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# FIDIC-SIDiR-EFCA Regional Infrastructure Conference

**Krakow  
7 & 8 March 2016**

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Vice-President ARIC

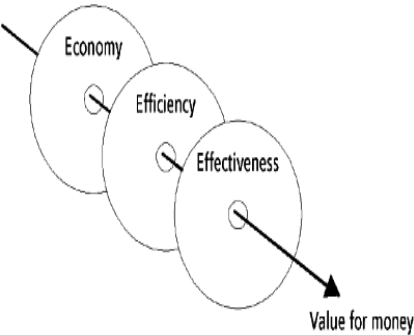


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## Effective procurement of services




One of the main goals of the current EU rules on public procurement is to provide the best value for money for public purchases while respecting the principles of transparency and competition



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- ◆ When procuring intellectual services, a pure price competition can never find the best value for money
- ◆ Services like engineering, consultancy, architecture or design are covered by the collective description of intellectual performances or services



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- ◆ When assessing the best price-quality ratio contracting authorities should determine the economic and qualitative criteria linked to the subject-matter of the contract that they will use for that purpose




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- ◆ In order to encourage a greater quality orientation of public procurement, Member States were permitted to
  - prohibit or restrict use of price only or cost only
  - to assess the most economically advantageous tender where they deem this appropriate

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Awarding procedures for service contracts - **past experiences**

- ◆ very poor quality of technical assistances and consultancy
- ◆ delays in awarding and implementation of the contracts
- ◆ disputes/appeals in tendering and implementation
- ◆ lost time with re-tendering, penalties and financial corrections
- ◆ improper fulfilment of contractual objectives
- ◆ non-eligible expenditure ...
- ◆ *and I will stop here!*

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◆ When transposing the EU Public Procurement Directive, the Romanian authorities decided to prohibit the use of price only for intellectual services:

- *Consultancy*
- *Technical assistance*
- *Design*
- *Supervision*
- *Others, pertaining to projects of high complexity*

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◆ A system of evaluation factors shall be implemented – the percentage allocated to price cannot be higher than 40%

◆ When using quality criteria, the contracting authority should be able to motivate their chosen evaluation factors so that:


- they do not become discriminatory
- they may be objectively verifiable
- they may allow an effective competition in the procedure.

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- ◆ The set of quality requirements shouldn't be easily reachable for everyone because that means that in the end the price is the only decisive criterion
- ◆ The evaluation factors and weightings must be tailored on the basis of contract objectives reflecting the most important activities and/or deliverables of the contract


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- ◆ The Contracting Authorities should have flexibility to assign weightings to both evaluation factors and sub-factors in the limits set out in the award section
- ◆ The award criteria must be linked to the subject matter of the service contract


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- ◆ Wherever the quality of the staff employed is relevant to the level of performance of the contract, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the contract in question
- ◆ This can affect the quality of contract performance and, as a result, the economic value of the tender
- ◆ This might be the case in contracts for intellectual services such as consultancy or design services


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- ◆ Contracting authorities which make use of this possibility should ensure, by appropriate contractual means:
  - the staff assigned to contract performance effectively fulfill the specified quality standards
  - the staff can only be replaced with the consent of the contracting authority which verifies that the replacement staff affords an equivalent level of quality


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- ◆ Contracting Authorities should disclose the criteria to be used and the weightings for these criteria from an earlier stage of procurement
- ◆ Preliminary market consultations between contracting authorities and suppliers are encouraged, which should facilitate
  - better specifications
  - better outcomes
  - shorter procurement times

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 ROMANIA

- ◆ Currently different sets of standard documentation for service contracts are under development:
  - preparation of the infrastructure projects
  - supervision of the infrastructure projects
  - contract management

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The aim of standard documentations is to control public spending and encourage efficiency, competition, transparency, fairness, integrity and accountability on public procurement for service contracts

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### Preparation of projects

- Development or revision of the Master Plan (if case);
- Delivering the Financing Application ((Pre)-Feasibility Study, Cost-Benefit Analysis (CBA), Environmental Impact Assessment (EIA))
- Geological / hydrological / topographic studies, technical expertise, technical project, (pre-) detailed design etc);
- Development of the tender dossiers for works contracts and other specific projects;
- Support for Contracting Authorities in the procurement procedures;

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## Supervision

Public contracts having as their object the provision of services for:

- Supervision of the works contract
- Other engineering activities



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## Supervision

The following aspects shall be introduced:

- the selection criteria shall be aligned with those for works contracts (which shall be supervised )
- contractual provisions shall detail the responsibilities of supervising engineers and shall strengthen their accountability
- requirements shall be introduced with regards to the obligation to resort to the expertise of external independent laboratories for the performance tests before accepting the works for payment



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## Contract management

Public contracts having as their object the provision of services for:

- Strengthening the capacity of the Contracting Authority
- Project management (for the Financing Contract)
- Delivering strategies, specific studies, etc.



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- ◆ The restricted procedure for the award of intellectual services is the most feasible procedure
- ◆ Important advantage: only the selected candidates (shortlisted) are invited to submit an offer
- ◆ An *official list of intellectual service providers* (at least for major investments), in accordance with *Directive 2014/24/EU, art. 64* would have immediate benefits



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In theory everything sounds great ...

In practice ...

Negative perception of public procurement is present in Romania and it lacks evidence of best practice examples

Contracting Authorities are very reluctant on giving up to the lowest price criteria

The new public procurement legislation is vague and leaves room for many interpretations



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Lawyers will be very busy in the next period!

So...

  
**KEEP  
CALM  
AND  
CALL YOUR  
LAWYER**



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**THANK YOU!**

Diana ANTOFIE  
**Lawyer,**  
Vice-President ARIC



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