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## Good MEAT criteria and successful projects - Good practices from Holland – the legal perspective

Andrea Chao

27 August 2020

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# Topics

- Introduction
- Legal preference re award criteria
- Role of price: impact and considerations
- Role of the procurement principles when applying price/quality ratio
- Questions / discussion

# Introduction: Andrea Chao

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**THE INTERNATIONAL  
CONSTRUCTION LAW  
REVIEW**



NERLANDSE ORDE VAN ADVOCATEN

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1 jul 19 Tekst Krant

BOUW



**efca**

MODEL OVEREENKOMST

BOUWTEAM

DG 2020

OPINIE

## Bezwaren tegen alliantie-contracten en bouwteam ontkracht

Ondanks goede ervaringen met bouwteam en alliantie-contracten, denken publieke opdrachtgevers er regelmatig helaas voor terug om met dit soort contracten aan de slag te gaan. Maar veel van de gehoorde bezwaren zijn leeg.

Arend Clahsen

### Handen ineen

De kloep is gesloten door de kerk. Het de gemeentelijke van de bouwteam... (text continues)

... (text continues)

## Wat het Zuidasdok van Zwolle kan leren

TIJDSCHRIFT VOOR BOUWRECHT

**TBR**



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# Legal preference re award criterion: EU approach

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Most economically advantageous tender (MEAT) as overriding concept  
(art. 67 sub 2 of EU Directive 2014/24/EU):

1. Price / quality ratio
2. Lowest price
3. Lowest price based on cost effectiveness (such as life cycle costing)



# Legal preference re award criterion: EU / NL approach



Consideration (90) of Directive 2014/24/EU:

“In order to encourage a greater quality orientation of public procurement, Member States should be permitted to **prohibit or restrict** use of price only or cost only to assess the most economically advantageous tender where they deem this appropriate.”

→ NL experiences: price/quality ratio the norm, ‘lowest price’ is the exception (as is lowest costs based on cost effectiveness) and requires additional motivation

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# Role of price

Impact:

- Best for project
- Proportionality
- Focus of bidders

Too much focus: race to the bottom in certain situations (failed projects)

No focus: not permissible from legal perspective

→ NL experiences: litigation & tender policies of authorities




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# Role of price

Consideration (90) of EU Directive 2014/24/EU:

“It should be set out explicitly that the most economically advantageous tender should be assessed on the basis of the best **price-quality ratio**, which should **always include** a price or cost element. It should equally be clarified that such assessment of the most economically advantageous tender could also be carried out on the basis of either price or cost **effectiveness** only.

→ NL experiences: level of detail in criteria and award letters

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# Role of the procurement principles when applying price/quality ratio

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Consideration (90) of Directive 2014/24/EU:

“Contracts should be awarded on the basis of objective criteria that ensure compliance with the principles of transparency, non-discrimination and equal treatment, with a view to ensuring an objective comparison of the relative value of the tenders in order to determine, in conditions of effective competition, which tender is the most economically advantageous tender. [...]”



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# Role of the procurement principles when applying price/quality ratio: NL approach

→ Safeguarding the earlier mentioned principles:

→ Objectivity

→ Transparency

→ Non-discrimination / equal treatment

→ And also: proportionality

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# Role of the procurement principles when applying price/quality ratio: NL approach

→ Specific points of attention/lessons:

→ Favouritism / corruption

→ 2 envelop procedure / one assessment team

→ Detailed award letters (for losing bidders) – for transparency & appreciation

→ Litigation (preliminary proceedings) & other potential forms of impact (penalties, measures, nullification)

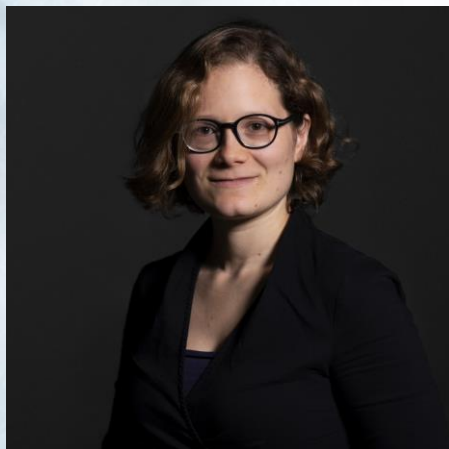


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Questions?



## Contact details



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