JUDGMENT OF THE COURT (Fourth Chamber)
16 October 1997 *

In Case C-304/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunale Amministrativo Regionale della Liguria (Italy) for a preliminary ruling in the proceedings pending before that court between

Hera SpA

and

Unità Sanitaria Locale No 3 — Genovese (USL),

Impresa Romagnoli SpA,

on the interpretation of Article 30(4) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54),

* Language of the case: Italian.

THE COURT (Fourth Chamber),

composed of: H. Ragnemalm (Rapporteur), President of the Chamber, P. J. G. Kapteyn and J. L. Murray, Judges,

Advocate General: C. O. Lenz,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Italian Government, by Professor U. Leanza, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato,

— the Commission of the European Communities, represented by Hendrik van Lier, Legal Adviser, and Paolo Stancanelli, of its Legal Service, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 29 May 1997,

gives the following

Judgment

1 By order of 4 July 1996, received at the Court on 19 September 1996, the Tribunale Amministrativo Regionale (Regional Administrative Court), Liguria, referred to

the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 30(4) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54).

2 That question was raised in proceedings brought by Hera SpA against Unità Sanitaria Locale No 3 — Genovese (the local health authority, hereinafter 'the USL') and Impresa Romagnoli SpA concerning a decision excluding Hera from a tendering procedure.

3 On 19 December 1995 the USL published an invitation to tender for a contract for works relating to the internal reorganization and technological adaptation of its property, the 'Vecchio Istituto del Presidio Socio Sanitario' in Genoa. According to the invitation to tender, the contract was to be awarded to the tenderer offering the maximum discount against the base price of LIT 16 463 000 000.

4 Hera submitted the best tender, offering a discount of 17.3%. However, that bid was excluded from the tendering procedure on the ground that it was abnormally low, with the result that the contract was awarded to Impresa Romagnoli SpA.

5 The contracting authority's decision was based on Article 21(1a) of Law No 109 (GURI, Supplement No 29, of 19 February 1994), as amended by Decree Law No 101 (GURI No 78 of 3 April 1995) and Law No 216 (GURI No 127 of 2 June 1995). This provides that 'until 1 January 1997, tenders in which the percentage discount exceeds by more than one-fifth the average of the discounts in all the tenders admitted shall be excluded from public works contracts for amounts above or below the Community threshold'.

6 In proceedings before the national court contesting the contracting authority's decision, Hera claimed, *inter alia*, that the USL had infringed Article 30(4) of Directive 93/37, which provides that:

'If, for a given contract, tenders appear to be abnormally low in relation to the works, the contracting authority shall, before it may reject those tenders, request, in writing, details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received.

...

However, until the end of 1992, if current national law so permits, the contracting authority may exceptionally, without any discrimination on grounds of nationality, reject tenders which are abnormally low in relation to the works, without being obliged to comply with the procedure provided for in the first subparagraph if the number of such tenders for a particular contract is so high that implementation of this procedure would lead to a considerable delay and jeopardize the public [interest] attaching to the execution of the contract in question. Recourse to this exceptional procedure shall be mentioned in the notice referred to in Article 11(5).'

7 The national court pointed out that the USL had correctly applied the Italian legislation providing for the exclusion of abnormally low tenders. It held, however, that there was a discrepancy between that legislation and Article 30(4) of Directive 93/37.

8 The national court decided to stay proceedings in the case pending a preliminary ruling from the Court on whether the Community rules 'allow — and if so in what cases — a Member State to make temporary exceptions regarding the entry into force of directives where the latter set an express time-limit'.

9 It is clear from the order for reference that the national court's question is essentially whether Article 30(4) of Directive 93/37 is to be interpreted as allowing the contracting authority to reject abnormally low tenders after 31 December 1992 without following the verification procedure provided for in the first subparagraph of that provision.

Admissibility

10 The Italian Government maintains that there is no need to reply to the question referred, given that provisions corresponding to those of Article 30(4) of Directive 93/37 already had direct effect, that the Directive does not allow Member States to make any exceptions and that an explanatory circular has been published by the Italian Ministry of Public Works, calling on the authorities concerned to interpret and apply Article 21(1a) of Law No 109 in a manner consistent with Directive 93/37.

11 In that regard the Court has consistently held that it is for the national courts alone, before which the proceedings are pending and which must assume responsibility for the judgment to be given, to determine, having regard to the particular features of each case, both the need for a preliminary ruling to enable them to give judgment and the relevance of the questions which they refer to the Court. A request for a preliminary ruling from a national court may be rejected only if it is quite obvious that the interpretation of Community law sought bears no relation to the facts of the main action or to its purpose (see Case C-143/94 *Furlanis* v *ANAS and Itinera* [1995] ECR I-3633, paragraph 12). However, that is not the case here.

12 The Court must therefore answer the question referred.

The question

13 It should be recalled at the outset that, as the Commission has pointed out, Directive 93/37 consolidates Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (OJ, English Special Edition 1971(II), p. 682) and subsequent amendments thereto. Article 30(4) of Directive 93/37 corresponds to Article 29(5) of Directive 71/305 as amended by Council Directive 89/440/EEC of 18 July 1989 (OJ 1989 L 210, p. 1).

14 Article 30(4) of Directive 93/37 lays down strict conditions circumscribing the contracting authority's power to waive the verification procedure for tenders which appear to be abnormally low. It may dispense with that procedure — exceptionally and provided that it does not discriminate on grounds of nationality — if the number of such tenders for a particular contract is so high that implementation of the procedure would lead to a considerable delay and jeopardize the public interest attaching to the execution of the contract in question. Moreover, that option is available only until 31 December 1992.

15 Furthermore, the Court, when called upon in *Furlanis* to adjudicate with regard to the provision in question — as it appeared in Directive 71/305, amended by Directive 89/440 — stated in paragraphs 17 and 20 of its judgment that the exception provided for was available only for procedures in which the definitive award was made by 31 December 1992 at the latest, emphasizing that the provision in question, which introduces temporary, derogating arrangements constituting an exception to the normal procedure, must be interpreted strictly.

16 It should therefore be stated in reply to the question referred for a preliminary ruling that Article 30(4) of Directive 93/37 must be interpreted as precluding contracting authorities from rejecting abnormally low tenders after 31 December 1992 without following the verification procedure provided for in the first subparagraph of that provision.

Costs

17 The costs incurred by the Italian Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the question referred to it by the Tribunale Amministrativo Regionale della Liguria by order of 4 July 1996, hereby rules:

Article 30(4) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts must be interpreted as precluding contracting authorities from rejecting abnormally low tenders after 31 December 1992 without following the verification procedure provided for in the first subparagraph of that provision.

Ragnemalm Kapteyn Murray

Delivered in open court in Luxembourg on 16 October 1997.

R. Grass H. Ragnemalm

Registrar President of the Fourth Chamber