



# Judgement from the Supreme Administrative Court regarding floor prices in evaluation models



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**The Swedish Supreme Administrative Court has announced a judgement, in which the court clarifies that contracting authorities are prohibited from applying an evaluation model whereby tenderers are not rewarded for prices below a certain price level. The judgment shows that the discussion concerning the possibilities for contracting authorities to limit the scope for price competition in public procurement is still relevant. It also shows that there may be reason to challenge evaluation models that have such a result.**

## **Background**

The judgement concerns a public procurement of an external website for a municipal association. An evaluation model was used which entailed that tender prices of SEK 700 000 or less were awarded a maximum of 55 points and tender prices of SEK 3 000 000 or more were awarded zero points. The evaluation model thus ceased to reward suppliers for a lower price than SEK 700 000.

According to the Supreme Administrative Court, the evaluation model constituted an unlawful restriction as bidders who offered a lower price than its competitors would not receive any advantage below a certain level. The Supreme Administrative Court found the restriction to violate the principle of equal treatment. The Supreme Administrative Court also declared that the evaluation model means that the rules that shall be applied on

abnormally low tenders and the dialogue that must be conducted with bidders who have offered such a low price, were challenged.

### **What is new?**

The Supreme Administrative Court has previously assessed the question of whether contracting authorities may limit the possibility for suppliers to compete on price are acceptable. In the first of these cases (the so-called "floor price judgment"), the court ruled that it is not permissible to apply mandatory requirements whereby bids with prices below a certain level shall be rejected, i.e. ruled that so-called floor prices may not be applied in public procurement. In the second judgment (the so-called "ceiling price judgment"), however, the Supreme Administrative Court ruled that it is permissible to impose a mandatory requirement that the price per unit that is offered for a larger volume may not be higher than the price per unit that is offered for a smaller volume.

In the new judgement, which is the third concerning suppliers' possibility to compete with price, the court clarified that the reasons that justified the prohibition of floor prices in the "floor price judgment" also applies to such scoring within certain price ranges that had been used.

The judgement clarifies that it is not permissible to apply an evaluation model in which tender prices are given the same score regardless of whether one price is lower than the other. Such an evaluation model may lead to suppliers being prevented from competing with their prices and to suppliers not offering their lowest possible price.

### **What are the effects of the judgement?**

The judgement demonstrates that there is still reason for suppliers to question evaluation models in public procurement that limit the ability to compete on price. For contracting authorities, the judgment means that there is a continuing need to ensure that price requirements do not constitute an excessive restriction.

For more information, please contact our procurement team through Charlotte Brunlid who will tell you more.

HFD 2022 ref. 41.

HFD 2018 ref. 50.

HFD 2020 ref. 24.

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