



Guide to compliance with competition law in joint-bidding, Ireland



Public Procurement Principle: **Access**



Procurement Stage: **Tendering**



Audience: **Private sector, Policy maker**

Description

The Competition and Consumer Protection Commission of Ireland has prepared a guide on how to comply with competition law when tendering as part of a consortium.

The guide is aimed at helping SMEs involved in consortium bidding. In the guide, the commission identifies four factors that economic operators must take into account in their self-assessment on whether the pro-competitive benefits that result from joint bidding outweighs anti-competitive effects:

1. The consortium bid must produce real efficiency gains
2. Consumers must benefit from those efficiency gains
3. Any restrictions of competition involved in the consortium bid must be indispensable to the achievement of the efficiency gains
4. Consortium bidding must not substantially eliminate competition either in the particular public procurement competition or in other markets.

A consortium bid does not cause competition problems if:

- The consortium members are not actual or potential competitors
- The consortium members are all owned by the same parent company, i.e., the consortium members all form part of a single economic entity, or 'undertaking', for the purposes of competition law. To come under this heading this must be the case before you start discussing your joint bid. The fact that a merger or takeover is planned is not enough.

In the Commission's view, a consortium bid even between actual or potential competitors will not cause competition problems if:

- none of the parties to the consortium bid could fulfil the requirements of the tender competition or the contract on its own
- no subset of the consortium members could together fulfil the requirements of the tender competition or the contract
- only the minimum amount of information strictly necessary for the formulation of the consortium bid and the performance of the contract (if awarded) is shared between the members of the consortium and is restricted to relevant staff on a 'need to know' basis. (More specifically, discussions between them must be confined to the relevant procurement project and must not involve disclosure of the terms, especially prices, that individual consortium members currently offer to other customers or of information relating to other procurement projects or their future strategies, whether related to pricing, capacity, customers or markets.)
- the consortium members ensure that they compete vigorously as normal in all other contexts. In other words, consortium members should not compete less aggressively with each other when tendering separately for other contracts or when offering their goods and services generally on other markets just because they have formed a consortium to help them bid for one particular contract.

Source: OECD (2018), SMEs in Public Procurement: Practices and Strategies for Shared Benefits, OECD Public <https://doi.org/10.1787/9789264307476-en>

