Audit in the field of public procurement and relevant documentation for Auditors
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• Content:
  ▪ Main types of audit performed by AA
    ▪ System audit
    ▪ Audit of operations
  ▪ Main features of auditor’s checklist
  ▪ Structure of AA checklist and standard format
  ▪ Audit red flags- sensitive areas identified during AA audits
  ▪ Verification of selection and award criteria
  ▪ Capitalization of audit work
AUDIT OF PUBLIC PROCUREMENT

Main audit obligation:

to express independently an opinion whether:

1) The management and control system put in place functions properly.

2) Expenditure for which reimbursement has been requested from the Commission and which are declared in the accounts is legal and regular

3) The accounts give a true and fair view,
AUDIT OF PUBLIC PROCUREMENT

System audit

Public Procurement

Audit of operations
Main Audit Authority verifications during System Audit

Verifications in relation to public procurement procedures should aim to ensure that Union public procurement rules and related national rules are complied with.
Main Audit Authority verifications during System Audit

AA conducts control tests in order to gain assurance over the effectiveness of Managing Authority controls in the field of PP

MA has the obligation to verify the compliance of the expenditure with national and Union rules in terms of public procurement during the administrative verifications of the expenditures.
Main Audit Authority verifications during System Audit

Auditor’s verifications may include:

- MA internal control environment, segregation of duties, number and experience of staff in charge with MV verification,
- Procedures and checklists used by the MA for PP verifications,
- Effectiveness of those verifications through re-performance of a sample of controls applied by the entity.
Main Audit Authority verifications during System Audit

Auditor examines if administrative checks performed by MA cover at least the following aspects:

- Cost estimation of the contracts;
- Selection of the correct procedure to be applied;
- Conformity with publicity requirements;
- Quality of tender documents;
- Evaluation and selection criteria to be used;
- Supplementary works awarded in the implementation
- Modification to the initial contract during execution of the contract
Audit of operations

- Eligibility of expenditures & Public Procurement
- Evaluation & selection of the project for financing
- Implementation of the project
- Irregularities & accounting records
- Information & Publicity Audit trail

Legality & Regularity
Checklist for the control of public procurement main features

- Not exhaustive, nor restrictive
- May be adapted / supplemented
- Public Procurement checklist
  - Distinct for each type of PP procedure
- Further analysis in case of fraud suspicion
- General conclusion on the PP procedure
<table>
<thead>
<tr>
<th>No</th>
<th>Elements checked</th>
<th>Legal Provision</th>
<th>Yes/No/N/A</th>
<th>Justify the answer</th>
<th>Audit evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td><strong>Question</strong> ? - Has the CA published a procurement notice in the Official Journal of the European Union and at national level? Guidance, explaining the question and giving some relevant information regarding the areas and directions in which that item should be checked It also highlights the points where the most common and serious errors arise. Check whether: ✓ there is evidence of the submission for publication / publication in the OJEU ✓ there is evidence of publication at national level and is identical to the version from OJEU; ✓ publication in the OJEU is prior to national publication</td>
<td>Art. 2 alin. (2), art. 211-213 from Law no. 98/2016, Art. 59, 145-146 from GD nr. 395/2016</td>
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dezvoltă următoarele:

a) fie valoarea reală globală a tuturor contractelor similare consecutive atribuite în ultimele 12 luni sau în anul bugetar anterior, ajustată, acolo unde este posibil, pentru a lua în considerare modificările cantitative și valorice care pot surveni într-un interval de 12 luni de la data contractului inițial;

b) fie valoarea estimată globală a tuturor contractelor consecutive atribuite într-un interval de 12 luni de la prima livrare.

12. Prin calculul valorii estimate, AC s-a asigurat că nu s-a produs o divizare artificială a contractelor de lucrări/produse/servicii?

Se verifică dacă AC nu a divizat contractul de achiziție publică în mai multe contracte distincte de valoare mai mică și nici nu a utilizat metode de calcul care să conducă la o subevaluare a valorii estimat a contractului de achiziție publică, cu scopul de a evita aplicarea procedurii de atribuire.

Se verifică dacă există următoarele:
- două sau mai multe achiziții consecutive și asemănătoare ca obiect situate imediat sub pragurile de la Art.7;
- separarea nejustificată a achizițiilor, de exemplu contracte separate pentru manoperă și materiale, fiecare având o valoare inferioară pragurilor din Lege;
- achiziții consecutive la valori situate imediat sub prag.

Atenție! Este nevoie de acestei cerințe poate constitui abatere sanctorată prin aplicarea unei corecții financiare!

13. În situația în care AC nu recurge la atribuirea contractului pe loturi, aceasta a justificat decizia de a nu atribui contractul pe loturi?

Se verifică dacă la dosarul achizitionei există această justificare și se evaluatează dacă este relevantă în raport cu achiziția efectuată.

ELABORAREA DOCUMENTAȚIEI DE ATRIBUIRE

14. AC a elaborat o documentație de atribuire care să conțină toate informațiile necesare pentru a asigura operatorilor economici o informare completă, corectă și precisă cu privire la cerințele achiziției, obiectul contractului și modul de
Acționa.

Atenție nerespectarea acestei cerințe poate constitui abateră sancționată prin aplicarea unei corecții financiare!

26. AC a indicat operatorilor economici, în documentele achiziției, informațiile și documentele prin care pot face dovada îndeplinirii cerințelor privind capacitatea tehnică și profesională?

Se verifică dacă AC a indicat ofertanților posibilitatea de a face dovada îndeplinirii cerințelor privind capacitatea tehnică și profesională, prin prezentarea documentelor/informațiilor prevăzute la lit. (a)–(m) de la Art. 179 din Legea 98/2016.

Se corelează și cu Instrucțiunea nr. 1 ANAP emisă în aplicarea prevederilor art. 179 lit. g) și art. 187 alin. (8) lit. a) din Legea nr. 98/2016 privind achizițiile publice, respectiv a art. 192 lit. g) și a art. 209 alin. (8) din Legea nr. 99/2016 privind achizițiile sectoriale și cu Instrucțiunea nr. 2/2017 din 19 aprilie 2017 emisă în aplicarea prevederilor art. 178 și art. 179 lit. a) și b) din Legea nr. 98/2016 privind achizițiile publice, cu completările ulterioare, respectiv a prevederilor art. 191 și art. 192 lit. a) și b) din Legea nr. 99/2016 privind achizițiile sectoriale.

Atenție nerespectarea acestei cerințe poate constitui abateră sancționată prin aplicarea unei corecții financiare!

27. În cazul în care AC a solicitat prezentarea unor certificate eliberate de organisme independente, care să ateste că operatorul economic respectă anumite

Art. 154, 179, 181 și 182 din Legea nr. 98/2016, art. 63 par. (1) alin. 2 și Anexa XII, Partea II din Directiva nr. 2014/24/UE

Art. 200 din Legea...
PP Checklist is based on the public procurement process

Preparation & Planning
- Object & Value
- Procurement strategy
- Procedure
- Schedule

Information & Publicity
- Drafting tender documentation
- Advertising
- Providing clarifications

Evaluation of tenders received
- Reception of tenders
- Evaluation of tenders & drafting the evaluation report

Award and execution of the contract
- Award & signature of the contract
- Notification of tenders & publication of the award notice
- Implementation of contract & addenda
- Completion
Audit of operations checklist structure

Pre-tender stage

Calculation of the estimated value of the contract and subdividing of the contracts into lots

Quality of tender documents

Conformity with the publicity and transparency rules

Compliance with the rules for preventing & avoiding conflicts of interest
Audit of operations checklist structure

- Evaluation process
- Awarding of the contract
- Execution of the contract
- Completeness of the tender dossier
Audit of operations – main documents under verification

Pre-tender stage
- PP strategy
  - planning documents
  - market consultation
- PP strategy & justification notes

Calculation of the estimated value of the contract and subdividing of the contracts into lots
- Tender documents including criteria
  - Technical specifications
  - ESPD
  - Contract model
  - Various Standards

Quality of tender documents

Conformity with the publicity and transparency rules
- Invitation to tender or for pre-qualification
  - Contract notice

Compliance with the rules for preventing & avoiding of conflicts of interest
- Statement of the decision makers within CA and evaluation committee
Audit of operations – main documents under verification

Evaluation process
- Evaluation Report
- Tenders received
- ESPD
- Clarifications during evaluation
- Exclusions
- Abnormally low tenders
- Subcontractors & third parties documents

Awarding of the contract
- ESPD supporting documents for the winning tender
- Award notice & communication letters to the bidders
- The signed contract
- Complaints to the PP procedure

Execution of the contract
- Documents for the subcontractors and third parties
- Addenda to the contract
- Justification notes for modification of the contract

Completeness of the tender dossier
- From PP strategy to the document attesting the fulfillment of the contractual obligations by the contractor;
Sensitive areas identified during audits

**Estimated value**
- Overestimated against market prices
- Artificial splitting in order to avoid a competitive procedure
- Could have been considered multiple procedure as a single one + lots?

**Information & Publicity**
- No OJEU publication of CN and errata to CN or to a later stage than national publication
- Advertising also for contracts under the EU thresholds or in order to ensure that the Treaty’s general principles of equal treatment and transparency are respected
- Too restrictive time limits for obtaining the documentation or for submission of tenders,
- Weaknesses in tender clarification;

**Criteria used**
- Restrictive criteria used or national permits requested at tendering stage
- Selection criteria not linked to the subject matter of the contract.
- Confusion between selection criteria and award criteria
- Criteria not published integral in the contract notice or significant modification occurred after publication without a corrigendum
### Sensitive areas identified during audits

#### Evaluation process
- Unjustified decisions of the evaluation committee with an impact on the result of the procedure
- Modification/incorrect application of the selection/award criteria laid down in the contract notice or tender documents during the evaluation phase
- Conflict of interest
- Negotiation during an open or restricted award procedure

#### Contract addenda
- Additional (supplementary or complementary) works – direct award in the absence of circumstances which a diligent contracting authority could not foresee
- Additional works generating a contract value exceeding EU thresholds
- Substantial modifications of the initial tendering conditions during implementation

#### Audit trail
- Failure to provide an adequate audit trail
- Lack of relevant documents from the PP procedure
Verification of selection and award criteria

- Who has no right to participate as per art.57 from Directive 24/2014?
- Application of the exclusion grounds

Who is qualified to perform the contract?
- Fulfilling the selection criteria

Whose tender meets the results in an optimal way?
- Application of the award criteria
Main features of good selection criteria

Selection criteria = aim to identify the tenderers which are capable of delivering the contract and its expected results.
Selection criteria = the minimum levels of ability which are required to participate.

- Relevant and proportionate to the object, size and nature of the contract
- Comprehensive, clear, simple, transparent & free from restrictions
- EU Treaty principles
- Intended to attract wide participation, including SME
# Types of selection criteria

<table>
<thead>
<tr>
<th>Types of criteria</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Suitability to pursue the professional activity</strong></td>
<td>• Registered in the official trades registers</td>
</tr>
<tr>
<td></td>
<td>• Official authorization to perform some activities</td>
</tr>
<tr>
<td><strong>Economic &amp; financial capacities</strong></td>
<td>• Minimum yearly turnover which must not exceed two times the estimated contract value</td>
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<tr>
<td></td>
<td>• A certain minimum turnover in the area covered by the contract</td>
</tr>
<tr>
<td></td>
<td>• Information on their annual accounts showing the ratios between assets and liabilities (e.g. minimum solvency level of 25% or more)</td>
</tr>
<tr>
<td></td>
<td>• Appropriate level of professional risk indemnity insurance</td>
</tr>
<tr>
<td><strong>Technical &amp; professional abilities</strong></td>
<td>• Necessary human resources (e.g. qualifications of key staff) and technical resources (e.g. specific equipment) to perform the contract to an appropriate quality standard</td>
</tr>
<tr>
<td></td>
<td>• Experience of the contractor itself to perform the contract to an appropriate quality standard (e.g. References from previous contracts within the last three years including at least two in similar contracts)</td>
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<tr>
<td></td>
<td>• Skills, efficiency, experience and reliability to provide the service or to execute the installation or the work</td>
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</table>
Methods for award criteria

Award criteria = choosing the best tender based on the most economically advantageous tender (MEAT).

- Price (a %)
- Quality (b %)
- Organization & staff (c %)
- Service linked to the contract (d %)

Award criteria

Price only

Best Price-Quality Ratio

Cost only using a cost-effectiveness approach
Use of award criteria

<table>
<thead>
<tr>
<th>Price only or lowest price</th>
<th>Best Price- Quality Ratio or best value for money</th>
<th>Cost –effectiveness, life –cycle costing or the lowest total cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Recommended for:</td>
<td>• Recommended for:</td>
<td>• Life –cycle cost cover all costs:</td>
</tr>
<tr>
<td>• Works where designs are provided by CA (pre-existing design)</td>
<td>• Works designed by the tenderer</td>
<td>• Acquisition cost (purchase + installation + initial training)</td>
</tr>
<tr>
<td>• Standardized services (e.g. cleaning or publishing, etc.)</td>
<td>• Services linked to intellectual activity (consultancy, training, etc.)</td>
<td>• Operational costs (raw materials, energy, consumables, maintenance)</td>
</tr>
<tr>
<td>• Supplies which are simple and standardized</td>
<td>• Specialized/complex supplies or which requires complex/specialized product installation</td>
<td>• Disposal costs at the end of life</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Environmental costs</td>
</tr>
</tbody>
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Capitalization of audit findings

- AA communicate Audit findings & recommendations

- Managing authority Performs own verification

- Apply financial correction

- AA verify the MA measures during FW audits

- Improve SMC & Prevent future irregularities
THANK YOU for your attention!

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Methodology and Coordination Directorate