

NON-COMPLIANCE WITH THE RULES ON PUBLIC PROCUREMENT - TYPES OF IRREGULARITIES AND BASIS FOR QUANTIFICATION

No	Type of irregularity	Basis for quantification
1. TENDERING PROCEDURE AND PUBLICATION		
1.1	Absence of tendering procedure without justification.	Quantify where the irregularity led in practice to: <ul style="list-style-type: none"> • an unjustified direct award; or • for tenders exceeding the thresholds for international publication¹, no publication in OJEU or in any other way that ensured that interested undertakings located in another Member State² had access to appropriate³ information regarding the public procurement before it was awarded, so that they would have been in a position to submit a tender or express their interest to participate in obtaining that contract.
1.2	Artificial split of works/services/ supplies in several tenders ⁴ .	
1.3	Use of inappropriate type of tendering procedure.	
1.4	Non-compliance with the publication and/or transparency requirements (including lack of publication).	

¹ Article 4 and Articles 48 to 52 of Directive 2014/24.

² For procurement in the EDF, publication in other ACP States may also be required.

³ In practice this means that either the contract notice was published at national level or the basic standards for the publication of the contract notice were respected.

⁴ The use of lots (for example to encourage SMEs) is in accordance with procurement law.

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2. TECHNICAL SPECIFICATIONS AND SELECTION/AWARD CRITERIA		
2.1	Unlawful/discriminatory technical specifications.	Quantify where the irregularity led in practice to: <ul style="list-style-type: none"> • an unjustified direct award; or • unjustified obstacles that exclude any interested undertaking located in another Member State; or • a different outcome to the tender resulting from the application of the unlawful/discriminatory criteria.
2.2	Unlawful/discriminatory selection/award criteria laid down in the contract notice or tender documents.	
3. EVALUATION OF TENDERS		
3.1	Modification/incorrect application of the selection/award criteria laid down in the contract notice or tender documents during the selection/evaluation phase.	Quantify where the irregularity led in practice to: <ul style="list-style-type: none"> • an unjustified direct award; or • a different outcome to the tender compared to the (correct) application of the original criteria.
3.2	Negotiation during an open or restricted award procedure with an impact on the outcome of the tender.	
3.3	Unjustified decisions of the evaluation committee with an impact on the outcome of the tender.	

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4. PERFORMANCE OF CONTRACTS COVERED BY ARTICLE 4 OF DIRECTIVE 2014/24		
4.1	Unjustified ⁵ substantial modification ⁶ of the contract without a new procurement procedure (including additional works/services/supplies).	Quantify based upon the proportion of the examined payment resulting from the modification.
4.2	Modification of the contract that does not arise from the operation of review clauses ⁷ which involves: <ul style="list-style-type: none"> • additional works/services/supplies⁸, or • unforeseeable circumstances⁹, where there has been no new procurement procedure and the increase in value exceeds 50% of the value of the original contract.	Quantify based upon the proportion of the examined payment resulting from the part of the modification that exceeds 50% of the value of the original contract.

⁵ Modifications other than those provided for under paragraphs 1 and 2 of Article 72 of Directive 2014/24.

⁶ As defined in Article 72 of Directive 2014/24.

⁷ Article 72.1(a) of Directive 2014/24.

⁸ Article 72.1(b) of Directive 2014/24.

⁹ Article 72.1(c) of Directive 2014/24.

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5. DOCUMENTATION		
5	Lack of documentation of the public procurement procedure.	Quantify where: <ul style="list-style-type: none"> • key compulsory documents are missing; <u>and</u> • alternative sources of evidence cannot be sought; <u>and</u> • the limitation is imposed by the contracting authority (i.e. it is not a case of force majeure); <u>and</u> • as a result it is not possible to verify that the procurement procedure has been carried out properly or has been carried out at all (with a clear risk of direct award or award to wrong contractor).
6. CONFLICT OF INTEREST		
6	Conflict of interest (as defined in Article 24 of Directive 2014/24 and Article 57.2 of Financial Regulation).	Quantify where the irregularity concerned the winning bid and led in practice to: <ul style="list-style-type: none"> • an unjustified direct award; or • a different outcome to the tender.