

# *Current Developments in U.S. Procurement Law*



**Selection, Qualification,  
Qualification of  
Tenderers**

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# US Developments: Discussion Topics

- Harmonization: Front-end versus Cradle-to-Grave?
- Four Concerns
- Food for Thought - Q&A



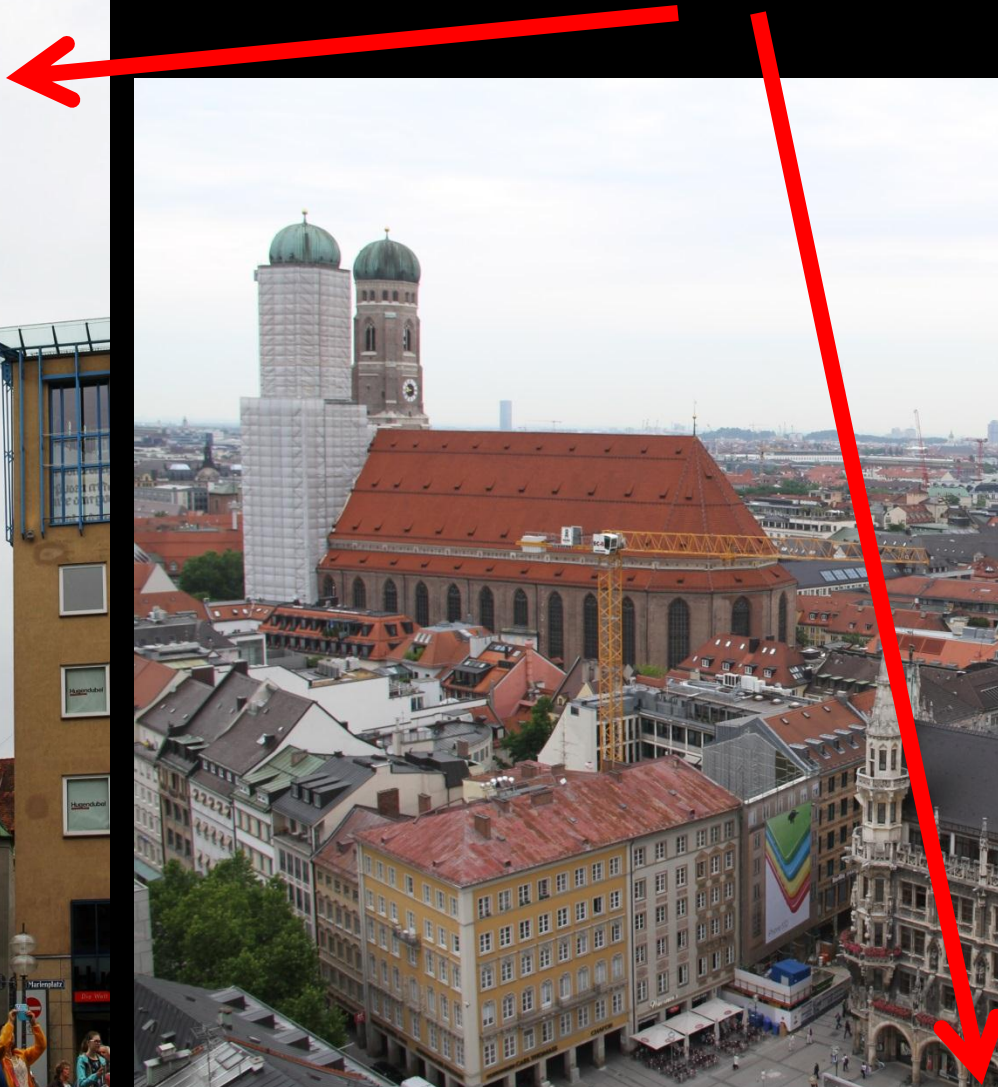
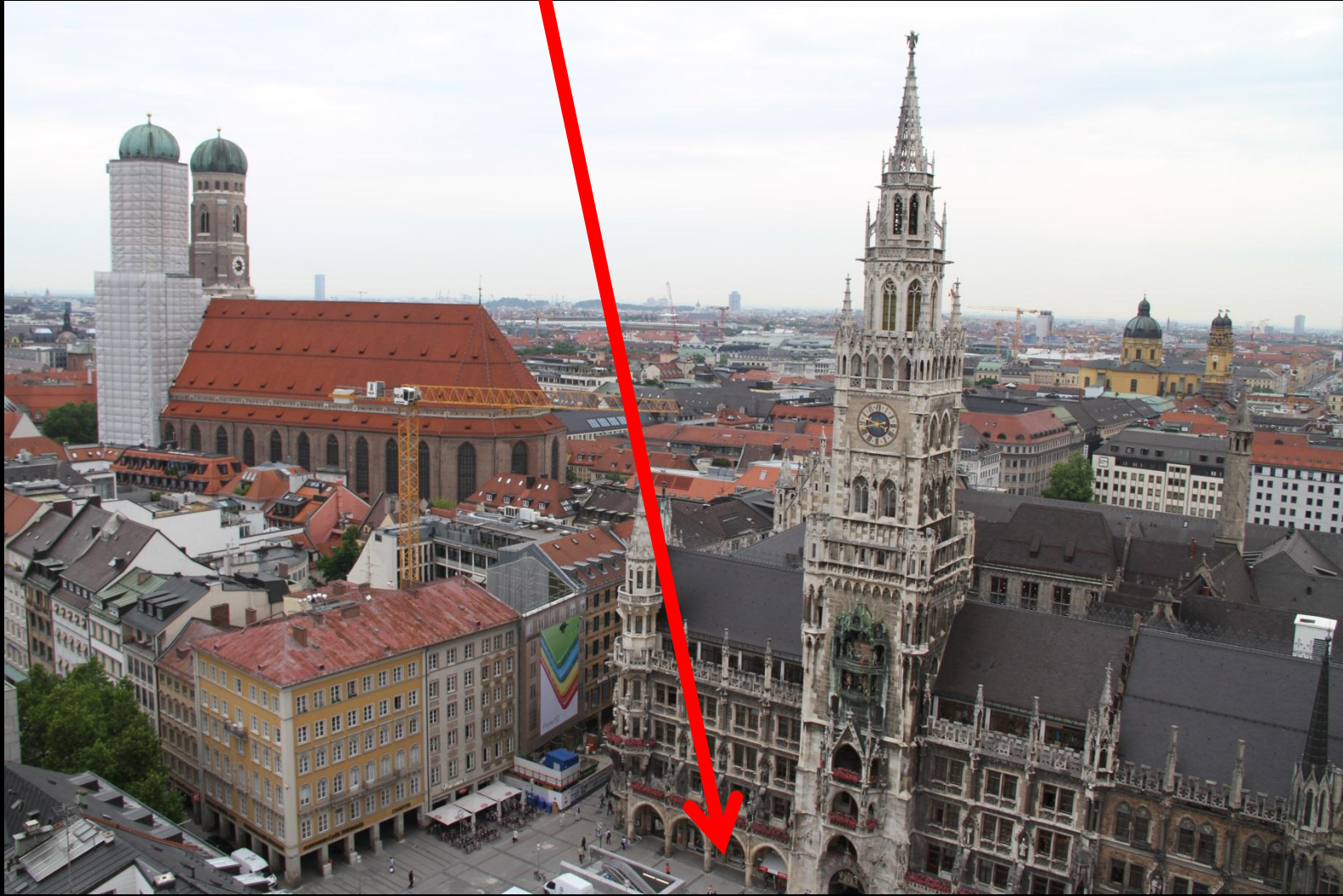


# Reality, Impact of Globalization

- **Multinational markets**
- **Multinational firms**
- **Global supply chain**
- **Free flow of**
  - **Capital**
  - **Information**
  - **Technology**
  - **Personnel**
- **Harmonization????? (yes, but...)**



# Perspective Matters



# Evolving Our Global Procurement Legal Community

- Diverse models:
  - Conventional contracts, hybrid relationships (PPP, PFI, BOT/BOOT), grants
  - Public, private, academic, NGO communities
  - Policy, operational, judicial (and quasi judicial)
- **No inclusive entity: Informal, unofficial, flexible**
- Anecdote: Sharing Research (free, borderless)
  - Social Science Research Network (SSRN)
  - JEL Codes: H57 (Procurement), L33 (Privatization, Contracting Out)

# Procurement Definition/Bifurcation versus *Cradle-to-Grave*

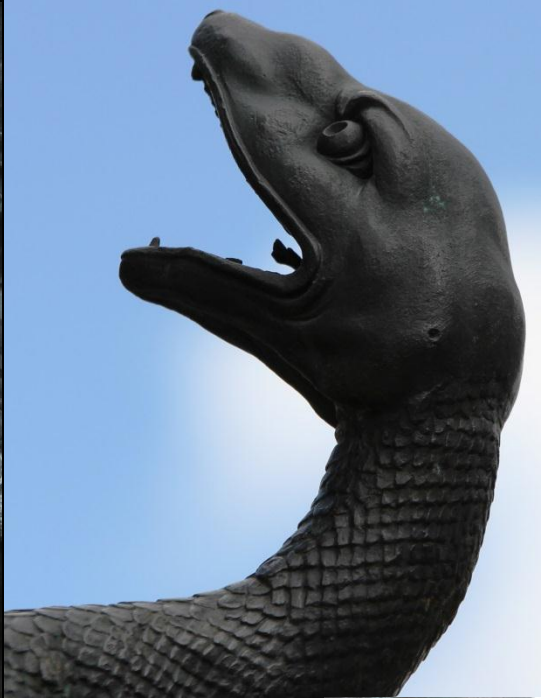
- Inefficient contracts begin with *inadequate acquisition planning*
- Failure to include the *customer (end user)* favors bureaucratic processes, rather than outcome-based, *consumer-like best practices*



# Putto (Puttis) Slay(s) the Beasts (Threats)







war  
pestilence  
hunger  
heresy



- Four Concerns

- Less Money and Competitive Pressure
- Lowest Price Technically Acceptable (LPTA)
- Maximizing Competition versus Proliferation of Social Policies
- Exclusion Trends







**Less  
Money**



# Global Economy: End of an Epic Procurement Growth Cycle

- US trend:

- *2001: \$223 billion*

- *2008-2011: \$540 billion*

- 2013: ~ \$465 billion (-14%)

- Invest or Retrench?

- Need for “Savings”:

- Curbing Appetites

- Managing the Margins?

# Competitive Pressure (Heightened Stakes)

- More offerors for individual contracts
- Exacerbating Trend
  - Fewer, larger, longer-term contracts (e.g., framework or umbrella contracts)
- Fear of market exclusion
  - The “bet the company” procurement (contract or program)
- Protest (Challenge)

# *An anecdote: Outsourcing, Proliferation of Services Contracting*

## – Information Technology (IT) acquisition

- Dismal track record
  - Incremental progress versus paradigm shifting
- IT solutions or “Software as a service”
- Migration to the cloud



# Lowest Priced Technically Acceptable (LPTA)





**Proliferation:**  
*of anti-  
competitive,  
inefficient, &  
unproven*  
**Social  
Programs**

- **Social Engineering or Open Markets?**

- **Examples**

- **Small Business (or SME's) Consolidation, Aggregation, Bundling**
- **Domestic Preferences (protectionism) versus Globalization, Efficiency, and Global Trade**
- **Green, Sustainable, Environmentally Friendly**
  - **Outcome/result based?**



# Vendor Exclusion



# Suspension, Debarment, Blacklisting, Long-Term Vendor Exclusion

- Longstanding Regime
  - Decentralized (agency autonomy)
  - Due Process heavy
  - Transparent Outcomes (Public list)
  - Large-Small Firm Dichotomy
- Congressional Pressure
  - Centralize (and standardize)
  - Higher body count – bad statistics



# *Food for Thought - Orientation:* Process or Outcome?



- **Re-Imagining Procurement Metrics: Measure What Matters (Not What Is Easy to Measure)**
- Global Data Collection
  - Expenditure (burn rate)
  - Type of Procurement, Competition Metrics
  - Vendors (Including Domicile, Size)
- Conventional Acquisition Performance Metrics
  - Contract Price (low price, compliance)
  - Timeliness (Delivery Date)
  - Contract (specification) compliance
- *Questions Worth Asking*
  - *Customer Satisfaction*
  - *Value for Money*
  - *Life Cycle Cost or Total Cost of Ownership*



# Conclusion - Q&A

