

Audit of European Union Funds Executive Agency

Audit engagement code	
Appendix.....	

CHECKLIST

for examination of public contracts, awarded following an open procedure under the Public Procurement Act

UPDATED AS OF STATE GAZETTE No 17 of 23 February 2018

Objective: to ascertain whether the public contract has been legally awarded and whether the costs covered by our work have been affected by irregularities in the area of public procurement.

APPLICABLE TO PUBLIC CONTRACTING AUTHORITIES

1	Description of the check <i>(including type of procedure, object /supply, service or construction/, subject, unique procurement number, contract/number, date, contractor, value excluding VAT)</i>	Check of an open procedure under the Public Procurement Act (PPA) for (supply, service or construction / with subject ".....", unique number and concluded contract No of / date / with contractor at a value of BGN, excluding VAT			
2	Opinion of the Managing Authority (MA) / Certifying Authority (SA) on the verification of the procedure (infringements found, financial corrections determined, number and date of the act):	MA		CA	
		<i>Number and date of the act:</i>		<i>Number and date of the act:</i>	
		Type of irregularity (It. of the Guidelines)	of (% financial correction)	Type of irregularity (It. of the Guidelines)	of (% financial correction)

Audit of European Union Funds Executive Agency

3	Conclusion of the Audit Authority in result of the check:	(Reference: Section 7 <i>Irregularities and Fraud in the checklist for project examination</i>)			
		Type of irregularity (It. of the Guidelines)		Financial impact (% financial correction)	
4	ISUN number and project title				
5	Beneficiary				

6	Contracting Authority:	
7	Unique procurement number in the Public Procurement Register (PPR) (nnnn-yyyy-xxxx):	
8	Opening decision (number, date and title of the person issuing the decision):	
9	Estimated contract value (excluding VAT):	
10	Act concluding the procedure (framework agreement, public contract or decision on termination (number, date):	
11	Acts of the Public Procurement Agency under Art. 229, para. 1, point 8 and point 14 and Art. 232 et seq. of the Public Procurement Act (PPA), Art. 114, Art. 126 and Art. 130 of the Implementing Rules of the Public Procurement Act (IRPPA) (number, date of the Public Procurement Agency opinion, details of the observers' opinion):	
12	Reports of other authorities (EC, European Court of Auditors, OLAF, Court of Auditors, Public Financial Inspection Agency, internal audit etc.) (number, date and publisher of the report on the examined procedure):	
13	Acts of the Commission for Protection of Competition (CPC) and Supreme Administrative Court (SAC) (number, date, publisher (decisions/orders of the CPC / SAC) on the examined procedure):	

Audit of European Union Funds Executive Agency

14	Address of the procurement electronic file in the buyer's profile:	
15	Number of tenders submitted (including for each lot):	
16	Number of excluded tenderers (including for each lot):	

INSTRUCTIONS:

In addition to the requirements laid down in the Audit of EU Funds Manual, when completing this checklist the following instructions should be followed:

I. INSTRUCTIONS TO THE AUDITOR

1. The auditor collects and attaches to the electronic file on the IAEUF EA server at least the set of documents specified below. A specific folder with the shortened name of the subject, contracting authority and year of opening is created in the file of the respective audit engagement. The following documents are stored in the folder:

- 1) Prior information notices (if any) (published on both Official Journal of the European Union and PPR);
- 2) Contract notices (published on both Official Journal of the European Union and PPR);
- 3) Procurement documents;
- 4) Clarifications of the contracting authority (if any);
- 5) Acts of the Public Procurement Agency on ex-ante control and / or monitoring (if any) and observers opinions, if any;
- 6) Notice of amendment or additional information and the decision which approves the relevant act (if any) (published on both Official Journal of the European Union and PPR);
- 7) Tenderers' register;
- 8) Protocol of the evaluation commission work, report on the evaluation commission work, including evaluation sheets and the like (if any);
- 9) Correspondence with the tenderers;
- 10) Decision determining contractor;
- 11) Public contract;
- 12) Framework agreement and a contract thereto (if applicable);
- 13) Acts of the CPC and SAC regarding the procedure;
- 14) Inspection reports of other authorities on the procedure;
- 15) Documents in support of the identified deviations.

The documents listed above are collected and attached to the audit file regardless of whether a deviation has been identified and whether a finding has been formulated.

The documents are downloaded from ISUN, equivalent platform or other source of information. If the auditor identifies a deviation, he must support it with sufficient, reliable and relevant evidence.

The file name of the individual electronic documents should contain file name identical to the name of the file in ISUN.

Example: the file in the information platform is named Procurement Documents for Implementation of Installation and Construction Work, and after being downloaded in the folder to the audit file it is saved under the name 9988761.pdf. In this case, the auditor should rename the downloaded file to Documents for Implementation of Installation and Construction Work.

Audit of European Union Funds Executive Agency

If the document is provided by another source or by an equivalent ISUN platform, when attaching and naming the file in the audit procurement file, brief description of the document is made, for example - act 15.

A link to the electronic file of IAEUF EA server is indicated in the first question of the checklist.

The specific answers to the questions must refer to pages of the file containing the information based on which the auditor has made his conclusion.

2. Answer must be given in column Yes / No / NA.

3. Tables 1-4 must be completed.

4. The auditor must **indicate** in column Comment / Reference short, accurate, clear and unambiguous **reference to** the relevant documents based on which the relevant answer to the check question is given and the relevant conclusion is made.

The reference is accurate, clear and unambiguous when it refers to specific collected document and when it indicates the relevant pages and paragraphs / items thereof relevant to the auditor's conclusion - for example, "Ref. item 3.2 of the procurement documents, page 13". Any reference to a page of the attached document should refer to the specific page of the scanned electronic attachment, as attached to the question, rather than to any other designation in the wording of the paper document.

5. If the answer to the question in the previous column shows an **IDENTIFIED DEVIATION**, the column Comments / References must indicate:

a) **The applicable rule of law** (abbreviated whenever possible) - it represents the criterion / requirement towards which the facts are being evaluated.

b) **The relevant established facts** - they do not correspond to a) and therefore represent deviation.

The auditor should describe them in a full, brief, accurate and clear manner, taking into account the specific instructions for the relevant check question.

ATTENTION! There is a deviation only if the established facts are inconsistent with the applicable evaluation criterion; sufficient, relevant and reliable evidence is collected for the deviation; it must be attached (see item 1.15 above) and used as reference.

ATTENTION! The facts established as evidence of fraud in the course of the check referred to in item IV of these instructions should be documented in column Comment / Reference of Section IV of this checklist.

c) If, in a next check question, the auditor finds out that facts already described as a deviation in the previous question are also considered as a **deviation in this check question**, the auditor must comply with item 5 (a), quoting the applicable abbreviated rule of law, without describing the established facts - they are not described again and the auditor refers to the relevant question number in the checklist where they are already mentioned.

d) **Effect of the deviation** - taking into account all relevant facts and circumstances of the examined procedure and the Guidelines¹, Appendix 1 to Article 2, paragraph 1 of the Ordinance on the indication of irregularities, representing grounds for financial corrections and on the percentage indicators on determining the financial corrections pursuant to the Management of Funds from European Structural Funds and Investment Funds Act (MFESFIFA), the auditor justifies whether or not the identified deviation represents an irregularity. In the event of any irregularity, the auditor determines an appropriate amount of the financial correction under the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance.

Common Approach

¹ Guidelines for determining financial corrections to be made to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement, adopted by Commission Decision of 19.12.2013.

Audit of European Union Funds Executive Agency

If the infringement is considered as an irregularity, the auditor suggests an appropriate amount of the financial correction under the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance. The auditor determines the financial correction for the relevant infringement, taking into account its seriousness, and respects the principle of proportionality, applying the highest rate of financial correction set out in the Guidelines for the relevant irregularity to the most serious infringements. In proposing the financial correction, the auditor is required to analyse and document all circumstances relevant to the seriousness of the infringement and its financial impact. Depending on the type of the irregularity found, these circumstances may be subject, nature, quantity and volume of the public contract, level of competition observed at the time the contractor has been selected, number of received tenders, number of ranked tenderers, etc.

Approach applied to contracts which estimated value is below the thresholds referred to in Directive 2014/24 / EC

If the contract has an estimated value below the thresholds referred to in the Directive 2014/24/EU the most severe financial correction of 10 % is determined for violations under item 6, items 8-12 and items 13-20 of the EC Guidelines.. In addition, the auditor considers whether there are facts and circumstances that may lead to reduction of the financial correction. The reduction starts at 10 %.

ATTENTION! The specific approach is only applicable to public contracts which estimated value is below the thresholds referred to in the Directive, i.e. the auditor makes assessment on the basis of the contract value at the time of opening of the procedure. If the contract value at the time of the opening of procedure exceeds the thresholds referred to in the Directive, and then, however, a contract with a value below the thresholds has been concluded, the specific approach is INAPPLICABLE.

In case of contracts which are concluded upon completion of procedure with several lots, the **estimated value** of the contract is the **total value of all lots**. It is therefore appropriate when evaluating the applicability of the specific approach to analyse the estimated value of the entire contract, rather than the value of the contracts which have fallen within our audit sample.

Approach applied to infringements of formal nature

Infringements of formal nature without actual or potential financial impact do not constitute an irregularity and are not subject to financial correction.

6. Please note that the auditor is required to formulate in column Comment/Reference finding for each established deviation from the public procurement legislation regardless of the decision and/or opinion of other authorities which have ruled on this public procurement procedure (Commission for Protection of Competition, Supreme Administrative Court and other courts and/or other authorities). The auditor must describe the opinion of these authorities in the column Comment / Reference. In case of such situation the auditor immediately informs with an electronic letter the head of the audit team, the director of the relevant directorate and the director of the Legal Provision of Audit Activities (LPAA) Directorate.

7. In each case of established deviation the auditor must further analyse the presence of indicators of frauds which have regard to the public procurement procedure ("red flags"), in accordance with the instructions contained in item IV of this checklist. The obligation for additional analysis may arise for each check question of this checklist. The results of the analysis are documented in column Comment / Reference of Section IV of this checklist.

II. INSTRUCTIONS TO THE HEAD OF THE TEAM

The head of the team reviews the checklist and procurement documents and confirms that the auditor:

1. has collected the minimum required documents and has attached them to the electronic file of the audit engagement;
2. has indicated answer Yes / No / NA for all check questions;
3. has specified accurate, clear and unambiguous reference to each check question;
4. has made an analysis of the existence of fraud indicators.

Audit of European Union Funds Executive Agency

III. INSTRUCTIONS TO THE DIRECTOR OF LPAA DIRECTORATE

The director of LPAA Directorate:

1. Examines whether the relevant checklists are reviewed by the head of the audit team in accordance with it. II;
2. Examines whether the documented deviations from the public procurement legislation, including their financial impact, are supported with sufficient, relevant and reliable audit evidence;
3. Conducts repeated check of the issues defined on the basis of the risk assessment and if deviations in the quality of the examined work are identified - prepares/corrects the relevant findings and their financial impact.

IV. INSTRUCTIONS ON ANALYSING THE PRESENCE OF INDICATORS OF FRAUDS, WHICH HAVE REGARD TO THE COMPLETED PUBLIC PROCUREMENT PROCEDURE ("RED FLAGS")

In each case of established deviation which is documented in accordance with the instructions referred to in item I, the auditor and head of the team must further analyse the presence of indicators of frauds ("red flags").

In the event that the auditor detects presence of one or several of the indicators listed below he should describe these facts in the column Comment / Reference of Section IV of this checklist to the relevant check question and should qualify them as indicators of fraud. The auditor should take into account these indicators in determining the financial impact of the established deviation and the following detailed guidances: guidance for assessment of fraud risk, guidance for the role of auditors in preventing and detecting fraud, guidance for identification of conflict of interests in public procurement procedures and for detection of false documents attached to the Audit of EU Funds Manual and information note of the EC on the indicators of fraud in connection with ERDF, ESF and CF.

ATTENTION! The instructions referred to in it. IV are applied by the auditor to all check questions of this checklist in case of any deviation in the examined procedure.

For this purpose, the auditor examines whether some of the following situations exist:

1. Indicators of fraud in case of conflict of interests:

Conflict of interests may arise when an employee of the contracting authority (manager, member of commission responsible for the procedure, employee involved in the preparation and / or conduct of particular public procurement procedure) is interested in particular contract or contractor / economic operator.

Suspicion of any presence of conflict of interests may arise if one or more of the following circumstances have occurred:

- unexplained or unusual preferential treatment of certain tenderer (e.g. only one tender has been submitted; only one tenderer has been ranked and the other tenderers have been excluded from the procedure; there are restrictive requirements and/or conditions giving priority to certain economic operators; there are tenderers unlawfully excluded from the procedure; the tenderer selected as a contractor does not meet the requirements of the contracting authority; there is unequal treatment of the tenderers; not all irregular or invalid documents of the tenderers excluded from the procedure laid down in Art. 54, para. 7-13 of the IRPPA have been found).
- There is evidence that a member of the commission responsible for the procedure or other employee having direct relation to its conduct perform economic activities (e.g., the members involved in the commission responsible for the procedure are persons external to the contracting authority, or the procurement documents are prepared by persons external to the contracting authority).
- There are close contacts (including publicly known ones) between a member of the commission responsible for the procedure or other employee having direct relation to its conduct and the contractor to the contract.
- A person who is a member of consortium or who has given his consent and is listed as a subcontractor in the tender of another tenderer has submitted a separate tender - the results of the check made for questions 41 and 42 of this checklist must be taken into account.
- There is a change in the tender after its submission upon expiry of the time limit for receipt of tenders;

Audit of European Union Funds Executive Agency

- There are objections/ appeals / signals from other tenderers claiming any presence of indicators of fraud;
- There is information that some of the tenders are opened before the expiry of the time limit for receipt of tenders and before the beginning of the public meetings for opening of the tenders / price offers;
- The tenderer selected as a contractor has supplemented / amended its tender upon expiry of the time limit for receipt of tenders in violation of the procedure laid down in Art. 54, para. 7-13 of the IRPPA.

2. Indicators of fraud when negotiating tender terms and conditions:

When negotiating tender terms and conditions the economic operators from particular geographic area, region or industry collude to eliminate the competition in a long term and to increase the value of the public contract using various schemes.

- Complementary bidding

The complementary bidding, also known as submission of cover tenders, is only aimed at impressing the competition in the course of the procedure, rather than at awarding the public contract.

Several economic operators agree to submit tenders at relatively higher prices or at extremely high prices in order to make possible the selection of certain contractor under conditions of increased prices.

The selected contractor appoints the persons who have not been awarded the contract as subcontractors. The involvement of subcontractors may also be informal or hidden, i.e. it may not be specified in the tender of the tenderer selected as a contractor.

Cover tenders may also be submitted by subsidiaries or related parties.

- Participation on the principle of rotation

The tenderers submit cover tenders or refrain from participation in order to enable each one of them to submit the lowest tender on the principle of rotation. The rotation may be based on geographical areas - one contractor may be awarded the entire contract concerning the roads in a certain region and another contractor may be awarded another contract in another region, or based on the type of work, period of time, etc.

Suspicion of any presence of negotiation may arise if one or more of the following circumstances have occurred:

- The selected tender contains too high price offer compared to the estimated value of the contract, prices of similar work or services, or average price and market prices for the sector;
- Increased prices in all tenderers;
- The technical specification directs to particular economic operator since it is too restrictive (especially for the IT sector and other more specialised technical contracts), including the use of trademarks, without providing an opportunity to submit equivalent proposal for performance of the contract;
- Rotation of the economic operators selected as contractors based on regional, or professional principle or depending on the work assigned;
- Part of association /consortium/ joint-stock company and another entity which has won the procedure participates individually in the same procedure;
- Tenderers which are not selected as contractors are engaged as subcontractors, including on an informal or hidden basis;
- Unusual characteristics in the tenders (e.g. the difference between the individual tenders is expressed as accurate percentage, the winning tender has a value just below the acceptable threshold of the prices, coinciding with the prices set out in the budget, or is too high, too close, too remote, or contains rounded amounts, or is incomplete, etc.);
- Obvious relations between certain tenderers e.g. same addresses, personnel, telephone numbers, etc.;
- Qualified potential contractors do not submit tenders and become subcontractors or a tenderer which has submitted a lower tender becomes subcontractor, including on an informal or hidden basis;

The negotiation is usually applicable to the following sectors: construction of roads, construction of buildings, cleaning the bottom of water sources and reservoirs, provision of electrical equipment, waste disposal. It may also be applied to other sectors and sites under public procurement procedures.

3. Indicators of fraud in the event of unjustified award of public contract to one contractor:

Audit of European Union Funds Executive Agency

This scheme often occurs as a result of corruption, especially if the characteristics are repeated and suspicious.

Suspicion of any presence of unjustified award of public contract to one contractor may arise if one of the following circumstances have occurred:

- Purchases from one source in an amount above or immediately below the thresholds requiring conduct of public procurement procedure;
- Several contracts with a value which is close to the thresholds requiring conduct of public procurement procedure;
- Unlawful division of the subject matter of a contract which has led to disapplication of heavier public procurement regime (e.g. separate contracts for performance of work and delivery of materials, each of them with a value below the threshold requiring conduct of open procedure);
- Unlawful type of award procedure - negotiated procedure without existence of the relevant preconditions has been conducted.

No	Question	Yes/No/NA	Comment/Reference
I. CONTRACT NOTICE AND SPECIFICATIONS			
Irregularities of the Guidelines (Appendix 1 to Art. 2, para. 1 of the Ordinance) relevant to this section: It. 1 - Lack of publication of contract notice It. 2 - Unlawful division of public contracts for performance of work /provision of services/supply It. 3 - Non-compliance with the time limits for receipt of tenders It. 4 - Insufficient time for receipt of documentation of potential tenderers It. 5 - Lack of publication of extended time limits for receipt of tenders It. 8 - Lack of clarification on: - the selection criteria in the contract notice; and/or on the criteria for award of public contract (and their weighting) in the contract notice or in the specifications. It. 9 - Unlawful and/or discriminatory selection and/or public contract award criteria in the contract notice or in the procurement documents It. 10 - Selection criteria which are not proportionate and related to the subject matter of the public contract It. 11 - Discriminatory technical specifications It. 12 - Unclear scope of the contract			
I.1. Announcement of the procedure			
17	Has a contract notice been sent to the Official Journal of the EU? Has the requirement for the manner and time of dispatch of the notice and its publication in the buyer's profile been met, namely: - has it been sent to the Official Journal of the EU through the Public Procurement Agency; - has it been published on PPR after its publication on the Official Journal of the EU or the conditions of Art. 36, para. 3 of PPA has been applied: - has it been published on the buyer's profile on the day of its publication on the PPR? ATTENTION! Contract notice must be sent to the Official Journal of the EU for EACH open procedure. This is because: - According to the new PPA the contract notice of each open procedure shall be published		

Audit of European Union Funds Executive Agency

<p><i>on the Official Journal of the EU and</i></p> <p><i>- The Contracting Authority has an obligation under Art. 20, para. 9 of PPA according to which if it decides to conduct a procedure, which is relevant to higher value thresholds, it shall apply all rules applicable to it.</i></p> <p>The obligation to conduct an open procedure and to send contract notice to the Official Journal of the EU and PPR arises when the public contract has a value exceeding the thresholds referred to in Art. 20, para. 1 of PPA.</p> <p>The documents are sent for publication in electronic format.</p> <p>The contracting authorities send the notices to the Publications Office of the European Union through the service Electronic Sender, i.e. through the Public Procurement Agency.</p> <p>The contracting authority proves the date of dispatch by acknowledgement of receipt of the notice provided by the Publications Office of the EU.</p> <p>The notice is published on the PPR after it has been published on Official Journal of the EU or before that, if 48 hours have elapsed since the confirmation of its receipt by the Publications Office of the EU (Art. 36, para. 3 of PPA).</p> <p>The contracting authorities publish the contract notice on the buyer's profile <u>on the day of publication</u> of the notice on the PPR (Art. 24, para. 1 cl. 1 of the IRPPA).</p> <p>(Art. 35, para.1, cl.2 of PPA)</p> <p>(Art. 35, para.1, para.3 and para.5 of PPA)</p> <p>(Art. 20 of the IRPPA)</p> <p>(Art. 36 of PPA)</p> <p>(Art. 42, para.2, cl.1 of PPA)</p> <p>(Art. 24, para.1, cl.1 of the IRPPA)</p> <p>Item 1 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.1 of Error Typology²</p> <p>Guidance sources of information: review the contract notice, in particular the part containing the date of dispatch of the notice, confirmation of receipt of the notice obtained by the Publications Office of the European Union, file in the PPR, evidence from the buyer's profile showing the date of publication of the contract notice, etc.</p> <p>Use Table 1</p> <p>Check whether the notice is sent to the Official Journal of the EU through the service Electronic Sender of Public Procurement Agency.</p> <p>Analyse:</p> <ul style="list-style-type: none"> - The dates of dispatch of the contract notice to the Official Journal of the EU; - The date of publication of the notice in the PPR; - The date of publication of the notice on the buyer's profile; <p>The check is documented in the relevant table.</p>		
---	--	--

² The reference to EC Error Typology is made to facilitate the consolidation of the check results. It is not necessary to include this reference in the findings of violations of public procurement law.

Audit of European Union Funds Executive Agency

I.2. Time limit for receipt of tenders at the opening of the procedure		
18	<p><u>Applicable to procedures where the time limit for receipt of tenders is not reduced:</u></p> <p>Does the number of calendar days of the time limit for receipt of tenders at the opening of the procedure correspond to the minimum one referred to in Art. 74, para. 1 of PPA?</p> <p>If the time limit for receipt of tenders is not reduced, a period of minimum 35 days should remain between the date of SENDING of the contract notice and the deadline for receipt of tenders, regardless of the object of the contract.</p> <p>Attention! The date on which the notice is published on the Official Journal of the EU and PPR is IRRELEVANT for calculation of the time limit for receipt of tenders. The date of publication of the notice in the Official Journal of the EU is relevant to determine the time at which the contracting authority is required to publish the procurement documents on the buyer's profile.</p> <p>The contracting authority proves the date of dispatch by acknowledgement of receipt of the notice provided by the Publications Office of the EU.</p> <p>(Art. 74, para.1 of PPA)</p> <p>Item 3 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.3 of Error Typology</p> <p>Guidance sources of information: review the contract notice, in particular the part regarding the time limit for receipt of tenders, date of dispatch of the document and the reasons for reduction of the time limit (if applicable).</p> <p>Use Table 1</p> <p>Analyse:</p> <ul style="list-style-type: none"> - The date of dispatch of the contract notice; - The deadline for receipt of tenders; - The number of calendar days between the two dates. 	
19	<p>Have the requirements for REDUCING the time limit for receipt of tenders, if applicable, been met:</p> <ul style="list-style-type: none"> - due to a prior information notice; - due to submission of tenders by electronic means in accordance with Art. 39, para. 1, para. 2 and para. 8-13 of PPA; - due to circumstances requiring urgent award of the contract which makes it impossible to meet the deadline referred to in Art. 74, para. 1 of PPA? <p>Attention! The date on which the notice is published on the Official Journal of the EU and PPR is IRRELEVANT for calculation of the time limit for receipt of tenders. The date of publication of the notice in Official Journal of the EU is relevant to determine the time at which the contracting authority is required to publish the procurement documents on the buyer's profile.</p> <p>Attention! The grounds to reduce the time limit for receipt of tenders due to a prior</p>	

Audit of European Union Funds Executive Agency

<p>information notice, submission of tenders by electronic means and extreme urgency CAN NOT BE applied simultaneously.</p> <p>Each of the three grounds to REDUCE the time limit for receipt of tenders is used independently and can not be used in conjunction with the others grounds provided for in Art. 74 of PPA.</p> <p><i>As regards the prior information notice:</i></p> <p>To use this notice as a basis to reduce the time limit for receipt of tenders, two groups of preconditions must be met:</p> <ul style="list-style-type: none"> - the notice should be sent within a specified time range - from 35 days to 12 months before the date of dispatch of the contract notice for publication; - the notice should contain certain information - the form of prior information notice contained in Annex 1 to Commission Implementing Regulation (EU) 2015/1986 with indices 12 and 19 indicates all particulars that need to be fulfilled in order to use the notice of reducing the time limit for receipt of tenders - type of access to procurement documents, method of submission of tenders, estimated value, number of lots for which tenders may be submitted, deadline for completion, award criteria, selection criteria, presence of variants and options, source of funding, etc. <p><i>As regards the electronic submission of tenders:</i></p> <p>If the contracting authority allows electronic submission of tenders in accordance with Art. 39 of PPA, the time limit for receipt of tenders may be reduced by 5 days.</p> <p><i>As regards the urgent award:</i></p> <p>Evidence for two sets of facts should exist:</p> <ul style="list-style-type: none"> - circumstances requiring urgent award of the contract, - inability to comply with the 35-day time limit. <p>In such cases, the contracting authorities may set a time limit for receipt of tenders not less than 15 days from the date of dispatch of the contract notice. The use of this option must be motivated by the contracting authority, and the reasons must include facts justifying the need for urgent award.</p> <p>(Art. 74 of PPA)</p> <p>(Art. 39 of PPA)</p> <p>Item 3 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.3 of Error Typology</p> <p>Guidance sources of information: review the contract notice, in particular the part regarding the time limit for receipt of tenders, date of dispatch of the document, prior information notice (if necessary), acknowledgement of receipt of the notice by the Publications Office of the EU, evidence of the opportunity to submit tenders by electronic means, reasons in the notice for arising circumstances which require urgent award of the contract and failure to comply with the 35-day time limit, documents justifying the occurrence of these circumstances, etc. relevant for each specific case.</p> <p>Use Table 1</p>		
---	--	--

Audit of European Union Funds Executive Agency

	<p>Analyse:</p> <ul style="list-style-type: none"> - The date of dispatch of the contract notice; - The deadline for receipt of tenders; - The number of calendar days between the two dates. <p>As regards Art.74, para. 2 of PPA (reduction of the 35-day time limit to not less than 15 days) analyse:</p> <ul style="list-style-type: none"> - Whether a prior information notice has been sent to the Official Journal of the EU and Public Procurement Agency and the date of dispatch; - Whether the prior information notice has been sent within a period of 35 days and 12 months before the date of dispatch of the contract notice; - Whether the prior information notice contains the information on the public contract required pursuant to Appendix 4, Part A, Section I to Art. 23 of PPA and Annex 1 to Commission Implementing Regulation (EU) 2015/1986 with indices 12 and 19. <p>ATTENTION! When analysing the prior information notice and contract notice, compare THE SUBJECT OF THE CONTRACT, ITS ESTIMATED VALUE, VOLUME AND QUANTITY, and the type of access to procurement documents, method of submission of tenders, number of lots for which tenders may be submitted, deadline for completion, award criteria, selection criteria, presence of variants and options, source of funding, etc.</p> <p>As regards Art. 74, para.2 of PPA analyse:</p> <ul style="list-style-type: none"> - Whether the notice provides for opportunity for submission of tenders by electronic means and - Whether the preconditions referred to in Art. 39, para.1, para.2 and para.8-13 of PPA exist. <p>As regards Art. 74, para.4 of PPA analyse:</p> <ul style="list-style-type: none"> - Whether the circumstances requiring urgent award of the contract have occurred and - Whether the nature of the circumstances allows for compliance with the 35-day time limit for receipt of tenders and - Whether the notice contains the reasons for reducing the time limit for receipt of tenders and whether the facts are supported by evidence available at the contracting authority at the time of opening of the procedure. 		
20	<p><u>Applicable to all procedures:</u></p> <p>Have the requirements for determining longer time limit for receipt of tenders at the opening of the procedure been met, if:</p> <ul style="list-style-type: none"> - there is a lack of unlimited, full, free and direct access by electronic means to the procurement documents; - the contracting authority has set requirements on protection of confidential 		

Audit of European Union Funds Executive Agency

<p>information provided to the tenderers in the course of the procedures and in the signing of the public contract;</p> <p>- the tenders can be prepared only after a visit to the site or after on-the-spot check of additional documents relating to the public contract under Art. 45, para. 2 of PPA?</p> <p>IMPORTANT! The obligation to determine time limit for receipt of tenders longer than the time limits referred to in Art. 74 of PPA arises at the opening of the procedure when the contracting authority determines the initial time-limit for receipt of tenders.</p> <p>Cases where the obligation arises:</p> <p>- <i>as regard the access to the procurement documents</i> - in the absence of unlimited, full, free and direct access by electronic means to the procurement documents according to Art. 32, para. 3 of PPA - at least 5 days longer (Art. 39 of PPA enters into force on 18 October 2018);</p> <p>- <i>as regards the protection of confidential information</i> – if such a requirement is set by the contracting authority the time limit may be 5 days longer as a minimum. In such cases, the notice must specify the measures for protection of the information, terms and conditions and method to access to the procurement documents (Art. 32, para. 4 of PPA).</p> <p>- <i>as regards the site visit and document on-the-spot review</i> – in the cases where the tenders can be prepared only after a visit to the site or after on-the-spot check of additional documents relating to the public contract the time-limits for receipt of tenders must be longer than the minimum ones and must provide an opportunity for the stakeholders to become familiar with all information needed to prepare the tenders.</p> <p>Important! When assessing whether the obligation to determine extended time limits at the opening of the procedure is duly fulfilled, Art. 74 of PPA which contains different time limits - standard one of 35 days and reduced one - to 15 days (due to prior information notice or due to circumstances requiring urgent award) or 30-day time limit - due to electronic submission of tenders - should be taken into account.</p> <p>(Art. 32, para.3 of PPA)</p> <p>(Art.32, para. 4, in conjunction with Art. 102, para. 3 of PPA)</p> <p>(Art. 45 of PPA)</p> <p>Item 3 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.3 of Error Typology</p> <p>Guidance sources of information: review the contract notice, in particular the part regarding the time limit for receipt of tenders, manner in which the procurement documents can be obtained, requirements for protection of confidential information provided to the tenderers in the course of the procedures, etc.</p> <p>Use Table 1</p> <p>Analyse:</p>		
---	--	--

Audit of European Union Funds Executive Agency

	<ul style="list-style-type: none"> - The date of dispatch of the contract notice; - The deadline for receipt of tenders; - The number of calendar days between the two dates. <p>As regards Art. 32, para.3 of PPA analyse:</p> <ul style="list-style-type: none"> - Whether there is limited, incomplete and indirect access to the procurement documents. <p>As regards Art. 32, para.4 of PPA analyse:</p> <ul style="list-style-type: none"> - Whether the contracting authority has set requirements for protection of the confidential information provided to tenderers in the course of the procedures and in the signing of the public contract <p>and</p> <ul style="list-style-type: none"> - Whether the contracting authority has defined the measures which should be taken to protect the confidentiality of the information. <p>As regards Art. 45, para.2 of PPA analyse:</p> <ul style="list-style-type: none"> - Whether the contracting authority has requested that tenders be submitted only after on-the-spot check of additional documents to the procurement documents and / or after a visit to the place of execution of the contract; - Whether the time limit for receipt of tenders provides an opportunity to the stakeholders to become familiar with all information needed to prepare the tenders (the time limit for receipt of tenders should be longer than the minimum statutory time limit). 		
I.3 Extension of the time limit for receipt of tenders AFTER opening of the procedure			
21	<p><u>Applicable to procedures where the time limit for receipt of tenders is reduced:</u></p> <p>Has the contracting authority fulfilled the obligation under Art. 44, para. 4 of PPA to extend the time limit for receipt of tenders after opening of the procedure?</p> <p>The obligation under Art. 44, para. 4 of PPA arises from the simultaneous presence of the following three preconditions:</p> <ul style="list-style-type: none"> - Market consultations have been conducted and / or external entities participate in the preparation of the procurement documents; - The time limits for receipt of tenders are reduced; - Only one tender is received from a person who participated in the market consultations and / or in the preparation of the procurement documents. <p>Answer NA must be given if one of the above preconditions is missing.</p> <p><i>The purpose of the check is to ascertain whether the contracting authority has had an obligation to extend the time limit for receipt of tenders and whether it has been fulfilled.</i></p> <p>If the above three preconditions have arisen, the contracting authority should extend the time limit for receipt of tenders after opening of the procedure at least until the minimum statutory time limit for the open procedure.</p> <p>(Art. 44, para.4 of PPA)</p> <p>Item 3 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p>		

Audit of European Union Funds Executive Agency

	<p>Item 1.3 of Error Typology</p> <p>Guidance sources of information: data and information on conducted market consultations published on the buyer's profile, and other sources of information; coordinating signatures or records for acceptance of the work on preparation of the tenders; register of the received tenders; other documents indicating the need to extend the time limits.</p> <p>Analyse:</p> <ul style="list-style-type: none"> - whether market consultations have been conducted and whether external parties have been involved in the preparation of the procurement documents; - The number of submitted tenders; - whether the time limit for receipt of tenders has been reduced. 		
22	<p>Has the contracting authority fulfilled its obligation to extend the time limit for receipt of tenders by means of a notice of amendment or additional information, if applicable:</p> <ul style="list-style-type: none"> - In the event of substantial changes in the terms and conditions of the public contract which necessitate a change in the tenderers' offers; - Upon promptly requested clarifications, when they can not be provided within the time limit referred to in Art. 33, para. 2 of PPA; - In case of appeal proceedings? <p>Act which governs the change:</p> <p>Notice of amendment or additional information.</p> <p>According to Art. 100 of PPA, the contracting authority is entitled to make only oneschanges to the contract notice and / or procurement documents.</p> <p>The notice of amendment or additional information is also used to extend the time limits for conducting the procedure (time limit for receipt of tenders, and the date of public opening of the tenders).</p> <p>Number of allowed changes:</p> <p>Depending on the scope of the change, the number of admissible changes is different:</p> <ul style="list-style-type: none"> - as regards the initially announced conditions - one change; - when only the time limits to conduct the procedure are extended - more than one change. <p>Scope of the changes: The change may cover all requirements for award of public contract, <u>except for the requirements that would change the range of stakeholders.</u></p> <p>Time of the change: The change is made within 14 days from the date of PUBLICATION of the contract notice, or within 5 days from the date of publication of the notice, if the time limits are reduced on the basis of Art. 74, para. 2 and para. 4 of PPA (notice of prior information or need for urgent award, respectively).</p> <p>Upon expiry of this time limit the change may only cover the time limit for receipt of tenders (Art. 100, para.6 of PPA).</p> <p>Please note that the time limit to make the change starts from the date of PUBLICATION</p>		

Audit of European Union Funds Executive Agency

<p>of the notice, rather than from the date of its dispatch.</p> <p><i>Hypotheses of the obligation to extend the time limit for receipt of tenders (Art. 100, para.7 and para. 11 of PPA):</i></p> <ul style="list-style-type: none"> - in case of substantial changes in the terms and condition of the contract which require a change in the tenderers' offers to be made - the change may affect the subject matter - inclusion of additional activity or removal of such activity; the volume - change in the number of services rendered - number of trainings, change in the number of delivered computers and / or equipment; change in the technical specification by inclusion of additional specific requirements; time limit for implementation; selection criteria; performance requirements; evaluation criteria, weighting of the evaluation indicators and the methodology for determining the most economically advantageous tender, etc. <p>IMPORTANT! If the change affects the content of the tender, it is considered as substantial;</p> <p>If the change affects the range of stakeholders, it is considered unacceptable.</p> <ul style="list-style-type: none"> - Upon promptly requested clarifications, when they can not be provided within the time limit referred to in Art. 33, para. 2 of PPA; - In connection with appeal proceedings. <p>IMPORTANT!</p> <p>It is necessary to analyse whether the change affects the range of stakeholders. In this case, the contracting authority should terminate the procedure on the grounds of Art. 110, para. 1, cl. 9 of PPA.</p> <p><u>Time to extend the time limit for receipt of tenders:</u></p> <p>According to Art. 100, para. 8 of PPA, the extension of the time limit in the first two hypotheses must comply with the time needed by the persons to become familiar with and to reflect the changes or clarifications in the preparation of the tenders.</p> <p>Attention! PPA does not specifically indicates deadline by which the time limit for receipt of tenders should be extended.</p> <p>In the third hypothesis concerning the obligation (due to appeal of the procedure), the total duration of the time limit for receipt of tenders, without the suspension period, should not be shorter than the initial time limit set by the contracting authority.</p> <p>(Art. 25 and Art.100 of PPA)</p> <p>(Art. 28, para.5 of the IRPPA)</p> <p>Item 3 and item 5 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.3 and item 1.5 of Error Typology</p> <p>Guidance sources of information: review the notice of amendment or additional information, if any.</p> <p>Analyse:</p> <ul style="list-style-type: none"> - The number of changes made; - The date on which the change is made, and whether the change is made within the statutory time limits; 		
--	--	--

Audit of European Union Funds Executive Agency

	<ul style="list-style-type: none"> - The scope of the change; - The time limits to conduct the procedure after the change - the time limit for receipt of tenders, date of the first public meeting of the commission responsible for the procedure, etc. In this regard, analyse whether the contracting authority has fulfilled its obligation to extend it, if such an obligation has arisen; - do the changes affect the range of stakeholders. 		
I.4 Announcement of the extended time limits for conducting the procedure			
23	<p>Has the notice of amendment or additional information been sent to the Official Journal of the EU and PPR?</p> <p>Has the requirement for the manner and time of dispatch of the notice and its publication in the buyer's profile been met, namely:</p> <ul style="list-style-type: none"> - has it been sent to the Official Journal of the EU through Public Procurement Agency; - has it been published on PPR after its publication in the Official Journal of the EU or the conditions of Art. 36, para. 3 of PPA has been applied: <p>- has it been published on the buyer's profile on the day of its publication in PPR?</p> <p>The publicity rules are the same as those explained in question No 17.</p> <p>(Art. 35, para.1, cl.3 of PPA)</p> <p>(Art. 35, para.1, para.3 and para.5 of PPA)</p> <p>(Art. 20 of the IRPPA)</p> <p>(Art. 36 of PPA)</p> <p>(Art. 42, para.2, cl.1 of PPA)</p> <p>(Art. 24, para.1, cl.1 of the IRPPA)</p> <p>Item 5 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.5 of Error Typology</p> <p>Guidance sources of information: review the notice of amendment or additional information, in particular the part containing the date of dispatch of the notice, confirmation of receipt of the notice by the Publications Office of the EU; information from the PPR file on the public procurement; evidence from the buyer's profile showing the date of publication of the tender documents therein, etc.</p> <p>Use Table 1</p> <p>Analyse:</p> <ul style="list-style-type: none"> - whether the notice of amendment or additional information is sent to PPR and the Official Journal of the EU, - whether the notice of amendment or additional information is published on the buyer's profile, - the dates of PUBLICATION of the notice of amendment or additional information in the PPR / the Official Journal of the EU and in the buyer's profile. 		

Audit of European Union Funds Executive Agency

I.5. Time limit for access to the procurement documents		
24	<p>Has the contracting authority provided unlimited, full, free and direct access by electronic means to the procurement documents contained in the buyer's profile?</p> <p>Beginning of the time limit for access: the date of publication of the notice in the Official Journal of the EU and PPR (Art. 32, para. 1, cl.1 of PPA).</p> <p>End of the time limit for access: the deadline for receipt of tenders.</p> <p>The contracting authority is required to maintain a file of the specific public procurement procedure for a period of 3 years upon fulfilment of all obligations under the public contract (Art. 24, para. 3, cl. 2 of the IRPPA).</p> <p>ATTENTION! The access to the procurement documents is always FREE!</p> <p>(Art. 32 of PPA)</p> <p>(Art. 24 of the IRPPA)</p> <p>Item 4 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.4 of Error Typology</p> <p>Guidance sources of information: review the contract notice, in particular the part regarding the time limit for receipt of tenders, electronic file of the relevant public contract in the buyer's profile, and the evidence certifying the date of publication and date of termination of the access to the documentation, if this is the case.</p> <p>Analyse:</p> <ul style="list-style-type: none"> - The date of publication of the notice in the Official Journal of the EU; - The start date on which access to the procurement documents is provided and which is adequately certified; - The end date on which access to the procurement documents is provided and which is adequately certified; - The deadline for receipt of tenders; - The number of calendar days for the time limit for receipt of tenders and the time limit for access to the procurement documents. <p>The access may be restricted both at the beginning of the time limit for receipt of tenders and at its end.</p> <p>In case of a ratio of less than 80% between the time limit for receipt of tenders and the time during which the contracting authority has actually provided access to the procurement documents, please formulate a finding.</p> <p>If the time limit for receipt of tenders is extended, the certified access dates should cover the extended time limit for receipt of tenders.</p> <p>The financial impact of the infringement is calculated depending on the ratio determined pursuant to the procedure laid down in it. 4 of the Guidelines. If the ratio is within the range of 75% - 80%, the financial impact of the infringement is reduced to 2%.</p>	
I.6 Terms and conditions for awarding public contract		

Audit of European Union Funds Executive Agency

25	<p>Does the contract notice contain the required information under Art. 35, para. 2 and Appendix 4, Part B of PPA, as follows:</p> <ol style="list-style-type: none"> 1. e-mail address or internet address at which the procurement documents are available. If there is no unlimited, full, direct and free access - instruction on the manner in which this access can be obtained; 2. nature and volume of the contract; 3. estimated value of the public contract, including that of the lots; 4. the amounts of the guarantees for good performance and / or the of the collateralisation of the funds provided in advance, if the contracting entity has determined such funds; 5. requirements for the personal situation of the tenderers; 6. evaluation criterion for the tenders and evaluation indicators; 7. opportunity to provide variants of the tenders (if applicable); 8. opportunity to submit tenders for one or more lots; 9. place and time limit for receipt of tenders and on the changes in the time limit, if any; 10. place and date of opening of the tenders, and 11. whether the contract relates to an EU project? <p>ATTENTION! THE ESTIMATED VALUE OF THE CONTRACT AND THE INTERNET ADDRESS at which the procurement documents are available are MANDATORY elements of the contract notice.</p> <p>(Art. 32, para. 2, Art. 35, para. 2, Art. 55, para. 2 and Appendix 4, Part B of PPA)</p> <p>(Art. 111, para.4 of PPA)</p> <p>Guidance sources of information: Review the contract notice.</p> <p>Item 8 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.8 of Error Typology</p> <p>In each case where it has been found that the notice does not contain the amount or volume of the contract, or value in the legal cases, or internet address at which the procurement documents can be found, a conclusion on infringement of Art. 35, para. 2 of PPA should be made and the financial impact of the infringement should be analysed in accordance with it. 8 of the Guidelines.</p> <p>Analyse whether there are differences in the information contained in the notices sent to the Official Journal of the EU and PPR and in the procurement documents published on the buyer's profile.</p>		
26	<p>Are the amounts of the guarantees for good performance and advance payments lawful?</p> <p>The guarantee for good performance should not exceed 5% of the contract value.</p> <p>In case the contract is awarded to specialised enterprises or cooperatives of disabled persons, if the contract is reserved, the guarantee for good performance of the contract may not exceed 2% of the contract value.</p> <p>The guarantee for advance payments should not exceed the amount of these payments.</p>		

Audit of European Union Funds Executive Agency

	<p>(Art. 111, para.1 and para.3 of PPA) Item 9 and item 10 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.9 and item 1.10 of Error Typology Guidance sources of information: review the contract notice (II.2.14), Further information and / or para. III.2.2 - Terms and Conditions for Execution of the Contract. Consider whether the guarantees for good performance and / or advance payments are determined within the eligible amounts referred to in Art. 111, para. 2 and para. 3 of PPA. Their legal amount is assessed for each lot separately (if any).</p>		
27	<p>Do the scope of public contract referred to in the contract notice and procurement documents and the requirements laid down in the technical specifications ensure compliance with the principles of equal access and non-discrimination, free competition between entities and proportionality? The contracting authority is required to define the subject of the public contract in the contract notice and in the procurement documents in a sufficiently comprehensive, clear and non-discriminatory manner, without using discriminatory elements (e.g. when the scope is defined too broadly or incomplete, it is impossible to identify the specific activities which should be performed). Attention! An in-depth analysis of whether the activities covered by the contract are of interest to the same group of economic operators needs to be made (the assessment needs also be made for contracts which scope includes several lots where application for all lots is required). The contracting authority must specify the technical specifications, taking into account the requirements of Art. 48 and Art. 49 of PPA and § 2, cl. 54 of the Additional Provisions of PPA. The technical specifications must provide equal access for the persons to participate in the procedure and must not create unjustified barriers to competition. The technical specifications should not be defined by reference to a particular model, source, process, trademark, patent, type, origin or production which benefit or eliminate certain persons or goods. In exceptional cases, the use such description is allowed, if the words "or equivalent" are added after it. Important! Technical specifications are prepared for all public contracts - contracts for supply, provision of services and construction. In this regard, reference to Art. 31, para. 1, cl. 1 of PPA and § 2, cl. 54 of the Additional Provisions of PPA should be made. (Art. 2 of PPA) (Art 48, Art. 49 and § 2, cl. 54 of the Additional Provisions of PPA) Item 11 and item 12 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.11 and item 1.12 of Error Typology Guidance sources of information: review the contract notice, in particular the part regarding the subject of the contract (para. II.1.1., II. (para. II.1.1., II. 1.4., II.1.6., II.2.4.)</p>		

Audit of European Union Funds Executive Agency

	<p>and the procurement documents, in particular the part describing the scope of the contract, technical specifications (including bills of quantities, etc.), requirements for the variants of the tenders (if applicable), and the draft contract.</p> <p>Analyse the above guidance sources of information in order to determine whether the subject of the public contract is defined in a sufficiently comprehensive, clear and non-discriminatory manner, without using discriminatory elements.</p> <p>Analyse the technical specifications to assess whether the requirements of the legal provisions specified above have been applied.</p>		
28	<p><u>As regards procedures ending with conclusion of a framework agreement:</u></p> <p>Is there any prevention, restriction or distortion of competition in the conclusion of the framework agreement?</p> <p>The contracting authority is not entitled to enter into a framework agreement if it prevents, restricts or otherwise distorts the competition pursuant to Art. 81, para. 7 of PPA. The ban applies to both the subject of the contract and to all other requirements of the contracting authority.</p> <p>Attention! Upon conclusion of a framework agreement no new contractors can be involved.</p> <p>(Art. 81, para.6 and para.7 of PPA)</p> <p>Item 9, item 10, item 11 and item 12 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.9, item 1.10, item 1.11 and item 1.12 of Error Typology</p> <p>Guidance sources of information: review the contract notice, in particular the part regarding the subject of the contract (para. II.1.1., para. II.1.5., II. 1.4., II.2.4.), terms and conditions for participation (para. III.1.1, para.III.1.2., para. III.1.3, and para. III.1.3.), and the procurement documents, in particular the part describing the scope of the contract, technical specifications, requirements for the variants of the tenders (if applicable), and the draft contract.</p> <p>Analyse the subject of the contract in case of procedures ending with conclusion of a framework agreement to establish whether there is a breach of the prohibition referred to in Art. 81, para. 7 of PPA.</p>		
29	<p><u>As regards construction contracts:</u></p> <p>Are services or supplies which are not related to the construction work included in the scope of the contract?</p> <p>When determining the activities to be performed the contracting authority must not include in the scope of construction contracts services or supplies, which are not required for its execution.</p> <p>When analysing the activities included in the scope of the contract, the legal definition of construction referred to in Art. 3, para. 1, cl.1 and para. 2 of PPA should be taken into account.</p> <p>(Art. 21, para. 7 and para. 17 of PPA, Art. 3, para. 1, cl. 1 and cl.2 of PPA)</p>		

Audit of European Union Funds Executive Agency

	<p>Item 11 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.11 of Error Typology Guidance sources of information: review the contract notice, in particular the part regarding the scope of the contract (para. II.1.1., II. 1.2., II. 1.4., II.2.1., II.2.4), and the procurement documents, in particular the part describing the scope of the contract, technical specifications (including bills of quantities), and the draft contract. Analyse the scope of the contract and, in particular, the technical specifications, including the bills of quantities, to determine whether it contains supplies and services that are not required to perform the construction work.</p>		
30	<p><u>Applicable to contracts in which execution is ongoing and framework agreements:</u> Does the time limit for execution of public contracts with continuous or repeated performance exceed 5 years? Does the term of the framework agreement exceed 4 years? If the answer is yes, has the contracting authority stated any reasons thereof in the contract notice? The conclusion of a contract / framework agreement for a period longer than the specified one is always considered as exception and should be motivated by the contracting authority. The scope of the restriction covers only contracts in which execution is ongoing and continuous, not all public contracts. (Art. 113, para. 1 and para. 2, Art. 81, para. 3 and para. 4 of PPA) Item 9 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.9 of Error Typology Guidance sources of information: review the contract notice in item II. 1.5, para. II.2.4., para. II.2.7., and para. IV.1.3. Analyse the term of the public contract, if its execution is continuous or repeated / framework agreement. If it exceeds the number of indicated years, analyse whether this is justified and whether Art. 113, para. 2 and Art. 81, para. 3 of PPA has been violated.</p>		
31	<p>Are the selection criteria (minimum requirements to the suitability (legal capacity) to pursue professional activity, economic and financial standing and technical and professional capabilities of the tenderers) detailed in the contract notice? Are the documents proving the selection criteria detailed in the contract notice? The contracting authority is required to indicate in the contract notice all selection criteria and all documents needed to prove them. The contracting authority is not required to set selection criteria. It can decide whether or not to determine such criteria and which legal criteria to set. The freedom of the contracting authority is not unlimited. It is required to define selection criteria that are proportionate to the scope of the contract. In the event that the contracting authority has set selection criteria, it is also required to specify the documents proving their satisfaction (Art. 59, para. 5 of PPA). The contracting</p>		

Audit of European Union Funds Executive Agency

	<p>authorities have no legal basis to require the submission of documents under Art. 60, Art. 62 and / or Art. 64 of PPA, without defining the relevant selection criteria.</p> <p>The documents proving the selection criteria shall be submitted prior to the conclusion of the public contract, but the contracting authority should specify their type at the opening of the procedure and should make public the information about them through the contract notice. The contracting authority is not entitled to require the submission of these documents upon the initial submission of the tender by the tenderers.</p> <p>(Art. 59, para. 5 of PPA, in conjunction with Art. 2, para. 1, cl. 4 of PPA and Art. 60, Art.62 and Art.64 of PPA)</p> <p>(Art. 35, para.2, cl. 11 (b) (c) of Appendix 4, Part B of PPA)</p> <p>Item 8 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.8 of Error Typology</p> <p>Guidance sources of information: contract notice, procurement documents</p> <p>Use Table 2</p> <p>Analyse the selection criteria and the documents demonstrating them. Review the contract notice, in particular the part regarding the terms and conditions for participation (para. III.1.1., para. III.1.2., para.III.1.3., and para. III.2.3.) and the entire procurement documents. Requirements to the suitability of the tenderers and the documents demonstrating them are most likely specified in the following parts of the procurement documents - requirements to the suitability of the tenderers and instructions for preparation of tenders. Since there are cases where these requirements are listed in all parts of the procurement documents (on a non-systematic basis), in-depth analysis of all documents and their enclosures must be made.</p>		
32	<p><u>In case that evaluation criteria "cost level" and "best value for money ratio" are applied:</u></p> <p>Are criteria for selection of tenderers included as evaluation indicators in the contract notice and in the methodology for determining the comprehensive evaluation of tenders?</p> <p>According to Art. 70, para. 5 of PPA, the evaluation indicators should be related to the subject of the contract. It is prohibited to include criteria for evaluation of tenders as criteria for selection of tenderers - Art. 70, para. 12 of PPA.</p> <p>Important! The law allows for an exception to the prohibition referred to in Art. 70, para. 4, cl. 2 of PPA.</p> <p><u>Scope of the exception</u></p> <ul style="list-style-type: none"> - <i>regarding the subject of the contract</i> - when the quality of staff involved in the execution of the contract may have a significant effect on this execution (<i>in most cases, this refers to service contracts, rarely to construction and supply contracts</i>). For this reason, assessment whether the staff has a similar role in the execution of the contract should be made on a case-by-case basis; - <i>regarding the type of evaluation indicator</i> - the indicator should be related to the 		

Audit of European Union Funds Executive Agency

	<p>professional competence of the staff involved in the execution of the contract.</p> <p>- regarding the selection criteria - if the evaluation indicator is related to the professional competence of the staff / management staff, the latter can not be used as a selection criterion (Art. 63, para.1 cl.5 of PPA).</p> <p>The prohibition referred to in Art. 70, para. 12 of PPA applies to all selection criteria, subject to the exception above, rather than to those used by the contracting authority for the particular procedure. The scope of prohibition includes both the evaluation indicators and the sub-indicators and all evaluation components set out by the contracting authority in the methodology.</p> <p>(Art. 70, para. 1, para. 2, para. 3, para. 4 and para. 12 of PPA)</p> <p>(Art. 63, para.1, cl.5 of PPA)</p> <p>Item 9 and item 10 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.9 and item 1.10 of Error Typology</p> <p>Guidance sources of information: review the contract notice, in particular the parts regarding the award criteria (para. II.2.5.) and selection criteria (para. III.1.1 - III.1.3) and the procurement documents, in particular the part regarding the selection criteria and methodology for determining comprehensive evaluation of tenders.</p> <p>Analyse all evaluation indicators of the tenders, including the sub-indicators and evaluation components (if any) contained in the methodology for determining the evaluation of tenders and in the contract notice. Analyse and identify whether the indicators, including all sub-indicators and benchmarks, provide for evaluation of the suitability (legal capacity) to pursue professional activity, economic and financial standing of the tenderers and their technical and professional capabilities.</p> <p>In case the evaluation indicators / sub-indicators / evaluation components provide for evaluation of the professional competence of staff, analyse the following:</p> <ul style="list-style-type: none"> - regarding the subject of the contract - whether the quality of staff involved in the execution of the contract may have significant effect on this execution; - regarding the type of evaluation indicator - whether the combined indicator relates only to the professional competence of the staff involved in the execution of the contract; - regarding the selection criteria - whether requirements related to the professional competence of the tenderers are defined as selection criteria. 		
33	<p>Have terms and conditions or requirements which <u>give priority to or which unjustifiably restrict</u> the participation of persons in the procedure been formulated?</p> <p>Have any unlawful requirements been formulated in the procedure?</p> <p><u>Have any requirements which are not needed to establish the ability of the tenderers to execute the contract and / or which do not conform to the subject, value, volume and complexity of the contract been formulated?</u></p> <p>Unlawful, discriminatory and / or disproportionate terms and conditions or requirements may apply to the selection criteria (and in particular, the requirements relating to the</p>		

Audit of European Union Funds Executive Agency

<p>suitability (legal capacity) to pursue professional activity, economic and financial standing of the tenderers and their technical and professional capabilities), to the evaluation indicators and to other terms and conditions or requirements set by the contracting authority. The unclear requirements are also a precondition for unequal treatment and discrimination against tenderers.</p> <p>The award criteria should not lead to:</p> <ul style="list-style-type: none"> - <i>unequal treatment on a territorial basis</i> (more favourable treatment of national tenderers than foreign ones) - this is the case where foreign economic operators are not expressly allowed to prove their compliance with a national requirement at the time of submission of equivalent documents from the state in which they are established or are required to have equipment or facilities located on the territory of the Republic of Bulgaria at the time of submission of the tender; - <i>unequal treatment of different types of tenderers</i> - formulation of special requirements for certain type of tenderers apart from the exemption referred to in Art. 37 of the IRPPA; - <i>disproportion in relation to the subject, nature, and value of the contract</i> - requirements which do not correspond to the subject, nature and value of the contract and therefore place a burden on the economic operators, which they have no interest in bearing, since there is no certainty that they will be selected as contractors (for example, provision of certificate which is not required to complete the contract valid for the entire term of the public contract, provision of certificate / professional liability insurance as a requirement for participation in the procedure or provision of professional liability insurance in an amount higher than the legally established minimum as a requirement for participation in the procedure, etc.). <p>In the cases where the scope of the contract is divided into lots, the requirements for each lot should be proportionate to the relevant lot.</p> <p>IMPORTANT! The contracting authorities are not entitled to include terms and conditions or requirements related only to the execution of public contracts or to implementation of specific programmes or projects, or to the specification of sources of funding, or a number of executed contracts with a specific reference to their subject matter (Art. 63, para. 6 of the Public Procurement Act).</p> <p>IMPORTANT! The contracting authorities are not entitled to require from the tenderers to prove the selection criteria with information and documents which are not listed in PPA (Art. 59, para.3 of PPA). The documents proving the selection criteria are set out in Art. 62 and Art. 64 of PPA.</p> <p>The European Single Procurement Document (ESPD) is an integral part of the tenderers' offers. It is used to declare the lack of grounds for exclusion and compliance with the selection criteria - Art. 67 of PPA and for reference to publicly available sources containing information on the accomplishment of the selection criteria.</p> <p><i>Regarding the turnover</i></p> <p>According to Art. 61, para. 2 of PPA, the total turnover may not exceed more than twice</p>		
--	--	--

Audit of European Union Funds Executive Agency

<p>the estimated contract value. The restriction refers to the TOTAL turnover, rather than to the turnover generated in the area covered by the contract. Requirement for larger total turnover may be set, provided that the need for such turnover is justified in the contract notice. It is not enough to provide reasons, but the facts described therein need to prove the necessity.</p> <p><i>Regarding the experience</i></p> <p>When making the analysis, it should be taken into account that the relevant period of acquisition of experience is laid down in Art. 63, para. 1, cl. 1 and cl. 2 of PPA - at most 3 years from the date of submission of the tender - in case of supply and service contracts - and at most 5 years - in case of construction contracts. If the contracting authority has determined a reference period of experience shorter than 5/3 years, it should provide reasons for its decision. It is possible that a shorter period may unjustifiably limit the participation of persons in the procedure.</p> <p>ATTENTION! According to Art. 63, para. 2 of PPA, period longer than that stipulated in the law may be determined, if the nature of the contract so requires. The legality is assessed on a case-by-case basis, depending on its specificity, complexity and duration and depending on other factors which may determine a period of experience other than the statutory one.</p> <p>Please note that the experience to be proven should be related to activities (not to contracts), identical or similar to the subject and volume of the contract. Therefore, the contracting authorities are not entitled to require a certain number of executed contracts with specific indication of their subject.</p> <p><i>Regarding the tenderers - consortia</i></p> <p>The contracting authority may lay down requirements which relate to consortia and which differ from those applicable to the individual tenderers (Art. 59, para. 7 of PPA and Art. 37, para.1 of the IRPPA). The specific requirements may only relate to a requirement to designate a partner to represent the consortium for the purpose of the public contract and / or to agree on joint and several liability, where such a liability is not provided for by the applicable law.</p> <p>(Art. 59, para. 2, para. 3, para. 6 and para.7, Art. 60, Art. 61, para. 1-4 and para. 6, Art. 62-69 of PPA) (Art. 2, para.2 of PPA) (Art. 37 of the IR of PPA) Item 9 and item 10 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.9 and item 1.10 of Error Typology Guidance sources of information: review the contract notice and procurement documents. IMPORTANT! In order make a conclusion on the check question, analyse whether the requirements are in line with the subject, value, volume and complexity of the contract</p>		
--	--	--

Audit of European Union Funds Executive Agency

	<p>needs to be made.</p> <p>Analyse the terms and conditions specified in the contract notice and procurement documents, including the requirements to the suitability (legal capacity) to pursue professional activity, economic and financial standing of the tenderers and their technical and professional abilities.</p> <p><u>In case of public contracts which scope is divided into several lots:</u></p> <p>The analysis of the lack of restrictive requirements, selection criteria / other requirements to the tenderers is made independently for each lot.</p>		
34	<p>Is the methodology for determining comprehensive evaluation of tenders lawful?</p> <p>The Contracting Authority is required:</p> <p>to define evaluation indicators which relate to the subject of the public contract and which meet the requirements for their type referred to in Art. 70, para. 4 and / or Art. 71, para. 1 of PPA;</p> <p>to define evaluation method which is in line with Art. 70, para. 7 and Art. 71, para. 2 of PPA.</p> <p>Rules on the subject of evaluation and method to determine the evaluation procedure are contained in Art. 70 and Art. 71 of PPA and Art. 33 of the IRPPA.</p> <p>It should be established:</p> <ol style="list-style-type: none"> whether the type of the evaluation indicators falls within the scope of the options specified in Art. 70, para. 4, cl. 1-3 of PPA and Art. 71, para. 1, cl. 1 and cl. 2 of PPA; whether the method of awarding the scores is defined in accordance with the requirements of Art. 70, para. 7 of PPA and Art. 71, para. 2 et seq. of PPA. <p>IMPORTANT! In case of design and construction contracts the evaluation indicators should include characteristics relevant to each of the two activities.</p> <p>The following types of evaluation indicators are prohibited:</p> <ul style="list-style-type: none"> - indicators which take into account the payment time in favour of the contractor (suspended or deferred payment); - indicators which evaluate the amount or the refusal of advance payment, where advance payment is provided for; - indicators which use the completeness and manner of submission of information in the documents (plans, schedules and other documents related to the organisation and performance of the activities). <p>(Art. 70, para. 2-5, para. 7-11, Art. 71 of PPA, § 2, para. 11 of the Additional Provisions of PPA, Art. 33 of the IRPPA)</p> <p>Item 8 and item 9 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.8 and item 1.9 of Error Typology</p> <p>Guidance sources of information: methodology for determining comprehensive evaluation of tenders and the other part of the procurement documents related to the instructions described in the methodology.</p> <p>Analyse the methodology for determining comprehensive evaluation of tenders and the</p>		

Audit of European Union Funds Executive Agency

	<p>related parts of the procurement documents.</p> <p>Examine:</p> <ul style="list-style-type: none"> - Whether the evaluation indicators are related to the subject of the public contract; - Whether the evaluation indicators' type falls within the cases referred to in Art. 70, para. 4 of PPA and Art. 71, para. 1 of PPA; - Whether the defined indicators fall outside the scope of the prohibitions referred to in Art. 70, para. 9 and para. 10 of PPA, and Art. 33 of the IRPPA; - Whether the method of awarding the scores is defined in accordance with the requirements of Art. 70, para. 7 of PPA and Art. 71, para. 2 et seq. of PPA; - Whether all other rules under Art. 70 and Art. 71 of PPA are complied with. 		
I.7 Requests for clarification of the procurement documents			
35	<p>Is the time limit for replying to the submitted requests for clarification of the procurement documents met?</p> <p>The Contracting Authority must reply to the questions of interested parties within 4 days upon receipt of the request for clarification and within 10 /7 days before the expiry of the time limit for receipt of tenders.</p> <p>IMPORTANT! The clarifications are posted in the buyer's profile. The clarifications should not provide information on the persons who have requested them.</p> <p>(Art. 33, para.2 and para.4 of PPA)</p> <p>Item 3 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.3 of Error Typology</p> <p>Guidance sources of information: review the submitted requests for clarifications and the answers given, and the information available in the buyer's profile.</p> <p>Use Table 3</p> <p>Analyse and document in a model table for each submitted request:</p> <ul style="list-style-type: none"> - the date on which the request for clarification is received, including the name of the sender; - the date on which the answer to the requested clarification is published on the buyer's profile. <p>The letter of notification of the on-the-spot check provides the beneficiary with the template of Table 3 and requests for completion of the relevant information. Upon receipt of the completed table, the auditor analyses its content in order to verify the accuracy of the data specified therein.</p> <p>The auditor confirms the information contained in the table after an analysis made on the basis of the requests for clarification available in the procurement file and the replies published on the buyer's profile, respectively the proof of the replies published on the buyer's profile (in case of inactive file in the buyer's profile).</p> <p>The contracting authorities are required to maintain the buyer's profile in a manner that can</p>		

Audit of European Union Funds Executive Agency

	<p>certify the date of publication of the documents contained therein - Art. 24, para. 4 of the IRPPA.</p> <p>A sample can be used for this check in the cases where significant number of clarifications are requested. The auditor shall select an appropriate number of clarifications (not less than 10%) in order to review in detail the relevant documents proving the fulfilment of the obligation to provide clarification on a timely basis.</p> <p>The sample is based on a risk assessment, as the clarifications given within a period of 10-7 days before the expiry of the time limit for receipt of tenders must be checked. If, after individualisation of the requests which meet the above requirement, 10 % of the clarifications given are not included in the sample, clarifications requested by the tenderers excluded from the procedure and / or economic operators which have not submitted a tender are selected.</p>		
36	<p>Are the clarifications given by the contracting authority change the content of the requirements contained in the procurement documents?</p> <p>The contracting authority may neither change the requirements contained in the procurement documents with the clarifications therein, nor supplement, amend or cancel requirements. The information contained in the replies of the contracting authority must not contradict the information in the procurement documents.</p> <p>(Art. 33, para. 1, Art. 25, and Art.100, para. 1 of PPA)</p> <p>Item 8, item 9 and item 12 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.8, item 1.9 and item 1.12 of Error Typology</p> <p>Guidance sources of information: review all replies published on the buyer's profile and the procurement documents, including the contract notice.</p> <p>The check question relates to all clarifications, regardless of whether a sample was taken to verify the timely fulfilment of the obligation to provide clarification.</p> <p>Analyse whether the replies actually change the requirements contained in the documentation.</p> <p>If the clarification changes any requirements, a finding should be defined. The finding will have financial impact if the change relates to the requirements laid down in the contract notice.</p>		
II. EVALUATION OF TENDERS			
<p>Irregularities of the Guidelines (Appendix 1 to Art. 2, para. 1 of the Ordinance) relevant to this section:</p> <p>It. 13 - Amendment of the selection criteria after opening of the tenders resulting in incorrect acceptance of tenderers</p> <p>It. 14 - Amendment of the selection criteria after opening of the tenders resulting in incorrect rejection of tenderers</p> <p>It. 15 - Evaluation of tenderers by misapplication of the selection or award criteria</p> <p>It. 16 - Lack of transparency and / or equal treatment in the evaluation</p> <p>It. 17 - Amendment of the tender in the evaluation</p> <p>It. 18 - Negotiation during the public procurement procedure</p>			

Audit of European Union Funds Executive Agency

It. 20 - Rejection of tenders with abnormally low price			
It. 21 - Conflict of interests			
II. 1 Receipt and registration of tenders			
37	<p>Are all reviewed and evaluated tenders registered?</p> <p>All tenders received must be registered in the records management system and / or register of tenderers.</p> <p>(Art. 48, para. 1, para. 4, and para. 5 of the IRPPA)</p> <p>Item 16 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.16 of Error Typology</p> <p>Guidance sources of information: extract from the records management system and / or register of tenderers, list as per Art. 48, para. 4 of the IRPPA (if any), other documents.</p> <p>Compare whether the reviewed, evaluated, and ranked tenders correspond to those registered with the contracting authority.</p> <p>If, upon receipt of the tenders, a waiting list is placed in front of the place of receipt under Art. 48, para. 4 of the IRPPA, check whether the tenderers' offers registered at the closing time of receipt appear on the list. Tenderers of non-listed persons should not be accepted, opened, reviewed, evaluated and ranked.</p>		
II.2 Commission responsible for the procedure			
38	<p>Is the lack of the circumstances referred to in Art. 103, para. 2 of PPA declared by all commission members upon receipt of the list of tenderers?</p> <p>The members of the commission responsible for the procedure are required to submit declarations for lack of the circumstances referred to in Art. 103, para. 2 of PPA upon receipt of the list of tenderers.</p> <p>(Art. 103, para.2 of PPA)</p> <p>(§ 2, para. 21 of the Additional Provisions of PPA)</p> <p>(Art. 51, para.8 of the IRPPA)</p> <p>Item 21 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.21 of Error Typology</p> <p>Guidance sources of information: review the signed declarations and the protocol of the commission work in the relevant part.</p> <p>Analyse:</p> <ul style="list-style-type: none"> - the number of the commission members; - the date of receipt of the list of tenderers certified by a take-over certificate; - the number of declarations submitted; - the date of submission of the declarations; - the content of the declarations. <p>In case of any conflict of interest indicators between the contracting authority or commission members and persons having relation to the successful tenderer offer,</p>		

Audit of European Union Funds Executive Agency

	additional checks should be made, including in official registers and other public sources of information.		
II.3 Work of the commission responsible for the procedure			
39	<p>Have the public meetings of the commission (opening of tenders and opening of price offers) been conducted in compliance with the law? (Art. 53 of the IRPPA) (Art. 54, para.1 and para.2 of the IRPPA) (Art. 57, para.3 of the IRPPA) Item 16 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.16 of Error Typology Guidance sources of information: information contained in the contract notice on the procedure for opening of the tenders, commission work report, call for opening of the tenders and price offers.</p> <p><u>As regards the meeting for opening of the tenders</u> Analyse whether the date and place of the public meeting coincide with the date and place of the public meeting announced in the contract notice. If there are any differences, analyse: - whether the buyer's profile contains a communication with the date, time and place of the opening (how was it announced); - whether the communication is published 48 hours before the new time (when was it announced).</p> <p><u>As regards the meeting for opening of the price offers</u> Analyse: - whether the public meeting for opening of the price offers was held (if applicable); - whether the buyer's profile contains a communication with the date, time and place of the opening (how was it announced); - whether the announcement is made not later than two working days before the date of opening the price quotations (when was it announced).</p>		
40	<p><u>Applicable to all tenderers:</u> Has the protocol referred to in Art. 54, para. 7 of the IRPPA been sent to all tenderers? The above protocol is sent to all tenderers on the day of its publication in the buyer's profile. (Art. 54, para.7-12 of the IRPPA) Item 16 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.16 of Error Typology Guidance sources of information: review the letters, thereby sending the report to the tenderers, and other documents related to the establishment of the facts to be verified, if necessary.</p>		

Audit of European Union Funds Executive Agency

	<p>Analyse:</p> <ul style="list-style-type: none"> - the date and addresses of the letters with which the report is sent; - the date on which the report is published on the buyer's profile. 		
41	<p><u>Applicable to all tenderers:</u></p> <p>Have related parties submitted tenders as individual tenderers in the examined procedure?</p> <p>Related parties may not be independent tenderers in the same procedure. (Art 101, para.11 and § 2, cl. 45 of the Additional Provisions of PPA) (§ 1, cl. 13 and cl. 14 of the Additional Provisions of Public Offering of Securities Act) Item 13, item 17 and item 18 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.13, item 1.17 and item 1.18 of Error Typology</p> <p>Guidance sources of information: review the relevant documents (presentation of the tenderer and other documents containing identification information for the persons) in the offer of the tenderer selected as a contractor and the offers of the other tenderers, including of the excluded ones.</p> <p>Analyse the commission work protocol, and the decision to rank the tenderers and to select a contractor. If necessary, refer to official registers and other public sources of information.</p> <p>Review the offer of the tenderer selected as a contractor. Check whether the tenderer it is a related party within the meaning of § 2, cl. 45 of the Additional Provisions of PPA to the contracting authority and / or to the other independent tenderers.</p>		
42	<p><u>Applicable to the tenderer selected as a contractor:</u></p> <p>Has any subcontractor to the tenderer selected submitted an individual tender?</p> <p>If the contractor is a consortium, which is not registered as natural person or legal entity:</p> <ul style="list-style-type: none"> - has a consortium member participated in another consortium, which has submitted a tender under the same procedure or - has a consortium member submitted an individual tender? <p>Any person, who is a member of a consortium or who has already given his consent and is registered as a subcontractor with the tender of another tenderer is not allowed to submit an individual tender.</p> <p>In a public procurement procedure a natural person or a legal entity may participate in only one consortium. (Art. 101, para.8-10 of PPA) Item 13, item 17 and item 18 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.13, item 1.17 and item 1.18 of Error Typology</p> <p>Guidance sources of information: review the relevant documents in the offer of the tenderer selected as a contractor and the offers of the other tenderers, including of the</p>		

Audit of European Union Funds Executive Agency

	<p>excluded ones, official registers and other public sources of information.</p> <p>Review the offer of the tenderer selected as a contractor.</p> <p>Examine:</p> <ul style="list-style-type: none"> - whether the contractor has declared that it will use subcontractor (s); <p>For each subcontractor, examine individually the register of tenderers whether it has submitted individual tender..</p> <ul style="list-style-type: none"> - whether the tenderer selected as a contractor is a consortium of natural and / or legal entities. <p>If this is the case:</p> <ul style="list-style-type: none"> - analyse the consortium members; - check for each member individually, whether the member has submitted individual tender; - check for each member individually, whether the member has participated in another consortium, which has submitted a tender under the same public procurement procedure. 		
43	<p><u>Applicable to the tenderer selected as a contractor:</u></p> <p>Does the offer of the tenderer selected as a contractor meet the contracting authority's requirements?</p> <p>Does this offer contain all required documents and in particular:</p> <ol style="list-style-type: none"> 1. European Single Procurement Document (ESPD) prepared in accordance with Art. 67, para. 1 of PPA and Art. 43-47 of the IRPPA; 2. If the tenderers are consortia - a copy of the constituting document of the consortium, if requested by the contracting authority; 3. Documents proving the reliability measures taken, where applicable (see Art. 56 of PPA and Art. 46 of the IRPPA); 4. Documents as per Art. 60, Art. 62 and Art. 64 of PPA, if they are required by the contract notice and if Art. 67, para. 5 of PPA is applied after opening of the tenders; 5. Documents relating to the reliance on third party capacity: <ul style="list-style-type: none"> - documents proving the obligations assumed by third parties; - ESPD for the said third parties; - evidence of the compliance with the third parties' selection criteria in accordance with Art. 65, para. 2 and para.4 of PPA, if Art. 67, para. 5 of PPA is applied; 6. Documents relating to the use of subcontractors' services: <p>Information on the type and proportion of the activities entrusted to subcontracting, and:</p> <ul style="list-style-type: none"> - Evidence of the obligations assumed by the subcontractors; - ESPD for the subcontractors; - Evidence of the selection criteria depending on the type and proportion of the contract; and - Other evidence of the lack of reasons for exclusion from the procedure, if Art. 67, 		

Audit of European Union Funds Executive Agency

<p>para. 5 of PPA is applied.</p> <p>7. Technical proposal for execution of the contract, containing:</p> <ul style="list-style-type: none"> - authorisation document when the tender is not submitted by the legal representative of the tenderer; - proposal for execution of the contract; - declaration of consent to the clauses of the attached draft contract; - declaration of the tender validity time limit; - declaration proving that the tax and social security liabilities, environmental protection, employment protection and working conditions obligations, where applicable, are complied with when preparation of the tender; - samples, description and / or photos of the goods to be delivered, where applicable; - other information and / or documents requested by the contracting authority when this is required by the subject of the contract; <p>8. separate sealed opaque envelope marked "Proposed Price Parameters" containing the price offer.</p> <p>Attention! In the event that the contracting authority intends to evaluate the tenderers' technical proposals and price offers prior to the pre-selection, then the price offers can not be submitted in a sealed envelope;</p> <p>9. list of the submitted documents - if the tender is submitted on a paper copy.</p> <p>(Art. 67, para. 1, para. 5 and para. 6 of PPA) (Art. 65, and Art.66, para. 1, para. 5 and para. 6 of PPA) (Art. 101, para.4 of PPA) (Art. 37, para. 4, Art. 39 - Art.46, and Art. 47 of the IRPPA)</p> <p>Note: <u>As regards the requirements for personal situation and selection criteria:</u> - The lack of reasons for exclusion from the procedure and compliance with the selection criteria are declared in the ESPD - Art. 67 of PPA, in conjunction with Art. 47, para.3 of the IRPPA. In case of compliance of the information declared in the ESPD and the contracting authority's requirements for personal situation and selection criteria, the contracting authority may allow the tenderer to be evaluated and ranked! The contracting authority may request from the tenderers (including from the selected contractor) to submit at any time all or part of the documents proving the information specified in the ESPD when this is needed for the legal conduct of the procedure. The submission of documents certifying the selection criteria is not required by all tenderers, but only by the selected contractor at the signing of the public contract (unless the contracting authority has explicitly requested the relevant documents during the selection evaluation of tenders). Specifics in the submission of ESPD: - in case of tenderers - consortia which are not registered as legal entities - ESPD</p>		
--	--	--

Audit of European Union Funds Executive Agency

	<p>for each consortium member;</p> <ul style="list-style-type: none"> - in case of participation of subcontractors - ESPD for each subcontractor; - in case of reliance on third party resources - ESPD for each third party. <p><u>As regards the declaration of the circumstances under Art. 54, para. 1, cl. 1, cl.2 and cl.7 and Art. 55, para. 1, cl. 5 of PPA:</u></p> <ul style="list-style-type: none"> - the cited circumstances refer to the persons who represent the tenderer according to Art. 40 of the IRPPA; - in the cases where the circumstances refer to more than one person, all persons sign the same ESPD; - when there is a need for protection of the personal data or in case of any difference in the circumstances related to the personal situation, the information on the requirements of Art. 54, para. 1, cl. 1, cl.2 and cl.7 and Art. 55, para. 1, cl.5 of PPA is completed in a separate ESPD for each person or for some of the persons. In this case, when more than one ESPD is submitted, the circumstances related to the selection criteria are contained only in the ESPD signed by a person who can independently represent the respective economic operator. <p>Item 13, item 15, item 16, item 17 and item 18 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.13, item 1.15, item 1.16, item 1.17 and item 1.18 of Error Typology</p> <p>Guidance sources of information: review all documents in the offer of the tenderer selected as a contractor.</p> <p>Use Table 4</p> <p>Review the entire offer of the tenderer selected as a contractor and assess whether it meets ALL CONTRACTING AUTHORITY'S REQUIREMENTS, in particular, both the requirements to the personal situation and selection criteria of tenderers and for the technical proposal and proposal for execution of the contract. This includes also check whether the tenderer has declared the circumstances under Art. 54 and Art. 55 of PPA by all liable persons.</p> <p>In case of any missing documents, analyse and indicate whether they are described as such in the relevant commission work protocol. Assess whether the established deviations can be considered as a reason for exclusion of the tenderer from the procedure.</p> <p>If the scope of the contract is divided into lots, the check is made for each tenderer selected as a contractor for each lot being examined.</p> <p>ATTENTION! ANALYSE WHETHER THE TENDERER SELECTED AS A CONTRACTOR IS TREATED MORE FAVOURABLE THAN THE TENDERERS EXCLUDED FROM THE PROCEDURE.</p> <p>To do this, verify whether the tenderer selected as a contractor meets the requirements listed as reasons for exclusion of the tenderers from the procedure / the relevant lot.</p>		
44	<p><u>Applicable to the tenderer selected as a contractor:</u></p> <p>Has the commission requested from the tenderer selected as a contractor justification</p>		

Audit of European Union Funds Executive Agency

	<p>if the price and / or cost proposals is 20% more favourable than the average value of the proposals contained in the other tenders subject to evaluation?</p> <p>Has the written justification been submitted within 5 days upon receipt of the request for justification?</p> <p>Is the written justification related to the circumstances referred to in Art. 72, para. 2, cl. 1-5 of PPA?</p> <p>(Art. 72 of PPA)</p> <p>The justification is evaluated in terms of its completeness and objectivity regarding the circumstances referred to in Art. 72, para. 2 of PPA to which the tenderer refers. If necessary, the commission may require clarifying information.</p> <p>According to Art. 72, para. 3 of PPA, the tenderer should provide evidence of the data specified in the justification.</p> <p>The justification is rejected and the tenderer is excluded if the justification is not related to any of the options referred to in Art. 70, para. 2 of PPA and / or when the submitted evidence is not sufficient to justify the proposed price or costs.</p> <p>The time limit referred to in Art. 72, para. 1 of PPA is 5 calendar days.</p> <p>Item 15 and item 20 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.15 and item 1.20 of Error Typology</p> <p>Guidance sources of information: review of the proposals of the tenderers subject to evaluation, commission work protocol, and the obtained justifications and evidence.</p> <p>Analyse:</p> <ul style="list-style-type: none"> - whether the value of the proposals related to the price and / or costs of the TENDERER SELECTED AS A CONTRACTOR is 20 % lower than the average value of the proposals contained in the other tenders subject to evaluation (the latter can not be less than two); - whether the time limit for submission of the written justification is complied with (see the date of receipt of the request and the date of receipt of the written justification); - whether the written justification concerns the circumstances referred to in Art. 72, para. 2, cl. 1-5 of PPA. - whether sufficient evidence of the proposed price and / or cost is provided. 		
45	<p><u>Applicable to the tenderer selected as a contractor:</u></p> <p>Has the commission allowed prohibited amendment of the proposal for execution of the contract of the tenderer selected as a contractor contained in the technical proposal and / or price offer within the procedure under Art. 54, para. 7-13 of the IRPPA?</p> <p>The commission is not allowed to amend the proposals contained in the technical proposal and / or price offer. According to Art. 104, para. 5 of PPA, the commission may verify at any time the data requested by the tenderers and may request from the tenderers clarifications about the data declared by them and additional evidence of the data from</p>		

Audit of European Union Funds Executive Agency

	<p>the documents contained in the technical proposal and / or price offer. This option may not be used to change the technical proposal and / or price offer.</p> <p>(Art. 104, para.4 and para.5 of PPA) (Art. 54, para.7-13 of the IRPPA) Item 17 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.17 of Error Typology</p> <p>Guidance sources of information: review the proposals of the tenderer selected as a contractor, commission work protocol, correspondence with the tenderers and other bodies or persons, and other documents.</p> <p>Analyse the documents contained in the public procurement file to determine whether the commission has allowed amendment to the offer of the tenderer selected as a contractor to be made.</p>		
46	<p><u>Applicable to the ranked tenderers:</u></p> <p>Has the commission applied correctly and objectively the methodology for evaluation of tenders? Are the scores correctly calculated?</p> <p>The commission reviews the eligible tenders and evaluates them in accordance with the previously announced terms and conditions. The commission applies the methodology for determining comprehensive evaluation of tenders in respect of all tenders, subject to evaluation without amending it.</p> <p>(Art. 109, para.2 of PPA) (Art. 56, para.2 and Art.58 of the IRPPA) Item 15, item 16, item 17 and item 18 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.15, item 1.16, item 1.17 and item 1.18 of Error Typology</p> <p>Guidance sources of information: review the documents subject to evaluation in the tenders of the eligible tenderers and the commission work protocol.</p> <p>Analyse whether the methodology for determining comprehensive evaluation of tenders has been applied accurately and objectively in respect to the RANKED tenders. Calculate the scores according to the methodology for evaluation of tenders and attach the created working document.</p>		
47	<p><u>Applicable to the removed tenderers, if any:</u></p> <p>When reviewing the documents referred to in Art. 39, para. 2 of the IRPPA have all missing documents and / or inconsistencies with the requirements of the tenderers' personal situation, selection criteria and / or other requirements of the contracting authority (including factual errors) of the tenderers excluded from the procedure in connection with these documents been properly found?</p> <p>When reviewing the documents referred to in Art. 39, para. 2 of the IRPPA the commission is required to identify all missing documents and inconsistencies with the requirements of the contracting authority regarding the personal situation of the tenderers and selection criteria.</p>		

Audit of European Union Funds Executive Agency

	<p>According to the IRPPA, when the commission has found any lack of documents and / or inconsistencies in the selection criteria and tenderers' personal situation the tenderer may replace, at its discretion and in accordance with the requirements of the contracting authority, submitted documents or may submit new documents and information which, in its opinion, will meet the requirements set by the contracting authority.</p> <p>IMPORTANT! The commission is not entitled to determine the documents to be submitted by the tenderer. It only establishes the irregularity in the documents, indicates them in the protocol referred to in Art. 54, para. 7 of the IRPPA and notifies the tenderers thereof.</p> <p>IMPORTANT! The additional information provided may also cover facts and circumstances that have occurred after the time limit for receipt of tenders.</p> <p>(Art. 104, para.4 and para.5 of PPA) (Art. 54, para.7-13 of the IRPPA)</p> <p>Item 14, item 15 and item 16 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.14, item 1.15 and item 1.16 of Error Typology</p> <p>Guidance sources of information: review the commission work protocol and the offers of the tenderers excluded from the procedure, in particular the part regarding the personal situation and selection criteria and the submitted additional documents.</p> <p>The analysis is made for each excluded tenderer individually in order to confirm the legality of the commission's activities and, in particular, that the commission has not restricted the tenderer's right to remedy the irregularity.</p> <p>Analyse:</p> <ul style="list-style-type: none"> - whether there are tenderers excluded from the procedure in connection with inconsistencies in the documents relating to the tenderers personal situation and selection criteria or other documents, which are not related to the technical proposals and price offers made for the purpose of execution of the contract; - if yes, determine whether the deviations indicated as a reason for exclusion of the tenderer from the procedure are set out in the record referred to in Art. 104, para. 4 of PPA; - whether the commission has provided an opportunity to remove the inconsistency; - whether the commission has restricted the tenderer's right to decide how to remove the inconsistency. 		
48	<p><u>Applicable to the excluded tenderers, if any:</u></p> <p>Do the tenderers excluded from the procedure and the tenders actually fail to meet the contracting authority's requirements?</p> <p>Have the tenderers excluded from the procedure been asked for justification, if they were excluded due to unusually favourable tender?</p> <p>Do the justifications presented by the tenderers excluded from the procedure actually fail to meet the requirements of Art. 72, para. 2 of PPA?</p>		

Audit of European Union Funds Executive Agency

<p>Are the requirements in respect of which the tenderers have been excluded from the procedure restrictive?</p> <p>The reasons for exclusion of tenderers from the procedure are set out in Art. 54, Art. 55 and Art. 107 of PPA.</p> <p>The tender is excluded from the procedure if it does not meet the requirements of Art. 54 and Art.55 of PPA and / or if the tenderer does not meet the selection criteria and / or other requirements of the contracting authority.</p> <p>Tenders that do not meet the contracting authority's requirements, i.e. do not contain proposals on all parameters of the technical specifications are subject to exclusion.</p> <p>Attention!</p> <p>Article 55 of PPA specifies the so-called "reasons for optional exclusion". The contracting authority considers whether to use any of these reasons to exclude tenderers from certain procedure. The contracting authority indicates the reasons stated in the contract notice. Thereafter, they become mandatory during the procedure.</p> <p>In addition to the requirements of Art. 54 and Art. 55 of PPA, the specific reasons for exclusion are:</p> <ul style="list-style-type: none"> - tenderer who does not meet the selection criteria set or fails to meet another requirement specified in the contract notice; - tenderer who has submitted a tender that does not meet: the pre-announced terms and conditions of the contract; rules and requirements for environmental protection, social and labour law, applicable collective agreements and / or provisions of the international environmental, social and labour law listed in Appendix 10 to PPA; - tenderer which has not submitted justification for the proposed more favourable proposal within the stipulated time limit or which tender has not been accepted according to Art. 72, para. 3 - 5 of PPA; - tenderers which are related parties <p>(Art. 107 of PPA)</p> <p>(Art. 101, para.4 of PPA)</p> <p>(Art. 72 of PPA)</p> <p>(Art. 54, Art. 55 of PPA, Art.39, para. 2 to 5 of the IRPPA)</p> <p>Item 14, item 15, item 16 and item 17 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.14, item 1.15, item 1.16 and item 1.10 of Error Typology</p> <p>Guidance sources of information: review the relevant documents of the tenderers excluded from the procedure, commission work protocol, and the decision to rank the tenderers and to select a contractor.</p> <p>For each tenderer, analyse individually whether the reasons for its exclusion listed in the record exist, and whether the tenderer actually excluded from the procedure has not submitted any of the required documents and / or does not meet the requirements of the contracting authority. For this purpose, it is necessary to review the tenders of the</p>		
---	--	--

Audit of European Union Funds Executive Agency

	<p>excluded tenderers, in particular the part relevant to the reason for their exclusion. The review includes:</p> <p>1) identifying the condition stated as a reason for exclusion of the tenderer from the procedure - in PPA, IRPPA and procurement documents, including the contract notice. It is important to identify the actual content of the grounds for the exclusion;</p> <p>2) determining the content of the tender in the part that does not meet the requirements of the contracting authority.</p> <p>IMPORTANT! If, as a result of the check, you have found that the requirement on which the tenderer has been excluded from the procedure is discriminatory / restrictive / unlawful, please document the results of the check in question No 33.</p> <p>The exclusion on the basis of a discriminatory / restrictive / unlawful requirement is ALWAYS reasonable if the tenderer / tender does not meet this requirement. The same applies to the procedure.</p>		
II. 4 Decision on ranking and selection of a contractor			
49	<p>Has the contracting authority selected as a contractor the successful tenderer ranked first or second, if applicable?</p> <p>The contracting authority is required to designate as a contractor the tenderer ranked first by the commission.</p> <p>(Art. 109 of PPA)</p> <p>(Art. 60 of the IRPPA)</p> <p>Item 15-18 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.15-1.18 of Error Typology</p> <p>Guidance sources of information: review the decision on selection of a contractor and the report and protocols of the commission work.</p>		
50	<p>Has the decision on selection of a contractor been sent to all tenderers within 3 days from the date of its issuance?</p> <p>Has the decision on selection of a contractor been published on the buyer's profile on the day of its dispatch to the tenderers?</p> <p>The contracting authority sends the decision on selection of a contractor to the tenderers within three days from the date of its issuance.</p> <p>The contracting authority publishes this decision on the buyer's profile on the day it is being dispatched to the tenderers.</p> <p>Important! The law provides for three options to send the decision on selection of a contractor, and the manner chosen must allow the date of its receipt to be verified.</p> <p>Attention! If the decision has not been received in one of the manners provided for in the PPA, the contracting authority publishes a notice to the relevant tenderer (s) on the buyer's profile. The decision is deemed to have been served on the date of publication of the notice.</p> <p>(Art. 42, para. 2, and Art. 43, para. 1-4 of PPA)</p>		

Audit of European Union Funds Executive Agency

	<p>(Art. 24, para. 1, cl.2 and cl.5 of the IRPPA) Item 16 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.16 of Error Typology Guidance sources of information: review the letters, faxes and / or emails whereby the contracting authority has sent the decision on ranking of the tenderers or other documents from which verifiable facts can be ascertained and the information published on the buyer's profile. Analyse: - the date of decision on selection of a contractor; - the date of dispatch of the cover letter, fax or e-mail, whereby the decision is sent (separately for each tenderer), or - the date of receipt of the decision by hand (separately for each tenderer); - the date of publication of the decision on the buyer profile.</p>		
II.5 Decision on termination of the procedure			
51	<p>Has the procedure been terminated? Does the contracting authority's decision contain reasons justifying the occurrence of one of the following circumstances:</p> <ol style="list-style-type: none"> 1. No tender has been submitted; 2. All tenders do not comply with the submission requirements, including in terms of the form, manner and time limit, or are inappropriate; 3. Refusal of the tenderer ranked first / second to conclude a contract; 4. Violations in the opening and conduct of the procedure, which can not be removed without changing the terms and conditions under which the procedure is announced; 5. Failure to conclude a contract due to violation of any of the terms and conditions referred to in Art. 112, para. 1 of PPA; 6. All tenders which meet the requirements previously announced by the contracting authority exceed the financial resources, which it is able to provide (see Art. 110, para. 3 of PPA); 7. It is no longer required to conduct the procedure or to award the contract as a result of substantial change in the circumstances or in case of failure to provide funding for the execution of the contract due to reasons, which the contracting authority could not have foreseen (see Art. 114, of PPA); 8. Significant changes in the terms and conditions of the announced contract which would change the range of stakeholders need to be made; 9. Only one tender has been submitted; 10. There is only one suitable tender; 11. The tenderer ranked first (see Art. 112, para. 3 of PPA): <ol style="list-style-type: none"> a) has refused to conclude a contract; b) has failed to meet any of the requirements referred to in Art. 112, para. 1 of PPA, <p>or</p>		

Audit of European Union Funds Executive Agency

	<p>c) has failed to demonstrate that there are no reasons for exclusion from the procedure?</p> <p>The contracting authority <i>is required</i> to terminate the procedure on the grounds referred to in items 1-8 of this question in case of occurrence of the circumstances referred to in Art. 110, para. 1 of PPA. If this is the case, a reasoned decision justifying the occurrence of all circumstances is issued.</p> <p>The contracting authority <i>may</i>, at its discretion, terminate the procedure on the grounds referred to in items 9-11 of this question in case of occurrence of the circumstances referred to in Art. 110, para. 2 of PPA.</p> <p>(Art. 110, para. 1, and para. 2 of PPA)</p> <p>Item 14-20 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.14-1.20 of Error Typology</p> <p>Guidance sources of information: review the report and protocol of the commission work, decision to terminate the procedure and the documents justifying the facts contained in the reasons for the issuance of the decision.</p> <p>Analyse:</p> <ul style="list-style-type: none"> - whether the decision contains the reasons for all circumstances, justifying the occurrence of the relevant legal basis; - whether the occurrence of all circumstances referred to in the relevant legal basis is confirmed by the evidence available at the contracting authority. 		
52	<p>Has the contracting authority conducted a negotiated procedure without prior notice of the planned procurement?</p> <p>In the event that a negotiated procedure for awarding this contract has been conducted, it is necessary to check that the statutory requirements for its selection have been met,</p> <p><u>FILLING A CHECKLIST FOR EXAMINATION OF NEGOTIATED PROCEDURE WITHOUT PRIOR NOTICE.</u></p> <p>(Art. 79 of PPA)</p> <p>Item 19 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.19 of Error Typology</p>		
II.6 Framework agreement			
53	<p><u>As regards framework agreements, which lay down all terms and conditions for execution of the contract:</u></p> <p>Does the framework agreement correspond to the project contained in the procurement documentation and to the proposals of the potential contractor / potential contractors on the basis of which they were designated as such?</p> <p>Have the predetermined terms and conditions for selection of a contractor to each particular contract been met?</p> <p>The contracting authority is required to conclude a framework agreement which, in substance, corresponds:</p>		

Audit of European Union Funds Executive Agency

	<p>- (1) to the terms and conditions set out in the contract documentation, and</p> <p>- (2) to the proposals of the tenderers identified for potential contractors.</p> <p>In case that the framework agreement is concluded with more than one contractor, it must specify the terms and conditions based on which the contractor will be selected as such to each specific contract.</p> <p>(Art. 2, para.1, cl.1 of PPA) (Art. 82, para.1 of PPA) Item 17 and item 18 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.17 and item 1.18 of Error Typology</p> <p>Guidance sources of information: review the procurement documentation, and in particular the draft framework agreement contained therein, and the offer of the tenderers designated for potential contractors.</p> <p>Analyse whether the terms and conditions of the framework agreement correspond to those of the framework agreement contained in the procurement documentation and to the proposals of the tenderers designated for potential contractors.</p>		
54	<p><u>As regards framework agreements, which do not lay down all terms and conditions for execution of the contract:</u></p> <p>If the framework agreement is concluded with one person, has the contracting authority requested in writing from that person to supplement its tender?</p> <p>If the framework agreement is concluded with more than one person, has an internal competitive choice been made?</p> <p>Attention! The contracting authority may also make internal competitive choice after it has entered into a framework agreement with more than one persons which sets out all terms and conditions only if it has provided for the conclusion of such framework agreement in the procurement documentation. If this is the case, the contracting authority must specify in the documentation objective criteria based on which it will make internal competitive choice or will directly apply the terms and conditions of the framework agreement and the agreed indicators subject to internal competitive choice.</p> <p>(Art. 82, para.1, para.3, para.7 and para.8 of PPA) Item 16, item 17 and item 18 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.16, item 1.17 and item 1.18 of Error Typology</p> <p>Guidance sources of information: review the contract notice, documentation and the written correspondence between the contracting authority and potential contractor / potential contractors.</p> <p>Analyse the terms and conditions in the contract notice and procurement documentation. If the contracting authority has made an internal competitive choice, check the requirements based on which the selection was made and the compliance of the terms and conditions with the initially announced ones to find out whether Art. 82, para. 2,</p>		

Audit of European Union Funds Executive Agency

	para.3, para.7 and para.8 of PPA has been violated.		
55	<p>In case of internal competitive choice, is the choice lawfully made, namely:</p> <ul style="list-style-type: none"> - Has a written invitation been sent to all parties to the framework agreement? - Has an appropriate time limit for receipt of tenders been set - minimum 10 days (Art.78 of the IRPPA)? - Have the commission members declare the lack of obstacles for participation in its work under Art. 103, para. 2 of PPA and Art. 51 of the IRPPA; - Is the criterion for making internal competitive choice contained in the notice, procurement documents and framework agreement and, where applicable, indicators and methodology for determining comprehensive evaluation of tenders; - Has the contractor to the public the contract been selected on the basis of the specified award criterion? <p>Attention! In order to make the internal competitive choice, the contracting authority may apply the indicators and methodology used to conclude the framework agreement, may refine them, where necessary, or may incorporate new indicators and methodology, where appropriate.</p> <p>To determine the provisions of the public contract, the contracting authority follows the procedure referred to in Art. 82 of PPA.</p> <p>(Art. 82, para. 1, para. 4 - 6 of PPA) (Art. 78 of the IRPPA) (Art. 103, para. 2 of PPA and para. 51 of the IRPPA)</p> <p>Item 16, item 17 and item 18 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.16, item 1.17 and item 1.18 of Error Typology</p> <p>Guidance sources of information: review the procurement documentation, and contracting authority's correspondence on the conclusion of the specific contract - letters of notice, submitted tenders, etc.</p> <p>Analyse:</p> <ul style="list-style-type: none"> - whether a written invitation has been sent to all persons with whom framework agreement has been signed - number and date of the letter - and the addressees; - whether the time limit for submission of tenders is shorter than 10 days; - whether the commission members have declared lack of obstacles for participation in its work; - whether the competitive choice criterion is indicated in the notice, procurement documents and framework agreement; - whether the ranking meets the defined competitive choice criteria / evaluation methodology - for this purpose, it is necessary to repeat the evaluation of the received tenders. 		

Audit of European Union Funds Executive Agency

II. 7 Public contract			
56	<p><u>Applicable also to public contracts concluded as a result of framework agreement:</u></p> <p>Is the public contract concluded:</p> <ul style="list-style-type: none"> - upon expiry of 14 days from the date of notification of the stakeholders of the decision on selection of a contractor and - after the entry into force of this decision or after the entry into force of the ruling which allows the preliminary enforcement of this decision? <p>The contracting authority may conclude public contract before expiry of the term referred to in Art. 112, para. 6 of PPA, when the tenderer selected as a contractor is the only interested one and when the contract is concluded on the basis of a framework agreement signed with one tenderer.</p> <p>The contracting authority may conclude public contract before entry into force of all decisions on the procedure, unless in the cases of provisional enforcement.</p> <p>(Art. 112, para. 6, para. 7, cl. 2, and cl.3 and para. 8 of PPA)</p> <p>(Art. 68, para.1 of the IRPPA)</p> <p>Item 18 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.18 of Error Typology</p> <p>Guidance sources of information: review the return receipts of the letters, faxes and emails sent, which contain the decision on selection of a contractor, buyer's profile data, complaints, etc., if any, acts of CPC and SAC and the public contract.</p> <p>Analyse:</p> <ul style="list-style-type: none"> - the dates on which the decision on selection of a contractor is received (this is the start date of the period for bringing an action); - the date on which the period for bringing an action has expired, - the date of the concluded contract; - information on the date on which the decision / ruling for provisional enforcement has entered into force. 		
57	<p><u>Applicable also to public contracts concluded as a result of framework agreement:</u></p> <p>Before conclusion of the public contract, has the tenderer selected as a contractor:</p> <ul style="list-style-type: none"> - submitted registration as a legal entity of the consortium selected as a contractor, if applicable; - submitted documents proving the lack of the circumstances under Art. 54, para. 1, and Art. 55, para. 1 of PPA; - provided evidence of the compliance with the selection criteria; - submitted a document proving the payment of the guarantee for good performance; - made the relevant registration, submitted a document or fulfilled any other requirement which is required by a statutory or administrative act and by the contracting authority at the opening of the procedure? <p>Important! According to Art. 58, para. 6 of PPA, the tenderer selected as contractor is not</p>		

Audit of European Union Funds Executive Agency

<p>required to submit documents issued by the relevant competent authorities proving the lack of the circumstances under Art. 54, para. 1, cl. 1, cl. 3 and cl.6 of PPA and of the circumstances under Art. 55, para. 1, cl. 1 of PPA specified in the notice, when the circumstances in the relevant documents are accessible through free of charge public register or when the information or access to it is officially provided by the competent authority of the contracting authority.</p> <p>Attention! The contracting authority does not enter into a contract in the cases where the tenderer ranked first refuses to conclude a contract or fails to fulfil any of the above requirements. In this case, the contracting authority may amend the final decision, in particular the part on selection of a contractor, and may determine, based on a reasoned decision, the tenderer ranked second as a contractor.</p> <p>(Art. 112, para. 1 - 3, Art. 67, para. 6 and Art. 58 of PPA)</p> <p>Item 17 and item 18 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.17 and item 1.18 of Error Typology</p> <p>Guidance sources of information: review the certificates issued by the relevant competent authorities, documents proving the compliance with the selection criteria, document proving the payment of the guarantee for good performance, contract notice, decision to open the procedure, etc.</p> <p>Analyse the date and publisher of the following documents:</p> <ul style="list-style-type: none"> - certificate of registration as a legal entity (applicable if the contractor is a consortium, which is not registered as such and if the contracting authority has formulated and justified such a requirement in the contract notice and in the decision to open the procedure); - judicial records of the persons referred to in Art. 54, para. 2 and Art. 55, para. 3 of PPA (taking into account Art. 67, para. 6 of PPA, Art. 39, para. 2, cl.1, Art.40 and Art. 41 of the IRPPA); - certificate of good standing, if the tenderer has not submitted UIC under Art. 23 of the Commercial Register Act; - certificate proving the lack of liabilities to the state / municipality (taking into account Art. 87, para. 10 of the Tax and Social Security Procedure Code and Art. 4, para. 3 of the Local Taxes and Fees Act); - certificate issued by the authorities of General Labour Inspectorate Executive Agency; - the documents proving the selection criteria referred to in the notice; - document proving the payment of guarantee for good performance - payment order, receipt, bank guarantee or insurance; check whether the document certifies the fulfilment of the entire obligation; - document proving the payment of guarantee for advance payment, if applicable - payment order, receipt, bank guarantee or insurance; check whether the document certifies the fulfilment of the entire obligation; 		
--	--	--

Audit of European Union Funds Executive Agency

	- other registration documents.		
58	<p><u>Applicable also to public contracts concluded as a result of a framework agreement:</u> Do the clauses of the public contract comply with the clauses of the draft contract annexed to the procurement documentation? The contracting authority is required to conclude the public contract without changing the terms and conditions for its award announced at the opening of the public procurement procedure. Attention! Changes can be made AS AN EXCEPTION, when they are insignificant and are imposed by circumstances occurring during the procedure or upon its completion. The changes are essential when one or more of the following circumstances have occurred: - the change introduces terms and conditions which, if they were a part of the public procurement procedure, (1) would involve additional tenderers, (2) would allow the participation of tenderers other than those originally selected or (3) would lead to acceptance of a tender other than the initially approved one; - the change brings benefits to the contractor, which were not known to the other tenderers; - the change affects the scope or volume of the public contract or framework agreement; - the contractor has been replaced by a new one under terms and conditions other than those referred to in Art. 116, para. 1, cl.4 of PPA. (Art. 2, para. 1, cl.1, Art. 112, para.4, Art. 116, para.1, cl. 4 and cl.5 and para.5 of PPA) Item 17 and item 18 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.17 and item 1.18 of Error Typology Guidance sources of information: review the concluded public contract and the draft contract contained in the procurement documents. If the contract is concluded on the basis of a framework agreement, review the signed framework agreement. Compare the signed public contract with the draft contract attached to the public documents and examine whether there are any differences between them. If the contract is concluded after the signing of a framework agreement, review both the draft public contract contained in the documentation and the framework agreement.</p>		
59	<p><u>Applicable also to public contracts concluded as a result of a framework agreement:</u> Does the public contract include all proposals of the offer of the tenderer selected as a contractor? (Art. 112, para.4 of PPA) Item 17 and item 18 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance Item 1.17 and item 1.18 of Error Typology</p>		

Audit of European Union Funds Executive Agency

	<p>Guidance sources of information: review the concluded public contract and the documents containing the proposals on the basis of which the tenderer is selected as a contractor.</p> <p>Compare the signed public contract with the relevant proposals in the offer of the tenderer selected as a contractor and determine whether there are any differences between them.</p> <p>Pay attention to the term of the contract, contract value, technical specifications, activities provided for subcontracting (whether the type, proportion and subcontractor are retained), and proposals to be evaluated.</p>		
60	<p><u>Applicable also to public contracts concluded as a result of a framework agreement:</u></p> <p>Has information on the concluded contract / framework agreement been communicated to the Public Procurement Agency and to the Official Journal of the EU within 30 days from the date of signing of the public contract / framework agreement?</p> <p>(Art. 26, para.1 of PPA)</p> <p>Guidance sources of information: review the letters / documents sent in which the information to the Public Procurement Agency / Official Journal of the EU is contained and the public contract.</p> <p>Analyse the date on which the information is sent and the date of the signed contract.</p>		
III. EXECUTION OF THE PUBLIC CONTRACT			
<p>Irregularities of the Guidelines (Appendix 1 to Art. 2, para. 1 of the Ordinance) relevant to this section: It. 22 - Substantial change of the contract elements specified in the contract notice or in the specifications</p> <p>It. 23 - Limitation of the scope of the contract</p> <p>It. 24 - Award of additional construction / service / supply contracts (if this award constitutes a substantial change of the original terms and conditions of the contract) without competition and in the absence of one of the following requirements: - extreme urgency caused by unpredictable events; - unforeseen circumstance for performance of additional construction work, services, supplies.</p> <p>It. 25 - Additional construction work or services which exceed the restriction provided for by the relevant provisions</p>			
61	<p><u>Applicable also to public contracts concluded as a result of a framework agreement:</u></p> <p>Does the execution of the contract correspond to the initially announced terms and conditions and signed public contract?</p> <p>The contracting authority may not amend the signed public contract except in exceptional cases.</p> <p>The contracts may only be amended in case of existence of one or more of the following circumstances:</p> <ul style="list-style-type: none"> - the amendments are provided for in the procurement documentation and in the contract by clear, precise and unambiguous instructions, and they must not lead to a change in the scope of the contract or framework agreement; 		

Audit of European Union Funds Executive Agency

<p>- due to unforeseen circumstances, there has been a need for additional supplies, services or work, which are not included in the initial public contract and in the cases referred to in Art. 116, para. 1, cl. 2 of PPA;</p> <p>- due to circumstances, which the contracting authority could not have foreseen regardless of the due care taken, there has been a need for amendment which does not entail any change in the scope of the contract or framework agreement;</p> <p>- it is necessary to replace the contractor with a new one, in the cases referred to in Art. 116, para. 1, cl. 4 of PPA;</p> <p>- insignificant amendments are required;</p> <p>- the amendment is needed due to unforeseen circumstances and does not change the overall nature of the contract or framework agreement, in the cases referred to in Art. 116, para. 1, cl. 6 of PPA.</p> <p>Substantial changes in the terms and conditions of the contract will be available if:</p> <p>- the change introduces terms and conditions which, if they were a part of the public procurement procedure, would involve additional tenderers, would allow the participation of tenderers other than those originally selected or would lead to acceptance of a tender other than the initially approved one;</p> <p>- the change brings benefits to the contractor which were not known to the other tenderers;</p> <p>- the change affects the subject or volume of the public contract or framework agreement;</p> <p>- the contractor has been replaced by a new one under terms and conditions other than those referred to in Art. 116, para. 1, cl.4 of PPA.</p> <p>Important! "Unforeseen circumstances" are circumstances which have occurred after the conclusion of the contract, which could not have been foreseen regardless of the due care taken and which do not result from actions or omissions by the parties, but renders impossible the execution of the contract under the agreed terms and conditions.</p> <p>(Art 116 of PPA and § 2, cl. 27 of the Additional Provisions of PPA)</p> <p>Item 22 - 25 of the Guidelines / Appendix 1 to Art. 2, para. 1 of the Ordinance</p> <p>Item 1.22-1.25 of Error Typology</p> <p>Guidance sources of information: review the contract and documents drawn up in the course of its execution - annexes, take-over certificates, invoices, and other documents proving the execution of the contract - substitute tables, information on the experts involved in the execution of the contract, etc.</p> <p>Approach to conduct the audits:</p> <p>- Contracts completed at the time of the check:</p> <p>- <i>scope of the check</i> - the check concerns the entire execution of the contract (its price, subject and term). This is aimed to confirm that the execution of the contract accepted by the contracting authority (on the basis of take-over certificates and other documents proving the execution of the contract) corresponds to the initially announced terms and conditions of the contracting authority and to the public contract, including to all</p>		
--	--	--

Audit of European Union Funds Executive Agency

<p>proposals, based on which the tenderer is designated as a contractor. The auditor checks all terms and conditions of the contracting authority, contract and offer, concerning the contract execution - for example, experts in execution of the contract, proposals on the basis of which the tenderer is selected as a contractor (warranty period, penalty amount, bonuses, etc. depending on the evaluation indicators specified by the contracting authority), terms of payment under the contract (with / without advance payment, amount of the advance payment, advance payment guarantee, etc.), conditions for the implementation of the activities; As regards <i>contracts in which execution is ongoing and complex contracts</i>, the auditor may formulate his opinion on the performance of the contract activities based on check on the activities for which costs are included in the audited request of payment.</p> <p>- <i>Contracts not being accomplished at the time of the check:</i></p> <p>- <i>Scope of the check of contracts in which execution is ongoing and complex contracts</i> (e.g. construction contracts / construction supervision contracts, etc., and contracts for provision of air tickets, organisation of trainings / public events, information and publicity)</p> <p>- the check concerns (1) <u>the activities for which the costs covered by our work have been incurred</u>, with the purpose to ascertain whether all the terms and conditions of the contract for performance of the particular activity (price of the specific activity, time limit for performance of the specific activity, other requirements of the contracting authority, proposals for performance of the contractor in connection with this activity) have been met. (2) As regards the full execution of the contract, information whether the amounts paid under the contract exceed its final value and whether the time limit for execution has expired at the time of the check, even though the execution has not been completed, should be obtained.</p> <p>Compare the signed public contract with the acceptance documents for the completed work. Verify whether there are any signed annexes. The amendment may not be formalised in a document, but may be available, despite the absence of a signed annex, since it has been proposed and accepted notwithstanding the originally intended one. If there are any amendments (with and without signed annexes), analyse the nature of the amendments and consider whether they are significant.</p> <p>Analyse the reason for amendment of the contract - for example, whether there are any unforeseen circumstances. In the event that the contracting authority has relied on any of the reasons referred to in Art. 116, para. 1-4 of PPA, examine whether there is evidence to justify the occurrence of all facts and circumstances referred to in the relevant legal provision.</p> <p>Depending on whether an on-the-spot check of the physical execution of the operation is made pursuant to Art. 27 (3) of the EC Delegation Regulation (EC) No 480/2014, the</p>		
---	--	--

Audit of European Union Funds Executive Agency

	<p>scope of the check is:</p> <ul style="list-style-type: none"> - during the on-the-spot check - check of the execution of the concluded contract, which covers the respective actions of the contracting authority by the date of our visit at the beneficiary; <p>without on-the-spot check - check of the execution of the concluded contract, which covers the respective actions of the contracting authority until the cost that has been included in our sample has been incurred. The information contained in ISUN is used for this purpose. This approach is also applicable to checks conducted during the MA / CA system audit.</p> <p>ATTENTION! You should check whether there is any change in the proposals, on the basis of which the tenderer is selected as a contractor and the initially announced terms and conditions of the contracting authority, such as selection criteria, payment terms, etc. (including those to the team involved in the execution of the contract, technical equipment, etc.).</p> <p>For example: check whether the contract has been executed with the participation of the originally proposed experts or equivalents experts proposed / replaced in accordance with the originally proposed replacement procedure (if any). Consider whether the professional competence of the tenderer has been used as an evaluation indicator. In this case, the replaced experts should both meet the minimum requirements of the contracting authority and should have professional qualification and experience equivalent to that of the experts with whom the contractor has won the contract.</p> <p>ATTENTION! In the cases referred to in Art. 116, para. 1, cl. 2 and cl. 3 of PPA, if increase of the price is required, it can not exceed by more than 50% the value of the main contract or framework agreement. When successive amendments are made, the limit applies to their total value.</p>		
IV. INDICATORS OF FRAUDS WHICH HAVE REGARD TO THE PUBLIC PROCUREMENT PROCEDURE ("RED FLAGS")			
62	<p>Are there any conflict of interest indicators in the audited procedure?</p> <p>Please make your conclusion on the audited procedure after you complete it. IV of the instructions to this checklist.</p>		
63	<p>Are there any indicators of fraud when negotiating tender terms and conditions in the audited procedure?</p> <p>Please make your conclusion on the audited procedure after you complete it. IV of the instructions to this checklist.</p>		
64	<p>Are there any indicators of unlawful award of the public contract to a particular contractor in the audited procedure?</p> <p>Please make your conclusion on the audited procedure after you complete it. IV of the instructions to this checklist.</p>		

Audit of European Union Funds Executive Agency

Conclusion (when completing the checklist in Pentana the conclusion is documented in question OO 047 of Public Procurement Section in the Common Audit Checklist for Operations):

The procedure was conducted in compliance with the law, and I did not find any deviations. OR

I found (number of) deviations that do not represent an irregularity - Reference - Questions No. above. AND/OR

I found (number of) deviations that represent an irregularity - Reference - Questions No. above.

Auditor who conducted the check (place, date, name):	
Head of the audit team which made the review (date):	
<p>Conclusion of the leader of the team which made the review:</p> <ul style="list-style-type: none">- the minimum required documents are collected and attached to the audit engagement electronic file;- answer Yes / No / NA has been given to all check questions;- the established deviations are documented in column Comments / References in accordance with the requirements of the checklist general instructions.- accurate, clear and unambiguous reference to each check question is specified;- analysis of the presence of fraud indicators that I confirm / do not confirm has been made.	