



Specialised training for public procurement in France



Public Procurement Principle: **Transparency, Integrity**



Procurement Stage: **Pre-tendering, Tendering**



Audience: **Procuring entity, Civil society, Policy maker, Private sector**

Description

The Central Service of Corruption Prevention, an inter-ministerial body attached to the French Ministry of Justice, has developed training materials for public procurement to help officials identify irregularities and corruption in procurement. Below is a case study from these training materials that illustrates the challenges faced by various actors at different steps of the procedure. The example also highlights the difficulty of gathering evidence on irregularities and corruption.

Issue at stake

Following an open invitation to bid, an unsuccessful bidder complains to the mayor of a commune accusing the bidding panel of irregularities because his bid was lower than that submitted by the winning bidder. How should the mayor deal with the problem?

Stage one: Checking compliance with public procurement procedures

The firm making the complaint is well known and is not considered “litigious”. The mayor therefore gives the claim his attention, and requests that the internal audit service check the conditions of the award of contract. In particular, the mayor asks that the audit service check whether the procedure complied with the regulations, as the lowest bidder is not necessarily the best bidder. The mayor also asks the internal audit service to make sure that tender notices were published in the official journal. The mayor learns from the report prepared by the bidding committee that although the procedure followed regulations, the bid by the firm in question had been revised upwards by the technical services responsible for comparing the offers. Apparently, the firm lodging the complaint had omitted certain cost headings which were added on to its initial bid.

Stage two: Replying to the losing bidder

The mayor lets the losing bidder know exactly why its bid was unsuccessful. However, by return post, he receives a letter pointing out that no one had informed the company of the

change made to its bid. In fact, the change to the bid was unjustified, given that the expenditure that had purportedly been omitted had been included in the bid under another heading.

Stage three: Suspicions

The internal audit service confirms the unsuccessful bidder's claim and points out that nothing in the report helps to establish any grounds for the change made by the technical service. It also points out that it would be difficult for an official with any experience, however little, not to see that the expenses had been accounted for under another heading. The mayor now requests that the audit service find out whether the technical services were in the habit of making such changes, whether they have already processed bids from the winning bidder and if contracts have been awarded frequently to the winning bidder in this case. He also requests that the audit service check the background of the technical service officials involved in the case. Do they have experience? Have they been trained? Do they have links with the successful contractor? Could they have had links with the contractor in their previous posts? What do their partners and children do? Examination of the personnel files of the officials, and the shares of the company which won the contract fail to yield anything conclusive. The only links between the officials or their families and the successful bidder are indirect.

Stage four: Handing the case over to authorities of the Ministry of Justice

Having suspicions, but no proof, the mayor hands over information so that investigations can begin. The investigators now have to find proof that a criminal offence (favouritism, corruption, undue advantage, etc.) has been committed. These investigators will exercise their powers to examine bank accounts, conduct hearings and surveillance, etc. The case has now moved out of the domain of public procurement regulations and into the domain of criminal proceedings.

Conclusion

Unable to gather any evidence, and with no authority to conduct an in-depth investigation or question the parties concerned, the mayor makes the only decision that is within his power – he decides to reorganise internally and change the duties of the two members of staff who are involved in the case. However, he must proceed cautiously when giving the reasons for his decision so as to avoid exposing innocent people to public condemnation or himself to accusations of defamation while the criminal investigation is in progress. The mayor also decides that, going forward, the reports made to the bidding committee by technical services should give fuller explanations of calculations and any changes technical services make to the bids. The mayor also mandates that technical services inform bidders systematically of any changes.

Source: OECD (2018), Public Procurement in Nuevo León, Mexico: Promoting Efficiency through Centralisation and Professionalisation, OECD Public Governance Reviews, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264288225-en>

