

IMPORTANT NOTICE

Introduction

The good practice guide on “Better Public Transport for Europe through Competitive Tendering” is a very useful instrument for stimulating the interest of purchasers for the improvement of environmental or social conditions through competitive tendering. Competitive tendering allows for a broad market consultation, inviting solutions of enterprises that answer to these needs.

Principle of competition is rule rather than exception

When the letting of contracts takes place by bodies covered by the EC Treaty and more particularly by the directives on public procurement, special care needs to be taken. This Community legislation prescribes as a general rule that when a service contract or service concession is awarded, this in principle has to comply with principles of transparency and equality of treatment. Furthermore, in cases where the procurement directives also apply this means that well defined procedures are applicable, requiring amongst others a maximum of transparency, publication and fair competition. In short: for awarding contracts based on this legislation, competitive tendering should be seen as the rule, not the exception.

In the cases covered by the directives on public procurement one should also be aware that this legislation not only applies directly when awarding a service contract for public transport, but also in cases where the equipment is purchased to perform these services. The service provider itself (whether private or public) is in many cases covered *qualitate qua* by the sector’s procurement directive.¹ This means that contracts awarded by service providers, (e.g. for equipment related to the service) have also to be procured by means of competitive tendering. This principle applies in particular to cases where, on the basis of exceptions in the procurement legislation, the original service contract or service concession was not tendered in open competition.

Taking into account environmental and social criteria

When executing a procedure for the procurement of transport equipment or for the transport service contract under the procurement directives one should be aware that the formulation of environmental or social criteria and requirements in a public procurement procedure is regulated by these directives. To define the legal possibilities, the Commission in 2001 has issued two interpretative communications on the adoption of environmental and social considerations into public procurement.² These explanatory documents have been followed by case law of the Court of Justice³ of the European Communities and have been codified in the new procurement directives.⁴ Contracting

¹ Directive 93/38/EEC, followed by 2004/17/EC

² COM (2001) 274 Final and COM (2001) 566 Final

³ In particular Concordia Bus Finland (C-513/99) and EVN Wienstrom (C-448/01)

⁴ Directives 2004/17/EC and 2004/18/EC

authorities and contracting entities are obliged to formulate their requirements and criteria within these legal boundaries.

Exoneration

This document is illustrative and only intended for awareness raising; the Commission has not verified all of the mentioned procurement procedures in the document. It can therefore not guarantee their compliance with Community legislation. Therefore, any adoption of social or environmental criteria or requirements resulting from this document remains the sole responsibility of the contracting authority or entity.