



C/2023/1125

4.12.2023

**Request for a preliminary ruling from the Ondernemingsrechtbank Gent Afdeling Gent (Belgium)
lodged on 11 July 2023 — DYKA Plastics NV v Fluvius System Operator CV**

(Case C-424/23, DYKA Plastics)

(C/2023/1125)

Language of the case: Dutch

Referring court

Ondernemingsrechtbank Gent Afdeling Gent

Parties to the main proceedings

Applicant: DYKA Plastics NV

Defendant: Fluvius System Operator CV

Questions referred

1. Must Article 42(3) of Directive 2014/24/EU ⁽¹⁾ be interpreted as meaning that the list of ways in which the technical specifications must be formulated is of an exhaustive nature and that, a contracting authority consequently is obliged to formulate the technical specifications of its public contracts in one of the ways listed in that provision?
2. Must Article 42(4) of Directive 2014/24/EU be interpreted as meaning that references to sewage pipes made of vitrified clay and concrete (depending on the specific type of sewage system) in the technical specifications of calls for tender are to be regarded as falling within one or more of the references listed in that provision, for example, as references to specific types, or to specific productions of pipes?
3. Must Article 42(4) of Directive 2014/24/EU be interpreted as meaning that references in the technical specifications of calls for tender to a single product, for example, to sewage pipes made of vitrified clay and concrete (depending on the specific type of sewage system) as constituting specific technical solutions, already produce the effect required by that provision (namely 'favouring or eliminating certain undertakings or certain products') since they have the effect of excluding a priori and thus disadvantaging, undertakings which offer alternative solutions to the specified product, despite the fact that different undertakings in competition with each other are able to offer the prescribed specified product, or is it necessary that there be no competition whatsoever with regard to the product in question, for example, sewage pipes made of vitrified clay and concrete (depending on the specific type of sewage system) and that the effect referred to can therefore be said to exist only if the product in question is characteristic of one particular undertaking which alone offers it on the market?
4. Must Article 42(2) of Directive 2014/24/EU be interpreted as meaning that an established infringement of Article 42(3) of Directive 2014/24/EU and/or of Article 42(4) of Directive 2014/24/EU, by virtue of the unlawful use of references in the technical specifications of calls for tender, for example, to sewage pipes made of vitrified clay and concrete (depending on the specific type of sewage system), also at the outset implies an infringement of Article 42(2) of Directive 2014/24/EU, as well as of the related Article 18(1) of Directive 2014/24/EU

⁽¹⁾ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).