



## Current Challenges in Public procurement

### Abnormally low tenders – EU draft directive

Where tenders appear to be abnormally low in relation to the works, supplies or services, the contracting authority may require economic operators to explain the price or costs proposed in the tender.

Explanations may in particular relate to:

- the economics of the construction method, the manufacturing process or the services provided;
- the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply of the goods or services;
- compliance with social and labour law
- the possibility of the tenderer obtaining State aid.



## Abnormally low tenders – EU draft directive

The contracting authority may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed.

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with applicable obligations established by Union law or national law compatible with it in the field of social and labour law.



## Abnormally low tenders

- Fair competition is the goal.
- A process is needed to avoid ALT
- Key is the analysis and examination of suspicious tenders.



## Transparency in the award process

- The procurement process has to ensure transparency.
- It is a challenge for the contracting authority to make that possible for all potential tenderers.



## Electronic auction

- It should be clarified that electronic auctions are typically not suitable for certain public works contracts and certain public service contracts having as their subject-matter intellectual performances, such as the design of works.
- When implementing electronic auctions the proper analysis and examination of suspicious tenders has to be considered.

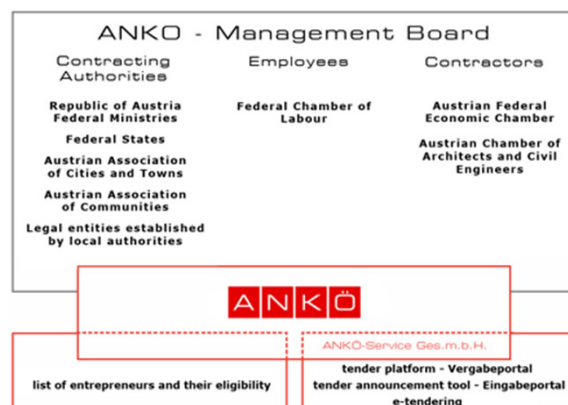
## Award criteria

The contracting authority may adopt as award criteria either 'the most economically advantageous tender' or 'the lowest cost', taking into account that in the latter case they are free to set adequate quality standards by using technical specifications or contract performance conditions.



## Standardisation of the award process

- Austrian Register of Tenderers (ANKO)



## ANKÖ

- ANKÖ – [www.ankoe.at](http://www.ankoe.at)
- registered non profit organisation, consisting of Austrian authorities and statutory representations of interest.
- supports public procurement procedures - in favour of contracting authorities, tenderers and candidates.



## ANKÖ – for contracting authorities

Contracting authorities can:

- Assess the eligibility of tenderers
- Issue public invitations
- Open tenders online



## ANKÖ – for contracting authorities

### Award notification

- ANKO provides the evidences of suitability required by the Austrian Federal Public Procurement Law 2006 for listed economic operators.
- Your key benefits:
- Your data is automatically updated on a regular basis.
- Any assessment of suitability is recorded. Legally, you will be on the safe side.
- our list of entrepreneurs contains about 8.000 company profiles.

Public authorities access the data 60.000 times per year.



## ANKÖ – for contracting authorities

- Our tender announcement tool (in German: Eingabeportal.at) is a web application to enter public invitations to tender. We provide all standard forms for notices concerning contracts with an estimated value below thresholds.
- **Your benefits are:**
- forms with only two screen pages for contracts below sub-thresholds,
- user-specific form templates with online help displayed,
- the intelligent mandatory field management and plausibility checks,
- mailing to defined publication media (e.g. your homepage, Official Journals in their online and print editions, and Tenders Electronic Daily, the online version of the "Supplement to the Official Journal of the European Union),
- flexible [user administration](#) by the contracting authority, and
- free access to our [test system](#) - log in [here](#).



## ANKÖ – for Tenderers

Tenderers can:

- Proof their eligibility
- Find public contracts
- Submit tenders online



## ANKÖ – for Tenderers

Evidences of Suitability

- If you participate in procurement procedures, you will have to provide the same evidences repeatedly in order to proof your suitability to the contracting authority. By using our tool, the list of entrepreneurs and their eligibility, you can proof your suitability online. You will save both time and money.

Your key benefits:

- Your data is automatically updated on a regular basis.
- Any assessment of suitability is recorded. Legally, you will be on the safe side.



## ANKÖ – for Tenderers

### Contract Notices

- The tender platform, Austria's first intersectoral database. It contains more than 1000 new contract notices each day. It offers online access to national and international tenders and contract notices for all subscribed contractors, suppliers and service providers.

### Your key benefits:

- Savings of time by using the online search-engine providing up to 100 search profiles
- The chance of acting immediately supported by our automated and free email alert services
- Competitive advantages in public procurement procedures using the tender announcement tool covering of all Austrian Official Journals containing notices of the Federal Government, the Federal States, local municipalities online, and related entities online
- Development of new markets due to selected public tenders from eleven Eastern European Countries
- Download of contract documents
- Contract award notices and announcements of competition results



## Subcontracting

EU draft directive: In the procurement documents, the contracting authority may ask or may be required by a Member State to ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors. Such an indication shall be without prejudice to the question of the principal economic operator's liability.





## Subcontracting in Austria

- It is not allowed to give the whole contract to subcontractors.
- Subcontractors need the capacity and permission to execute their parts of the works.



## Subcontracting in Austria

- We have a distinction between „essential“ and „non essential“ subcontractors.
- „Essential“ subcontractors are needed by the tenderer to execute the works. (Without these subcontractors the tenderer would not be allowed or able to execute the works.)



## Subcontracting in Austria

- The contracting authority has to decide in the tender documents whether it wants information about all subcontractors or only about subcontractors for crucial parts of the works.
- If the contracting authority states nothing in the tender documents, then the tenderer has to give information about all subcontractors.



## Subcontracting in Austria

- If the tenderer fails to give information about the subcontractors, he is excluded from the tender process if the failure relates to an „essential“ subcontractor.
- The tenderer does not have to give information about his contract with the subcontractor (calculation).



## Delayed payment

- Directive on combating late payment in commercial transactions.
- Has to be transposed into Austrian national law until March 2013.
- Is going to be transposed in public procurement law (for transactions with contracting authorities) and civil law (for private companies' transactions).



## Delayed payment – public procurement

- Austrian public procurement law defines a maximum payment period of 30 days.
- May in cases – when „factually justified“ be extended to 60 days but in no case be more than 60 days.
- Taking over procedures are limited to 30 days.



## Delayed payment – standard for construction contracts

- ÖNORM B 2110 „General conditions of contract for works of building and civil engineering”
- Defines a maximum payment period of 60 days.
- For small contracts up to € 100.000,- a maximum payment period of 30 days.
- Statutory interest for late payment of 9,2 percentage points above the reference rate.



## Compliance with social regulations

- § 84 BVergG (Austrian public procurement law)
- Contracting authority has to
  - apply Austrian social and employment law for procurement procedures in Austria
  - lay down an obligation for the tenderer in the tender documents to comply with Austrian social and employment law when preparing the offer
  - state in the tender documents, that the tenderer will comply with Austrian social and employment law when executing the construction works



## Encouragement of social procurement

- § 19 BVergG
- In the tendering procedure the contracting authority may promote employment of
  - Women
  - trainees
  - Long-term unemployed
  - Handicapped
  - Older jobholders
- Or take further measures to implement other social interests.



## Encouragement of social procurement

- Particularly through consideration in
  - Performance description
  - Technical specifications
  - Determination of award criteria
  - Definition of contract conditions
- From experience a source of complications in the tender process when applied without special know-how



## Social Award Criteria

Subject of award criteria or contract performance conditions can be:

- Measures aiming at the protection of health of the staff involved in the production process
- the favouring of social integration of disadvantaged persons or
- members of vulnerable groups amongst the persons assigned to performing the contract

provided that they relate to the works, supplies or services to be provided under the contract.

For instance, such criteria or conditions may refer, amongst other things, to

- the employment of long-term job-seekers,
- the implementation of training measures for the unemployed or young persons in the course of the performance of the contract to be awarded.



Thank you for your attention!