

| Case Number | Facts of the case | Answer | Κατηγορία ευρήματος σε περίπτωση που δεν μπορεί να διορθωθεί | Ποσοστό διόρθωσης |
|-------------|---|--|---|------------------------------------|
| 1 | <p>A Contracting Authority wants to commission the preparation of a report.</p> <p>One of the selection criteria in the tender document is the experience of the company in performing financial control tasks. One award criterion is that the bidder shall have its office in the same city as the partner. Another award criterion is the experience of the bidder's staff with social policies.</p> <p>Questions: -What are the potential problems as regards compliance with the procurement law? -How to solve the issue to be in line with the procurement law?</p> | <p>“bidder shall have its office in the same city as the partner”:</p> <ul style="list-style-type: none"> ➤ Not an award criterion but selection (it has to do with the company not the offer itself) ➤ discriminatory clause regular meetings, response time <p>“experience of the bidder's staff with social policies”: cannot be pass / fail criterion as such experience could be obtained,</p> <ul style="list-style-type: none"> ➤ a weighted criterion that would give the offer an advantage. The weightings should be stated in the tender documents. ➤ or during implementation follow social policies | <p>1.9 Καθορισμός παράνομων και/ή μεροληπτικών κριτηρίων επιλογής και/ή ανάθεσης στην προκήρυξη του διαγωνισμού (item 10a 25%) (item 10b 10%)</p> <p>1.10 1.10 Τα κριτήρια επιλογής δεν συνδέονται ούτε είναι αναλογικά προς το αντικείμενο της σύμβασης (item 11a 10%) (item 10b 5%)</p> | <p>25% or 10%</p> <p>10% or 5%</p> |

| | | | | |
|-----------------|---|---|--|-----------------------|
| <p>2</p> | <p>A company has developed a monitoring system for a European Territorial Cooperation-project. The source codes are owned by the company and they are not freely available. Another ETC-project wants to have the same monitoring system.</p> <p>Questions: -Can the company be directly commissioned with the adaption of the monitoring system? -Which procurement procedure could be applied?</p> | <p>Yes, if the need is the same and can be justified that is the only solution available.</p> <p>Negotiation without advertisement based on technical reasons.</p> | | |
| <p>3</p> | <p>A department has published a restricted procedure to appoint a consultant. During the selection phase an interested EO asks for a clarification of an article in the tender documents. The CA decides that there is no need to make any adjustments to the contract documents, but to explain thoroughly only to the EO asked the question.</p> <p>Questions: -Is the decision of the CA right?</p> <p>Assume that the CA decides to publish the clarification the last 3 days prior to the submission of tender. Is this ok? -What parameters has to have in mind?</p> | <p>No, transparency and equal treatment issues. Same info should be distributed to all Eos. Same info to all Eos.</p> <p>No clarification should be issued within the last 6 days prior the submission of tender.</p> | <p>1.8 Παράλειψη δήλωσης: - των κριτηρίων επιλογής στην προκήρυξη του διαγωνισμού και/ή - των κριτηρίων ανάθεσης (και της στάθμισής τους) στα έγγραφα του διαγωνισμού ή στη συγγραφή υποχρεώσεων</p> <p>(item 9d 10%)</p> <p>1.5 Μη δημοσίευση - της παράτασης των προθεσμιών για την παραλαβή των προσφορών ή - της παράτασης των προθεσμιών για την παραλαβή αιτήσεων συμμετοχής</p> | <p>10%</p> <p>10%</p> |

| | | | | |
|-----------------|---|--|---|-----------------------|
| <p>4</p> | <p>During the evaluation of the tenders, the evaluation committee finds out that a tender is well below the estimated cost and its wondering the reason for this. They decided to adjust the individual prices which are considered very low.</p> <p>Questions: Is their decision, right? What they should do according to the legislation?</p> | <p>No, the price of a tender cannot be altered for any reason.</p> <p>Ask tenderer to justify the reasons for submitting such a low tender. If CA is not satisfied then the offer could be rejected.</p> | <p>2.4 Έλλειψη διαφάνειας και/ή ισότιμης μεταχείρισης κατά την αξιολόγηση</p> <p>Item 17</p> <p>If rejection without asking for justification for the low bid : 2.6 Απόρριψη των ασυνήθιστα χαμηλών προσφορών Item 20</p> | <p>25%</p> <p>25%</p> |
| <p>5</p> | <p>Your institution wants to commission a study that will include a SWOT-analysis and proposals for the strategy of your institution until 2020. You are not yet sure if further input by the experts will be necessary to help you in defining indicators on top of the other work.</p> <p>Questions: What type of contract will you conclude? What is the estimated contract value? How do you calculate it?</p> | <p>Service contract with option to extend the hrs used up to %</p> <p>Service contract with the right to use negotiated procedure for a specific amount for supplementary work.</p> <p>The estimated amount for threshold purposes should include any option or right to use negotiated procedure.</p> | | |

| | | | | |
|-----------------|---|---|--|------------|
| | | | | |
| <p>6</p> | <p>You are a first level controller. A representative of an organization involved as a partner in ETC-project calls you. He tells you that he intends to contract someone who will provide support in the project management. He is not yet sure if he can employ someone or he has to conclude a freelance contract with an external expert. He asks what kind of documents and information you will need once the person is contracted.</p> <p>Questions: Which steps will you recommend him to take in case of an employment contract and in case of a freelance contract?</p> <p>Which documents would you like to see from the project partner?</p> | <p>Employment contract- Normal employment procedure</p> <p>Freelancer contract – public procurement procedure for service contract using quality ratio award criterion</p> <p>Tender documents/ notices or invitations/ evaluation report / decisions</p> | | |
| <p>7</p> | <p>During the implementation of a contract, the Contractor requires 9 months extension for completing the project. The reasoning behind the requirement is that the time limits were very strict and unrealistic from the beginning.</p> <p>Questions: Can the CA approve the requirement for extension?</p> | <p>No. Contract modification that has impact on the contract scope. It breaches transparency. Such comment should be stated upfront and should be known to all EOS interested.</p> | <p>17.3 Ουσιαστική μεταβολή που επηρεάζει τη φύση, τους στόχους ή την εφαρμογή των όρων που θα μπορούσαν να υπονομεύσουν τους αρχικούς στόχους Item 23</p> | <p>25%</p> |

| | | | | |
|---|---|---|---|------|
| | | | | |
| 8 | <p>A project partner has commissioned a company to help with the project management in a negotiated procedure without prior publication. It argues that it took too long to fulfil all conditions, which were imposed by the Steering Committee when approving the project. In order not to risk a significant delay in the project implementation, the contract award had to be done urgently. You are a first level control body.</p> <p>Questions: How do you see the case? Was the procurement procedure correct? Are the costs eligible?</p> | <p>Urgency cannot be justified. The procedure chosen cannot be justified therefore it is not correct and the cost cannot be eligible.</p> | 1.1 Μη δημοσίευση της προκήρυξης του διαγωνισμού. | 100% |
| 9 | <p>A Municipality conducted an open procedure with a selection criterion the previous experience of 3 similar projects with cost of €1m each. Tenderer A provided information for 3 projects of 980k, 1600k and 2500k and tenderer B for projects of 940k, 1200k, 1500k. During evaluation, the committee decided to lower the limit of €1m to 950k and accept tenderer A and reject tenderer B. Additionally both tenderers did not submit their financial statements as required by the tender documents, but evaluation committee sent them an email to submit them during evaluation phase.</p> <p>Questions: Is the decision of the evaluation committee correct?</p> | <p>Criteria published cannot be altered during evaluation and additionally EOs treated differently for the same issue.</p> <p>Financial statements can be requested and submitted during evaluation as they represent historic data and the data is included in the offer submitted.</p> <p>Equal treatment, transparency</p> | 2.1 Τροποποίηση των κριτηρίων επιλογής μετά το άνοιγμα των προσφορών, με αποτέλεσμα τη λανθασμένη αποδοχή των υποβαλλόντων προσφορά. Item 14 | 25% |

| | | | | |
|------------|---|---|--|------|
| | | included in the first competition for the idea developing | | |
| 11A | <p>A Cypriot ministry has contracted a company to develop a study for ETC-project. The project has now been approved. The ministry wants to exclude from participation the company from the competition of the implementation contract on the base of conflict of interest. You work in the legal department of the ministry and you have been asked for advice.</p> <p>Question: Do you see any problem regarding compliance with the procurement law?</p> | <ul style="list-style-type: none"> ➤ Measures should be taken to avoid any equal treatment issues mainly by providing the study and any other available info to all interest EOs. ➤ In cases where cannot be transparency and equal treatment cannot be safeguarded with less severe measures, exclusion could be applied. ➤ If the conflict could be identified in the study competition, the exclusion term should be included therein | <p>2.5 Τροποποίηση προσφοράς κατά την αξιολόγηση</p> <p>(Irregular prior involvement of candidates/tenderers towards the contracting authority)</p> <p>Item 18</p> | 25% |
| 12 | <p>The Department of Electromechanical services has to buy 100 split units for new buildings with estimated cost of €150.000, but has to do it urgently due to the fact that the building will be used for a special event. They know that they cannot use negotiated procedure as the delay was due to bad planning, so they have decided to conduct 2 competitions of 50 split units and estimate cost of €75.000 respectively. The estimate cost falls below thresholds and therefore can allow only 14 days of submission of tenders.</p> <p>Question: What's wrong with the procedure followed?</p> | <ul style="list-style-type: none"> ➤ Artificial splitting to avoid use of directives ➤ Improper publication /procedure | <p>1.2 Τεχνητός κατακερματισμός των συμβάσεων έργων/ υπηρεσιών/ προμηθειών.</p> <p>Item 2</p> | 100% |

| | | | | |
|-----------|--|--|--|-----|
| | | | | |
| 13 | <p>Two Municipalities need to explore the potential of natural resources in the development of new tourism products. They want to conduct a study as part of the exercise. You work in the partner institution and you have been asked for advice on the possibilities they have in order to carry out the procurement jointly.</p> <p>Questions: How do you see the case? What will you recommend?</p> | Yes, as joint procurement or one CA on behalf of both. | | |
| 14 | <p>In the tender documents of an open procedure include a selection criterion relating to the annual turnover of the Economic Operator. Additionally, the annual turnover is used as an award criterion to reward extra marks in order to award the contract to the EO with the highest turnover.</p> <p>Question: Is there anything wrong with the criteria set in tender documents?</p> | <p>Capacity of the company can be used as a selection criterion whereas award criteria should be directly linked to the offer submitted.</p> <p>Double counting</p> | 1.10 Τα κριτήρια επιλογής δεν συνδέονται ούτε είναι αναλογικά προς το αντικείμενο της σύμβασης | 10% |
| 15 | <p>You work for an ETC-project. You have engaged a company to carry out some infrastructure work. During the contract implementation it turns out that the company will need more person/days to implement the agreed tasks. This will lead to an increase of the contract volume by about 10%.</p> <p>Questions:</p> | <ul style="list-style-type: none"> ➤ Contract amendment ➤ Could be considered not that material, does not change the subject matter ➤ Appropriate authorization from TEAA/KEAA/ coordinator | | |

| | | | | |
|----|--|--|---|-----|
| | Is there a problem with regard to procurement law? Which steps will you take? | | | |
| 16 | <p>A CA conducted an open procedure for the award of a service contract. The estimated cost of the service is €35.000 (represents apx €35 per man-hour for 1000 hours). The lowest price offered was €50 per man hour. The evaluation committee decided either to reduce the required service (man hours) or negotiate the price with the successful tenderer due to the fact that the maximum available amount is €35.000.</p> <p>Questions: Is there any problem with the decision of the Evaluation Committee? What should be the decision of the Evaluation Committee? What should have been included in the tender Documents to avoid such problems?</p> | <ul style="list-style-type: none"> ➤ Negotiation is not allowed within open procedure nor the need could be reduced. Transparency issues – affects participation ➤ Cancellation based on high prices offered and reissued the competition based on more accurate estimation ➤ Could negotiate the offers, under new procedure following cancellation (unacceptable tenders) ➤ Justify the difference in prices and find the money ➤ Define the maximum acceptable price in the tender documents | 2.4 Έλλειψη διαφάνειας και/ή ισότιμης μεταχείρισης κατά την αξιολόγηση Item 17 | 25% |
| 17 | <p>A University conducts a procedure in order to implement an information system and including a period of 12 months maintenance. The estimated cost regarding the acquisition of the system and 12 months maintenance period indicated in the contract Notice and in contract documents is €1m. There is also an article in the contract documents stating that the CA has the option to extend the maintenance period for another 36 months.</p> <p>Question:</p> | The info included in the Tender documents and in contract notice should be consistent. The estimated cost should include the total period and should be compared to thresholds for publication purposes. For better information the estimated cost could explain what it consists of (main contract and option) The contract Notice should show the extent/scope of the subject matter to attract the appropriate participants. | Provided that the estimated value is above threshold and the publication is made in EC, no financial correction is applied based on improper publication. The only issue is inconsistency of documents. | |

| | | | | |
|----|--|--|--|------|
| | Is the information included in the Contract Notice according to legislation? | | | |
| 18 | <p>Ministry of Health conducts a procurement procedure to acquire a special medical equipment of €350.000. The evaluation committee prepares the evaluation report with a clear suggestion for award to tenderer A, and the report is forwarded to the Tender Board for final decision. A member of the evaluation committee, who is expert on the specific equipment, is at the same time member of the Tender Board of the Ministry.</p> <p>Question: Is the evaluation procedure according to legislation? Can the Tender Board conclude to an award of the contract?</p> | <p>Evaluation procedure is not valid conflict exist. A person in the tender board approves its own decision as evaluation committee Cannot be part of the evaluation committee and competition cannot be awarded.</p> <p>The procedure is not compliant with national legislation. It has not affect the legality and regularity of contract itself however it has limited a nationally imposed control.</p> | 1.24 Other Sound financial management | 2% |
| 19 | <p>The Cyprus Tourism Organisation wants to buy advertising services for a promotion. Due to the fact that the estimated cost is €73.000, the CA decided to follow simplified procedure using the article 90.1.(c) and sent the tender documents to four economic operators of their choice and allow them 7 days to submit their tenders. Two of them did not respond to the invitation, the 3rd is rejected by CA because it cannot provide the service within the specified time limit. Finally, the CA is left with only 1 tender which is 25% above the estimated cost.</p> <p>Question: Can you accept the above procedure?</p> | <ul style="list-style-type: none"> ➤ High prices offered above the simplified threshold lead to improper procedure applied ➤ The participation indicates artificial competition ➤ Insufficient market sounding to identify the interested and capable EOs ➤ No | Luck of publication Item 1 | 100% |

| | | | | |
|----|---|---|--|-----------------------|
| 20 | <p>The Public Works Department appoints an organization through an open procedure for the provision of consultancy services for the implementation of a specific project. The estimated cost of the service is €150.000. The department publishes the contract notice in the eProcurement system and official gazette of the Cyprus Government and allows 45 days for submission of tenders as the cost falls above the threshold.</p> <p>Questions: Is the time allowed for the submission of tenders according to the legislation? Is the publication according to the legislation?</p> | <p>The deadline is according to the legislation whereas the publication should be made to the Official Gazette of Europe (above thresholds) Procedure bridges the legislation.</p> | <p>1.1 Μη δημοσίευση της προκήρυξης του διαγωνισμού.</p> | 25% |
| 21 | <p>The following information is included in the tender documents (open procedure) for supply of machinery: Contracting Authority: Municipality Estimated cost: 250.000 euros Date of publication: 10 November 2018 Date for acquiring the tender documents (only hard copy available):18 November 2018 Deadline for submitting comments/questions on tender documents: 10 December 2018 Deadline for submission of tenders: 30 December 2018 The publication was made to eProcurement, CY gazette and EU Official Journal.</p> | <ul style="list-style-type: none"> ➤ Deadlines correct but not reasonable- publication was correct ➤ Tender documents should be available electronically ➤ The change in the selection criteria may lead to different participation ➤ New deadlines for submission of tenders should be given allowing the newcomers to prepare their tenders appropriately ➤ Amend tender documents for selection criteria and new deadlines in eProcurement Publication of the | <p>If failure to extend time limits for receipt of tenders: 1.5 Μη δημοσίευση - της παράτασης των προθεσμιών για την παραλαβή των προσφορών ή - της παράτασης των προθεσμιών για την παραλαβή αιτήσεων συμμετοχής</p> <p>If failure to amend tender documents for change in selection criterion:</p> | <p>10%</p> <p>25%</p> |

| | | | | |
|----|---|---|--|------------|
| | <p>A comment received from a number of interested EOs was to lower the selection criterion of similar projects from 3 to 2 and CA considered it reasonable and accepted it.</p> <p>Questions: Were all the dates given correct and reasonable? Was the publication according to legislation? What is the impact of the change? What are the steps for the amendment?</p> | <p>amended contract notice with new deadlines in eProcurement / cyprus gazette/ EU gazette</p> | <p>2.3 Αξιολόγηση των υποψηφίων/υποβαλλόντων προσφορά με χρήση παράνομων κριτηρίων επιλογής ή ανάθεσης.</p> | |
| 22 | <p>A University wants to appoint an IT developer to implement a library system for the University. The selection criteria include that the bidder should have experience in library systems implementation in Cypriot Universities. Additionally the project team should be fluent in Greek language.</p> <p>Questions: How do you see the selection criteria? How the selection criteria should be set in order to be in line with the legislation?</p> | <p>Discriminatory: if some of them are important could be used as award criteria and bear a weighting if they actually add value to the contract (i.e. project team should have experience in library systems in Cypriot Universities). The Greek language could be requested indirectly stating that all communication and deliverables would be in Greek</p> | <p>1.9 Καθορισμός παράνομων και/ή μεροληπτικών κριτηρίων επιλογής και/ή ανάθεσης στην προκήρυξη του διαγωνισμού ή στα έγγραφα υποβολής προσφορών</p> | 25% or 10% |

| | | | | |
|------------------|--|--|---|------------|
| <p>23</p> | <p>A CA appoints a contractor to add an extension to an existing building which will cost approximately €100.000. In order for the CA to award to the best contractor, the following were included in the selection criteria: Annual turnover of minimum €3m and number of permanent personnel 250.</p> <p>Question: Which of the basic principle of Public Procurement is violated?</p> | <p>Proportionality</p> | <p>1.10 Τα κριτήρια επιλογής δεν συνδέονται ούτε είναι αναλογικά προς το αντικείμενο της σύμβασης Item 11</p> | <p>10%</p> |
| <p>24</p> | <p>During the evaluation phase, the evaluation committee finds out that the CVs included in two tenders submitted does not show clearly if the requirement of experience is satisfied. They decided to ask clarifications only from one bidder as they considered its offer better than the other one, although both satisfy all other criteria.</p> <p>Questions: Is something wrong with their decision? What basic principle is not satisfied with the decision? What must be done in order to be in line with the legislation?</p> | <p>As both tenders require similar clarifications, both should be asked to provide them</p> <p>Equal treatment</p> <p>Ask both in writing and evaluate on equal base</p> | <p>2.4 Έλλειψη διαφάνειας και/ή ισότιμης μεταχείρισης κατά την αξιολόγηση Item 17</p> | <p>25%</p> |

| | | | | |
|------------------|--|--|---|---|
| <p>25</p> | <p>CA conducts negotiated procedure with publication which fulfils the criteria of negotiating following no submission of tenders in an open procedure. During the negotiation process, the CA decides to add some more specifications to the existing and remove some others. Additionally, instead of acquiring a single system, which was the initial scope of the contract, the negotiations resulted in acquisition of three similar smaller systems.</p> <p>Questions: How do you see the case? What is the problem with the above case?</p> | <p>Substantial changes during negotiation/ change of the scope/ substantial change of the tender documents/ subject matter</p> <p>It consists of a new competition which could attract participation if was designed like this at the first place</p> <p>Transparency issues</p> | <p>3.1 Διαδικασία με διαπραγμάτευση με προηγούμενη δημοσίευση προκήρυξης διαγωνισμού με ουσιαστική τροποποίηση των όρων που περιέχονται στην προκήρυξη του διαγωνισμού ή στη συγγραφή υποχρεώσεων του διαγωνισμού Item 19</p> | <p>25%</p> |
| <p>26</p> | <p>During the implementation of a service contract whose estimated value was €100.000, the CA decided to use the negotiated procedure in order to award some additional services to the contractor, justifying that the additional services are absolutely necessary for the completion of the initial contract. The estimated cost of additional services is approx. €80.000.</p> <p>Question: What is the problem with the above procedure?</p> | <p>Such contract amendment cannot be done as the % of change is very high and consist of substantial alternation.</p> | <p>17.3 Ουσιαστική μεταβολή που επηρεάζει τη φύση, τους στόχους ή την εφαρμογή των όρων που θα μπορούσαν να υπονομεύσουν τους αρχικούς στόχους Item 23 (last)</p> | <p>100% of related contact modification 25% of initial contract</p> |