



How to prepare a competitive award procedure:

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Prague, 14 November 2018

*Disclaimer: This presentation is also based on the presentations, discussion and conclusions of the Commission Workshop on "Competitive tendering of public service contracts for rail passenger transport: Meeting the challenge" held in Brussels on 30 May 2018, available at: https://ec.europa.eu/transport/modes/rail/events/2018-pso-workshop_en
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Main topics

Rules and best practices in competitive tendering as regards:

- *Planning of the tendering procedure*
- *Selection and evaluation criteria*
- *Negotiated procedure*
- *Access to information*



Planning of tendering procedure: Main principles and objectives of tendering

Tendering should inspire trust with the operators to ensure a maximum participation rate which is important to get the best of what the market offers



CA should design the procedure so as to create conditions for effective competition



Respect of principles of fairness, transparency and non-discrimination

Planning of the tendering procedure **Communication with stakeholders**

Prerequisite to success is a communication with all parties involved:

- *Administration*
- *Other competent authorities*
- *Users and consumers*
- *Social partners*



Create trust
and manage
expectations



Planning of the tendering procedure **Timelines**

Tendering is a complex and lengthy process and following risks should be taken into account:

- *Need for coordination with other competent authorities*
- *Availability of relevant information*
- *Complaints/Litigation*
- *Availability of rolling stock*

Planning of the tendering procedure **Timelines**

Potential bidders must have time to prepare for the tendering

Information notice has to be published in Official Journal - model forms available at ted.europa.eu



Failure to publish the notice could result in annulment of the contract (case C-518/17)

Planning of the tendering procedure

Size of the contract

The size of the contract must be carefully assessed taking into account, in particular:

- Potential level of supply
- Characteristic of the network
- Location of service facilities
- Commercial offer
- Demand
- Users' needs



Knowledge of
the market is
key



Planning of the tendering procedure

Test pilots

Test pilots may help to optimise the tendering procedures through:

- Testing of the tendering procedures on smaller lots or less complex or smaller networks
- Shorter duration of the first public service contracts
- Starting with gross cost contracts with less risk for the operator

Planning of the tendering procedure **Monitoring**

Monitoring of the performance of the contract is key. Competent authorities should introduce clear criteria on:

- *Punctuality*
- *Reliability*
- *Security and safety*
- *Cleanliness and condition of rolling stock*
- *Emergency management*
- *Customers satisfaction and information*



Possibility of contractual penalties or termination of the contract should be envisaged

Net cost contracts give incentive to improvement



Selection criteria

Competent authority enjoys a large margin of appreciation in definition of selection criteria

BUT general principles apply

The experience shows that tendering should not only concentrate on savings but also on the quality for customers

In case of specific or complex requirements the competent authorities may negotiate with the pre-selected parties



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Negotiated procedure

Competent authorities may also apply a specific “negotiated procedure” which allows to lead negotiations with only one operator without tendering:

- Following a publication of specific information notice in OJ
- Only one operator expresses interest within a period fixed by a competent authority of more than 60 days
- That operator has duly proved that it is able to provide the transport service as established in public service contract
- The absence of competition is not the result of an artificial narrowing of the parameters of the procurement
- No reasonable alternative exists

Access to information

Access of potential bidders to information is essential



Prerequisite of the design of offers



Risk of retention of certain business related information from the side of operators or infrastructure managers



Access to information

Solution



Contract must require that the operator provides the authority with the essential information for the tender

Legitimate protection of confidential business information must be ensured

Access to information

Competent authority must give all interested parties all information for preparation of an offer, in particular on:

- passenger demand
- fares
- costs and revenues
- infrastructure specifications
- technical state of rolling stock,
- details of the infrastructure specifications → infrastructure manager
- access to infrastructure → rail regulatory body
- information and access to service facilities → rail regulatory body



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Thank you



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