

Competition law reminder



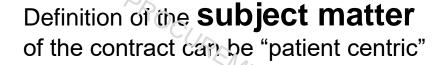




# Several ways of taking patient outcome into consideration



What do we want to buy?





Do we want to impose patient « performance » aspects?

**Specifications** can impose "patient outcome results"



How to we want to differentiate the bidders?

**Award criteria** can focus on patient outcome and make the difference



Patient centric

definition

Ex.: buying a solution to decrease post operation infection

Subject matter is more open and focusses on a result/proposition

Procedure shall be more flexible

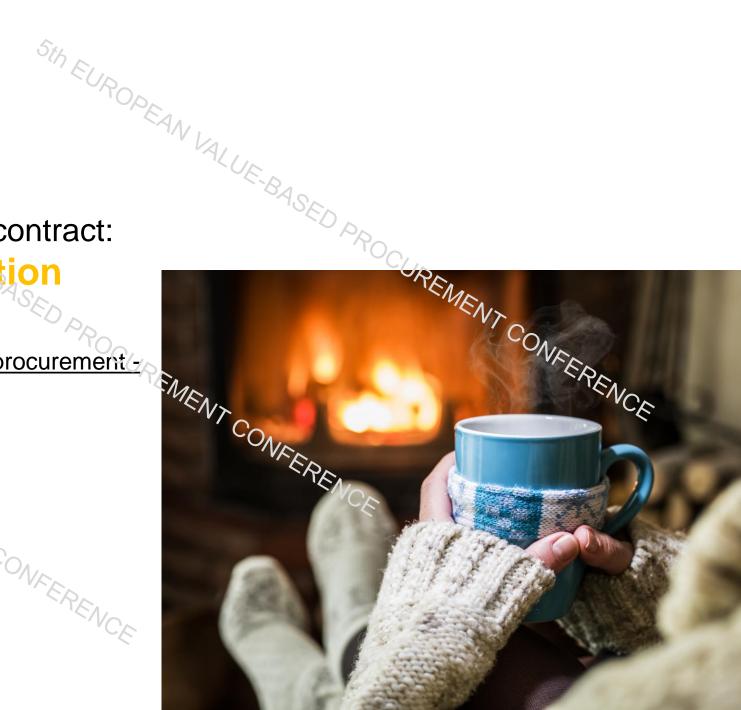
Implementation of contract focusses on the **monitoring** of the results



Example: subject matter of the contract:

patient hypothermia solution

<u>Le réchauffement du patient – best value procurement - YouTube</u>





Competitive procedure with negotiation

Competitive dialogue

Innovation partnership

What we buy is a solution (not a product/service)

Need to be able to discuss/negotiate the propositions

Criteria shall recognize the quality of the results event if the ways to achieve it are different

Make sure you are still able to compare comparable solutions

Room for variants





#### Specifications are minimal requirements

#### If not met:

- → Exclusion of tender during the procedure → verify the information in the tender
- → Penalties and breach of contract during the implementation of the contract → monitor the results during the implementation of contract



### Technical specifications

- The technical specifications drawn up by public purchasers need to allow public procurement to be open to competition
- Functional and performance requirements
- Tenders should reflect the diversity of technical solutions standards and technical specifications in the marketplace
- Contracting authorities shall avoid artificially narrowing down competition through requirements that favor a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator
- No reference to a specific trademark nor source, nor a particular process which characterises the products or services provided by a specific economic operator or to trade marks, patents, types or a specific origin or production with the effect of favoring or eliminating certain undertakings or certain products



Award criteria serve to differentiate the bidders

Patient outcome can be one of the awarding factors: weight will determine the importance of it

#### BUT:

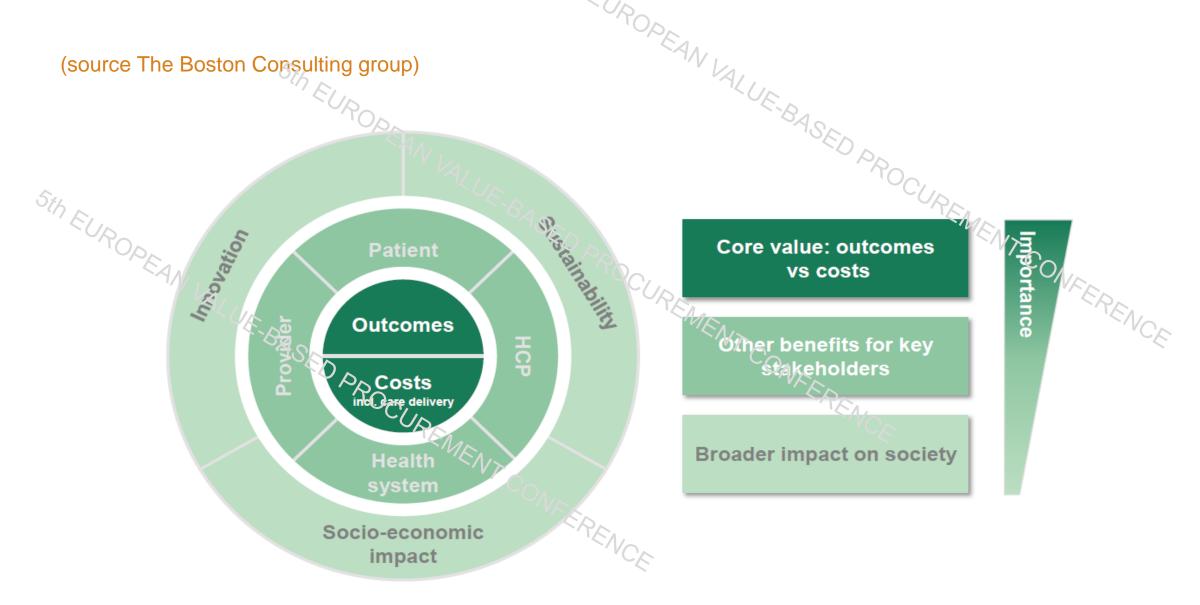
- → Be sure it is measurable during the award phase
- → Be sure it will be monitored during the implementation phase



# Award criteria: conditions 5th EUROPE

Linked to subject of the contract	OK if they relate to supplies of services in any respect and at any stage of their life cycle including a specific process for another stage of their life even if such factors do not form part of their material substance
No unrestricted freedom of choice	This could be the case if the contracting authority is free to put a value next to an internal cost or bonus proposed by the tenderers without providing this information upfront to tenderers or use an objective method fixed before the opening of the tenders
Effective competition	The contracting authority should make sure to compare comparable tenders/propositions (for example: the calculation and content of the life-cycle cost should be the same for all tenderers)
Possibility to verify the information/ assess	The contracting authority should make sure that it values verifiable (and, if necessary enforceable) commitments

## Award criteria: value based procurement



Should be applied on a case by case basis, depending on the (source: The Boston Consulting Group) subject matter of the contract Criteria Layer Category Evidence of relevant Outcomes improvement Existence of high quality outcomes data Outcomes & evidence Outcomes 5 Support in measuring and reputing on outcomes **Outcomes focus** Willingness to offer outcomes-depkrisk-sharing Price of purchasing / renting product Purchasing Compatibility: required upgrades to infrastructure, \ Conversion: staff training for new product Cost Mainterance Spare parts **Product** Technical staff time **Total** Costs Service contract Disposal Disposal / decommissioning Care Cost of consumables Operating / healthcare Madical staff time using device delivery delivery imractijucture usage Patient and prelative comfort and convenience Quality Secondary Patient flexibility & mobility patient benefits Willing. Secure usage for care pro HCP ness to Training and access to education pay [€] Other benefits for Maintainability & technical service support key stakeholders Support improving efficiency along patient of Alignment and support with reimburse, structure 🖍 Support on admin., storage and logistics Health system Reduced long term costs of treatment Reduction of rehospitaliz. / number of treatments Development of new and improved technologies Innovation Contribution to development of health care Criteria to be **Broader impact** Environmental impact Sustainability Socially responsible product value chain selected / detailed on society during tender Impact of people not in the workforce Socio-economic Burden calified by non professional carers definition impact Impact on competition in MedTech sector

# Criterion: "pain" (purchase of catheters - Norway) \*



- Purchase of catheters by a central purchase body
- Criteria (notably): price and "pain"
- Objective evaluation method on a large scale of patients
- Objectivity of the criterion was criticised
- Courts of Norway decided that the criterion had been objectively applied

<sup>\*</sup> Example provided by Kjetil Marius Istad

# Criterion: "humidity" (purchase of diapers)



- Purchase of diapers by a hospital
- Criteria (notably): price and "humidity retention"
- "Artisanal" evaluation method by the purchasers of the hospital
- Reliability?

#### Other criteria

Beds: patient comfort

Sutures: infection risks

Blood glucose meters: easiness to use, connectivity, pain, ...

Linked to subject matter of contract?

Competition?

Verifiable? How to assess?

- → During the procurement procedure
- → After



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Patient outcome is certainly elevant

But make sure the process is predictable, transparent, fair, objective and monitored 5th EUROPEAN VALUE-BASED PROCUREMENT CONFERENCE



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