

Camilla Graf-Morin

Från: Michael Slavicek
Skickat: den 13 mars 2006 17:02
Till: Camilla Graf-Morin
Ämne: VB: Your e-mail of 7 December 2005 MARKT/C2 D(2006) 1786

Här kommer kommissionens svar./M

-----Ursprungligt meddelande-----

Från: David.MIHALIK@cec.eu.int [mailto:David.MIHALIK@cec.eu.int] För
Matthias.Petschke@cec.eu.int
Skickat: den 16 februari 2006 10:34
Till: Michael Slavicek
Ämne: Your e-mail of 7 December 2005 MARKT/C2 D(2006) 1786

National Board for Public Procurement

Mr. Michael Slavicek

Head of Legal Services

e-mail: michael.slavicek@nou.se <mailto:michael.slavicek@nou.se>

dispatch only in electronic form

Subject: Your e-mail of 7 December 2005

Dear Mr. Slavicek,

I refer to your e-mail of 7 December 2005 expressing your interest in hearing our views on the problem of winners of public contracts passing such contracts to third parties.

The Community Directives on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts do not specifically deal with the change of the partner of a contracting body in the course of the execution of a public contract. However, the fact that Member States are obliged to give full effect to the Directives might - in exceptional cases - require national authorities to take measures against changes of partners of contracting bodies after the award of a public contract. This might be the case where such change in the person of the partner of a contracting body risks circumventing Community rules on public procurement and concessions.

For example, Community rules on the required eligibility of tenderers, such as Article 45 of Directive 2004/18/EC, might be rendered ineffective if the winner of the public contract passed it on to a third party which does not meet these requirements. In this case public authorities would have to take measures against such circumvention.

What about the right of Member States to take measures against such practices under Community law? In this regard it is appropriate to state that the Community Public Procurement Directives are not regulating all public procurement aspects. Thus, in principle, Member States are free to adopt regulations in those areas which are not covered by the EC Public Procurement Directives. As far as such national rules concern contracts in which a public body awards work involving an economic activity to a third party they need, however, to respect the rules and principles of the EC Treaty, in particular the principles of transparency, equal treatment, proportionality and mutual recognition.

Please note that this is the opinion of my service. Ultimately, the interpretation of Community law falls within the competence of the European Court of Justice.

As you mentioned the PPP Green Paper, I conclude this letter by informing you about the outcome of the consultation on the specific question on step-in clauses which is closely related to the matter of your concern. It turned out that virtually no stakeholder participating in this consultation perceived particular procurement problems linked to the change of the partner of a contracting body after award of a public contract. As a consequence, the Commission does not intend to prepare specific initiatives on this subject.

I hope these comments are of assistance to you. Do not hesitate to turn back to us if you have any further question on this issue.

Kind regards

Matthias Petschke

Contact: