



The Contact Committee of the Supreme Audit Institutions  
of the European Union

## PPUG SEMINAR "PUBLIC PROCUREMENT AUDIT"

Lisbon, 14-15 October 2010

*Workshop "Audit of Public Procurement for EU funded projects"*

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# AGENDA



## ✓ Introduction

## ✓ Our approach to auditing public procurement

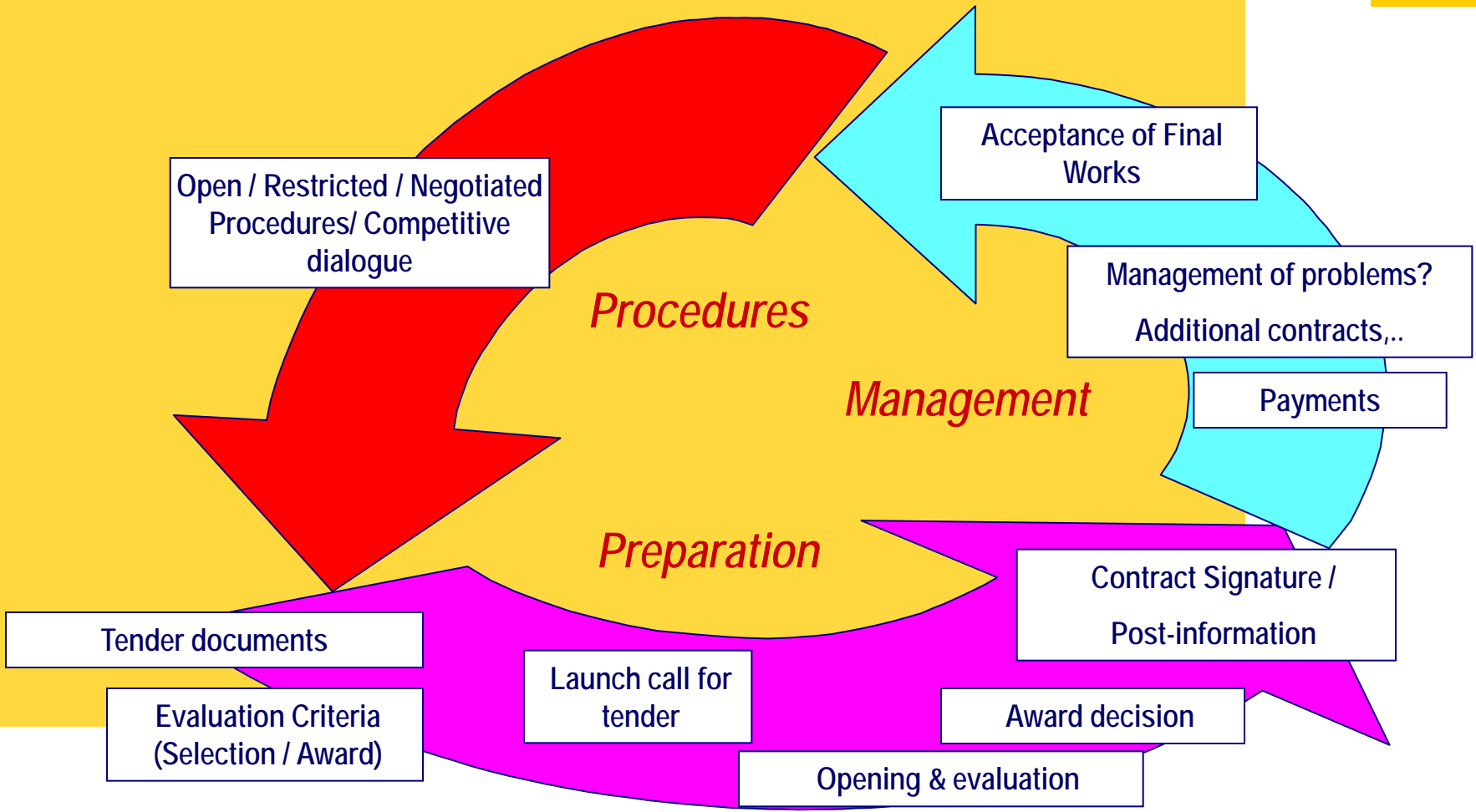
1. Selection of the procedure
2. Announcement
3. Quality of tender documents
4. Evaluation of offers
5. Award of contract
6. Contract and amendments





# FEW WORDS AT THE BEGINNING...

# THE MAIN PHASES



# LEGAL BASIS

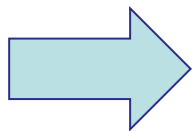


## European Directives

- ✓ Directive 2004/17 (utilities - entities operating in the water, energy, transport and postal services sectors)
- ✓ Directive 2004/18 (works, supplies and service contracts)

## Treaty

- ✓ free movement of goods
- ✓ right of establishment
- ✓ freedom to provide services
- ✓ non-discrimination and equal treatment, transparency, proportionality and mutual recognition



transposed into national legislation

# WHICH LEGAL BASIS APPLIES?



Directives apply when contract value  $\geq$   
following thresholds

(otherwise principles of the Treaty)

Estimated value of the Works contract in €	Estimated value of the Supplies/ Services contract in €
$\geq 5.000.000$	$\geq 130.000$ (200.000)
$\geq 6.242.000$	$\geq 162.000$ (249.000)
$\geq 4.845.000$	$\geq 125.000$ (193.000)

1993

2004/18

Now

# TO WHOM DOES IT APPLY?



Article 1(9) – defines contracting authorities

- ✓ “the State, regional or local authorities, bodies governed by public law, associations formed by [those entities]”
- ✓ Body governed by public law – 3 stage test:
  - ✓ legal personality
  - ✓ established to meet needs in the general interest, and not having an industrial or commercial character
  - ✓ and financed, for the most part, by the State, regional or local authorities or bodies governed by public law or subject to management supervision by those
- ✓ Private bodies may be concerned



# 1. SELECTION PROCEDURE



# SELECTION PROCEDURE



- ✓ Are the works/supplies/services tendered consistent with the description in the project application?
- ✓ Has the correct awarding procedure been applied and followed?
- ✓ Is the contract tendered regular in terms of splitting (i.e. artificial split in order to avoid compliance with Community or national legislation)?



## 2. ANNOUNCEMENT

# ANNOUNCEMENT



- ✓ Did the contract notice comply with all applicable legislation?
  - ✓ detail of the contracting authority
  - ✓ address where further information can be obtained
  - ✓ award procedure selected
  - ✓ the nature and the extent of the works
  - ✓ the final date for the receipt of tenders
  - ✓ the minimum economic and technical standards of the contractor
  - ✓ award criteria: lowest bid or economically most advantageous
  - ✓ possibility to increase contract amount (repetition)

# ANNOUNCEMENT



- ✓ Is the contract notice clear, precise and complete in identifying the subject of the contract?
- ✓ Are the time limits set for the receipt of the tenders in compliance with legislation?
- ✓ In case of accelerated procedure, is the urgency properly justified?

# ANNOUNCEMENT



## Time limits

Minimum time limit of Directive 2004/18/EC		Open procedure	Restricted procedure	
		Tenders	Request to participate	Tenders
WITHOUT Prior- information	Ordinary	52 days	37 days	40 days
	Electronic means / Electronic access to doc.	40	30	35
WITH Prior- information	Ordinary	36	37	36
	Electronic means / Electronic access to doc.	29	30	29

## EXAMPLE 1: TRANSPARENCY OF THE PROCEDURE

- ✓ Restricted procedure & under the threshold – national legislation
- ✓ Tender for works – refurbishment of IT networks & construction; cca 3,5 mil euro
- ✓ Contract notice published on 23.12.2008 (sent for publication on 17.12.2008)
- ✓ Deadline for request to participate set on 2.1.2009
- ✓ One consortium applied and was later awarded the contract

### Additional information gathered by the audit team:

- ✓ Consortium – three companies; the leading partner had 80% and was active in road signs business, the partner with all the required experience had 10% in the consortium
- ✓ Many of essential documents were notarized before the publication of contract notice





# 3. QUALITY OF TENDER DOCUMENTS

# QUALITY OF TENDER DOCUMENTS



- ✓ Is the technical information provided in the tender dossier sufficient and adequate for the type of project?
- ✓ In case questions have been raised:
  - ✓ were they answered within the time limits foreseen (at the latest 6 days before offer submission date)?
  - ✓ were the answers communicated to all parties (the ones which have obtained the contract documents)?
- ✓ Do the technical specifications allow equal access for tenderers i.e. do they not have the effect of creating unjustified obstacles to the opening up of public procurement?





## 4. EVALUATION OF OFFERS

# EVALUATION OF OFFERS



- ✓ Was the evaluation committee's composition in compliance with applicable national legislation?
- ✓ Opening minutes
  - ✓ Are minutes of the opening meeting existing mentioning the number of offers received and those rejected as well as the reason for the rejection?
  - ✓ Are the reasons for rejection foreseen in the tender conditions?

# EVALUATION OF OFFERS



- ✓ Changes with respect to the notice
  - ✓ Was any of the information of the contract notice changed during the tender evaluation stage?
  - ✓ If so, was it justified?
- ✓ Were the qualitative (selection) criteria used pre-defined (refer tender dossier - general conditions for participation) and the same as the ones published in the contract notice?
- ✓ Were the selection criteria defined on the basis of a reasonable relation between the size and nature of the project?

# EVALUATION OF OFFERS



- ✓ In case any tenderers were excluded for any of the selection criteria
  - ✓ was a justification provided in the evaluation report and does the rejection relate to the non-respect of a requirement/criteria foreseen in the tender dossier?
  - ✓ the rejected offers: was the decision taken by the evaluation committee correct?
  - ✓ the winning offer: on the basis of the documentation provided did it comply with the major requirements?
- ✓ In case the evaluation committee requested complementary information, did it relate to documentation already presented?



## 5. AWARD OF CONTRACT

# AWARD OF CONTRACT



- ✓ Was the award criterion used pre-defined (in tender dossier) and the same as the one published in the contract notice and/or tender dossier?
  
- ✓ In case the award criteria was the "economically most advantageous tender",
  - ✓ were the criteria and weightings used appropriate?
  - ✓ are the points given reasonable?
  - ✓ are the calculations arithmetically correct (points given x weightings)?

# AWARD OF CONTRACT



- ✓ In case of lowest bid as award criterion (criterion cannot be used for competitive dialogue procedure):
  - ✓ before a tender was rejected for being abnormally low, was the tenderer requested to provide a justification and was this justification properly analysed by the evaluation committee?
  - ✓ has the Commission been informed of the rejection of an abnormally low offer in case the tenderer is not able to prove that the low price results from a legally granted State aid?
- ✓ In case there have been any appeals or any legal proceedings on-going judge whether this has an impact on the conclusions on the procurement procedures.

# AWARD OF CONTRACT



- ✓ Has an award notice been sent for publication in the OJ at the latest 48 days (or 2 months for Dir 93/38 and Dir 04/17) after the award of the contract?



# EXAMPLE 2: UNREASONABLE EVALUATION FORMULA

- ✓ Award criteria: price & “advantageousness of offered payment conditions”
  - ✓ the winning bidder proposed payment terms equivalent to 32 million euro for 3 months,
  - ✓ the other bidder offered the equivalent of 7 million euro for 90 months.
- ✓ The following calculation method was used by the selection committee: full millions of euro added to full years of credit term and the sum was used as the starting point to award points to each offer.

Score calculated by ECA	Respective award points
8,0	4,6
52,5	30,0



Bid	Equivalent of credit amount (mil euro)	Length of grace period (years)	Score calculated by the selection committee	Award points granted by the selection committee	Offered price; euro
Winner	32	0,25 (3/12)	32,25	30	52.267.231
2 <sup>nd</sup> offer	7	7,50 (90/12)	14,50	13,6	47.413.478



## 6. CONTRACT AND AMENDMENTS

# CONTRACT AND AMENDMENTS



- ✓ Is the contract content in line with tender documentation and are amendments to the contract justified?
  - ✓ Are the works/supplies/services included in the contract (refer priced bill of quantities attached) the same as in the tender procedure (refer bill of quantities that was part of the tender dossier)?
  - ✓ Does the contract amount correspond to the amount of the original offer of the winning bidder?
- ✓ Was the contract signed with the tenderer identified in the final evaluation report?
- ✓ Were justifications of conditions (e.g. guarantees required) provided before signing contract?

# CONTRACT AND AMENDMENTS



- ✓ Are all subsequent contract amendments properly justified and approved by the contracting authorities?

# CONTRACT AND AMENDMENTS



- ✓ In case of additional works or services not part of the initial contract
  - ✓ necessary due to unforeseen and unforeseeable circumstances
  - ✓ value of all additional works or services  $\leq$  50% of the amount of the original contract



possibility of signing these amendments with the same contractor (= negotiated procedure without publication)

# CONTRACT AND AMENDMENTS



- ✓ In case of additional deliveries,
  - ✓ partial replacement or extension of existing supplies
  - ✓ change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties
  - ✓ length of such contracts  $\leq 3$  years



possibility of signing these amendments with the same contractor (= negotiated procedure without publication)

# EXAMPLE 3: SUBSTANTIAL CHANGES IN CONTRACT



Scope of contract: 7,5 km armoured tunnel diameter 4m set up with iron cast pipeline

offers received	A (winner)	B	C
total price in currency net of VAT	40.380.088.430	43.996.522.765	41.898.229.476

price evolution	net of VAT
contracted amount	40.380.088.430
exclusion of cast iron pipeline	(4.410.250.000)
other works not performed	(14.070.838.866)
replacement related works	22.340.657.116
contracted after amendments	44.239.656.680
extra works approved	10.240.453.194
<b>total contracted including extra works</b>	<b>54.480.109.874</b>
- of it subject to tender	21.898.999.564
<b>- percentage of contract subject to tender</b>	<b>40%</b>

item	A (winner)	B	C
total price in currency net of VAT	40.380.088.430	43.996.522.765	41.898.229.476
Item: cast iron pipeline diameter 1400 mm	4.410.250.000	7.833.800.000	7.848.750.000
price after exclusion of pipeline	35.969.838.430	36.162.722.765	34.049.479.476

item	A (winner)	B	C
drilling in currency net of VAT - total	17.096.500.000	13.307.915.600	10.257.900.000
- per m3	125.045,71	97.335,58	75.027,43
pipeline in currency net of VAT - total	4.410.250.000	7.833.800.000	7.848.750.000
- per m	590.000	1.048.000	1.050.000





## Training Module by ECA:

### ✓ What?

Public procurement in the area of cohesion policy  
of EU co-financed projects

### ✓ Where?

EIPA seminar on Internal and external audit of the EU funded  
programmes and projects

### ✓ When?

Barcelona, 27-29 October 2010

### ✓ Contact

Milan SMID, [milan.smid@eca.europa.eu](mailto:milan.smid@eca.europa.eu)





# Thank you for your attention!

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