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Press and Information

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Judgment of the Court of Justice in Case C-220/05

Jean Auroux and Others v. Commune de Roanne with Société d'équipement du département de la Loire (SEDL) (third party)

AN AGREEMENT FOR THE REDEVELOPMENT OF AN AREA IN A TOWN CONSTITUTES A PUBLIC WORKS CONTRACT

On that basis, such an agreement, whose value is to be determined by taking into account the overall volume of the development project, is subject to the Community rules for the award of public contracts where it exceeds the relevant threshold.

In 2002, the French municipality of Roanne decided, as an urban development measure, to construct a leisure centre in the area around the railway station, including a multiplex cinema, commercial premises, a public car park, access roads and public spaces. The construction of other commercial premises and a hotel were envisaged subsequently.

In order to execute that project, the municipality of Roanne engaged a semi-public development company, the Société d'équipement du département de la Loire (SEDL), to acquire land, obtain funding, carry out studies, organise an engineering competition, undertake construction works, coordinate the project and keep the municipality informed.

Certain members of the Municipal Council, who took the view that the agreement should have been made subject to advertising and a call for tenders, requested the Tribunal administratif de Lyon (Administrative Court, Lyon) to annul the Municipal Council's resolution which resulted in SEDL's engagement. The Tribunal administratif de Lyon asked the Court of Justice of the European Communities about the interpretation of the directive concerning the coordination of procedures for the award of public works contracts¹ and, in particular, whether the engagement of SEDL constituted the award of a public works contract which must be the subject of a call for competition in accordance with the directive.

As regards the question whether the development agreement constitutes a public works contract, the Court recalls, first of all, that the directive concerning the coordination of procedures for the award of public works contracts defines a public works contract as any written contract, concluded for pecuniary interest between a contractor and a contracting authority (State, local authority, body governed by public law) whose purpose is, in particular, the design

¹Council Directive 93/37/EEC of 14 June 1993, as amended, concerning the coordination of procedures for the award of public works contracts (OJ L 199, p. 54-83).

and/or execution of works, or a work corresponding to the requirements specified by the contracting authority.

The Court notes that SEDL, a contractor within the meaning of the directive, was engaged by the municipality on the basis of an agreement concluded in writing. It observes that, although the agreement to engage SEDL contains an element which provides for the supply of services, that is to say the administration and organisation of the works, its main purpose consists in the construction of a leisure centre, that is to say a work within the meaning of the directive. The Court states that it is irrelevant, in that regard, that SEDL does not execute the works itself and that it has them carried out by subcontractors.

The Court states that it is apparent from the agreement that the construction of the leisure centre is intended to house commercial and service activities designed to regenerate an area in the town, so that it must be regarded as fulfilling an economic function. That finding is not called into question by the fact that a number of buildings forming part of the work are intended to be sold to third parties. Finally, the Court states that the agreement was concluded for pecuniary interest, which refers to both the consideration from the municipality and third parties to whom some of the works are to be sold.

In those circumstances, the Court holds that ***the agreement must be classified as a public works contract within the meaning of the directive.***

As regards the methods for calculation of the value of the public works contract, in order to determine whether the value of the agreement exceeds the threshold for application of the directive, the Court observes that the total value of the works contract must be taken into account from a potential tenderer's point of view, that includes not only all the amounts that the contracting authority is to pay, but also all the revenue received from third parties.

As regards the possibility to avoid the procedure for award of a public works contract, the Court states that, according to the directive, a contracting authority cannot be exempt from using such procedures on the ground that, according to national law, those agreements can be concluded only with certain legal persons who are themselves bound to apply those procedures in order to award any subsequent contracts. As SEDL is a semi-public company, whose capital includes private funds, the project cannot be classified as in house.

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Languages available: BG, CS, DE, EN, FR, HU, NL, PL, RO, SK, SL

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-220/05>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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