

Indicators for conflict of interest in public procurement financed by the EU Structural funds

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Abstract. Public procurement activity, filled with many preconditions for the emergence of irregularities and fraud. The conflict of interest is inherently corrupt practice extending through the entire process of assignment and performance. Indicators of conflict of interest are an important part of knowledge that should have recognition of the illegal practices that will enable the protection of the financial interests of the Community. Indicators of conflict of interest are an important part of knowledge that we should have for recognition of the illegal practices that will enable the protection of the financial interests of the Community. Indicators of conflict of interest are an important part of knowledge that should have recognition of the illegal practices that will enable the protection of the financial interests of the Community.

Index Terms: Indicators of conflict of interest, conflict of interest, public procurement irregularities, fraud
JEL: G28, H57, H83.

I. INTRODUCTION

The management of conflict of interest is a huge challenge for managers, whether they are part of public or corporate sector. Increasingly commercial public sector that works closely with businesses and NGOs raises the possibility of the emergence of new forms of conflict of interest between public sector employees and those from private, in the performance of their duties.

Lack of proper identification and management of conflicts of interest can lead to serious harm in achieving the organization's objectives, compromising its entirety and availability of corrupt practices.

A key point in the prevention of conflict of interest is increased awareness and conversance among the society and businesses. The Requirements for impartial and transparent decision-making by the government is a tool for reducing corruption practices in compliance with the rules of fair and loyal competition.

Protection of the financial interests of community regarding to the conflict of interests are defined in the

general Financial Regulation¹, according to which: *"The conflict of interests exists where the impartial and objective exercise of the functions of a financial participant or other person is flawed for reasons involving family, emotional life, political or national affinity, economic interest or any other interest that is common with that of recipient."*

In national legislation is defined² that *conflict of interest arises when a person holding public position has a private interest that could affect the impartial and objective performance of the powers and duties of his office.*

In the area of public procurement, conflict of interest is regulated on one hand as a ban on participation of members and consultants in committee in the examination, evaluation and ranking of offers and the other for non-participation in a contract to persons who have contracted with persons having restrictions after their release from public position³.

As a result of community requirements, for the new programming period is accepted new law on public procurement⁴, which introduces more detailed requirements regarding conflicts of interest. Subsequently, the requirements for openness and transparency, the successful introduction and implementation of the policy management of conflicts of interest⁵ aimed to minimize the risks and correct any problems. Of particular relevance to policy implementation is the knowledge of key indicators – so called "Red flags" in procurement.

II. INDICATORS OF CONFLICT OF INTEREST IN PUBLIC PROCUREMENT - "RED FLAGS"

Indicators or so called "Red flags" are the item or set of items that are unusual or untypical in nature and digress from normal activity. This is a signal that something is

¹ Art. 57 paragraph 1 and 2 of Regulation (EC, Euratom) № 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) № 1605 / 2002 Council

² Art. 2 para. 1 of the Law on Prevention and Disclosure of Conflict of Interest prom. SG. 94 of 31/10/2018, last. amend. and supplemented. SG. 12 g 02/13/2015

³ Art. 35, para. 1 pt. 3 and art. 47, para. 5 pt. 2 of the Public Procurement Act, SG. 28 of 2004, last. amend. SG. 13 of 2016 in force until 15/04/2016

⁴ Public Procurement Law, promulgated. SG. 13 of 2016 effective from 15.04.2016

⁵ Managing Conflict of Interest in the Public Service OECD Guidelines and country experiences

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wrong and needs to be further investigated for any possible irregularity or fraud. The presence of such an indicator is not always the reason for irregularity or fraud.

In assignment and execution of procurement can meet many indicators showing abnormalities and anomalies in regard to:

- documentation for participation in the procedure;
- financial aspects of the contract;
- anomalies in the behavior of employees.

The presence of indicators should raise the attention of employees and managers of the contracting authority.

They should take the necessary measures to confirm or reject the suspicion of conflict of interest. It is essential to respond to appeared "red flags." The presence of these indicators does not necessarily mean there are a fraud and a need to undertake a detailed examination of the circumstances and caution and monitor of manifestation.

Assignor, respectively MA \ IB is responsible for preventing and checking all doubts connected with appearance of "red flag."

Typical cases of suspected irregularities and fraud in connection with conflicts of interest in the conduction of public procurement during the various stages are associated with a number of indicators.

These indicators at times may seem ordinary and are valid for many different situations. It should be borne in mind that the "red flags" are indicators that aim inspections in order to confirm or reject the presence of irregularity or fraud.

According to the guide for establishing the conflict of interest in procurement procedures for structural actions⁶, the indicators are grouped into three conditional groups according to the stage of the procedure or its implementation as follows:

1. Preparing and starting the procedure

The questions related to conflict of interest are relevant at this preliminary stage of the procedure. Depending on the type of proceedings, connected with the documentation for participation the assigner may require external studies or to be provided advice from external bodies or experts.

At this stage it is essential determining the type of procedure, preparation of documents for participation, evaluation methods, specifications, project offer and contract.

Red flags:

- abnormal behavior employee who insists on receiving information on the procedure, although he is not responsible for it;
- an employee of the contracting authority has relatives\close people who work for the company, submitted an offer;

- an employee of the contracting authority worked for a company that may represent an offer just before to be assigned at work in contracting.

- senior official \ person responsible for the preparation of documentation requires hiring outside experts to prepare the documentation on supposition that there is no need;
- exerting the pressure of a specific study in preparation of procedure documentation;
- the person responsible for the preparation of the procedure provides the documents with such a delay that it has no time to perform thorough and careful examination of the documents before starting of the procedure;
- choice of a negotiated procedure in the presence of conditions for the open procedure;
- for a veru short time are assigned two or more contracts with the same subject in restriction of competition;
- There are unsubstantiated selection criteria or selection that benefit a specific company or an offer;
- rules for the provision of goods or services are too stringent and restrictive and only allow a company to represent an offer;

2. Providing offers, review, ranking and selection of a contractor.

After the expiry of the deadline for submission of proposals, the contracting authority shall appoint a committee for examination, evaluation and ranking of the offers received.

If not clear questions exist, the Evaluation Committee may require the submission of additional evidence or clarification of questions. Decisions on acceptance of the documents and the explanations are provided to the Commission that on the basis of their work offers the assignor with ranking of participants and remove those that do not meet preset conditions. The decision to select a contractor is up to the assignor or person authorized by him.

Red flags:

- There are obvious changes in official documents and / or certificates of obtaining documents (for example scratching out, addition, etc.);
- Members of the Evaluation Committee do not have the specific expertise to assess the offers submitted by only one person with specific competencies;
- methodology for estimation is with too much weight of subjective elements;
- missing mandatory information from the participant won the procedure;
- information provided by the participant who won is associated with an employee of the assignor (for example address of the employee, telephone number, e-mail address);
- address of the successful assignor is incomplete referred only mailbox, no phone number and address (fictitious company).
- specifications are very similar to the products or services to the winning participant, especially if the specifications include a set of very specific requirements that very few actors can perform;

⁶ Identifying conflicts of interests in public procurement procedures for structural actions. A practical guide for managers, p. 22-25

- small number of companies which have bought documents for participation give offers, especially if more than half quit;

- it is signed a contract with an unknown company with no experience in the subject.

3. Contract procurement, amendment and implementation.

One of the main requirements related to the implementation of contracts following a public procurement procedure, is to be executed according to predefined requirements and parameters according to the technical specifications, proposed period and value. Allowing amendments to existing contracts is permitted only under certain conditions and motivation on the part of the initiating party.

Red flags:

- modification of standard contract clauses (control implementation, penalties and damages, remedies, etc.);

- specifications, schedule, offer etc. are not applied to the contract;

- the name and legal form of the company have changed and the official responsible is not inform anyone for the change;

- numerous or suspicious orders for changes are made in a particular with a contractor approved by the same officer;

- for large orders it is observed long and unexplained delay between the announcement of the participant won the procedure and the signing of the contract (the contractor may refuse to pay or negotiate at the request of bribery);

- made significant changes in the technical specifications or conditions of implementation;

- the quality of the items that should be supplied is reduced without a corresponding reduction in payment;

- operating hours are increased without a corresponding increase in the materials used;

- lack of contract or documentation on which to justify a specific purchase;

- working with the file, the behavior of the person responsible is unusual: he did not answer questions from management about unexplained delays, anticipation and missing documents;

- there are many complaints and canceled procedures in procurement;

- there are changes in the quality, quantity or specification of goods and services under the contract, which deviate from the tender documentation (conditions, technical specifications, etc.).

IV. CONCLUSIONS

The appearance of indications of conflict of interest is a manifestation that should not be overlooked. Verification of red flags will frustrate and prevent multiple corruption, irregularities and fraud in the award and execution. The assignor should establish clear policies defining steps and levels of checks to declare conflicts of interests and taking corrective action when they occur.

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