

## **Decision in case 1771/2015/OV on the non-selection of a tender by the Commission Representation in Bulgaria**

Decision

**Case 1771/2015/OV - Opened on 29/02/2016 - Decision on 27/09/2016 - Institution concerned** European Commission ( No further inquiries justified ) |

On 6 November 2015, you complained to the European Ombudsman concerning the non-selection of your tender under the tender procedure PO/2015-02/SOF launched by the European Commission Representation in Bulgaria. You submitted, in summary, the following two allegations and two claims:

### **Allegations:**

- 1) The European Commission Representation in Bulgaria failed to reply to your request of 30 October 2015 for further information on the winning tender and clarifications on the assessment of your tender.
- 2) The European Commission Representation in Bulgaria, through its Evaluation Committee, assessed your tender inadequately and disproportionately, and there was a lack of transparency.

### **Claims:**

- 1) The European Commission Representation should provide the information and clarifications requested.
- 2) The score given to your tender should be re-evaluated.

**1) Regarding your first allegation and claim** , following the Ombudsman's instructions, I contacted the relevant service of the Commission. In response, the Commission informed me that it replied to you on 23 March 2016 and that it had already sent earlier replies to you on 9 and 16 November 2015. Both these replies were sent within the prescribed 15-day deadline stipulated in Article 161(2) of the Rules of Application of the Financial Regulation (RAP), namely on 9 and 16 November 2015.

I subsequently invited you to submit observations on that reply. However, I did not receive any



observations from you. The Ombudsman therefore considers that you are satisfied with the reply you received, and that **the Commission has taken steps to settle the matter**.

**2) Regarding your second allegation and claim**, the Commission in its reply of 23 March 2016 stated that it had correctly applied the Financial Regulation and its RAP and that the principles of equality, non-discrimination and transparency had been fully respected. More specifically, the Evaluation Committee compared the technical offers with the requirements of the tender specifications.

With respect to Criteria 1 and 2, the Commission stated that the Evaluation Committee had awarded you 28/30 points, which was the maximum score given in the tender procedure. The Commission explained that the Evaluation Committee members are not bound to assign the maximum score of 30 points to any offer, and that indeed, the final ranking demonstrated that offers with similar comments as yours had also received 28 points. The Commission further stated that the points had been awarded in a proportional manner and that all tenderers had been treated fairly and uniformly. Lastly, the Commission explained that the Evaluation Committee had considered that your reference under Criterion 1 to the European Citizens Initiative was irrelevant because it could not assess how this procedure related to the functioning of the EU's Information Centre in Bulgaria.

Regarding Criterion 3, the Commission explained that the Evaluation Committee used a negative points approach in the case of unclear, incomplete or irrelevant replies. In your case, the Evaluation Committee deducted 5 points because your answer to Enquiry 3 did not fully comply with the criteria, in particular in terms of clarity. The reply should have been to first advise the person to contact the competent pension authorities before suggesting to contact SOLVIT.

The Commission concluded that the contract had been awarded in compliance with the selection and award criteria set out in the tender documents. It pointed out that, despite the fact that your offer was ranked equally high with the winning tender as regards quality, it did not offer the lowest price.

Moreover, having carefully assessed the Commission's reply of 23 March 2016, the Ombudsman considers that the Evaluation Committee has assessed your tender in compliance with the relevant rules, including the applicable rules of the Financial Regulation and its RAP. The Ombudsman's conclusion, therefore, is that **no further inquiries are justified with regard to your second allegation and claim**.

The Ombudsman has therefore closed the case.

Lambros Papadias

Head of Inquiries - Unit 3

Strasbourg, 27/09/2016

