



Addressing Offers with Apparently Unusual Low Prices

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ABSTRACT

Through Public Procurement, the Contracting Authorities aim at obtaining products, works or services. Starting from identifying the necessity, a series of procedures are followed for its satisfaction. Considering the complexity of the procurement process, the desired result will not appear in case certain stages are bypassed. These omissions can have repercussions on the offered price when either the Contracting Authority did not explain sufficiently clear in the awarding documentation the need or it did not assess it adequately, as well as when the Tenderer did not completely understand the complexity of the requested work / service / product. In these conditions, the present study aims at analyzing from the point of view of both parties the problems related to the unusually low price estimated by the Contracting Authority or proposed by the Tenderer for services and its influence on the quality of the provided services.

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1. Introduction

Public Procurement represents the supply of goods and services performed by Public Authorities (Rolfstam et al., 2013). But the implications of Public Procurement on a country's economy are multiple. One of these implications is represented by stimulation of innovation, by influencing the economic agents in the production and trade of products, services and new technologies (Edler et. al., 2006).

Considering the fact that the level of Public Procurement in 2018 represents 15% of the Gross Domestic Product (GDP), the importance of public money management is vital. The effects of some inadequate procurement procedure reflects upon the Contracting Authority and upon population, environment, social and economic relations at micro and macroeconomic level (Vargo et al., 2017).

In the present scientific endeavor we plan on doing an analysis of the procurement process stages which can lead to the tendering below market level of services.

In the first part of the paper, the key stages that influence the price of the contracted services have been presented in a theoretical way, trying to establish a series of good practices that should be followed in order to avoid altering the quality of services and inefficient spending of public money. Likewise, during the presentation of the procurement process stages, a risk analysis on a scale from 1 to 5 for the selection and evaluation process was performed. The purpose of the analysis is to identify the main generating factors of the misunderstanding of the services requested by the Contracting Authority.

An empirical analysis has been performed in the second part of the paper, analysis performed on the Public Procurement Contracts for financial audit services which deal with the auditing of projects with European financing in the first semester of the year 2019.

The importance of the study is generated by the influence of the tender's low value for the audit services on the quality of the verifications performed by the auditor. At the same time, there were identified significant differences between the estimated value of the procurement and the assigned value, in the context of personnel, transport, accommodation etc. costs increasing.

2. Good practices for an optimum development of public service procurement procedure

In the context of Romania's integration into the European Union (EU), the Public Procurement sector had to reorganize itself in order to comply with the principles imposed by European law. In general, the EU encourages the competition between operators, advocating for the elimination of discrimination and preferential treatment.

Another important factor is the transparency of the procurement process that aims to ensure the publication of information in order to eliminate any doubt on discriminatory treatment and to respect the integrity of the procedure.

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At the same time, the identification of the optimum situation by which the objective of the procurement is fulfilled, without leading to faulty usage of the public money and keeping an equivalent / over-unity quality - price report.

2.1. The selection process

According to Directive 2004/18/EC, as well as to the national legislation, 6 stages within any Public Procurement have to be followed. These were presented within Figure 1. The main stages in the selection process were highlighted in the upper part of the figure and the stages of the assessment process were highlighted below them.

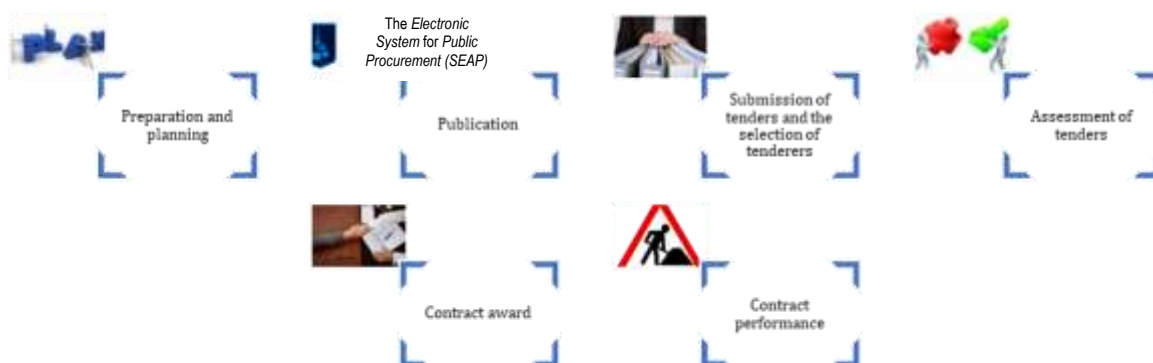


Figure 1. The mandatory stages within Public Procurement

Source: Issued by the author

In the author's opinion, the preparation and planning stage is the most important stage, influencing the development of the entire procurement.

The duration of this stage is determined by the complexity of the contract which is going to be concluded.

It is important to understand the need for procurement, the necessary characteristics which must be fulfilled and how this need can be satisfied. The definition of a budget according to the reality registered on the market, as well as the definition of some minimum qualitative indicators represents also a stage within the preparation process. (Word Bank, 2016)

The preparation supposes at the same time the identification of suppliers which are interested in participating to the respective procurement (Woldesenbet and Worthington, 2019). Public consultation is performed in order to establish a competitive estimative price, which would also comply with the average price practiced at market level.

The pulse of the market is determined during the public consultation, but at the same time the economic operators can make observations on possible omissions or expressions that can create confusion. Failure to organize this consultation may result in considerable costs in the event of subsequent observance of non-compliance and may lead to the resumption of the tender, the delay of the works, the loss of funding, etc. (Word Bank, 2016)

The Public Procurement specialist should be careful that the observations made during the public consultation are not likely to affect competition, to generate conflicts of interest or to distort the smooth running of the process. Discussions with a procurement specialist from the internal department regarding issues resulting from the public consultation ensure an increased level of security.

All the stages presented previously that dealt with the preparation were aimed at understanding the need for procurement and the resources that must be involved to satisfy it. After that, it is necessary to establish the object of the contract and whether it is a single work (Article 1, paragraph 2 of Directive 2004/18 / EC) or it must be divided into several lots. It is necessary to create a timetable of the entire procedure, in which to include time for all obstacles that may occur in a manner contrary to optimism.

Depending on the complexity of the project, staff is allocated both from the unit and from outside it, if their expertise is necessary to contribute to the successful completion of the acquisition. The appointment of an Evaluation Committee with solid competences and knowledge in the field of procurement can add value and lead to the exact purchase of the necessary service at optimal parameters.

In order to justify the completion of all the necessary steps, it is necessary to establish a database with documents that allow the authority to have a record of the procedure performed.

Another important step in the planning process is represented by the choice of the optimal procurement procedure to be carried out without affecting transparency and competition. The main types of procedures were presented in Figure 2.



Figure 2. Types of procedures

Source: processed by the author based on the Guide on Public Procurement published by the European Commission

Each procedure has its advantages and disadvantages. The open procedure is usually the most used as it is more transparent, it is carried out in a relatively short period and in a single stage. However, the length of time can be influenced by the large number of tenders that involve a significant consumption of human resources for evaluating the tenders received.

The restricted procedure can add value due to the limitation of those operators with a high level of expertise in the field, while at the same time it is more difficult to maintain transparency and avoid possible remedies.

The negotiated procedure is an exceptional procedure and can only be done with a solid justification of the special circumstances that have been taken into account.

Regarding the place where the procurement add will be published and whose legal norms it is subject to, it is necessary to compare the estimated budget with the thresholds established by Directive 2004/18 / EC. If the estimated value is higher, then the publication in the Official Journal of the European Union is mandatory.

The Tender Book is a document which is very important for the procurement, where there are summarized the objective of the procurement, the requirements necessary to be achieved and the awarding criterion. It is recommended that the Tender Book should be issued by a person having knowledge in the area of the procurement which is going to be achieved. The awarding criterion must be chosen carefully, without being discriminatory.

The awarding criterion must not limit the participation of operators in any way, as the use of only the lowest price criterion has a direct impact on the quality of the services to be provided, according to the authors.

All the necessary works must be mentioned in the Tender Book; its subsequent modification can lead to additional expenses and sometimes to the resumption of the tender. The Tender Book must comply with national standards and use a common technical specification that does not limit the participation of operators in all EU Member States. The publication notice must comply with all legislative provisions. (Law no. 98/2016)

After publication of the tender documentation, a reasonable time must be given to the economic agents to formulate their tender. Granting an unjustified short term is a deliberate limitation of competition, fact which can be sanctioned. Directive 2004/18 / EC sets the minimum time limits for each procedure that must be followed. During this time, the tenderers can request information regarding the procedure. Written communication with them is recommended to avoid suspicions of fraud. The requests of a tenderer, as well as the response of the Contracting Authority must be visible for any interested tenderer.

The place and date of tender's submission are set within the publication notice. The Evaluation Committee organizes a tender opening session and verifies that the selection criteria defined during the planning stage are complied with. The selection must be objective, applying the same judgment to all economic operators.

Abusive elimination of some tenderers or acceptance of tenderers who do not meet the selection criteria are situations that lead to the initiation of legal proceedings, as well as failure to comply with the deadlines set within the procurement schedule.

Within the selection process, a dynamic analysis was performed that quantifies the risk threshold. This degree of risk was determined to show the influence on the whole procedure, as well as the possibility of receiving tenders with significantly lower prices.

Table 1. Quantification of the risk degree of the selection stage

No	Reason	Risk scale				
		1-very low	2-low	3-average	4-high risk	5- very high risk
1	The understanding of the need by the Procurement Department				4	
2	Definition of a realistic budget					5
3	Performance of the procedure for market consultation (testing the knowledge from the tender book)			3		
4	Establishing the object of the contract					5
5	Performance of a calendar (taking into consideration all unforeseen situations)				4	
6	Appointment of an Evaluation Committee (avoiding conflicts of interest)				4	

No	Reason	Risk scale				
		1-very low	2-low	3-average	4-high risk	5- very high risk
7	Performance of the entire documentation necessary for the procurement			3		
8	Choosing the optimum procedure				4	
9	Avoiding discriminatory or disproportionate requirements					5
10	Comparing the requirements and price with other similar tenders			3		
11	Establishing the awarding criterion and its weight					5
12	Issuing a clear and concise Tender Book					5
13	Publication of a participation notice without complying with the legislative regulations					5
14	Short terms granted to the economic operators in order to submit the tender					5
15	Request of unjustifiably high participation guarantees as compared to the purchase					5
16	Differentiated treatment in the tender selection stage					5
RISK DEGREE OF THE PROCEDURE		4,4- High risk				

Source: Issued by the author

It can be seen that a high level of risk has been determined during the selection stage, any failure to observe a stage can lead to significant financial corrections or costly and long-term processes. The evaluation process is based solely on verifying compliance with the requirements defined during the planning and preparation phase of the procurement.

1.2. Evaluation process

The evaluation method chosen during the planning stage must be applied to determine the winner of the tender.

The most used method of evaluation is the criterion of the lowest price because it is a transparent and difficult to challenge. But does the best price offer the best quality? Combined methods of evaluation are also met in practice, respectively experience criteria in a certain proportion corroborated with the lowest price.

However, what does happen when the contracting authority receives one or more tenders considered “tenders with abnormally low price”? This possibility had to be considered during the planning stage.

A definition of the abnormally low price offers is given by the World Bank (2016) in a thematic paper that addresses the same problem as the one presented by the authors in the present scientific endeavor. The translation of the definition is as follows: “An abnormally low tender / proposal is one in which the tender price / the tender, in combination with other elements of the tender / proposal, is so low that it raises important concerns about the tenderer / the tenderer’s ability to execute the contract at the respective price level”.

In this situation, the Contracting Authority is bound to ask the economic operator concerned for an economic justification of the tender in order to ensure that they benefit from certain special conditions. The special condition’s category includes government aids, innovative technologies or any other conditions that allow the operator to provide the service at the mentioned price.

Depending on the formulated response, the Contracting Authority through the Evaluation Committee determines whether the tender is accepted or rejected.

At the same time, there is the possibility of making a mistake in the Tender Book that prevents the Tenderer from understanding the complexity and extent of the services purchased or just the misinterpretation of the economic operator.

The clarifications received by the authority should not bring significant changes to elements such as the price offered or the quality of services (European Commission, 2015). Equal treatment for all Tenderers must be complied with in the clarifications.

The decision of the Evaluation Committee must be supported by a complete report describing all the elements that have been taken into account for issuing the chosen decision.

A scheme indicated to be used by the Contracting Authorities to analyze the tenders with abnormally low price is presented in the World Bank’s paper. This scheme was taken over by the author and processed in Figure 3.

Five main objectives which must be complied with are defined: identification, clarification, justification, verification and decision.

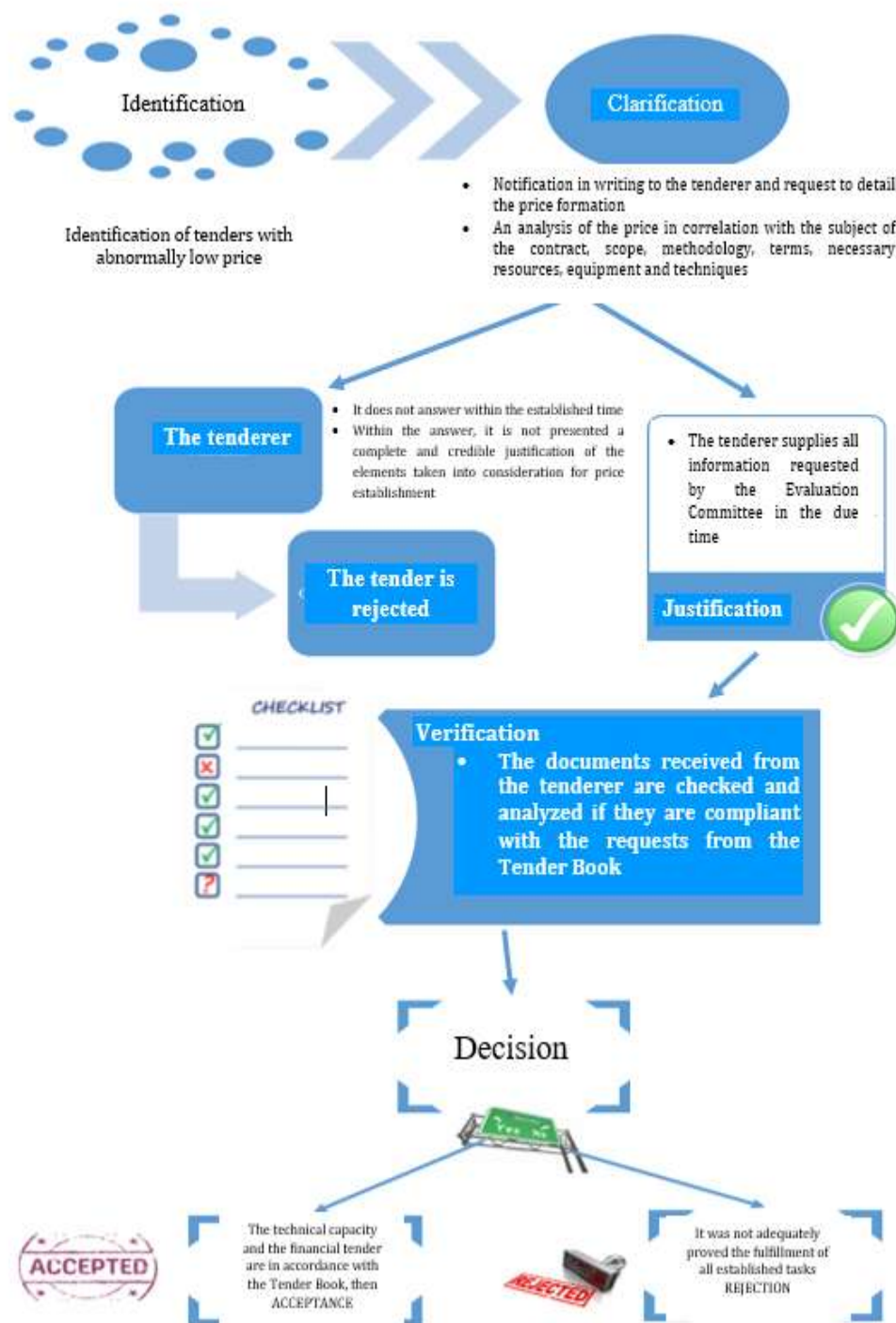


Figure 3. Procedure to be followed following to receiving a tender with abnormally low price
Source: Processed by the author, based on the Guide published by the World Bank

After the evaluation process is completed, the Contracting Authority informs all economic operators participating in the procedure about its outcome. If no appeals have been registered after the expiration of the legal term, the contract can be signed.

Having the contract concluded, the two parties must contribute to its achievement in good conditions. The provider must provide the services for which it was contracted (Chicot and Matt, 2018) within the terms assumed and at the requested quality. The Contracting Authority must supervise the execution of the contract and respect its role established in the contract.

After the conclusion of the contract, the results of the contract will be evaluated by comparing it with the initial needs. The Guide prepared by the European Commission specifies that the Contracting Authority should be able to answer the questions presented in Figure 4.

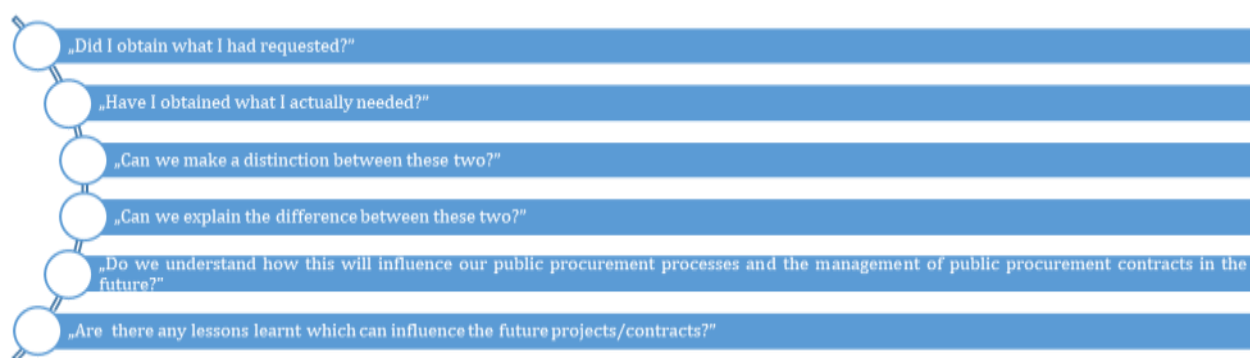


Figure 4. Survey which must be completed by the Contracting Authority at contract's finalization

Source: Processed by the author based on the Guide issued by the European Commission.

The risk was determined also for the evaluation process. If the conditions set in the planning stage are not maintained, it results a very high risk. As stated by the author in the beginning of the paper, if a good planning is performed in the selection part, the risks from the evaluation stage are considerably reduced. The risk scale was presented in Table 2.

Table 2. Quantification of the risk degree of the evaluation stage

N o.	Reason	Risk scale				
		1-Very low	2-Low	3-Average	4- High risk	5- Very high risk
1	Changing the awarding criteria within the evaluation process					5
2	Equal treatment for all tenderers					5
3	Significant change of the tenders during the evaluation					5
4	Existence of undeclared conflicts of interests during selection phase					5
5	Rejection of tenders with abnormally low price without requesting clarifications					5
6	Modifications of technical specifications				4	
7	Negotiation of the price with the tenderer declared winner				4	
RISK DEGREE OF THE PROCEDURE		4,71- Very high risk				

3. Empirical analysis of audit services procurement for the European projects in the year 2019

As in the first part of the paper we have presented all the measures that the Contracting Authority can take to avoid altering the quality of the services and how to manage the tenders with abnormally low price within this section, the analysis will be performed from the tenderer's perspective.

Let's suppose we are an auditor with three years' experience in auditing projects with non-reimbursable financing, with a portfolio of more than three works contracted through Public Procurement.

The annual turnover is achieved in proportion of 40% from statutory audit contracts purchased by public tender and 60% from European funds' auditors, also by public tender.

We will focus in this chapter on justifying a reasonable price for auditing a project from European funds, taking into account the provisions established by the Chamber of Financial Auditors of Romania (CAFR).

According to the CAFR decision no. 52/2013, the minimum number of hours for a financial audit mission based on agreed procedures (ISRS 4400) applicable to projects funded from European funds for a funding request is 105 hours (approximately 13 days).

The fixed CAFR membership fee is 162 euro/ year to which the variable membership fee of 0.8% is added, if the turnover is between 10,400 euro and 42,000 euro as we considered in our example. We suppose we carry out 10 works with similar values of auditing European funds.

The salary expenses with at least one person must be covered, as well as the expenses with travel, accommodation, insurance and consumables.

We have developed two scenarios:

The first scenario represents the maximum version in which the auditor must bear the travel and accommodation expenses.

Table 3. The maximum variant of expenses which must be borne by the auditor

No	Expense	Amount (euro)	Amount assigned to the procurement contract	Observations (arbitrary exchange rate 1 euro=4.8 lei)
1	Monthly salary expenses	910	394 (13 days out of 30 days of the month)	Reported to a net salary of 516 euro
2	Expenses for monthly fixed membership fee to CAFR (162 euro per year/12 months*60%)	10	4 euro (10 euro/30 days*13 days)	Reported to a yearly membership fee of 162 euro/year
3	Monthly expenses with consumables	106	53 euro	Printer cartridge, stationery, etc.
4	Travel expenses – 2 round trips (signing the contract and analysis of documents for the application)	80	80 euro	We consider the distance to the contracting authority of maximum 200 km
5	Accommodation expenses (13 days)	270	270 euro	
6	Monthly expenses with variable membership fee to CAFR (0.8% of 42.000/12 months*60%)	17	7 euro (17 euro/30 days *13 days)	
7	Yearly insurance expenses	42	1 euro (reported to the number of days and weighted with 60% as it represents the percentage of this type of purchase)	
8	Profit margin	5%	41 euro	
9	Tax on income for micro	1%	9 euro	The tax on dividends was not taken into consideration.
TOTAL PRICE/APPLICATION FOR FINANCING			859	

Within the second scenario we have eliminated the accommodation and travel expenses, considering that the audit takes place in the locality of residence of the auditor.

Table 4. Minimum variant of expenses which must be borne by the auditor

No	Expense	Amount (lei)	Amount awarded to the procurement contract	Observations (arbitrary exchange rate 1 euro=4.8 lei)
1	Monthly salary expenses	910	394 (13 days out of 30 days of the month)	Reported to a net salary of 516 euro
2	Expenses for monthly fixed membership fee to CAFR (162 per year / 12 months * 60%)	10	4 euro (10 euro/30 days*13 days)	Reported to a yearly membership fee of 162 euro/year
3	Monthly expenses with consumables	106	53 euro	Printer cartridge, stationery, etc.
4	Monthly expenses with variable membership fee to CAFR (0.8% of 42,000/12 months * 60%)	17	7 euro (17 euro/30 days *13 days)	
5	Yearly insurance expenses	42	1 euro (reported to the number of days and weighted with 60% as it represents the percentage of this type of purchase)	
6	Profit margin	5%	23 euro	
7	Tax on income for micro	1%	5 euro	The tax on dividends was not taken into consideration.
TOTAL PRICE/APPLICATION FOR FINANCING			487	

Source: Issued by the author

Starting from these estimations, we have performed an analysis of the prices used for awarded contracts similar to those analyzed, with the help of the information published on SICAP Platform and licitatiapublice.ro.

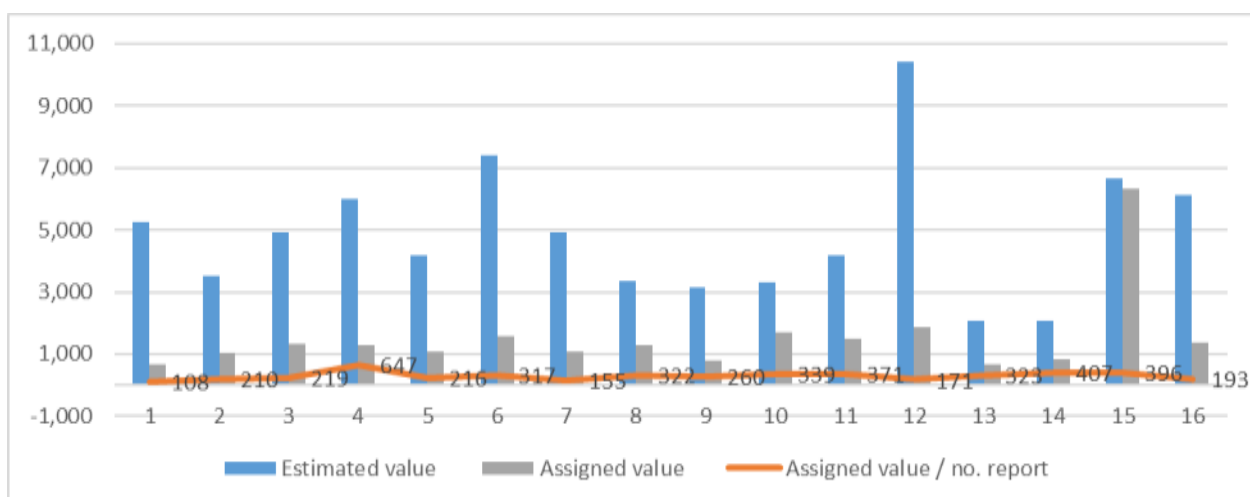


Figure 5. Market analysis for awarding audit service procurement from European Funds, 1st semester 2019

Source: Processed by the author, based on the information from SICAP and licitatiapublice.ro Platforms

In these conditions, how can they compete with the prices applied on the market and how can they justify the price offered to the Contracting Authority?

We observe an exaggerated difference between the estimated prices and the assigned prices, being mainly in the range between 12 and 35% of the estimated value.

We would like to mention that practicing a price below the level set by the professional body will attract the auditor's sanctioning during the verification visit.

Taking into account the number of hours necessary for carrying out the mission and reporting to the assigned value the number of reports to be completed, it results a cost per hour between 5 and 29 lei.

The cost indicated by CAFR ranges between 90 and 99 lei per hour.

In these conditions, as a Tenderer, what can you do to cope with the competition on the market, considering that this type of purchases represents 60% of the turnover?

We have analyzed the possibilities of justification of the Tenderers who use abnormally low prices and we have reached a single conclusion: it can only be justified by reducing the effective working time / demand and reporting the salary to the minimum salary on the economy.

Table 5. Justification of low prices

No.	Expense	Amount (euro)	Amount assigned to the procurement contract	Observations (arbitrary exchange rate 1 euro=4.8 lei)
1	Monthly salary expenses	443	118 (8 days out of 30 of the month)	Reported to a minimum salary of 433 euro.
2	Expenses for monthly fixed membership fee to CAFR (162 per year/12 months*60%)	8	2 euro (8 euro/30 days * 8 days)	Reported to a yearly membership fee of 162 euro/year
3	Monthly expenses with consumables	104	52 euro	Printer cartridge, stationery, etc.
4	Monthly expenses with variable membership fee to CAFR (0.8% of 42,000/12 months*60%)	17	4 euro (17 euro/30 days * 8 days)	
5	Yearly insurance expenses	42	1 euro (reported to the number of days and weighted with 60%, as it represents the percentage of this type of purchase)	
6	Profit margin	5%	9	
7	Tax on income for micro	1%	2	The tax on dividends was not taken into consideration
TOTAL PRICE/APPLICATION FOR FINANCING			189	
PRICE LEI/ HOUR			3	The total number of hours is 64 (8 days x 8 hours)

Source: Issued by the author

In these conditions, the quality of the audit service is certainly reduced. The auditor will decrease the attention paid directly in proportion to the decrease in working time.

What should the auditor taken as example in this study do? Should he/she reduce the number of hours, accepting the corresponding risks and compete, or should he/she give up 60% of turnover and look for other types of contracts?

5. Conclusions

Following the analysis from both the Contracting Authority and the Tenderer's perspectives, it was demonstrated that both can influence the receipt of abnormally low financial tenders related to market prices.

From the perspective of the Contracting Authority, there is the possibility of omitting certain aspects that have determined the misunderstanding of the contract size and it is necessary to request clarification and not to downgrade the tender on the spot.

On the contrary, the economic operator either does not fully understand the requirements requested by the Contracting Authority, or it struggles to face the pressing competition, no matter the costs.

Within procurement, it is important to ensure the fulfillment of the need for which the procurement was requested, within the deadline and within the qualitative parameters established in the technical documentation.

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