

## **ANNEX I: CHECKLIST FOR PUBLIC PROCUREMENT**

This checklist may be applied to contracts covered by the EU public procurement directives (above thresholds) or where there are doubts about contracts that are below the thresholds but for which national legislation exists and has to be followed. Obtain the law and read it carefully before starting the audit.

If the expenditure relates to several contracts/procurement procedures, obtain the following information for the contracts to be audited:

publication notice (to check procedure used);

evaluation committee minutes/report;

contract.

For a sample of them (most important ones of each category: works-supplies-services) answer the questions in the checklists below.

Private bodies may be concerned as in the case of works contracts, the Directive is to be applied in each case where more than 50% of the works (of a particular nature) and/or linked service contract are subsidized from public sources.

Directives: 90/531; 92/50; 93/36; 93/37; 93/38; 98/4; Applicable since Jan 2006: 2004/17 2004/18.

### **1.1. Contract examined (n° and title):**

- Contracting entity:
- Contractor:
- Amount awarded (in €):
- Amount mentioned in the contract (in €):
- Expenditure declared for CF co-financing (in €):
- Selection procedure used:
- If direct award (i.e. negotiated procedure without publication), justification presented by national authorities:
- Amount of financial corrections made by national authorities as a result of an audit done by national audit body:
- Applicable Directive:
- Applicable national legislation:

No	Audit step	Y	N	NOP	NA	Comment	Ref.
<b>SUB-SECTION 7.1. GENERAL</b>							
7.1.1	<p>Has the correct awarding procedure been followed (Note that for services under annex B, there are no requirements regarding the procedure):</p> <ul style="list-style-type: none"> <li>• open international</li> <li>• restricted : number of candidates needs to be such as to ensure genuine competition (min 5 candidates)</li> <li>• negotiated with or without prior publication (min 3 candidates): very exceptional procedure !!! (refer specific conditions)</li> <li>• competitive dialogue (new directives: for particularly complex projects)?</li> </ul>						
7.1.2	Are the works/supplies/services tendered consistent with the description in the project application (refer procurement notice and tender dossier)?						
7.1.3	Is the contract tendered regular in terms of splitting (i.e. no artificial split in order to avoid compliance with Community or national legislation)?						
7.1.4	Is the contracting authority as stated in the publications also signing the contract? If not, is it acceptable?						
<b>SUB-SECTION 7.2. DID THE CONTRACT NOTICE COMPLY WITH APPLICABLE LEGISLATION?</b>							
7.2.1	Has a contract notice been published in accordance with the Directive (or national legislation) in OJ and national press and including as a minimum the following:						
	a) detail of the contracting authority?						
	b) address where further information can be obtained?						
	c) the award procedure selected?						
	d) the nature and the extent of the works?						
	e) the final date for the receipt of tenders?						
	f) the minimum economic and technical standards of the contractor?						
	g) award criteria: lowest bid or economically most advantageous?						
	h) disclosure of the possibility to increase the contract amount (within 3 years of contract signature) in case of new works or services consisting in the repetition of similar						

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	works or services (to be disclosed if the contracting authority wants to use this possibility refer Art. 31.4 b) of 04/18 or Art. 40. 3 g of 04/17)?						
7.2.2	Is the contract notice clear, precise and complete in identifying the subject of the contract?						
7.2.3	Are the time limits set for the receipt of the tenders in compliance with legislation:						
	<p>a) Open procedure:</p> <p>Old directives - 52 days from the date on which the contract notice was sent.</p> <p>Reduced deadline of 36 days but in no case lower than 22 days possible if prior information notice published.</p> <p>New directives - 52 days from the date on which the contract notice was sent.</p> <p>Deadline may be reduced by 7 days in case the notice has been transmitted by electronic means (to be checked).</p> <p>Deadline may be reduced by 5 days in case full and unrestricted direct access is provided by electronic means to the tender specifications.</p> <p>(Thus total possible reduction is 12 days).</p> <p>Reduced deadline of 36 days but in no case lower than 22 days possible (for utilities Dir 04/17 - 15 days if notice transmitted by fax or electronic means) if prior information notice published.</p>						
	<p>b) Restricted &amp; negotiated procedure &amp; competitive dialogue:</p> <p>Old directives - for reception of requests to participate – 37 days from the date on which the contract notice was sent.</p> <p>New directives - for reception of requests to participate - 37 days from the date on which the contract notice was sent.</p> <p>Deadline may be reduced by 7 days in case the notice has been transmitted by electronic means (to be checked).</p> <p>For utilities Dir 04/17 the deadline may not be lower than 22 days or 15 days if transmission of notice by electronic</p>						

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	means.						
	<p>c) Restricted &amp; negotiated procedure &amp; competitive dialogue:</p> <p>Old directives - for receipt of offers - 40 days from the date on which the contract notice was sent.</p> <p>Reduced deadline of 26 days if prior information notice published.</p> <p>New directives - for receipt of offers - 40 days from the date on which the contract notice was sent.</p> <p>Deadline may be reduced by 5 days in case full and unrestricted direct access is provided by electronic means to the tender specifications.</p> <p>Reduced deadline of 36 days but in no case lower than 22 days possible if prior information notice published.</p> <p>For utilities Dir 04/17 it can be fixed by mutual agreement or otherwise at least 24 days but in no case less than 10 days.</p>						
	d) <b>In case</b> the deadlines were reduced to 36 or 22 days (see above), was a prior information notice sent for publication between 52 days and 12 months before the date on which the procurement notice was sent?						
7.2.4	<p><b>In the case</b> of urgency shorter time limits may be set for restricted and negotiated procedures (e.g. 10 days). Is the urgency fully justified?</p> <p>Art. 38.8.</p> <p>of 04/18</p>						
<b>SUB-SECTION 7.3. WAS THE TENDER DOSSIER OF GOOD QUALITY?</b>							
7.3.1	<p>Is the technical information provided in the tender dossier sufficient and adequate for the type of project (i.e. were there any questions raised on legal or administrative matters - inconsistencies discovered or situations not foreseen)?</p> <p>Check on the basis of the questions raised by the tenderers and answers given whether relevant information was missing from or wrong in the tender dossier.</p>						
7.3.2	<p>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?</p> <p>Art. 23 of 04/18</p>						

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7.3.3	<b>In case</b> questions have been raised						
	a) were they answered within the time limits foreseen (at the latest 6 days before offer submission date)?						
	b) were the answers communicated to all parties (the ones which have obtained the contract documents)?						
<b>SUB-SECTION 7.4. WAS THE TENDER EVALUATION DONE IN A CORRECT WAY?</b>							
7.4.1	Was the evaluation committee's composition in compliance with applicable national legislation?  <b>In case</b> of absence of legislation: check professional experience whether this is relevant to the subject of the tender and whether there is no recent link with one of the tenderers.						
7.4.2	a) Are minutes of the opening meeting existing mentioning the number of offers received and those rejected as well as the reason for the rejection?						
	b) Are the reasons for rejection foreseen in the tender conditions (check the conditions foreseen for handing in the offers)?						
7.4.3	a) Was any of the information of the contract notice (see question 7.3.1.) changed during the tender evaluation stage?						
	b) If so, was it justified?						
7.4.4	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?  (Dir 93/37 art 24: bankruptcy, art 25: trade register, art 26:financial standing, art 27:technical capability)  (Dir 04/18 art. 45 bankruptcy, art 46 register, art 47 financial standing, art 48 technical capability)						
7.4.5	Where the selection criteria defined on the basis of a reasonable relation between the size and nature of the project (too high standards may exclude competition: check in particular the requirements regarding experience with similar projects and turnover)?						
7.4.6	<b>In case</b> any tenderers were excluded for any of the selection criteria						
	a) 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?						
	b) check the original offer sent in by those rejected (sample and if lowest offers have been rejected check them in any case). Can you confirm that the decision taken by the evaluation committee was the correct one?						

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	<p>c) check the original offer sent in by the winning bidder?</p> <p>Can you confirm that on the basis of the documentation provided he did comply with the major requirements?</p>						
7.4.7	<p><b>In case</b> the evaluation committee requested complementary information or clarification, can you confirm that it relates to documentation already presented?</p> <p>The committee cannot request documents that should have been part of the offer in the beginning (compulsory documentation); it can only ask for clarification. Art. 51 of 04/18</p>						
7.4.8	<p>Was the <u>award criterion</u> used pre-defined (refer tender dossier) and the same as the one published in the contract notice and/or tender dossier? (see Dir 93/37)</p>						
7.4.9	<p>If offers with a price lower than the winner were excluded for a particular reason, does the winner himself fulfil these criteria (check on the basis of the offer sent in)?</p>						
7.4.10	<p>In case the award criteria was the "economically most advantageous tender",</p>						
	<p>a) were the criteria and weightings used appropriate (ie do they make sense for the type of works tendered)?</p>						
	<p>b) are the points given reasonable?</p> <p>You are in a position to check this for objective criteria such as execution time, experience of staff, price.</p> <p>For more technical criteria, use the points given by the individual evaluators as hints (if there are big variations between the evaluators, ask for explanation).</p>						
	<p>c) can you confirm that the calculations are arithmetically correct (points given x weightings)?</p> <p>Use tickmarks for those recalculated</p>						
7.4.11	<p>a) In case of lowest bid as award criterion (criterion cannot be used for competitive dialogue procedure):</p> <p>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?</p> <p>Note that the Greek authorities had to pay financial corrections because offers were rejected on the basis of mathematical formula without considering any possible justification provided by the tenderer concerned.</p>						
	<p>b) Old directives - Has the Commission been informed of the rejection of offers on the basis of them being abnormally low (in case EU directives are applicable)?</p> <p>New directives - 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?</p>						

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	In case electronic auction is used (open & restricted procedure and negotiated procedure after presence of irregular offers):						
	a) was the possible use of this option mentioned in the contract notice?						
	b) since electronic auctions can only deal with contracts for works, supplies or services for which the specifications can be determined with precision (in particular recurring supplies, works and service contracts) can you confirm that this was the case?						
	c) did the committee do a full initial evaluation of the tenders in accordance with the award criteria set and with the weighting fixed for them?						
	d) was it possible to establish the respective ranking of the tenderers at any stage of the electronic auction (disclosure of identities of tenderers prohibited)?						
	e) were all tenders invited simultaneously and did the auction not start sooner than 2 working days after the date on which invitations are sent out?						
	f) were only those elements suitable for automatic evaluation by electronic means (i.e. elements which are quantifiable so that they can be expressed in figures or percentages) the object of the electronic auction?						
7.4.13	In case of a design contest, can you confirm that the requirements of Title IV of Directive 04/18 or Title III of Directive 04/17 are respected?  Provide explanations in your WP!						
7.4.14	In case there have been any appeals or any legal proceedings on-going judge whether this has an impact on your conclusions on the procurement procedures.						
7.4.15	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?  In case of contracts based on a dynamic purchasing system, the contracting authorities may regroup notices on a quarterly basis. In that case, the grouped notices shall be sent within 48 days (or 2 months for Dir 04/17) of the end of each quarter.						
<b>SUB-SECTION 7.5</b> Is the contract content in line with tender documentation and are amendments to the contract justified?							
7.5.1	a) 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)  (Check to be done on a sample of positions in the bill of quantities)?						
	b) Does the contract amount correspond to the amount of the original offer of the winning bidder?						
7.5.2	Was the contract signed with the tenderer identified in the						

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	final evaluation report?						
7.5.3	Where justifications of conditions (e.g. guarantees required) provided before signing contract?						
7.5.4	a) In case of a framework agreement, does the term of the agreement not exceed 4 years? Art. 32.2  of 04/18						
	b) In case of a dynamic purchasing system, does it not last for more than 4 years?						
7.5.5	Are all subsequent contract amendments properly justified and approved by the contracting authorities? Art. 33.7  of 04/18  Amendments are only justified for additional works (Art 7.3.d old Directives and Art 31.4a) new Directives) or additional services (Art 11.3.e) old Directives and Art. 31.4a) D 04/18 and Art. 40.3 f) D 04/17 new Directives) not included in the project initially allocated or in the contract first concluded but which have, through unforeseen circumstances become necessary for carrying out the work described therein (max increase in contract value: 50%).  New works or services consisting in the repetition of similar works or services can be entrusted to the initial contractor if these works or services are in conformity with a basic project for which the original contract was awarded. The use of this procedure is to be announced since the beginning (contract notice - refer Q 7.2.1.h).  (Art. 7.3.e) for works old Directives, Art. 11 3.f) old Directives for services and Art. 31.4.b) new Directive 04/18 and Art. 40.3.g) new Directive 04/17 for works)  Additional deliveries in the case of a supply contract (intended as partial replacement or extension of existing supplies) can be entrusted to the original contractor where the change would oblige the contracting authority to acquire material having different technical characteristics (Art. 6.3.e) old Directive and Art. 31.2.b) of D 04/18 and Art. 40.3e) of D 04/17).  This aspect is to be looked at with due care as it may be a way of circumventing competition rules or provide undue advantages to a contractor.						
<b>SUB-SECTION 7.6. DYNAMIC PURCHASING SYSTEM Art 33 of 04/18</b>							
7.6.1	Make sure that the above sub-sections are checked for the acceptance of bidders into the system in general.						
7.6.2	Was a possibility given to any economic operator - throughout the entire period of the system - to submit an indicative tender?						
7.6.3	Was a complete evaluation done within 15 days from the date of submission of the indicative tender (to be extended only if no specific tender launched in the meantime)?						
7.6.4	Make sure that the above sub-sections are checked for every specific contract to be signed under the system						



No	Audit step	Y	N	NOP	NA	Comment	Ref.
	(simplified procurement notice in this case)?						