

JUDGMENT OF THE COURT (Fourth Chamber)

20 September 2018 (*)

(Reference for a preliminary ruling — Article 267 TFEU — Jurisdiction of the Court — Whether the referring body qualifies as a court or tribunal — Directive 2014/24/EU — Public procurement procedures — Open procedure — Award criteria — Technical evaluation — Minimum score threshold — Price-based evaluation)

In Case C-546/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi (Administrative Board of Contract Appeals of the Autonomous Community of the Basque Country, Spain), made by decision of 21 October 2016, received at the Court on 28 October 2016, in the proceedings

Montte SL

v

Musikene,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Vajda (Rapporteur), E. Juhász, K. Jürimäe and C. Lycourgos, Judges,

Advocate General: M. Szpunar,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure,

having regard to the order opening the oral procedure of 6 March 2018 and further to the hearing on 16 April 2018,

after considering the observations submitted on behalf of:

- the Spanish Government, by A. Gavela Llopis, acting as Agent,
- the Greek Government, by A. Dimitrakopoulou and K. Georgiadis, acting as Agents,
- the European Commission, by E. Sanfrutos Cano and A. Tokár, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 June 2018,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of 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 The request has been made in proceedings between Montte SL and Musikene concerning a public procurement procedure.

Legal context

European Union law

- 3 Recital 90 of Directive 2014/24 is worded as follows:

'Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment, with a view to ensuring an objective comparison of the relative value of the tenders in order to determine, in conditions of effective competition, which tender is the most economically advantageous tender. It should be set out explicitly that the most economically advantageous tender should be assessed on the basis of the best price-quality ratio, which should always include a price or cost element. It should equally be clarified that such assessment of the most economically advantageous tender could also be carried out on the basis of either price or cost effectiveness only. It is furthermore appropriate to recall that contracting authorities are free to set adequate quality standards by using technical specifications or contract performance conditions.

...'

- 4 Under recital 92 of that directive:

'When assessing the best price-quality ratio contracting authorities should determine the economic and qualitative criteria linked to the subject-matter of the contract that they will use for that purpose. Those criteria should thus allow for a comparative assessment of the level of performance offered by each tender in the light of the subject-matter of the contract, as defined in the technical specifications. In the context of the best price-quality ratio, a non-exhaustive list of possible award criteria which include environmental and social aspects is set out in this Directive. Contracting authorities should be encouraged to choose award criteria that allow them to obtain high-quality works, supplies and services that are optimally suited to their needs.

The chosen award criteria should not confer an unrestricted freedom of choice on the contracting authority and they should ensure the possibility of effective and fair competition and be accompanied by arrangements that allow the information provided by the tenderers to be effectively verified.

To identify the most economically advantageous tender, the contract award decision should not be based on non-cost criteria only. Qualitative criteria should therefore be accompanied by a cost criterion that could, at the choice of the contracting authority, be either the price or a cost-effectiveness approach such as life-cycle costing. However, the award criteria should not affect the application of national provisions determining the remuneration of certain services or setting out fixed prices for certain supplies.'

- 5 Article 18 of that directive, entitled 'Principles of procurement', provides, in paragraph 1 thereof:

'Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

The design of the procurement shall not be made with the intention of excluding it from the scope of this Directive or of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators.'

- 6 Under Article 27 of that directive, entitled 'Open procedure':

1. In open procedures, any interested economic operator may submit a tender in response to a call for competition.

The minimum time limit for the receipt of tenders shall be 35 days from the date on which the contract notice was sent.

The tender shall be accompanied by the information for qualitative selection that is requested by the contracting authority.

2. Where contracting authorities have published a prior information notice which was not itself used as a means of calling for competition, the minimum time limit for the receipt of tenders, as laid down in the second subparagraph of paragraph 1 of this Article, may be shortened to 15 days, provided that all of the following conditions are fulfilled:

- (a) the prior information notice included all the information required for the contract notice in section I of part B of Annex V, in so far as that information was available at the time the prior information notice was published;
- (b) the prior information notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.

3. Where a state of urgency duly substantiated by the contracting authority renders impracticable the time limit laid down in the second subparagraph of paragraph 1, it may fix a time limit which shall be not less than 15 days from the date on which the contract notice was sent.

4. The contracting authority may reduce by five days the time limit for receipt of tenders set out in the second subparagraph of paragraph 1 of this Article where it accepts that tenders may be submitted by electronic means in accordance with the first subparagraph of Article 22(1), and Article 22(5) and (6).'

7 Article 29 of Directive 2014/24, entitled 'Competitive procedure with negotiation', provides, in paragraph 6 thereof:

'Competitive procedures with negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in another procurement document. In the contract notice, the invitation to confirm interest or in another procurement document, the contracting authority shall indicate whether it will use that option.'

8 Article 30 of that directive, entitled 'Competitive dialogue', states, in paragraph 4 thereof:

'Competitive dialogues may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria laid down in the contract notice or in the descriptive document. In the contract notice or the descriptive document, the contracting authority shall indicate whether it will use that option.'

9 Article 31 of that directive, entitled 'Innovation partnership', provides, in paragraph 5 thereof:

'Negotiations during innovation partnership procedures may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the contract notice, in the invitation to confirm interest or in the procurement documents. In the contract notice, the invitation to confirm interest or in the procurement documents, the contracting authority shall indicate whether it will use that option.'

10 Under Article 66 of that directive, entitled 'Reduction of the number of tenders and solutions':

'Where contracting authorities exercise the option of reducing the number of tenders to be negotiated as provided for in Article 29(6) or of solutions to be discussed as provided for in Article 30(4), they shall do so by applying the award criteria stated in the procurement

documents. In the final stage, the number arrived at shall make for genuine competition in so far as there are enough tenders, solutions or qualified candidates.'

- 11 Article 67 of Directive 2014/24, entitled 'Contract award criteria', provides, in paragraphs 1, 2 and 4 thereof:

'1. Without prejudice to national laws, regulations or administrative provisions concerning the price of certain supplies or the remuneration of certain services, contracting authorities shall base the award of public contracts on the most economically advantageous tender.

2. The most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with Article 68, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question. Such criteria may comprise, for instance:

- (a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- (b) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
- (c) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

The cost element may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.

Member States may provide that contracting authorities may not use price only or cost only as the sole award criterion or restrict their use to certain categories of contracting authorities or certain types of contracts.

...

4. Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria. In case of doubt, contracting authorities shall verify effectively the accuracy of the information and proof provided by the tenderers.'

Spanish law

- 12 According to Article 40(6) of the Texto Refundido de la Ley de Contratos del Sector Público (consolidated text of the Law on Public Sector Contracts), resulting from Real Decreto Legislativo 3/2011 por el que se aprueba el Texto Refundido de la Ley de Contratos del Sector Público (Royal Legislative Decree 3/2011 approving the consolidated text of the Law on Public Sector Contracts) of 14 November 2011 (Boletín Oficial del Estado No 276 of 16 November 2011, p. 117729), a special appeal in public procurement proceedings is optional prior to the bringing of an administrative-law action.

- 13 The first subparagraph of Article 150(4) of the consolidated text of the Law on Public Sector Contracts provides as follows:

'Where more than one criterion needs to be taken into consideration, it will be necessary to specify the relative weighting attributed to each criterion, which may be expressed by establishing a sufficiently broad band of values. If the award procedure is divided into several stages, it will also be necessary to indicate in which stages the various criteria will be applied,

and the minimum number of points that must be obtained by the tenderer in order that he may continue to participate in the selection process.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 14 Musikene is a public-sector foundation in the Comunidad Autónoma de Euskadi (Autonomous Community of the Basque Country, Spain). In July 2016 it launched a tendering procedure for the award of a public contract relating to the 'supply of furniture and signage, specific musical equipment, musical instruments, electro-acoustic, recording and audiovisual equipment, computer equipment and reprographics' under the open procedure. The estimated value of the contract was EUR 1 157 430.59. The procurement documents were approved by Musikene's management on 14 July 2016 and the contract notice was published in the *Official Journal of the European Union* (2016/S 142-257363) on 26 July 2016.
- 15 The contract award criteria are set out in Annex VII – A to the particular administrative specifications governing the contract, as follows:
 - (a) "Presentation and description of the project", with a weighting of 50 points out of 100, broken down into different subcriteria or secondary criteria for each of the five lots into which the contract is divided. In addition, the following clause applies to all lots:

"Minimum score threshold required to continue to participate in the selection process: tenderers who do not obtain 35 points in relation to the technical tender will not proceed to the economic stage."
 - (b) For all lots, the reduction offered in relation to the tender budget, with a weighting of 50 points out of 100, [will be decided] according to the following scale:

"A maximum of 50 points will be awarded. A tender of an amount equal to the tender budget will be awarded 0 points.

5 points will be applied for each 1% reduction in relation to the tender budget, so that:

1% reduction in relation to the tender budget: 5 points

5% reduction in relation to the tender budget: 25 points

10% reduction in relation to the tender budget: 50 points".'
- 16 On 11 August 2016 Montte lodged a special appeal against those procurement documents with the Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi (Administrative Board of Contract Appeals of the Autonomous Community of the Basque Country, Spain). Montte argues that the condition which states that it is necessary to reach a minimum score threshold at the end of the technical stage in order to continue to participate in the selection process must be annulled, because it restricts tenderers' access to the economic stage of the procurement procedure and renders the joint weighting of the technical and economic criteria laid down in those procurement documents entirely meaningless in practice. Montte submits that, unlike the price criterion, which is applied automatically by using a formula, the technical criteria, which are assessed by means of a less objective qualitative evaluation, are, in practice, assigned a weighting of 100% of the total points. Therefore, according to Montte, by applying such criteria, tenderers may not be judged equally depending on the price of their tender and Musikene may accordingly be unaware of the most advantageous tender after weighing all the criteria.
- 17 For its part, Musikene contends that that condition is justified. It argues that, given that the public contract at issue in the main proceedings concerns the installation of equipment that will be part of a building, it is acceptable to require tenderers to submit tenders that meet certain minimum requirements connected with compliance with time limits and the technical quality of the services provided.

- 18 The referring court considers that the national legislation and practice at issue in the main proceedings could be contrary to Directive 2014/24. In that regard, it notes, first of all, that that directive seems to allow contract award criteria to be established which apply during successive eliminatory stages only in the procedures in respect of which such a possibility is expressly laid down therein, and not in open and restricted procedures, which are governed by rules that state precisely how such procedures are to be conducted. Next, it considers that the system of contract award criteria which applies during successive eliminatory stages in open procedures may, contrary to Article 66 of Directive 2014/24, hinder genuine competition where the application of thresholds considerably reduces the number of tenderers in the final stage. Lastly, it considers that the eliminatory threshold at issue in the main proceedings, which requires a minimum of 35 out of 50 points in the technical evaluation, may prevent the most competitive tenders in terms of price from being analysed and evaluated.
- 19 In those circumstances, the Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi (Administrative Board of Contract Appeals of the Autonomous Community of the Basque Country) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- (1) Does Directive [2014/24] preclude national legislation, such as Article 150(4) of the [consolidated text of the Law on Public Sector Contracts], or a practice for interpreting and implementing that legislation, which authorises contracting authorities to establish in the documents governing an open tendering procedure award criteria which apply in successive elimination stages for tenders which do not exceed a predetermined minimum score threshold?
- (2) If the answer to Question 1 is in the negative, does the aforementioned Directive 2014/24 preclude national legislation, or a practice for interpreting and implementing that legislation, which uses the aforementioned system of award criteria which apply in successive elimination stages in such a way that in the last stage there are not sufficient tenders to ensure “genuine competition”?
- (3) If the answer to Question 2 is in the affirmative, does the aforementioned Directive 2014/24 preclude, because it does not ensure genuine competition or circumvents the mandate to award the contract to the tender with the best price-quality ratio, a clause such as that at issue, in which the price factor is evaluated only for tenders which have obtained 35 out of 50 points in the technical criteria?’

Admissibility of the request for a preliminary ruling

- 20 It is necessary at the outset to examine the question whether the Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi (Administrative Board of Contract Appeals of the Autonomous Community of the Basque Country) fulfils the necessary criteria to be regarded as a national court or tribunal for the purposes of Article 267 TFEU.
- 21 In that regard, it should be borne in mind that, in accordance with settled case-law, in order to assess whether a body making a reference is a ‘court or tribunal’, which is a question governed by EU law alone, the Court will take account of a number of factors, such as whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent (judgment of 24 May 2016, *MT Højgaard and Züblin*, C-396/14, EU:C:2016:347, paragraph 23 and the case-law cited).
- 22 In the present case, first, it is apparent from the order for reference that the referring body is a permanent, independent body established under a legal provision which adopts its decisions on the basis of exclusively legal criteria following an *inter partes* procedure. Regarding, more specifically, that body’s independence, that order explains that that body, inasmuch as it is not subject to any hierarchical constraint and does not receive instructions from third parties, carries out its functions objectively, impartially and entirely autonomously.
- 23 Second, as regards whether the referring body’s jurisdiction is compulsory for the purposes of the case-law of the Court concerning Article 267 TFEU, it is true that that body’s jurisdiction

is, under Article 40(6) of the consolidated text of the Law on Public Sector Contracts, only optional. Thus, a person who wishes to contest the lawfulness of a public procurement procedure may choose between a special appeal before the referring body and an administrative-law action.

- 24 Nevertheless, it is apparent from the order for reference that the decisions of the referring body, whose jurisdiction does not depend on the parties' agreement, are binding on the parties. In those circumstances, that body also fulfils the criterion of compulsory jurisdiction (see, to that effect, judgment of 6 October 2015, *Consorti Sanitari del Maresme*, C-203/14, EU:C:2015:664, paragraphs 23 to 25).
- 25 Accordingly, the Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi (Administrative Board of Contract Appeals of the Autonomous Community of the Basque Country) fulfils the necessary criteria to be regarded as a national court or tribunal for the purposes of Article 267 TFEU, and the questions referred to the Court are admissible.

Consideration of the questions referred

The first question

- 26 By its first question, the referring court asks, in essence, whether Directive 2014/24 is to be interpreted as precluding national legislation, such as that at issue in the main proceedings, which allows contracting authorities to lay down, in the documents governing an open procurement procedure, minimum requirements as regards the technical evaluation, so that the tenders submitted which do not reach a predetermined minimum score threshold at the end of that evaluation are excluded from the subsequent evaluation based on both technical criteria and price.
- 27 Although the first subparagraph of Article 27(1) of Directive 2014/24 provides that, in open procedures, any interested economic operator may submit a tender in response to a call for competition, that directive allows contracting authorities to lay down, in the context of such procedures, minimum requirements in relation to the technical evaluation.
- 28 In that regard, as was noted by the Advocate General in point 37 of his Opinion, Article 27 of Directive 2014/24 does not contain any rule as to how the tendering procedure is to be conducted, with the exception of those relating to the minimum time limit for the receipt of tenders from the date on which the contract notice was sent.
- 29 In addition, recital 90 of that directive recalls that contracting authorities are free to set adequate quality standards by using technical specifications or contract performance conditions, while recital 92 thereof specifies that the purpose of that directive is to encourage contracting authorities to choose award criteria that allow them to obtain high-quality works, supplies and services that are optimally suited to their needs.
- 30 For its part, Article 67(1) of Directive 2014/24 states that contracting authorities are to base the award of public contracts on the most economically advantageous tender. Article 67(2) of that directive provides that the most economically advantageous tender from the point of view of the contracting authority is to be identified on the basis of the price or cost and may include the best price-quality ratio, which is to be assessed on the basis of criteria which comprise, inter alia, qualitative aspects such as quality, including technical merit.
- 31 It should be added that those criteria must, as can be seen from recital 90 of that directive and Article 67(4) thereof, ensure compliance with the principles of transparency, non-discrimination and equal treatment, so as to guarantee an objective comparison of the relative merits of the tenders and, accordingly, effective competition. That would not be the case for criteria having the effect of conferring on the contracting authority an unrestricted freedom of choice (see, by analogy, as regards Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114),

judgment of 10 May 2012, *Commission v Netherlands*, C-368/10, EU:C:2012:284, paragraph 87).

- 32 Consequently, contracting authorities are to be free, provided that they comply with the requirements set out in paragraph 31 above, to determine, according to their needs, the level of, *inter alia*, technical merit that the submitted tenders must provide depending on the characteristics and the subject matter of the contract in question and to establish a minimum threshold which those tenders must comply with from a technical point of view. To that end, as was argued by the Commission in its written observations, Article 67 of Directive 2014/24 does not preclude the possibility, at the contract award stage, of excluding, as a first step, submitted tenders which do not reach a predetermined minimum score threshold as regards the technical evaluation. In that regard, it appears that a tender which does not reach such a threshold does not correspond, in principle, to the needs of the contracting authority and must not be taken into account for the determination of the most economically advantageous tender. The contracting authority is thus not required, in such a case, to determine whether the price of such a tender is lower than the prices of tenders not eliminated which reach that threshold and thus correspond to the needs of the contracting authority.
- 33 In that context, it should also be specified that if the contract is awarded after the technical evaluation, the contracting authority will necessarily have to take account of the price of tenders which reach the minimum threshold from a technical point of view.
- 34 The finding in paragraph 32 above is not undermined by the fact, referred to by the referring court, that Directive 2014/24 expressly provides for the possibility of certain procurement procedures other than open procedures being conducted in successive stages, which is the case for the competitive procedure with negotiation (Article 29(6)), the competitive dialogue procedure (Article 30(4)), or the innovation partnership procedure (Article 31(5)).
- 35 As was noted, in essence, by the Advocate General in point 48 of his Opinion, the fact that Directive 2014/24 provides for the possibility of certain procedures, such as those referred to in Article 29(6), Article 30(4) and Article 31(5) thereof, being conducted in successive stages, does not permit the conclusion that a two-step evaluation of tenders during the contract award stage would be inadmissible in the case of an open procedure such as that at issue in the main proceedings.
- 36 In that regard, it should be noted that, as was argued by the Commission in its written observations, the possibility which those provisions offer the contracting authority to reject tenders which, although meeting the minimum requirements, are not among the best, is justified by the specific nature of the procedures concerned, in which it could prove difficult to conduct negotiations or dialogues if an excessive number of tenders or solutions were to be retained until the final stage of the procurement procedure.
- 37 However, the case in the main proceedings concerns a different situation from those referred to in the provisions mentioned in paragraph 34 above. It is not apparent from the public procurement documents at issue in the main proceedings that the contracting authority would be able to reject tenders fulfilling the award criteria and select only the best tenders. On the contrary, according to those documents, the only tenders which the contracting authority is authorised to exclude from the price-based evaluation are those which do not meet the minimum requirements relating to the technical evaluation and thus do not meet the needs of the contracting authority. Such an approach is not intended to limit the number of tenders subjected to the price-based evaluation, given that all the tenders submitted may, in principle, meet those minimum requirements.
- 38 In any event, it should be borne in mind that the contracting authorities must, throughout the procedure, observe the principles of procurement set out in Article 18 of Directive 2014/24, which include the principles of equal treatment, transparency and proportionality.
- 39 In the light of the foregoing, the answer to the first question is that Directive 2014/24 must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows contracting authorities to lay down, in the documents governing an open procurement procedure, minimum requirements as regards the technical evaluation, so

that the tenders submitted which do not reach a predetermined minimum score threshold at the end of that evaluation are excluded from the subsequent evaluation based on both technical criteria and price.

The second question

- 40 By its second question, the referring court asks, in essence, whether, in the event that the answer to the first question is in the negative, Article 66 of Directive 2014/24 is to be interpreted as precluding national legislation, such as that at issue in the main proceedings, which allows contracting authorities to lay down, in the documents governing an open procurement procedure, minimum requirements as regards the technical evaluation, so that the tenders submitted which do not reach a predetermined minimum score threshold at the end of that evaluation are excluded from the subsequent stages of the procurement procedure, regardless of the number of tenderers remaining.
- 41 In that regard, provided that, in the case at hand, the conditions laid down by Directive 2014/24, in particular in Articles 18 and 67 thereof, have been applied correctly, it must be held that the contracting authority has ensured that there is effective competition. In addition, it must be stated from the outset that even if, following the technical evaluation, there is only one tender left for the contracting authority to consider, that authority is in no way required to accept that tender (see, by analogy, judgment of 16 September 1999, *Fracasso and Leitschutz*, C-27/98, EU:C:1999:420, paragraphs 32 to 34). In such circumstances, if the contracting authority considers that the procurement procedure is, in view of the specificities and the subject matter of the contract concerned, characterised by a lack of effective competition, it is open to that authority to terminate that procedure and, if necessary, to launch a new procedure with different award criteria.
- 42 It is true that, under Article 66 of Directive 2014/24, contracting authorities, where they exercise the option of reducing the number of tenders to be negotiated as provided for in Article 29(6) of that directive, or that of reducing the number of solutions to be discussed as provided for in Article 30(4) thereof, must do so by applying the award criteria stated in the procurement documents, so that the number of tenders selected in the final stage makes for genuine competition in so far as there are enough tenders that meet the necessary requirements.
- 43 Nevertheless, for the reasons stated in paragraph 37 above, the case in the main proceedings concerns a different situation from those referred to in Article 29(6) and Article 30(4) of Directive 2014/24, so that it is not covered by Article 66 of that directive. Accordingly, the need to ensure genuine competition until the final stage of the procedure referred to in that article does not concern open procedures such as that at issue in the main proceedings.
- 44 In the light of the foregoing, the answer to the second question is that Article 66 of Directive 2014/24 must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows contracting authorities to lay down, in the documents governing an open procurement procedure, minimum requirements as regards the technical evaluation, so that the tenders submitted which do not reach a predetermined minimum score threshold at the end of that evaluation are excluded from the subsequent stages of the procurement procedure, regardless of the number of tenderers remaining.

The third question

- 45 As the third question was referred only in the event of the Court answering the second question in the affirmative, there is no need to answer that third question.

Costs

- 46 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

- 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 must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows contracting authorities to lay down, in the documents governing an open procurement procedure, minimum requirements as regards the technical evaluation, so that the tenders submitted which do not reach a predetermined minimum score threshold at the end of that evaluation are excluded from the subsequent evaluation based on both technical criteria and price.**

- 2. Article 66 of Directive 2014/24 must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows contracting authorities to lay down, in the documents governing an open procurement procedure, minimum requirements as regards the technical evaluation, so that the tenders submitted which do not reach a predetermined minimum score threshold at the end of that evaluation are excluded from the subsequent stages of the procurement procedure, regardless of the number of tenderers remaining.**

[Signatures]