

Public procurement

Visit of Konsek Trøndelag
EFTA House – 4 May 2022
Frederik De Ridder

ESA Organisation Chart



Areas of Interest

- Implementation of new EEA rules and regulations
- Investigate breaches of the EEA Agreement
- —State aid
- —Competition



Marco Uccelli, Deputy Director of Internal Market Affairs

The Internal Market

- In a successful and fair Internal Market, everyone plays by the same rules.
- ESA monitors that Iceland, Liechtenstein and Norway implement new EEA legislation.



Director of Internal Market Affairs, Jónína S. Lárusdóttir

EEA EFTA States' obligations

- Have the law
- Have the right law
- Apply the law in practice



How IMA Investigates

- Anyone can file a **complaint** if they believe their EEA rights have been infringed.
- ESA can also take action based on **own initiative** cases where it has spotted potential issues in the EEA EFTA countries' national legislation.
- In both cases, ESA will look into the matter
 - This may lead to a **formal investigation**

Three formal steps of an infringement procedure



Letter of formal notice

1. ESA sends a letter of formal notice, setting out ESA's view on why the State's conduct breaches EEA law, giving the State a chance to respond.



Reasoned opinion

2. If the issue is not resolved, ESA may deliver a reasoned opinion requiring the State to comply with EEA rules.



Bring the case to court

3. ESA may ultimately bring the case to the EFTA Court, which will have the final say.

Public procurement – what?

- “Procurement ... is the acquisition by means of a **public contract** of **works, supplies or services** by one or more **contracting authorities** from economic operators chosen by those contracting authorities...” (Art. 1(1)) – also concessions
- Procedures apply to public contracts above thresholds:
 - NOK 56 236 143 for public works contracts;
 - NOK 1 462 850 for public supply and service contracts awarded by central government authorities - NOK 2 246 520 for sub-central contracting authorities
 - EUR 750 000 for public service contracts for social services

Section II: Object**II.1) Scope of the procurement****II.1.1) Title:**

Procurement of AV-solutions for meeting and interrogation rooms for Sør-Vest PDI (Haugesund, Jæren & Stavanger)

Reference number: 20-149614

II.1.2) Main CPV code

32321200 Audio-visual equipment

II.1.3) Type of contract

Supplies

II.1.4) Short description:

The Customer is in need of AV-solutions for meeting and interrogation rooms in the forementioned police districts.

Public Procurement – Who?

- Contracting authorities: “the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law;”
- Contracting entities: entities which exercise activities on the basis of special or exclusive rights granted by a State:
 - production and distribution of gas and electricity,
 - provision and supply of water,
 - transport services, ports and airports,
 - postal services,
 - extraction/exploration of oil and gas

Public Procurement – Why?

- To give effect to principles of EEA law:
 - Free movement
 - Equal treatment, non-discrimination, mutual recognition, proportionality and transparency
 - To ensure public procurement is opened up to competition
 - Should result in best price/quality
- Falls under Parts II & III of the EEA Agreement: equal access of all goods/service providers to public contracts
- ≠ State Aid (Part IV): avoid distorting competition through aid

Public Procurement - Why?

- EU
 - 250,000 public authorities
 - 14% of GDP (around €2 trillion per year)
 - 676,734 notices published (TED, 2021)
- Norway (2021)
 - 11,629 notices published

Supplies - 668811-2021

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27/12/2021 S251

I. II. IV. V. VI.

Norway–Oslo: Audio–visual equipment

2021/S 251–668811

Contract award notice

Results of the procurement procedure

Supplies

Legal Basis:

Directive 2014/24/EU

Section I: Contracting authority

I.1) **Name and addresses**

Official name: Politiets fellestjenester

National registration number: 974 761 157

Postal address: Fridtjof Nansens vei 14

Town: OSLO

Public Procurement – How?

- Lowest price or best price quality ratio
- How do you hire a new person to your team?

Public Procurement - How?

- Different procedures – “standard” is the open procedure (Article 27):
 - Possibility to conduct market consultations
 - Call for competition
 - Qualitative selection criteria: which economic operators?
 - Technical requirements: characteristics of the work, service, supply
 - Contract award criteria
 - Publicity and transparency: TED
 - Deadline for applying: at least 30 days
 - Any interested economic operator may submit a tender

Qualitative selection: selecting candidates

- Exclusion grounds: eg. economic operators which are involved in crime, corruption, fraud, late paying taxes...
- Selection criteria: suitability to pursue the professional activity, economic and financial standing, technical and professional ability, provided that the criteria are linked to the subject matter of the contract.
 - Eg. If I am buying pens from a company that is also making printer cartridges, I cannot require 10 years of experience in the printer cartridge recycling business

Technical requirements: does the tender fulfill my needs?

- Technical specifications shall be linked to the subject-matter of the contract
- Equal access of economic operators to the procurement procedure:
 - Eg. Commission v. Netherlands: requirement of a Dutch sustainability label for procurement of coffee and tea. CJEU: you can require products to be sustainable but you should allow equivalents to the Dutch sustainability label. Likely that other products in the EEA meet the same criteria, but would be excluded as they have not applied for the Dutch label.

Award of the contract

- Selecting the most economically advantageous tender
- Only price or price/quality ratio
- What is “quality”?
 - Decided on the basis of objective criteria set out in the contract notice
 - Can include social and environmental characteristics
 - Can include experience of the tenderer in providing services
 - Criteria need to be linked to the subject-matter of the contract
 - cannot give an unrestricted freedom of choice
- “weight” of the different criteria: giving points

Conclusion

- Making rational procurement choices
- Rules are detailed and might sound cumbersome, but provide in flexibility to take into account social and environmental objectives
- Up to contracting authorities to make good use of this flexibility!
- If not...

Michael Gove backer won £164m in PPE contracts after 'VIP lane' referral

David Meller's company was among 47 awarded PPE contracts after referrals from politicians and officials

- **Five Tory MPs and peers who referred firms to controversial VIP lane**



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