



Tool: Checklist for protecting competition when splitting contracts into lots

Purpose of the Checklist

- To guide and support public procurement practitioners to split contracts into lots in ways that promote effective competition in public procurement that helps achieve better value for money.

Public Procurement
Principle: **Access, Integrity,
Efficiency**

Procurement Stage:
Pre-tendering, Tendering

Audience: **Procuring Entity,
Policy Maker**

Description

Procurers may be concerned that large or bundled contracts may risk reducing competition in the market, either by preventing efficient small or specialist firms from bidding, or by creating an overwhelming advantage for the winning bidder in future tenders. They might want to split contracts into lots to reduce this risk. However, at the same time, procurers will not want to facilitate collusion, or prevent bidders from exploiting economies of scale or scope to improve the value of their bid. Therefore, when splitting contracts into lots, procurers should take care to do so in ways that do not reduce competition and the value achieved by the procurement.

Protecting competition when splitting contracts into lots

Procurers will sometimes be rightly concerned about the risk that large bundled contracts may reduce competition:

- **Efficient SME or specialist firms may be unable to provide the full bundle of goods or services that the procurer is purchasing. The procurer may therefore find that the intensity of competition and hence the value it obtains is weaker than it might be.**
- **Where their purchases account for all or most of the market for a certain good or service, they may, by awarding the contract to a single firm, reduce the number of bidders in future tenders and so increase the market power of their chosen supplier.**

Before splitting the tender into lots to address these two concerns, procurers should conduct a market analysis to help consider whether, given the type of product or service that they are procuring, tendering smaller lots is the best solution.

- **On the first concern, are there no other ways to encourage participation by smaller specialist firms? For example, could simplifying the bidding procedure help them bid for the contract? Might they be able to form a joint bidding consortium? See for example the other advice within this OECD toolbox on improving [access](#) to procurement.**
- **On the second concern, would the losing bidders exit the market and therefore not participate in future procurements, or would they, and others, bid again the next time the contract is tendered? Similarly, in future procurements would the strength of rival bids be limited by their lack of experience, or would they be able to strengthen their bids and demonstrate their experience by poaching staff from the incumbent contractor.**

If splitting the contract into lots would promote competition, then procurers should ensure that they split lots in ways that do not risk reducing competition and the value that the procurement achieves. Below we provide a checklist of ways to protect and promote competition when splitting contracts into lots. For the avoidance of doubt procurers should also ensure that their actions are consistent with the applicable procurement law.

A.1 To split contracts into lots without reducing competition and the value that the procurement achieves, at the pre-tendering stage the procurer:

- Should provide all potential bidders with clear tender documentation including all the relevant information that is available on the product or service that is being procured in order to help minimise any advantage to the incumbent supplier (e.g. electronically available and free of charge).
- Should consider dividing a contract into lots where it is aware of small or specialist firms that will not otherwise participate in the bidding. For example, it should not carve out an additional lot if it expects there to be fewer competitors for that lot than there would be for the bundle of lots.
- Should allow a bidder to make bids for different combinations of lots (so-called *package bidding*) in order to obtain any cost synergies available from providing a larger bundle of goods or services. Obtaining these synergies may for example encourage non-local bidders to bid for packages of different lots even if they are unwilling to bid for individual lots.
- Should use *award limits* rather than *participation limits* in those cases where they want to prevent all lots being awarded to a single firm, and are confident that the benefits from doing so will outweigh the ensuing loss of competition for the contract in question.
- Should consider making the number of lots smaller than the number of expected bidders. This can make it more difficult for colluding bidders to agree a division of lots and hence improve value achieved providing it does not create inefficiency.
- Should consider making the lots different in size from the market share of the bidders. This can make it more difficult for colluding bidders to agree a division of lots and hence improve value achieved providing it does not create inefficiency.
- Should consider in repeated procurements making the division into lots unpredictable (for example by changing the size or composition of the lots), and making bidders aware of this unpredictability. This can reduce the risk that lot division facilitates collusion and hence improve value achieved providing it does not create inefficiency.

A.2 To split contracts into lots without reducing competition and the value that the procurement achieves, at the tendering stage the procurer:

- Should refer to the Competition Authority any suspicions of actions taken by incumbents to obstruct rivals ability to put together an attractive bid. The Competition Authority is able and may decide to determine whether this constitutes anti-competitive exclusionary conduct.
 - Should refer to the Competition Authority any suspicions of actions taken by bidders to rig the bidding.
 - Should be aware that joint bidding may be anti-competitive in cases where the bidders are capable of submitting separate bids. There are different ways procurers might treat joint bids. For example, one option could be that procurers may wish to set out a presumption that joint bidding between horizontal rivals will not be permitted, unless they are not able to bid independently. Alternatively, procurers may wish to make no presumption and take a case-by-case approach. For the avoidance of doubt, procurers should also ensure that their actions are consistent with the applicable procurement law.
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Further Resources

Albano (2017), "[Competition in Public Procurement Markets](#)"

OECD (2015), "[Competition and the use of tenders and auctions](#)"

OECD (2009), "[Guidelines for Fighting Bid Rigging](#)" (available in 15 languages)

SIGMA (2016), "[Division of Contracts into Lots](#)"