

WRITTEN QUESTION P-1170/04
by Manuel dos Santos (PSE)
to the Commission

Subject: Construction of the Amoreiras tunnel in Lisbon

On 29 May 2002 the Lisbon Municipal Chamber (LMC) approved the call to tender for the contract to alter the level of the streets Avenida Duarte Pacheco, Rua Joaquim António de Aguiar and Avenida Fontes Pereira de Melo, the basic project for which stipulated that:

- the building work would overlap with other infrastructure and those submitting tenders should offer solutions to divert such infrastructure;
- the competing contractors should submit the proposed solutions worked out on the basis of a preliminary study, taking into consideration all the specialised tasks involved, including the diversion of infrastructure occupying the sub-soil;
- the contract should include all the work carried out to meet all the objectives entailed in the complete execution of the project, including all the diversions carried out by sub-contractors.

On 14 March 2003 the LMC did not award the contract to any of the candidates, since they all quoted a higher total price, and it decreed that the contract should be awarded directly. Recourse to this method (when no suitable proposals are received in response to a public tendering procedure) must not entail any deviation from the programme and specifications sheet on which the competition was based. When examining the proposals in this context the Commission decided that the specifications for the repositioning of infrastructure could not be considered as essential elements of the contract. On 22 May 2003 the LMC awarded the contract directly to the group consisting of the firms Empresas Construcções do Tâmega S.a. and CME - Constucções e Manutenção Electromecânica S.A., which in their proposal removed essential construction tasks from the context of the contract, with a substantial impact on infrastructure.

In view of all this, can the Commission say:

- whether the direct award procedure under the above-mentioned terms constitutes an infringement of Article 7(3)(a) of Directive 93/37/EEC¹ and the principle of free competition,
- whether the fact that the proposal did not correspond to the basic project and specifications sheet and that the LMC took into consideration and initiated the negotiations on this basis to the prejudice of third parties acting in good faith, does not violate the principle of equal treatment inherent in the application of Community law?

¹ OJ L 199, 9.8.1993, p. 54.