

**Question for oral answer O-000169/2011
to the Commission**

Rule 115

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Subject: Public Procurement

On 17 May, the Commission published the award of a new contract with Microsoft for 'the acquisition of Microsoft high-level services' to supply PCs in the EU institutions and agencies with a migration to the Windows 7 operating system. The contract is worth a total of EUR 45 million in market value.

The publication of the contract states that the contract was entered into using a negotiated procedure without prior publication of a contract notice. According to Article 89(2) of the Financial Regulation, 'all procurement contracts shall be put out to tender on the broadest possible base, except when use is made of the negotiated procedure referred to in Article 91(1)(d)'. Thus the negotiated procedure can be applied in specific and restricted circumstances. The award of the contract states that in this case the justification for the negotiated procedure was 'technical', given that the participating bodies already use Microsoft products for part of the IT infrastructure and because the supply of services is subject to the Interinstitutional Licensing Agreement, which governs the licensing rights for the products concerned. At the same time, the Commission has been adamant to point out that using the negotiated procedure was not the result of a technical lock-in to buy Microsoft, for instance in its response to written question P-003807/2011: 'The Commission does not rely on (or is locked into) one single software vendor.'

Could the Commission please explain how it is not inherently contradictory to argue for the negotiated procedure for technical reasons whilst not being locked-in, in contradiction with stated EU policy objectives? If there are alternatives, what are the reasons for not subjecting the need for new software to an open competition?

The award notification also states the award criterion as 'lowest price'. However, how can the Commission assess Microsoft's offer as the 'lowest price' when there has been no open competition and therefore there have been no alternative offers?

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