

## HOW TO AVOID ERRORS IN PUBLIC PROCUREMENT FUNDED BY EU

On 30 October 2015 the European Commission published a new Guidance to assist contracting authorities across the EU member states to avoid the most common errors in planning and delivering purchases of public works, supplies or services funded by the European Structural and Investment Funds (*Guidance*).

This Guidance is part of the Commission's priority action plan to help Member States to strengthen their administrative capacity and improve the way the EU funds are invested and managed and to reduce the irregularities in public procurement contracts. The main aim of this Guidance is to give knowledge and exchange of good practices for better preparation of tenders and projects by the contracting authorities.

The Guidance covers EU funded contracts for the procurement of works, supplies and services as set out in Directive 2004/18/EC only. It is not related to procurement contracts funded by the Member States' national budgets and to contracts awarded by entities operating in the water, energy, transport and postal services sectors. The document also does not consider the new procurement regulations set out in Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on the public procurement and repealing Directive 2004/18/EC, for those provisions are expected to be finally transposed into all Member States' national law in April 2016.

This Guidance contains a list of most common serious errors potentially leading to financial corrections<sup>1</sup> and practical tips, alerts and interactive elements with links to the relevant legislative texts in order to avoid such mistakes. The Guidance is structured to cover all six stages of a public procurement process: (i) preparation and planning; (ii) publication; (iii) submission of tenders and selection of tenderers; (iv) evaluation of tenders; (v) awards and (vi) contract implementation.

Some of the most common mistakes are highlighted and explained in detail in the document with a particular focus to those which lead to financial corrections at each of the stages (e.g. direct awarding of a contract with no adequate justification; artificial splitting of procurements; disproportionate and discriminatory selection criteria; short

<sup>1</sup> I.e. actions taken by the European Commission or a Member State to exclude from co-financing from the EU budget, expenditure which does not meet the conditions of funding because of irregularity. The purpose of financial corrections is to restore the situation in which the expenditure made from EU funds and Member State budget are in line with the applicable public procurement rules and regulations (*European Commission Decision C (2013) 9527 of 19 December 2013 on the setting out and approval of guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement*).

timelines for obtaining and submitting of tenders; unequal treatment of tenderers; lack of transparency during evaluation; undisclosed conflict of interest and others).

EU funding plays vital role for the development of the Bulgarian economy - more than 7.5 billion euros from EU funds have been transferred to Bulgarian beneficiaries since 2007. At the same time, according to the Bulgarian Executive Agency 'Audit of EU Funds', irregularities were still detected in more than 50% of the procedures (e.g. 57% for 2014). The main errors were related to preparation and planning and awarding public procurements stages. Setting up selection criteria that grant unfair advantage to some of the participants in the procedures or unjustifiably restrict their participation or applying short timelines for obtaining and submitting of tenders were considered as having the greatest financial implication over the beneficiaries.

Because of the seriousness of the irregularities established in Bulgaria by the Audit of EU Funds Agency, many of them resulted in financial corrections. Due to such procurement irregularities in 2013 and 2014 two operational programs ("Environment" and "Regional Development") were blocked by the European Commission where the financial corrections amounted to approximately 150 million euros. Some of those financial corrections ended up to 100% of the amount grant.

Significant and continuous errors in public procurements may potentially cause severe problems for public budgets. To this extent, the Guidance is to be recognized and become integral part of the procurement procedures led by the Bulgarian contracting authorities for improving quality, efficiency in terms of value for money and effectiveness of public procurement.

Although the Guidance does not provide a definitive legal interpretation of EU law, but is rather a technical tool for good practices, it could be also helpful for all economic operators in the private sector for better understanding of the process and predictability of the procurement outcomes of the EU funded public procurements in Bulgaria.

A copy of the European Commission's Guidance can be accessed at: [http://europa.eu/rapid/press-release\\_IP-15-5913\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-15-5913_en.htm?locale=en).

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