Rule of law and it’s premises in Public Procurement Procedures

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Principles of PP - directives

Proposal of the new PP Directive (article 15):

(1) Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

(2) The design of the procurement shall not be made with the intention of excluding it from the scope of this Directive or of unduly favouring or disadvantaging certain economic
Principles of public procurement

- Transparency
- Competition
- Equal treatment of bidders
- Proportionality

Efficiency, effectiveness and economy
Principles and goals

Principles does not equal goals of PP

Public procurement systems has both goals it’s seeks and constraints it must not violate

Harvard Kennedy School (Kelman):
- Goal of PP is to attain best-value products and services
- The procurement system’s constraints include avoiding
Formality of procedures vs. 3E

Formality is not to be mistaken for legality

Formality has to be taken as equal, not a superior (principle)

There has to be a proportionality test in PP
Changes of a TD and bids

To which extent tender documentation can be changed?

To which extent tender documentation has to be followed?

Can bids can be changed after the submission?

What do we try to establish in public procurement procedure?
Documentation in PP

Directive 2004/18/EC:

The contracting authority may invite economic operators to supplement or clarify the certificates and documents submitted pursuant
New proposed text of Directive:

Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous or where specific documents are missing, contracting authorities may, unless otherwise provided by the applicable national law implementing this Directive; request the economic operators concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit, provided that such requests are made in full compliance with the principles of good administration.
Practical question

Can a reference (as proof of past work in the field of procurement) be explained or even changed?

Can a bank guarantee can be changed? What it is missed, to which extent do we follow the rule of equal treatment

Can subcontractor be changed?
Can bidder in joint bid be changed?
Case

(Centralized) procurement for heating oil
Price is established as discount on government established pricelist (changed every 2 weeks)
Measure: biggest discount on a price list a week before opening of the bids

Best bidder has better discount but has taken a list price a day (not a
Case 2

Bidder has include subcontracter, but he haven‘t payed all taxes (obligatory criteria)

Subcontractor is not part of a bid (as a relying on a capacity)

Does a bid has to be removed from bidding process