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Completion Deadline, Price Difference & Defamation within

Author:

Mirko Orešković, PhD. CE
Investinženjering d.o.o., Zagreb
mirko.oreskovic@gin.hr
Corresponding author

Professional paper

Mirko Orešković

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This paper takes a critical look at two terms; one is Completion Deadline (CD) and the other is Price Difference (PD). These two terms will not be approached semantically or, more generally, lexically, but solely through their use value, their widespread applicability and the ambiguities of their use, depending on the angle from which they are viewed, applied, and interpreted, each in its own right. More than often, there is an exclusive approach that does not accept the possibility of a different understanding, comprehension, or interpretation. This is what this work is about, polemically, all centered on the success of the construction project.

Key words:
construction project, completion deadline, price difference, currency value of the service, engineering consulting service

Stručni rad

Mirko Orešković

ROK, RUC i mistifikacije

U radu kritički se sagledavaju dva pojma, i to jedan omeđen jednom riječju, ROK, i drugi koji je kratica triju riječi, razlika u cijeni, odnosno RUC. Ta se dva pojma ne sagledavaju ni semantički ni šire leksički, već isključivo kroz njihovu uporabnu vrijednost, obuhvatnu primjenljivost i nesporazume koji nastaju pri njihovoj primjeni, ovisno o poziciji s koje ih se, svakog za sebe, promatra, primjenjuje, interpretira. Pritom je više nego često prisutan pristup isključivosti koji ne prihvaća mogućnost drugačijeg shvaćanja, razumijevanja, interpretacije. O tome je u radu polemička riječ, usmjerena na uspjeh graditeljskog projekta.

Ključne riječi:
graditeljski projekt, ugovoreni rok, razlika u cijeni, valutna vrijednost usluge, inženjerska konzultantska usluga

1. Introduction

Everyone is somehow familiar with the word ROK (DEADLINE) in one way or another, that we are completely familiar with its content and its message, and it seems to us that there can be no dilemmas or misunderstandings in connection with this word, especially no mystifications. Does it feel good to us and is it really so regular? Well, it doesn't seem right to us and, frankly, it's not. In building practices in particular, and even more so in connection with public procurement, the awarding of public contracts, and the provision of engineering consultancy services, this is regularly not the case. It all depends on the observer of the state of practice. Wrong. It is not about the observer but about the subject-object relationship. The subject is the one who orders, the object is the one who offers and performs engineering consulting services.

The specific nature of the position of the contracting entity as the subject of the public procurement process, which all too often gives rise to the question of time limits, is due to an approach based on the professional orientation of the contracting entity's employees, both those who take decisions and those who prepare and draft decisions.

Decisions as such are based on the consideration, understanding, interpretation and expected uses of the initial arguments, which include the awareness of the possibility that the decision will be imposed on an economic entity that will participate in a public tender, without possible appeal by the economic entity, i.e. its objection or amendment request is rejected with the argument that the decision is lawful and therefore indisputable. That is the subject of this paper. For decades, the use of the abbreviation RUC has been standard practice, and anyone involved in the construction industry knows that it stands for difference in price. Looking back, we see that for a long time there was no need to update and apply the forms to calculate difference in price. Inflation was negligible.

The term "price difference" is directly related, or rather conditioned, by inflationary movements in which the ratio of the value of a good or service to the related, expressed currency value changes drastically or less drastically over time in an unpredictable, unforeseeable, uncontrolled rhythm.

RUC is firmly linked to the public perception that the calculation of price differences is an instrument used by contractors and service providers to make unjustified profits during construction projects and to impose costs on public contracting entities that they could neither foresee nor plan for. Unfortunately, the public opinion on this is completely wrong, especially regarding the contracting entity's costs and the other party's profit.

In this paper, the author did not intend to discuss the current legal solutions concerning deadlines and RUC, but rather to encourage the general professional public to discuss open questions related to the application of existing inadequate legal solutions that condition the implementation of construction projects in the Republic of Croatia.

2. Deadline for the provision of engineering consultancy services

Years of practice and occasional, targeted research into the definition of deadlines for the realisation of construction projects and the definition of delivery dates set out in contractual agreements have shown that deadlines in works contracts are understood and interpreted completely differently from those in contracts for the provision of engineering consultancy services.

The deadline, in addition to the subject matter of the contract, the scope of services, the offered (contractually agreed) value of the results of the services rendered or the offered (contractually agreed) value of the results of the services rendered, is an essential, determining element of the contract. It can only be counteracted by a contractual provision that excludes the date as an essential part of the contract, but nevertheless remains fixed and calendar-based.

It is about an attitude and an understanding of deadlines that are legally indisputable and fair. And one that leaves no room for doubt, uncertainty, different interpretations, disagreement in application and possible disputes. When concluding construction contracts or works contracts, the deadline is determined either by

- the total duration set by the calendar from the work introduction to the completion of the work, whereby the day of the work introduction and the day of the completion of the work have been precisely determined in advance; more often, or
- by the total number of working days, specifying precisely on which days work is to be carried out and on which not; less frequently.

For specific projects which, owing to the conditional result of the work carried out, require the implementation of a trial run or trial production based on the achieved result of the works, the deadline for completion of the works, the duration of the trial run or trial production are separately and clearly determined. Usually, the deadline for achieving the performance target and the deadline for completing the trial operation or trial production or the deadline for handing over the certified result of the work performed are specified separately in certificates. All within fixed terms and with the conditions under which the fixed terms can be changed. Clear and indisputable.

Public procurement and the provision of engineering consultancy services in relation to the deadline do not even come close to the data and information required by the practice of conducting public tendering procedures for construction projects or awarding construction contracts. We cannot assume that any public procurement of engineering consultancy services is simple and in the interests of both the contracting entities and the economic entities involved in public procurement as bidders. Therefore, this paper seeks to clear the confusion and obscurity surrounding the necessary, unavoidable, and reasonable understanding of a deadline as an essential element of a contract for the provision of engineering consultancy services.

The specification of a deadline is a dominant and decisive component of every contract for the provision and delivery of engineering consultancy services. That's how it should be! When we look at a Deadline, we must assume that the Deadline, because of its character, its habitus, and the messages it contains and radiates, cannot and must not be something that can and must subsequently be the subject of discussion and, all too often, dispute. Unfortunately, this is all too often ignored in practice and the Deadline is "determined" either by means that are in reality not determined at all or insufficiently determined, or it is "determined" in a way that depends on the actions of legal entities that are not parties to the contract in question.

Research conducted on existing, current contracts for the provision of engineering consulting services from the last three years confirmed the existing different approaches to the (undisputed) definition of the Deadline as a central contractual element. The research was carried out using the archives of the Company in which the author acts as a procurator (*Investinženjering* d.o.o., Zagreb, Tuškanova 41). The contracts attached to the tender documents and the tender documents themselves for public tenders for the procurement of engineering consultancy services were analyzed over a three-year period, ending with the year in which the thesis was written. A total of thirty-eight contracts were processed.

There are three scenarios, one acceptable and two completely unacceptable. I'll start with the acceptable.

2.1. Calendar deadline for the provision of services

(*46 % of contracts investigated*)

In these contracts, the Deadline for the provision of engineering consultancy services is determined by the calendar day of the start of the service and the calendar day of the agreed end of the service. In seven percent of the contracts surveyed, the deadline is defined by working days. Working days do not include Saturdays, Sundays, and holidays. The contract stipulates the conditions under which the contractual deadline can and may be changed.

The contractor is obliged to perform the contracted scope of services by the contractual deadline.

If the scope of services changes, the contracting parties shall agree to a new contractual service provision deadline. If the deadline for the provision of the contractually agreed scope of services is extended and the Contractor is not responsible for this, the contracting entity and Contractor shall conclude an addendum to the contract in which the amended deadline and the method of payment for the services provided within the extended deadline are regulated.

Agreement between the two parties determines whether the Deadline will be extended or shortened. If no agreement is reached, the dispute shall be submitted to the competent dispute resolution body specified in the contract (Council for Dispute Resolution, Arbitration or Court).

At the tender stage for engineering consultancy services, potential tenderers are aware in advance of all the parameters that determine or influence the assessment of the value of the service that the tenderer intends to provide should the contract be awarded, the conditions under which it will provide the contractually agreed service within a given deadline, and the conditions for concluding a supplement to the contract in the event of a change in the deadline.

The tenderer has no knowledge of the details of the specified/agreed deadline when submitting and calculating the tender amount. It should be underlined that the contract's unquestionable fact is that the expected amount of time needed by the service provider's project team to successfully deliver the agreed-upon service is the objectively dominant element in determining the value of a contractually agreed service. After all, the project team behind an engineering consultancy service provider inevitably consumes the irreplaceable resource of time. For the service provider, a legal entity, the cost of time, which can never be influenced, is beyond the control of anyone, including the service provider.

Only in the event that the provision of services is shortened or in the event of a drastic termination of the contractual relationship or the release of the Contractor from further contractual obligations shall the scheduled time for the provision of services be shortened once, without further influence from the contractor or contracting entity.

In accordance with the project enquiry, i.e. the scope of services, or in accordance with the contracting entity's previous enquiry, the Provider shall form a project team to provide the requested service under the conditions requested by the contracting entity, which shall be based on the requested (expected) time required for the project by individual members of the Provider's project team or, in future, the service provider.

By forming a project team, the contractor determines the costs for the functioning of the team and, based on these costs, calculates the value of the service it intends to provide to the contracting entity. All within the planned, previously agreed Deadline for the provision of engineering consultancy services. There is no argument about this scenario, nor can there be!

2.2. Twofold deadline

(36 % of contracts investigated)

In practice, a twofold deadline is a form of setting the deadline for the provision of engineering consulting services in which a calendar deadline is agreed upon, with parallel conditions that derogate from, or place in context, the contractual calendar deadline, and the financial value of the contract is fixed. The fact that the deadline is contingent on circumstances that may cause it to change without the service provider's influence but at its expense puts this contractual provision-which specifies a set date for the provision of engineering consulting services-into perspective, even though it is not exactly a harmless one.

Simply put, the contract sets out a condition whereby the contractual calendar date is changed outside the responsibility of the service provider for a period that is not known to the customer or the service provider at the time of the tender and conclusion of the contract for the service. It is common ground

that the service provider is contractually obliged to provide the entire scope of the offered service within the contractual deadline!

There is no catch here, rather it is the contracting entity's demand and interpretation that the service provider, without being responsible for the failure to provide the service by the contractual calendar deadline, must provide the service until the service is provided in full within a deadline determined not by the service provider but by the contracting entity or a third party. All without changing the contractually agreed value of the service.

With an amended clause in the contract, the contracting entity simply unilaterally specifies the calendar period for the provision of the desired service, i.e., until the successful completion of this and other activities included in the scope of the contractually agreed service (contracting entities frequently use the term cost estimate for this, which is not exactly appropriate for the service).

Regrettably, this contractual provision is interpreted within legal circles and even the courts as if the contractor has accepted that the contractually agreed service is to be provided for a fixed contractually agreed service value within an unlimited period of time. The courts also consider it legally acceptable that the duration of the service provision is not agreed in a way that protects both contracting parties, but instead puts the service provider in the impossible position of accepting the unavoidable costs of providing the service for an indefinite period of time without additional remuneration.

In a nutshell, does that mean that the court judges and decides that the provider must provide the contractually agreed service for an indefinite, uncertain period in return for a fixed fee?! In this manner, the contractually agreed scope of services is used to determine a fixed value for the service; however, the fact that the contractually agreed scope of services is rendered at the start of the contract in an unidentified portion after the date on the calendar for the service's provision is not taken into consideration. After all, the scope of the service determines the value of the service and the contractor is contractually obliged to provide the contractually agreed service for an unlimited period of time!

This drastically disregards the fact that the provider was forced to act beyond his/her responsibility in order to provide the entire scope of services beyond the calendar period known solely and exclusively to him/her at the time of the provision of service. They were just as unaware of the calendar deadline for the provision of service as the contracting entity.

As an example of such judicial policy, I would like to quote a verdict from the Permanent Court of Arbitration at the Croatian Chamber of Commerce (payment order, reference no: AS-P2019/25, of 4 October 2019): "Given that, in the present case, the parties have agreed on a lump-sum total payment for all monitoring services in the amount of (amount deleted), as understood by this arbitration tribunal, the plaintiff shall not be entitled to demand an increase in the fee due to the extension of the deadline for the provision of the services."

There are also cases where the agreed calendar deadline is ten months, for example, but the provider of services has provided their services for thirty-six months. Naturally, such solutions form the basis for initiating a dispute without the certainty of a solution based on an appropriate assessment. This practice eliminates the deadline as an essential element of the contract. Unless additional requirements are made by the contracting entity, the contractually agreed scope of services does not change during the amended or extended period, but the degree of service provision does, i.e. the service provider devotes the same time resources to the provision of extended project activities as within agreed deadlines. Regardless of the agreed payment schedule for the engineering consulting service provided, which may take one form or another, the following scenario is assumed in practice:

- *Linear payment:* when the contracting entity shall pay the service provider in equal monthly (lump sum) installments, irrespective of the progress of the scope of the contractually agreed service, and
- *Payment for the scope of services performed:* according to agreed specifications of the value of individual activities from the scope of the service, the contracting entity shall pay according to the invoice issued and accepted by them for the actual provided service in the previous month, up to
- *Payments based on the third-party progress*: the contracting entity shall pay the contractor a share of the total contractually agreed service value that corresponds to the percentage of the third party's performance progress, irrespective of the current intensity of the service provision and without taking into account the actual value of the activities performed within the scope of the contractually agreed service.

This is particularly true in contracts in which the contracting entity entrusts the service provider with the provision of professional supervision services for the construction or execution of construction and other works.

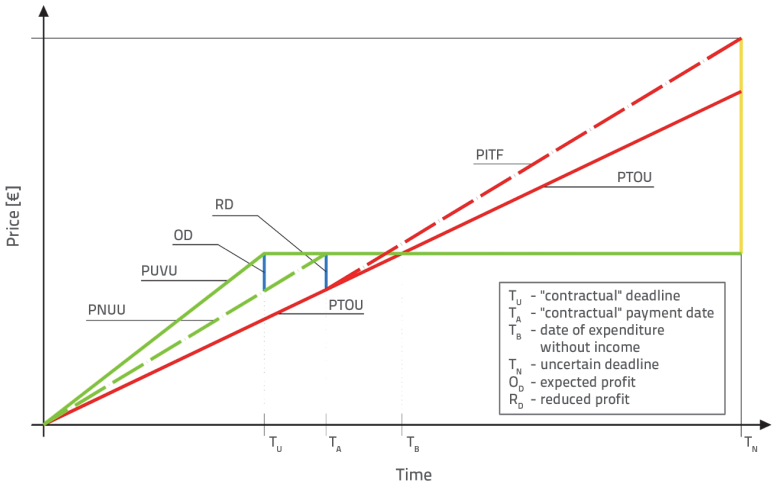

Figure 1. The ratio of planned revenues and expenses with a twofold deadline

This paper focuses on two issues and I will not discuss the justification or unfoundedness of any particular payment scenario. I will merely argue that linking the payment to the success of a third party is in no way justified except by an attitude that drastically exaggerates the assessment of the success of the executor's influence on the third party's behavior and success. In addition, this method of payment, unfortunately, represents a direct incentive for corrupt practices.

Payment based on the provided services, or the level of completion of individual project activities (second scenario) is logical and justified.

The institution of payment itself and its consequences will be discussed subsequently, all related to the twofold deadline. Or rather, it is an institution of a deadline without a deadline.

The application of the twofold deadline system merely poses a concern for engineering consultancy service providers, especially in the development phase of a construction project, when the tenderer becomes the provider.

Four linear curves that thoroughly demonstrate the unjustifiability and unsustainability of the twofold deadline scenario are displayed in Figure 1 for the purpose of clarity and readability:

- PUVU: increase in contracted service value;
- PNUU: Increase in collection of contracted services;
- PTOU: Increase in the cost of providing the service.
- PITF: Increase in the financing costs of the provider

Figure 1 clearly illustrates the absurdity of the scenario in which the price of a service is fixed for an undefined period of service provision. The service provider, ideally upon payment of the value of the service rendered (postponing the situation by at least thirty to sixty days), finds itself in a situation where they initially and definitively finance the provision of the relevant service and its planned profit is reduced by the cost of financing the deferred payment. This is true even if, under fortunate but extremely rare conditions and circumstances, the contractually agreed engineering consultancy service is provided within the contractual deadline (T_U) – a deadline that is not contractually demanded at the same time.

This means that even if the service is provided within the deadline (T_U), the service provider does not achieve the planned profit (O_D) within the time (T_A), but a reduced profit (R_D). In the case of anticipation of the scenario in question, the planned profit (P_D) is already reduced by the amount of the financing for the execution of the work in the first phase after the contractually agreed date (T_U) to the reduced profit (R_D) in the time interval T_A, so that the service provider would be able to finance the execution of the work completely from its own costs at the time (T_B) until an uncertain or unforeseeable date (T_N). The chart in Figure 1 clearly shows how absurd this scenario is.

A contractual clause stipulating a twofold deadline is absurd, unfair and unfounded by any reasonable argument - with the exception of the argument of force. It is a constant source of conflict and dispute. Nevertheless, it is included in a considerable number of contracts concluded on the basis of the results of a public tender. This is because if the engineering consultancy service provider, subsequently the contractor, is able to finance the provision of the contractual service in an uncertain period of time on the basis of a contract, its uncertain, unlimited loss (NGOU) is increased by the financing costs to a total, uncertain, unlimited total loss (NUG).

This is particularly evident in the provision of supervision services. In accordance with the provisions of the Construction Act of the Republic of Croatia, the supervisory engineer MUST actively and continuously provide supervision services, which specifically include continuously monitoring the completion of the projects that fall within their purview. Figure 2 displays the relationship between revenue, costs and income in a twofold deadline diagram with the necessary simplification through linearization.

For two key reasons, it is clear (the meaning of the abbreviations is the same as in Figure 1) that the service provider experiences a loss (yellow on the graph) during the course of the service provision period in an unknown, unforeseen, and limitless amount of time:

a) the uncovered total cost of providing the service over time
b) financing costs, without income and without any financial charges.

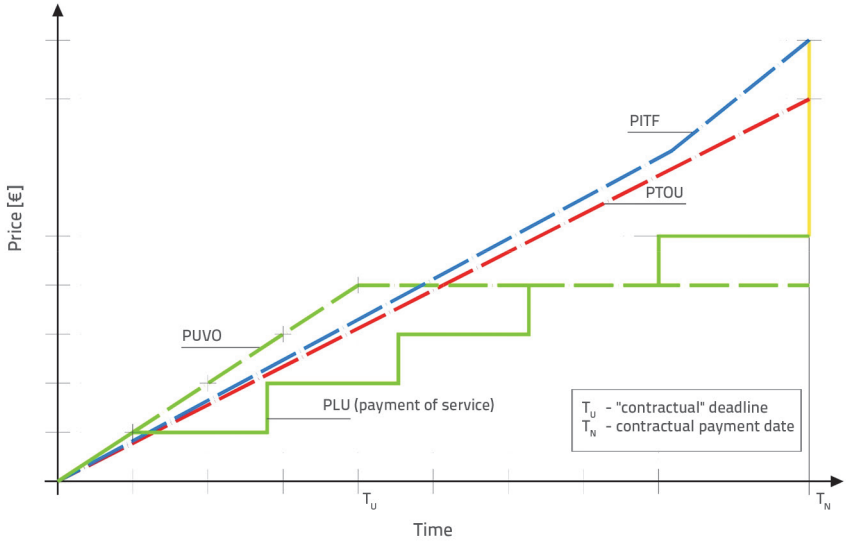

Figure 2. Relationship between revenue, costs and income within a twofold deadline

For the purposes of this paper, it is irrelevant from which source the contractor finances the execution of the service; what matters is that they are placed in the position of a (potential) financial loser. There is little doubt that the contractor will suffer a large loss under such a contract if they don't alter this stance!

It is not in the best interests of anyone, not even the contracting entity, for the contractor who has successfully, diligently, and duly completed the engineering consulting service in line with the contract to incur a significant loss. A business loss

for any capital company is a societal detriment that needs no further proof in this context.

Figure 3 graphically illustrates the sheer absurdity and social detriments that are practically inseparable from contracts stipulating twofold deadlines—in other words, deadlines without actual deadlines. Regardless of the exaggerated representation of relationships in the graph, it is evident that the calculation of service value becomes highly questionable under such conditions. In the graph, for the sake of readability of the graph itself, the estimated service value in the public procurement process is represented as a point, while other related elements (revenue/costs) are depicted using consistent line styles (dash-dot-dash or dash-dash-dash). The question of how the contracting entity determines the projected procurement value has not been addressed in any way here.

It is reasonable to assume that the contracting entity, when calculating the procurement value of engineering consulting services under a twofold-deadline arrangement, should consider the relationship between the "contractual" deadline and its negation within a presumed timeframe.

This presumption is challenged, nonetheless, by the contracting entity's express admission and disclosure that they are unsure of the precise time frame for service execution through the establishment of the twofold deadline.

In doing so, the contracting entity directly shifts the responsibility for calculating the value of a tender onto tenderers-based on unknown key elements of the tender- which is both unacceptable and detrimental to the project. How tenderers respond to such a requirement remains unknown. To illustrate the unacceptability and unsustainability of this model of awarding engineering consultancy services, two scenarios are shown in Figure 3:

1. The price offered is below the estimated price (a)

- In the event that, by some fortunate circumstance, the contractor (a), who offered a value below the estimated value, performs the complete service in a time shorter than the base deadline (T_{VR}), the contractor will generate unplanned extra income (yellow); In this case, the contracting entity paid more than they actually had to through the fixed-price institution;
- If the entire service is provided within the base period (T_U), the planned income will be achieved;
- In the event that the complete service was performed within a period that has not been drastically extended (T_{NP}), the service provider from the contract faces a loss.
- The cumulative loss increases over time (T_N) to unpredictable values.

2. Tendered price is above the previously estimated price (b)

- This is a possible scenario in which the contracting entity in the public tendering process did not receive a single acceptable tender with a price at the level of the estimated value of procurement, but all tenders were above the estimated value. The contracting entity shall then cancel the tender and announce a new one with an increased estimated value of procurement.
- In the event that, by some fortunate circumstance, the contractor (b), who offered a value above the previously estimated value and in accordance with the new estimated value, performs complete service in a time shorter than the base period (T_{VR}), the contractor will generate significant unplanned extra income (yellow); In this case, the contracting entity paid more than they actually had to through the fixed-price institution;
- In the event that the complete service was performed within a period that has not been drastically extended (T_{NP}), the service provider from the contract faces a loss.
- The cumulative loss increases over time (T_N) to unpredictable values.

A comparison of these two scenarios points to a simple but inevitable conclusion: The implementation of a twofold deadline is unfavorable for the contracting entity and intolerably unfair for the contractor.

No process whatsoever for calculating the value of engineering consulting services based on an unknown service provision deadline can be established to even approximately determine the value of the service upon its completion. The practice of the Arbitration Court also offers a scenario in which, when a lump-sum, i.e., fixed total price is agreed upon, the contractor is obliged to perform the contracted service indefinitely, without a limited timeframe-essentially, forever!? This defies all reason!

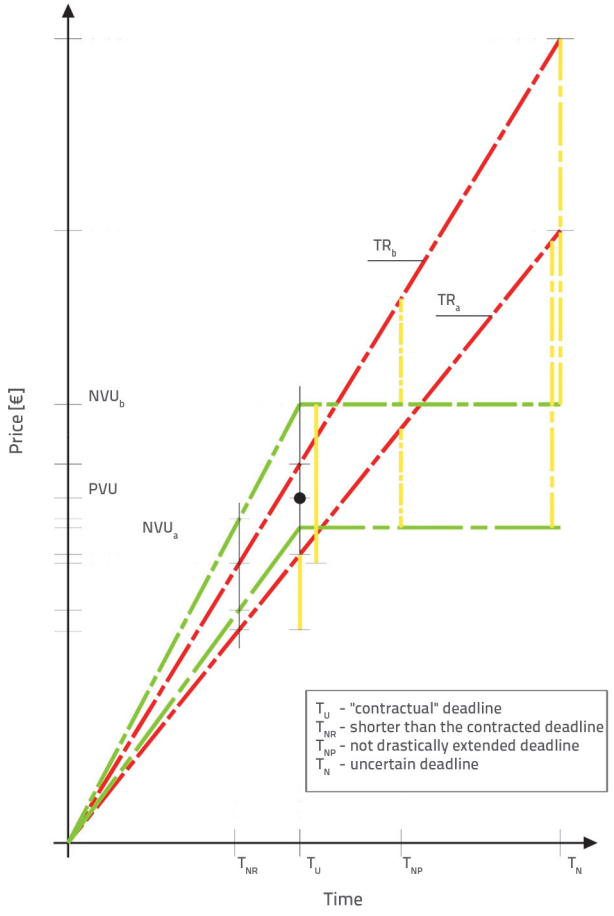

Figure 3. Variants of the relationship between the value of the service and the cost

How can one possibly explain-to anyone unwilling to acknowledge the fact that engineering consulting services are performed within a time frame, which is the contractor's primary resource, irreversibly consumed in executing the agreed service in both scope and quality-the sheer absurdity and societal detriments of such a contractual arrangement between the contracting entity and the contractor? hat is encouraging, however, is that this decision was not unanimous. A dissenting opinion from one arbitrator holds that the claimant is entitled to compensation for performing the service beyond the initially expected timeframe.

There are only two possible scenarios for escaping the twofold-deadline model:

- Under circumstances involving the twofold-deadline provision, tenderers unanimously decline to provide engineering consulting services, compelling the contracting organization to discontinue its use. It is difficult to believe that all interested economic operators would support this stance, but it is worth making the appeal!
- The contracting entity, while maintaining the twofold-deadline framework, eliminates the fixed price and instead determines the value of the provided engineering consulting services based on the actual time required for execution, under appropriate conditions.

Whether public contracting entities, prompted by the outcomes of contracts implementing the twofold-deadline provision, will change their current approach remains to be seen.

The twofold-deadline provision is entirely unjustified, and public contracting entities must accept this as an indisputable fact. When issuing calls for tenders for engineering consulting services, they must define planned deadlines that are binding for both the contracting entity and the tenderer-who will subsequently become the contractor. Because a deadline is a defining, fundamental, and stabilizing element of any contract, including service contracts.

A contract that lacks a calendar-defined service provision deadline, without additional conditions that override this deadline, is neither legally valid nor in accordance with the Croatian Civil Obligations Act. This assertion is reinforced by the analysis conducted on the practical implications of the twofold-deadline contractual model for engineering consulting services.

2.3. Indicative time period or indicated deadline, dependent on a third party

(*18 % of contracts investigated*)

An indicative or indicated deadline, dependent on a third party, is a model of contract in which the deadline, as a real, contractual, mutually binding fact, is simply ignored.

As a result, a term that is strangely binding for both the contractor and the contracting entity is introduced under an improper term *indicative deadline*.

Whilst hiding the name of an infrastructure project, I quote the response of the contracting authority to the tenderer's question regarding the contractual deadline specified in the tender documents in the public procurement procedure: "The procurement documents set out all possible circumstances in detail under point 19, deadline for the start and end of the contract, so that the contracting authority is unable to estimate the exact duration of the contract at this stage. The deadline for completion is indicative and depends on the contractors, and the Service Provider is expected to complete the work in this assignment in full regardless of the indicative completion date of the services specified above." The indicated deadline is not binding but it is indicative. That's what they say!?

This situation highlights the fact that, at the time of initiating the public procurement process, the contracting entity either did not know or did not plan the duration of the required service and was unwilling to assume the risk of determining the deadline.

Instead, the contracting entity transfers the deadline risk to the tenderer. And does so in a manner that is fundamentally and entirely absurd:

- It requires the tenderer to assess, at their own risk, the realistic duration of service execution.
- It expects the tenderer to offer a fixed price for the full scope of services based on that assessment.
- Based on the indicated deadline, it also imposes conditions that increase the financial risk for the tenderer.

The specific contracts contain the following provisions, conveyed here without direct citation but with accurately reflected intent:

- A deadline of "n" days is indicated.
- The tenderer is required to perform the contracted service even beyond the indicated deadline.
- The duration of service execution will depend on a third party (in this case, the contractor performing construction works).
- The tenderer is required to continue providing the service for up to fifteen percent beyond the indicated deadline without additional payment beyond the total contract value agreed for the indicated period;
- If the provision of service extends beyond this fifteen percent threshold, the tenderer must continue performing the service within the contracted scope and quality until a deadline determined by the third party, with an additional fee capped at twenty percent of the initially agreed contract value.
- Payment for the service will be made in accordance with the percentage of progress achieved by the third party in fulfilling its contractual obligations.

It is only possible to interpret the contracting entity's intention and choice to transfer the risk of deadline extensions-without any causal accountability on the part of the contractor-as a coercive imposition that puts the contractor directly at the mercy of the actions and performance of a third party that the contracting entity has signed the construction contract with. At the same time, the contracting entity limits the contractor's compensation for the indefinite extended service period to a maximum of twenty percent of the initially agreed service value.

The base contract value already includes the service price for a duration that extends fifteen percent beyond the indicated deadline.

Contrary to the contracting entity's rigid stance that the service execution period is unlimited while compensation remains capped, the contractor can reasonably infer from the contract provisions that the deadline is, in fact, defined by the compensation limitation. In other words, the contractor could interpret and accept the obligation to perform the contracted service for a total duration of 135 % of the indicated deadline-thus establishing the ultimate deadline for service execution-while receiving a maximum compensation of 120 % of the base contract value. For any services rendered beyond this ultimate deadline, an additional agreement for engineering consulting services must be signed. The conflicting positions of the contracting entity and the contractor's interpretation of the deadline inevitably lead to disputes in court or arbitration, with uncertain outcomes!

It will ultimately be up to the judge or arbitrators to decide whether or not the duty to offer engineering consulting services for an indeterminate period of time is comparable to a one-time delivery of toilet paper.

Everything discussed regarding the contractual institution of the twofold deadline also applies entirely to the contractual institution of an indicative or indicated deadline, which is entirely dependent on a third party. Public procurement processes for engineering consulting services are filled with examples of both institutions, yet they continue to escape public scrutiny.

And yet, the principle should have been clear from the very beginning: the deadline must be contractually defined within a fixed timeframe, with an agreed start and end date for the execution of the contracted service scope. But it is not! The persistent practice in the field, along with certain court rulings and arbitration decisions, confirms this reality. How long will it take to change this practice?

I do not offer an answer to that question (I dare not predict the timeframe), but this paper is an attempt to accelerate the process of reform. As the wise have said: hope dies last!

3. Price difference (RUC)

The price difference (RUC), as an institution with which we live and occasionally struggle, not only in the construction sector, has long been burdened by persistent misunderstandings regarding its application and the consequences of its use or non-use. The public has long believed-both historically and currently-that construction contractors use price difference to obtain disproportionate profits while imposing unanticipated costs on contracting entities.

Therefore, price difference is regarded by the legislature by means of the Public Procurement Act as an expense that is within the financial growth limit that necessitates the implementation of a new public procurement procedure.

The government has acknowledged and accepted the impact of inflationary trends on construction companies and construction costs. Consequently, it has advised public contracting entities to carefully consider justified claims from contractors regarding price differences in the execution of works or construction. The government's message is well known and will not be discussed here. However, I strongly oppose its limited application.

The government has either failed or refused to recognize the undeniable fact that providers of engineering consulting services, throughout the development of a construction project-including the construction phase-are in the same "pot" as building contractors and suffer equally from inflationary trends. Without hesitation, I present claims based on both research and direct insights into the impact of inflationary trends on the operations of companies offering and providing engineering consulting services to the market.

- First and foremost, the term Price Difference is entirely inappropriate for the actual circumstances!
- We must abandon the term Price Difference because it misleadingly suggests an increase in the market value of the contracted engineering consulting service.
- That is simply not true! Secondly, to properly align the interests of contracting entities and providers of engineering consulting services, we must begin by fully understanding inflationary trends! Thirdly,
- inflation does not increase the value of the performed engineering consulting service!
- Instead, service providers face the reality that, as service provision progresses, inflation erodes the monetary value of the service performed!
- For this reason alone-an entirely sufficient and necessary reason-we must abandon the use of the term RUC and instead adopt the term: currency value adjustment (CVA) of the performed engineering consulting service (and any other service, including the execution of works or construction) when addressing and responding to inflation trends. That is the fourth claim.

Figure 4 illustrates on a linear graph the effects of inflation on the financial and operational capacity of service providers in a general and conceptual manner. It presents three simplified, conceptual curves representing trends in currency value:

- UVVU: contracted currency value of the service
- PVTOU: planned currency cost of performing the service
- PVVOU: decrease in the currency value of the service provided

Before considering the effects of inflation as depicted in the graph in Figure 4, I must first acknowledge an undeniable fact: Just as everyone is unique in their personality, social standing, material riches, and financial situation, so too are we all affected by inflation in different ways. The intensity of inflation is determined statistically using a basket of data, with the application of more or less adequate parameters. However, each of us also has our own personal "basket" by which we measure the impact of inflation on our individual standard of living. Like any statistical data processing outcome, inflation indices incorporate derived values and data! Here, I think of the well-known meat-and-cabbages analogy.

The relationship between the three curves in Figure 4 clearly illustrates the "power" of inflation. Without much fear of exaggeration, it can be concluded that inflation will quickly begin reducing the currency value of the performed service (PVVOU), ultimately leading to a drastic outcome where the depreciated value of the performed service falls below the cumulative cost of performing the service (PTOU).

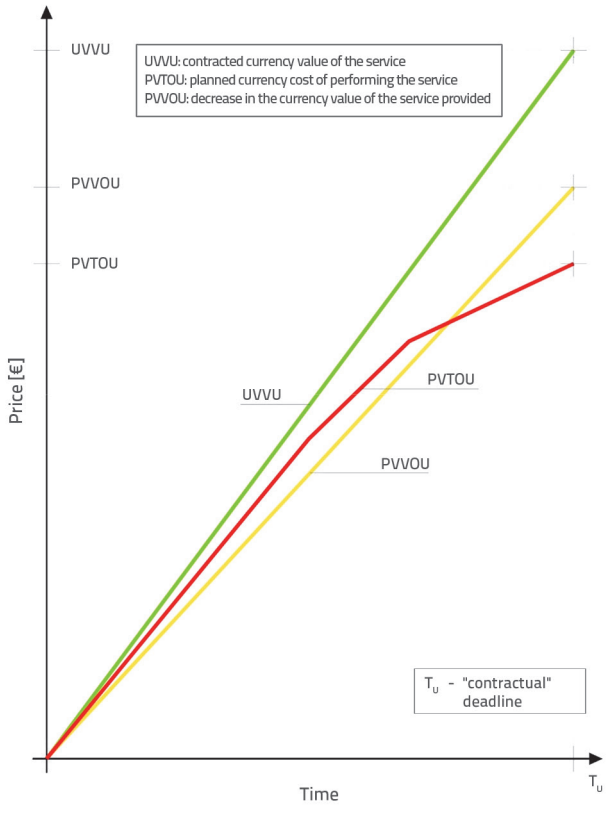

Figure 4. Currency value of income and expense ratio

This is unmistakable proof that the service provider will unavoidably suffer financial loss when providing the service during an inflationary period if essential, required, and inevitable valuation changes are not made. If we further factor in the uncertainty of service duration, we arrive at a dramatically negative scenario for the business viability of an engineering consulting service provider.

Unfortunately, this is not some hypothetical "what-if" discussion. This is a factual presentation and analysis of the daily realities of public procurement processes in the Republic of Croatia, specifically in the implementation of public tenders (administrative procedure: Decision/Ruling of the Supreme Court: https://odluke.sudovi.hr/Document/view?id=4f978958-5fa1-42e2-9f25-a57e7beed7cd&q=+Rev+139 %2f2023-5) and the implementation of building projects in accordance with the results of public tenders (Civil Obligations Act).

The claim that RUC (I'm using the common term) represents an unforeseen cost for the contracting entity is simply neither accurate nor true. To some extent, the estimation and payment of the difference between the base currency value and the present currency value of the engineering consulting service is merely an attempt to address the business disruption that occurs for both clients and service providers during inflationary times. This is by no means an increase in costs for the client-on the contrary, inflation, without the adjustment of the currency value of the provided service, reduces this cost precisely due to its inflationary effect, entirely at the expense of the service provider, who thereby suffers a direct loss of actual and real income.

For this reason, and this reason alone, we must understand and accept as an indisputable fact that this is exclusively a matter of aligning the currency value of the performed service with the originally contracted currency value of the service. Every method of calculating this currency value adjustment is approximate, with a greater or lesser deviation from the actual present state. Inflation has not been an issue in Croatian construction for a very long time. The reasons for this are beyond the scope of this paper.

As a result, we were forced to establish fixed rates and repeatedly eliminate sliding scale clauses through special conditions in FIDIC contracts for building and service delivery. This also applied to other contracts when non-negotiable terms were enforced by public procurement documents. The previous procedure of debating the terms specified in the procurement documents was pointless since well-founded complaints and suggestions would unavoidably run into a thick wall and be rejected. The reasoning behind this resistance was always well justified, yet those justifications were everything but inclusive.

Experience with the method of calculating price differences (as it was then called, since we did not yet consider currency value adjustment) was disregarded and erased. This method used a formula incorporating price change indices and their corresponding weighting factors to determine the overall price change. The formula's structure, including the number of indices and their weightings, was known to tenderers at the beginning of the tendering process. This meant they had no reason to factor in expected inflation in their offered price.

It is not intent here to analyze the two methods of calculating price differences (this paper is an attempt to replace the term RUC with the concept of currency value valorization – CVV). However, I will mention that the Government of the Republic of Croatia has declared that price differences can be addressed either through an argument-based method or a sliding scale. Both methods have fundamental shortcomings. The argument-based method is highly complex and requires a known cost structure for individual elements of a cost estimate item. When this structure is not predefined-and it usually is not-it leads to a burdensome and lengthy process of reaching a consensus on the structure to be used in the calculation. In my opinion, this method is inapplicable!

The method of calculating the currency value valorization (CVV) using a sliding scale is entirely applicable when the formula structure is pre-agreed, meaning that the indices and their weighting factors are predetermined. However, complications arise when the formula has not been agreed upon beforehand and must be negotiated. This negotiation process requires a structured discussion on both index selection and application of the weightings. Such a process can be cumbersome and time-consuming and may ultimately end in a dispute rather than an agreement.

For this reason, and this reason alone, I advocate for the application of a sliding scale with a single index in the case of currency value adjustment for performed engineering services-for example, using the variable cost-of-living index. It is not a perfect solution, but it is pragmatic and simple to implement, avoiding the need for an

excessively detailed and prolonged discussion. Economic operators in the public procurement process for engineering consulting services, when considering currency value adjustment, face a choice between two possible scenarios:

- Disregard potential inflation expectations during period of service provision, submit a price without accounting for anticipated inflation, and fall into the trap of the fixed-price clause, or
- Include an estimated inflation adjustment in the offered price, making their tender financially uncompetitive.

This puts the economic operator in the position of Buridan's donkey: halfway between hay and straw! The concept of RUC (price difference) carries a misleading message that an economic operator, by requesting recognition of inflation's impact on the service value, is demanding a price increase-essentially "asking for more than they are entitled to."

As previously stated, this is solely about adjusting the current currency value of the provided service to match its original contracted value. Without acknowledging this fundamental fact, the economic operator is directly deprived of the difference in currency value, which should be compensated based on the contracted value versus the current currency value. Regardless of which method is used to calculate inflation's impact, the economic operator is still in a losing position due to the approximation inherent in the calculation method, the time lag between calculation and the actual occurrence of the currency value difference, the payment delay caused by invoice maturity dates, etc.

This is a fact. And facts can sometimes be harsh. The consequences of ignoring these facts are often painful, sobering, and lead to post-mortem reactions. But action should be preventive, not just in healthcare. When it comes to currency value adjustment, we must act to change entrenched perceptions, judgments, and practices.

4. Conclusion

Why is there so much mystification about the deadline for the provision of engineering consultancy services? Where does all this mystification around determining the current currency value of performed engineering consultancy services come from? I don't know the answer to either question. I can only speculate-but I won't! I stand by everything I have written, explained, and argued in this paper.

Many will disagree with me, especially those who approach both deadlines and the current currency value of performed engineering consulting services with an attitude of absolutism. They will respond, "It is what it is, and that's how it should be," dismissing my claim that perspective and practice need to change. At its core, a deadline implies something fixed, predetermined, verified in advance, unambiguously defined, mutually accepted, and binding for both contractual parties. This applies to deadlines in every industry, and it should apply to the process of tendering and performing engineering consulting services. But it doesn't!

Despite the requirement for a fixed remuneration for the contractual scope and quality, the duty to provide engineering consulting services in public procurement is frequently, by sheer force, forced into an ambiguous, open-ended timeline. This disregards the fact that an engineering consulting service is not a single, fixed-cost roll of toilet paper. Even a roll of toilet paper incurs storage costs if it isn't sold within an acceptable timeframe. Performing an engineering consultancy service is a responsible, primarily intellectual process in which the service provider inevitably consumes time-and no rational person can deny that consumed time has value and entails real, objective costs. No one needs to be told that new value expressed in financial terms cannot be created without cost. And while nobody can deny this fact, they can persistently ignore it-and many do.

Examples of contracts covered in this paper demonstrate a socially detrimental practice where deadlines are viewed as a minor and unimportant component of the contractual relationship between public clients and service providers. How to change existing, stubborn practices? The simplest and only truly effective solution is to eliminate this practice through legal reform. Amendments to the Public Procurement Act should explicitly prohibit the issuance of public tenders for engineering consulting services without a fixed deadline. A straightforward solution-but one that requires a prior political decision, since laws are amended based on the needs of day-to-day politics. It is the responsibility of professional organizations and industry stakeholders to relentlessly and consistently advocate for this change until it is realized.

The goal is clear: The deadline for engineering consulting services must be unambiguously defined in the contract and strictly linked to the total financial compensation for the total service provided. If the service must be provided beyond the agreed-upon deadline for any reason, this needs to be resolved by a contractual amendment. I am acutely aware that we as a society and as individuals find it difficult to give up "good" habits and even better ones.

However, as regards the contract duration as a fundamental element of any contract, including a contract for the provision of engineering consultancy services, contracting entities would have to accept the necessary changes discussed in this paper and abandon the practice whereby the responsibility for the duration (term) of the service is transferred to the economic entity, which is not responsible for either the planned (often stated) or the extended duration of the offered/contracted service, with a fixed financial fee for the service provided, regardless of the total duration of the service.

This practice-where public clients force engineering consulting providers to assume responsibility for estimating service duration, when that responsibility should rightfully belong to the client-is simply unfair and commercially unacceptable. Public customers use coercion and exclusivity to compel economic operators to provide a fixed service fee, even while they are unaware of the service's anticipated longevity. Equally unpleasant and no less justified is the view that the valorization of the current currency value (commonly referred to as the price difference) represents an additional, unforeseen cost factor for the contracting authority.

In accordance with the Public Procurement Act, the valuation of the service's current currency value is also considered a cost that, when combined with other unanticipated expenses, restricts the

total amount that can be added to the contract without compelling a new public tender. The Act simply ignores the fact that the effect of inflation in no way changes the value of the service provided. The value remains fixed-only the amount of equivalent currency required to settle the payment for the performed service changes, in accordance with the originally contracted currency value of the service, which is to be executed over a certain period under significant inflationary conditions. The change in the current value of the performed engineering consulting service, caused by inflation, is a factor that neither the public client nor the economic operator can control. This change does not represent an actual cost for the contracting entity-it merely reflects a necessary adjustment in the amount of money that must be transferred to the service provider, as the currency depreciates over time.

It is evident that, due to inflation, the service provider incurs higher financial expenditures in delivering the service. This is the basis for adjusting the currency value of the performed service. What is particularly harmful is the widespread misconception that engineering consulting service providers "unjustly profit" from adjusting the currency value of their services under inflationary conditions. I have proven in this paper that this is not true! Just as indefinite, uncertain service deadlines must be addressed, it is equally necessary to change the existing perception of inflation's impact by acknowledging a fundamental fact: The current currency value of the performed service is not a real or additional cost for the client, nor is it a mechanism through which the service provider generates illegitimate revenue. Should contracting authorities also plan expenditure based on existing and expected inflation trends when planning foreign currency expenditure for the realization of construction projects? Absolutely, they should! In fact, they must!

Through research into current public procurement practices for engineering consulting services and the execution of contracts awarded through public procurement, I have demonstrated the urgent need for contracting authorities to change their approach. This applies to both the determination of contractually fixed deadlines for the provision of service, and the adjustment of the current currency value of performed services in accordance with the originally agreed value. All in an effort to eradicate the social harm that, regrettably, results from the current situations of undefined deadlines for service delivery and situations where the duty to convert the contracted currency value of the service into its actual currency value is waived.

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