

Decision of the European Ombudsman on complaint 737/2003/GG against the European Parliament

Decision

Case 737/2003/GG - Opened on 06/05/2003 - Decision on 01/10/2003

Strasbourg, 1 October 2003

Dear Sir,

On 7 April 2003, you lodged, acting on behalf of your client, Mrs Heidelinde Pfefferle, a complaint against the European Parliament in relation to the latter's handling of calls for tender for operating a hairdressing salon in the European Parliament in Strasbourg.

On 6 May 2003, I forwarded the complaint to the President of the European Parliament. The European Parliament sent its opinion on 3 July 2003. I forwarded it to you on 15 July 2003 with an invitation to make observations, which you sent on 28 August 2003.

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

THE COMPLAINT

In 2000, the European Parliament published a call for tender for operating a hairdressing salon in the WIC building of the European Parliament in Strasbourg. The complainant, a German citizen, is a hairdresser who operates a hairdressing salon in Germany. On 13 September 2000, she submitted, represented by her lawyer, an offer in reply to the said call for tender. In the absence of further information, the complainant's lawyer wrote to Parliament on 20 November 2000 in order to find out whether a decision had already been taken. By letter of 22 November 2000, the European Parliament informed the complainant that it had decided to cancel the call for tender. According to the complainant, Mr V., the person in charge of the matter at the European Parliament, subsequently explained on the occasion of a telephone conversation that the cancellation had been due to internal problems and that a new call for tender would be published in early 2001. Mr V. added that the complainant would be directly informed.

On 22 February 2001, the European Parliament published a notice of a call for tender for operating a hairdressing salon in the WIC building of the European Parliament in Strasbourg in the "Mittelbadische Presse" (a German newspaper). According to the information published in this advertisement, requests for receiving the tendering documentation had to be submitted by 6



March 2001. The complainant alleges that she was not informed of this call for tender.

On 26 April 2001, the complainant's lawyer wrote to the European Parliament in order to find out when the new call for tender would be published. By letter of 3 May 2001, the European Parliament sent the complainant a new call for tender and the relevant documentation, including information on the selection criteria and the award criteria. The complainant submitted an offer by the time set for this purpose in the call for tenders (29 May 2001).

By letter of 13 August 2001, the European Parliament informed the complainant that her offer had not been accepted. The complainant's lawyer queried this decision in a letter of 27 August 2001. In its reply of 14 September 2001, the European Parliament informed the complainant that the tender had been awarded, "in accordance with the selection and award criteria for calls for tender by the European Parliament", to a hairdressing shop called 'Haute Coiffure Duo'.

In her complaint to the Ombudsman, the complainant took the view that there was a strong suspicion that the call for tender organised in 2000 had been cancelled arbitrarily and that she should have been awarded the tender in view of the fact that she had submitted the best offer. The complainant further criticised the fact that the documentation concerning the second or third call for tender had only been sent to her after she had inquired although Parliament had undertaken to inform her without delay about a new call for tender. Finally, the complainant submitted that she had not been properly informed of the individual reasons for Parliament's decision. In her view, a standard reply did not enable her to understand the reasons underlying the decision.

The complainant thus made the following allegations:

- (1) The call for tender organised in 2000 was cancelled arbitrarily.
- (2) The European Parliament only sent her the documentation concerning the second or third call for tender after she had inquired although Parliament had undertaken to inform her without delay about a new call for tenders.
- (3) The European Parliament failed to inform her about the reasons for its decision to award the contract to the hairdressing salon called "Haute Coiffure Duo" rather than to her.

THE INQUIRY

The European Parliament's opinion

In its opinion, the European Parliament made the following comments:

In the course of the second half of 2000, the European Parliament's authorising officer published a call for tender for operating the Strasbourg hairdressing salon, which was then being run by 'Haute Coiffure Duo'. The contract of this operator was due to expire on 1 December 2000.



On 22 November 2000, the authorising officer wrote to the bidders who had replied to the call for tender, informing them that he had, in accordance with Article 4 of the General Conditions applicable to contracts, decided against awarding a contract. The authorising officer had in fact preferred to withdraw the call for tender on realising that the award criteria selected for that tender did not place enough emphasis on the quality of the service to be provided and that the selection criteria did not specify a minimum of experience required.

It was thus apparent that, at that stage in developments, and contrary to what was alleged by the complainant, the first invitation to tender had not been withdrawn arbitrarily, and that the complainant had been duly informed thereof.

Following a favourable opinion by the Advisory Committee on Procurement and Contracts (ACPC) at its meeting of 10 November 2000, the contract was extended until 31 March 2001 (Opinion 00/0235). The authorising officer subsequently applied to the ACPC, at its meeting of 9 March 2001 (Opinion 01/046), to be allowed to extend the contract until 30 June 2001.

The bidding documents for the new call for tender were submitted to the ACPC at its meeting of 10 April 2001 for its opinion, prior to being forwarded to bidders. The ACPC delivered a favourable opinion, subject to certain changes that were incorporated into the documents in their final form (Opinion 01/069).

Notices for the new call for tender were published on 22 February 2001 in *Dernières Nouvelles d'Alsace* and *Mittelbadische Presse*. Four applications for tendering specifications were received by the European Parliament by the deadline set for requesting them of 6 March 2001. As proposed in the note to the ACPC dated 2 April 2001, tendering documentation was sent to those firms on 3 May 2001 and also to the complainant who had not made any submission in response to the latest notification published in the press.

It must, consequently, be concluded that the complainant could not legitimately claim not to have been informed by Parliament of the existence of that call for tender.

The call for tender specified a compulsory visit to the premises on 18 May 2001. The complainant and two other bidders (including the incumbent operator) sent representatives.

The deadline for submission of bids was fixed as 29 May 2001. The above-mentioned three undertakings submitted bids which were selected following analysis of the selection criteria.

Following analysis of the bids on the basis of the four award criteria, the results were as follows:
Haute coiffure Duo Complainant (third bidder)
1. Professional qualifications 43,60 41,20 37,25
2. Staffing structure 15 15 0
3. Guarantee of long-serving staff 15 11 10
4. Prices of services 8 4
0 Total points out of 100 81,60 71,20 47,25

It should be noted that the authorising officer had asked for quality of services to feature prominently in the award criteria. The analysis of the bids showed that 'Haute Coiffure Duo' was offering staff with professional qualifications and experience superior to those of the other two bidders.



Those results, together with the bid-analysis tables, and the various assessment tables that need not be notified to bidders, were submitted to the ACPC with an explanatory note on 15 June 2001. The authorising officer recommended that the ACPC should deliver an opinion in favour of 'Haute Coiffure Duo', which had scored highest in the award criteria analysis table.

The ACPC delivered an opinion (No°01/123 of 29 June 2001) in favour of awarding the contract to 'Haute Coiffure Duo' for a period of five years renewable five times for one year.

The European Parliament informed the complainant that her bid had not been accepted. In addition, and in reply to a letter of 27 August 2001 sent by the complainant's lawyer, the European Parliament informed the complainant on 14 September 2001 that, after considering the selection and award criteria for bids received, the contract had been awarded to 'Haute Coiffure Duo'. It should be pointed out that the services responsible were under no obligation to provide details of the advantages or other characteristics of the successful bid.

In a letter dated 25 September 2001, the complainant's lawyer expressed surprise that the bid by 'Haute Coiffure Studio' could have been successful, given that that firm had allegedly not been represented at the compulsory visit to the premises on 18 May 2001. Although that allegation was totally without foundation, the services responsible had replied pointing out that 'Haute Coiffure Duo' had indeed been represented at the visit to the premises, and had gone so far as to take the exceptional step of forwarding to the lawyer a copy of the correspondence relating to that visit in order to cut short any such unfounded claim.

In the light of the above sequence of events, it could not but be concluded that the arguments raised by the complainant in her complaint to the Ombudsman were without foundation.

The complainant's observations

In her observations, the complainant maintained her complaint. She argued that in the absence of any information as to the specific criteria that had been applied as regards professional qualifications and the guarantee of long-serving staff, the result of the analysis of bids could not be checked and was not transparent.

THE DECISION

1 Arbitrary cancellation of call for tenders

1.1 In 2000, the European Parliament published a call for tender for operating a hairdressing salon in the WIC building of the European Parliament in Strasbourg. The complainant, a German citizen, is a hairdresser who operates a hairdressing salon in Germany. On 13 September 2000, she submitted an offer in reply to the said call for tender. The complainant alleges that the call for tender was cancelled arbitrarily by the European Parliament.

1.2 In its opinion, the European Parliament points out that it decided to withdraw the call for tender on realising that the award criteria selected for that tender did not place enough emphasis on the quality of the service to be provided and that the selection criteria did not specify a minimum of experience required.



1.3 The Ombudsman considers that the explanation put forward by the European Parliament for cancelling the call for tender published in 2000 appears to be reasonable and that the complainant has thus not established her allegation that Parliament had acted arbitrarily.

1.4 In these circumstances, there appears to be no maladministration on the part of the European Parliament in so far as the first allegation submitted by the complainant is concerned.

2 Failure to send information without solicitation

2.1 The complainant alleges that the European Parliament only sent her the documentation concerning the second or third call for tenders after her lawyer had inquired on 26 April 2001 although Parliament had undertaken to inform her without delay about a new call for tenders.

2.2 The European Parliament submits that notices for the new call for tender were published on 22 February 2001 in *Dernières Nouvelles d'Alsace* and *Mittelbadische Presse*, that four applications for tendering specifications were received and that the tendering documentation was sent to those firms and also to the complainant who had not made any submission in response to the latest notification published in the press.

2.3 The Ombudsman notes that the European Parliament has submitted a copy of the note concerning the call for tender that its services submitted to the Advisory Committee on Procurement and Contracts (ACPC) on 2 April 2001 (and thus before the complainant's lawyer sent his letter of 26 April 2001). In this note to the ACPC, Parliament's services propose to send the tendering documentation also to the complainant. The Ombudsman concludes that the complainant's allegation that Parliament failed to send the relevant information without prior solicitation is thus not borne out by the evidence available to him.

2.4 In these circumstances, there appears to be no maladministration on the part of the European Parliament in so far as the second allegation submitted by the complainant is concerned.

3 Failure to provide sufficient information

3.1 The complainant alleges that Parliament failed to inform her about the reasons for its decision to award the contract to another bidder rather than to her. In her observations on the European Parliament's opinion, the complainant argues that in the absence of any information as to the specific criteria that had been applied as regards professional qualifications and the guarantee of long-serving staff, the result of the analysis of bids cannot be examined and is not transparent.

3.2 The European Parliament points that it informed the complainant on 14 September 2001 that, after considering the selection and award criteria for bids received, the contract had been awarded to another bidder. Parliament takes the view that its services were under no obligation to provide details of the advantages or other characteristics of the successful bid. It further submits a copy of the report its services had made to the ACPC on 14 June 2001 and a copy of the explanatory note dated 15 June 2001 that was submitted to that committee.

3.3 The Ombudsman notes that the above-mentioned note of 15 June 2001 contains a table



setting out the points attributed by Parliament's services, with regard to each of the four criteria applied by them (professional qualifications, staffing structure, guarantee of long-serving staff and price of services), to each of the three bids that had been examined. In the Ombudsman's view, the information thus provided must be considered as being sufficient to enable the complainant to understand the reasons underlying the decision adopted by Parliament and to formulate objections in case she should consider that the appraisal regarding the individual criteria was wrong or unfair.

3.4 In these circumstances, there appears to be no maladministration on the part of the European Parliament in so far as the third allegation submitted by the complainant is concerned.

4 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Parliament. The Ombudsman therefore closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS