



Reports of Cases

Case C-561/12

**Nordecon AS
and
Ramboll Eesti AS
v
Rahandusministeerium**

(Request for a preliminary ruling from the Riigikohus)

(Public procurement — Negotiated procedure with prior publication of a contract notice — Whether possible for the contracting authority to negotiate on tenders which do not comply with the mandatory requirements of the technical specifications relating to the contract)

Summary — Judgment of the Court (Fourth Chamber), 5 December 2013

1. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Jurisdiction of the national court — Establishing and assessing the facts of the dispute — Necessity of a question referred and relevance of the questions raised — Assessment by the national court — Clearly irrelevant questions and hypothetical questions put in a context not permitting a useful answer — Questions bearing no relation to the subject matter of the case in the main proceedings*

(Art. 267 TFEU)

2. *Approximation of laws — Procedures for the award of public works contracts, public supply contracts and public service contracts — Directive 2004/18 — Negotiated procedure with prior publication of a contract notice — Not possible for the contracting authority to negotiate on with tenderers tenders which do not comply with the mandatory requirements of the technical specifications relating to the contract*

(Directive 2004/18 of the European Parliament and of the Council, Art. 30(2))

1. See the text of the decision.

(see paras 28-30)

2. Article 30(2) of Directive 2004/18 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts does not allow the contracting authority to negotiate with tenderers tenders that do not comply with the mandatory requirements laid down in the technical specifications of the contract.

Even though the contracting authority has the power to negotiate in the context of a negotiated procedure, it is still bound to see to it that those requirements of the contract that it has made mandatory are complied with. Were that not the case, the principle that contracting authorities are to act transparently would be breached and the aim of precluding any risk of favouritism or arbitrariness on the part of the contracting authority could not be attained.

Moreover, allowing a tender that does not comply with the mandatory requirements to be admissible with a view to negotiations would entail the fixing of mandatory conditions in the call for tenders being deprived of useful effect and would not allow the contracting authority to negotiate with the tenderers on a basis, made up of those conditions, common to those tenderers and would not, therefore, allow it to treat them equally.

(see paras 36-39, operative part)