HOW THE ORGANIZATION OF THE AUCTIONS ON THE ROADS SNOW REMOVAL FACILITATES THE AGREEMENTS

* fines over 1 million Euro for 4 companies

The Competition Council considers that the way of organizing auctions for roads winter maintenance services (snow removal) needs to be improved in order to eliminate any possibility of rigging them through agreements between participants.

Thus, the competition authority requests the National Company for the Management of Road Infrastructure SA (CNAIR) to avoid the situations in which negotiations with the participants in auctions are reached, considering that, in most cases, the prices are higher than those offered under the open auction procedures.

As a result, CNAIR must initiate the organization of open auctions more in advance, which would allow the procedure to be carried out and would not be necessary to invoke the urgency of the services (as in the case of snow removal services) which would require a direct passage to the negotiation method.

At the same time, CNAIR has to take a series of measures to decrease the degree of contestation of tenders, given that, following the appeals, the procedures are suspended, and the process of awarding services is very delayed. This leads to the invocation of the urgency and, consequently, the initiation of direct negotiation procedures.

The Competition Council requests CNAIR to adopt a series of measures in order to ensure that the competition principles are respected in the tender procedures and that it does not facilitate the conclusion of agreements between the participants. Thus, the simultaneous presence of the participating companies at the authority's headquarters during the negotiation procedures must be avoided by establishing different time intervals for the negotiation sessions with the bidders.
At the same time, the competition authority argues that the Final Offer Form, a document to be completed by the bidder after the negotiation session and which reflects the final value of the financial offer, should not be completed in the presence of competing companies.

These requests of the Competition Council resulted from the completion of the investigation on rigging the bid organized by CNADNR (currently CNAIR), in 2012 and 2013, in order to assign maintenance services in winter time (snow removal) of national roads and highways under the administration of Cluj Roads and Bridges Regional Directorate.

Within the investigation, the Competition Council sanctioned four companies (Diferit SRL, Selina SRL, Athos Com SRL, Ritorsa Trans SRL) active in the road and highway construction sector with fines totalling 5,042,540 lei (approx. 1.1 million Euro).

The Competition Authority found that the open tenders organized were either cancelled, as a result of submitting non-compliant / unacceptable tenders, or suspended, as a result of the complaints submitted and it led to the awarding the services through negotiation procedures. Although the companies involved showed an increased interest in the open tender procedures, the negotiations took place in the absence of competitive pressure. Thus, the companies either submitted bids without competing or submitted bids for several lots and the negotiation took place without the participants actually competing.

"In this situation, the companies acted in concerted way: the contracts were awarded within the negotiation procedures, by rotation, each of the four companies winning at least one contract at higher prices compared to those offered during the tender procedures. On the other hand, the concrete way of conducting the negotiations, which implies the simultaneous presence of the bidders at the headquarters of the contracting authority for a considerable period of time, favoured the communication between companies” said Bogdan Chirițoiu, the President of the Competition Council.

The sanctions were applied as follows:

- Different SRL - 2,755,562 lei;
- Selina SRL 1,329,936 lei;
- Athos Com SRL - 922,741 lei;
- Ritorsa Trans SRL - 34,301 lei.

The decision of the Competition Council shall be published on the institution website www.consiliulconcurrentei.ro after removing the confidential information.

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