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# Utilities & Public Procurement

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# Scope of the Utilities Directive 2004/17/EC

- Regulates the awarding of contracts in sectors providing services to the public
- Service providers - utilities (i.e. covered activity) in terms of public procurement are:
  - Water supply
  - Energy supply
  - Transport
  - Postal services and
  - Others (exploring oil, gas or coal, building & management of airports or marines...)





# Utilities basic definition & exceptions

❑ The activities for which the utilities contract are awarded (hereinafter: covered activities) shall be water supply; energy; transport; postal services, and other covered activities.

❑ Exceptions applicable for

- public enterprises, shareholding & ltd companies where state authorities, local self government units etc. have dominant influence, for execution of activities which are not considered as covered activities
- contract values below certain thresholds
- procurement of electricity or fuels for production of electricity
- goods for the purpose of resale or lease to third parties, provided that the contracting authority enjoys no special or exclusive rights to sell or lease such goods, and the other entities are free to sell or lease them under the same conditions, or
- goods, services or works intended for carrying out covered activities abroad...



# Similarities among utilities

- ❑ **Similar scope of activity & definition for**

- ❑ **Energy**

- ❑ the installation and management of *fixed networks* intended for provision of *public services* in connection with the production, transport or distribution, i.e. the supply, of gas, heat or electric energy to such networks

- ❑ **Water supply**

- ❑ installation and management of *fixed networks* intended for provision of *public services* in connection with the production, transport or distribution of drinking water, or supply of drinking water to such networks



# Importance of utilities

- ❑ Functioning of community indirectly significantly depends on Utilities
- ❑ Citizens daily needs depends on utilities
- ❑ Utilities business has to be
  - ❑ Flexible towards customers' demands
  - ❑ Reliable in properly providing the service
  - ❑ Permanent adaptation of capacity to demand (growth)
  - ❑ Leading force in each society.....





# Advantages for utilities in public procurement

- ❑ **Wider range of standard procedures**
  - ❑ Open procedure
  - ❑ Restricted procedure
  - ❑ **Negotiated procedure with prior publication of a contract notice**
  - ❑ Negotiated procedure without prior publication of a contract notice
  - ❑ Simplified competitive procedure





# Advantages for utilities in public procurement

- ❑ **Extended number of special manners for concluding contracts or qualifying suppliers**
  - ❑ Framework agreements
  - ❑ e-auctions
  - ❑ **Qualification Systems**
- ❑ **Other**
  - ❑ Other “classical” procedures/ manners can be used
    - ❑ Technical dialogue , e-auctions...
    - ❑ Not mandatory public opening for negotiating procedure
    - .....





# Advantages for utilities in public procurement

- ❑ **Partly higher threshold values than for ‘classical’ procurement**
  - ❑ Defined at EU level
    - EUR 400 000 for procurement of goods & services
    - EUR 5 000 000 for procurement of works
- ❑ **In Macedonia, for contracting authority with exclusive rights**
  - ❑ 200.000 EUR / procurement of goods & services
  - ❑ 4.000.000 EUR/ procurement of works



# Understanding of utilities

- ❑ **Economic operators – frequent concerns**
  - ❑ 1<sup>st</sup> opinion – they are usually confused
  - ❑ Why previously standard contracting authority is given such big flexibility?
  - ❑ Is procurement by utilities “closed” up to the threshold values?
  - ❑ Why can the negotiated procedure become the standard procedure?
  - ❑ Is everything properly done at negotiations?
  - ❑ How can qualification be made, and are there no precise requirements for concluding the contract?
  - ❑ Why are telecoms not following public procurement rules?
  - ❑ Why should a private energy sector company comply with the PPL?





# Understanding utilities

- ❑ **Contracting authority – contracting entity (i.e., a utility) important differences:**
  - ❑ Utilities are very dynamic businesses
  - ❑ Set of other laws/by-laws/rules are regulating their specific activity
  - ❑ Exclusive rights for business activity
  - ❑ National regulators review and supervise
  - ❑ Defined deadlines and quality standards (they should be!) for performance of covered activity
  - ❑ In some countries utilities are part of big international groups....



# Utilities and international companies

- ❑ **National environment**
  - ❑ Statutory limitations
  - ❑ Domestic rules, laws, by-laws, rulebooks, regulators, customer conditions ...
  - ❑ Sometimes not well known and changing legal environment, need to manage the business in a state of regulatory change
  - ❑ Communication, language, response time





# Utilities and international companies

- ❑ International company
  - ❑ Multinational working capital, rules, culture, procedures...
  - ❑ Wide choice of potential operators
    - ❑ mother company country operators + local, traditional bidders
- ❑ Regional environment limitations
  - ❑ Geographic location of daughter company
  - ❑ Special commercial/regional trading terms in the country of the daughter company





# Why should a private company apply the PPL?

- ❑ **Public Procurement Law Is Mandatory**
  - ❑ Energy segment importance in each country
  - ❑ Not yet liberalized energy market
  - ❑ Utilities as a special chapter of the common PPL
  - ❑ Alignment with EU Directive EC 2004/17 on Public Procurement





# Why should a private company apply the PPL?

## Voluntary reasons

- Highly competitive prices achieved with public tendering
- Increased competition vs. bids collection
- Transparent approach to economic operators
- Equal opportunities to all operators
- Fairness
- Increased procurement proficiency....



# Typical items to be procured

## Goods

- Wide range of electric materials
- Electric machinery
- General consumer products (general goods)
- IT / TC products
- Safety at work equipment
- Tools, machinery ...





# Typical items to be procured

## Services

- Facility maintenance & management
- IT/ TC maintenance, telecommunication services
- Equipment overhaul
- Transport services, temporary employments ....

## Works and engineering

- Construction works
- Installation works
- Project design, revision, supervision,
- Geodetic works.....



# Combination of items to be procured

- ❑ Combined procurement of goods and services, is considered as procurement of goods, if the value of the goods is bigger than the value of the services ( and vice versa)
- ❑ Contract where the basic scope is for providing services, but there are some works also, is considered as contract for services



# Procurement principles for utilities

## **Fairness**

- Reasonably defined rules
- Reasonable evaluations, equal approach
- Pressure or misuses avoidance

## **Consistency**

- Pre-defined requirements & rules; no unannounced changes

## **Transparency**

- Set, standard procedures; allocation of responsibilities

## **Equal opportunities** for all vendors



# Procurement principles for utilities

## ❑ Efficiency

- ❑ Increasing proficiency in procurement entity
- ❑ Elimination of over-centralisation
- ❑ Decision maker levels & bureaucracy
- ❑ Speeding up the procurement process

## ❑ Traceability

- ❑ Documented processes/procedures
- ❑ Awareness/caution & responsibility of all involved
- ❑ Evaluations process facilitation & audits

## ❑ Accountability

- ❑ Procurement staff/ department liability to owners & authorities





# Changing from « classic » to utility procurement

- ❑ **“Standardizing” Strategy** (= Model Based Procurement)
  - ❑ Centralization to reasonable level
  - ❑ Technical standardization of goods/services/works
  - ❑ Tenders/bid inquiries/contract models preparation
  - ❑ Intensive Framework Agreements
  - ❑ Intensive Qualification Systems
  - ❑ Maximum use of ERP Systems
  - ❑ “Maintain & Invest” in Procurement Top Achievers





# Changing from « classic » to utility procurement

## ❑ Obstacles to “Standardizing” Strategy

- ❑ Staff reduction; staff
- ❑ Unification, i.e. reduction of no. of vendors / slow reduction of exclusive vendors
- ❑ Taking away procurement activity from technical department
- ❑ Higher efficiency of procurement staff / less headcount
- ❑ Less contracts / less administration
- ❑ Less technical evaluations needed to be done
- ❑ Maximum use of ERP Systems - faster response time

## ❑ Importance of training: in-house & external





# Preconditions for successful procurement in utilities

## Preparation activities

- Request (Demand) for procurement**
  - Needs Identification & Approval on a level different from that of the procurement organization
  
- Procurement Concept Development**
  - Constraints
  - Concept Development
  - Approval
  
- Drafting/documentation preparation**





# Defining needs, quantities, values

- ❑ **Procurement Planning** in utilities as most difficult task
  - ❑ Each year is hardly comparable to previous ones
  - ❑ Weather circumstances significantly influence maintenance: defects, maintenance, materials needed
  - ❑ Networks in different geographical regions, different accessibility, possibly different consumption patterns
  - ❑ Constructed long time ago, upgrades available, remedies
  - ❑ Fast growing networks, areas with significant no. of new connections
  - ❑ Variety of different materials used for building networks....





# Defining needs, quantities, values

- ❑ How to plan quantities & values?
  - ❑ Prepare procurement plans
  - ❑ Statistical data exploring for new investments/ connections
  - ❑ Exploring list of contracts from previous 3-5 years
  - ❑ 3-5 years data bases for estimating trends
  - ❑ Conclude as much as possible FWA
  - ❑ Include risk & safety index when planning quantities& values
  - ❑ Values estimated based on benchmarking ( internet, budgetary offers, ERP statistical data)
  - ❑ Necessity to have strong ERP system support

# Selection of Procurement Procedure

- Recommended: **Negotiated procedure with prior announcement**
- Non-standard procedure for the public sector at large
- Economic operators are not used to it
- Initial results after implementing it: provide a significant savings & price reductions; on middle term basis - stable prices
- Higher/highest technical/professional quality of bidders invited on negotiations
- Shorter procedure than restricted procedure
- Strong staff training processes needed** (negotiation skills, soft skills - presentation management, conflict management, handling difficult vendors, communications, etc)

# Use of negotiated procedure with prior announcement

- ❑ Important to have clear specifications & selection criteria
- ❑ Clearly marked mandatory & eliminatory requirements in case of lowest acquisition price
- ❑ Recommended to be used, due to:
  - ❑ Objective measurement, especially when procuring technically sophisticated items
  - ❑ All requirements & terms negotiated in detail
  - ❑ Cooperative approach, trust & confidence with vendors
  - ❑ Competitive prices & terms
  - ❑ Proper vendor management

# Use of Qualification Systems

- ❑ New instrument in Macedonia, available only for Utilities
  - ❑ Fast, flexible procurement system
  - ❑ Fulfilling utilities' business requirements
  - ❑ Open system for economic operators
  - ❑ Caters for economic operators' permanent improvement & development
  - ❑ Vendor's fulfillment continual follow up
  - ❑ Transparent & equitable public procurement system for unlimited / 3 years' time period

# Use of Qualification Systems

- ❑ New dimension in public procurement
  - ❑ When ever needed or time is available, QS can be started
  - ❑ Technical evaluation period is longer (max 6 months)
  - ❑ Whenever real needs appear, 2<sup>nd</sup> phase of restricted or negotiated procedure is applied
  - ❑ Valid for 3 years or unlimited time period (if notices are duly published)
  - ❑ Economic operators can apply any time during validity

# Use of Qualification Systems

## ❑ Benefits

- ❑ QS is recommended to be applied for technically standardised (permanently needed) goods/services/works
- ❑ Very flexible, dynamic, adjustable to utilities' needs
- ❑ Eliminating risk of non performance of selected vendors
- ❑ Possible modification of technical specifications
- ❑ Market trends can be followed
- ❑ Saving costs of procurement entity

- ❑ **Shall QS be made available when introducing utilities chapter in the PPL?**

# Feedback after implementing QS

- ❑ Economic operators are initially confused
  - ❑ How can there not be no quantities in QS “tender”?
  - ❑ Why then is something like a tender published?
  - ❑ When shall the contract be concluded?
  - ❑ How can an operator apply whenever he finds proper?
  - ❑ What if a once not qualified economic operator remedies whatever did not fulfill the requirements for qualification?
- **Utility procurement staff has to be trained to explain and to use the QS**

# Feedback after implementing QS

- ❑ **Contracting Authority perspective**
  - ❑ Dilemma - unlimited validity of QS or 3 years?
    - ❑ Are local markets stable enough for an unlimited QS?
    - ❑ What if the personal standing of the qualified company is changed during validity of QS?
  - ❑ Does it reduce procurement entity staff in the medium term?
  - ❑ Can foreign QS be used locally (mother – daughter companies)?
  - ❑ Prior usage of technical dialogue prior to announcing QS?





# Award Criteria

## **Lowest acquisition price**

- Highly recommended - but with preconditions!

- Clearly set technical specifications

- Professionally defined functional requirements; measurable and thus possible to evaluate

- Very clear mandatory requirements regarding technical / professional / economic capability

## **Best offer – most economically advantageous tender**

- Complicated technical evaluation, requires good skills

- Causes bidders' comments/complaints if not clearly defined

- Prices often seem higher but total costs may be lower





# Qualification criteria

- ❑ **Mandatory criteria must be fulfilled**
  - ❑ **Operators' personal standing**
    - ❑ Not initiated procedures for liquidation, bankruptcy, paid taxes, no involvement in criminal activity, no prohibition for participation at tenders for public procurement, no prohibition for performance of activity - temporary or permanent etc...
  - ❑ **Qualification to perform professional activity**
    - ❑ What is proper qualification i.e. registered activity for the scope of the procurement?
    - ❑ Is that requirement reasonable and useful?





# Qualification criteria

## ❑ Other criteria

### ❑ Economic & financial standing

- ❑ To be defined with caution
- ❑ How to judge what is the proper value of turn-over to be required?
- ❑ What requirement is proportional to procurement scope?
- ❑ Balancing risks of
  - ❑ Complaints, bankruptcy
  - ❑ Insurance policies (business, 3<sup>rd</sup> party liability, comprehensive business liability insurance .....





# Qualification criteria

- ❑ Other criteria
  - ❑ **Technical or professional capability**
    - ❑ References, but to be checked
    - ❑ Technical equipment & most of all R&D issues are important
    - ❑ Staff - is the no. enough, or is quality of staff important?
    - ❑ Very important is evaluation of subcontractors
    - ❑ Quality certificates & awards
    - ❑ Licenses or permits, whenever needed
    - ❑ **On-site control of economic operator**



# Qualification criteria

## ❑ Other criteria

### ❑ Quality Assurance Standards &

### ❑ Environment management standards

- ❑ base for proper fulfillment of bidder's business cycle
- ❑ Environmental impact on the overall decision
- ❑ Impact on Total Costs of Ownership



# Content of Tender Documentation

- Invitation to economic operators
- Short description of the procedure/ procurement method
- Instructions / Guidelines to Bidders with
  - Carefully defined qualification criteria
  - Explicatively stated award criteria, deadlines, opening of offers
- Detailed, but generic technical specification
- Model contract
- Enclosures
  - Statements needed to be submitted by bidders with proper documentation to be attached
  - Form of bid (in case of 2 phase procedures)

# Announcements & Notifications

- Official announcement
- Announcement on web site of contracting authority
- TED announcements
- Usage of specialised web sites/ portals
- Invitation to potential bidders...



# Procurement proceedings

- ❑ **Procurement proceedings**
  - ❑ Opening offers
  - ❑ Evaluation (technical & commercial)
  - ❑ Sourcing/Vendor selection
  - ❑ Contracting
  - ❑ Delivery management
  
- ❑ **Consignments**
  - ❑ delivery, control, change requests, improvements







# Evaluation techniques

- ❑ Clear assignment Vendor-Buyer
  - ❑ TCO calculation
  - ❑ Mistakes & additional costs avoidance
  
- ❑ “4 eyes” principal
  - ❑ Double check commercial / technical
  - ❑ External consultants engagement, if needed
  
- ❑ Useful tracking & risk sharing tools
  - ❑ “4W” matrix usage (Who, What, When, Why)
  - ❑ Supplements usage (summary reports)



# Evaluation techniques

- ❑ Price Schedule & Schemes
  - ❑ 1/2 work is done with good price schedule
  - ❑ “Apple to apple” comparison
  - ❑ TCO price schedules & PBS Structure
  
- ❑ Results Measurement & Monitoring
  - ❑ Market price (offers); historical & group prices
  - ❑ Price benchmarking
  - ❑ KPI permanent monitoring



# Determination of Price

- ❑ **Acquisition price vs Total Cost of Ownership**
  - ❑ TCO during life cycle should prevail
  - ❑ As much as higher commodity complexity, TCO is more important
  - ❑ TCO requires at least basic knowledge & understanding of the item procured
  - ❑ Properly defined quality & warranty requirements & their fulfillment eliminate most of the additional costs
  - ❑ Proper definition of bill of quantities of works & control of performed works, limits TCO
  - ❑ Fixing prices of spares, additional & optional items for life cycle time, always when applicable



# Determination of Price

- ❑ **Unit price vs Total Cost of Ownership**
  - ❑ Samples of cases for good & services
    - ❑ Office materials
    - ❑ Trainings, consultancy
    - ❑ IT & TC commodities (servers, storage, RTU, gprs ...)
    - ❑ Basic electro materials (auxiliary equipment, cords, cables)
    - ❑ Complex products ( trafo stations, substations, transformers...)
    - ❑ Construction & electrical installation works (additional quantities, subcontractors , maintenance / costs in breakdowns)



# Importance of life cycle cost evaluation

- ❑ Proper evaluation justifies rational spending of financial resources on long term basis
- ❑ TCO calculation impact on management business decision
- ❑ TCO in procurement – basis for proper ROI calculation
- ❑ Planning of impacts on middle term company results.....



# Turn key solution vs Multisourcing

- Turn key solution
  - Easy manageable
  - Requires less internal resources (staff, materials etc)
  - Complete responsibility outsourced
  - Quality depends only on the vendor
  - Usually higher unit price
  - Delegation to subcontractors
  - Requires very professional supervision
  - High demands for project management





# Contracting

## ❑ Contracting

- ❑ 90% of contracting works is done, if contract is part of tender documentation
- ❑ Recommendable is defining time period for signing contract by the other contracting party

## ❑ Contract Management

- ❑ Realization of the contract is in technical department
- ❑ However, occasional follow-up, at least about quality performance, should be made available to procurement dep't
  - ❑ Vendor's post qualification as a possibility
- ❑ Mechanisms/SW for following contract implementation should be available to both procurement & technical departments





# Workflow Samples for Utilities Procurement

## ❑ Technical standardisations

- ❑ defining crucial goods/ services/ works without which a utility cannot function
  - ❑ Cables, pipes, transformers, cells, trafo stations, connection equipment, safety at works equipment ...
  - ❑ Construction works, project design, supervision, geodetic works ....
  - ❑ Mobile/fixed line telephony services, cleaning facilities, maintenance services, overhauls etc...







# Workflow Sample for Utilities Procurement

- ❑ **Establishing Qualification Systems**
  - ❑ For crucial goods/ services/works
- ❑ **Concluding Framework Agreements**
  - ❑ mostly with 1 vendor, especially when there is Qualification System
  - ❑ Reliable ERP data base is extremely important
- ❑ **Splitting of**
  - ❑ Strategic from operative procurement
  - ❑ Commercial from technical part of procurement



# Controlling mechanisms

- ❑ Flexibility requires very rigorous internal controlling mechanisms
- ❑ Control points
  - ❑ State Commission for complaints on public procurements
    - official, independent control & decision maker
  - ❑ Internal approval & signing mechanisms
    - ❑ 4 eyes principles
    - ❑ signing matrix (rule books) & levels of controls
    - ❑ price comparisons, independent benchmarking, frequent tendering
  - ❑ Control of performance
    - ❑ on site during project realization
    - ❑ technical control during warranty period
    - ❑ independent ( supervision, institutes)
    - ❑ performance bond mechanisms & production guarantee





# Control mechanisms

- ❑ Staff control in procurement organization
  - ❑ rotations
  - ❑ awareness of responsibility & consequences
  - ❑ conflict of interest avoidance
  - ❑ codex of behavior
  
- ❑ Internal audit & controlling
  - ❑ planned & not planned controls & audits
  - ❑ good traceability system
  - ❑ budget control & spending controls





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# Thank You!

## Questions & Answers

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