



[AD/2021/04]

Public Procurement Seminar

Online seminar, 10-11 June 2021

Workshop 2 with Michael Jürgen Werner

Application and Coordination in Cross-border Procurement Contracts

Background

The federal state of Hessen in Germany decides to build a new section of a motorway between Wiesbaden and Giessen. The awarding officer in the contracting authority in Hessen publishes a call for a public procurement tender for a public-sector construction contract.

The estimated value of the contract is around EUR 500 million.

Facts

Three private companies, A, B, and C, submitted offers. Bidder A is a Spanish company, bidder B is a German company and bidder C is a Dutch company.

During the first round of the selection and qualification process, Bidder A's offer of EUR 770 million is considered too expensive and is not taken into consideration for the later stages.

Bidders B and C continue the negotiation process. During this negotiation process, the contracting authority restates the selection criteria.

It also adds the condition that the final offer cannot be more than 10% above the first offer. If this criterion is not met, the bidder's offer is subject to exclusion from the tender process.

During the negotiation period, the contracting authority set the limit of economic efficiency at EUR 550 million.

Moreover, it specified that all offers that fulfil the aforementioned criteria must be signed.

Both bidders B and C submitted final offers.

Bidder B's initial offer was EUR 450 million. Its final offer is EUR 550 million.

Bidder C's initial offer was EUR 540 million. Its final offer is 600 million. It lacks the signature of the authorised person and one part of the offer has been lost on the way to the contracting authority.

Following receipt of the final offers, the contracting authority decides to cancel the tender.

Task

Identify legal pitfalls and breaches of the EU Public Procurement Directives

***Disclaimer**

The facts and parties depicted in this case are fictitious. Any similarity to any real case is merely coincidental.