



Association of Construction Entrepreneurs of Slovakia

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Public Procurement in Transport Construction Focused on Quality and Innovation

McKinsey Study declares that if the public sector would adapt the best from the current available good practice, up to 40% of the planned investments in the infrastructure would be saved. Based on the Study, better choice of the projects is needed at the beginning. Long-term strategy is needed together with the investments with the synergies. Further, the whole planning investment process, construction period including maintenance, need to be more efficient.

Moreover, what is also needed – better management and use of the current infrastructure. Today's trend in the area of infrastructure is to use the best. Collaboration approach instead of confrontation is the way forward for the major infrastructure projects. Investors cooperate with the contractors since the preparation phase of the project development much before the tendering for the construction. Inventions, ideas and innovative solutions are supported; the best people are responsible for the projects. But such an approach was not there from the beginning.

Purpose of the Methodology

In line with tendencies in the development of public procurement in the European Union, as accepted by the national legislation, “the most economically advantageous tender” as a unified award criterion was integrated into the Act No. 343/2015 Coll. on Public Procurement, and on amendments to certain acts, as amended (the “Act”). Contrary to the previous public procurement act, where the lowest price criterion was defined next to the criterion of the most economically advantageous tender, the Act incorporates this criterion among the methods of evaluating the economic performance.

The Act shall help extend the evaluation of tenders also in view of other criteria while, at the same time, obtain better quality tenders in the field of project work and other engineering activities.

The aim of the Act is to motivate the contracting authority or contracting entity to make more use of the additional award criteria alongside the tender price, which ultimately should lead to a more efficient use of public resources.

This intend¹ is fully in line with the principles of the currently applicable directives governing the public procurement, which are based rather on a wider understanding of costs and benefits than only on a normative price.

¹According to point 89 of the Recitals of Directive 2014/24/EC of the European Parliament and of the Council on public procurement and repealing Directive 2004/18/EC, the concept of “award criteria” is the central concept of this Directive. It is therefore important that the relevant provisions are presented as simple and brief as possible. This can be achieved by using the term “the most economically advantageous tender” as an umbrella term, since all winning tenders should eventually be selected in line with what the individual contracting authorities consider to be a most economically viable solution out of the tenders submitted. In order to make a distinction from the award criterion currently known as “the most economically advantageous tender” in Directives 2004/17/EC and 2004/18/EC, a different term should be used to designate this term, namely “best price to quality ratio”. It should therefore be interpreted in line with the case-law relating to those Directives, except where a clearly different solution is set out in this Directive.

Change of Approach

In Germany the original budgets and deadlines were exceeded for many major governmental projects, which did not lead to the value for money. To ensure better confidence of public in major projects, effective expenditures of public sources and maintaining the good international reputation, the Reform Commission for Major Projects was created by the Federal Ministry of Transport, Construction and Urban Development in 2013. Ten recommendations of this Commission are following:

Results of the Reform Commission (Reasons for failing of large scale projects):

- Unfounded, too early cost and schedule information
- Unclear scope and targets lead to costly changes
- Too superficial and insufficiently coordinated designs
- Too early starts of tendering and construction
- Contract award to the cheapest but not the best-value bid
- Absence of risk management and risk budget
- Lack of competence with some project participants
- Organizational deficits (responsibilities, processes, controls)
- Lack of transparency in schedule, costs and risks
- Lack of dispute resolution mechanisms / arbitration procedures

One of the first recommendation is the improvement of the cooperation between the clients and their suppliers not only during the project preparation but also during its implementation. Further point covers the project risks and its transparent and correct costs and management plan. The fourth recommendation is to award the contract not to the cheapest bid but the best-value bid. In the second part, the assessment “value for money” is required. The cheapest offer could be value for money when purchasing the office supplies, fuel or commodity goods. However, the cheapest offer for the selection of designers or consultants of the major infrastructure projects is not acceptable for the responsible contractor any more nowadays. In transport new investments the governments strives for several public goals, like:

- reduced Co2-emission,
- noise reduction,
- less traffic jams,
- more healthy people,
- reduced use of natural resources,
- increased use of recycled materials,
- innovation, etc.

The need for change is foreseen from the position of the Association of Construction Entrepreneurs in Slovakia where the transport infrastructure projects create 35% of the market. We cooperate with the public contractors and investors who want the investments to fill the goals of utility and modernness. Members of our association (tendering candidates) have very often comments regarding the specific solutions and impossibility to submit an alternative offer due to a better /cheaper/ faster alternative realization of the subject of the contract.

BEST VALUE Method

In Slovakia and the Czech Republic, we have been inspired by the experiences from the Netherland Ministry of Transport and Environment (Rijkswaterstaat) which decided in 2007 to speed up the construction of key infrastructure projects. The evaluation of the offers according to the number of references and historical experiences of the companies and project members was stopped and the best expertise started to be found. The method of the qualitative evaluation of the offers (BEST VALUE) was introduced. This Ministry belongs today among the best and most respectful contractor in Europe.

BEST VALUE enables to evaluate the offers through the qualitative criteria and to choose the offer with the best ratio of the quality and price. Therefore, there is not such a need to be very strict with respect to the qualification criteria. On the contrary, more offers are requested because the competition is important. In the BEST VALUE method, the price offer weight is around 30%. The qualitative evaluation focuses on the level of expertise, risks and benefits. The interview with the team members creates an integral part of the assessment, which could have the weight between 20 and 30%, same as the price. Because the quality is taken into account, the candidates have to properly prepare their offers. It happens very often that the candidates rather submit no offer when they feel they cannot compete with their experiences or their capacity for the project is missing. Successful expert from the interview is strictly and contractually bounded with the involvement within the project development.

The offers are submitted in two envelopes – separately for the price and the qualitative part. The price offers are being opened after the evaluation of the qualitative part including the interview assessment. Until the interview, the qualitative parts of the offers have to be anonymous and the evaluators do not know which company is being assessed.

In the current Czech and Slovak practise, the contractors have to apply for more contracts because the success is more-less random. Very often the offer of the most courageous or desperate candidates, who tries to cover at least part of his fixed financial costs, wins. The profit is not mentioned at all. Such an approach puts both – the investors together with the contractors – in a very difficult and conflict situation. The contractors do whatever to increase the price, the investors have to properly follow the quality of the performance. Both groups expect the future claims and therefore focus on the administrative and paperwork to find the mistakes of the others.

Training and Adaptation is necessary

The Netherland practise showed that for allowing proper use of BEST VALUE it is necessary to undergo practical trainings, which explain the method in details using the practical examples.

Association of Construction Entrepreneurs of Slovakia in cooperation with Czech and Netherland partners have already trained more than 45 Czech and Slovak experts who got the international certification B for the BEST VALUE method after the successful participation in the training. One of the most respectful organization in the area of the purchasing management “NEVI Perspective” issues this certification. People from the public sector (e.g. ministries), beneficiaries, control organizations and members from the design/legal/consultant/construction companies participated, mostly from the transport infrastructure.

The most important condition of this method is transparency. Subjective evaluation of the quality of offers needs some time and thinking. The evaluation commission have to be independent and include experts not only from the investor’s side. Not very detailed technical knowledge shall be required for the evaluators. BEST VALUE approach believes that only the real expert can be so simple and concise to allow also laic to understand fully.

Conclusion

BEST VALUE method is definitely the way to apply the Most Economically Advantageous Tender (MEAT) approach in the transport infrastructure practise. It gives the opportunity for the investors to choose the most qualified candidates. If both groups do not use the possibilities, the investor stays where today – with the lowest price. This is not good for the development of investments in transport and economy of the country as a whole.