The Open-Negotiated Procedure and the Limits of the Flexibility Narrative

A First Reading of the European Commission's Leaked Public Procurement Regulation, with Italy as the Empirical Test Case

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Abstract

This paper examines the European Commission's leaked draft Public Procurement Regulation of July 2026, and asks whether the diagnosis behind its central innovation, the open-negotiated procedure, survives contact with the evidence usually invoked for it. We argue that the rigidity narrative driving the reform conflates two different statistics, procedures counted and procedures valued, and that Italian data for 2025 show these pointing in opposite directions, so that the reform is sized for the smaller of the two problems. We then read the open-negotiated procedure against its closest American analogue, negotiated award under Part 15 of the Federal Acquisition Regulation, and find not a shared logic but two different ways of disciplining discretion, one built ex ante into the structure of the procedure and the other left to ex post review, with the European draft borrowing the flexibility of the second before it has built the apparatus that makes that flexibility safe. Evidence from the European Court of Auditors on a decade of buyer behaviour under the current, already permissive regime suggests the constraint on quality-weighted awarding has been behavioural rather than legal, a constraint the draft's central instrument does not address and may worsen. Game-theoretic and practitioner-dealmaking considerations bearing on the internal design of the resulting hybrid, or negotiauction, are set out separately, as a preliminary sketch for a paper this series will devote to the subject.

Keywords: Public procurement · Negotiated procedure · Regulatory transplant

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1. Introduction

On 9 July 2026, a working text began circulating in Brussels that proposed something the European Commission had not attempted since 2014, namely the repeal of three procurement directives and their replacement by a single, directly applicable Regulation.[1]

The text abandons the classical open procedure as the default award mechanism in favour of one built for negotiation, open to any interested operator, in which both the negotiation itself and the selection criteria that have historically screened participants are made optional. The complaint that motivates this design is familiar to anyone who has followed the debate, and it has become something of an institutional reflex. Buyers, runs the claim, need more flexibility. The 2014 Directives over-specify procedure, under-specify outcome, and lock contracting authorities into forms of competition too rigid to accommodate genuine negotiation, genuine risk-sharing and genuine responsiveness to complex or urgent need. The remedy, equally reflexive, is to loosen the procedural corset.

This is not a fringe view. It is the Commission's own diagnosis, stated almost verbatim in the leaked Regulation's explanatory memorandum, which describes the 2014 framework's complexity as a source of

[1] Draft Public Procurement Regulation, unofficial working text, leaked and hosted by table.media, 9 July 2026. Formal adoption was rescheduled from the second quarter of 2026 to September 2026, and the text carries internal marks of an unfinished draft, including bracketed placeholders and at least one duplicated pair of recitals; it should be treated throughout this paper as a snapshot of intent rather than a settled instrument. The Commission's Regulatory Scrutiny Board issued a negative opinion on the accompanying impact assessment on 17 April 2026 and a positive opinion with reservations on 8 June 2026, which is itself evidence that the cost-benefit case for the reform, including for the instrument examined here, remained unsettled within the Commission's own review process at a late stage of drafting.

legal uncertainty and its procedures as complex and inflexible. The European Court of Auditors' 2023 special report is invoked as the empirical anchor for that diagnosis, citing declining competition and rising single-bidding as evidence that a decade-old framework has not delivered what it promised.

We think the diagnosis is incomplete rather than false. What it is rarely asked to specify is which rigidity, measured how, is driving how much of the phenomenon it is invoked to explain. Buyers need more flexibility is a claim pitched at the level of an entire legal architecture, applied uniformly across works, services, supplies, utilities and concessions, in response to statistics that are almost always reported as counts of procedures rather than as the economic weight those procedures carry. A rigidity concentrated in a large number of small, low-value, sub-threshold awards is a different problem, with a different and much narrower fix, than a rigidity constraining how the Union's largest contracts get competed, and the reform on the table does not distinguish between the two.

The argument proceeds in three steps. Section 2 tests the premise against the one national dataset detailed enough to separate count from value, Italy's 2025 procurement statistics, and finds the two measures pointing in opposite directions. Section 3 reads the open-negotiated procedure against Part 15 of the United States Federal Acquisition Regulation, its closest structural analogue, and locates the divergence not in the procedures themselves but in what stands behind them. Section 4 asks what a decade of European buyer behaviour under a regime that already permitted quality-weighted awarding predicts about a regime that will require it. A first, deliberately preliminary treatment of the game-theoretic issues raised by multi-stage negotiation design is set out in Appendix A, and a guide to the wider economic literature bearing on the argument in Appendix B.

2. The Italian Test

Italy is not offered here as a representative Member State, since no single country can be, but as the one whose procurement authority publishes a breakdown granular enough, by both count and value, to let the rigidity narrative's central ambiguity be tested rather than merely asserted.[2]

The headline figures for 2025 are a total market of 309.7 billion euros across 287,421 award procedures, an increase of 7.6 per cent in count and 13.9 per cent in value against 2024. The report's own framing, and the framing picked up by most commentary on it, leads with count. Direct awards numbered 159,019, a rise of 9.5 per cent, and in services and supplies they reached close to 95 per cent of all acquisitions, with a suspicious clustering just below the 140,000 euro threshold above which competitive procedures become mandatory. Contracts in the 135,000 to 140,000 euro band numbered 13,879 in 2025, against 1,549 in 2021, a ninefold increase set against a market that grew by roughly 60 per cent by value over the same period. Read this way the data appears to confirm exactly the picture the flexibility narrative needs, a system so overwhelmed by direct, uncompeted award that the open procedure has become marginal.

The value-weighted reading of the identical dataset tells a different story. By value the procedura aperta, the open procedure, accounted for 54.3 per cent of the entire market in 2025, and that share grew 24.2 per cent against 2024. The procedura ristretta, the restricted but still competitive procedure, accounted for a further 21.5 per cent, up 43.5 per cent year on year. Direct awards, despite their explosive growth in count, carried only 5 per cent of total value, 15.7 billion euros, and that value share fell 5.0 per cent against 2024 even as the market as a whole expanded by nearly 14 per cent. On this reading the share of Italian procurement value awarded without an open procedure in 2025 was 45.7 per cent, and the greater part of that residual is itself competitive restricted procedure rather than direct, uncontested award. The open

[2] ANAC (Autorità Nazionale Anticorruzione), Relazione Annuale al Parlamento 2025, presented to the Chamber of Deputies, 21 April 2026; cross-checked against News4market's published analysis of the same release. All figures in this section are drawn from these two sources.

procedure was not being squeezed to the margins. It was carrying a majority of the money, and growing faster than the market itself.

Both readings are true of the same year and the same country, and what differs between them is the denominator. A count-weighted reading describes a phenomenon concentrated in a particular slice of the market, low-value, often local procurement of services and supplies, where the bunching just under the direct-award threshold looks far more like a response to a fixed statutory limit than like evidence that contracting authorities find the open procedure unworkable for the contracts that matter economically. A value-weighted reading describes the opposite phenomenon, an open procedure not merely surviving but gaining ground precisely where the money is.

The significance of this divergence for the reform is direct. The open-negotiated procedure is not proposed as a narrow fix for sub-threshold, high-count, low-value direct award. It is proposed as the new default across the board, including for the large, above-threshold contracts where, on the Italian value data, the existing open procedure is demonstrably not in retreat. If the rigidity narrative's empirical support is concentrated in the count-weighted phenomenon and largely absent from the value-weighted one, the instrument built to answer it is sized for the wrong problem, a threshold-and-incentive difficulty dressed up as a wholesale procedural redesign.

Two qualifications belong here, not as a matter of caution for its own sake but as genuine limits on the claim. One country's data cannot establish an EU-wide pattern, and whether the same divergence holds elsewhere in the Union is an open question this series should return to. And the Italian clustering below threshold is itself a real policy problem, one ANAC's own leadership has described in terms of waste, fragmentation and occasional criminal infiltration, but it is a problem about the direct-award threshold and its enforcement, not evidence that the open procedure is failing where it is actually used.

3. Same Procedure, Different Scaffolding: The Draft against American Practice

Strip away vocabulary and the two systems are proposing the same basic move. The EU draft's open-negotiated procedure, with open entry, optional selection criteria, negotiation, a successive reduction of the field, and award on Best Price-Quality Ratio subject to a mandatory quality-weighting floor of 30 per cent, or 50 per cent for labour-intensive contracts, has the same skeleton as Part 15 of the United States Federal Acquisition Regulation, which governs competitive award with negotiation through a request for proposals, a competitive range, negotiation within that range, and a best-value or lowest-price technically-acceptable award.[3]

Both are explicit departures from a rigid, price-anchored default, the EU's classical open procedure and the FAR's sealed bidding under Part 14 respectively, toward negotiated best value as the operative norm. Read only at this level the EU proposal looks like a belated adoption of an approach the United States settled on decades ago, and that is the case the draft's defenders would make. It is not a frivolous one. But the two systems diverge sharply once the comparison moves from procedural form to the scaffolding around it, and the divergence runs along four lines.

It helps first to name what the open-negotiated procedure actually is. Subramanian (2010) uses the term negotiauction for exactly this kind of hybrid, a transaction blending competitive, auction-like pressure with

[3]Federal Acquisition Regulation 15.103-1, 15.103-2, 15.104(a), 15.204-1 and 15.204-2. The FAR is currently undergoing its most significant restructuring in decades under the Revolutionary FAR Overhaul, a rolling, part-by-part rewrite begun in 2025. As consulted for this paper, the FAR Overhaul deviation guide to Part 15 (acquisition.gov, consulted August 2026) shows the negotiated-procurement provisions discussed in this section substantially retained rather than restructured, including the competitive-range mechanic, the Small Business Administration Certificate of Competency referral, and the debriefing and protest architecture; this should be treated as a snapshot to be rechecked before publication, since the Overhaul continues to roll out across the remaining Parts and Part 15 itself could yet be revisited.

the customisation and back-and-forth of bilateral negotiation, and shows that skilled dealmakers move between the two modes within a single deal rather than choosing one at the outset.[4]

On that reading the draft is not attempting anything exotic. What distinguishes a well-run negotiauction from a poorly run one, on this account, is not the blend itself but a small set of design levers, including how many parties are invited and whether that number is disclosed, whether bidding proceeds in sequential or simultaneous rounds, how much information about rival positions is revealed as the process unfolds, and whether any party holds a last look or matching right once offers are ostensibly final. The leaked draft specifies none of these levers for the open-negotiated procedure, which gives concrete content to the diagnosis that follows. Appendix A returns to the point.

The first concerns what anchors the narrowing of the field before negotiation intensifies. FAR 15.204-1(b) permits narrowing the competitive range to the greatest number that will permit an efficient competition, but only among the most highly rated proposals, rated against evaluation factors that 15.104(a) requires to be stated clearly in the request for proposals before any proposal is seen. Entry into the negotiation pool is criterion-anchored by construction. Exit is looser, since 15.204-2(c)(2) lets a contracting officer eliminate an offeror at any time on concluding that the offeror is unlikely to receive award, without a further negotiation round, but even that looser step carries a mandatory written notice and a debriefing right. The EU draft's equivalent mechanism, the successive reduction of the number of economic operators referred to in Recital 21, has no comparable anchor in the material available to us. There is no provision requiring the criteria for reduction to be published before negotiation begins, and Part III of the draft, which would presumably contain it, lies beyond the truncation of the retrieved text. This may be a genuine absence or an artefact of retrieval, and the paper treats it as unverified rather than as a confirmed gap, but the asymmetry in what is demonstrably specified is itself worth reporting. The FAR text makes the anchor a named, numbered rule. The EU draft's account of the same step exists, so far, only at the level of a recital's promise.

The second concerns what happens to the reliability floor. The EU draft makes selection criteria optional in the open-negotiated procedure, on the ground that turnover thresholds and prior-experience requirements are one of the major burdens on SME participation. The mechanism for protecting buyers from incapable awardees is not specified as surviving this move, and the draft's own text pushes reliability concerns toward exclusion grounds and abnormally-low-tender review, neither of which catches an honestly priced offer from an operator that simply cannot deliver.[5]

The FAR's response to the identical policy problem, small firms losing on responsibility or past-performance grounds before they can compete on merit, is structurally opposite. It does not remove the capability check. FAR 15.202(c)(4) mandates that where a lowest-price technically-acceptable evaluation would otherwise eliminate a small business on an unacceptable past-performance rating, the matter must be referred to the Small Business Administration for a Certificate of Competency determination, an independent second look, specifically for the disadvantaged bidder, that leaves the underlying capability check intact for everyone else. Same diagnosis, that capability screens burden small entrants, opposite prescription, building a bypass for the vulnerable case rather than dismantling the screen. The EU draft's flexibility is achieved by subtraction, removing a check, while the FAR's is achieved by addition, building a review channel around a check left intact. The first is cheaper to legislate and harder to predict the consequences of. The second is more expensive institutionally but keeps the floor everyone else relies on.

The third divergence is the deepest, and the first two are best understood as symptoms of it. American negotiated procurement is an ex-post discipline system. Contracting officer discretion is presumed legitimate in the moment, since FAR 15.204-2(a) states plainly that the scope and extent of negotiations are

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[4]Subramanian, G. (2010). Negotiauctions: New Dealmaking Strategies for a Competitive Marketplace. New York: W. W. Norton.

[5]Leaked draft Public Procurement Regulation, Recitals 21 and 22.

a matter of contracting officer judgment, and is policed afterward through mandatory debriefings, a standing bid-protest apparatus resolved by the Government Accountability Office or the Court of Federal Claims, and specific conduct prohibitions carrying consequences, including a bar on favouring an offeror or revealing a competitor's solution or price. Flexibility is affordable because the downstream machinery catching abuse is dense, standing and well tested.

European procurement law, across both the 2014 directives and this draft, is historically an ex-ante constraint system. The protection against discretion is built into the procedure's structure, through enumerated grounds for negotiated procedures, fixed and published selection criteria, and a firm separation between the selection stage and the award stage. The open-negotiated procedure abandons several of these structural constraints while relying on the Remedies Directives, an apparatus built to check whether the published rules were followed rather than to review the merits of a discretionary narrowing decision, to catch what goes wrong. Recital 44's emphasis on the traceability of decisions is the draft's own acknowledgment that documentation, not structural constraint, is now expected to carry the safeguarding weight. That is precisely the American model. But the FAR's documentation requirement sits inside a mature, decades-old protest ecosystem with a specialised forum that decides thousands of protests a year and a professionalised, warranted contracting-officer corps. The Union has neither yet, and the draft's own governance chapter, which requires Member States to stand up at least one competence centre and a national coordinating authority, is a tacit admission that the professionalisation the American model presupposes does not currently exist across twenty-seven jurisdictions.

The fourth divergence concerns the design levers just introduced. Subramanian's most directly relevant single intuition concerns last look and matching rights, the practice of allowing one party to see and better a rival's ostensibly final offer. He shows that granting such a right changes the strategic behaviour of every party in the process, not only the favoured one, since rational competitors who anticipate that their best offer will simply become a floor for someone else to beat have every reason to shade their bids downward or decline to compete seriously at all. Nothing in the leaked draft grants a formal last look, but the successive reduction of the field creates the same structural risk informally, since an operator surviving into a later round has no assurance that the buyer is not carrying forward an informal sense of what an eliminated rival was prepared to offer. FAR 15.201(d), by contrast, makes this an explicit conduct prohibition, barring the disclosure of one offeror's price or technical approach to another. The EU draft's equivalent protection exists only at the level of Recital 20's promise of confidentiality, with no operative provision yet visible to confirm it functions as a rule rather than an aspiration.

The honest formulation, and the one this paper adopts, is that the EU draft is attempting to import the FAR's discretionary flexibility without first importing the FAR's disciplining ecosystem. Section 4 asks what the existing record predicts about how that gap will be filled in the interim.

4. Implementation Problems: Buyer Readiness under an Expanded Discretion Mandate

Section 3 argued that the open-negotiated procedure transplants an American degree of discretion without the American ecosystem built to discipline it. This section asks a narrower and more immediate question. Independent of any future ecosystem the Union might eventually build, is there existing evidence about how European contracting authorities behave when the current rules already give them room to move away from price-only awarding? There is, and it does not support optimism.[6]

The Court found that 55 per cent of procedures across the Union used lowest price as the sole award criterion, a bare majority rather than an overwhelming one, though the figure exceeded 80 per cent in eight specific Member States. Over the same period single-bidding rose across the Union from 23.5 to 41.8 per

[6]European Court of Auditors, Special Report 28/2023, adopted 25 October 2023, published 4 December 2023, covering the decade 2011 to 2021.

cent, and the incidence of direct awards increased. These figures matter for a specific reason. The 2014 directives already permitted the most economically advantageous tender as the default award criterion, and already permitted negotiated procedures in defined, if narrower, circumstances. Contracting authorities across the Union had a decade of legal room to move away from price-only awarding, and a majority, Union-wide, did not.

This is direct behavioural evidence against the premise that the current directives' rigidity, rather than buyer practice and incentive, is the binding constraint on how procurement is actually conducted. If lowest price persists as the dominant criterion under a regime that already permits and even encourages quality-weighted award, the likelier explanation is administrative. A price-only criterion is simpler to apply, harder to challenge, and requires no defensible judgment about the relative weight of a quality dimension. It is the risk-averse choice for an official whose career is more exposed to a successful challenge than to a mediocre outcome.

The open-negotiated procedure does not merely permit negotiation and quality weighting. It makes both the default, backed by the mandatory quality floor described in section 3, while simultaneously making the pre-existing capability check optional. This asks the same workforce that defaulted to the administratively safest option under a permissive regime to exercise materially more judgment, more often, with one of its prior safety mechanisms removed. Two failure modes follow directly from the behavioural pattern just documented, rather than from speculation about buyer motives.

The first is formalistic compliance. A comply-or-explain quality floor is satisfied by producing an explanation, not by producing a genuine quality assessment, and an official trained by a decade of practice to prefer the defensible over the substantive has every incentive to write an explanation that clears the bar without engaging the judgment the rule was meant to provoke. The second is defensive convergence. Freed to negotiate but newly exposed, by the removal of published selection criteria and the ex post reliance on traceability described in section 3, to challenges over how the field was narrowed, buyers may conduct negotiation so cautiously that price re-emerges as the least contestable tiebreaker, this time inside a nominally negotiated procedure rather than a transparently price-only one. Both failure modes reproduce the outcome the reform is meant to correct, at the cost of additional procedural complexity and additional discretion exposed to challenge.

The deeper point connecting sections 3 and 4 is that the ex-post discipline architecture making wide American discretion tolerable, a professionalised contracting workforce operating inside a dense protest ecosystem, is also the architecture that would be needed to correct these two failure modes over time, by making formalistic explanation and defensively price-driven negotiation costly through repeated, credible challenge. The draft's governance chapter gestures toward this but does not yet demonstrate that it will exist, Union-wide, at the moment the new default procedure takes effect.

5. Conclusion

The transatlantic comparison developed in sections 3 and 4, read against the Italian evidence in section 2, yields a lesson that runs in two directions.

For the Commission, the lesson is that instrument selection has outrun the evidence and the ecosystem both. The procedural form borrowed from American negotiated procurement is coherent on its own terms, and the case for moving away from a rigid, price-anchored default is not without merit. But the case as made rests on a count-weighted reading of a phenomenon that, at least in the one Member State whose data allow the test, is concentrated at the small end of the market rather than at the large end the new default procedure is meant to govern. And the discretion the new procedure grants presupposes a disciplining apparatus, professionalised buyers and a dense review mechanism, that the American analogue took decades to build and that Europe has not yet begun to build at scale. Adopting the flexibility before the scaffolding is not a matter of taste. It is a sequencing error with predictable consequences, formalistic compliance where genuine judgment was wanted, and a quiet drift back toward price as the least contestable basis for award.

For national administrations, Italy among them, the lesson is more immediate. The current regime already permits the behaviour the reform hopes to encourage, and a decade of data shows that permission was not enough. Whatever the eventual shape of the Regulation, the harder task, building the competence centres, the coordinating authorities and the professionalised workforce the draft's own governance chapter anticipates, does not wait on Brussels finishing the legislative text. It can and should begin now, against the current rules, since the same workforce that will need to exercise expanded discretion under the new default is the workforce operating today.

A final observation qualifies the argument and marks where it should go next. This paper has treated the open-negotiated procedure largely as a structural and behavioural question. But the procedure's internal design, specifically how a multi-stage negotiation is structured once triggered, is itself a determinant of whether it screens well or badly, and that question belongs to mechanism design rather than to institutional comparison. Appendix A sets out a preliminary sketch of the issues involved, and a fuller treatment is reserved for a later paper in this series.

Appendix A. Preliminary Game-Theoretic Notes on Multi-Stage Negotiation Design

This appendix is deliberately confined to a sketch. The mechanism-design and dealmaking literatures bearing on multi-round negotiation are large, and a proper treatment belongs in a later, dedicated paper in this series rather than in a subsection of this one. Four dynamics deserve to be flagged here, each tied to a concrete feature of the leaked draft.[7]

The first is the ratchet effect. Sequential-bargaining models in the tradition associated with Laffont and Tirole show that when a principal uses information revealed in an early negotiation round to extract concessions in a later round, a rational agent anticipates this and shades its early-round behaviour accordingly, offering less favourable terms upfront than it would in a single-shot interaction, precisely to avoid signalling room for further concession. The open-negotiated procedure's successive reduction of the field is structurally the kind of multi-round setting in which this dynamic arises, since operators surviving into later rounds have reason to expect that information from earlier rounds will be used against them, and to bargain defensively from the outset. Whether the draft's eventual operative articles contain any commitment device, a rule preventing the buyer from using round-one information in round two, is unknown from the retrieved text and is precisely the kind of provision worth searching for once the full Part III becomes available.

The second is the relation between screening and adverse selection. Removing selection criteria shifts the entire burden of screening capable from incapable operators onto the scoring rule applied during negotiation. The mechanism-design literature on scoring auctions shows that a scoring rule can, in principle, be designed to induce truthful revelation and adequate screening, but only if its structure is worked out with exactly that function in mind. Whether the Best Price-Quality Ratio rule, with its mandatory quality floor, was designed as a functioning scoring auction, or is simply a fixed weighting applied on top of a procedure that no longer screens for capability at all, is the open question the leaked recitals do not let us resolve.

The third is that negotiation format is not a residual detail. Negotiation covers a wide range of distinct mechanisms, sealed final-offer rounds, iterative and auction-like bidding, and open-ended free-form bargaining, each with different susceptibility to collusion and different information-revelation properties. The 2014 directives constrained when a negotiated procedure could be used. On the material retrieved so far, this draft does not yet specify how negotiation, once triggered, must be structured. In mechanism-design

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[7] A guide to the underlying literature, organised by the same four dynamics, is given in Appendix B.

terms that is not an implementation detail to be settled by guidance after the fact. It is the design choice that determines whether the procedure screens well or badly, and it deserves the same legislative attention as the choice to make negotiation the default in the first place.

The fourth returns to the negotiauction framing introduced in section 3. Subramanian's practitioner-oriented account of hybrid auction-negotiation transactions supplies a checklist of design levers that a legal text, rather than a game-theoretic model, would naturally specify, and the leaked draft specifies none of them for the open-negotiated procedure: whether the number of participating operators is disclosed to the others, whether reduction proceeds in announced, simultaneous rounds or through informal, staggered elimination, how much a buyer may signal about a rival's position without revealing it outright, and whether any operator effectively obtains a last look once other offers are ostensibly final.[8]

The last look question is the sharpest of these. Even without a formal matching right, a buyer who narrows the field through successive rounds while retaining discretion over what each surviving operator learns about the others is, functionally, granting itself a form of last look at every stage, and Subramanian's finding that this chills serious competition applies regardless of whether the right is named in the text or simply available as a matter of practice. The related concern, bluffing about the existence or strength of competing offers to extract concessions, sits squarely inside the leaked draft's own integrity chapter on fraud, collusion and favouritism, and that chapter would need to reach this conduct explicitly, rather than leave it to be inferred from general good-faith obligations, if the concern raised here is to be taken seriously.

Appendix B. A Guide to the Relevant Economic Literature

This guide is organised around the argumentative structure of the paper rather than alphabetically, so that each cluster of references maps onto a specific claim made in the main text or in Appendix A.[9]

Multi-stage bargaining and the ratchet effect. Freixas, Guesnerie and Tirole (1985) is the original formalisation of the dynamic sketched in Appendix A, developed for production planning under incomplete information rather than for procurement but directly transposable. Laffont and Tirole (1988) restates the mechanism in a contracting frame closer to the present application, and Laffont and Tirole (1993) remains the textbook treatment most public-procurement economists would expect to see cited here.

Scoring auctions and the design of the award rule. Che (1993) is the foundational paper, showing that a scoring rule can be designed to implement efficient, truth-revealing outcomes across price and quality simultaneously, but only if the rule is derived with that objective in mind rather than adopted as a fixed, arbitrary weighting. This is the paper against which the leaked draft's quality floor should eventually be tested, once the operative articles are available. Branco (1997) extends the analysis to correlated cost and quality types, the more realistic setting for most public contracts. Asker and Cantillon (2008) works out the comparative-statics properties of scoring rules more generally.

Auctions versus negotiation as competing procurement formats. Bulow and Klemperer (1996) is the classical result cutting against the reform's own premise, showing that under fairly general conditions adding one more competitor to an auction dominates even skilled bilateral negotiation. Manelli and Vincent (1995) complicates this in the other direction, showing that negotiation can outperform auctions specifically when quality is uncertain and hard to verify ex ante, which is closer to the Commission's own stated justification and should be cited precisely because it is the strongest theoretical case for the reform rather than the weakest. Asker and Cantillon (2010) sits between the two and is probably the single most relevant theoretical paper for adjudicating between sections 3 and 4. Bajari, McMillan and Tadelis (2009) moves

[8] Subramanian (2010), especially chs. 3 and 7 on last-look and matching rights, and ch. 9 on the ethics of bluffing about competing offers.

[9] Full bibliographic details are given in the References list at the end of this paper and should be verified before citation; they are stated here from memory rather than from a fresh check of the original sources.

from theory to data, examining when real public buyers choose negotiation over open bidding, and is the natural bridge between this literature and the paper's own evidence in sections 2 and 4.

Foundations in adverse selection. Akerlof (1970) is the base case for why removing a quality signal degrades a market even when every participant would prefer it not to. Rothschild and Stiglitz (1976) supplies the separating-equilibrium apparatus a more formal version of the reliability-floor argument in section 3 would need. Neither is procurement-specific, and they are included because a technical reader would expect the underlying intuition to be traced to them.

Institutional and empirical evidence on buyer discretion. Kelman (1990) made essentially the argument advanced in section 4 three decades before the Court of Auditors' 2023 data existed to support it, that risk-averse public buyers systematically under-use discretion even where the law already permits it. Coviello, Guglielmo and Spagnolo (2018) is directly on point and, usefully, uses Italian data, letting it sit alongside section 2's evidence rather than requiring a second national context. Decarolis (2014) bears on what abnormally-low-tender review can and cannot catch, relevant to section 3's observation that this review is the draft's main fallback once selection criteria become optional.

Negotiauction design and the practice of dealmaking. Subramanian (2010) is the fullest treatment of hybrid auction-negotiation transactions and supplies the design-lever vocabulary used in section 3 and Appendix A, including last look and matching rights, disclosure of the number and identity of competing parties, the sequencing of rounds, and the ethics and legality of bluffing about rival offers. It is a law-school text aimed at practitioners rather than a game-theoretic monograph, and it earns its place here precisely because it translates the mechanism-design intuitions above into the vocabulary a procurement lawyer or contracting officer would actually use, which matters for a paper aimed at readers in both traditions.

A minimal core set, if a shorter list is wanted for this first paper with the remainder held for the dedicated game-theory paper the series has deferred this material to, would comprise Che (1993) for the scoring-auction baseline, Asker and Cantillon (2010) for the auctions-versus-negotiation comparison closest to this paper's own question, Freixas, Guesnerie and Tirole (1985) for the ratchet effect, Subramanian (2010) for the practitioner-facing design-lever checklist and the last-look problem, and Kelman (1990) for the institutional claim underlying section 4.

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