

# 9<sup>TH</sup> CONFERENCE ON COMPETITION AND OWNERSHIP IN LAND TRANSPORT

## CONSIDERATION OF QUALITY CRITERIA WHEN AWARDING BUS TRAFFIC CONTRACTS

*Marja Rosenberg, M.Sc.Tech., Senior Research Scientist, VTT Technical Research Centre of Finland, P.O. Box 1800, FIN - 02044 VTT Finland, e-mail [marja.rosenberg@vtt.fi](mailto:marja.rosenberg@vtt.fi)*

*Pirkko Erämetsä, M.iur, Attorney-at-Law, Forum Partners Attorneys Ltd., Mannerheimintie 20 B, 00100 Helsinki, Finland, e-mail [pirkko.erametsa@fp.fi](mailto:pirkko.erametsa@fp.fi)*

*Åsa Krook, LL.M., Attorney-at-Law, Forum Partners Attorneys Ltd., Mannerheimintie 20 B, 00100 Helsinki, Finland, e-mail [asa.krook@fp.fi](mailto:asa.krook@fp.fi)*

### **1.Introduction**

This paper is based on the results of the survey "Consideration of quality criteria when awarding bus traffic contracts", made by VTT and Forum Partners Ltd in Finland 2004. The survey was commissioned by the Helsinki City Transport Office and the Helsinki Metropolitan Area Council.

The study contemplates whether and how quality criteria could be taken more broadly into consideration in the competition process for bus traffic contracts in the Helsinki Metropolitan Area with the aim of improving the quality of bus traffic services.

Both of the above mentioned organisations are the authorities in competition tendering in bus transport, Helsinki City Transport office in the inner city bus transport and Helsinki Metropolitan Area Council in the regional and the inner city bus transport in the neighbouring cities of Espoo and Vantaa. Both authorities use the same kind of competition documents where the quality is considered only in the part of comparison of the rolling stock criteria. Of course there are also some quality demands for the tenderers and for the transport services, but they don't act as a comparison factor when awarding contracts. The bonus and sanction is

in use as well, but the survey didn't aim to change this system, although it is accepted as a good way to achieve better quality in some parts of bus services.

The authorities aim to catch more passengers by taking into account the quality factors as much as possible in every stage of providing service but also in the range of the costs of the bus transport to the municipalities.

The study contemplates whether and how quality criteria could be taken more broadly into consideration in the competition process for the capital city area bus traffic contracts, when the aim is to improve the quality of the bus traffic services.

According to the current Finnish law regulating public procurement and the new EU directives 'the lowest price 'and 'the most economically advantageous tender' can be applied as awarding criteria. In case 'the most economically advantageous tender criteria' is applied only awarding criteria indicated in advance in the invitation for tenders may be taken into consideration. When evaluating the tenders now, the weight of the rolling stock criteria gives 23 point in maximum and the price criteria 87 point in maximum.

**2. Experiences from Copenhagen and Gothenburg**

The contract awarding models used by the cities of Copenhagen and Gothenburg were contemplated as references for the purposes of the research. Copenhagen has introduced a new model in 2004 and Gothenburg has had its model in use for a few years.

The model of Gothenburg is based on a so called Add Proval method. There are four stages in the method; first the interviews of the potential operators, second the competition tendering and evaluating the bids, third auditing the operators who got the contracts and finally the development of quality to achieve the promised standard. They use a consult in every stage of the quality management process to insure the objectivity in the evaluation and auditing.

The weightings in evaluating the most economically advantageous tender in Copenhagen and Gothenburg are as follows:

	Copenhagen	Gothenburg
price	40 %	60 %
quality of services	35 %	20 %
quality of buses	25 %	5 %
references		10 %
experience		5 %

When awarding the contract, both the offered price and how well the operator satisfies the quality requirements the author has made in the tendering documents are considered.

Documents of call for tenders consist of requirements for transport services. The tenderers must fill the attachment templates to establish that the operator fulfills the requirements.

The author has set a minimum quality index for every tender unit and every quality criteria. The tenderer offers the quality index which the operator promises to get. The tendering documents also contain a detailed template which the operator must use to explain the quality process and several activities in the producing process. The quality is checked by continuing customer interviews. The author pays the bonus after one year's contract time if the promised quality standard is gained.

Both reference cities seemed to be very satisfied with their systems and had achieved a better quality in bus transport. Of course there had also been other actions to improve quality in public transport. There had not been any claims or problems with the operators to accept these methods, or any problems from the legal point of view.

### **3. Models in the Helsinki area**

Besides the experiences in the other cities the evaluating criteria used in tendering of cleaning services was examined as well.

On the basis of these examples the survey points out that if the quality criteria are within comparison factors when evaluating the tenders, there are some common rules:

- the quality indicators had to be quite few in number, transparent and unambiguous
- the quality indicators had to be specified so that the evaluation could be done objectively and clearly.

The following factors were found relevant in affecting the quality which the customer (passenger) recognises and the operator produces:

- operators organisation and the development of the organisation
- permanency, recruiting and education of staff
- working conditions and internal information system
- ways of cooperation
- security and safety
- flexibility in case of changes
- operation in unusual situations
- guaranteeing satisfying customer service
- reaction to feedback
- punctuality
- developing of services.

The study comes up with three different models based on which the tender procedures could be developed.

1. In 'the innovative model' awarding criteria are e.g. familiarising of the personnel with the traffic routes in question, handling of feedback, organising the flow of information, training programme for the personnel and language skills. The evaluation scale and qualification criteria for e.g. four different quality level classes are announced in the tender documents.

This alternative model is more like the Gothenburg model.

2. In 'the self evaluation model' the tenderer itself promises a quality level fulfilling or exceeding the minimum criteria set forth.

This alternative is more like the Copenhagen model.

3. In 'the ordinary model' the awarding criteria can be the same as in the innovative model. The assessment of the criteria is based on the contracting entity's evaluation and determination between the tenders.

In 'the innovative model' awarding criteria are e.g. familiarising of the personnel with the traffic routes in question, handling of feedback, organising the flow of information, training programme for the personnel and language skills. The evaluation scale and qualification criteria for e.g. four different quality level classes are announced in the tender documents.

#### **4. Assessment of the models**

Basically, from the legal point of view, different kinds of contract awarding models can be used.

The study comes up with three different models for the development of the tender procedures.

However, it should be generally kept in mind that if 'the most economically advantageous tender criterion' is applied, only awarding criteria indicated in advance in the invitation for tenders may be taken into consideration. Furthermore, the tender documents shall clearly indicate the weighting of quality and price and their evaluation grounds. The evaluation of the quality criteria shall be linked to the subject matter of the contract, not to the tenderer.

#### ***A -model***

Characteristic for the A –model, 'the innovative model' is that the weighting of the quality criteria is based upon a special scale. The valid legislation does not prevent this kind of price modelling. The awarding criteria set forth in this model, i.e. familiarising of the personnel

with the traffic routes in question, handling of feedback, organising the flow of information, training programme for the personnel and language skills, are basically also possible. It needs, however, to be taken into consideration that the criteria shall always fulfil the fundamental principles of the public procurement law and regulations - especially the transparency and equal treatment principles. The criterion shall be relevant for the procurement in question and be linked to the subject matter of the contract.

### ***B –model***

The speciality of Model B, 'the self evaluation model' is that the tenderer itself evaluates its own quality and promises a quality level, fulfilling or exceeding the minimum criteria set forth.

The minimum requirements, in numerical values, of the quality criteria are based on factors from customer satisfaction surveys and quality controls. Special attention needs to be paid thereupon that this system of setting a minimum level is equal for all the tenderers. It is also of importance to carefully control that the valuation system does not use customer satisfaction surveys and quality controls in such a way that tenderers would be discriminated or favoured by these. The risk in using customer satisfaction surveys is namely, among others, that historical facts, i.e. the orderer's former experience of the tenderers will be used to the disadvantage of new players and hinder them from entering the market.

Attention needs also to be paid thereupon that the evaluating criteria are linked to the subject matter of the contract, not to the tenderer.

In respect of model B it is also of importance to ensure that the system with the numerical values does not lead to a situation where the criteria are not transparent. As the evaluation is based on the numerical values only, it is not possible to control afterwards whether the promises of the tenderers to fulfil a certain level of quality have based on acceptable groundings and whether the orderer has followed the principle of equal treatment in its evaluation.

### ***C -model***

In the C- model, 'the ordinary model' quality weighting is based upon the orderer's requirements and descriptions of the subject matter of the tender. This should be legally possible throughout. However, in this model it is problematic that references and earlier experience of the tenderer are directly used as evaluation criteria.

For example in the decision of the Supreme Administrative Court of Finland (decision of KHO 12.12.2003, taltio 3202), the court doubted whether criteria such as references or former knowledge in local matters could be used as evaluation criteria. The Court of Justice has basically been of the same opinion as the Supreme Administrative Court (see judgement C-315 / 01 GAT) i.e., that references shall, normally, not be used as evaluation criteria but as eligibility criteria. Giving an average for newcomers (in the absence of the tenderer's specific data) does not necessarily fulfil the juridical requirements of equal treatment. The average number should be applied in respect of all tenderers in order to achieve a sustainable solution.

## **About price/quality relation**

In Finland, there are neither special public procurement legislation nor rules to regulate the setting of the balance between price and quality when applying the economically most advantageous tender. In the literature it has been considered that the weight of the price should not be set too low, as this would not fulfil the requirement of the Finnish public procurement law (Laki julkisista hankinnoista 1505/92, 7 §) setting forth the economical criteria. In Finnish jurisdiction, it has been considered that in case the winning tender is clearly more expensive than the other ones, it should show respectively better quality (Decision of the Supreme Administrative Court 19.12.2002, taltio 3384), and also among others that depending on the procurement in question the price should have reasonable weight (e.g. decision of the Competition Counsel in Finland of 2.3.2001, 2/690/2000). This means that the price shall always have a reasonable role when applying the economically most advantageous tender.

## **Summary**

From the legal point of view model A is the model with the least risk. In the light of present legislation and jurisdiction, special attention should be paid to the use of references as evaluation criteria (model C). These criteria should be used only restrictedly or should be left out completely. From the legal point of view, model B is the most complicated and risky model, especially in respect of setting the minimum requirements.

Basically, all of the procedure models seem, from the juridical point of view, to be possible. The self-assessment model does, however, have some aspects to be considered further. Attention shall also be paid to the criteria applied in the models, e.g. the need for the criteria to be linked directly to the subject matter of the contract.

The first task in achieving a stronger weight for the quality criteria is to specify those factors which are of importance from the quality point of view pursued by the contracting authority and the passengers and to verify the technical specifications i.e. the quality criteria linked to the invitation to tender. For the purpose of improving the quality, the target shall be creating a culture of co-operation between the contracting entity and the operators.

## **5. Conclusions**

Both authors came to the conclusion that there is work to be done with quality factors to make the bus services more attractive. The main action, however, is not the contracts or the evaluating the quality factors in the tenders, but in the first hand the cooperation with authorities and the operators in different levels of organisations. The other thing is the tendering documents in which the quality demands set to the operator could be specified more properly than before. The public transport authority will specify the insistence to indicate

what the minimum quality stage they want to get from the operators and provide to customers is.

The first task in achieving a stronger weight for the quality criteria is to specify those factors which are of importance from the quality point of view pursued by the contracting authority and the passengers and to verify the technical specifications i.e. the quality criteria linked to the invitation to tender. For the purpose of improving the quality, the target shall be creating a culture of co-operation between the contracting entity and the operators.

Customer satisfaction assessments shall be developed as a part of the quality incentive system, among others by harmonising the measurable quality factors, their evaluation scales, weighting and determination principles. It is also of importance to take the results of the Customer satisfaction assessments and the feedback system into consideration when developing the quality of the service.

Regardless of how the awarding system of bus traffic contracts in respect of quality criteria will be developed in the future, a quality control system shall be created for the production of transport services. The system shall be such that the contracting entities and operators are able to mutually accept it and to follow it as a part of their routine operations.