

MEAT: The Legal Framework

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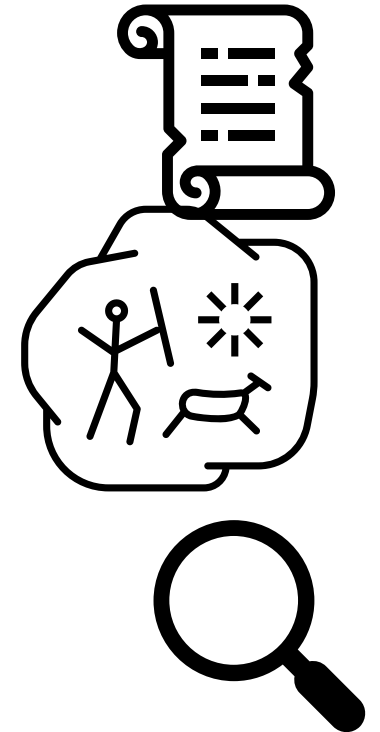


Public
Procurement Analysis

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○ A bit of history...

- ‘**Most economically advantageous tender**’ introduced in first EU procurement directive in 1971 – as alternative to lowest price award
- *Concordia* case (C-513/99) established legitimacy of environmental criteria as part of MEAT – and this was written into 2004 Directives
- During reform process leading to 2014 Directives, some (particularly in EP) argued for lowest price to be removed as an award criterion, while others were opposed this
- **Compromise:** Under 2014 Directives, all contracts are awarded based on MEAT, but it is possible to exclude qualitative criteria (!)
- Where qualitative criteria are included, this is called ‘**best price-quality ratio**’ – a confusing term



○ So what can we do with MEAT?

- Non-exhaustive list of considerations which can be taken into account
- Article 67 explicitly mentions environmental, social and innovative characteristics and ‘trading and its conditions’ (*Dutch Coffee case*)
- Case law has established that there is no need for award criteria to be ‘objectively quantifiable’ (*Concordia*) but they must be intelligible to the ‘reasonably well-informed and normally diligent tenderer’ (*SIAC*)
- No need to disclose details of evaluation methodology (*TNS Dimarso*; *Proof IT v EIGE*) – contracting authority must exercise its discretion in accordance with the published criteria and weightings
- For **life-cycle costing**, it is not necessary to use an ‘off the shelf’ method but the method must be fair, transparent and disclosed in advance



○ Link to the subject-matter requirement

- **Article 67 (3)** of Directive 2014/24/EU: Award criteria shall be considered to be linked to the subject-matter where they:
 - “relate to the works, supplies or services to be provided under that contract in any respect and at **any stage of their life cycle**, including factors involved in—
 - (a) the specific process of production, provision or trading of those works, supplies or services, or
 - (b) a specific process for another stage of their life cycle, even where those factors do not form part of their material substance.”
- **Recital 97** of Directive 2014/24/EU: “...the condition of a link with the subject-matter of the contract **excludes criteria and conditions relating to general corporate policy ...**”



○ LtSM in practice: Link or no link

- In Case C-448/01 *EVN Wienstrom* the CJEU held that awarding marks for the total amount of renewable electricity which bidding companies could produce (in excess of buyer's requirements) was **not** LtSM. In Case C-368/10 *Dutch Coffee*, the Court accepted fair trade criteria **were** LtSM.
- In the absence of further case law, SPP should focus on impacts which:
 - a) arise as a [direct] result of the contract being awarded; and
 - b) can be addressed by firms or their subcontractors as part of the delivery of that contract.
- Examples of criteria which probably would not pass the LtSM test: **Overall carbon footprint** of a company, **overall recycling rate** of company, **general environmental commitments**, **offsetting** or **donating** to environmental charities, **green pension investments**.



QUESTION TIME

