

Public Procurement and European Structural and Investment Funds (ESIF)

European Structural and Investment Funds are derived from contributions made by member states to fund the operations of the EU. Any funds that are allocated under the ESIF must comply with Public Procurement rules and adherence to these rules for ESIF is audited by the European Court of Auditors (ECA).

Failure to comply with the relevant procurement procedures is likely to invalidate any contract entered into and the funds distributed have the potential to be reclaimed by the EU. It is therefore essential that all involved with ESIF are familiar with the basic principles involved and this briefing provides an introduction to those principles. Organisations should however always sought seek professional advise to ensure compliance with the rules.

The procurement procedures – basic principles

Contracting authorities, be they the Local Enterprise Partnerships or other publicly funded body must carry out procurements in compliance with the *Public Contracts Regulations 2006 (SI 2006/5)* and, above certain agreed thresholds, must use one of the following four procurement procedures:

- The open procedure.
- The restricted procedure.
- The competitive dialogue procedure.
- The negotiated procedure (*the least used process*)

Each of the procedures allow a varying degree of control over the process and interaction with tenderers. The appropriate procedure to use should be considered on a case-by-case basis, as the appropriate procedure will be dependent upon factors that are specific to each procurement.

All four procedures will normally require the contracting authority to publish an OJEU Notice. This notice:

- Is submitted in a prescribed form.
- Published in the Official Journal of the European Union (OJEU).
- Sets out certain key information about the procurement and the contracting authority.

Fundamental requirements of any tender process

- Advertise the contract notice (before the tender) and the contract award notice (after the award of the contract) in the OJEU;
- Use procurement procedures that ensure an open and transparent competition
- Specify clear and objective selection and award criteria, notify potential bidders in advance about these criteria and apply them as defined; and
- Allow sufficient time for submission of expressions of interest and tenders.

Basic Principles of public procurement as specified in the EU Lisbon Treaty

The Lisbon Treaty specifies the main principles for public procurement within the common market:

- The free movement of goods (Article 28);
- The freedom of establishment and the freedom to provide services (Articles 49 & 56); and
- Non discrimination and equal treatment, transparency, proportionality and mutual recognition (Articles 18 & 53).

These principles also underpin the EU Public Procurement Directives and are transposed by all Member States into their national public procurement rules.

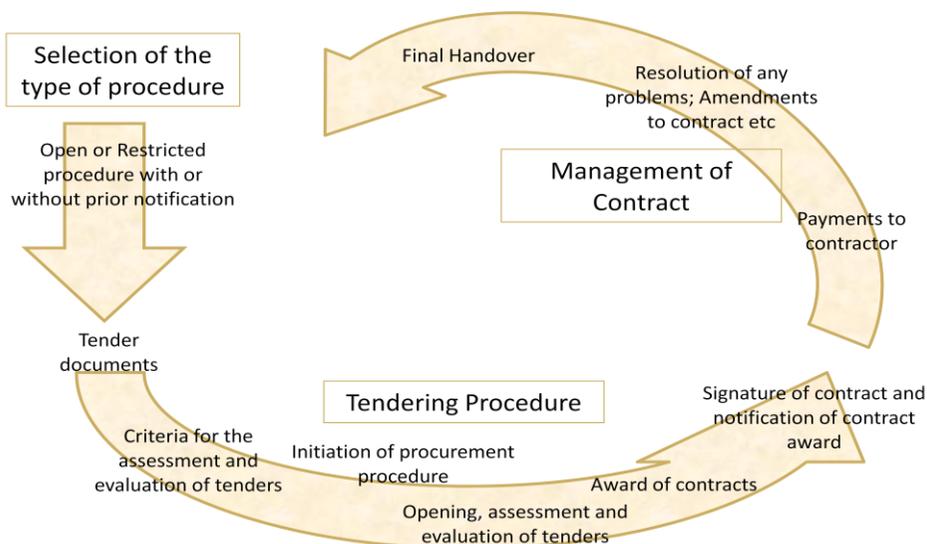
Why it matters to you

info@lynheath.co.uk



Non-compliance with EU and national public procurement rules remain as the main source of irregularities identified by the ECA for ERDF and Cohesion funds during ECA reviews throughout 2011 and 2012. Of the 550 public procurement procedures reviewed by the ECA more than half had at least one error due to non compliance with national or EU rules and over 25% of all errors were deemed sufficiently serious, in the Court's opinion, that the conditions predicated the EU cofinancing element of the expenditure were not met; therefore the expenditure was ineligible and recoverable.

Scope of ECA public procurement audits



EU Thresholds

Summary of thresholds (reviewed annually) from 1 January 2014 (net of VAT)

Public Contracts	Supplies	Services	Works
Central Govt re World Trade Organisation	£111,676	£111,676	£4,322,012
Other Public sector contracting authorities	£172,514	£172,514	£4,322,012
Small lots	£66,672	£66,672	£833,400
Utilities Contracts			
All sectors	£345,028	£345,028	£4,322,012
Small lots	£66,672	£66,672	£833,400

Amounts relate to total value contracts including any contract extensions. For details see <http://www.ojec.com/Thresholds.aspx>

OJEU Advertising Timescales (summary)

Procedure		Days
Open	Minimum time for receipt of tenders from date of contract notice sent	52
	Reduced when prior information notice (PIN) published (subject to restrictions) to generally And not less than -	36 22
Restricted	Minimum time for receipt of requests to participate from the date of contract notice sent	37
	Minimum time for receipt of tenders from date invitation sent	
Restricted Accelerated	Reduced when prior information notice (PIN) published (subject to restrictions) to generally And not less than -	36 22
	Minimum time for receipt of requests to participate from the date of contract notice sent	15
Competitive Dialogue / Negotiation	Minimum time for receipt of tenders from date invitation sent	10
	Minimum time for receipt of requests to participate from date contract notice sent	37
Competitive Negotiated Accelerated	Minimum time for receipt of requests to participate from date contract notice sent	15

- Timescales for EOI may be reduced by 7 days (5 for Accelerated process) where OJEU Contract notice has been prepared and submitted electronically.
- Timescales for returns of tenders may be reduced by 5 days where authority provides unrestricted electronic access to contract documents on identified internet address.