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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 in relation to an own-initiative case concerning 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

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 the 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.

Further, on 18 June 2018, the Directorate sent the Ministry a request for information (Document No 915973) regarding two new tender procedures for nursing home services which are reserved for ideal organisations in Oslo and Bergen, and documents providing guidance on reserving contracts and purchasing of health and social services. The Ministry replied on 17 August 2018 (Document No 927315; Your ref 13/3816-11).

In connection to a closed complaint case (case number 77606), the Ministry in its reply dated 1 March 2017 (Document No 926520; Your ref 15/4983-36) to the Authority’s request for information dated 10 January 2017 (Document No 834495) put forward its reasons as to why the tender procedure announced on 19 December 2016 regarding procurement of long-term care placements in nursing homes by the Municipality of Oslo is governed by the procurement rules on services rather than works. According to the tender documents for the abovementioned procurement however, the contract for the lease of the unconstructed buildings will run for a minimum of 30 years, while the contract on nursing home services will run for either 8+1+1 years or as a standing agreement with a 12-month period of notice. It also follows from the abovementioned tender documents that the municipality of Oslo has the option to buy the buildings at the end of the lease.

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

1. Given the different contract periods applying to the lease agreement and the nursing home services contract of the tender procedure announced on 19 December 2016:
 - a. clarification of how the lease contract for the nursing homes is intended to function (including the option of purchase);
 - b. clarification of how the nursing home services contract is intended to function (including the choice between a term of 8+1+1 years and a standing agreement with a 12-month notice period and, if applicable, how the term of the latter will be determined); and
 - c. clarification of the relationship between the lease and the services contract (including why they are subject to different contract periods).

2. A copy of the tender documents in the tender procedure for the operation of nursing homes in Oslo announced on 27 March 2018.

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 19 November 2018.

Yours faithfully,

Kristin Saether Bangsund
Deputy Director
Internal Market Affairs Directorate

This document has been electronically authenticated by Kristin Saether Bangsund.