



# Main public procurement audit findings of the European Commission

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- 1. Objectives of audits, the system of audits built up on one another**
- 2. Typical irregularities in public procurement**
- 3. Management of public procurement irregularities**



## Bodies entitled to carry out audits

- Intermediate Bodies (also together with the Managing Authorities)
- Government Control Office as a Controlling Authority
- European Commission
- European Court of Auditors
  
- the National Audit Office



## The objectives of audit carried out by the European Commission

- The effective operation of the institutional system of MSs
  - Prevention of irregularities
  - Disclosure and correction of irregularities
- The institutional system ensures
  - The compliance of the projects
  - The accuracy of the charged costs



# Typical problems

- Public procurement
- Non-eligible costs
- Information and visibility (advertising)



## Typical public procurement irregularities

- Splitting up of projects/contracts
- Under-estimation of the value of contracts
- Unreasonably strict suitability criteria, which distort competition or are not linked to the subject-matter of the contract
- Omission of publication of notices



## Typical public procurement irregularities

- Discriminatory suitability criteria
- Unjustified application of biased award criteria
- Automatic exclusion of abnormally low tenders
- Inappropriate justification/documentation of decisions



## Typical public procurement irregularities

- Omission of retention of documents
- Failing to mention that the project is co-financed by ERDF and Cohesion Funds
- Exclusions due to extremely harsh application of formal criteria
- Application of an inappropriate procedure
- Amendments of contracts: additional works





## Additional works, amendments of contracts

- extra work, supplementary work, amendment of contract: these are not included in the Directive 2004/18
- additional works: Article 31 (4)
  - unforeseeable circumstances
  - cannot be separated
  - may not exceed 50 % of the amount of the original contract



## Possible outcomes of the examinations

- No conclusion
- In case of omissions/problems: monitoring procedure
- Financial correction procedure
  - Hearing
  - Commission Decision
  - Remedy



## According to the type of the irregularity

1. The infringement of rules pertaining to advertising stipulated in the public procurement Directives - direct award of contracts

Proposed financial correction:

- 100% of contract value



2. The infringement of rules pertaining to advertising stipulated in the public procurement Directives - use of negotiated or restricted procedure in place of open procedure.

Proposed financial correction:

- 25% of contract value



3. The contract was awarded without tendering and it was not justified by the existence of unforeseeable circumstances.

Proposed financial correction:

- 100% of the value of the disapproved contract ("initial contract" or the contract concerning extra work)



4. Additional works the value of which exceeds the limit set for the purposes of unforeseeable circumstances - conclusion of additional contracts with a value exceeding 50% of the value of the original contract.

Proposed financial correction:

- 100% of the part exceeding 50% of the value of the original contract



5. Certain selection and/or award criteria are missing from the invitation to tender or the tender documentation.

Proposed financial correction:

- 25% of the contract value (it can be decreased to 10%, depending on the seriousness of the case).



6. Application of unlawful/inappropriate award criteria (e.g. applying a selection criterion in the awarding stage, neglecting a criterion included in the invitation to tender)

Proposed financial correction:

- 25% of the contract value (it can be decreased to 10%, depending on the seriousness of the case).





7. Application of unlawful/inappropriate selection and/ or award criteria in the contract award procedure - where certain potential tenderers may have been kept from participating in the procedure by the unlawful restrictive terms set out in the invitation to tender.

Proposed financial correction:

- 25% of contract value

In the most serious cases, where there is an intention to deliberately exclude certain tenderers from the procedure, a financial correction of 100%.



8. The subject-matter of the contract is defined in a discriminatory way or its definition is not sufficiently detailed.

Proposed financial correction:

- 25% of the contract value. It can be decreased to 10%, depending on the seriousness of the case, based on an individual assessment.



9. Negotiations during the awarding stage - the contract has been awarded through an open or restricted procedure, but the contracting authority conducts a negotiation with the tenderers in the awarding stage.

Proposed financial correction:

- 25% of the contract value. It can be decreased to 10%, depending on the seriousness of the case, based on an individual assessment.



10. Decrease in the subject-matter of the contract - the contractual quantity is decreased while the amount of the consideration is not reduced proportionally.

Proposed financial correction:

- An amount proportionate to the decrease of the contractual quantity.

And

- 25% of the decreased quantity.



11. Inappropriate application of certain "supplementary" stipulations - e.g. failing to publish the contract award notice.

Proposed financial correction:

- 2%, 5% or 10% of the contract value, depending on the seriousness and the repetitiveness of the case.



## Summary

- the Guidance of the European Commission
- a Guidance, not exhaustive and not binding, but recommended
- insufficiencies of the remedy system
  - objective/subjective deadlines
  - opportunities after conclusion of the contract
  - not taking into account the financial risks
  - lack of preventive force



## Summary

- financial risks: Council Regulation No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities
  - Chapter 7 concerning sound financial management



**Thank you for your attention!**

**Any question?**