



Decision on how the Translation Centre for the Bodies of the European Union (CdT) evaluates tenders in procurement procedures for the provision of translation services (case 1841/2021/ABZ)

Decision

Case 1841/2021/ABZ - Opened on 15/11/2021 - Decision on 09/11/2022 - Institution concerned Translation Centre for the Bodies of the European Union (No maladministration found) |

The case concerned how the Translation Centre for the Bodies of the European Union (CdT) evaluated tenders in two procurement procedures for the provision of translation services. The complainant argued that the CdT was inconsistent in its evaluation, given that it had assessed its tenders differently in the past. It also argued that the CdT had wrongly assessed the complainant's tenders against two criteria set out in the calls for tenders.

The Ombudsman found that the CdT correctly followed the methodology it put in place for assessing the tenders in the two procedures. She also took the view that there was no indication of a manifest error in how the CdT assessed the complainant's tenders.

On that basis, the Ombudsman considered that there was no maladministration by the CdT and she closed the case. Nevertheless, the Ombudsman trusts that the CdT will provide more detailed information to tenderers about its assessment in future procedures, as clearer information at an early stage may reduce the risk of complaints such as the one that led to this inquiry.

Background to the complaint

1. In November 2020, the Translation Centre for the Bodies of the European Union (CdT) organised two procurement procedures for the provision of translation services regarding texts in the general affairs field. [1] Both procedures were divided into lots based on the language combinations of the translation service. The framework contracts for each lot were to be concluded for an initial period of 12 months and could be renewed by tacit agreement for up to three one-year periods.

2. The complainant is a company providing translation services. It submitted tenders for several lots in both procedures.

3. In September 2021, the CdT informed the complainant that it was successful in all lots for which it had applied. It provided the complainant with the breakdown of points allocated under the award criteria and its position in the ranking concerning each lot.



4. Although the complainant was successful in both procedures, it was dissatisfied with its position in the final rankings, which determined the assignment of work to the contractors. [2] The complainant considered that the points allocated under the criteria concerning the method used to incorporate feedback [3] and the method used to revise translations [4] were unusually low, in comparison to the evaluation of the complainant's proposals in previous procurement procedures organised by the CdT. It asked the CdT to re-assess its offers under the two criteria and to provide information on the proposals of the successful tenderers in both procedures.

5. In response to the complainant's request for re-assessment concerning the first procedure [5], the CdT informed the complainant that each call for tenders was governed by the criteria and the requirements applicable only to that specific call and thus could not be compared. It also argued that the final ranking was established on the basis of a comparative assessment of the valid tenders for a specific lot, taking into account the best quality and the lowest price offered ('quality-price ratio' [6]). As regards the evaluation of the complainant's offers under the two above-mentioned criteria, the CdT observed that the replies and the documentation of other tenderers " *corresponded better to [its] expectations*".

6. On 30 September 2021, the CdT informed the complainant about the suspension of the signing of the framework contracts in two lots, following the comments made by unsuccessful tenderers. As a result of the subsequent re-examination, the complainant's tenders moved down in the rankings in both lots. The complainant again asked the CdT to provide information on the assessment of the other tenderers in both procedures.

7. The complainant turned to the Ombudsman on 17 October 2021. It argued that the CdT had not replied to its request for re-assessment in relation to the second procedure. [7]

8. On 20 October 2021, the CdT provided the complainant with detailed information on the points awarded to the successful tenderers under the specific criteria, their total mark and their ranking in both procedures.

The inquiry

9. The Ombudsman opened an inquiry into the following aspects of the complaint:

(i) the methodology for assessing tenders; and (ii) how the complainant's tenders were assessed under the two criteria in question.

10. In the course of the inquiry, the Ombudsman received the reply of the CdT on the complaint, as well as the complainant's comments on the CdT's reply.

11. The Ombudsman also asked the CdT for additional clarifications on the evaluation of the complainant's offers and the final ranking, which the CdT provided accordingly.

Methodology to assess tender proposals

Arguments presented to the Ombudsman



12. The complainant asserted that the CdT did not use an objective methodology to assess the tenders. In particular, the complainant contested whether the assessment and the subsequent allocation of points was comparative.

13. The CdT argued that it had to verify compliance with the minimum quality threshold of all proposals, regardless the number of proposals presented for a specific lot. The CdT observed that no comparison could be made where there was only one offer that met the minimum criteria. Nevertheless, there was a comparative assessment, using the quality-price ratio, in those cases in which several tenders were assessed for the same lot.

The Ombudsman's assessment

14. Based on the specifications in both calls for tenders, the admissible proposals were assessed in three stages, under the exclusion, selection and award criteria. [8] The framework contracts were awarded to the most economically advantageous tender on the basis of the quality-price ratio in light of the award criteria, [9] with a 70% weighting for service quality and a 30% weighting for the price of tenders.

15. In line with the above specifications, the CdT had to assess proposals under the applicable criteria at each stage of the procedure. The allocation of points was not conditional upon the number of tenders presented for a specific lot, which means that the fact that there was a single tenderer for one lot does not imply that it should receive the maximum amount of points.

16. The Ombudsman further notes that the tenders were not ranked based solely on the quality points allocated to the tenders, but also the price proposed, following the quality-price ratio.

17. In view of the above, the Ombudsman finds that the CdT followed an objective methodology in assessing the tenders in both procedures. The Ombudsman thus finds no maladministration regarding this aspect of the complaint.

Assessment of the complainant's tenders

Arguments presented to the Ombudsman

18. The complainant argued that the CdT had wrongly assessed its tenders in both procedures. It stated that it had provided identical information in tenders it had submitted to previous calls for tenders with the CdT but received lower marks on this occasion. The complainant contested the amount of points allocated to its tenders under the criteria concerning the method used to incorporate feedback and the method used to revise translation.

19. The CdT argued that the information provided by the complainant in a previous procedure was assessed under a different criterion in that procedure and thus the related scores could not be compared. The CdT also reiterated that each call for tenders was



governed by the requirements applicable only to that specific call.

20. As regards the two procedures at hand, the CdT observed that the information provided in the complainant's tenders related to the two criteria was not specific and failed to demonstrate the methodology the complainant intended to use to carry out the specific tasks in the provision of the translation services. The CdT also confirmed that, following the complainant's request, it had re-assessed its proposals in all lots, but that this did not reveal a manifest error in its evaluation.

21. Lastly, the CdT informed the Ombudsman that the ranking of tenders could evolve, based on the quality of the translations delivered *during* the framework contract. The CdT indicated that the complainant had already moved up in the ranking in one lot.

The Ombudsman's assessment

22. According to EU case-law, [10] the contracting authority - the CdT in this case - has a broad discretion in assessing the factors to be taken into account when deciding to award contracts in the context of a procurement procedure. The Ombudsman's role in this regard is limited to verifying that there has been no manifest error of assessment and that the EU institution or body in question has complied with the rules governing the procurement procedure, as well as with the principles of good administration in general.

23. Based on the evidence and the information provided in the course of the inquiry, the Ombudsman considers that the CdT provided compelling explanations concerning how it assessed the complainant's tenders. The CdT rightly observed that each call is governed by the criteria and the requirements applicable only to that specific call. The Ombudsman finds the CdT's explanation as to how it assessed the complainant's tenders under the two criteria to be reasonable, given that the information provided in the tenders could be considered to be limited. The Ombudsman therefore finds no indication of a manifest error in how the CdT assessed the complainant's tenders. The Ombudsman thus finds no maladministration regarding this aspect of the complaint.

24. Although the Ombudsman welcomes that, in the course of the inquiry, the CdT explained how it dealt with the complainant's request for re-assessment and provided more detailed explanations on how it assessed the tenders against the criteria concerned, it would have been preferable if the CdT had provided the complainant with more detailed explanations on its assessment at an earlier stage. The Ombudsman is not convinced that the very general statement first provided to the complainant complies with EU case-law [11] and the principles of good administration, [12] according to which EU institutions should give reasons for their decisions. Providing clear and individual reasoning is not only good administrative practice but can enable tenderers to improve their tenders in potential future procurement procedures. Clearer information at an early stage may also reduce the risk of complaints such as the one that led to this inquiry. The Ombudsman trusts that the CdT will take this into account in future procedures.

Conclusion



Based on the inquiry, the Ombudsman closes this case with the following conclusion [13] :

There was no maladministration by the Translation Centre for the Bodies of the European Union in this case.

The complainant and the Translation Centre for the Bodies of the European Union (CdT) will be informed of this decision .

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 09/11/2022

[1] Call for tenders - FL/GEN20-02 ('call FL/GEN20-02');

<https://ted.europa.eu/udl?uri=TED:NOTICE:552091-2020:TEXT:EN:HTML&src=0> and Call for tenders - FL/GEN20-03 ('call FL/GEN20-03');

<https://ted.europa.eu/udl?uri=TED:NOTICE:542056-2020:TEXT:EN:HTML&src=0> .

[2] Point 1.6 'Ranking and award of assignments' of Specifications in call FL/GEN20-02:

<https://etendering.ted.europa.eu/cft/cft-document.html?docId=81914> and in call FL/GEN20-03:

<https://etendering.ted.europa.eu/document/document-old-versions.html?docId=81541> .

[3] Criterion C1 referred to "assessing, accepting and (if applicable) assigning texts for translation and methods to ensure strict compliance with deadlines, to cope with unpredictable circumstances, to back up work and translation tools used".

[4] Criterion C3 referred to "quality assurance applied to translation job, including the method used to revise the translation and to incorporate feedback from requesters".

[5] Call FL/GEN20-02.

[6] Point 4 'Award of the contract' of Specifications in calls FL/GEN20-02 and FL/GEN20-03.

[7] Call FL/GEN20-03.

[8] Point 3 'Evaluation of tenders' of Specifications in calls FL/GEN20-02 and FL/GEN20-03.

[9] See footnote 6.

[10] Judgment of the General Court of 8 July 2010, case T-331/06 , *Evropaiki Dynamiki – Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis AE vs European Environment Agency (EEA)* , paragraph 61.



[11] Judgment of the General Court of 22 May 2019, case T-604/15 , *Ertico - ITS Europe v European Commission*, paragraph 166.

[12] Art. 41(2) third indent of the Charter of Fundamental Rights of the EU .

[13] This complaint has been dealt with under delegated case handling, in accordance with the Decision of the European Ombudsman adopting Implementing Provisions