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This project is funded
by the European Union

Project “Support for further improvement of Public Procurement system in Serbia”, IPA 2013

DETERMINATION OF THE ESTIMATED VALUE IN PUBLIC PROCUREMENT

Georghe Cazan, Public Procurement Expert

“Envoy Conference”, Belgrade, 26 September 2018



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DETERMINATION OF THE ESTIMATED VALUE

- Planning process is crucial for the success of the procurement procedure
- Determination of the estimated value of the subject-matter of public procurement represents an essential element in the pre-award phase of the public procurement process
- Estimated value of the subject-matter of public procurement is an economic concept that refers to the most likely price that is supposed to be paid by the contracting authority for the purchase of goods, services or works, on a given date and in given circumstances
- Estimated value should be included in Procurement Plan

METHODS FOR DETERMINING THE ESTIMATED VALUE

1. Market research

- **Sources**

- Catalogues and published price lists
- Market consultation

- **Advantages**

- Simplicity (catalogues and published price lists)
- Direct contact with potential tenderers (market consultation)

- **Risks**

- Catalogues/market price lists are sometimes out-dated
- Contracting authorities could be tempted to perform the analyses with focus on a particular product, instead to take into consideration a wider variety of options
- Differences among particular elements of “similar” products must be identified and analysed



METHODS FOR DETERMINING THE ESTIMATED VALUE

2. Value estimation by analogy

- **Inputs:** actual costs incurred by contracting authority/other organization in carrying out similar activities or in meeting similar needs, in similar circumstances
- Contracting authority should check whether:
 - requirements of the previous procurement procedure were different (in comparison with the current needs)
 - market conditions have changed in the meantime
- **Factors**
 - a) Similarity
 - b) Quantity
 - c) Inflation

METHODS FOR DETERMINING THE ESTIMATED VALUE

a) Similarity

- functional and performance characteristics
- geographical location
- term of delivery
- conditions for payment

b) Quantity

- In order to avoid unnecessary complication of the analysis, quantities may be considered similar if:

$$0.5 Q \text{ previous} < Q \text{ new} < 2 Q \text{ previous}$$

- If the quantities are not similar – see example of *Learning Curve Analysis*

METHODS FOR DETERMINING THE ESTIMATED VALUE

c) Inflation

- In order to avoid unnecessary complication of the analysis, historical prices can be considered recent (= current prices) if they have been paid within the last 12 months
- Where information about prices is not recent, the prices should be adjusted

Conclusion:

A historical price of another product can be used for price analysis if the following requirements are satisfied:

- It was obtained based on adequate competition
- It was paid for a similar product
- It is adjusted for quantity
- It is adjusted for inflation

METHODS FOR DETERMINING THE ESTIMATED VALUE

3. Parametric estimation

- Total price calculation is made on the basis of the **costs of each major element/activity of the subject-matter of procurement**
- Particularly for services or works contracts (see example TA service contract)

2014 Public Procurement Directives and estimated value

- Rules applicable for all types of contracts
- Particular rules applicable for supply and services contracts
- Particular rules applicable for supply contracts
- Particular rules applicable for services contracts
- Particular rules applicable for works contracts
- Rules applicable in case of innovation partnership
- Rules for framework agreements and dynamic purchasing systems



APPLICATION OF EU RULES RELATED TO THE ESTIMATION OF PROCUREMENT VALUE

- The estimated value of the subject-matter of procurement shall be valid at the moment of initiating the procurement procedure (if it was calculated earlier it should be adjusted if necessary)
- The estimated value shall be calculated without VAT
- The calculation of the estimated value shall be based on the total amount payable for the total volume of the services, supplies or works to be purchased, for the full duration of the contract including all options, phases or possible renewals of the contracts (even if those options or renewals are not subsequently exercised)
- $V_{\text{estimated}} = \sum V_{\text{lots}}$
- **The choice of the method used to calculate the estimated value shall not be made with the intention of excluding that procurement from the scope of the law or in order to avoid specific rules applicable for various thresholds**



APPLICATION OF EU RULES RELATED TO THE ESTIMATION OF PROCUREMENT VALUE

- Breach of the rules concerning the estimation of contract value, in particular underestimation of the value and artificial division of the contract, constitute a substantial infringement, especially if it results in the application of non-transparent and non-competitive procedures
- In the context of EU procurement, underestimation or artificial splitting of the contract may lead to the situations where the publicity is made at national level only, thereby significantly limiting the access of foreign companies to information about the bidding opportunity



RELEVANT ASPECTS FOR AVOIDING ARTIFICIAL DIVISION OF THE CONTRACTS

- Key element: **prohibition to divide the contract in order to avoid specific rules** applicable above different thresholds provided by the law
- Division of the contract is not forbidden where that decision has not a negative effect on the application of rules regarding advertising, deadlines, the degree of detail of the procurement documentation etc
- Questions:
 - When is a specific procurement considered to be **artificially divided** in order to avoid the application of specific rules?
 - When the values of certain subject-matter of procurement **should be cumulated**?

RELEVANT ASPECTS FOR AVOIDING ARTIFICIAL DIVISION OF THE CONTRACTS

1. Public supply contracts

- In order to identify the situations where an artificial division of supply contracts occurs, the most relevant aspect to be checked is “**similarity of the products**”.
- Recital 19 of Directive 24/2014/EU provides explanations regarding the concept of "similar products":

*"It should also be clarified that, for the purpose of estimating the thresholds, the notion of similar supplies should be understood as products which are intended for identical or similar uses, such as supplies of **a range of foods** or of **various items of office furniture**. Typically, an economic operator active in the field concerned would be likely to carry such supplies as part of his normal product range."*

RELEVANT ASPECTS FOR AVOIDING ARTIFICIAL DIVISION OF THE CONTRACTS

2. Public works contracts

- EU Directives do not use the word “similar” in the context of the methods of calculating the estimated value of works contracts, which means that similarity of the works is irrelevant in this case.
- **C-16/98 Commission v. France** - the Court of Justice of the European Union clarified that the analysis of a possible artificial division of a works contract should be based on the functional definition of the Work:

“ ‘a work’ means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;”

- **T-384/10 Kingdom of Spain v. Commission**

RELEVANT ASPECTS FOR AVOIDING ARTIFICIAL DIVISION OF THE CONTRACTS

3. Public service contracts

- As in case of public works contracts, EU Directives do not use the word “similar” in the context of regulating the methods of calculating the estimated value of public service contracts, which means that similarity of the services is irrelevant in this case, too
- **C-574/10 Commission v. Germany** – relevant is the aspect of performing the same technical and economic function.

QUESTIONS, COMMENTS?



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