

**Interreg
Greece-Italy**

European Regional Development Fund



EUROPEAN UNION

4 Infodays on project implementation

ITALY

• Bari 17th April 2018 • Lecce 19th April 2018

GREECE

• Patras 24th April 2018 • Preveza 26th April 2018



Some keywords in the Italian legal system for the management of public grants

1. The principle of **competitiveness**
2. The principle of **transparency**
3. The **conflict of interests**

The principle of competitiveness

What is it?

The award of contracts financed by EU grants has to comply with the principles of the Treaty on the Functioning of the European Union (TFEU), and in particular the **free movement** of goods, freedom of establishment and the freedom to provide services, as well as the principles deriving therefrom, such as **equal treatment**, non-discrimination, mutual recognition, proportionality and **transparency**. However, for contracts above the EU thresholds value, provisions should be drawn up also by coordinating national procurement procedures so as to ensure that those principles are given **practical effect** and the **tender is opened up to competition**.

The principle of competitiveness

How is it ruled?

1. DIRECTIVES 2014/24/EU and 2014/25/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on public procurement and repealing Directive 2004/18/EC;
2. Italian Legislative Decree no. 50/2016 regarding the transposition of Directives 24 and 25/2014/EU within the Italian legislation;
3. Italian Legislative Decree no. 165/2001 regarding the contracting framework of public employees and collaborators;
4. Also, could be used as soft-law guidelines the followings: Implementing Guidelines on Procurements set by the Italian ANAC; EC Interpretative Communication (2006/C 179/02) on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives; EC Implementing Regulation (EU) 2015/1986 of 11 November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011 (corrected by C/2017/4550); and EC Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document.

The principle of competitiveness

How does it work?

2 different type of providers to select:

- 1) Enterprise provider
- 2) Expert provider

3 different modalities of selection procedure:

- a) Opened
- b) Restricted (here should included also the competitive dialogue, the framework contract; etc.)
- c) Negotiated (with or without prior publication of a contract notice)

2 different criteria to select the best tender:

- i) Selection criteria for the tender
- ii) Award criteria for the offer: lower price or the best price-quality ratio (MEAT)

1 contract to award for satisfy the needs

The principle of competitiveness

Tips

- 1) Preparation and planning: **RECOGNISE THE NEED**
- 2) Publication: **TRASPARENCY, TRACEABILITY AND THE RIGHT TIMING**
- 3) Submission of tenders and selection of tenderers: **NOT DISCRIMINATORY**
- 4) Evaluation of tenders: **EQUAL TREATMENT / COMPLYING WITH THE CALL / AVOID CONFLICT OF INTERESTS**
- 5) Award the contract: **PUBLICITY AND TRASPARENCY**
- 6) Contract implementation: **TRASPARENCY / DEROGATIONS ARE ALLOWED IN EXCEPTIONAL AND UNFORESEEN CIRCUMSTANCES / AVOID CONFLICT OF INTERESTS**
- 7) Toolkit: **FORMAL TEMPLATES and CHECK-LIST ON PUBLIC PROCUREMENT FOR PRACTITIONERS** (see, the guidance of EC on the avoidance of the most common errors in projects funded by the ESIF - EGESIF 14-0030 - and the several guidance of the Italian ANAC on public procurements)

The principle of **transparency**

What is it?

The transparency and the integrity of the competitive procedures to award a contract financed by EU funds **is essential for maintaining citizens' trust in Programme management activities.**

Transparency is **one of the most principles** applied to all procurement selection procedures and awarding contract.

It is satisfied by: a) **fully reporting and archive** all the steps procedure and the contract commitments and modifications; b) **publishing** (for i.e. on the web site of the Beneficiary) any relevant notice regarding the selection procedure and the contract awarded not covered by founded secret (commercial/defense reason/national priorities/etc.) or by not disclosure data (restricted personal data/technical reserved data/etc.); c) free **access to records** by interested people.

The principle of **transparency**

How is it ruled?

- 1) Italian legislative decree no. 33 on 14 March 2013 regarding the legislation that rules the access rights and the obligations of publicity, transparency and diffusion of information by the Public Administrations (it is also applied to private Beneficiary that award a contract to third part financed by public funds);
- 2) Artt. 29, 42 and 76 of Legislative Decree no. 50/2016

The principle of transparency

How does it work?

Beneficiaries should be adopt procedures to **inform**, **disclosure** and **allow** to access to information regarding the usage of EU public funds during all the implementing phases of the project (which means not only during the selection of providers or awarding a contract to third part)

Several **obligations** to Beneficiary are required:

1. Publicity of the project implementation activities, outputs and results
2. Publicity of the project grant import and how and on it will or had been spent
3. Publicity of the prior/notice of the selecting procedure
4. Publicity regarding the open sections during the selecting procedure
5. Publicity of the exclusion causes of tender/s
6. Publicity of the winner data (including the CV)
7. Reporting and records of the selection steps procedure
8. Ruling and ensuring the access to records by the interested parties
9. Publicity of the contract relevant information and of the further modifications

The publicity of information could be **satisfied** by publication of relevant data on Beneficiary web-site (transparency web-site or specific web-page or project web-page); or by a direct communication to all tenderers participated to the competition; and by free access to records.

The principle of transparency

TIPS

1. Implement a **page of transparency** on the project web-site
2. **Inform** the direct interested parties of relevant information
3. **Trace all relevant documents** with “CUP”, Contract code (CIG) and the project MIS code and record them in a transparency register
4. **Rule the access to records** and adopt a template to start the access procedure
5. Adopt a **code of transparency** and provide a **transparency manager** figure within the project

The conflict of interests

What is it?

The concept of conflicts of interest covers at least any situation where staff members of the Beneficiary or of a procurement service provider acting on behalf of the Beneficiary who are involved in the conduct of the procurement Procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest (such as for i.e., reasons involving family, emotional life, political or national affinity) **which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.**

The conflict of interests

How is it ruled?

1. Art. 42 of Italian Legislative Decree 50/2016
2. Art. 7 of Italian D.P.R. 62/2013
3. Art. 6-bis of Italian Law 241/1990
4. Art. 57 of EU Regulation (EU, EURATOM) no. 966/2012
5. Art. 24 of EU Directive no. 24/2014
6. ECJ case C-538/13, e-Vigilo (points 42 to 44)
7. Italian State Council, 11 July 2017, sentence no. 3415
8. A practical guide "Identifying conflicts of interests in public procurement procedures for structural actions" has been elaborated by OLAF

The conflict of interests

How does it work?

Beneficiaries should be adopt **procedures** to **identify, prevent and remedy** conflicts of interests during all the implementing phases of the project (which means not only during the selection of providers or awarding a contract to third part)

The conflict of interests

TIPS

Conflict of interests could be involves:

- **Staff** of the Beneficiary
- **Target people** of the project activities
- **Tenderers participating** to selection procedures for awarding a contract
- **Providers** committed for carrying out activities within the project

The absence of conflict of interests should be identified towards **staff** beneficiary, **participants** to tenders and **providers**

The absence of conflict of interests should be identified at the **beginning** of project implementation, of project activities direct to third parties and also **periodically** during the project implementation (for i.e., **one time a year**)

The adoption of the followings tools are suggested to manage the absence of conflict of interests:

- **Model of declaration of absence of conflict of interests**
- A **procedure** to rule internal activities for identify, prevent and remedy the conflicts of interests

Frequent irregularities to avoid

Contract notice and tender specifications

1. Lack of publication of contract notice
2. Artificial splitting of works/services/supplies contracts
3. Non-compliance with time limits for receipt of tenders; or with time limits for receipt of requests to participate;
4. Insufficient time for potential tenderers/candidates to obtain tender documentation;
5. Lack of publication of extended time limits for receipt of tenders; or extended time limits for receipt of requests to participate;
6. Cases not justifying the use of the negotiated procedure even with prior publication of a contract notice;
7. Failure to state the selection criteria in the contract notice; and/or the award criteria (and their weighting) in the contract notice or in the tender specifications;
8. Unlawful and/or discriminatory selection and/or award criteria laid down in the contract notice or tender documents;
9. Selection criteria not related and proportionate to the subject matter of the contract;
10. Discriminatory technical specifications;
11. Insufficient definition of the subject matter of the contract.

Frequent irregularities to avoid

Evaluation of tenders

1. Modification of selection criteria after opening of tenders, resulting in incorrect acceptance of tenderers;
2. Modification of selection criteria after opening of tenders, resulting in incorrect rejection of tenderers;
3. Evaluation of tenderers/candidates using unlawful selection or award criteria;
4. Lack of transparency and/or equal treatment during evaluation;
5. Modification of a tender during evaluation;
6. Abusive negotiation during the award procedure;
7. Abusive negotiation procedure (even with prior publication of a contract notice) with substantial modification of the conditions set out in the contract notice or tender specifications;
8. Abusive rejection of abnormally low tenders;
9. Award procedure afflicted by a conflict of interests.

Frequent irregularities to avoid

Contract implementation

1. Substantial modification of the contract elements set out in the contract notice or tender specifications;
2. Reduction in the scope of the contract;
3. Award of additional works/services/supplies contracts (if such award constitutes a substantial modification of the original terms of the contract) without competition in the absence of one of the following conditions: a) extreme urgency brought about by unforeseeable events; b) an unforeseen circumstance for complementary works, services, supplies;
4. Additional works or services exceeding the limit laid down in the relevant provisions;
5. Breach of obligations regarding the transparency of contract modifications;
6. Breach of obligations on absence of conflict of interests.

Thank you for your attention

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