest procedure has now ended, the Ombudsman considers that further inquiries in this case are not justified.

The complainant and the European Union Agency for the Space Programme will be informed of this decision .

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 03/03/2022



[1] Regulation (EU) 2021/696 of the European Parliament and of the Council of 28 April 2021 establishing the Union Space Programme and the European Union Agency for the Space Programme and repealing Regulations (EU) No 912/2010, (EU) No 1285/2013, (EU) No 377/2014 and Decision 541/2014/EU, available at: <https://eur-lex.europa.eu/eli/reg/2021/696/oj> [Link].

[2] Procurement procedure: *New logo for the European Union Agency for the Space Programme (EUSPA)* . Reference: GSA/NP/14/20. The related documents are available at: <https://www.euspa.europa.eu/new-logo-european-union-agency-space-programme-euspa> [Link]

[3] Procurement procedures have an opening phase and an evaluation phase of the projects submitted.

[4] FTP servers are solutions used to facilitate file transfers over the internet.

[5] As is required by Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union - Financial Regulation, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32018R1046> [Link]. See in particular Article 149.

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