

Decision of the European Ombudsman on complaint 1119/2001/GG against the European Commission

Decision

Case 1119/2001/GG - Opened on 22/08/2001 - Decision on 23/01/2002

Strasbourg, 23 January 2002

Dear Mr X,

On 31 July 2001, you submitted, acting on behalf of a German consultancy firm, a complaint concerning the Commission's handling of this firm's bid submitted in reply to tender no. ENTR/00/055 published by the European Commission's DG Enterprise.

On 22 August 2001, I forwarded the complaint to the Commission for its comments.

On 27 August 2001, the Commission forwarded to me a copy of a letter it had addressed to you on 22 August 2001. My services thereupon contacted you to ascertain whether this letter had satisfied you. In a letter dated 27 August 2001, you informed me that you had not received the fax dated 30 January 2001 to which the Commission had referred and that you wished to obtain a copy of the relevant transmission report. On 30 August 2001, I forwarded your letter to the Commission.

The Commission sent its opinion on your complaint on 17 December 2001. I forwarded the Commission's opinion to you on 18 December 2001 with an invitation to make observations, if you so wished. On 20 December 2001, you sent me your observations on the Commission's opinion.

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

THE COMPLAINT

The original complaint

The complainant, a German consultancy firm, submitted an offer in reply to the call for tender no. ENTR/00/055 published by the European Commission's Directorate-General (DG) Enterprise. On 15 January 2001, the complainant was informed that the contract would be awarded to another bidder.

The complainant had addressed a fax to the Commission on 23 November 2000 in which it had



urgently asked for information regarding the qualitative award criteria used for the tender. According to the complainant, no reply was sent by the Commission.

On 25 January 2001, the complainant wrote to the Director in charge of the matter at DG Enterprise to ask for the reasons why its bid had failed and why its previous letter had received no reply. According to the complainant, no reply was given to this letter and to a further letter to the Director sent on 9 February 2001. On 27 February 2001, the complainant wrote to the Director-General of DG Enterprise. According to the complainant, this letter remained unanswered as well.

The complainant then turned to the Ombudsman in order to complain about the Commission's failure to answer to its letters.

Subsequent developments

On 27 August 2001, the Commission forwarded to the Ombudsman a copy of a letter it had addressed to the complainant on 22 August 2001. In this letter, the Commission stated that the information requested on 23 November 2000 had been given over the telephone and that the letter of 25 January 2001 had been answered by fax on 30 January 2001. A copy of this fax was submitted to the Ombudsman.

The Ombudsman's services thereupon contacted the complainant. In a fax sent on 27 August 2001, the complainant informed the Ombudsman that it had not previously received the fax to which the Commission had referred and that it wished to obtain a copy of the transmission report in relation to the said fax. On 30 August 2001, the Ombudsman forwarded the complainant's letter to the Commission and asked it to take this letter into account when preparing its opinion on the complaint.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

The complainant had participated in the call for tender no. ENTR/00/055 published by the European Commission's DG Enterprise. The expiration date for the tender was 27 November 2000. Six other bids had been submitted.

The complainant's request for further information of 23 November 2000 was made after the deadline of 20 November 2000 foreseen by the conditions of the call for tender for the introduction of a formal request for documentation and related information about the tender. Moreover, the "qualitative award criteria" used in the evaluation of offers had been clearly specified in the "tendering specifications" of the "General invitation to tender".

The Commission had nevertheless provided additional information by telephone to an employee of the complainant. This information had been confined to factual clarifications and had in no way been prejudicial to other competitors. The Commission had explained to the said employee the risk of injury to competitors if additional information was provided in writing four days before



the expiry of the deadline for submitting offers.

The complainant's letter of 25 January 2001 had been replied to by fax of 30 January 2001. The transmission report of the fax could however not be recovered.

Due to the departure of the official in charge of the tender at the end of February 2001, the complainant's two letters of 9 and 27 February 2001 had been misplaced and as a consequence had not been followed up within the allowable time frame, despite the built-in controls for incoming and outgoing mail of DG Enterprise.

The Commission regretted that the said two letters had been answered with a significant delay. It took the view, however, that this had been due to a simple administrative oversight of pure form having no material consequences for the complainant. According to the Commission, the exceptional nature of this oversight was underscored by the existence of the necessary systems and procedures within DG Enterprise to ensure the reliable and effective follow-up of incoming and outgoing mail at all three levels of the hierarchy (Directorate-General, Directorate and Unit). Moreover, DG Enterprise had since instituted daily "deadline alerts" on pending replies to incoming mail to minimise the risk of similar incidents.

The complainant's observations

In its observations, the complainant took the view that the substance of the matter had not been clarified. The complainant informed the Ombudsman, however, that he could close his inquiry. It only wished to stress that its employee had not received any information over the telephone on 23 November 2000 but had been asked to send the questions by fax.

THE DECISION

1 Failure to reply to letters

1.1 The complainant, a German consultancy firm, submitted an offer in reply to a call for tender published by the European Commission's Directorate-General (DG) Enterprise. It alleged that the Commission had failed to reply to a request for information sent on 23 November 2000, two letters to the Director in charge at DG Enterprise dated 9 and 27 February 2001 and a letter to the Director-General of DG Enterprise sent on 27 February 2001.

1.2 The Commission claimed that the request for information dated 23 November 2000 had been answered by telephone, to the extent that this had been possible without causing prejudice to other tenderers. It further claimed that the letter of 25 January 2001 had been answered by a fax sent on 30 January 2001. However, the Commission acknowledged that it had been unable to recover the transmission report for this fax. The Commission regretted that due to the departure of the official in charge of the tender at the end of February 2001, the complainant's two letters of 9 and 27 February 2001 had been misplaced and as a consequence had not been followed up within the allowable time frame. In the Commission's view, however, this had been due to a simple administrative oversight of pure form having no material consequences for the complainant. According to the Commission, the exceptional nature of this oversight was underscored by the existence of the necessary systems and procedures within DG Enterprise to ensure the reliable and effective follow-up of incoming and



outgoing mail at all three levels of the hierarchy (Directorate-General, Directorate and Unit). The Commission moreover pointed out that DG Enterprise had since instituted daily "deadline alerts" on pending replies to incoming mail in order to minimise the risk of similar incidents.

1.3 In its observations, the complainant took the view that the substance of the matter had not been clarified. The complainant informed the Ombudsman, however, that he could close his inquiry.

2 Conclusion

It appears from the information supplied to the Ombudsman by the complainant that he wishes to drop the complaint. The Ombudsman therefore closes the case.

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

Yours sincerely,

Jacob SÖDERMAN