



Public procurement and rules of competition

The challenges for public contracting authorities and national standardisation bodies in referencing standards in public procurement (web-meeting)

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1. Public procurement procedure

Goal of public procurement > **VALUE FOR MONEY**

Tool to achieve the goal of public procurement > **COMPETITION**

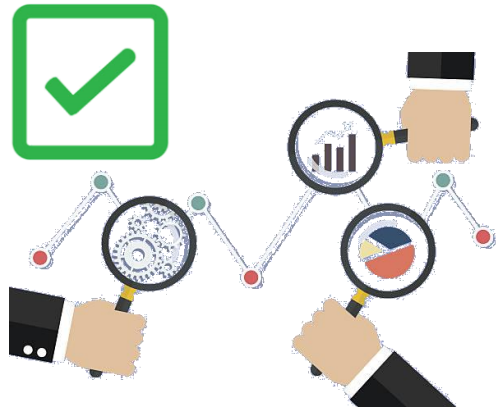


2. Technical specifications

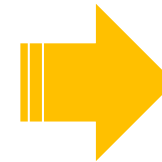


3. Ideal conduct of tender procedure (*correct* technical specifications)

Pre-tendering phase



Technical specifications not affecting competitive dynamics

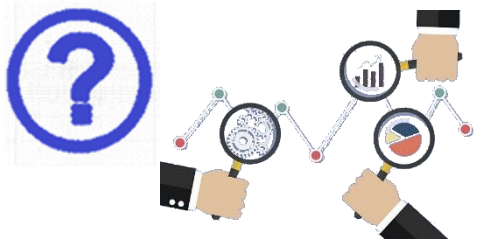


Opening up of public procurement process



4. Artificially narrowing down competition (*wrong* technical specifications)

a) Insufficient or no knowledge of the market and product or services



b) Corruption



c) Cartel facilitator



Wrong technical specifications



Limiting the number of bidders



5. Bid-rigging (*correct* technical specifications)

Pre-tendering phase



Technical specifications
not affecting competitive
dynamics



Illusion of perfect competition
(from outside)



6. Article 101(1) TFEU

The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which **may affect trade between Member States** and which have as **their object or effect the prevention, restriction or distortion of competition within the internal market**, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

7. Fighting Bid Rigging by reporting it to NCAs or the Commission (DG COMP)

- ✓ The same supplier is often the lowest bidder.
- ✓ There is allocation of winning tenders (geographically or based on CAs).
- ✓ Some suppliers submitted bids but unexpectedly withdrawn from bidding.
- ✓ Bids from different companies contain identical mistakes.
- ✓ Certain companies always submit bids but never win.
- ✓ Each company seems to take a turn being the winning bidder.
- ✓ The winning bidder repeatedly subcontracts work to unsuccessful bidders.
- ✓ Bid documents from one company make express reference to competitors' bids.

<https://www.oecd.org/competition/cartels/fightingbidrigginginpublicprocurement.htm>



Thank for your attention

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