



EJTN ADMINISTRATIVE LAW PROJECT

[AD/2021/04

Workshop 1 with Professor Christopher Bovis

Application and Coordination in Cross-border Procurement Contracts

Background and Facts

The French highway authorities decide to organise a public procurement tender for the extension of a main highway between Paris and Lyon.

The estimated value of the contract is EURO 500 million.

The French government has recently enacted law 12/2018 which specifies that all major construction projects must maximise the use of domestic materials which are environmentally friendly.

Silvio Srl is an Italian company that specialises in the construction of motorways across Europe and has the opportunity to compete for the tender.

Silvio Srl offers to the French highway authorities the use of their own innovative and intellectual property protected tarmac material which does not retain any water and therefore contributes to safe driving in wet conditions.

QUESTIONS

During the selection and qualification process, the French highway authorities specified that for evidence of financial and economic standing, a mere declaration from interested undertakings that they have adequate financial means to deliver the project. **Can they do that?**

During the selection and qualification process, the French highway authorities specified that references from previous public sector clients will be used as selection criterion. **Can they do that?**

During the selection and qualification process, the French highway authorities specified that the location of providers will be used as selection criterion. **Can they do that?**

During the procurement award process, the French authorities exclude Silvio Srl and subsequently eliminate their offer on grounds of breach of law 12/2018 and in particular on the grounds that French products must be used in all major infrastructure projects for quality control, consistency of standards and guaranteed delivery. **Can they do that?**

The French highway authorities award the contract to Emmanuel SARL, a French company, on the premise that their offer meets the most economically advantageous offer as criterion for award. Within six months from the award, the French highway authorities extend without competition the remit of the contract to cover all major city connections to highway standards. The value of the extension is EURO 3 billion. **Can they do that?**

*Disclaimer

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