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# **Webinar: Basic Principles in Public Procurement and Procurement Procedures**

**September 14th, 2020**

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(Enterprise Europe Network Bavaria/Germany 2015-2020,  
Bavaria2Europe, SGA-Nr.: 671811)

## Auftragsberatungszentrum Bayern e.V (ABZ)

- Funded by the Bavarian chambers of commerce and industry, the Bavarian chambers of handicraft and the Bavarian ministry of economic affairs
- Consulting services for public buyers and enterprises
- Seminars
- Newsletter
- Part of the Enterprise Europe Network
- Part of a German network of similar organisations (Auftragsberatungsstellen)
- **One topic: Public Procurement**

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## Useful websites:

<https://simap.ted.europa.eu/>

<https://ec.europa.eu/growth/single-market/public-procurement/>

**Link to national legislation in EU countries:**

[https://ec.europa.eu/info/policies/public-procurement/support-tools-public-buyers/public-procurement-eu-countries\\_en](https://ec.europa.eu/info/policies/public-procurement/support-tools-public-buyers/public-procurement-eu-countries_en)

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## AGENDA

- What are the basic principles?
- What possibilities are there for a bidder if the basic principles are not respected?
- What types of procurement procedures are there?
- What are possible strategies to evaluate contract notices and take decisions whether to participate or not?
- Your questions!

## Basic principles

- Non-discrimination
- Equal treatment
- Mutual recognition
- Proportionality
- Transparency

Basic principles are meant to guarantee fair competition.

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**Steps to take if procurement legislation seems to be violated:**

- Ask the public buyer to change the discriminating parts of the tender
    - Mention the violation and require an amendment (no division into lots, lack of proportionality, no product neutrality, hidden or obvious, unadequate minimum requirements, short delivery times
    - Request a clarification of tender specifications because otherwise the bidder is not able to hand in a bid, calculate a price.
    - Keep in mind that questions with regard to the tender as well as the answer will be made available to all interested parties.
- The questions might give away the bidders strategy.

## Steps to take if procurement legislation seems to be violated:

- The bidder will have to address these complaints to the public buyer before taking further legal measures
- Check whether there is a deadline to ask questions!
- File an official complaint before handing in a bid (it might be too late to bring up the infringement later, risk of preclusion)
- Check national legislation for deadline on review procedures
- See section VI.4) in contract notice form (review procedures)

## Public buyers

- Have rules to respect.
- Are not allowed to bargain to get the best price (in most cases).
- Have strict budgets.
- Have to fulfill political targets
- Are risk averse.
- Want reliable suppliers.

## Private buyers

- Can buy
- Whatever they like.
  - From whoever they like.
  - How they like.
  - Have cost targets.
  - No requirements to be non-discriminatory and transparent.

## Procurement Process

1. **Public buyer** has a need.
2. Decides to start a procurement process.
3. Decides on what he intends to buy.
4. Estimates the contract value.
5. **Chooses the tender procedure (no free choice of procedures).**
6. Prepares the tender documents.
7. Writes the technical specification.
8. Prepares forms and Terms and Conditions for the fulfillment of the contract.
9. Chooses criteria (eligibility of tenderers, award criteria)
10. Publishes a contract notice or starts the direct call for tendering
11. Receives and evaluates the bids.
12. Awards the contract or cancels the procurement.

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## Legal Framework

### EU-Directives on Public Procurement

Implementation in national law



### EU-Thresholds



### National Law

## **NEW EU-Thresholds ( 01/2020)**

Supplies and service contracts in the Water, energy, transport and postal services sector	428.000 Euro
Supplies and service contracts Of central government authorities	139.000 Euro
Supplies and service contracts Of sub-central contracting authorities	214.000 Euro
Works contracts, works concession Contracts, subsidised works contracts	5.350.000 Euro
Concessions:	5.350.000 Euro
Social and other specific services:	750.000 Euro
(all amounts are net amounts)	

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# Do you have any questions on the basic principles?

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## Options for the choice of procedure (See Article 26 of Directive 2014/24/EU on public procurement)

- Public buyers may choose either the open procedure or the restricted procedures (with call for competition) without further justification.
- The choice of the negotiated procedure and the competitive dialogue is restricted.

Possible reasons for the choice of the negotiated procedures:

- Needs cannot be met without adaptation of readily available solutions.
- Complexity of legal and financial make-up, risks.
- Technical specifications cannot be established with sufficient precision by the contracting authority.

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## **Tender procedures (1)**

### **Open procedure**

Requires the publication of a contract notice.

All interested economic operators may submit a tender.

Deadline: Minimum 35/30 days to hand in a bid (minimum 15 days)

Tender is awarded according to the published award criteria to the fully compliant bid.

### **Restricted procedure (non-open)**

Requires the publication of a request to participate.

Any economic operator may request to participate, but only those economic operators invited by the contracting authority may submit a tender (minimum five bidders).

Choice of enterprises invited to bid according to published criteria (criteria of suitability).

Deadlines: to hand in request to participate: 30 days (minimum 15 days)

to hand in the bid: 30 days (minimum 10 days)

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## Tender procedures (2)

### **Negotiated procedure**

- The contracting authority **negotiates** the terms of the contract with one or more economic operators selected by it.
- Requires the publication of a call for competition is standard.
- Any economic operator may request to participate, but only those economic operators invited by the contracting authority may submit a tender (minimum three bidders).
- Choice of enterprises invited to bid according to published criteria (criteria of suitability).

Deadlines: to hand in request to participate: 30 days (minimum 15 days)  
to hand in the bid: 30 days (minimum 10 days)

**Very restricted is the choice of:**

**Negotiated procedure **without** call for competition**

**Prior-information notice (ex-ante)**

**Obligation to publish the contract award afterwards. **Possibility for bidders to question the correctness of the choice of this procedure.****

## Tender procedures (3)

**Competitive dialogue procedure** (*only for contracts that are considered to be particularly complex and where public authorities are not objectively able to define the technical means in advance*)

- a) Any economic operator may make a request to participate
- b) The contracting authority conducts a dialogue with the economic operators admitted to that procedure with the aim of developing one or more suitable alternative solutions...on the basis of which the economic operators are invited to tender

Deadline: 30 days for request to participate.

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## Innovation partnership (4)

- Aims at the development of an innovative product, service or works and the subsequent purchase of the resulting product or service.
- Requires a contract notice providing the information for qualitative selection.
- The procurement documents shall identify the need for the product/service and define the minimum requirements and the necessary information to decide whether to request to participate in the procedure.
- Contracting authority may decide to set up the innovation partnership with one partner or with several partners.

## Tender procedures (5)

### **Design Contests**

Mainly in the fields of town and country planning, architecture and engineering enables the contracting authority to acquire a plan selected by a jury after being put out to competition.

### **Dynamic Purchasing System**

Electronic system of limited duration which is

- a) Established by a contracting authority to purchase commonly used goods, works or services.
- b) Is open throughout its duration for the admission of economic operators which satisfy the selection criteria specified and submit an indicative tender which complies with the specification required.

### **Electronic Auction**

Repetitive electronic process for the presentation of prices to be revised downwards or of new and improved values which takes place after the initial evaluation of tenders and enables tenders to be ranked using automatic evaluation methods.

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## Framework Agreement

- A framework agreement means an agreement between one or more contracting authorities and one or more economic operators.
- To establish the terms governing contracts to be awarded during a given period, in particular with regard to price and where appropriate, the quantity envisaged
- The terms of a framework agreement shall not exceed four years...

# Do you have any questions on the procurement procedures?

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## Steps to take finding tender notice

- Read everything carefully
- Directive requires a full and direct access to the tender documents.
- Special attention to:
  - Description
  - Award Criteria
  - Estimated value
  - Variants
  - Section III: Legal, economic, financial and technical information (conditions for participation)
  - Procedure
  - Time limit (deadline, local time!)

**In many cases essential information only available in tender documents (download often NOT full and direct)**

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## Which procedure is best for bidders?

- Different procurement traditions.
- Some countries prefer open procedures, some restricted procedures.
- Some countries have very standardised processes and forms for the choice of bidders in restricted procedures.

### **Advantage open procedure:**

- You get the chance for handing in a bid.

### **Disadvantage open procedure:**

- Unlimited competition

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## Which procedure is best for bidders?

### **Advantage restricted procedure:**

- Limited number of competitors
- Less work because as first step you don't have to write a bid
- Pre-qualification questionnaires can be a simple standard.

### **Disadvantage of restricted procedures:**

- Need to understand the selection process. How does the public buyer choose the bidders that qualify? Know how to play the game. Focus is to be among the ones that are selected, not yet on writing a good bid.
- Pre-qualification questionnaires can be very detailed and time consuming. Bidders need to check whether they can really score and meet the minimum requirements.

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## How to check procurement notices and documents for the decision

### Quick check

- Do CPV Code and short description fit?
- Does the contract size fit?
- Is the contract attractive?
- Do you know the public buyer?
- Could it be a strategic client?
- How do you estimate your chances?
- Can you meet minimum requirements?
- Can you meet delivery deadline?

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## How to check procurement notices and documents for the decision

- Go
- No Go

As there are Many pages of contract notice. For a quick check see the following sections:

I.3) Access to procurement documents

II1.2) Main CPV code

II.1.4) Short description

II.1.5) Estimated total value

II.1.6.) Information about lots

II.2) Description

III) **Conditions for participation**

IV.1.1) Type of procedure

IV.1.4) Information about reduction of the number of solutions

IV.1.5) Information about negotiation **(right to award the contract on the basis of the initial tender)**

IV.2) Administrative information (**deadline etc.**)

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## Checklist for a go or no-go:

- Can you hand in a good bid?
- Still make a profit?
- Deliver in time and to the customer's satisfaction?
- Right ratio between time and effort to write a bid/request to participate and expected profit and chances to win?

- Check tender documents for minimum requirements  
(To be found in “conditions to participate”)
- If you cannot meet them:
  - A) try to have them adjusted
  - B) Otherwise: no point to hand in a bid

- **Check award criteria**
  - A) Price only (can you offer a competitive price)
  - B) Can you score in all mentioned award criteria
  
- **Check tender specifications**
  - Can you hand in a fully compliant bid?  
If not, can you offer variants?)

- Check tender specifications
  - Unclear specifications
  - Ambiguities
  - Lack of information
  - Inaccuracy

## Ask questions immediately!

Check “questions and answer” section on tender portal” to see all questions and answers with regard to the tender.

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## Check “Form for handing in bid”

- Check information on use of platform and electronic handing in of bids.
- Do you need an electronic signature?
- What kind of signature?
- Do a test if possible.

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## Non-Open Procedure

### Steps to take

- Market research
- Is there a standard request to participation method
- Keep your chances to be chosen with minimum effort
- Detailed evaluation of criteria for participation
- Check your chances according to scoring system

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## **More detailed check after first sight of procurement documents**

- Check the commercial conditions.
- Do a risk assessment.
- Do you have to post workers?
- Are the award criteria favourable for you?
- Collect questions in the bidding team on the tender documents (internally)
- Do a rough time table for the bid writing process.
- Do you have to hand in documents/certificates?
- Deadline to obtain the documents?