



EU Directives on Public Procurement AND THE GUIDELINE FOR AUDITORS

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EU Directives on Public Procurement

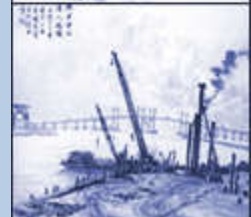


TFEU

Internal single market

- Free movement of goods, freedom of establishment and freedom to provide services

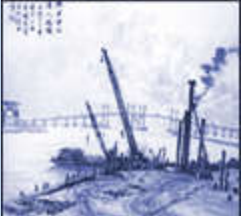
- Principles deriving therefrom:
 - Equal treatment
 - Non-discrimination
 - Mutual recognition
 - Proportionality
 - Transparency



Public Procurement in the EU

Every year, over 250 000 public authorities in the EU spend around 14% of GDP (2 000 billion euros) on the purchase of services, works and supplies

source: https://ec.europa.eu/growth/single-market/public-procurement_en and COM(2017) 572, on 3.10.2017

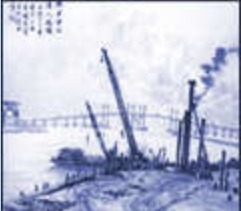


Public Procurement in the EU



Therefore, EU public procurement policy is a key instrument in:

- Establishing the single market
- Ensuring the efficient use of public funds
- Increasing productivity in the supply industries
- Improving participation in and access to such markets by enterprises



EU Public Procurement Directives

To give effect to the principles of the Treaty and to implement the benefits of the internal market, the EU has been adopting **Public Procurement Directives** to set out in law what Member States must do in exercising the public procurement function

- 1976
- 1985-1992
- 1993-1997
- 2004
- 2014

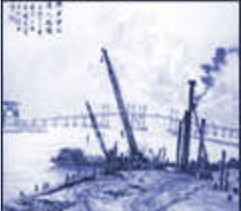


EU Public Procurement Directives



OBJECTIVES:

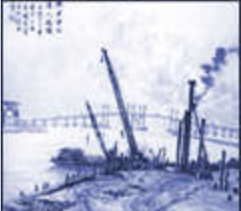
- Transparent, fair and competitive public procurement across the EU's single market
- Business opportunities, economic growth and increased employment
- Improved governance, simplification of procedures, better quality and prices
- Greater use of electronic tools in public procurement
- Fighting fraud and corruption





Obligations imposed:

- Advertising the procurement publicly (OJEU)
- Adopting procedures providing open and transparent competition
- Using non-discriminatory technical specifications
- Allowing sufficient time for submission of interest expressions and tenders
- Applying clear, objective and notified criteria
- Stand-still period

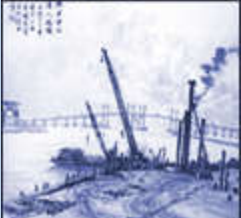


2014 EU Public Procurement Directives

- **Directive 2014/23/EU** (award of concession contracts)
- **Directive 2014/24/EU** (public procurement)
- **Directive 2014/25/EU** (procurement by entities operating in the water, energy, transport and postal service sectors)



2014 EU Public Procurement Directives



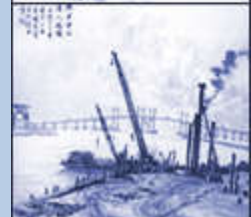
- **Role of public procurement as a tool for wider public policies** (social, environmental and labour areas)
- **Enhanced involvement of SMEs in public procurement**
- **More flexible approach**
- **Faster, less costly and more effective public procurement processes**
- **Promotion of integrity**

2014: Main changes



Use of public procurement as an instrument of wider public policies

- Compliance with social and labour law obligations
- Reserving contracts for sheltered workshops or sheltered employment programmes
- Selection criteria related to environmental and labour requirements
- Possibility of requiring certifications and labels
- Social and environmental criteria for the award phase
- Social and environmental performance conditions

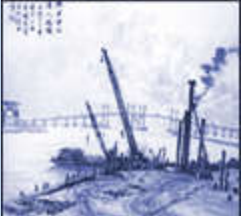


2014: Main changes



Facilitate the involvement of SMEs in public procurement

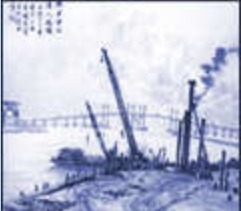
- Division of contracts into lots
- **Limiting company turnover requirements**
- Central on-line point where suppliers can find out the type of documents and certificates which they may be asked to provide in any EU country (e-Certis)



2014: Main changes

Introduce simpler processes to assess bidders' credentials

- Supplier self-declarations
- European single procurement document (ESPD)
- European database for procurement documents (e-Certis)
- Only the winning bidders have to submit certificates and documents to prove their status

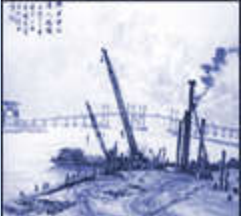


2014: Main changes



Faster processes

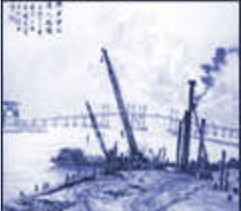
- Minimum time limits in which suppliers have to respond to advertised procurements and submit tender documents were reduced by about a third



2014: Main changes

Incorporation of the CJEU case law in the provisions

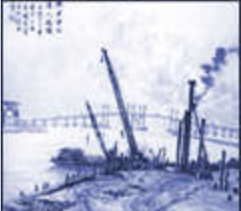
- Concepts
- **Public/public cooperation**
- Modifications to contracts



2014: Main changes

Clarification of exclusions and specificities

- **Public contracts** (works, supplies and services)
- **Contracting authorities**
- **Thresholds/estimations**
- **Contracts with no pecuniary interest/non-economic services of general interest**
- **Exclusive rights**
- **Contracts between public sector entities** (*in-house* and inter-administrative cooperation)
- **New light-touch regime for social, health and some other services**
- **Water, energy, transport and postal services**
- **Defence and security**

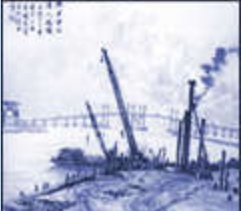


2014: Main changes



Principles governing public procurement

- Competition
- **Equal treatment**
- Non-discrimination
- **Transparency**
- **PROPORTIONALITY** (procedural and substantial requirements)
- Applicable to contracts excluded from the scope of Directives, provided they have cross-border interest





Reinforce electronic procurement

- Electronic versions of the procurement documentation
- **Progressively implementing full electronic communication at all stages of procedure (incl. electronic invoicing)**
- Data-based approaches at various stages of the procurement process
- **Simplifying rules on dynamic purchasing systems**
- Encouraging electronic catalogues

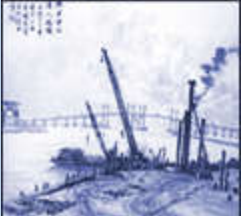


2014: Main changes



Improve integrity and safeguards against corruption

- Definition of conflicts of interests
- Contracting authorities have to put in place appropriate safeguards against conflicts of interests
- New provisions on grounds for exclusion of economic operators (allowing their exclusion for collusive practices or poor performance)
- Time limits for the exclusion of suppliers
- Suppliers who have been excluded from public procurement for bad practices can be included again if they demonstrate that they acted to prevent misconduct and wrongdoing (“self clean”)



2014: Main changes



Encourage market consultations

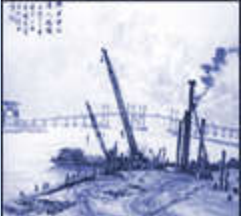
- Preliminary consultation mechanism

2014: Main changes



Allow more freedom to negotiate

- Flexible competitive procedure with negotiation
- Regulating the conditions for negotiations in several procedures, such as the competitive dialogue and the innovation partnership



2014: Main changes



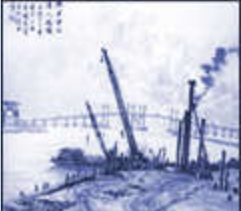
Allow more scope for innovative ideas

- “*Innovation partnership*” procedure, where research for new products and services is encouraged



2014: Main changes

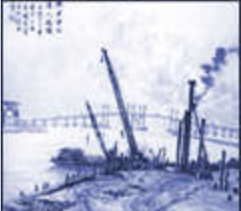
Encourage central purchasing, framework agreements, dynamic purchase systems and joint procurement



2014: Main changes

Stronger focus on the quality of the performance

- Selection of suppliers based on their ability to perform the contract
- The most economically advantageous tender as the award criteria
- Cost-effectiveness approach (such as life-cycle costing)
- Best price-quality ratio to be assessed on the basis of factors that may include qualitative, environmental and/or social aspects
- Possibility of considering the relevant skills and experience of individuals where relevant
- Possibility of imposing conditions to the performance of the contract



2014: Main changes

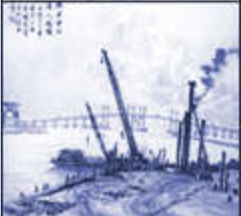


Provisions about the implementation of contracts

- Provisions to regulate the modification and termination of contracts
- New approach to allowed modifications to contracts, by distinguishing substantial from non-substantial changes



2014: Main changes



Need to appoint a national public body to oversee public procurement

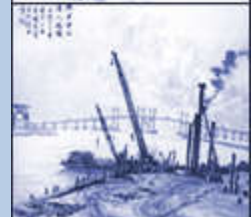


Guideline for Auditors

The CC Public Procurement Audit Documents



- **Guideline for Auditors**
- **Procurement Performance Model**
- **Checklists for Financial and Compliance Audit of Public Procurement**
- **List/summaries of audit reports published by EU SAIs**



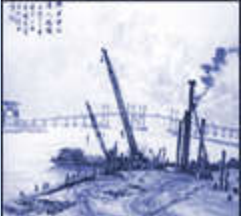
2004/2020/2018

The CC Public Procurement Audit Documents



The 2018 review consisted mainly in:

- Describing the new content of the EU Directives
- **Updating the references to the CJEU case-law**
- Including references to the most common public procurement infringements
- **Redrafting the audit questions related to the directives (including new procurement procedures and new areas dealt with, such as modifications to contracts and concessions)**
- Updating the notes to the several questions of the checklists
- **Updating the list of SAIs audit reports to current date**
- Refreshing guidance notes

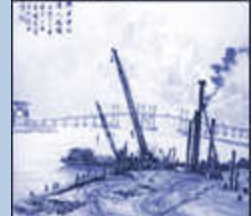


Guideline for Auditors



GENERAL ASPECTS

1. Main changes introduced by Directive 2014/24/EU
2. Principles governing public procurement
3. Subject-matter and Scope of Directive 2014/24/EU
4. Public contracts between entities within the public sector
5. Contracts excluded from the scope of EU public procurement directives
6. Publications in the OJEU
7. Common Procurement Vocabulary
8. Tendering Procedures
9. Procurement instruments
10. Time limits for replies



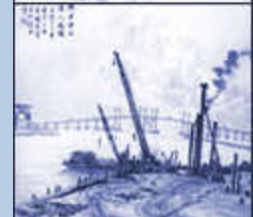
Guideline for Auditors



CONDUCT OF THE PUBLIC PROCUREMENT PROCESS

11. Preparing the procurement
12. Receipt, opening and clarification of tenders
13. Electronic communication
14. Selection of suppliers
15. Evaluation of tenders and award of contract
16. Disclosure of information
17. Contract performance

Guideline for Auditors



APPENDICES

- I. Glossary of Terms
- II. **Thresholds**
- III. Overview of social and other specific services referred to in article 74 of Directive 2014/24/EU
- IV. **Guidance for auditors on public contracts falling outside the scope of the Public Procurement Directives**
- V. Public Sector Timescales
- VI. **Steps in conducting a Competitive Process for contracts above EU thresholds (open, restricted and negotiated procedures)**
- VII. Information sources on public procurement

Guideline for Auditors



APPENDICES

- VIII. Directive 2014/23/EU, on the award of concession contracts
- IX. Directive 2009/81/EC, on the award of contracts in the fields of defense and security
- X. (a): Case law of the Court of Justice of the European Union concerning public procurement (1982-2017) – SUBJECT INDEX
(b): Case law of the Court of Justice of the European Union concerning public procurement (1982-2017) - SUMMARIES
- XI. European Court of Auditors (ECA)' analysis of public procurement errors

➤ **Your Questions**

➤ **Your Comments**

