



## **ECEC Position Paper Public Procurement of Engineering Services - Fair procedures ensure successful projects**

### **Introduction:**

Engineers are affected by public procurement procedures for intellectual services on a daily basis. Thus the ECEC has carved out some principles that are necessary to ensure fair procedures for the public procurement of engineering services as the basis for successful projects. Inappropriate procurement procedures have a strong impact on quality and successful implementation of a project. Even though it is already common understanding within many procuring authorities that for intellectual services such as engineering services only quality based procedures are possible and adequate, their practical implementation is often still lacking in effectiveness.

As the legal and practical situation in regard to public procurement procedures differs in the countries in which ECEC member organisations are situated, the focus of this position paper is on very basic principles that procuring authorities should comply with in order to ensure fair and efficient procedures.

The ECEC fully supports the efforts of the European Commission to professionalize public buyers. For high quality engineering projects it is of utmost importance to ensure that public procurers have the necessary theoretical and practical skills and knowledge in order to conduct procurement procedures correctly. In cases in which the necessary expertise is not available within the procuring authorities it should be provided by the support of external consulting engineers.

This position paper addresses public procurement authorities as well as political representatives.

### **Content:**

The ECEC Working Group Public Procurement has decided to describe the basic requirements in the following Chapters:

- **The definition of quality criteria**
- **How to guarantee fair evaluation**
- **Price assessment**

## The Definition of Quality Criteria

For the procurement of engineering services the content design of criteria is of essential importance. The adequate definition of quality criteria in fact decides about whether a decision is really based on quality or is de-facto based on a price competition due to the ineffectiveness of the defined criteria.

**Therefore the ECEC would like to provide general hints for the definition of quality criteria:**

### **1. BASIC SELECTION CRITERIA (minimal requirements for participation in the procurement procedure):**

Basic selection criteria have to show an objective relation to the contract item. The requirements have to be adequate in regard to scope and extent of the contract and to the actual risks in connection with the project. In regard to planning services there is a tendency to have excessive basic selection criteria and thus create unnecessary burdens for market access especially for SMEs.

**Authorization:** In case of low contract values the requirement of an authorization for the offered planning services is often sufficient as it is in most countries legally combined with minimum professional legal requirements.

**Economic capacity:** For proving the economic resilience, professional liability insurance is an important factor. Requirements of minimum turnovers can be misleading as the office structure of planning offices very much differs from the structure of other companies that are part of the building process. Excessive requirements can be a burden for many potential service providers with an SME structure. This can considerably reduce the intellectual competition and thus hinder perfect solutions.

**Technical capacity:** Most relevant is the qualification of the personnel that is active in the project. This can be proved by qualification / CPD certificates and personnel references. Additionally it is possible to require company references. It is important that such requirements are not excessive, normally it is sufficient to ask for references with half the volume of the contract item (e.g. for planning a retirement home, references in housing are sufficient). Reference periods should be as long as possible, unrealistically short periods can considerably reduce the intellectual competition without bringing added value.

**Reliability:** In many cases the proof of a legal authorization – which is often bound to certain legal requirements - makes this requirement negligible. The ECEC is very much in favour of the self-declaration as it considerably reduces the efforts for clients and contractor.

## **2. SELECTION CRITERIA (for two-stage procedures to select the most suitable participants):**

In contrast to basic selection criteria their evaluation range is broader. Selection criteria should be listed in order of their importance, the scoring system should be made transparent. It is important to ensure an objective relation to the contract item.

### **Potential selection criteria:**

- Additional qualifications of key personnel receive additional score points;
- Personnel references / team constellations exceeding the key personnel qualifications that are evaluated according to content-related parameters;
- Company references exceeding the basic selection references that are evaluated according to content-related parameters;
- Work samples that are evaluated by a commission according to sub-selection criteria related to the task assignment in the second stage of the procedure;
- Knowledge management e.g. shown by lecture series / publication series in connection with the contract item, CPD measures;
- Quality management by work samples of checklists and test criteria;
- Processing concept

## **3. AWARD CRITERIA**

Award criteria are the mean to assess an offer; therefore they have to be contract related. Planning services as intellectual services require the use of the “most economically advantageous tender” (MEAT).

This means that the quality aspects of the tender are more important than the pure price aspects. The economic efficiency of the project is essential and more important than the score points that assess the offered price.

It is recommended that the weighting should be at least 70% (better 90%) for quality aspects and maximum 30 % (better 10%) for price aspects. It is important to ensure that the chosen assessment formulas are in accordance with the chosen weighting. Research has shown that also in many cases of formal overweight of quality aspects the price is finally decisive.

When formulating the quality award criteria it is necessary to consider the following aspects:

- The criteria have to be contract related;



- A non-discriminatory application without the possibility of a subsequent arbitrary decision has to be ensured (**see also text "How to guarantee fair evaluation"**);
- The information of the participants has to be verifiable;
- A common understanding of all participants has to be ensured;
- In regard to weighting the quality criterion has to go beyond tokenism and needs to be effective;
- A graduated ranking possibility is necessary so that a real quality ranking of offers is possible instead of giving yes/no score points for only fulfilling a requirement;
- In a two-stage procurement procedure the same aspect may not be used for selection;

Depending on the question if consulting or planning services are the focus of the contract, the award criteria are designed differently (for planning services solution in form of a planning concept with according sub-criteria, for consulting and planning services concepts with according sub-criteria such as workflow concepts, schedule concepts, personnel deployment concepts etc.).

## How to guarantee fair evaluation

Fair evaluation not only requires clear, transparent and objective evaluation criteria, but at the same time serious and completely independent evaluation commissions, which assess the tenders submitted objectively and impartially, giving primary importance to the quality and pursuing in this way the interests of the public administrations; saving at the same time public spending and preventing the possibility of subjective and opportunistic influence distorting the competition.

**Therefore the ECEC would like to stress the aspects that are important in order to achieve these goals:**

- As mentioned the evaluation criteria should be objective, project-related and sustainable; they should be advertised already in the tender phases and published together with the tender rules, so that they are known to all the participants before they can submit their offers;
- The members of the evaluation commissions have to be competent and have to possess the same knowledge and skills required for participating in the tender;
- Evaluation commissions should be fully independent of the administrative bodies announcing them; preferably based on the suggestions of professional chambers or



other independent bodies, which nominate members from specially-created lists of professionals according to strict rotation criteria;

- Evaluation commissions should work in wholly public sessions, which can be attended by participants or their representatives, so as to warrant as much transparency and correctness as possible;
- Tender evaluation should be carried out in a completely anonymous manner, with the evaluation commission drawing up the technical assessment of the tenders and creating an initial technical ranking list only on the basis of documentation that cannot be immediately identified with the individual participants;

## Price assessment

Following the evaluation and assessment of the quality and performance to be expected of bidders, the bid price must then be assessed.

The client should not be informed of the price until the assessment of the quality criteria has been completed. This is an absolute requirement, since knowledge of the price may influence the assessment of the performance criteria. It is guaranteed by using the two-envelope procedure. This means that the price – in the second envelope – is not disclosed until the performance has been assessed.

The planner has a decisive influence on the functional, design and economic quality of a project; this means that price should be assessed in a way that is appropriate to this goal.

There are various very different methods for assessing the price.

A total of 100 points are available for the overall assessment of the bidder.

**The price should be given a weighting of ideally 10 and up to the absolute maximum of 30 points.**

1. The most frequently applied method for assessing price is by allocating full points for the lowest price and then linear reduction down to 0 for the highest price. This method leads to a much too great spread in the allocation of points with the result that in most cases price alone decides the overall assessment. This method means that price has a greater influence, deliberately and in a concealed manner, on the overall outcome than it is allocated in the weighting. It means that in most cases the cheapest bid is given preference.

**Therefore the ECEC is against the use of this method as it does not provide a quality based decision.**



2. A better method is assessing the price of each bidder against the lowest price. The bidder with the lowest price is given full points, and each of the other bidders is given reduced points in proportion to their respective prices. This method places the assessment of price in the same proportion as the assessment of the quality and performance of the bids.

**Therefore the ECEC regards this method as preferable to the method described under 1.**

3. If the most important factor in the assessment of price is to get a price that is fair and adequate in terms of the required work, the highest points should be allocated to the mean price. Bidders then have to offer the “right” price for the job and not the lowest (cheapest) price. The mean price can be calculated as the arithmetical average of all bid prices. It is also possible to exclude the highest and the lowest prices beforehand and then to calculate the arithmetical mean using the prices then remaining. From the point of view of ECEC, the mean price best expresses the market price, because offers represent the market. Therefore the mean price as thus calculated is given the highest number of points. The prices above and below this mean price are then evaluated in relation to the mean price.

**This method is recommended by the ECEC as it ensures an adequate price in terms of the tendered service, even if it would require harmonizing with the legal situation.**

Great care should be given to Abnormally Low Tender (ALT) procedures. Moreover Member States should provide further guidance on accepted ALT explanation.

In the opinion of ECEC, fixing an initial threshold that defines the lowest price at which it seems possible to warrant the desired quality undoubtedly has to be a task for the contracting authorities before putting a service or a public work out to tender. This threshold could be compared with the average value of the bids, considering that this value is an expression of the real market. If it is clear that with a lower price it will not be possible to guarantee the desired quality, it should also be clear that bids which are below this threshold have to be eliminated.

The ECEC would like to appeal to the EC, to initiate a legal change which makes the automatic elimination of such ALTs possible. This would simplify procedures and avoid long and complex legal trials.