Preliminary Market Consultation

IN PUBLIC PROCUREMENT

PMC =

- a voluntary
- pre-tender process (or a technical dialogue)
- undertaken by, or on behalf of a CA
- to inform, analyze or engage directly with the market
- with a view to preparing a future procurement

Recital 8 of the previous directive 2004/18

"Before launching a procedure for the award of a contract, CAs may, using a technical dialogue, seek or accept advice which may be used in the preparation of the specifications provided, however, that such advice does not have the effect of precluding competition."

Art. 40.1 Classic Directive (Art. 58 Utility Directive)

"Before launching a procurement procedure, CA may conduct market consultations with a view to preparing the procurement and informing EOs of their procurement plans and requirements"

Art. 40.2

"… does not have the effect of distorting
competition
and
does not result in a
violation of the principles of
non-discrimination and transparency"

Art. 41

“Where a candidate or tenderer … has advised the CA, whether in the context of Article 40 or not, or has otherwise been involved in the preparation of the procurement procedure, the CA shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer”

Art. 41.3

"Prior to any exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition.

The measures taken shall be documented in the individual report required by Article 84."

Art. 24.1

“CA [shall] ***take appropriate measures*** *to effectively prevent, identify and remedy CoI arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all EOs.”*

Art. 24.2

"The concept of CoI … covers any staff members … or … service providers who may … influence the outcome of the procurement procedure … [who] have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence…"

Art. 84.4

the CA shall … keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as … communications with EOs and internal deliberations, preparation of the procurement documents …

Art. 18.1

“CA shall treat EOs
equally and without discrimination
and shall act in a transparent and proportionate manner”

Art. 18.2

“The design of the procurement shall not be made with the intention of … artificially narrowing competition.

Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain EOs”

The 7 golden rules

as to how to carry out a PMC =

1. Do not dance, unless you know the steps !

2. Pre-agree Rules of Engagement/Framing Note

- How to identify and engage with Eos
- Call for expression of interest + PIN

3. Pre-agree methodology

- Questionnaire
- Telephone interview based on standard questions
- Zoom/Teams meeting
- Live events/meet the buyer

4. Detail your needs & required outcomes

in writing

&

then read them out loud

5. Set aside time

Allow 3-6 months

6 Ensure proper audit trail is in place

PMC Report

7 Remember …

THANK

YOU