



C/2024/4074

8.7.2024

Request for a preliminary ruling from the Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi (Spain) lodged on 14 March 2024 – Asociación de Empresas de Servicios para la Dependencia (AESTE) v Ayuntamiento de Ortuella

(Case C-210/24, AESTE)

(C/2024/4074)

Language of the case: Spanish

Referring court

Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi

Parties to the main proceedings

Applicant: Asociación de Empresas de Servicios para la Dependencia (AESTE)

Defendant: Ayuntamiento de Ortuella

Question referred

Is a criterion for awarding a contract for services, such as that described, which:

- assesses the increase in the total payroll cost above that determined by the collective agreement applicable to the sector, which the tenderer proposes to apply to the individuals performing the contract, and
- obliges the successful tenderer, following collective bargaining with the workers' representatives, to specify the precise form that the pay increase is to take, and to seek to formalise a collective agreement applicable to the staff assigned to the contract,

suitable for identifying the most economically advantageous tender, as required by Article 67(1) of Directive 2014/24/EU? ⁽¹⁾

Does such an award criterion conflict with the freedom to provide services or restrict free competition, contrary to Article 56 of the Treaty on the Functioning of the European Union and Directives 2014/24/EU and 96/71/EC? ⁽²⁾

Does such an award criterion infringe the right of collective bargaining recognised in Article 28 of the Charter of Fundamental Rights of the European Union?

⁽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).

⁽²⁾ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1).