

# Public procurement - verifications

9 October 2019

Nicosia, Cyprus

## Case studies

### Your task:

You perform verification on several projects. For these projects you check public procurement, and several questions are raised. These are outlined in the tables below.

Please answer the questions and be ready to present your feedback.

### Case 1

<b>Description</b>
Contracting Authority wants to commission the preparation of a report. One of the selection criteria in the tender document is the experience of the company in performing financial control tasks. The award criteria are: the bidder must have its office in the same city as the partner, and the experience of the bidder's staff with social policies.
<b>Questions</b>
<p><i>What are the potential problems as regards compliance with the procurement law?</i></p> <p><i>How to solve the issue to be in line with the procurement law?</i></p>

### Case 2

<b>Description</b>
A company has developed a monitoring system for an ETC-project. The company owns the source codes, and they are not freely available. Another ETC-project wants to have the same monitoring system.
<b>Questions</b>
<p><i>Can the company be directly commissioned with the adaptation of the monitoring system?</i></p> <p><i>Which procurement procedure could be applied?</i></p>

### Case 3

<b>Description</b>
A department has published a restricted procedure to appoint a consultant. During the selection phase, an interested Economic Operator asks for a clarification of an article in the tender documents. Contracting Authority decides that there is no need to make any adjustments to the contract documents, but to explain thoroughly only to the Economic Operator that asked the question.
<b>Questions</b>
<i>Is the right decision of the Contracting Authority? Assume that the Contracting Authority decides to publish the clarification. What parameters must the Contracting Authority have in mind?</i>

### Case 4

<b>Description</b>
During the evaluation of the tenders, the evaluation committee finds out that a tender is well below the estimated cost, and it is wondering the reason for this. They decided to adjust the individual prices that are considered very low.
<b>Questions</b>
<i>Is their decision right? What should they do according to the legislation?</i>

### Case 5

<b>Description</b>
Your institution wants to commission a study that will include a SWOT-analysis and proposals for the strategy of your institution until 2020. You are not yet sure if further input by the experts will be necessary to help you in defining indicators on top of the other work.
<b>Questions</b>
<i>What type of contract will you conclude? What is the estimated contract value? How do you calculate it?</i>

### Case 6

<b>Description</b>
You are a controller (FLC). A representative of an organisation involved as a partner in ETC-project phones you. He tells you that he intends to contract someone who will provide support in the project management. He is not yet sure if he can employ someone or he must conclude a freelance contract with an external expert. He asks what kind of documents and information you will need once the person is contracted.
<b>Questions</b>
<i>Which steps will you recommend him to take in case of an employment contract, also in case of a freelance contract?</i> <i>Which documents would you like to see from the project partner?</i>

### Case 7

<b>Description</b>
During the implementation of a contract, the Contractor requires 9 months extension for completing the project. The reasoning behind the requirement is that the time limits were strict and unrealistic from the beginning.
<b>Question</b>
<i>Can the Contracting Authority approve the requirement for an extension?</i>

### Case 8

<b>Description</b>
A project partner has commissioned a company to help with the project management in a negotiated procedure without prior publication. It argues that it took too long to fulfil all conditions, which were imposed by the Monitoring Committee when approving the project. In order not to risk a significant delay in the project implementation, the contract award had to be done urgently. You are a first level control body.
<b>Questions</b>
<i>How do you see the case?</i> <i>Was the procurement procedure correct?</i> <i>Are the costs eligible?</i>

### Case 9

<b>Description</b>
A Municipality conducted an open procedure with a selection criterion the previous experience of 3 similar projects with a cost of €1m each. Tenderer A provided information for 3 projects of 980k, 1600k and 2500k and tenderer B for projects of 940k, 1200k, 1500k. During the evaluation, the committee decided to lower the limit of €1m to 950K and accept the tenderer A and reject tenderer B. Additionally both tenderers did not submit their financial statements as required by the tender documents, but evaluation committee sent them an email where asking to provide the financial statements during the evaluation phase.
<b>Questions</b>
Is the decision of the evaluation committee correct? Which basic public procurement principles are violated here?

### Case 10

<b>Description</b>
A municipality building of €5m was awarded through the open procedure to the contractor offered the lowest price as per tender documents. During execution, the municipality decided to add to the existing contract the construction of an open amphitheatre of €1.5m. The reasoning behind their decision was that it would be cheaper as all the machinery and personnel are already on site.
<b>Questions</b>
<i>Was the addition according to the public procurement law?</i> <i>What procedure should have been followed?</i>

### Case 11

<b>Description</b>
A Cypriot ministry has contracted a company to develop an idea for ETC-project. The project has now been approved. The ministry wants to commission the same company to help with overall project management. You work in the legal department of the ministry, and you have been asked for advice.
<b>Questions</b>
<i>Do you see any problem regarding compliance with the procurement law?</i> <i>Which procurement procedure should be selected?</i> <i>What kind of information should be available to ensure lawful procurement?</i>

### Case 12

<b>Description</b>
The Department of Electromechanical Services must buy 100 split units for new buildings with an estimated cost of €150.000 but must do it urgently because the building will be used for a special event. They know that they cannot use the negotiated procedure as the delay was due to bad planning, so they have decided to conduct 2 competitions of 50 split units and estimate cost of €75.000 respectively. The estimated cost falls below thresholds and therefore, can allow only 14 days for submission of tenders.
<b>Question</b>
<i>What's wrong with the procedure followed?</i>

### Case 13

<b>Description</b>
Two Municipalities need to explore the potential of natural resources in the development of new tourism products. They want to conduct a study as part of the exercise. You work in the partner institution, and you have been asked for advice on the possibilities they have to carry out the procurement jointly.
<b>Questions</b>
<i>How do you see the case?</i> <i>What will you recommend?</i>

### Case 14

<b>Description</b>
In the tender documents of an open procedure include a selection criterion relating to the annual turnover of the Economic Operator. Additionally, the annual turnover is used as an award criterion to reward extra marks for awarding the contract to the Economic Operator with the highest turnover.
<b>Questions</b>
<i>Is there anything wrong with the criteria set in tender documents?</i>

### Case 15

<b>Description</b>
You work for an ETC-project. You have engaged in a company to carry out some infrastructure work. During the contract implementation, it turns out that the company will need more person/days to implement the agreed tasks. This will lead to an increase in the contract volume by about 10%.
<b>Questions</b>
<i>Is there any problem with procurement law?</i> <i>Which steps will you take?</i> <i>Is there any problem with procurement law?</i> <i>Which steps will you take?</i>

### Case 16

<b>Description</b>
Contracting Authority conducted an open procedure for the award of a service contract. The estimated cost of the service is €35.000 (represents approx. €35 per person-hour for 1000 hours). The lowest price offered was €50 per person-hour. The evaluation committee decided whether to reduce the required service (person-hours) or to negotiate the price with the successful tenderer because the maximum available amount is €35.000.
<b>Questions</b>
<i>Is there any problem with the decision of the Evaluation Committee?</i> <i>What should be the decision of the Evaluation Committee</i> <i>What should have been included in the tender documents to avoid such problems?</i>

### Case 17

<b>Description</b>
A University conducts a procedure to implement an information system and including 12 months maintenance. The estimated cost regarding the acquisition of the system and 12 months maintenance period indicated in the Contract Notice and contract documents is €1m. There is also an article in the contract documents stating that the CA has the option to extend the maintenance period for another 36 months.
<b>Questions</b>
<i>Is the information included in the Contract Notice following the legislation?</i>

### Case 18

<b>Description</b>
Ministry of Health conducts a procurement procedure to acquire special medical equipment of €350.000. The evaluation committee prepares the evaluation report with a clear suggestion for award to tenderer A, and the report is forwarded to the Tender Board for final Decision. A member of the evaluation committee, who is the expert on the specific equipment, is at the same time member of the Tender Board of the Ministry.
<b>Questions</b>
<i>Is the evaluation procedure according to legislation?</i> <i>Can the tender Board conclude to an award of the contract?</i>

### Case 19

<b>Description</b>
The Cyprus Tourist Organisation wants to buy advertising services for promotion. Because the estimated cost is €43.000, Contracting Authority decided to follow the simplified procedure, and sent the tender documents to four Economic Operators of their choice and allowed them 7 days to submit their tenders. Two of them did not respond to the invitation. Contracting Authority rejects the 3rd because it cannot provide the service within the specified time limit. Finally, the CA only remains with one tender, which is 25% above the estimated cost.
<b>Questions</b>
<i>Can you accept the above procedure?</i>

### Case 20

<b>Description</b>
The following information is included in the tender documents (open procedure) for the supply of machinery  Contracting Authority: Municipality of Nicosia Estimated cost: 250.000 euro Date of publication: 10 November 2018 Deadline for acquiring the tender documents (only hard copy available): 18 November 2018 Deadline for submitting comments/ questions on tender documents: 10 December 2018 Deadline for submission of tenders: 30 December 2018  The publication was made to e-procurement, Cypriot gazette and EU Official Journal. A comment received from an interested EO was to lower the selection criterion of similar projects from 3 to 2, and CA considered it reasonable and accepted it.
<b>Questions</b>
<i>Were all the dates given correct and reasonable?</i> <i>Was the publication according to the legislation?</i> <i>What is the impact of the change?</i> <i>What are the steps for the amendment?</i>

### Case 21

<b>Description</b>
University of Cyprus wants to appoint an IT developer to implement a library system for the University. The selection criteria include that the bidder should have experience in library systems implementation in Cypriot Universities. Additionally, the project team should be fluent in the Greek language.
<b>Questions</b>
<i>How do you see the selection criteria?</i> <i>How should the selection criteria be set to be in line with the legislation?</i>

### Case 22

<b>Description</b>
Contracting Authority appoints a contractor to add an extension to an existing building which will cost approximately €100.000. For the interest of Contracting Authority to award to the best contractor, the followings were included in the selection criteria: Annual turnover of minimum €3m and number of permanent personnel 250 persons.
<b>Questions</b>
Which of the basic principle of public procurement is violated?

### Case 23

<b>Description</b>
During the evaluation phase, the evaluation committee finds out that the CVs included in two tenders submitted does not show clearly if the requirement of experience is satisfied. They decided to ask clarifications only from one bidder as they considered its offer better than the other one, although both satisfy all other criteria.
<b>Questions</b>
Is something wrong with their decision? What fundamental principle is not satisfied with the decision? What must be done to be in line with the legislation?



## Case 24

<b>Description</b>
Contracting Authority conducts negotiated procedure with a publication which fulfils the criteria set out in the Directive. During the negotiation process, the Contracting Authority decides to add some more specifications to the existing and remove some others. Additionally, instead of acquiring a single system, which was the initial scope of the contract, the negotiations resulted in the acquisition of three similar smaller systems.
<b>Questions</b>
<i>How do you see the case?</i> <i>What is the problem with the above case?</i>

## Case 25

<b>Description</b>
During the implementation of a service contract whose estimated value was €100.000, the CA decided to use the negotiated procedure to award some additional services to the contractor, justifying that the additional services are necessary for the completion of the initial contract. The estimated cost of additional services is approx. €80.000.
<b>Question</b>
<i>What is the problem with the above procedure?</i>

## Case 26

<b>Description</b>
Contracting Authority conducts a procedure splitted into 4 lots for the acquisition of equipment. Each lot has several machines, grouped according to their destination. Tenders are submitted to each lot. But two of the machines from a certain lot were not offered and were not procured. The overall value of the equipment is 8,200 euros. Subsequently, the Contracting Authority changes the characteristics of the two machines because these are too complicated to be procured.
<b>Question</b>
<i>Can the CA procure the equipment using direct award?</i>