

**EUROPEAN COMMISSION**

DIRECTORATE-GENERAL

REGIONAL POLICY

Interventions in Bulgaria, Cyprus, Greece, Romania and IPA/ISPA

The director

Brussels, 23.02.2009*001690
REGIO I2/CR/vr D(2009) 930049*J. Mueber*
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Dear Ms. Ontzova,**Subject: Abuse of negotiated procedures in the environment sector**

During the 4th Cohesion Fund (ex-ISPA) Monitoring Committee that took place in Bansko (Bulgaria) on 09-11 December 2008, the Commission noted that many work contracts (i.e falling under Directive 2004/18/EC) had been signed as the outcome of direct negotiation procedures following the cancellation of open tenders.

These open tenders were launched according to the normal procurement rules. Following the submission of offers, the tenders were subsequently cancelled for the sole reason that the offers exceeded the available budget. Upon cancellation the bidders satisfying the criteria for qualitative selection were then invited to negotiate. No contract notice was published, as only the enterprises which had submitted tenders during the prior open tenders were invited.

However, the available budgets for those contracts are notoriously out of date, as they were established at the time of the award of financing, which in certain cases goes back as far as 2003. In the meantime the market prices have evolved considerably. In spite of knowing from similar recent tenders that the budget available would be out of phase with the market, the Contracting Authority did not undertake any step to increase the budget before tendering or to allocate sufficient financial resources after tendering in order to be able to finance the lowest qualified bid.

Following this logic the cancellation of tenders in this way becomes foreseeable, with the negotiated procedure ending up being the norm rather than the exception.

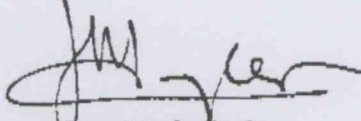
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My services have in the meantime consulted the services of the European Commission's Directorate General for the Internal Market, which have confirmed that negotiated procedures should be the exception and not the rule.

Considering the above, I rely on you to include the above mentioned procurement procedures under the Cohesion Fund (ex-ISPA) into your Annual Work Programme with a view to establish the facts and – if necessary – to propose adequate financial corrections.

Yours sincerely,



Jean-Marie Seyler

C.c.: Mr. D. Ahner, Director-General, DG Regional Policy
Mr. M. Pasca-Raymondo, Deputy Director-General, DG Regional Policy
Mr. N. Martyn, Director J, DG Regional Policy