

Riikide vastuste koondtabel

Riikide esindajatele esitati järgmised küsimused:

- 1) At what stage are the prices disclosed?
- 2) Is disclosure of prices obligatory for all tenderers or only of the successful tenderer's offer?
- 3) Are components of the price disclosed or only the final price?

| Riik | Vastus esimesele küsimusele | Vastus teisele küsimusele | Vastus kolmandale küsimusele |
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| Malta | <p>The answer to this question depends on the value of the contracts. In contracts above the applicable EU thresholds (transposed into Maltese law by virtue of LN 177/2005 which has now been replaced by LN 296 of 2010) under Maltese law the procurement process is structured in what is known as the "three packages" procedure. The first package includes typically the bid bond, the second contains the technical offer, whereas the third package would contain the financial offer. The third package (financial offer) is only opened if the offer is compliant in its first and second packages. When this is the case (and in case of multiple offers being declared compliant) the price is published by the contracting authority.</p> <p>In tenders of smaller value, the publication of the financial offer is generally immediate upon the opening of the bids.</p> | Please see answer above. | Generally the final price is disclosed. In appeal procedures however the appellants have a right to ask for a breakdown of the component elements of the price. |
| Poland | In Poland all prices are disclosed at the opening of tenders. | The ordering party discloses prices of all submitted tenders, regardless of whether the tender is successful or even whether it is validly submitted. The verification and | Components of the price are also disclosed. As far as such components constitute the tenders' assessment criteria, they are included in the tenders' opening protocol. If |

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| | | assessment of tenders is performed at the later stage, therefore, at the moment of opening of tenders it is not established, which tender is successful. Opening of tenders is open for public. The ordering party opens the envelopes with tenders in the order of submission thereof and discloses names of the tenderers and the prices, as well as other figures constituting tenders' assessment criteria. | the tenders' assessment criterion is only the final price, but the tenderers submit with their tenders also a price list indicating elements of the final price or the unit prices, such price lists are available to all tenderers immediately after opening of tenders. Each tenderer may request such price list from the competitors' tenders to be disclosed to him or provided in a copy. |
| Netherlands | In the Netherlands there is no absolute obligation to disclose prices offered in a tender. Historically while tendering public contracts for works a practice was established to disclose overall prices immediately after the opening of the bids. With the advent of electronic tenders this practice has since been largely abandoned. | Contracting authorities must disclose the characteristics and relative advantages of the winning bid and this can include the overall price or the score on the price award criterion which enables other tenderers to deduce the overall price. This information is disclosed after the tender in the letter with which the contracting authority informs the tenderers of the provisional winner. At least the score of the winning tenderer must be disclosed, but contracting can voluntarily disclose all overall price scores. | Contracting authorities must however maintain strict confidentiality with regard to all competition sensitive information and disclosing a price breakdown would be in breach of this obligation. Therefore only overall prices are disclosed and not the underlying price elements. |
| Latvia | Under Latvian law, prices are disclosed at opening of tenders. | Disclosure of prices are mandatory for all tenderers. Price of successful bidder is published in home page of the Procurement Monitoring Office. | components are disclosed: Article 55(5) of the Public Procurement Law "Tenders shall be opened in the order of submission thereof, stating the name of the bidder, time of submission of the tender, the price and other information, which characterises the tender. Upon request of participant of the meeting, the contracting authority shall present a financial tender in which the price is indicated in accordance with the required form of financial tender. If the subject-matter of a procurement has been divided into several parts and their number is unreasonably large, the contracting authority is not obliged to state |

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| | | | <p>the price for each part, but instead it may copy and provide to each participant of the meeting a copy of the financial tender, in which according to the requested form of the financial tender the price for each part is indicated, ensuring that information, which is not generally accessible, is not disclosed.”</p> <p>Article 49(3) of the Law On Public Procurements of Public Service Providers “Tenders shall be opened in the order of submission thereof, stating the name of the bidder, the time of the submission of the tender, the price and other information, which characterises the tender. Upon request of participant of the meeting, the public service provider shall present a financial tender in which the price is indicated in accordance with the required form of the financial tender.”</p> |
| Spain | Under the most commonly used tender procedure in Spain (i.e., open tenders), prices are disclosed at the opening act of the economic or objective criteria tender’s envelope, which takes place after the opening act and evaluation of subjective criteria tender’s envelope, if any. | Disclosure of prices is mandatory for all tenderers, except for those excluded from the tender procedure before the corresponding opening act (i.e. when solvency requirements are not met). | Disclosure of prices includes all corresponding components. Thus, whenever the tender price is composed of different elements or will be awarded based on unit prices, all of those components will be disclosed. |
| Denmark | As regards construction contracts put out to tender we have a special Danish law requiring public opening of the tenders just after deadline - and thus in front of the tenderers - and disclosure of total prices as well as any reservations. This Danish law apply for both EU tenders and national tenders (but is limited to | Please see above. It is - except for construction contracts - not obligatory to disclose prices of all tenderers, but in general the prices related to the awarded tenderer will be disclosed. However, we do have regulatory exceptions allowing the contracting authority to keep prices secret, e.g. due to confidentiality reasons. | <p>In general only the total / combined price will be disclosed (as being the price relevant for evaluation).</p> <p>Please be aware that the right to request access to public files is quite wide in Denmark. This means that in principle any third party can request access to file - including prices (total as well as unit) - and</p> |

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| | <p>construction contracts).</p> <p>As regards other contracts (services and goods) the price of the winning tenderer will in general be included in the announcement (the "Alcatel letter") with information on the award (and thus NOT when receiving/opening the tenders). Sometimes such announcements also include the prices of other tenderers. This letter will be sent, when the contracting authority have had time to evaluate the incoming tenders and thus after award.</p> | | <p>as a starting point such third party will receive everything. The contracting authority will almost always contact e.g. a supplier and thus hear if there would be any grounds for redacting information, e.g. due to confidentiality. Prices and especially unit prices are quite often redacted. If your client sees himself in such a situation (i.e. third party has requested access to file/prices) or if there is a risk of such request when participating in a Danish tender we would always recommend to contact a Danish lawyer to ensure your clients' rights. Perhaps even prior to submitting a tender in Denmark.</p> |
| Finland | <p>In Finland, information (including prices) about tenders can be disclosed to interested parties, such as all tenderers, once the contract award decision has been made. The information can be disclosed to all others (the public at large) only after the written contract with the successful tenderer has been made. However, it should be noted that prices may be declared confidential (see our reply to Question 3).</p> | <p>As a general rule, all documents held by public authorities are considered as public information. Therefore, the obligation to disclose information about tenders applies to all tenders, and not only to the successful tender. In other words, also the prices of unsuccessful tenderer may be disclosed if they are not declared confidential. (see our reply to Question 3).</p> | <p>Prices and components of prices are treated as confidential information if the tenderer so requests. Confidential information may not be disclosed to the public. However, the interested parties (i.e. mainly those who have participated in the tender) have the right to receive confidential price information to the extent that the information has been used in the comparison of tenders. So, if the comparison has been made on the basis of the final price, the interested parties have the right to know the final price but not the components of the price. If also components have been compared for the award decision, then the interested parties have the right to know these components.</p> |
| Austria | <p>Sect 118 BVergG provides in relation to open procedures and to restricted (= non open) procedures that tenders are to be opened in the presence of the bidders. In this, the contracting authority is obliged to call out, among others (i) the total</p> | <p>Sect 131 BVergG, which applies to all of the afore-mentioned types of award procedures, provides that the contracting authority has to announce the award decision to the remaining bidders prior to awarding the contract to the preferred bidder. In this, it has to announce, among</p> | <p>Look above.</p> |

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| | <p>prices of the tenders, (ii) discounts or surcharges (if applicable), (iii) partial prices resp variant prices (in case the invitation for tender allows for a tender in lots resp for offers of variants).</p> <p>In the negotiated procedure, by contrast, which is usually organised in several rounds, bidders are not admitted to the opening of the tenders, rather, the contracting authority is under an obligation to maintain confidentiality as regards the number and names of the participants (sect 105 para 6 BVergG) and thus even more of the prices until the announcement of the award decision.</p> | <p>others, the name of the preferred bidder, the features of the successful tender and the total price of this tender (Thus, regarding your question, there is no obligation to announce the elements of this price at this stage). There is an exception to the said disclosure obligation only to the extent that the notification of these pieces of information impairs an legitimate interest of the preferred bidder in confidentiality or impairs free and fair competition.</p> | |
| Belgium | <p>Under Belgian law, the total/final price of all tenders is disclosed during the opening of the tenders, but <u>only for the adjudication procedure</u> (award on the basis of the lowest price only). For quote request, negotiated procedure and competitive dialogue, prices are never disclosed during the opening of the tenders.</p> | <p>The final price and the components of the price <u>can</u> be disclosed in the award decision, but this is as such not mandatory. Immediately after the award decision, the contracting authority must nevertheless notify:</p> <p>a every non-selected candidate about the reasons for the non-selection, by sending a copy of the relevant part of the motivated decision;</p> <p>b every tenderer with an irregular or unacceptable tender about the reasons for the exclusion of their offer, by sending a copy of the relevant part of the motivated decision; and</p> <p>c every tenderer whose (regular) offer has not been considered to be the</p> | <p>On the other hand, the Public Procurement Act of 15 June 2006 prohibits contracting authorities from divulging information that would violate the public interest, legitimate commercial interests or the principle of fair competition. This provision is open to interpretation and has of course a practical influence on the behaviour of the contracting authorities.</p> <p>In practice, contracting authorities rarely provide a full copy of the bids of other tenderers to their competitors. Especially for works contracts, tendering authorities are generally very reluctant to divulge any unity prices. To date, the Council of State has never obliged a contracting authority to provide a copy of these bids or specific information in these bids during summary</p> |

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| | | most economically advantageous tender (in the case of a quote request) or who does not offer the lowest price (in the case of an adjudication), by sending a copy of <u>the relevant part of the motivated decision</u> . In most of the cases, this part will contain some information about the final prices, and eventually about its components, but it is up to the contracting authority to decide which information. | proceedings (the suspending procedure of extreme urgency, being the standard procedure in the field of public procurement). However, it has regularly given injunctions to contracting authorities to provide detailed information about the prices in proceedings on the merits of the case (annulment procedure), for instance when the unsuccessful bidder had criticised the possibly 'abnormal' prices of its competitor. |
| Ireland | There are no obligations under Irish law requiring contracting authorities to disclose pricing during tender processes. | As you will be aware OJEU Contract Notices do require an estimate of price and Contract Award Notices require details of prices to be disclosed. In Ireland some but not all awarding authorities here comply with those obligations and provide details in relation to price. | Some but not all awarding authorities disclose the price of the winning tender in standstill letters issued to unsuccessful bidders. Often price information is not disclosed as being commercially sensitive. |
| Luxemburg | In Luxembourg law, concerning open and restricted procedures, prices are disclosed at the opening of the tenders. No such provision requiring the disclosure of the prices exists for tenders under the negotiated procedure. | Prices of all the bidders are disclosed. | Unit prices are not disclosed. Luxembourg legislation prohibits disclosure of unit prices during and after the tender process. Thus, only the total price for the tender or the prices of each lot are disclosed at the opening of the tenders. It cannot be excluded that further price elements would need to be disclosed in a judicial review procedure. |
| Portugal | The key piece of legislation regarding Portuguese public procurement law is the Public Contracts Code (PCC). Most award procedures provided for in the PCC take place on an electronic platform. In most of these procedures, a list of all tenderers is published on the day following the expiry of the deadline for the submission of tenders. | As follows from the answer to the previous questions, tenderers become aware of the prices offered by all other tenderers. | Whenever tenderers are required to indicate certain price components in their offers, such information will be available to the other tenderers. In most procedures, the aforementioned access granted to the other participants' tenders also encompasses information on such price components. |

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| | <p>Afterwards, the tenderers included in said list are given access to the tenders submitted by all participants.</p> <p>In direct award procedures (ajuste direto), in which more than one economic operator participate, disclosure of prices generally occurs with the publication of the so-called preliminary report. This report is issued by the jury of the procedure once the tenders are submitted and contains inter alia a first ranking of the tenders. Since such ranking must be reasoned, tenderers become aware of the prices offered by other tenderers. However, tenderers also have a right to access the other participants' tenders in order to duly exercise their right to be heard before a final report is issued.</p> | | |
| France | <p>During the tender process and before the award decision of a public procurement contract, any disclosure of financial information and therefore of prices, between the candidates or by the public authority, is prohibited (CE 20th October 2006, <i>Syndicat des eaux de Charente-Maritime</i>, No. 278601). Disclosure of prices may indeed characterize anti-competitive practices, such as trusts, if they take place prior to the submission of tenders and the award decision of the public market (Competition Authority, Decision No 10-D-10 of 10 March 2010; Competition Council, Decision No</p> | <p>After the award decision and before the signing of the procurement contract, the overall price of the successful tenderer must be communicated to the unsuccessful candidate who makes the request (article 83 of the French public procurement code). Indeed, the french Conseil d'Etat recently ruled that the overall price was a component of the offer within the meaning of article 83 cited above, and that non-disclosure thus constituting a breach of the tender rules, except if the price disclosure may harm the business secrecy (CE 11th march 2013, <i>Ministre de la Défense c/ Société Aeromécanic</i>, No. 364827 ; CE 29 may 2013, <i>Ministre de la Défense c/ Société</i></p> | <p>Between the award decision and the signing of the contract, only the overall price of the successful tendered can be disclosed, under the condition that the disclosure won't harm business secrecy.</p> <p>After the signing of the contract :</p> <ul style="list-style-type: none"> - regarding the successful tenderer, the detailed price is in principle communicable to third parties by the contracting authority. However, if the services are part of repetitive following markets, that is to say if they involve the award of a new public market recurrently, only the overall price is communicable. |

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| | <p>05-D-45 of 22 July 2005; CA Paris 1st ch, 18 January 2000 1999/08982; CA Paris 1st ch, May 24, 2005, No. 2005/01573).</p> <p>The prices can be disclosed after the award decision, and after the signing of the market, as specified bellow.</p> | <p><i>Aeromécanic</i>, No. 364827).</p> <p>After the signing of the procurement contract, disclosure of financial information by the contracting authority is not as sensitive from the competitive point of view. Consequently, some elements are considered as administrative documents and are in principle communicable upon the request of a citizen (notably the unsuccessful candidate) (article 2 of Law No 78-753 of 17th July 1978) :</p> <ul style="list-style-type: none"> - the detailed price for the tenderer (CADA*, No. 20072696, 26th July 2007); - the final price for the other unsuccessful companies (CADA, No. 20072696, 26th July 2007). <p>* CADA means <i>Commission d'accès aux documents administratifs</i>, an independant administrative authority and consultative, responsible for ensuring freedom of access to administrative documents. Its main role is to provide advice on the refusal by the administration to communicate administrative documents.</p> | <p>Indeed, disclosure of the detailed price to third parties could harm competition in the renewal of the market (CADA, No 20090938, 19th March 2008) ;</p> <p>regarding the unsuccessful companies, technical and financial details of the offer is not communicable and only the final price can be disclosed (CADA, No 20072696, 26th July 2007)</p> |
| Slovenia | <p>According to Slovenian Public Procurement Act, the final prices as contained in the bids submitted to the Employer are disclosed at the opening of bids. Final contractual price is namely an obligatory part of the minutes on the opening of bids.</p> | <p>As the final price is an obligatory part of the minutes on the opening of bids, final prices of all bids, submitted within the deadline as set by the Employer, are disclosed.</p> | <p>According to provisions of the Slovenian Public Procurement Act, only the final price must always be disclosed at the opening of bids and included in the minutes. However, the Employer may decide to disclose also other data from the bids, which are not defined by the Bidder as his business secrecy. Such decision has to be</p> |

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| | | | adequately noted in the minutes on opening of bids. With regard to business secrets, however, provisions of Slovenian Public Procurement Act specifically provide, that the final price, specified quantities, prices per units, the value of individual items of the bid and in case of criteria representing the most economically advantageous bid, data indicating the evaluation and/or the classification of the tender within other award criteria, are always publicly available data. That data has to be made available to all other bidders, if they so request, after the decision on awarding the contract is issued. |
| Czech Republic | The tender prices are disclosed at the stage - opening of the envelopes with tenders to all present tenderers. The tender prices and other relevant information are also described in the report on the opening of envelopes, which shall be inspected by all tenderers (not only by tenderers present) upon the request (and make an extract or copy). The contracting authority is also obliged to make the report (with tender prices included) available to tenderers by electronic means without delay after the opening of the envelopes. | Tender prices of all tenderers are disclosed. | Disclosure of the final price or also the components of the price depends on specific conditions determined by the contracting authority in the tender documentation; both variants described by you are possible under the Czech law. Any components of the tender prices shall be disclosed, if these components represent award criteria (including partial award criteria). Anyway, in specific cases all components of the tender price determined in the successful tender's offer shall be disclosed once the contract is concluded (public contracting authorities are obliged to publish the contract with any alterations and amendments containing components of the price; it shall not apply to minor public contracts with a price not exceeding CZK 500.000 (approx. EUR 18,500) without VAT. |
| Germany | Under the current legal regime in Germany, tender prices are only disclosed in procurement processes | Disclosure of prices is required for all tenderers' offers, not only for the successful tenderer's. | Disclosure is obligatory for final prices only, not for unit prices. The public authority may decide to disclose sub-totals for parts of the |

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| | <p>for the award of construction contracts, but not for contracts concerning the supply of goods and services. For construction contracts, tender prices are disclosed at the opening of tenders at which all bidders may be present. All bidders may request to receive a copy of the minutes of the opening with the tender prices. If, after review the tenders, corrections are to be made to the tender prices (e.g. in case of obvious calculation errors), all bidders having request a copy of the minutes need to be informed accordingly.</p> | | <p>tender, but in practice this is hardly ever done.</p> |
| Lithuania | <p>The prices are disclosed at the opening of the tenders, i. e. during a meeting of the Public Procurement Commission. The meeting is being held at the place and the hour and the minute specified in the contract documents. Where the tender is evaluated on the basis of the lowest price criterion, the prices are disclosed immediately. Where the tender is evaluated on the basis of the most economically advantageous tender, the prices are disclosed only after the contracting authority verifies the compliance of the technical data of the tenders and the suppliers' qualification against the requirements fixed in the contract documents, and assesses the technical merits of the tenders according to the requirements of the contract documents and after communicating the results of such</p> | <p>The prices of all tenderers whose tenders have not been rejected are disclosed.</p> | <p>Only the final price is disclosed. However, in some cases components of the final price could be disclosed (e. g. if the components are part of the evaluation or if the components price is public during the execution of contract).</p> |

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| | verification and assessment to the tenderers. | | |
| Slovakia | <p>The prices (or other criteria which may be represented in figures) offered are published at opening of the offers.</p> <p>According to Slovak public procurement law, the offer in the public procurement shall contain the separate and closed part marked as "Criteria", containing the information regarding the satisfaction of the determined criteria of assessment of the offers, and the part "Other", containing all other information.</p> <p>At the time of opening of bid envelopes, parts of the offer are disclosed that are marked as "Criteria", in particular the business name and registered address of the bidder and offer of the bidder on meeting the criteria specified by the contracting authority for evaluation of the offers, which can be expressed by a figure (number). No other information from the part of the offer marked as "Criteria" should be disclosed at that time. As result, this may mean that at the time of opening of envelopes, either both relevant parts (expressed by a figure/number) of technical and financial offers are disclosed, or only financial offer is disclosed, depending on the respective criteria set by the contracting authority in the particular tender.</p> | Prices offered by all bidders which were not excluded from the tender are published. Moreover, after the conclusion of the contract with the successful bidder, the entire offers of all bidders are published. | <p>Only the price which constitutes the criterion for assessment of offers is published after opening of the offers. However, after conclusion of the contract with the successful bidder, the entire offers are published.</p> <p>After the signing of the agreement which resulted from the tender, the whole offers, i.e. both the "Criteria" and the "Other" part, are published online at profile of public procurer. However, the respective provision of the Public Procurement Act on this publication after conclusion is relatively new (effective from 1 July 2013), therefore, current practice cannot yet be checked</p> |

