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FIDIC-SIDiR-EFCA Regional Infrastructure Conference

**Krakow
7 & 8 March 2016**

J.N. (Jaap) de Koning MA BSc



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Speaker

J.N. (Jaap) de Koning MA BSc

- Consultant contracting and procurement at Witteveen+Bos;
- Manager Amsterdam office Witteveen+Bos;
- Chair IMC at EFCA;
- Member (Dutch) committee of procurement experts;
- Certified BVP expert;
- Chair Platform Integrated Contracts(CROW);
- Member committees Nlingenieurs.



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New European Directives

- Directive 2014/24/EU of the European Parliament and of the Council on public procurement and repealing Directive 2004/18/EC
- Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC
- Directive 2014/23/EU of the European Parliament and of the Council on the award of concession contracts



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Proposal for a Directive of the European Parliament and of the Council on public procurement

2011/0438 (COD)

COMMISSION PROPOSAL	EP IMCO AMENDMENTS	COUNCIL GENERAL APPROACH ¹	COMMENTS / COMPROMISE PROPOSALS
(1) The award of public contracts by or on behalf of Member States authorities has to comply with the principles of the Treaty on the Functioning of the European Union, and in particular the free movement of goods, freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that these principles are given practical effect and public procurement is opened up to competition.	(1) The award of public contracts by or on behalf of Member States authorities has to comply with the principles of the Treaty on the Functioning of the European Union (TFEU), and in particular the free movement of goods, freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that these principles are given practical effect and public procurement is opened up to competition.	(1) The award of public contracts by or on behalf of Member States authorities has to comply with the principles of the Treaty on the Functioning of the European Union, and in particular the free movement of goods, freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that these principles are given practical effect and public procurement is opened up to competition.	(1) The award of public contracts by or on behalf of Member States authorities has to comply with the principles of the Treaty on the Functioning of the European Union, and in particular the free movement of goods, freedom of establishment and the freedom to provide services as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that these principles are given practical effect and public procurement is opened up to competition.

¹ Based on final report adopted in IMCO Committee on 24 January 2013 (A7-0030/2013).

Major Issues

- Spring 2014: Issues on Implementation;
 - definition of intellectual services
 - Most Economically Advantageous Tender (MEAT);
 - the use of the competitive procedure with negotiation
 - Innovation partnership
 - scope for practical modification of contracts
 - procurement capacity
 - duration of valid project references
 - allowance for clarifications / additional information
 - Life-cycle costing (LCC)



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Are they really new?

1. 2020 goals:
 - Europe 2020 strategy for smart, sustainable and inclusive growth;
 - Need for innovation;
 - Need for sustainable development
2. New:
 - Intellectual services;
 - MEAT;
 - Competitive procedure with negotiation
 - Innovation Partnership
 - Life Cycle Costing (LCC)



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Message!

Procurement is the key to change...



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History

- Directives 2004: transparency, cross border trade between Member States, more efficiency, etc.
- Belgium: 9 years...
- Open markets?!
- Red tape?!
- Are they restrictive?



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New Directives

- Example: MEAT as an award criterion
- The Dutch experience
- MEAT = more than price
- Does it work, does it have the right effect?

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The transposition

- Deadline April 18th 2016
- 2 years exclusion
- The picture: in general;
- Germany, Denmark
- Holland, France, Finland, Austria
- Portugal, Spain.

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Issues

- Use of MEAT (on intellectual services)
- Modifications on contract
- Use of competitive procedure with negotiation for intellectual services
- Specific:
 - In-house engineering
 - Comply, or explain
 - Upfront delivery of the evaluation model
 - Extensive guidance



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Conclusions

- Almost in time...
- Differences in issues in memberstates.



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Thank you!

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