



Guidance on qualification requirements in new public procurement ruling by the Norwegian Supreme Court



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In September 2019 the Norwegian Supreme Court established in the «Fosen»-case that a breach has to be «sufficiently serious» in order to be entitled to compensation/damages after a public procurement procedure.

Two years later, the Norwegian Supreme Court has again ruled in a case regarding claim for compensation related to an alleged breach in a public procurement procedure (HR-2022-1964-A). This case relates to a rather classic topic: a rejected bidder challenges the contracting authority's decision and claimed compensation.

The contract in question was related to upgrading a 4,9 km tunnel and the valid was estimated to NOK 197 million. The question was whether or not the rejected bidder fulfilled the qualification criteria related to experience with traffic routing, relevant for the time period the work in the tunnel was going on, and specifically if this qualification criteria read in light of the rest of the procurement documents entailed that the bidder was required to have had experience with use of a guide car for traffic routing purposes. A question in this regard was whether the qualification criteria and the procurement documents was sufficiently clear in order for interested bidders to understand that experience with use of guide car for traffic routing was required to be qualified.

Obviously, it was a very case-specific question which was subject to an assessment in light of what reasonably could be expected when reading the procurement documents. The Norwegian Supreme Court does not

introduce any new or ground-breaking legal standards, but the ruling provides guidance through case law on the requirements related to qualification criteria, and emphasizes - under reference to ECJ case Pippo Pizzo (C-27/15) - , that a bidder naturally cannot assume a more limited or wider understanding of a requirement than an assessment of the procurement documents read as a whole gives basis for.

The Norwegian Supreme Court concluded that it was sufficiently clear - and a bidder should have been able to understand - that experience with use of guide car for traffic steering was required to fulfil the qualification requirement in question. In our view, this result supports the view that a contracting authority is awarded a rather large room for interpreting decisive criteria, which again may challenge the suppliers need for clarity and predictability in a procurement process.

The ruling is accessible [here](#) in Norwegian.

Fagområder EU/EØS- og Konkurranserett, Offentlige anskaffelser

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