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MARKET RESEARCH IN PUBLIC PROCUREMENT

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Public procurement - Potential Issues

- The competitive process is apparently losing intensity and companies (in particular SMEs) encounter difficulties accessing procurement markets
- In Serbia, despite the extensive publication rules and the preference for open procedures, the official statistics shows that:
 - the average number of tenders submitted in competitive procedures is about 3
 - in more than 40% of the procedures only one tender was submitted

Market Research

- Market research is considered a useful tool for encouraging competition
- Contracting authorities have the opportunity to:
 - Identify the main characteristics of the targeted market sector
 - Avoid of imposing artificial barriers to competition
 - Stimulate the participation of the economic operators in procurement procedures

Market Research

- **When?**

During the planning stage of a procurement procedure

- **Who?**

Staff of the contracting authority or external experts on behalf of the contracting authority

- **What purposes?**

- Collection of information regarding a specific sector of the market
- Asses the reaction of the potential tenderers to a proposed procurement approach



Market Research in 2014 EU Directives

- EU Directives do not impose market research as an obligation for contracting authorities/entities
- EU Directives focus mainly on cases implying direct contact/engagement with economic operators, particularly on the following two main aspects:
 - o Preliminary market consultation
 - o Prior involvement of candidates or tenderers
- Uniform rules on how to organize different forms of market research do not exist
- Article 64 (3) of PPL states that *“The estimated value of public procurement must be based on completed inquiries, **market research relevant for public procurement subject**, including checking prices, quality, guarantee period, maintenance etc., and must be valid at the time of the initiation of procedure.”*



Initial Market Analysis

- Sound planning of public procurement requires good knowledge of the characteristics of the market
- In the first stage, market research may focus in particular on:
 - Understanding the market structure and type of competition
 - Understanding the marketplace from the economic operators' perspective
 - Clarifying where the leverage points and opportunities exist in the market place
 - Getting a view on the market prices

Market Research

- **Sources for analysing the market structure, type of competition and market prices**
 - own experience of the contracting authority/entity's staff, related to the previous procedures or the knowledge of the market as consumers
 - informal discussions and exchanges of information with other procurement specialists
 - websites (including PP portal), other publications
 - trade bodies/chambers of commerce
 - marketing materials of economic operators (leaflets, catalogues/e-catalogues), which can be sources of information in respect of detailed descriptions of products, business conditions, price lists, etc.

Market Research

- **“Good market”** - large number of economic operators, abundance of products
The prices usually reflect the outcome of the genuine competition and the profit of the economic operators falls within a normal margin. Contracting authority expects that many suppliers will respond to the call for tenders and submit responsive and competitive tenders
- **“Bad market”** - few economic operators
There is always a danger for contracting authority/entity to get disproportionately high prices and receive very little or no tenders at all

Contract Positioning Matrix

(Two axis)

- **Importance of the contract** for the contracting authority
 - (i) the importance is given to the value of the contract, or
 - (ii) although the value is not substantial, the contract is paramount for the activity of the contracting authority and/or for public interest
- **Supply risk/Complexity of the market**

Contract Positioning Matrix

The matrix divides the perceptions on the position of the contracts in four Quadrants

Quadrant I Non-critical contracts

- usually, the contracts imply routine procurements but, due to their high number, may require the involvement of many resources and disproportionate costs

Quadrant II Leverage contracts

- such contracts may be used in a way that can exploit the purchasing power of the contracting author/entity as well as for promoting innovative procurement, environmental and/or social goals

Contract Positioning Matrix

Quadrant III Bottle-neck contracts

- in spite of their low value, as result of the structure of the market, these apparently non-important contracts may negatively affect the activity of the contracting authority/entity in the future

Quadrant IV Strategic contracts

- usually, big value contracts or very important contracts are included here, and the response from the market is not expected to be satisfactory, as result of their complexity and/or their very high value

Contract Positioning Matrix

- The main goal in public procurement should be to obtain, by way of competition, the best results:
 - Low/Fair prices/costs
 - High quality of the supplies/services/works

The contracts positioning matrix can be used in this respect, depending on the position where the contract is placed in the relevant Quadrants

Contract Positioning Matrix

Q1

- the number of economic operators is high or very high
- the supplies/services/works are available on the market at any time
- the contract is not critical for contracting authority
- the contract is not expected to cause technical or commercial problems
- Such routine purchases may consume the most part of the procurement department's time, while they often represent only a small part of the total (annual) procurement value.
- No need to carry out supplementary market research

Target: reduction of the internal costs

- standard procurement documentations
- aggregation of the demand (framework agreements, consortia of contracting authorities, central purchasing bodies)

Contract Positioning Matrix

Q2

- the number of economic operators is high or very high
- the supplies/services/works are available on the market at any time
- the contract is critical for contracting authority (value or importance)
- avoid to award the contract on the basis of the price alone (the lowest price criterion)

Target: maximise the advantages of the situation on the market by using various incentives/award criteria in order to obtain better quality and reduction of the global price

Market research may be performed in a more detailed manner, focusing on aspects such as:

- Innovative solutions, new technologies
- Price discounts for big quantities
- Economic solutions from the perspective of whole life costs
- Additional features
- Faster delivery

Contract Positioning Matrix

Q3

- the number of economic operators is low or very low
- few suppliers and/or high complexity make it difficult to obtain the products/services/works on the market or the costs may be disproportioned (bottle-neck)
- the contract is not critical for contracting authority at the moment, but it is expected to become important in the near future
- Market research may be performed in a more detailed manner, focusing on aspects such as:
 - Commercial cycle - four stages (each of them may have various marketing strategies)
 - a. Introduction
 - b. Growth
 - c. Maturity
 - d. Decline
 - Identify substitutes in the market



Contract Positioning Matrix

Q4

- the number of economic operators is low or very low
- the contract is critical for contracting authority
- The basic rule of attracting competition is to **prepare the technical requirements/specifications in a generic way**, paying attention more on the outcome and not on the description of certain characteristics in a precisely manner.
- Divide the contract into smaller **lots**, either geographically or by their nature

Identifying potential restrictions of competition

- Too short time to prepare the tender
- Use of irrelevant or redundant qualification criteria
- High costs of preparing the tender, too high administrative burdens
- Unclear or bias technical specifications (imprecise, unclear, restrictive or even “tailored-made” in favour of one economic operator and/or one product)
- Contract terms and conditions are not well-balanced
- Non-incentive award criteria
- Large size of the contracts

Perspective of Potential Tenderers

- Contracting authority may develop a matrix, where the classification of the contract shall be made from the perspective of “seller” and not “buyer”.
 1. Quadrant I Nuisance
 2. Quadrant II Development
 3. Quadrant III Exploitable
 4. Quadrant IV Core Business



Market Consultation

- It may take place when, following initial market analysis and research, the contracting authority considers that added-value can be gained by asking opinion of the economic operators, with the view to prepare the procurement in such a manner as to attract a higher number of participants to the competition and to secure the position of the contracting authority as a client

Market Consultation

- The 2014 Procurement Directive explicitly allows for preliminary market consultations before the procurement procedure and defines the principles to be respected
- Few examples on how MSs regulates market consultation
 - Croatia
 - Poland
 - Romania
 - Spain
 - France

Market consultations in Poland

- before commencing a procurement procedure the contracting authority (CA) may inform the economic operators about plans and expectations concerning the contract, and in particular:
 - to conduct technical dialogue, by addressing experts, public authorities, or economic operators, seeking advice or information necessary for preparation of the description of the subject matter of contract, technical specification or terms of the contract
- technical dialogue should be conducted in a manner ensuring fair competition and equal treatment of potential bidders and their solutions
- the CA should publish information about technical dialogue and its subject on internet webpage
- the CA should also publish information on application of technical dialogue in a procurement notice
- where there is a possibility that an entity participating in the preparation of the procurement procedure will apply for the contract concerned, the CA should ensure that the participation of this entity in the procedure does not distort competition, and in particular should provide to other economic operators information obtained and conveyed during the preparation of the procedure, and should set an appropriate time limit for the submission of tenders
- In the record of the procedure, the CA should mention the measures applied to prevent distorting



Market consultations in Spain

- The contracting authorities (CA may carry out market studies and refer to the economic operators that are active in that market in order to correctly prepare the tender, and inform them about their plans and the requirements
- Before starting the consultation, the CA should publish in their profile the purpose of the consultation, its time, the names of participants as well as the reasons why those were selected
- The advice may be further used provided that this does not have the effect of distorting competition or of violating the principles of non - discrimination and transparency
- The consultations may not result in a specific contractual object that meets the technical characteristics of only one of the respondents, on the contrary – its results should, where appropriate, be specified by introduction of generic characteristics, general requirements or abstract formulas that ensure a better satisfaction of public interests; these should not bring particular benefits for the economic operators who participated in the study/consultation
- Concluding consultations the CA should record the actions carried out in a report
- In general, the CA must take into account the results of the consultations carried out when drawing up the specifications; otherwise, they must record the reasons in the report
- Participation in the consultation process does not prevent subsequent participation in the procurement procedure



Market research in France

- In order to prepare the award of a public contract and to get a better understanding of the structure of the market and practices of economic operators, the CA can carry out consultations or market research, to solicit opinions or to inform the economic operators of their projects and their requirements
- This research may consist for example of:
 - monitoring of the economic sector concerned
 - organizing or participating in trade fairs in order to make companies aware of CA's needs or identify new needs, particularly in the innovation sector
 - meeting, before the launch of the consultation, several economic operators in order to obtain information regarding the market in question, the actors operating in that sector, the services or products offered etc
 - sending questionnaires to several suppliers or service providers
- The CAs are required to take the appropriate measures to ensure that **competition is not distorted** by the participation in the procurement procedure of an economic operator who had access to information unknown by other candidates or tenderers
- Such an economic operator should be excluded from the procurement procedure only when this situation cannot be remedied by other means, such as making available, within the public procurement documents, all the information communicated by the buyer during the market consultation



Market analysis in Croatia

- Before the launching of the procurement the CA, in principle, should conduct the market analysis in order to prepare the public procurement and inform economic operators about its plans and requests related to that procurement
- The CA may request or accept the advice of independent experts, responsible bodies or participants on the market which it may use in planning and preparation of procurement procedure as well as procurement documents on the condition that such advice will not lead to distortion of competition on the market and will not contravene the principle of prohibition of discrimination and transparency
- Before the launching of the open or restricted public procurement procedure for works or supplies or services of high value, the CA is obliged to make available to economic operators on the internet website (<https://eojn.nn.hr/Oglasnik>) the description of the subject matter of procurement, technical specifications, criteria for qualitative selection of economic operators, contract award criteria and special conditions for execution of contract **for at least 5 days**
- After the conclusion of consultations, the CA is obliged to consider all proposals and suggestions of interested economic operators, prepare the report about accepted and rejected proposals and suggestions and publish it on the same internet website



Market consultation in Romania

- Before the launching of the procurement the CA may organise market consultation in order to prepare the public procurement and inform EOs about its procurement plans, particularly in case of products/services/works which are of high technical or financial complexity, or in areas with rapid technological progress
- CA shall inform the EOs about the market consultation by publishing a notice in this respect on the Electronic Public Procurement System (EPPS) <http://www.e-licitatie.ro/Public/MarketConsulting/MarketConsultingList.aspx>
- The notice must contain at least the following:
 - a) the name of the CA and the contact details
 - b) the internet address where the information on the market consultation process is published
 - c) a description of the technical, financial and/or contractual needs and constraints related to the contract
 - d) issues and topics that are subject to consultations
 - e) the deadline for the consultation process
 - f) description of how to conduct the consultation and interact with economic operators
- Consultation may address potential technical, financial or contractual solutions as well as aspects of the contracting strategy, including division of the contract into lots or the possibility of requesting alternative offers
- Any interested person/organization may provide the contracting authority/entity with opinions, suggestions or recommendations
- CA may hold meetings with interested person/organization in order to discuss the views, suggestions or recommendations that have been sent
- CA may consider the opinions, suggestions or recommendations received during consultations if it considers them relevant, and provided that their use does not have the effect of distorting competition and breaching the principles of non – discrimination and transparency
- CA has the obligation to publish on EPPS the outcome of the market consultation process, before the start of the procurement procedure



Market Consultation Surveys/Questionnaires

- **Surveys/Questionnaires** - designed in order to obtain the needed information required for a useful market analysis
- Target groups
 - selected set of economic operators, who can be expected to respond with accurate feedback
 - known economic operators
 - trade organisation(s)
 - advertise the opportunity to participate in market engagement widely, but then limit participation to a maximum number of economic operators selected at random
 - openly publish the questionnaire, so it can be completed by any interested economic operator

Market Consultation

- Questionnaire
 - General, with the main role of getting information about the current capacities, experience and geographical coverage of the economic operators
 - Targeted for identifying artificial barriers in competition and opportunities to stimulate competition
- Contracting authority must be able to outline a minimum number of requirements for the desired product/service/work
- Contracting authority may encourage economic operators to provide supporting documents (details on their own products/services/works, pricing schemes etc)

Market Consultation

- Topics
 - Time to prepare the tender
 - Qualification criteria
 - Costs of preparing the tender, administrative burdens
 - Technical specifications
 - Contract terms and conditions
 - Award criteria
 - Other issues

Market Consultation

Meetings with economic operators

- **Meetings with economic operators**

 - “Meet the buyer”

 - “Open days”

- The event should be advertised
- With the only purpose of informing economic operators about the proposed project (vision, objectives and constraints, performance specification , flexibility around the time frames)
- Participants may have the option of submitting written feedback after the event, if they did not want to discuss some issues in front of their competitors
- Meetings with economic operators can be also organised as a final stage of the market consultation after receiving answers to the questionnaire/survey (for clarifying the sensitive issues that have been mentioned by the responded economic operators to the questionnaire/survey, better understanding of the issues)
- **All of the information provided to economic operators during the meetings must also be made available to candidates and tenderers in the subsequent tender process, as part of the procurement documents**



Final analysis of collected data

- Based on the results of the market consultation, the decisions of the contracting authority might be the following:
 - (re)estimating the price of the procurement and assessing the budget more accurately
 - (re)defining the duration of the contract
 - adjusting the qualification criteria at a proper level, in accordance with the real capacity of the economic operators in the market
 - refining the technical specifications
 - identifying the contract risks
 - dividing the contract in lots
 - establishing other award criteria than the lowest price
 - using of procurement tools or (even) choosing another type of procurement procedure



Final analysis of collected data

- The contracting authority is not bound to take into consideration all the proposals
- The decision of what is to be considered and included in the procurement documents should be justified by the objectives set by the contracting authority/entity from the outset:
 - to increase the degree of participation in the procurement procedure; and,
 - to identify the most appropriate solutions for achieving CA's needs in an efficient and effective manner
- **Market research it is not a part/phase of procurement procedure!**

Record of the Market Research Process

- **Initially:** Contracting authority should prepare a market research document
 - aims of the market analysis
 - issues to be considered
 - process that will be followed to gather relevant information
 - sources and information
 - staff involved
- **After:** Contracting authority should prepare a report
 - description of the main topics for which the opinion of the economic operators has been requested
 - description of proposals and comments sent by/discussed with the business community
 - explanation for accepting those proposals and comments that have been implemented in the procurement documents
 - explanation for not accepting some proposals and comments

Part of the public procurement dossier!

Conclusions

- Market research can contribute to the effective management of a procurement process
- There are no uniform rules on how to organize market research and CA should adapt the methods to their own objectives
- Overall objectives of the CA may focus on how to:
 - Ensure a higher level of competition, by:
 - Taking into account the market structure and the perspective of economic operators, in relation with the contract to be awarded
 - Identifying and removing artificial restrictions within the procurement process
 - Identifying incentives for attract more economic operators
 - Achieve best value for money, by obtaining better quality of goods, services and works and reduction of the global price
 - Use the public procurement as leverage for better meet their policy objectives, such as environmental protection, innovation, development of SMEs
- The main requirements in case of direct contact/engagement with economic operators: not distort competition, principles of non-discrimination and transparency shall be always observed
- Records of the market research process should be prepared by CA and included in the procurement dossier
- A summary of the results of the market research should be published on the CA web-site and/or on the PP Portal



QUESTIONS, COMMENTS?...



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