

## **SELECTION OF A CONSULTANT BASED ON THE ASSESSMENT OF QUALITY OF SERVICE**

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### **Abstract**

The adoption of the new European Directive No. 2014/24/EU as of February 26, 2014 on Public Procurement and the preparation of its implementation to the Czech national legislation raises again the question of the selection of the best offer. The above referred to directive in fact recommends to all member countries ordering so called intellectual services (for instance some consulting, architectural, engineering or major project information and communication technologies) to implement negotiation proceedings or tender dialogue. The paper deals with the area of design and engineering services as an example of situation when maximum attention should be paid to the above selection from the point of view of efficiency, quality and follow up evaluation so that the client could get maximum value for his money. The paper describes the methodology that is recommended as the preferred one, referred to as Quality and Cost Based Selection (QCBS) that may be modified to the Quality Based Selection (QBC) method, too.

**KEYWORDS: Public Procurement, Quality and Cost Based Selection, Consultancy Services, New EU Directive 2014/24/EU**

### **INTRODUCTION**

The adoption of the new European Directive No. 2014/24/EU as of 26.2.2014 on public procurement [1] by member-countries again raises the issue of the methods of the selection of special services (that are referred in the Directive as intellectual services). An extremely important component of the public procurement process are design, consulting and engineering services. The consulting services component includes planning, design, development, verification and management of the operation of the infrastructure humans need for their existence. Given limited supply of sources and need to preserve the nature, growing demand for food, water, hygiene, health protection, transport and energies generates a permanent demand for consulting services. Most of them become the subject-matter of public interest and, thus, they get included to the public procurement processes.

In this context, consulting services are technologically based intellectual services associated with development projects and environment and they may be roughly divided to the following groups:

Table 1: Types of technologically based intellectual services for development projects and environment

Design services		Consulting services
Preparatory works	Implementation services	
Data and information analyses, surveys	Tender documentation	Strategies and policies
Sector studies	Technical assistance	Management
Master plans	Technical supervision	Institutional changes
Project studies	Project management, bid evaluation	Local service support (capacity building, know-how transfer)
Special studies (EIA, sustainability, health)	Integrated service solutions	Management (quality, cost, contract, risk, claim)
Project documentation	Training	Information technologies
	Detailed design	Financial consultancy

## **CHOSEN RECOMMENDATIONS OF THE DIRECTIVE NO. 2014/24/EU**

The Directive unambiguously recommends to member countries to initiate competitive procedure with negotiation and publication or competitive procedure with dialogue in the process of the procurement of so called intellectual services, including for instance some consulting, architectural, engineering services or for major information and communication technological projects. In these cases, the competitive procedure with negotiation may be inevitable to ensure that respective service meet needs of the public contracting authority.

Research and innovation including environmental innovations and social innovations ranks among key driving forces of future growth and they are in the heart of the strategy Europe 2020, a strategy for smart, sustainable and inclusive growth supporting the integration[2]. Comments to the Directive recommend to public administration agencies to make strategic use of the public procurement to promote innovations. This is why the Directive introduces a new subject-matter of the public procurement, namely innovation partnership. What should be applied in this particular case is the competitive procedure with negotiation and public contracts should be awarded solely based on the best value for money criterion as it is the most appropriate method of the comparison of innovative solution proposals.

Unfortunately, method based on the lowest price criterion is preferred in the Czech Republic and Slovak Republic, yet. Logically, this is why we do not have experience with the application of such public procurement criteria for contract that would be evaluated in the framework of the “the most advantageous proposal from the point of view of economy”.

Public contracts should be awarded based on simple and comprehensible unbiased criteria that will guarantee the adherence to principles of transparency, non-discrimination and equal treatment with regard to unbiased comparison of the relative quality of the tenderer, proposal value with aim at defining which of the proposals is actually the most advantageous in the conditions of the actual economic competition, that means which of the proposals shows the highest best value for money ratio. In the context of the best value for money ratio, the Directive contains a demonstrative enumeration of possible tendering criteria including environmental and social aspects.

We all know well that the key project influencing factor is the selection of a right and quality consulting engineer. In the preparatory and implementation phase of the project, the consultant will be the critical factor that will determine the project success although costs of such services represent mere per cent points of the total project budget.

The selection of the consulting engineer is so important that foreign countries have a detailed and sophisticated methodological procedure of his/her selection that completely differs from the goods purchase or development project contracts. Unfortunately, such standard methodologies have not been implemented in the current public procurement legislation. Institutions that pay enormous attention to the selection of best possible consultants in order to provide for the most efficient possible exploitation of funds granted by them include international financial institutions (World Bank, IBRD, EIB, EU funds).

## **CURRENT OPINION ON THE SELECTION OF CONSULTANTS**

In April, the Infrastructure Development Association organised the „Czech National Infrastructure Conference” with a very interesting inquiry that addressed a representative sample of participants [3]. Their answers to the question „What kind of the selection of the project designer do you consider right?” were as follows:

- 54% - The right procedure is to select designers based on the design and team experience
- 43% - The right procedure is to select designers based on their experience, capacity and references
- 4% - The right procedure is to select the cheapest designers.

## **FIDIC RECOMMENDATIONS**

The International Federation of Consulting Engineers (FIDIC) elaborated various consultants selection methodologies and offered them for practical implementation. An unambiguous primary criterion was the quality of services offered plus a number of other selection criteria and conditions [4]. The methodology chosen as preferable is referred to as Quality and Cost Based Selection (QCBS) although it may be modified and have the form of Quality Based Selection (QBC). This recommendation was gradually adopted and applied in practice by a number of countries and organisations. For instance the World Bank’s (WB) methodology is entirely based on this method and the organisation has its own manual for public procurement tenders based on this method [5] and all WB funding beneficiaries worldwide are encouraged to proceed in compliance with such manuals. The manual has been currently updated [6] as it has become a recommended methodology for all Multi-lateral Development Banks and, thus,

for the beneficiaries of their funds, too. It is logical that it immediately affects the formulation of the wording of public procurement legislation in such countries so that they could have their legislation compliant with funding bank requirements in case of the granting of such funds.

We meet this methodology practically in all international tenders organised for the preparation of projects funded by so called international financial institutions (IFI). This methodology started to be adopted in the Czech Republic during the accession period in 2003 – 2004 when consulting services supporting some major projects were organised based on so called “PRAG”. [7] Unfortunately, no Czech public procurement legislation amendment has reflected this different method of the selection of consulting and other services providers. Thus, we saw an illogical combination of the selection of intellectual and other types of services and such an approach resulted from the implementation of principles of the original European public procurement directive [8]. Although the law stipulates different rules for the selection of construction work, supplies of good and service contractors, it envisages the implementation of the same procedures. What is missing is a recommendation how to proceed in case of intellectual services.

The FIDIC recommendations and the current international practice fully comply with the best value for money principle. A public contracting authority will get the best possible and useful value (quality) for the money is spent [9].

The QCBS and QBS methods fully meet recommendations formulated by the expert group of the Platform for Transparent Public Procurement concerning the preparation and every year update of the “Best Value For Money Methodology” (Recommendation No. 24) already approved by the Government of the Czech Republic [10].

## **PRINCIPLES OF THE SELECTION OF THE CONSULTANT**

Principles governing the preparation of the consultant selection process are included to the tendering term and conditions and all manuals used for this public procurement type.

Such key principles include the following:

- High quality of purchased goods
- Efficiency of works and economy of chosen solutions
- Limitation by means of tendering terms and conditions makes it possible to provide for the competition between qualified consultants
- Free access to the tender for domestic and foreign consultants (participation of local consultants is always preferred)
- Transparency of the tender and all parties involved in the public procurement process (this term includes such principles as elimination of conflict of interest, unfair competitive advantage, eligibility of the tenderer, language, deceptive practices, corruption etc.)

### **QBS Methodology (Quality and Cost-Based Selection - QCBS)**

The most recommended method is the Quality- and Cost-Based Selection (QCBS) method. This method prefers the best possible quality or services taking into account their price (most economically advantageous tender – MEAT). Although the QCSB method is the best way for most cases, selecting it, we have to take into account the nature of services purchased. Below we mention other methods, too, that may be used for the purchase of services as in specific cases these may be simpler and more appropriate.

The QCBS method is unambiguously recommended by key international organisations funding consulting service that include the significantly dominant intellectual core of such services. On the contrary, this method is not recommended for those types of services that include construction works, production of goods, operation and maintenance, surveys, services ordered based on physical metering of certain outputs from such rendered services.

The QCBS method is based on tender to which short-listed companies are invited taking into consideration mainly the quality and price of services offered (the best price-quality ratio). The price as a selection factor is being used in a very deliberate manner (its weight is not absolutely decisive, it is as usual approx. 20 %). The relative price and quality weight is defined individually for each separate case depending on the nature of services, however it has to respect the recommendation of respective manuals (legislation). An ambiguous process recommendation envisages ensuring the selection of consulting, architectural or engineering services preferably using the competitive procedure with negotiation and publication.

The QCBS based tendering process includes the following steps:

- a) Description of required services, scope and ends of the project, list of available documents concerning the project as under preparation, scope of the competence required by the client, that means terms of Reference (TOR)
- b) Preparation of the price estimate and budget
- c) Tender notification process, project promotion and response from future tenderers
- d) Short-list – list of preliminarily eligible companies
- e) Preparation and publication of the Request for Proposals (RFP) that includes Letter of Invitation (LOI); Instructions to Consultants (ITC), again Required Terms of Reference (TOR) and Draft Contract)
- f) Receipt of proposals
- g) Evaluation of the technical part of the proposals from the point of view of their quality
- h) Opening of the financial part of the proposals
- i) Evaluation of the financial part of the proposals
- j) Evaluation of the proposal quality and price, publication of the general evaluation
- k) Negotiation and execution of contract with the chosen tenderer

As far as the most important step of the tendering process – quality evaluation is concerned, various criteria are taken into consideration:

- a) Adequate experience of the consultant with similar projects (references)
- b) Quality and methodology of the proposed solution and procedure (this includes always more often the evaluation of proposed innovations and detail solutions)
- c) Qualification of key project team members and their production tools (HW, SW)
- d) Extent to which know-how will be transferred to the client

- e) Extent to which local companies have been incorporated in the structure of the project team

As a rule, each criterion is evaluated using a scale of 1 to 100 points. Points are weighed and their sum is the total evaluation result. The applicable weighing system has to be specified in the request for proposal. The output from the evaluation is a report on the evaluation of the technical part of the proposals. Should the project be funded by credits provided by international financial institutions, the report is subject to approval by such a funding institution. Only after all these steps have been completed, the financial part of the proposals may be opened. There is a minimum number of points specified for tenderers to be admitted to the financial part of the tender. Financial proposals of companies that have not been granted this minimum number of points will not be opened and will be returned to the tenderers.

The opening of the financial part of proposal is public with the information on points awarded in the technical part of the tender and the proposed price. However, the price has to include the remuneration to the consultant and all other costs, it may be higher than the specified budget. As a rule, the lowest price proposal is awarded 100 points, the following one get proportional number of points. The proposals are then subject to a general evaluation based on the RFP specific methodology.

A dialogue with the chosen tenderer precedes the final approval of the price in order to check the availability of offered experts and price details and subject-matter of the performance. Either the execution of the contract or refusal to execute the contract (followed by the invitation by the next tendered to negotiation, refusal of all proposals) is published.

### **QBS Methodology (Quality Based Selection)**

This method is used for very complex and highly specialised projects where precise formulation of the terms of reference is very difficult and the consultant is required to provide output to the client as early as in this phase. A typical example is the requirement of the client to an innovative solution included to a lower phase of the project preparation (ordering for instance economic or sector studies, feasibility studies, hazardous waste landfill design documentation, city master plans including respective service segments etc.). It may include studies and design documentation of key infrastructure projects, for instance big dams, strategic studies of national significance, security projects. This case as a separate process is specified in the new EU Directive [1] as innovation partnership.

The QBS method includes the same steps as the QCBS method, however, it envisages either the submission of the technical part of the proposal, only, or of both parts (technical and financial parts) at the same time. The financial part is informative with regard to the lower level of the terms of reference (what may be missing for instance is the anticipated budget). The technical part is evaluated in the same way as in case of the QCBS method. Chosen tenderers are invited to dialogue on the price or price modified by them. Only the winning price is published. Quite often, the subject-matter of the competition is not a fixed price but the hourly rate of individual experts.

### **Selection under a Fixed Budget (FBS)**

This method is used for simple projects where the project budget may be defined in a relatively easy way. The procedure is the reversed QCBS procedure: again, both technical and financial parts of the proposal are to be submitted. In this case, the specified maximum price of required services must not be exceeded.

### **Least-Cost Selection – (LCS)**

This is a method that is used in the Czech Republic and Slovak Republic most often. It is appropriate solely for routine consulting services and it does not support the best project quality attainable. This method defines minimum quality requirements as a rule as a qualification criterion for a company or its experts but not for the solution quality. What is evaluated is the price, only, after the adherence to the qualification criteria. The company who proposed the least price is invited to negotiate on the contract.

### **Selection Based on the Consultants' Qualifications (CQS)**

This method is used for small projects. The preparation is identical to that used for QCBS with the only exception that the short-list is compiled directly by the contracting authority who, based on its own knowledge, will invite companies to present their technical and financial part of the proposal. The evaluation procedure is identical to the QCBS method evaluation.

## **SUMMARY**

Permanently growing society sustainable development requirements generate growing requirements to the quality of consulting services to innovations to be implemented to projects [11]. The current consulting services public procurement condition is in direct conflict with interests of the society. It invests and plans to invest huge amounts to the education system and improvement of its quality in order to logically safeguard the preparation of technical solutions that would guarantee sustainable development. Unfortunately, the current Czech and Slovak consultation service public procurement practice seems to lead in an exactly opposite direction. Selecting a consultant based on the least cost selection method and given the generally poor standard of the terms of reference, the objective is the achievement of the lowest possible (but still acceptable) quality resulting from the least offered price of such services. The quality and price cannot be separated from each other, however, their relation may be optimised and this is the core of the methods of the selection of the consultant based on QCBS or QBS. It is a paradox that funds invested into education are at the key moment, i.e. upon the practical application of the education achieved, focused on the identification and implementation of a solution that shows the lowest quality and price (still acceptable value for money), i.e. they go in a completely opposite direction but not towards the identification of the optimum (best value for money) solution.

The survey of the internationally recognised methods of the selection of consultants should lead us to consider whether the implementation of the new EU directive should not be used for a simple amendment to the public procurement act following the example of international financial organisations who fully respect the “value for money” rule. Otherwise, the Czech and Slovak Republic can expect further stagnation of consulting services quality or even

quality deterioration or lagging. The problem is not simple increase of consulting services but creation of an environment motivating the implementation of quality, sustainable development principles and innovation in practice. This is the only way towards an improvement of the entire consulting service sector and society.

EFCA [13] recommends that design contracts for complex projects be awarded with the competitive procedure with negotiation. Since this is a complicated procedure and requires significant input on behalf of the consultants and the clients, clients and service providers should be encouraged to ensure that they have enough capacity in their procurement or tender team to manage the requirements of the procedure.

It is quite promising that the preparation of the transposition of the European public procurement directive in a new public procurement legislation seems to go in right direction according to information available by now. The Ministry of Regional Development of the Czech Republic advised the following main principles [12]:

- Evaluation criteria
  - Sole award criterion - most economically advantageous tender (MEAT)
  - Possibility to evaluate the contractor's team
  - Fixed price may be specified and the competition will concentrate on quality criteria, only
  - Innovative contribution of the proposed solution
- Extraordinarily low bidding price
  - The formula concept has not been adhered to (it is likely not be excluded)
  - Possibility of individual evaluation
  - An option on the part of the contracting authority to include a formula to the terms of reference
- Open tender procedure
  - Possibility to evaluate the proposal first and only then to start with the assessment
  - Simplification of all proceedings (e.g. protocols)
  - Competitive procedure with negotiation and publication is recommended as a versatile proceeding type applicable to intellectual services tenders
  - Competitive procedure with negotiation and publication – possibility of limitation based on higher qualification
- Economic qualification
  - Economic qualification criterion will be implemented again

Given the above, we can just guess what the real shape of the new public procurement legislation will be after it leaves the Czech Parliament. For the bill enactment time schedule see the annex, table No. 2.



The incorporation of the principles of the selection of consultants based on quality necessary for the implementation of the project is a basic presumption of the achievement of the necessary goal:

To reverse the current trend that is typical of the erosion of quality elements of projects!

This may be achieved if, when implementing the new public procurement directive, we apply in practice principles of selection based on quality and price (art. 67, section 2 letter b) of the Directive „Organisation, qualification and experience of workers charged with the implementation of project”). This is the only way to the selection based on the economically most advantageous proposal.

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Table 2: Legislative text – time schedule [12]

Directive publication	28. 03. 2014
Articulated version of the draft legislation – submission for the comments procedure	until 1. 1. 2015
Inter-department comments proceeding	20 business days
Settlements of objections	2 months
Sending of the draft to the government	April 2015
Statement of the Government Legislative Council	60 days
Government addresses the draft legislation	June 2015
House of Deputies	July - October 2015
Senate	November 2015
Enactment	1. 1.2016, until 1. 4. 2016