

Eligibility of expenditure

Section C'

12 July, 2021

PUBLIC PROCUREMENT

Public procurement, findings & financial corrections

Errors in Public Procurement

1. Contract notice and tender specifications
e.g. artificial splitting of works/services/supplies contracts, discriminatory criteria for selection (either by ignorance or by mistake or deliberately), and/or discriminatory award criteria.

PUBLIC PROCUREMENT

Errors in Public Procurement

2. Selection of tenderers and evaluation of tenders (e.g. Selection criteria or technical specifications were modified after opening of tenders or were incorrectly applied)

3. Contract implementation (Modifications of contract elements)

PUBLIC PROCUREMENT

Modification of contracts without a new procurement procedure (Article 72(1) of Directive 2014/24/EU)

- Have been provided in the initial procurement documents in clear and precise review clauses
- For additional works/services/supplies that have become necessary (please note that it cannot exceed 50% of the value of the original contract)

PUBLIC PROCUREMENT

Modification of contracts without a new procurement procedure (Article 72(1) of Directive 2014/24/EU)

The following conditions are met

- A diligent contracting authority could not foresee
- Does not alter the nature of the contract
- Any increase is not higher than 50% of the value of the original contract

Last, the modifications are not substantial.

PUBLIC PROCUREMENT

Unforeseen circumstances (Article 72(1) of Directive 2014/24/EU)

Under strict interpretation : Circumstances which a diligent contracting authority could not foresee.

Examples that a diligent contracting authority should have foreseen in the tender specifications:

- extension of the project
- modifications caused by insufficient preparation of the tender document (new services added later)

PUBLIC PROCUREMENT

Significant modification of a contract during contract implementation

Case Study I

Legal basis: Article 72 of Directive 2014/24/EU
(or Article 89 of Directive 2014/25/EU)

“...renders the contract materially different in character from the initial one.”

PUBLIC PROCUREMENT

Significant modification of a contract during contract implementation – Examples

- The delivery of the final services was prolonged 55% or more of the initial approved period
- Contractual penalties not applied
- A reduction in scope of the contract by approximately 30% without concomitant economic reduction.

PUBLIC PROCUREMENT

National “open” public procedure under the budget line “external expertise” and total budget 200.000€.

The Contracting Authority modified the initial contract with a corresponding increase of physical and economic object: additional management services as well as modification of the physical object of new deliverables and increase of the contractual amount.

PUBLIC PROCUREMENT

The Contracting Authority argued that any financial excess was based on article 72. The additional works/services were not included in the initial contract because :

- (a) It could not be done for technical reasons
- (b) It would involve overlap of costs for the contracting authority.

PUBLIC PROCUREMENT

However, according to this same contract, the following sentence,

"In case of extension of the project, the contract is extended respectively with the same conditions, without extension of the economic object".

Means that there cannot be additional cost.

As a result, any amount paid to the contractor on top of the initial economic value, was ineligible.

PUBLIC PROCUREMENT

Determining financial correction

The EC decision C(2019) 3452/14.05.2019

Type of irregularity: Case 23. Modifications of the contract elements set out in the contract notice or tender specifications, not in compliance with the Directives.

- Financial correction of 25% of the initial contract.

PUBLIC PROCUREMENT

Case Study II

Open tender

Services and supplies Contract. Procurement of GIS, mobiles, software, electronic equipment supplies etc.
Budget 200,000€.

PUBLIC PROCUREMENT

Restrictive Selection and award criteria were applied in the tender documents.

- A Team Project coordinator with 10 years of experience in similar projects.
- One Project officer with 15 years of experience and a Ph.D.
- Three Project officers without experience but permanent residents of Rhodes.

PUBLIC PROCUREMENT

Commission decision C(2019) 3452 final/14.5.2019

Type of irregularity. Case 11 (b). Criteria for exclusion, selection or award . Cases in which restrictive criteria were applied but still a number of economic operators submitted tenders.

The basic reasoning is the selection of the most suitable “Project Coordinator” and not junior expert.
Rate of Correction 5%.

PUBLIC PROCUREMENT

Case Study III

Services Contract.

Energy conservation in public buildings.

The Restrictive term in the contract documents (selection criteria ON/OFF) is :

“The tentative financial operator must have completed “A similar project in a municipality located in a Greek island”.

PUBLIC PROCUREMENT

Commission decision C(2019) 3452 final/14.5.2019

Type of irregularity, Case 10. Use of criteria for exclusion, selection that are discriminatory.

- Cases in which operators could have been deterred from tendering because of exclusion, selection criteria that include unjustified national, regional or local preferences.

Rate of Correction 25%.

PUBLIC PROCUREMENT

Case Study IV

External expertise. Services Contract. Budget 230,000€

- Project management
- Publicity
- Technical studies
- Evaluation case studies

The selection criterion in the tender documents “*offers are accepted only for the whole contract*” is restrictive. No justification accompanies (art. 46 of Directive 24/2014).

PUBLIC PROCUREMENT

Commission decision C(2019) 3452 final/14.5.2019

Type of irregularity, Case 3. Lack of justification for not subdividing contract into lots.

The contracting Authority does not provide an indication of the main reasons for its decision not to subdivide into lots.

Rate of Correction 5%.

PUBLIC PROCUREMENT

Case Study V

Article 67 – Directive 24/2014

Without prejudice to national laws, regulations or administrative provisions concerning the price of certain supplies or the remuneration of certain services, contracting authorities shall base the award of public contracts on the most economically advantageous tender.

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.

PUBLIC PROCUREMENT

Services 150,000€ (external expertise)

- Project management.
- Technical studies (engineer works).
- Publicity (including catering)

The contracting authority decided that instead of following the award of public contract on the most economically advantageous tender to follow the award on a fixed price.

No or insufficient documentation is provided.

PUBLIC PROCUREMENT

Commission decision C(2019) 3452 final/14.5.2019

Type of irregularity, Case 16. The relevant documentation is insufficient to justify the award of the contract, resulting in a lack of transparency.

Rate of Correction 25%.

THANK YOU FOR YOUR ATTENTION ANY QUESTIONS?



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