



SAMKEPPNIS
EFTIRLITID

Fighting bid rigging in public procurement

Bidder exclusion

Brynjólfur Sigurðsson

Article 57- Exclusion grounds

Mandatory vs Discretionary grounds

Limited precedents in Iceland

Increasing practical relevance



Directive 2014/24/EU

Article 57 (4) (d)

Where the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition.

Lög um opinber innkaup nr. 120/2016

e. Liður 6. mgr. 68. gr.

Fyrirtæki hefur gengið til samninga við önnur fyrirtæki í þeim tilgangi að raska samkeppni sem kaupanda er unnt að sýna fram á með nægilegum líkum.

Three main questions

1. How much evidence is enough?

2. Can exclusion occur without a final decision by the Competition Authority?

3. How do we avoid arbitrary exclusion while still protecting the procedure?



Purpose of the Provision

- **Protect the integrity of procurement procedures**
- **Maintain equal treatment and transparency**
- **Safeguard competition**
- **Prevent cartel behaviour in tenders**

Directive 2014/24/EU

Article 57 (4) (d)

“Sufficiently plausible indications”

“Agreements with other economic operators”

“Aimed at distorting competition”

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Fyrirtæki hefur gengið til samninga við önnur fyrirtæki

í þeim tilgangi að raska samkeppni

sem kaupanda er unnt að sýna fram á með nægilegum líkum.

Sufficiently Plausible Indications

- **Lower burden of proof**
- **No final ICA decision required but can be used as evidence**
- **Preventive and forward looking**
- **Objective and verifiable evidence**
- **OECD toolkit guidance**

Directive 2014/24/EU

Article 57 (6)

6. Any economic operator that is in one of the situations referred to in paragraphs 1 and 4 may provide evidence to the effect that measures taken by the economic operator are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion. If such evidence is considered as sufficient, the economic operator concerned shall not be excluded from the procurement procedure.

Lög um opinber innkaup nr. 120/2016

9. mgr. 68. gr.

Fyrirtæki sem er í einhverjum þeim aðstæðum sem segir í 1. mgr. og 6. mgr. er heimilt að færa fram sönnur á að ráðstafanir sem það hefur gripið til dugi til að sýna fram á áreiðanleika þess þrátt fyrir að til staðar sé útilokunarástæða. Ef sönnun er talin fullnægjandi skal ekki útiloka viðkomandi fyrirtæki frá innkaupaferli.

Self cleaning (integrated safeguard)

- **Right to be heard**
- **Remedial measures**
- **Cooperation with authorities**
- **Replacement of management**
- **Proportionality**

Two practical entry points

01

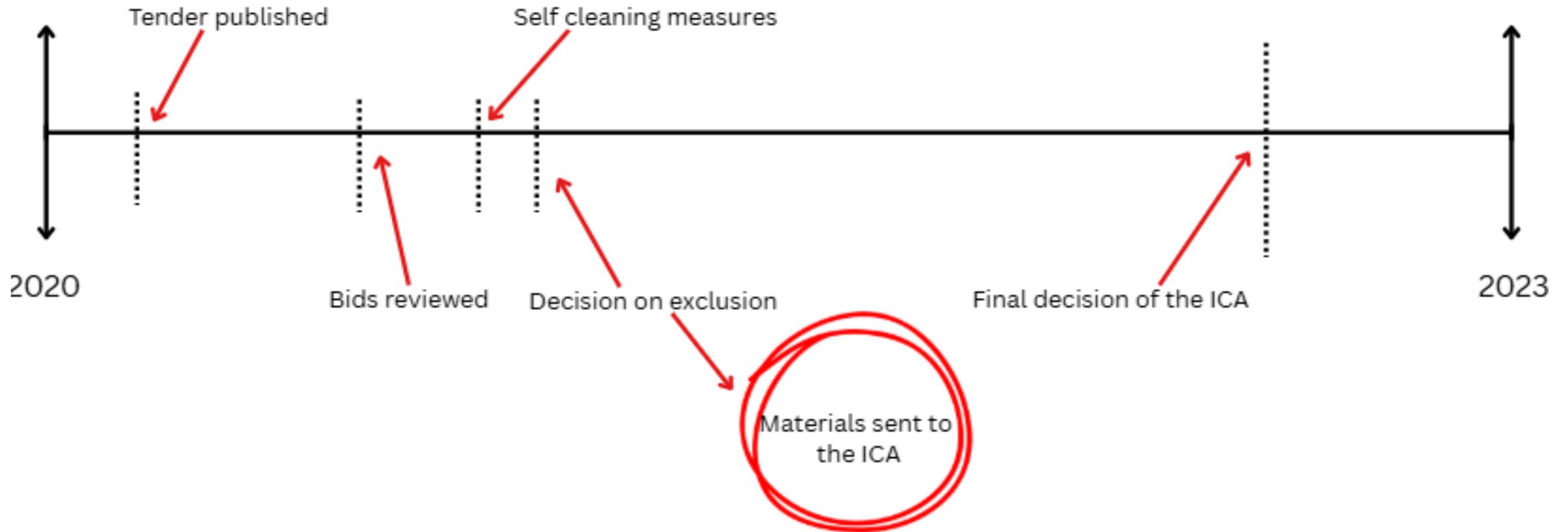
**Suspicion during Procurement Procedure
Prior to ICA decision**

02

After ICA Infringement Decision

Suspicion during Procurement Procedure Prior to ICA decision

Timeline



Two practical entry points

01

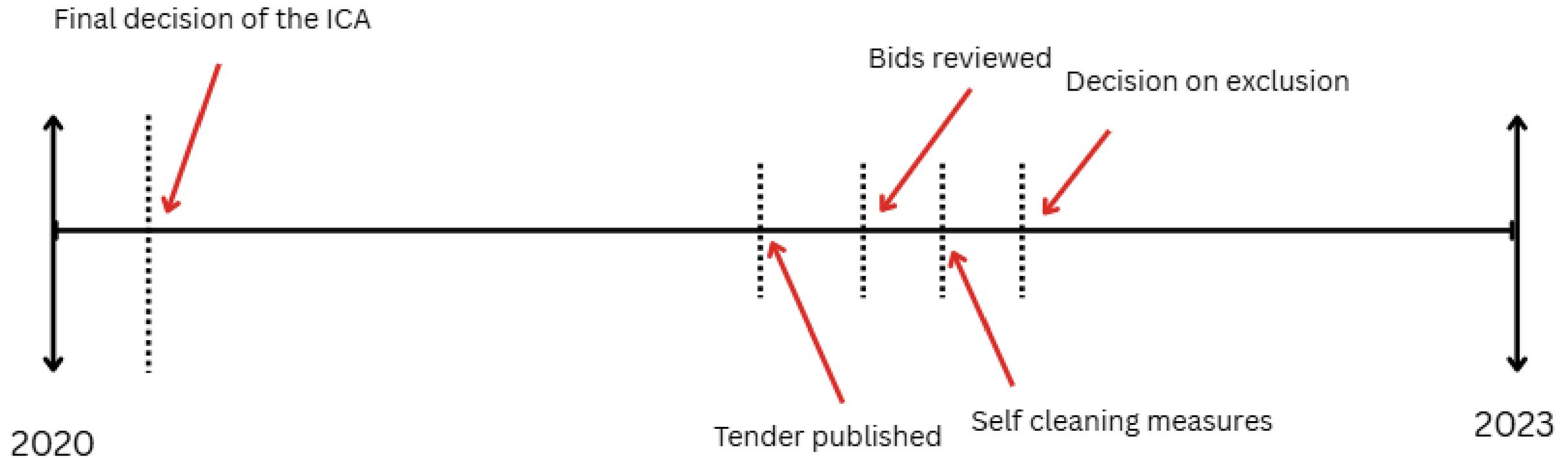
Suspicious within Procurement Procedure
Prior to ICA decision

02

After ICA Infringement Decision

After ICA Infringement Decision

Timeline



Judicial Review

- **Discretion of the Contracting authority**
- **Requirement of objective evidence**
- **Review of reasoning and proportionality**
- **OECD guidelines**

Directive 2014/24/EU

Article 57 (7)

Where the period of exclusion has not been set by final judgment, that period shall not exceed five years from the date of the conviction by final judgment in the cases referred to in paragraph 1 and three years from the date of the relevant event in the cases referred to in paragraph 4.

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10. mgr. 68. gr.

Þegar útilokunartímabil hefur ekki verið ákvarðað með endanlegum dómi skal tímabil útilokunar ekki vara lengur en fimm ár frá dómsuppkvaðningu í þeim málum sem um getur í 1. mgr. og ekki lengur en í þrjú ár í þeim málum sem um getur í 6. mgr.

Summary

Procedure-initiated Assessment

Objective indications in the tender

Right to be heard / Self cleaning

Reliability assessment

Decision on exclusion

Possible notification to ICA

Infringement-Based Assessment

ICA infringement decision as evidence

Right to be heard / Self Cleaning

Reliability assessment

Timeframe from ICA decision

Decision on exclusion

Thank you for listening

Brynjólfur Sigurðsson

Brynjolfur.sigurdsson@samkeppni.is