

Management verifications in Interreg INTERACT SEMINAR

**PUBLIC PROCUREMENT – MAJOR ISSUES –
AVOIDING SAME MISTAKES**

Thessaloniki 13-14 July 2023

- ❖ **Contract – specifications**
- ❖ **Selection of tenderers**
- ❖ **Evaluation of tenderers**
- ❖ **Contract implementation**

Contract – tender/technical specifications basic mistakes

- Artificial splitting of works/services/supplies contracts
- Artificial splitting of similar CPV actions
- Discriminatory selection criteria,
- Discriminatory award criteria

Selection of tenderers - reiterated mistakes

- Selection criteria were modified after opening of tenders
- Selection criteria are used again as award criteria

Contract implementation

- Unjustified modifications of contract elements
- Addition of new deliverables
- Increase of contract content without prior publication
- Unjustified extension

Contract Modification – Legal basis

- Article 72 of Directive 2014/24/EU
- Article 89 of Directive 2014/25/EU

**Modification of contract without new procurement
procedure**

Contract Modification

Modification of contract without new procurement procedure

- In the initial procurement documents, review clauses are precisely provided
- For additional services and supplies that have become necessary during project implementation for the completion and functionality, the final value cannot exceed 50% of the value of the initial contract (sufficiently justified)

Contract Modification

Conditions to be met

- A diligent contracting authority could not foresee
- The additional physical content does not alter the nature of the initial contract
- Not a substantial modification
- The increase of the economic subject is not higher than 50% of the initial contract value

Contract modification - Unforeseen circumstances

Circumstances which a diligent contracting authority could not foresee

- extension of the project due to pandemic
- modifications caused by insufficient preparation of the tender document (new services added later because otherwise the project could not be completed)

Contract modification - Substantial modification

A modification is considered to be substantial when,

- (a) it introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the acceptance of other candidates than those initially selected or would have attracted additional participants in the procurement procedure;
- (b) changes the **economic balance** of the contract in favour of the contractor in a manner which was not provided for in the initial contract,
- (c) extends the **scope** of the contract considerably

Case Study contract modification

- Open public tender by a public authority
- The Contracting Authority modified the initial contract with a corresponding increase of physical and financial object because additional management services were required due to extension of duration (COVID-19)
- modification of the physical object by addition of new deliverables and increase of the contractual amount.

Case Study contract modification

If the modification was requested due to covid-19, there should be a decision of the contracting authority, which proves how the "unforeseen circumstance" of the pandemic affected the smooth running of the contract and substantiate the reasons which led to exceptional modification

- music – theatre festivals canceled last minute
- food and wine tasting congregations canceled because of issuance of national restrictions

Case Study contract modification

Management verifications

Is expenditure verified or not ?

- If the action can be repeated, all expenses are considered eligible and verified
- If the action cannot be repeated, expenditure is verified by FLC even in the absence of deliverables

Subdivision into lots

According to Article 46, Directive 2014/24/EU,

- Contracting authorities may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots
- Contracting authorities shall provide an indication of the main reasons for their decision not to subdivide into lots, which shall be included in the procurement documents or the individual report referred to in Article 84

Subdivision into lots

- Open public tender
- The tender included several different CPVs, such as management services, publicity services, organisation of events services, case studies for instance assessment of atmospheric pollution, how it affects the health of citizens in the eligible project area, monitoring of the air pollution and proposing measures for prevention for the well being of the citizens
- There is no justification or very poor justification
(usually only one offer is submitted)

Irregularity - financial correction

Irregularity. Lack of justification for not subdividing contract into lots: The contracting authority does not provide an indication of the main reasons for its decision not to subdivide into lots (Article 46(1) of Directive 2014/24/EU) – Rate of financial correction 5% of the contract value.

Restrictive selection criteria

Open public tender.

- A Team Project coordinator with 25-28 years of experience in similar projects
- One Project officer with 15-20 years of experience holder of a Ph.D.
- An unreasonable number of completed previous projects for instance 100 similar projects
- To be based and operate in a particular geographical area or city of Greece

Irregularity - financial correction

Type of irregularity. Case 11 - Criteria for exclusion, selection or award Of Commission decision C(2019) 3452 final

- Only one economic operator 25%
- A number of economic operators submitted tenders.

Financial correction according to type 5%

Artificial Splitting

Artificial splitting of service/supply contract

Cases where similar deliverables are contracted separately in order to avoid an Open tender.

Electronic equipment, solar panels, engineering materials, electrical equipment, etc.

Management services, publicity, web creation and hosting services, event organisation, travel air-tickets – car hiring, accommodation expenses, preparation of training, training sessions and seminars etc.

Artificial Splitting - financial correction

Type of irregularity. Case 2. Artificial splitting of contracts

Rate of financial correction

- 25% (adequate means of publicity)
- 100% (each contract is below the threshold of Directives thus no publication in the Official Journal).



UNIT C “VERIFICATION OF EXPENDITURES” MANAGING AUTHORITY OF INTERREG 2021-2027 PROGRAMMES

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