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In case no. 5807-19, **Advania Sverige AB** and the **Legal, Financial and Administrative Services Agency** (Appellants) v. **Dustin Sverige AB** (Respondent), the Supreme Administrative Court delivered the following judgment on 13 May 2022.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court overturns the judgment of the administrative court of appeal and affirms the ruling of the administrative court.

BACKGROUND

1. A framework agreement is an agreement which establishes the terms and conditions for a contract subsequently entered into between a contracting authority and one or more contractors. A procured framework agreement may not, as a general rule, be modified without a new procurement. The replacement of a contractor may, however, under certain circumstances, take place in the event the new contractor universally or partially succeeds into the position of the initial contractor as a consequence of corporate restructuring which includes, in this context, *inter alia*, insolvency.
2. The Legal, Financial and Administrative Services Agency has procured four framework agreements pertaining to the purchase of computers, computer screens, tablets, etc., by means of a restricted procedure. Seventeen candidates qualified for the selection. In the event more than nine candidates qualified for submitting a tender, a choice would be made based on the highest added value. Dustin Sverige AB (Dustin) and Misco AB (Misco) belonged to the nine candidates with the highest added value. Advania Sverige AB (Advania) did not belong to these nine but, rather, to the seventeen who qualified. Misco was awarded agreements within all four framework agreement areas.

3. After Misco had been declared bankrupt, the administrator in bankruptcy transferred the framework agreements to Advania. The transfer was approved by the Legal, Financial and Administrative Services Agency.
4. Dustin applied to the Administrative Court in Stockholm seeking that the framework agreements between the Legal, Financial and Administrative Services Agency and Advania were to be declared invalid. The administrative court rejected Dustin's application. The Administrative Court of Appeal in Stockholm granted Dustin's appeal there and decided that the framework agreements were invalid. The administrative court of appeal noted that Misco had essentially not transferred any business to Advania other than the relevant framework agreements. According to the administrative court of appeal, Advania cannot be deemed to have universally or partially succeeded into the position of Misco in the manner required for a replacement of contractor to be permitted.
5. The Supreme Administrative Court has obtained a preliminary ruling from the European Court of Justice (see paragraphs 13–16 below).

CLAIMS, ETC.

6. *Advania Sverige AB* claims that the judgment of the administrative court of appeal is to be overturned and that the judgment of the administrative court is to be affirmed and states the following. The present case involves a question regarding restructuring of the previous contractor due to insolvency and subsequent bankruptcy. Advania has accepted taking over all of Misco's obligations in accordance with the agreements, and Advania has thus universally succeeded into the position of Misco in the framework agreements.
7. *The Legal, Financial and Administrative Services Agency* claims that the judgment of the administrative court of appeal is to be overturned and that the framework agreements are to be declared valid and states the following. The expression "universally or partially succeeds into the position of the initial

contractor” should be interpreted such that the new contractor replaces the initial contractor in respect of the rights and obligations established in the framework agreement or contract transferred. The central issue is that the new contractor can fulfil the contract in accordance with the terms and conditions and requirements initially established.

8. *Dustin Sverige AB* is of the opinion that the appeals should be rejected and states the following. A change of contractor in accordance with the relevant provisions presupposes that the new contractor replaces the initial contractor by taking over assets therefrom. A framework agreement as is now at issue constitutes no asset in accounting terms, and the relevant framework agreements have also not been reported as assets on Misco’s balance sheet or in Misco’s bankruptcy.

REASONS FOR THE RULING

The question in the case

9. The question in the case is whether a new contractor who, after the initial contractor is declared bankrupt, takes over only the initial contractor’s rights and obligations in accordance with a procured framework agreement is to be deemed to have succeeded into the position of the latter, which is a condition in order to avoid a new procurement.

Legislation, etc.

10. Chapter 17, section 13, first paragraph of the Public Procurement Act (2016:1145) provides that a contract or framework agreement may be modified with one contractor being replaced by another, without a new procurement, if
 1. the new contractor, universally or partially succeeds into the position of the original contractor, following corporate restructuring, including takeover, mergers, acquisitions or insolvency, and

2. the circumstance that a new contractor universally or partially succeeds into the position of the original contractor does not entail other substantial modifications to the contract or framework agreement.
11. Section 13, second paragraph states that a replacement of a contractor under the first paragraph requires that the new contractor cannot be excluded pursuant to Chapter 13, section 1 or section 2, first paragraph and that it satisfies the criteria for qualitative selection of the original procurement pursuant to Chapter 14, sections 1–5.
12. The provisions correspond to Article 72 (1) (d) (ii) of Directive 2014/24/EU on public procurement (the Procurement Directive).

Preliminary ruling from the European Court of Justice

13. In a request for a preliminary ruling from the European Court of Justice, the Supreme Administrative Court has referred the following question.
14. Does the circumstance that a new contractor has taken over the initial contractor's rights and obligations under a framework agreement, after the initial contractor has been declared insolvent and the insolvency estate has transferred the agreement, mean that the new contractor will be deemed to have succeeded into the position of the initial contractor under conditions such as those referred to in Article 72 (1) (d) (ii) of the Procurement Directive?
15. The European Court of Justice answered the question in the following manner by virtue of the judgment in case C-461/20 (EU:C:2022:72).
16. Article 72 (1) (d) (ii) of the Procurement Directive must be interpreted as meaning that an economic operator which, following the insolvency of the initial contractor which led to its liquidation, has taken over only the rights and obligations of the initial contractor arising from a framework agreement concluded with a

contracting authority must be regarded as having succeeded in part to that initial contractor, following corporate restructuring, within the meaning of that provision.

The Court's assessment

17. By virtue of the judgment of the European Court of Justice, it is clear that a new contractor who has taken over only the initial contractor's rights and obligations in accordance with a framework agreement must be regarded as having succeeded to that initial contractor within the meaning referred to in Chapter 17, section 13, first paragraph (1) of the Public Procurement Act where the taking over is a result of the initial contractor's bankruptcy. No new procurement need be carried out provided that other conditions in section 13 are met.
18. The transfer of the relevant framework agreements resulted from the fact that Misco had been declared bankrupt and entails that Advania took over Misco's rights and obligations in accordance with the agreements. Advania has thereby succeeded into the position of Misco following corporate restructuring, in this case insolvency. It has not come to light that the replacement of contractor entailed any other material changes of the framework agreements or that there was ground for exclusion of Advania which met the qualification conditions established in the original contract.
19. However, Dustin claims that the agreements must have been reported as assets in the initial contractor's balance sheet in order to avoid any new procurement. However, no such requirement may be gleaned from the judgment of the European Court of Justice.
20. Based on the above, it follows that all conditions have been met for a replacement of contractor in the framework agreements being able to take place without a new procurement. Accordingly, there is no ground to declare the framework agreements between the Legal, Financial and Administrative Services Agency and Advania invalid. Advania and the Legal, Financial and Administrative Services

Agency's appeals shall therefore be granted, the judgment of the administrative court of appeal shall be overturned, and the ruling of the administrative court shall be affirmed.

Justices Jäderblom, Knutsson, Rosén Andersson, Jönsson and Medin have participated in the ruling.

Judge Referee: Sara Westerlund.