



Judgments that will have great significance for suppliers in Swedish public procurement



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The Swedish Supreme Administrative Court has announced two judgments* that will have great practical significance for both companies and contracting authorities in public procurement. Suppliers that do not adapt to the new legal situation risk missing out on the opportunity to apply for review of incorrect procurement procedures.

What is new?

According to the two judgments, contracting authorities and entities are required to report the maximum quantity or the highest value that will apply to framework agreements (so-called ceiling volume) in the tender documents. The requirement applies to framework agreements with one supplier as well as with several suppliers.

However, the most important news is that the Supreme Administrative Court introduces a brand new rule (a "liability to prosecute") for suppliers.

What does the new rule mean?

A supplier that wants to have a chance of winning a later review in the Administrative Court due to deficiencies in a tender document needs to ask questions or request clarifications from the contracting authority or entity already during the tender period.

If such questions or clarifications have not been requested and there are no acceptable reasons for this, the application for review may be rejected with reference to the fact that the complaining supplier has not tried to limit its damage.

What should suppliers think about in public procurement?

Tender documents most often contain ambiguities. It may be difficult for tenderers to see what practical significance unclear requirements can have, or which ambiguities have a decisive effect on the tender evaluation. However, with regard to the Supreme Administrative Court's assessment, suppliers that discover ambiguities or suspect unclarity in the tender documents need to ask questions and request clarification during the tender period.

What consequences do the judgments have for contracting authorities?

With the Supreme Administrative Court's assessment, it is now clear that a maximum quantity or highest value that applies to framework agreements must be reported in public procurement procedures, in this case above the threshold values.

The new requirement of "liability to prosecute" will most likely lead to an increase of number of questions to contracting authorities during the tender process. The requirement may also potentially lead to clearer tender documents.

For more information, please contact our Procurement team through [Charlotte Brunlid](#).

*The judgments announced by the Supreme Administrative Court on January 10, 2022 have case numbers 196-21 and 6151-6159-20. [Read about them here \(in Swedish\)](#).

The background to the previous debate on ceiling volume is found in the judgments of the European Court of Justice in the cases [Coopservice](#) and [Simonsen & Weel](#).