

DAY #3

Main message from DAYS 1-2

- „If you don't know where you are going, any road will get you there.“



Lewis Carroll, Alice's Adventures in Wonderland

- „If you don't know what evaluation you want, any evaluation is good for you.“



The Graveyard
of Good TOR Intentions:
Procurement

WRITING A TOR IS BOTH

**A STEP IN THE
PROCUREMENT FOR EVALUATION SERVICES**

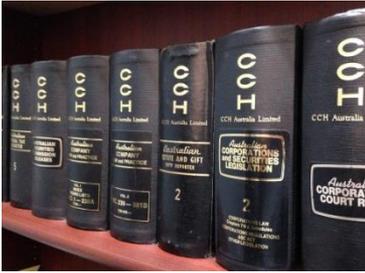
AND OFTEN ALSO
**A STEP TOWARD THE DESIGN
OF AN EVALUATION**

IDEALLY, THESE STEPS SHOULD BE SEPARATE AND DONE BY
DIFFERENT PEOPLE WITH VERY DIFFERENT EXPERTISE.

IN PRACTICE THE EVALUATION PEOPLE HAS TO PERSUADE
THE PROCUREMENT PEOPLE TO ALLOW SUCH A TOR SETUP
THAT WILL PROVIDE A CHANCE FOR A DECENT EVALUATION.

Outline of this part

- *Procurement basics*
- *Frequent issues*
 - *Estimated value and related problems*
 - *Possible procedures*
 - *Selection criteria*
 - *Award criteria*
- *Alternatives to procurement*



Legal framework

- **Directive 2014/24/EU on public procurement**
- **Should be implemented in national Public procurement legislations by April 2016**
 - => To the large extent there is common approach across the EU.
- **From evaluation services procurement point of view this Directive is better than the previous one.**



Disclaimers

- 1. Following discussion is (hopefully) in line with the PP Directive. On the one hand, national specificities are likely mainly in ,below-the-threshold‘ contracts, on the other hand ,below-the-threshold‘ rules are usually quicker and lighter versions of EU-Directive rules. Note that, there is a possibility of some goldplating in your national public procurement legislation. Thus, use the following discussion for inspiration, not for copy-pasting.**



Disclaimers

- 2. The problem is usually not in what is written in the legislation, but in how narrow-minded approach people have when reading it. The ‘It’s-always-been-like-this’ or ‘There-is-no-alternative’ approach is much worse enemy for procurement of good evaluation services than the law itself.**

Thus, problems are at the level of organisation-specific procurement habits (sometimes reinforced by national control systems habits).

Procurement basics

- When using public money to buy evaluation services, you have to act as Contracting Authority
- As CA, you have to treat economic operators (potential and actual tenderers) equally and without discrimination and have to act in a transparent and proportionate manner.

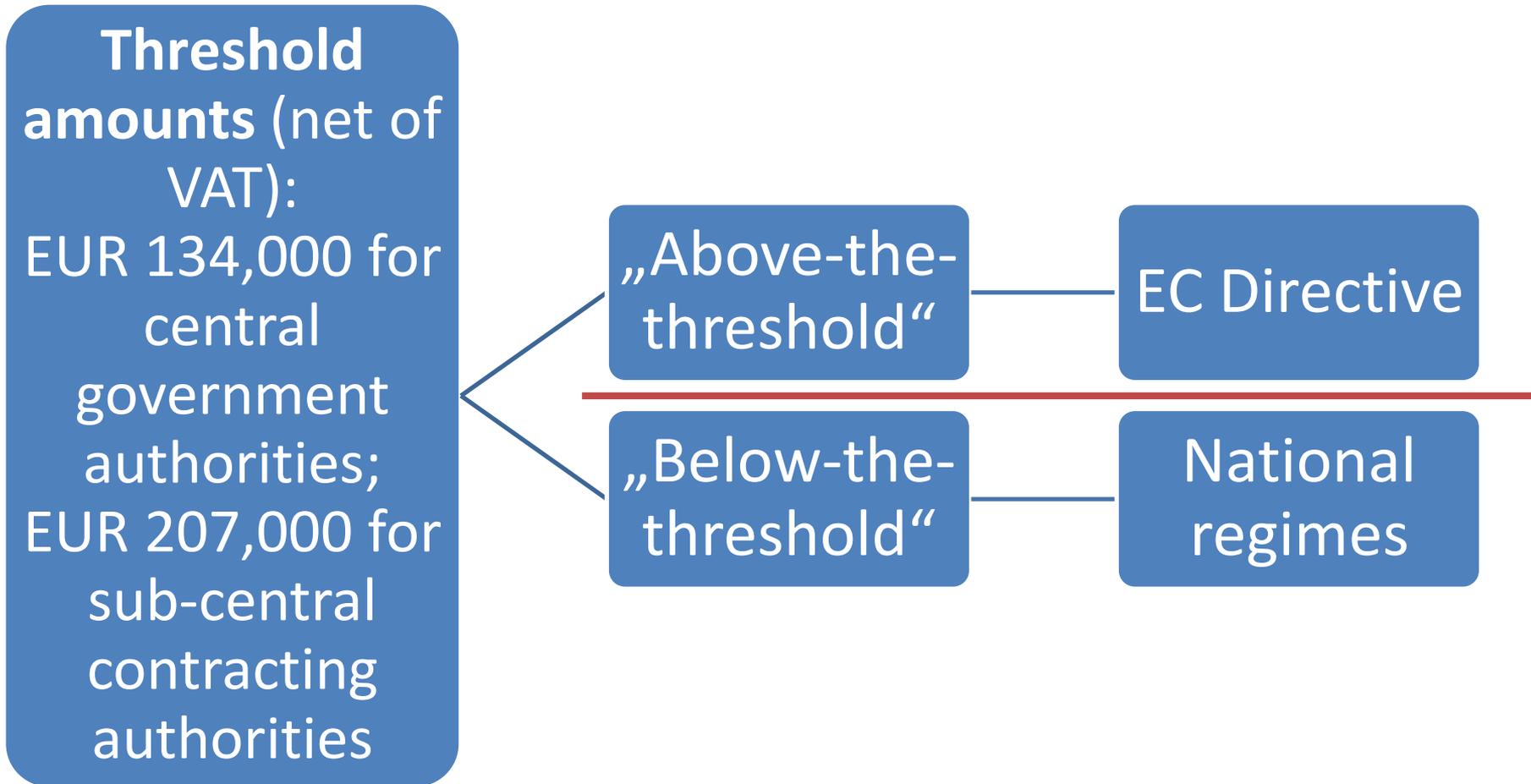
Estimated value

Estimated value

- CA has to estimate the value of the evaluation contract.
- This is good for budget planning, but from the procurement point of view this is key to decide which regime to apply for the tender.



Estimated value



Estimated value

- „Above-the-threshold“
 - Time consuming, regulated in detail procedures
- „Below-the-threshold“
 - One or more regimes set by national procurement law and/or in the rules of the organisation
 - Lighter, quicker, softer versions of „Above-the-threshold“

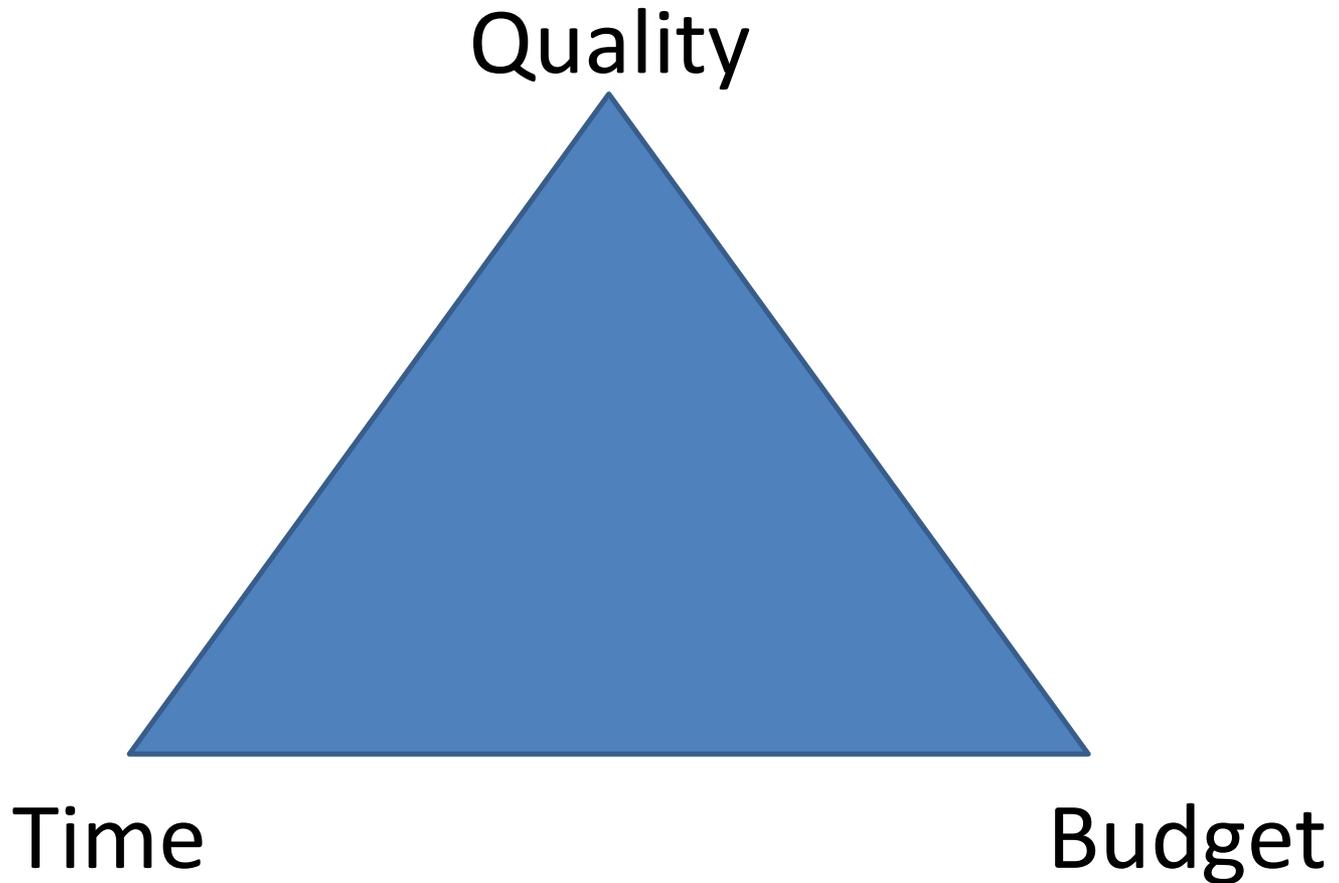
Estimated value - issues

- (1) How to set estimated value?
- (2) How to deal with this requirement: *„The choice of the method used to calculate the estimated value of a procurement shall not be made with the intention of excluding it from the scope of this Directive. A **procurement shall not be subdivided** with the effect of preventing it from falling within the scope of this Directive, unless justified by objective reasons.“* (Art. 4)

How to set estimated value?

- Own experience with previous evaluation contracts
- Looking into evaluation libraries for similar scope evaluations
- Rule of thumb calculation on the basis of estimated man-days needed + other significant costs
- Using **Preliminary market consultations**: *„Before launching a procurement procedure, contracting authorities may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements.“* (Art. 40)

Beware of trade-offs between
quality, time and budget



„A procurement shall not be subdivided...“

- Any evaluation = one service?
- There is a frequent pressure from procurement people to merge estimated values of different evaluation in order to prevent violation of non-subdivision principle. This leads to „above-the-threshold“ regime when not necessary.

„A procurement shall not be subdivided...“

- Possible counterarguments:
 - **Different service argument:** Use of different methods and/or investigation of different intervention is a different service. How does the perfect team for different evaluations look like? Is the same or different?
 - **Utility argument:** If the output of evaluation is useful standalone, then different service. (Distinct evaluation in evaluation plan = distinct procurements).
 - **Discrimination argument:** Artificial merging of estimated values violates antidiscrimination principle as it limits the ability of smaller economic operators to bid.

Procedures



Possible procedures for purchase of evaluation services

- **Open procedure** is often default for procurement people
- Disadvantage – it limits possible discussion between the CA and bidders before the contract is awarded.
- For evaluation services not very problematic if:
 - You can describe the design of the evaluation in ToR in detail and you are sure it is the best possible, or
 - You believe the evaluators will be able offer good design and you are able to assess the real quality of the bid.

Are these assumptions plausible?

Possible procedures for purchase of evaluation services

- **Competitive procedure with negotiation and Competitive dialogue**
- Advantages:
 - Possibility for good discussion on evaluation design between the CA and evaluators
- Disadvantages:
 - Could take time
 - Usually lack of experience with these procedures

Legal basis for competitive procedure with negotiation or a competitive dialogue

„Contracting authorities may apply a competitive procedure with negotiation or a competitive dialogue in the following situations:

- ***the needs of the contracting authority cannot be met without adaptation of readily available solutions;***
- ***they include design or innovative solutions;***
- ***the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of the risks attaching to them;***
- ***the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical reference...“*** (Art. 26)

Possible procedures for purchase of evaluation services

- New procedure: **Innovation Partnership** (art. 31)
- *The innovation partnership shall aim at the development of an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs agreed between the contracting authorities and the participants.*

Selection criteria



Selection Criteria

- Minimum requirements bids of tenderers have to meet
- Failing on selection criteria means contract cannot be awarded to the tenderer

Selection Criteria

Selection criteria (art. 58) may relate to:

- *„(a) suitability to pursue the professional activity;*
- *(b) economic and financial standing;*
- *(c) technical and professional ability.“*
- With regard to technical and professional ability, CAs may impose requirements on necessary human and technical resources and experience to perform the contract to an appropriate quality standard.
- CAs may require a sufficient level of experience demonstrated by suitable references from contracts performed in the past.
- Conflicting interests = not possessing the required professional abilities.

Selection Criteria

Typical selection criteria in evaluation ToRs
(apart from general ones):

- References – experience from previous evaluation contracts
- Minimum size and profile of the evaluation team
 - University degree
 - Field of education
 - Years of experience

Selection Criteria - Example

Qualifications of the Team Leader:

General experience:

- Relevant, higher academic degree.
- A profile with major emphasis on development issues, with 10 years or more of relevant professional experience from development cooperation, including from work in relation to public health.
- Experience as team leader for multi-disciplinary teams (at least three references).

Specific experience:

- Extensive knowledge on and experience from establishing evaluation approaches and application of evaluation methods, including theory based evaluations, contribution analysis, and mixed methods evaluation.
- Substantial experience with collecting, systematizing, analysing and reporting large amounts of different types of data. Experience with synthesis studies an advantage.

Country experience and language:

- Relevant working experience, including working experience from East Africa.
- Fluent in English

Selection Criteria - Example

Tenders will initially be evaluated by reference to the following qualification criteria:

- a. Completeness of tender documentation as specified at Section 6 above.
- b. Stated ability of the Consultant(s) to meet all the requirements specified in the terms of reference, including adherence to the evaluation timetable as set out at Section 5 above.
- c. Statement that none of the excluding circumstances as per Annex 3 apply to him/her.
- d. Tenders exceeding €83,000 net of VAT will not be considered.

To be eligible for inclusion in the award process, a tender must meet these qualification criteria.

Selection Criteria

- Discussion

Selection Criteria

Should be based on the knowledge of the evaluation market.

Two approaches:

- Formal and easy to pass criteria => danger of too many bids to assess
- Request of high minimum standards => danger of no one applying

Award criteria



Award Criteria

- To choose the best bid
- *„Contracting authorities shall base the award of public contracts on the **most economically advantageous tender.**“*
- Best price-quality ratio
- *„The cost element may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.“ (Art. 67)*

Award Criteria

„Criteria may comprise, for instance:

- *(a) **quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;***
- *(b) **organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or***
- *(c) **after-sales service and technical assistance, delivery conditions such as **delivery date, delivery process** and **delivery period or period of completion.****“ (Art. 67)*

Award Criteria

In evaluation procurements typically mix of (some of) these elements:

- Quality of the evaluation team
- Quality of methodology proposed
- Quality of management of the evaluation
- Price

Award Criteria – Example 1

Proposals will be evaluated on the basis of the following criteria:

- Proposed approach
- Relevant experience of the researcher(s)
- Cost

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A real life extreme in simplicity (below – the – threshold).

If you are allowed to use this approach, be happy, you are able to choose anyone: The best bidder (recommended) or your best friend (think twice).

Award Criteria – Example 2

The contract will be awarded on the basis of the most economically advantageous tender, applying the following 4 criteria (the relative weighting assigned to each criterion is also shown):

Award Criteria	Maximum marks available
Understanding, analysis and coverage of project's requirements	10
Quality and feasibility of the methodological approach proposed	20
Expertise and experience of the tenderer and members of the project team	30
Cost of tender	40
Total marks available	100

A number of the most economically advantageous tenderers may be invited to make presentations on their proposals at the Department's offices in XY for the purpose of elaboration, clarification and/or aiding mutual understanding. Invited tenderers must be in a position to make such a presentation immediately after the closing date for receipt of tenders.

Quite typical setup for the below-the-threshold. Weight of cost maybe too high.

Interesting is the possibility of presentation during awarding (light version of competitive dialogue approach).

Award Criteria

	Maximum marks available
Understanding, analysis of project's requirements	10
Quality and feasibility of technical and logistical approach proposed	20
Expertise and experience of tenderer and members of the project team	30
Cost of tender	40
Total marks available	100

A number of the most economically advantageous tenderers may be invited to make presentations on their proposals at the Department's offices in XY for the purpose of elaboration, clarification and/or aiding mutual understanding. Invited tenderers must be in a position to make such a presentation immediately after the closing date for receipt of tenders.

Award Criteria – Example 3

The contract will be awarded on the basis of the most economically advantageous tender, applying following criteria and weights:

Technical quality	25 %
Cost of tender	75 %

Technical quality assessment is based on following subcriteria

Coverage of tasks, complexity of solution	30 points
Proposed methods, approaches and analytical procedures	55 points
Form and scope of interpretation of results	15 points

Members of the steering committee will rank all offers within each subcriterion and award maximum points to the best offer and to all remaining offers a number of points reflecting their quality in the subcriterion compared to the best offer.

Only offers awarded at least 80 points in Technical quality will proceed to assessment of Cost of tender.

Award Criteria –

On the first sight too high weight of cost, but...

The contract will be awarded on the basis of the most economically advantageous tender, applying following criteria and weights:

Technical quality	25 %
Cost of tender	75 %

Technical quality assessment is based on following subcriteria

- Coverage of tasks, complexity of solution
- Proposed methods, approaches and analytical procedures
- Form and scope of interpretation of results

But here is the problem, as it is not clear what the CA wants to see.

Members of the steering committee will rank all offers within each subcriterion and award maximum points to the best offer and to all remaining offers a number of points reflecting their quality in the subcriterion compared to the best offer.

Only offers awarded at least 80 points in Technical quality will proceed to assessment of Cost of tender.

... this rule to the large extend eliminates the problem.

Award Criteria – Example 4

Quality of the evaluation team | [Selection criteria request a team of at least 6 members]

Following subcriteria of the same weight apply:

- a. CA prefers an evaluation team with higher average professional experience in the field of evaluation. Professional experience of more than 10 years of an individual member, counts as 10 years.
- b. CA prefers an evaluation team with higher average of members' education degree. Here 3 marks are awarded to a member with doctoral degree, 2 marks with master degree, 1 mark for bachelor degree and 0 marks if no tertiary education degree.
- c. CA prefers an evaluation team including professional specialists on individual specific objectives of Operational Programme XYZ. Here 1 mark is awarded for each specific objective of the OP with matching specialists from the team with education directly linked to the specific objective theme and additional 1, 2 or 3 marks for 1, 2 or 3 specialist's publications on the topic closely related to the specific objective.

Award Crite

Quality of the evaluation team | [Se
members]

Following subcriteria of the same w

- a. CA prefers an evaluation team w
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education directly linked to the specific objective theme and additional 1, 2 or
3 marks for 1, 2 or 3 specialist's publications on the topic closely related to the
specific objective.

An attempt to „objectively“
measure the quality of the
evaluation team. It could
work, but it is complicated.
Similar approach is hardly
feasible to assess the quality
of methodology proposed.

Award Criteria

- Discussion

Award Criteria

- Keep the importance of price low – you are not rich enough to afford a cheap service.
- Make clear what you prefer
- Make sure the criteria really differentiate (no variance = no weight)
- Do not make it too complex – you will have to make the assessment in the end
- There is no simple, mechanistic way to assess the quality of methodology, only the judgement of experts

Life without procurement



Alternatives to procurement



DO-IT-YOURSELF
also known as
Internal evaluation

- Advantages:
 - Learning: Only if you are able eventually to run the evaluation fully by yourself, you are able to write a good ToR and manage the evaluation project through the procurement
 - No procurement...
- Disadvantages:
 - Divergent opinions on the need of independent evaluation

Alternatives to procurement



- Evaluation is applied social science
 - There are grant titles for this
- Advantages:
 - Saving own budget
 - No procurement...
 - Disadvantage:
 - Dealing with academics...
 - No direct contract between you and the evaluator

Good luck with your
procurements!