



# **FIDIC – EFCA DNS 23.9.2006**

**Procedures for the award of engineering  
contracts  
concerning services**

**EFCA Guidelines for transposition of  
Directive 2004/18 into national legislation**



- **Aims & principles**
- **Procedure of award**
- **Selection & award**
- **Controversial issues**



# Transposition

The Directives 2004/18/EC and 2004/17/EC are to be transposed into national law and put into practice by the EU member states as from 31.01.2006

- The national legislation has to be consistent with the directives
- Not all options provided for in the directives are to be included



## Aims & principles

- to simplify the existing directives
- to adapt them to new technologies
- to offer the possibilities to integrate environmental and / or social considerations



## Aims & principles

Freedom of movement: of goods, of establishment and to provide services, and the principles deriving from that:

- transparency,
- equal treatment,
- non-discrimination,
- mutual recognition,
- proportionality



- for all the above procedures the contracting authority obligatorily announces the project in of the Official Journal of the European Union (included in the Tenders Electronic Daily (TED))



## Procedure of award

- The main **award procedures** are the open and restricted procedure

**Open procedure:** all interested economic operators may submit a tender (long list)

*RECOM: The open procedure should be avoided for the award of consulting services:*

- *high cost for preparation for consulting sector*
- *high cost for evaluation for the public sector*



## Procedure of award

**Restricted procedure:** all economic operators may participate but only those invited by the contracting authority may submit a tender (short list)

*RECOM: the restricted procedure is the most appropriate procedure for the award of consulting services*





## Procedure of award

- Restricted procedure
    - Number of tenders:
      - contracting authorities may limit the number of candidates they will go on to discuss or negotiate with (restricted and negotiated procedures and in the competitive dialogue).
      - Minimum is defined in directive; maximum is not
- RECOM : Short-lists should contain a limited selection of qualified bidders, in our view maximum eight for the restricted procedure and five for the negotiated procedure.*



## Procedure of award

- **Negotiated procedure** only in exceptional cases:
  - following submission of irregular/unacceptable tenders;
  - for intellectual services such as design of works when sufficient contract specifications cannot be established



## Procedure of award

- **Design contest:**
  - enables the contracting authority to acquire a plan or design by a independent jury after competition
  - negotiated procedure without prior publication is applied for negotiating with the winner

*RECOM: provision for remuneration of the candidates*



## Procedure of award: new

- Competitive dialogue:
    - the contracting authority conducts a dialogue with the candidates admitted to that procedure,
    - with the aim of developing one or more suitable alternatives able to meet its requirements,
    - on which the candidates chosen are invited to tender.
  - Use: in case of ***particularly complex contracts***
- RECOM: provision for remuneration of the candidates*



## Procedure of award: new

- Dynamic purchasing system  
is a completely electronic process for making *commonly used purchases*, open to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification

*RECOM: not suitable for consulting services*



## Procedure of award: new

- Electronic auction
  - repetitive process involving an electronic device for the presentation of new prices,
  - revised downwards, and/or new values concerning certain elements of tenders,
  - to be ranked using automatic evaluation methods

*RECOM: not suitable for consulting services*



## Procedure of award: new

- Framework agreements
  - an agreement between one or more contracting authorities and one or more economic operators,
  - to establish the terms governing contracts to be awarded during a given period, (four years)
  - in particular with regard to price and, where appropriate, the quantity envisaged

*RECOM: agreements were all or almost all of the contract terms are defined, with the aim of restricting the possibility of price competition for the award of individual contracts*



- Central purchasing body:  
  
is a contracting authority which acquires supplies and/or services intended for contracting authorities





- mixed contracts: Contracts of works and services. The decision to award contracts separately or jointly must be determined by qualitative and economic criteria, defined by national law.

### *RECOM*

- *mention of content, method and means of implementation of services*
- *modification of subcontractor is subject to agreement of awarding authority*



- subcontracting

Permitted to encourage the involvement of small and medium-sized undertakings in the public contracts procurement market.

*RECOM*

- *indication of portion of the contract that is intended to be subcontracted*
- *modification of subcontractor is subject to agreement of awarding authority*



## Selection & award

### **Qualitative selection criteria**

- the selection process is performed in 2 steps:
  - Screening of the consultant
  - Evaluation of the suitability of the consultant



## Selection

# Screening of the consultant

- Personal situation of the candidate/tenderer
  - involvement in criminal activities
  - bankruptcy
  - fraud, corruption
  - professional misconduct ...



# Selection

*RECOM (in view of significant documentation for the provision of evidence):*

- establishment of official list of approved consultants*
- set-up of database containing related documents accessible by the contracting authorities*
- possibility to substituted by declaration, with obligation of the winner to substantiate the necessary documents*



# Selection

## Evaluation of the suitability of the consultant

- Economic and financial standing
- Evidence of the economic operators' technical capability
- Technical and / or professional ability
- Quality assurance standards
- Environmental management standards
- Can use the capabilities of another firm



# Selection

## *RECOM*

*The technical and/or professional suitability of consultants is primarily assessed on the basis of experience in similar projects*



# Award

## **Award criteria**

The criteria on which the contracting authorities shall base the award of public contracts shall be either:

- (a) to the economically most advantageous tender or
- (b) the tender with the lowest price





# Award

## Award criteria

- The contracting authority shall specify in the contract notice or in the contract documents **the relative weight which is given to each of the criteria** chosen to determine the most economically advantageous tender.



# Controversial issues

- Unfair competition
  - The entities that may participate in the procedures for award of contracts include natural and legal persons belonging to the private sector and public entities.
  - Member States should ensure that the participation of a public entity in an award procedure does not cause any distortion of competition in relation to private tenderers.



## Controversial issues

- Abnormally low financial proposals
  - abnormally low tenders in open or restricted procedures can be rejected after requesting in writing details of the constituent elements
  - identification of abnormally low financial proposals is difficult in practice



# Controversial issues

- Conflict of interest
  - Conflict of interest is not treated in the Directive