

Parties to the main proceedings

Applicant: Nobina Finland Oy

Other parties: Helsingin seudun liikenne-kuntayhtymä, Oy Pohjolan Kaupunkiliikenne Ab

Questions referred

1. Does Directive 2004/17/EC ⁽¹⁾ of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ('Directive 2004/17') preclude an interpretation according to which, in a situation in which a tender can be submitted for several or all of the lots of a contract, a contracting authority can limit, by means of a clause included in the invitation to tender, the number of lots for which a single tenderer can be awarded a contract (a lot award limitation clause)?
2. Pursuant to the lot award limitation clause included in the call for competition for bus transport at issue, if the components of the subject matter of a contract that are won by a tenderer exceed the maximum number of vehicle days laid down in the clause, then the subject matter of the contract for which the points difference between the best and the second-best tender, multiplied by the number of vehicles of that subject matter of the contract, is the smallest is transferred to the tenderer that submitted the second-best tender. The use of the lot award limitation clause can mean that, on the basis of the call for competition, the tenderer that submitted the best tender for the subject matter of the contract in question is awarded a contract for fewer vehicle days in total than the tenderer that submitted the second-best tender for the subject matter of the contract.
 - a) Can the specific outcome to which the inclusion of the lot award limitation clause in the call for competition could lead be taken into account when assessing the permissibility of the lot award limitation clause, or must this be assessed on an abstract basis, so that the inclusion of a lot award limitation clause such as that in question in the main proceedings is either permissible or not permissible pursuant to Directive 2004/17?
 - b) Are the circumstances specified in the invitation to tender as justification for the clause — which are related to the preservation of the competitive situation in public bus transport in the Helsinki region and the reduction of the operational risk that the assumption of responsibility for a high volume of transport and the establishment of transport on changed lines entail for the quality of the transport service — relevant to the assessment of the permissibility of a lot award limitation clause such as that at issue in the main proceedings?

⁽¹⁾ OJ 2004 L 134, p. 1.

Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 19 April 2019 — Porin kaupunki

(Case C-328/19)

(2019/C 220/29)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Appellant: Porin kaupunki

Other parties: Porin Linjat OY, Lyttylän liikenne Oy

Questions referred

1. Must Article 1(2)(a) of Directive 2004/18/EC ⁽¹⁾ of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts be interpreted as meaning that the model of the ‘municipality responsible’ in accordance with the cooperation agreement between municipalities in question meets the conditions for a transfer of responsibilities which is not covered by the scope of the Directive (C-51/15, *Remondis*) or a horizontal cooperation which is not covered by an obligation to issue a call for tenders (C-386/11, *Piepenbrock* with further references), or does this constitute another case altogether?
2. If the model of the ‘municipality responsible’ in accordance with the cooperation agreement meets the conditions for a transfer of responsibilities: In the event that contracts are awarded after responsibilities have been transferred, is the public entity to which the responsibilities have been transferred the contracting authority and is this public entity entitled, on the basis of the responsibilities transferred to it by the other municipalities, to award contracts for services to one of its related entities without a call for tenders in circumstances where the award of these contracts for services would — without the principle of the ‘municipality responsible’ — have been the responsibility of the municipalities which transferred the responsibility?
3. If, on the other hand, the model of the ‘municipality responsible’ in accordance with the cooperation agreement fulfils the conditions of a horizontal cooperation: Can the municipalities taking part in the cooperation award contracts for services without issuing calls for tenders to a municipality taking part in the cooperation, which awarded these service contracts to one of its related entities without a call for competitive tenders?
4. As part of the assessment whether a company carries out the essential part of its activities for the municipality by which it is controlled, does the calculation of the turnover related to the municipality take into account the turnover of a company owned by the municipality which operates transport services within the meaning of Regulation (EC) No 1370/2007 ⁽²⁾ of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No 1191/69 and (EEC) No 1107/70 (hereinafter: Regulation on Public Passenger Transport Services) to the extent that the company derives this turnover from transport services organised by the municipality as the competent authority within the meaning of the Regulation on Public Passenger Transport Services?

⁽¹⁾ OJ 2004 L 134, p. 114.

⁽²⁾ OJ 2007 L 315, p. 1.

Request for a preliminary ruling from the Cour d’appel de Bruxelles (Belgium) lodged on 24 April 2019 — DA v Romanian Air Traffic Services Administration (Romatsa), Romania, European Organisation for the Safety of Air Navigation (Eurocontrol) — and FC, S. C. European Food S.A., S. C. Starmill S.R. L., S. C. Multipack S.R. L. v Romanian Air Traffic Services Administration (Romatsa), Romania, DA, European Organisation for the Safety of Air Navigation (Eurocontrol)

(Case C-333/19)

(2019/C 220/30)

Language of the case: French

Referring court

Cour d’appel de Bruxelles