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EFTA SURVEILLANCE  
AUTHORITY

Norwegian Ministry of Trade, Industry and Fisheries  
P.O. Box 8090 Dep  
0032 Oslo  
Norway

Dear Sir/Madam,

**Subject: Request for Information concerning own-initiative case in relation to a possible breach of EEA rules on public procurement in connection with the award of public contracts for the construction and operation of nursing homes**

On 22 September 2017, the Internal Market Affairs Directorate (“the Directorate”) of the EFTA Surveillance Authority (“the Authority”) informed the Ministry of Trade, Industry and Fisheries (the “Ministry”) informally that it had opened an own initiative case to investigate a possible breach of EEA rules on public procurement in connection with the award of public contracts concerning the construction and operation of nursing homes in Norway. The Directorate’s investigation is concerned with whether practices in relation to the reservation of such contracts for *ideelle organisasjoner* (“ideal organisations”)/non-profit organisations constitute a breach of EEA law.

In the context of this investigation, the Directorate has become aware of tender procedures announced by (a) the Municipality of Oslo on 27 March 2018 aimed at awarding contracts for the building of nursing homes and the subsequent provision of care services and (b) the Municipality of Bergen on 24 January 2018 aimed at awarding a contract for the provision of care services. Both of these competitions appear to be reserved for ideal/non-profit organisations. In its notice on Doffin, the Municipality of Oslo explicitly refers to Section 2-4(h) of Regulation No. 974 of 12 August 2016 and guidance from the Ministry in relation to its reservation.

Furthermore, the Directorate has become aware that guidance on reserving contracts (dated 20 December 2017) and purchasing health and social services (updated 14 May 2018) has been published by the Ministry and the Agency for Public Management and eGovernment (Difi) respectively.

In order for the Directorate to assess the case further, the Norwegian Government is requested to provide the following information:

1. Clarification of whether the tender procedure launched by the Municipality of Oslo is a replacement for the procedure launched on 19 December 2016 (referred to in previous correspondence between the Directorate and the Norwegian Government in relation to case 77606) and the current status of that procedure.

2. In the event that the procedure launched on 19 December 2016 was not so replaced, information about the current status of the procedure launched on 19 December 2016.
3. Clarification of the basis on which the procedures referred to above are reserved for ideal/non-profit organisations.
4. Details of what assessment the two Municipalities have undertaken in relation to the applicability of Section 2-4(h) of Regulation No. 974 of 12 August 2016, and/or any alternative provisions relied upon in order to limit the procedures to ideal/non-profit organisations. In this respect, reference is made to the Authority's decision in case 77606, Decision No 154/17/COL of 20 September 2017, in particular sections 4.2.5 and 5, and the Norwegian Government is invited to include details as to how that decision has been taken into account in the assessments.
5. With reference to point 5 of the letter from the Norwegian Ministry of Trade, Industry and Fisheries dated 8 May 2017 in respect of case 77606 (your ref. 15/4953; Authority Doc No. 855102), details of any actions taken or planned in relation to provisions akin to former Section 2-1(3)(a) of Regulation No. 402.
6. Details of any current official interpretations, guidance or similar regarding reservation of contracts to ideal/non-profit organisations, whether pursuant to Section 2-4(h) of Regulation No. 974, principles akin to former Section 2-1(3)(a) of Regulation No. 402, or otherwise.

The Norwegian Government is invited to submit the above information, as well as any other information it deems relevant to the case, so that it reaches the Authority by 18 July 2018. Please enclose copies of any relevant documents, including English translations if available.

Yours faithfully,

Kristin Bangsund  
Deputy Director  
Internal Market Affairs Directorate

*This document has been electronically authenticated by Kristin Bangsund.*