



Ministry of
Finance

Common mistakes in public procurements

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PUBLIC PROCUREMENT IN IPA III

LEGAL BASE – ARTICLE 58 Reg. (EU) 2021/1059 – ETC Regulation

Where the implementation of an operation requires **procurement of service, supply or works** contracts by a beneficiary, the following rules shall apply:

(a) where the beneficiary is located in a Member State and is a contracting authority or a contracting entity within the meaning of the Union law applicable to public procurement procedures, it shall apply national laws, regulations and administrative provisions;

(b) where the beneficiary is a public authority of a partner country under IPA III or NDICI whose co-financing is transferred to the managing authority, it may apply national laws, regulations and administrative provisions, provided that the **financing agreement allows it** and that the contract is awarded to the tender **offering best value for money**, or as appropriate, to the tender **offering the lowest price**, while avoiding any conflict of interests.



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IPA III FINANCING AGREEMENT

Where the implementation of an operation requires procurement of service, supply or works contracts by a beneficiary from Montenegro, the procurement procedures set out in **Annex II** shall apply.

The **ANNEX II of the Financing Agreement** is mirroring the relevant provisions of the EU Financial Regulation (*Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union*) i.e. Title VII Chapters 1-3 articles 160-179 and Annex 1.



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General provisions

Principles applicable to contracts and scope (mirroring art. 160 of the Financial Regulation)

All contracts financed by a grant contract shall respect the principles of **transparency, proportionality, equal treatment and non-discrimination**.

All contracts shall be put out to **competition** on the broadest possible basis, except when use of negotiated procedure. The estimated value of a contract shall not be determined with a view to circumventing the applicable rules, **nor shall a contract be split up** for that purpose. The grant beneficiary, acting as contracting authority, shall divide a contract into lots, whenever appropriate, with due regard to broad competition.

Grant beneficiaries shall not use framework contracts improperly or in such a way that their purpose or effect is to prevent, restrict or distort competition.



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The PRAG – Practical Guidelines

A useful practical tool (but **not** a source of EU law with the consequence that are not binding rules) in management of public procurement are the so called **PRAG Procurement and Grants for European Union external actions – a Practical Guide**. Document providing guidance and formats for procurement procedures, including IPA pre-accession funds. The manual is based on the EU Financial Regulation and the Common Rules and Procedures for the Implementation of the Union's instruments for External Action (Council Regulation 236/2014).

<https://wikis.ec.europa.eu/spaces/ExactExternalWiki/pages/152798604/ePRAG>

<https://wikis.ec.europa.eu/spaces/ExactExternalWiki/pages/152798604/ePRAG?preview=/152798604/169935155/PRAG-2025.1-Full-Version-.pdf>

WARNING!

PRAG are strongly recommended for Montenegrin beneficiaries

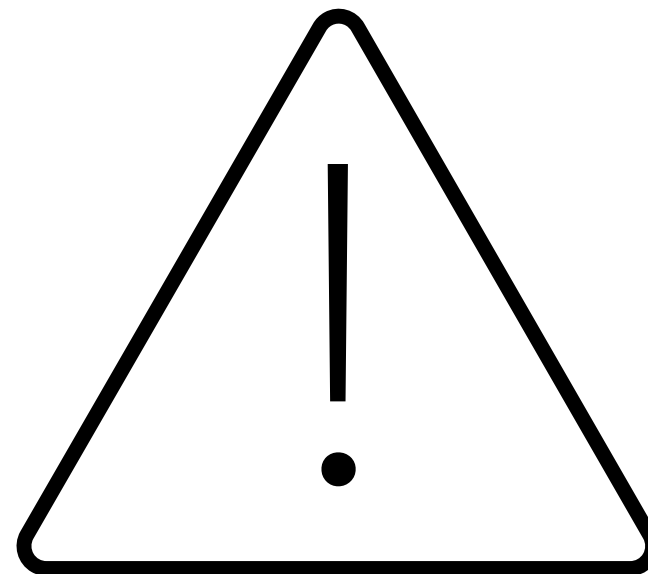


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Irregularity

Common Provisions Regulation -CPR

- Regulation (EU) 2021/1060 (Common Provisions Regulation - CPR), Article 2, Point 31:
- „An “irregularity” is to be considered as any infringement of a provision of EU law resulting from an act or omission by an economic operator which has, or would have, the effect of prejudicing the general budget of the European Union by charging an unjustified item of expenditure to the general budget





PUBLIC PROCUREMENT IN IPA III

Most common errors in procurement (EU Court of Auditors)

- **Insufficient publication of procurement procedure (e.g. direct award without any prior notification, notification only on national or regional instead of EU-level);**
- **Imprecise definition of the subject-matter of the contract to be awarded or deadlines for the submission of tenders not in compliance with applicable legislation;**
- **Mix-up of selection and award criteria;**
- **Use of discriminatory or dissuasive selection or award criteria;**
- **Unlawful splitting of contracts;**
- **Use of wrong procurement procedure;**
- **Unlawful application of exemption rules;**
- **Unlawful negotiation during award procedure;**
- **Modification of a tender or criteria during evaluation;**
- **Unlawful substantial contract modification or purchase of additional works, services of supplies.**



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In financial perspective 2014.-2020. 90% of irregularities has been determined under 4 points of COCOF rules:

Artificial splitting of the contract

Discriminatory technical specifications

Modification of the criteria during evaluation

Irregularities during contract implementation



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Guidelines for determining financial corrections (COCOF) – point 2

- Artificial splitting of works/services/supplies contract
 - 100% if procedure is not published
 - 25% if certain level of transparency is ensured





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Example 1 - splitting

- Beneficiary conducted 2 „simplified procedures” with the same subject of the contract „Intellectual services of external experts”
- According to the description of the service, both contracts refer to the “collection of specific databases, surveying, processing of the obtained data, creation of an action plan based on the collected data)” - almost identical items of procurement
- Estimated procurement values: EUR 101,000.00 + EUR 202,000.00
- In both procedures, invitations to submit bids were sent to the same three economic entities
- The same conditions of ability were requested by the ToR.
- The same economic entity was contracted.



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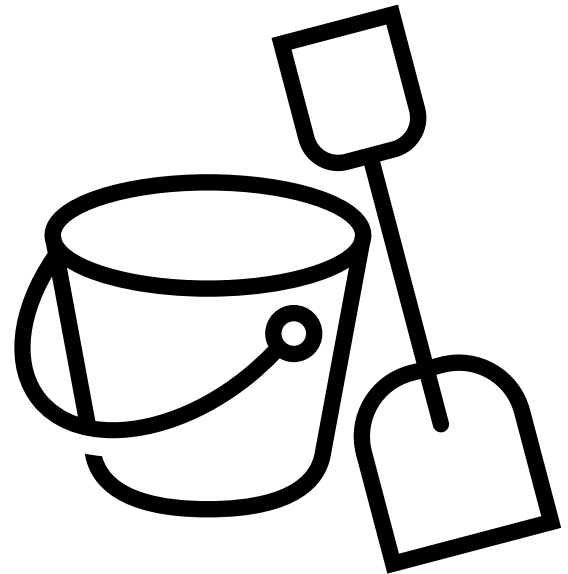


- The project partner tried to point out the specifics of each procurement in its explanation.
- The explanation was not accepted because there were no obstacles to conducting one open procedure with two groups.
- A financial correction of 25% was determined (applied to both contracts).
- The extenuating circumstance was evidence of a certain level of market competition (3 invited economic operators, 2 submitted bids)



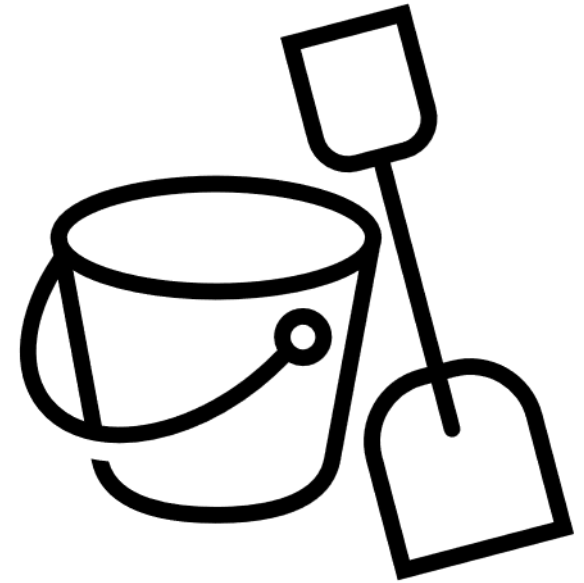
Example 2 - splitting

- 2 public procurement procedures were carried out:
- "Services of expert archaeologists", estimated procurement value 5,000 EUR, "single tender" procedure
- "Archaeological research and conservation and restoration services", estimated procurement value 48,500 EUR, "simplified" procedure
- Identical qualification requirements required in the ToR
- Same economic entity contracted





- The project partner claimed that these were different items of procurement and that they could not be combined into one technical, technological, design, functional or other objectively determinable entity.
- An irregularity was established and a financial correction of 25% of the value of the contract for "Service of an expert archaeologist" (single tender) was determined
- An objection was submitted, in which the Project Partner tried to change the Decision on irregularity, claiming that the unification of procedures would prevent equal access to the public procurement procedure for all economic entities.
- The objection was rejected as unfounded.

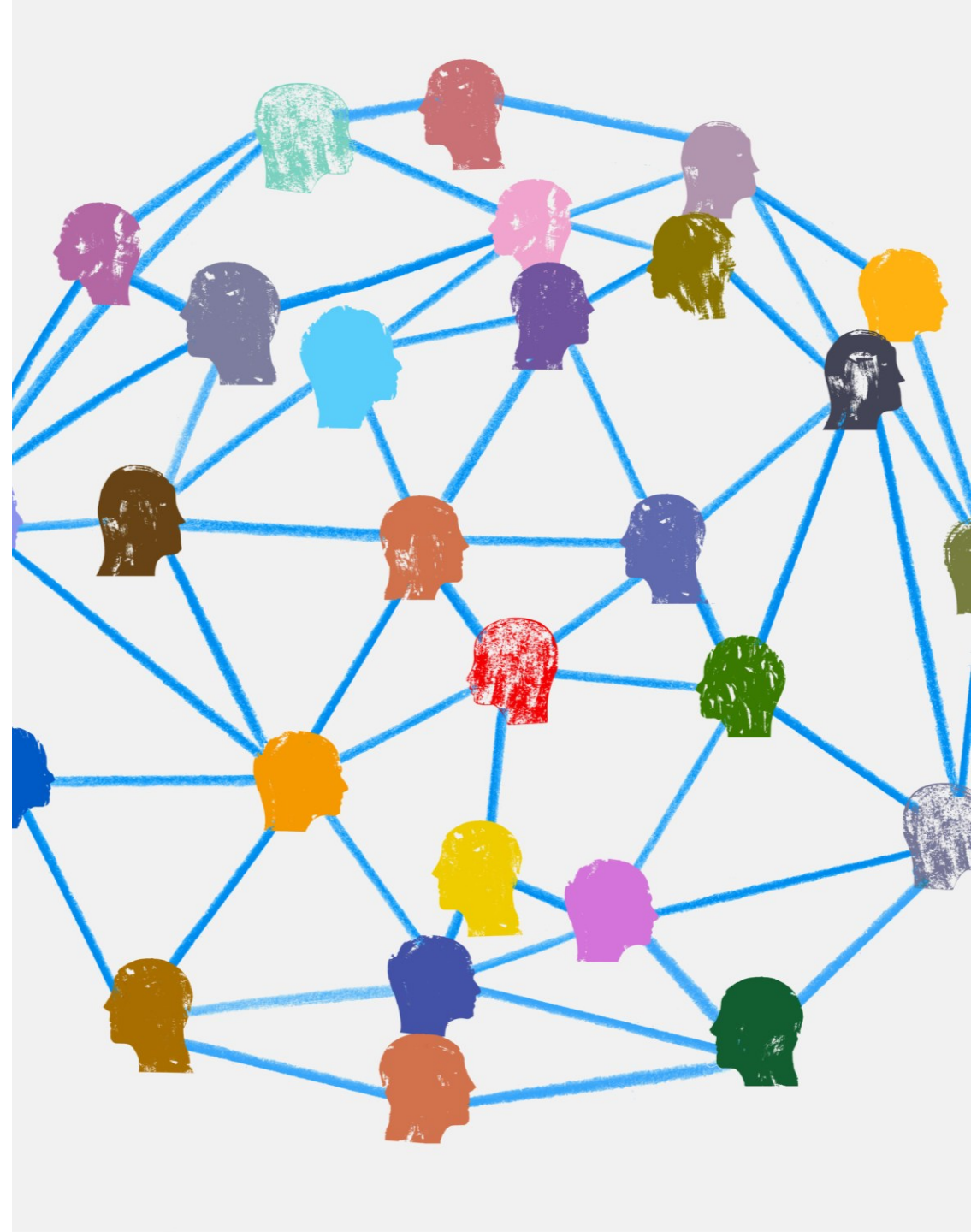




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Guidelines for determining financial corrections (COCOF) – point 11

- Discriminatory technical specifications – setting technical standards that are too specific, thus not ensuring equal access for tenderers or having the effect of creating unjustified obstacles to the opening up of public procurement to competition.





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5% - cases where restrictive criteria/conditions/specifications are applied but a minimum level of competition is still ensured

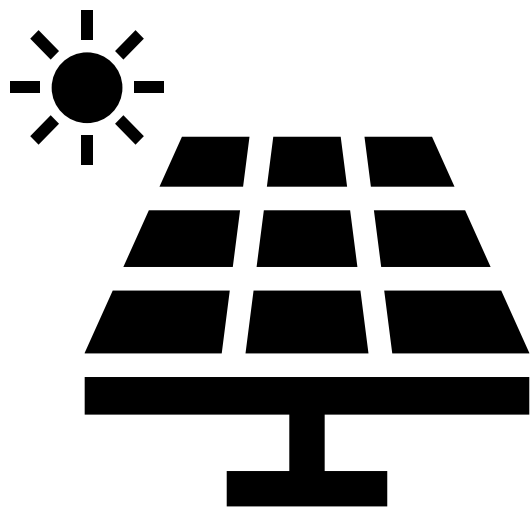
10% - for criteria/conditions that are not discriminatory but still restrict access to a certain procedure for economic entities

25% - cases where the minimum capacity levels for a specific contract are clearly not related to the subject-matter of the contract, or cases where the grounds for exclusion, the selection and/or award criteria or the conditions for the performance of the contract have led to a situation where only one economic operator can submit a tender



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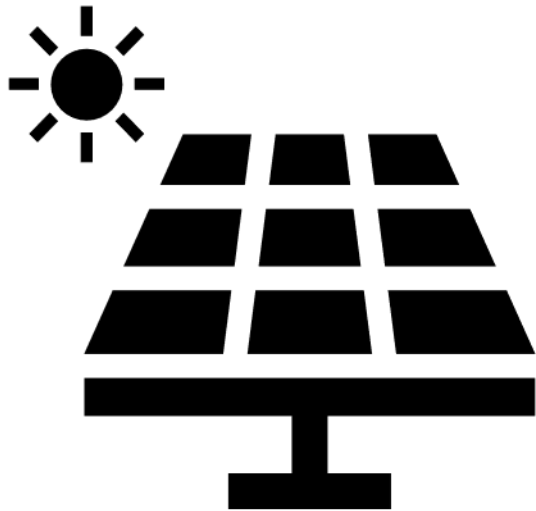
Example 3 – Discriminatory technical specifications



- “Local open tender” procedure with the subject “Equipment powered by solar system - smart benches, totems, solar tree”
- A total of 6 irregularities were identified, and 2 related to the discriminatory criteria



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- The duration of the warranty period as a sub-criteria for the selection of the offer was scored in the range from 24 months to 120 and more months.
- The criteria for the selection of the offer is disproportionate to the subject of the procurement.
- Financial correction according to point 11 – 10% of the contract value.
- The items of the cost estimate “Smart benches” and “Solar tree” were given very specifically and all offers contained the same models, from the same manufacturers.
- The contracting authority failed to prove the existence of other equipment that meets the given technical specifications.
- Financial correction according to point 11 – 5% of the contract value.



Example 4 – Discriminatory technical specifications

- A "local open tender" procedure was carried out for the procurement subject "Smart bicycle station, e-charging station for vehicles and ships".
- Only one bid was received and a contract was concluded with this economic operator.
- The ToR requested a statement from the manufacturer/representative/distributor providing all items listed in the cost estimate and guaranteeing the quality of the materials and installation - market competition was limited because it was impossible for all interested economic operators who were unable to provide such a statement to submit bids.





- The capacity requirements also required that the economic operator have a business relationship for SMS payments with at least two tele operators operating in the territory of the Contracting Authority's country - unacceptable because the capacity requirements can only refer to the ability to perform professional activities, economic, financial, technical and professional capacity.
- A financial correction of 25% was determined.





Example 5 – Modification of a tender during evaluation

- The procedure for the procurement of specialized vehicles (vans with built-in necessary equipment) was carried out.
- Only one offer was submitted by a consortium of bidders and a contract was concluded with it.
- In the ToR, as an economic and financial criterion, was required that the current liquidity (current assets/current liabilities) should not be less than 1.
- The contract was concluded with that consortium even though the received/selected offer did not meet the required economic and financial criteria (the current liquidity of the bidder was <1) – a contract was concluded with a bidder whose offer should have been rejected because it did not meet the set criteria.
- Financial correction was applied: 25%





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Guidelines for determining financial corrections (COCOF) – points 22-25 (contract implementation)

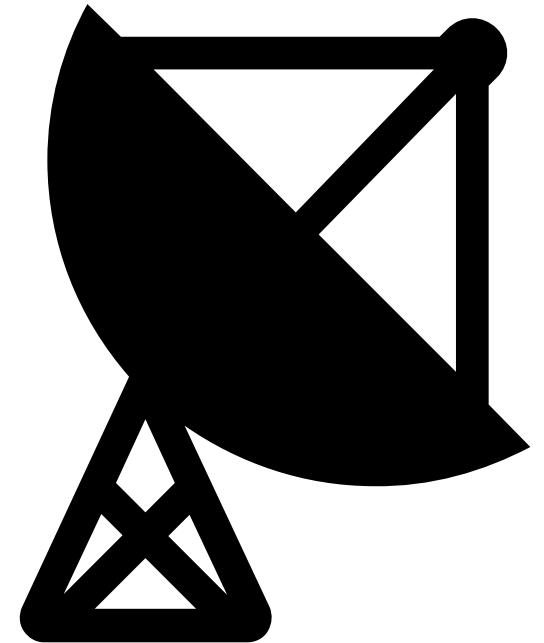
- *Reduction in the scope of contract: Value of the reduction in scope plus 25% the value of the final scope*
- *Substantial modification of the contract elements set out in the contract notice or tender specification: 25% of the amount of the contract plus the value of the additional amount of the contract resulting from the substantial modification of the contract elements.*
- *Award of additional works/services/supplies contracts: 100% of the value of the supplementary contract*
- *Additional works or services exceeding the limit laid down in the relevant provisions: 100% of the amount exceeding 50% of the value of the original contract.*





Example 6 – contract implementation

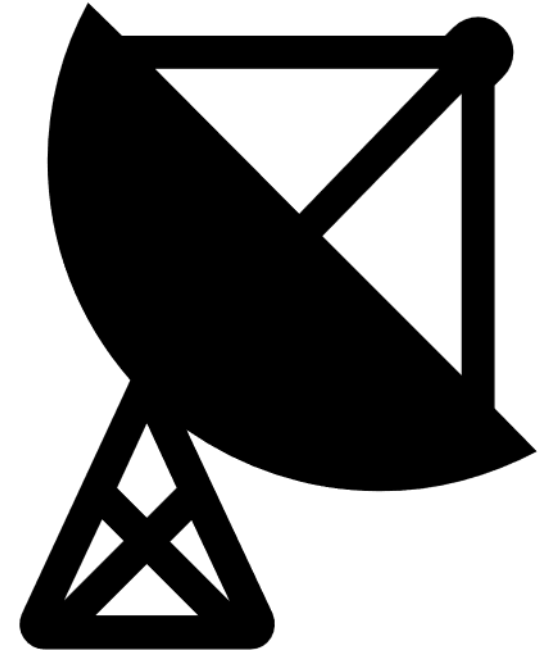
- A "local open tender" procedure was conducted with the subject "Procurement of a radio communication system".
- Criteria for selecting the bid:
 - - price 70 points
 - - warranty period for the removal of defects 20 points
 - - delivery period 10 points
- The maximum allowed delivery period according to the ToR is 120 days.
- Both bidders offered a delivery period of 120 days.





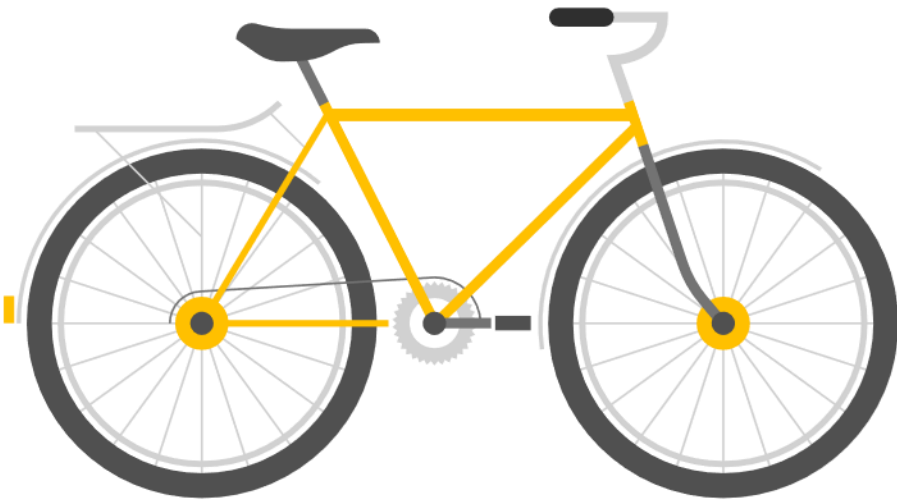
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- An amendment to the contract was concluded, extending the delivery period (due to the war in Ukraine, which is the primary market for the equipment) to 210 days.
- The extension of the delivery period represents a significant change to the contract - the change introduced conditions that, if they had been part of the original procurement procedure, would have potentially allowed the attraction of additional participants.
- The economic balance is changing in favor of the contractor.
- A financial correction has been determined according to point 23: 25% of the contract value.





Example 7 – contract implementation

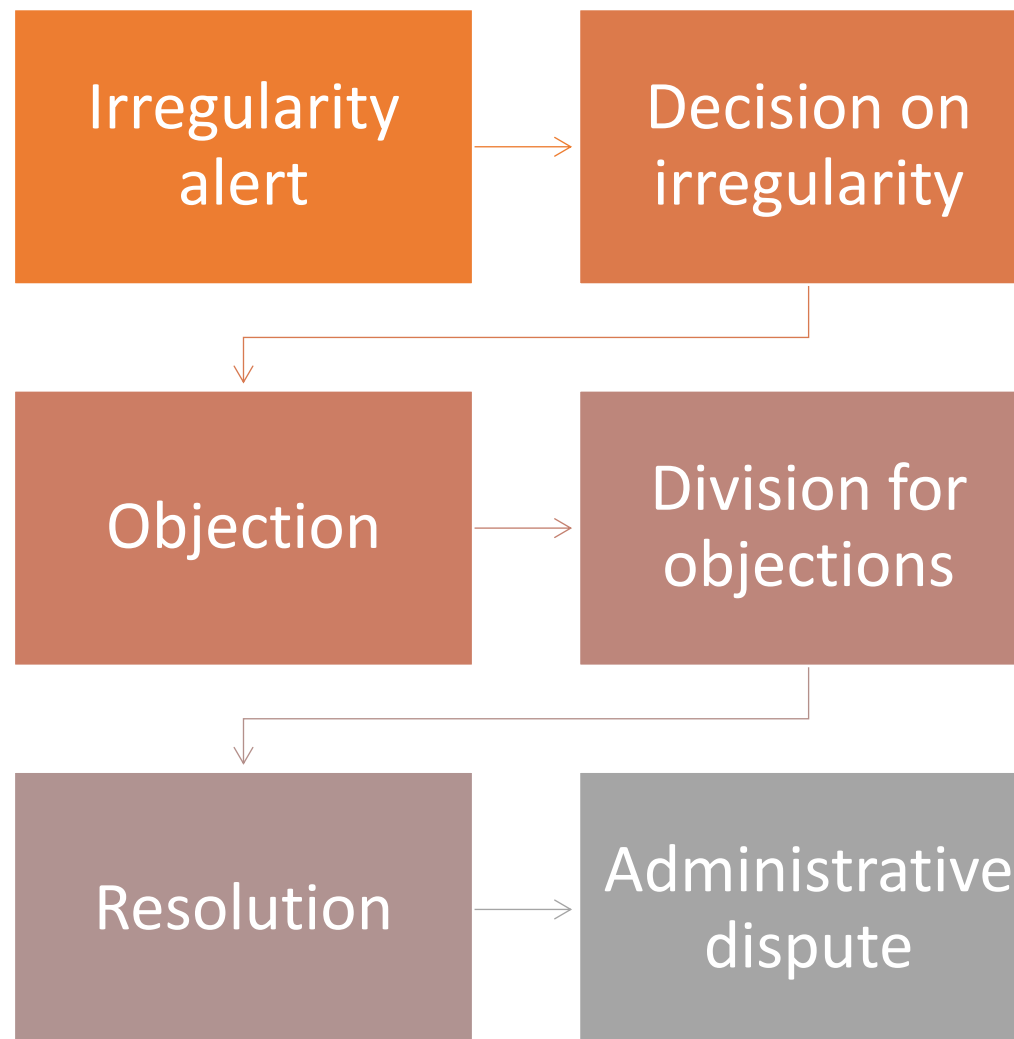


- "Local open tender" procedure with the subject "Bicycle equipment"
- The procedure is divided into 4 groups
- Group 1
- ToR: bicycles (technical specifications) - wheels size 26-28"
- Bid - bicycle model with 28" wheels
- Invoice - another bicycle model with 29" wheels
- A financial correction of 25% has been determined on the value of the group



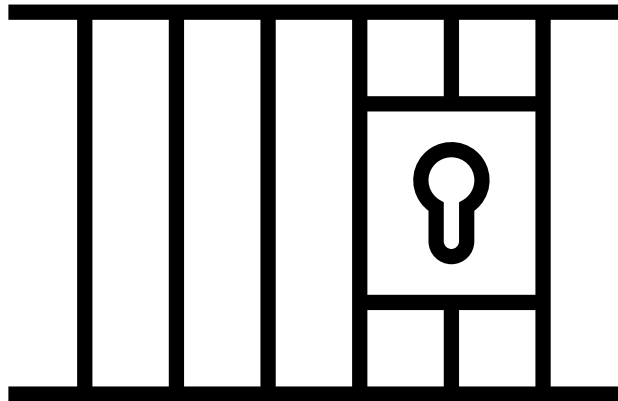
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Legal remedy





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Frauds

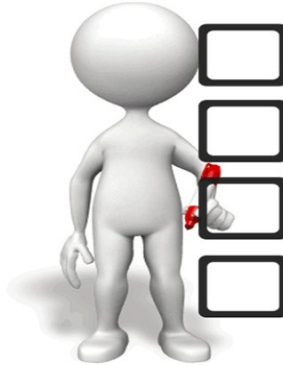
Fraud is irregularity that leads to the initiation of administrative or judicial proceedings at national level to determine the existence of intentional conduct.

Intentional acts or omissions that involve using false or incomplete statements/documents, or misapplying funds for a purpose other than the one for which they were originally granted.



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HOW TO PREVENT IRREGULARITIES/FRAUD?



✓ **Good planning:**

- Market research
- Clear subject of the contract

✓ **Respect of publishing procedures:**

- Deadlines for submitting offers and extension of deadlines
- Clear definition of selection and award criteria
- Proportional selection criteria
- Non discriminatory or restricted technical specifications

✓ **Evaluation:**

- Evaluation in accordance defined criteria
- No conflict of interest
- No offer modifications
- No negotiating

✓ **Contract implementation:**

- Avoiding of modifications and additional works/services/supplies
- Avoiding of substantial modifications of the contracts