

CONFEBUS contributions on how competition rules and sustainability policies work together.

Public procurement, represents about 14-16% of the EU GDP and is a powerful instrument to support the transition towards a sustainable economy. The spending power of Public Authorities can facilitate critical demand for green services and business models, while increasing the competitiveness and availability of innovative products and services. In this sense, public procurement is of key importance in vital sectors for green transition and decarbonisation such as public transport. In particular, it can set requirements for energy efficiency and energy use of vehicles, boost of new technologies such as green fleets, and promote quality, accessibility and digitalization of the sector. It is thanks to the Authorities' control over public transport tenderings that Spain has the newest fleet of buses and coaches in the EU, allowing and guaranteeing newer vehicles providing services in the market than in other Member States.

The EU legal framework, and in particular the European public procurement directives, offer procedures for sustainable public procurement as a voluntary element. Under these directives, authorities must award contracts on the basis of the most economically advantageous tender (Articles 67 of Directive 2014/24 and 82 of Directive 2014/25), which can be assessed on the basis of one of the following criteria: 1) price; 2) cost; 3) best value for money, which allows for qualitative, social, environmental and innovation-related criteria at each stage of the procurement process.

The procurement of public passenger transport services is regulated by EU Regulation 1370/2007. The main objectives are to guarantee safe, efficient, high-quality passenger transport services through regulated competition that also ensures transparency and good performance of public passenger transport services, taking particular account of social and environmental factors and territorial planning or the need to offer certain fare conditions to certain categories of passengers, such as senior citizens, and to eliminate disparities between transport undertakings in the various Member States which, by their nature, can considerably distort competition conditions.

Regarding quality criteria when awarding contracts, that Regulation states that 'competent authorities are free to establish social and quality criteria to maintain and increase quality standards for public service obligations, for example with regard to minimum operating conditions, passenger rights, the needs of persons with reduced mobility, environmental protection, passenger and employee safety, and obligations arising from collective agreements and other rules and agreements concerning workplaces and social protection at the place of performance of the service' (17).

However, despite the possibilities and flexibility of the EU legal framework, in practice, Authorities tend to award contracts on the basis of the lowest price to the detriment of environmental, qualitative and social criteria. In this way, contrary to what European Green Deal pursues, tendering



companies investments' in sustainability and improvement of the quality and safety of service are discouraged by authorities, which might have a negative impact on the safety of services, consumers and social and economic cohesion.

Public tenders for bus and coach public transport services should be fair and balanced, so that economic aspects are not the main requirement, but rather is sustainability from a social, environmental and economic point of view, always emphasising safety, innovation and quality of services. Therefore, it is necessary to articulate incentives for authorities to make full use of the possibilities offered by EU framework, encouraging decarbonization and improvement of the supply of services of general economic interest sectors such as public transport.

Authorities must avoid turning tendering procedures into lowest price bids. They should not ignore other aspects that define public services; otherwise the incentive for improvement by bidders disappears, as all efforts are focused on offering the lowest fare possible.

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