

POLICY ON **FAIR COMPETITION**

1. General

Ordina aims to be a successful business. We believe that we can only achieve this fairly by competing on content, quality and price – and by ensuring that all three are well balanced.

Competition rules exist to ensure that competition takes place on a level playing field and with fair play. Ordina always operates within the rules of competition law, and this means that you must stick to the rules for fair competition.

This policy will help you to do this.

2. Competition

Although competition rules are not always straightforward, the basic principle is simple: as a company, you are not allowed to enter into any agreements whose aim is – or that could lead to – competition being limited or distorted. Synchronisation of market behaviour between competitors, without this involving actual agreements, is also forbidden.

Market behaviour: the way in which you operate as a company in the business market.

A breach of competition rules can have extremely severe consequences. It can not only lead to high fines for Ordina (up to 10% of annual turnover) and to a loss of contracts, but also to high personal fines for you, not to mention reputational damage. We want to prevent this; both for Ordina and for you.

If you suspect that the competition rules are not being complied with, you are obliged to make your manager or the Compliance Officer aware of this.

What are the rules that you need to abide by in relation to competition rules?

- Do not make any agreements with competitors about market behaviour.

Example: You do not agree with competitors that you will keep away from one another's clients or that you will not respond to an invitation to tender (illegal market sharing).

Example: You do not make agreements with competitors about market rates (illegal price fixing).

NB: If you enter into collaboration with a sub-contractor to make a joint proposal to a client, there is in principle no question of illegal price-fixing. Always ensure that the motives behind the collaboration are pure (and are therefore not intended to limit competition).

- Speak to the Legal Department first if you want to respond to a call for tender with a competitor – either in combination or as a sub-contractor – or want to collaborate with a competitor in another way.
- Do not discuss with competitors the rates charged to clients, prospects, profit margins, price quotations or other confidential company information, either relating to Ordina or to the competitor.

Because Ordina wishes to conduct its business fairly, the following also applies:

- Do not collect and use any confidential company information about competitors if you do not have a right to the information.

What is defined as confidential company information about competitors?

This is information about another company that is not commonly known is valuable and could therefore be used to gain commercial advantage. Examples of confidential company information about competitors are: information about sales plans, rates that are charged to the client, discounts and profit margins, purchase prices, information with regard to over- and under-capacity, and business or financial strategies.

However, you are permitted to gather information about competitors from publicly available sources, such as publications, newspapers, annual reports, TenderNed, etc. In principle, you are also permitted to ask third parties questions about competitors.

Do not collect, accept or use any confidential information from, or relating to, competitors of which you know – or have good reason to believe – that its acquisition constitutes a violation of a duty of confidentiality, or of the law.

Example: A client informs you of the rates charged by a competitor for the staff it has seconded to the client.

Question: Are you allowed to accept or use this information?

Answer: Decline the information, unless you are certain that the client is allowed to share it with you (and has obtained the information by honest means). If you already have the information in your possession, do not use it and inform the Legal Department.

3. Tenders (*Aanbestedingsrecht*)

If you do business with the government (tenders) you also have to deal with the rules of procurement law. In order to ensure that market players have equal opportunities during tenders, and to prevent favouritism, the process is tightly regulated and the government is bound by strict procurement rules.

Although, in principle, procurement rules focus on the client, a violation of these rules also carries risks for Ordina as a (potential) tenderer: possible objections from third parties to the award, possible scrapping of the award – whether or not it has been directly awarded – and reputational damage.

Furthermore, Ordina must ensure that it always guards against contributing to a violation of the procurement rules by the client.

For tenders, you should therefore always stick to the following rules:

- When tendering, make sure you receive proper information about the bidding process from the Bid Managers in Ordina's Commercial Department; they have the necessary experience and knowledge to supervise the process.
- Beware of situations in which Ordina enters into directly-awarded contracts with a government department. Check whether in the given circumstances, directly-awarded contracts are in accordance with the procurement rules.

Examples of situations where things can go wrong:

- The scope of the contract exceeds the threshold for mandatory tendering.
- A contracting authority splits up the task into smaller parts to avoid a public tender.
- A further agreement comes into existence for legal purposes, but is covered by a framework contract that, unfairly, has never been put out to tender.
- A contracting authority awards a contract or distributes contracts without a mini competition within a framework contract.

If, according to Ordina's vision of fair play, you believe that the client is not approaching things in the right way, you should let the client know. If the client continues to insist that no tendering process is necessary, you should discuss with your manager whether Ordina can accept the risks associated with this.

- Beware of situations where particular contracts are incorrectly brought under an existing framework contract.

Example: A contracting authority asks Ordina to carry out an assignment to bring about a specific result and wants to place the assignments within a framework contract, while the framework contract relates to the secondment of Ordina staff.

Apart from the risks outlined above, it is also true in this case that the contract conditions of the framework agreement have not been designed for a result-oriented assignment. If the client insists that the existing framework can be used, discuss with your manager whether Ordina can accept the risks associated with this.

- Avoid situations in which Ordina has an unfair knowledge advantage over other providers. There can be said to be an unfair knowledge advantage if Ordina is utilising information to which it has no right.

Example: Do not involve anyone in the bid process who has come into possession of confidential information about the contracting authority by other means and who is not allowed to share this information. This could relate to Ordina staff that are (or have been) seconded to the contracting authority and have a duty of confidentiality as regards Ordina, or could relate to other people with a duty of confidentiality.

Example: Be aware that sub-contractors can be in possession of confidential information about competitors, because, for example, they have acted as a sub-contractor for a competitor for another tender. Decline confidential information if the sub-contractor offers this to you.

- Avoid situations in which Ordina staff – whether or not they are seconded to the client – are working with the client on the selection or award criteria for the call for tender, if Ordina is interested in competing for the work. The same applies to any sub-contractor that Ordina may be intending to use.
- Beware of situations in which Ordina staff – whether or not they are seconded to the client – are working on or talking about the technical specifications or the functional design before the call for tender has been published.

NB: If Ordina staff have been involved in the preparation of the call for tender by working on (or discussing) technical specifications or functional design, and Ordina chooses to react to the call for tender, then 'Chinese walls' need to be set up within the Ordina organisation. These are measures that guarantee that there is no transfer of knowledge between those Ordina staff who have been involved in the preparation of the call for tender and the bid team. Contact the Legal Department for advice on appropriate measures to take.

- During a call for tender, strictly limit communication with the client about the call for tender to the contracting authority's designated contact person. Where possible, always communicate in writing, so that the contents of the communication can be referred to at a later date. Also avoid giving the impression that there has been any contact with regard to a call for tender, except with that contact person.
- Beware of 'material alterations' over the course of the contract. This could be a shrinking or expansion of the contract with regard to its scope at the time of the call for tender, but could also be the extension of a framework contract after four years. As a rule, these kinds of material alterations are not permitted without re-tendering, unless provision has been made for this in the original call for tender.
- If a contract is not awarded to Ordina, still avoid entering into a directly-awarded contract with the contracting authority which falls outside the call for tender – even if the contracting authority takes the initiative on this.

NB: Ordina can act as a sub-contractor if the contract is awarded to a third party. But if Ordina has taken part in a call for tender itself, it may not agree in advance with a competitor that either firm will act as a sub-contractor for the other.

4. Any questions or doubts?

Do you have any questions or doubts as to how to behave in a particular situation? If so, always contact your manager or the Assurance Department.

In case of non-compliance with this policy Ordina may take disciplinary measures.

This Policy on Fair competition should be read in conjunction with:

- [Policy on handling information](#)
- [Deal review Systematiek \(DRS\)](#)