

Public procurement

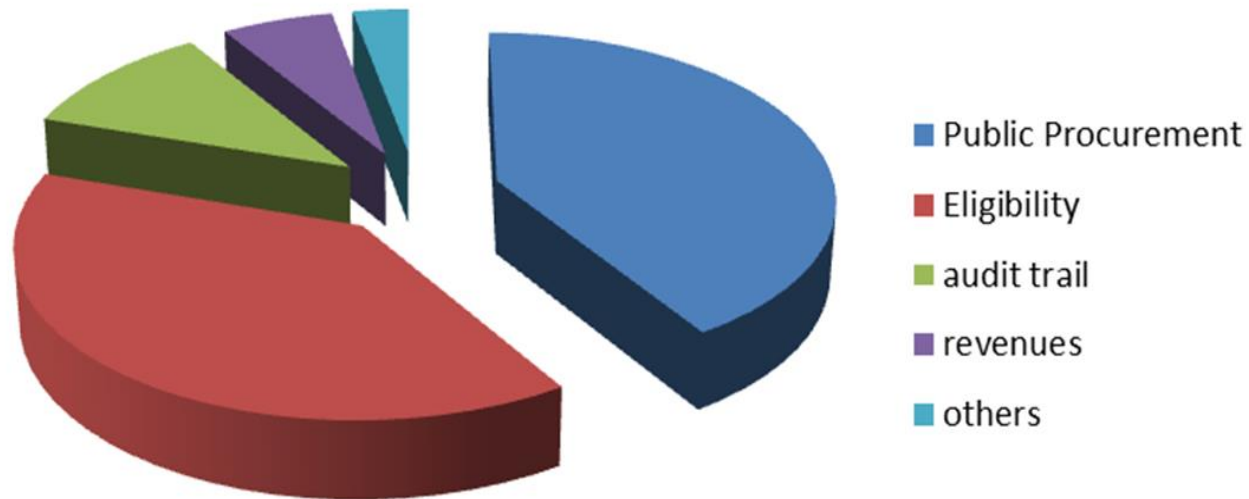
14 | 20

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Managing authority



Errors in cohesion policy



Source: European Commission, Errors in Cohesion Policy, 2011

http://ec.europa.eu/regional_policy/sources/docgener/presenta/errors2011/analysis_errors2011_en.pdf



What makes procurement difficult?

Directive 2014/24/EU on public procurement

Directive 2014/25/EU water, energy, transport, postal service

thresholds e.g. 209.000 €
for service contracts

EU-Treaty

e.g. principles of equal treatment, transparency

European Court of Justice

national law(s)

specific rules of ESI-funded programmes

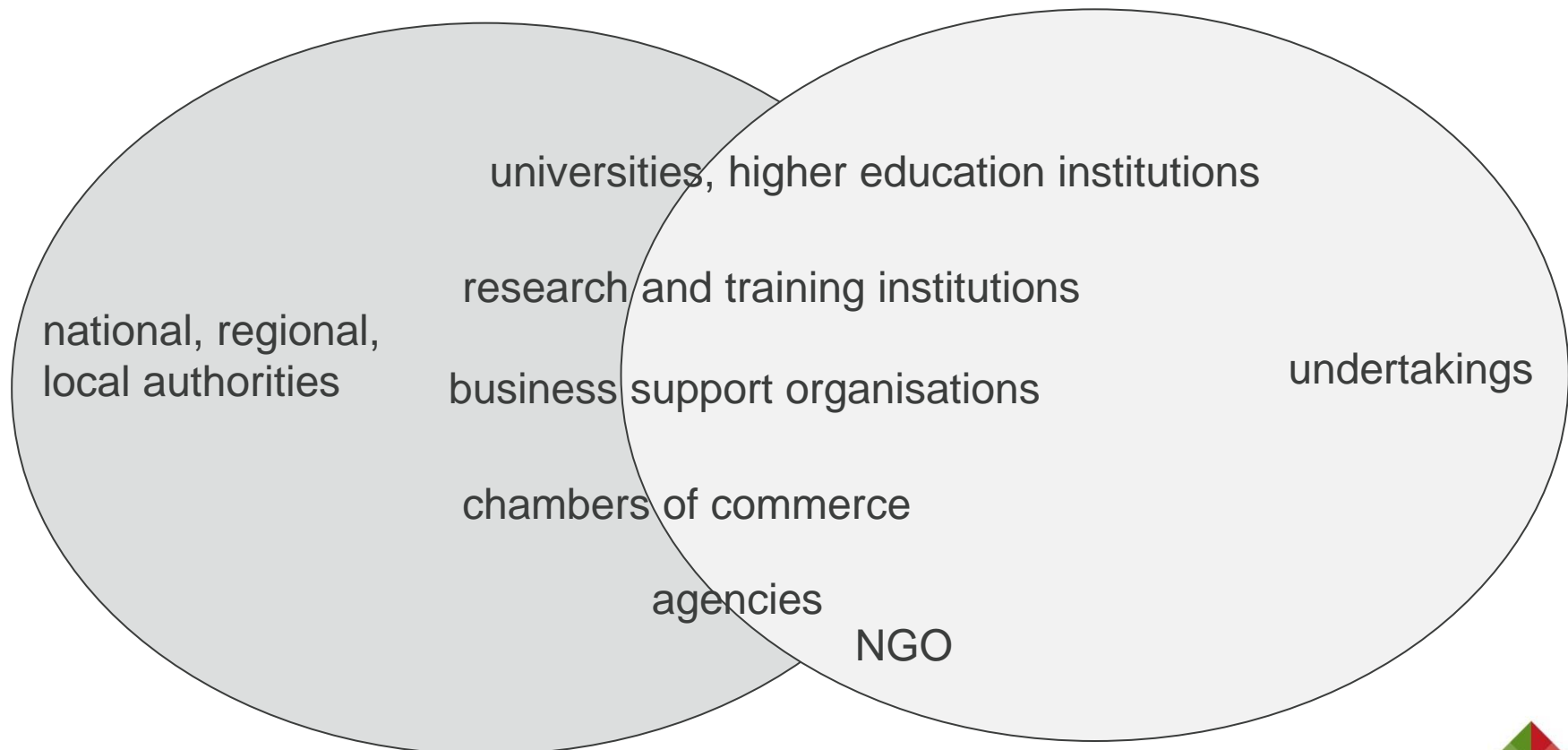
specific rules of project partner organisations



Who is subject to procurement law?

public bodies

private bodies



Body governed by public law?

established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character

and

legal personality

and

financed, for the most part, by the state, regional or local authorities or other bodies governed by public law

or

subject to management supervision by those bodies

or

having an administrative, managerial or supervisory board, more than half of whose members are appointed by the state, regional or local authorities, or by other bodies governed by public law



Programme rules on procurement

Project partner is a	Procurement law	Programme rule
public project partner (state, regional or local authority or body governed by public law)	applicable	relevant procurement law to be respected and procurement to be properly documented (audit trail)
private project partner	not applicable	principles of efficiency, economy, expediency simplified rules ->

Programme Guidance:

Factsheet 1.2. Who can participate?

Factsheet 4.2. Public procurement



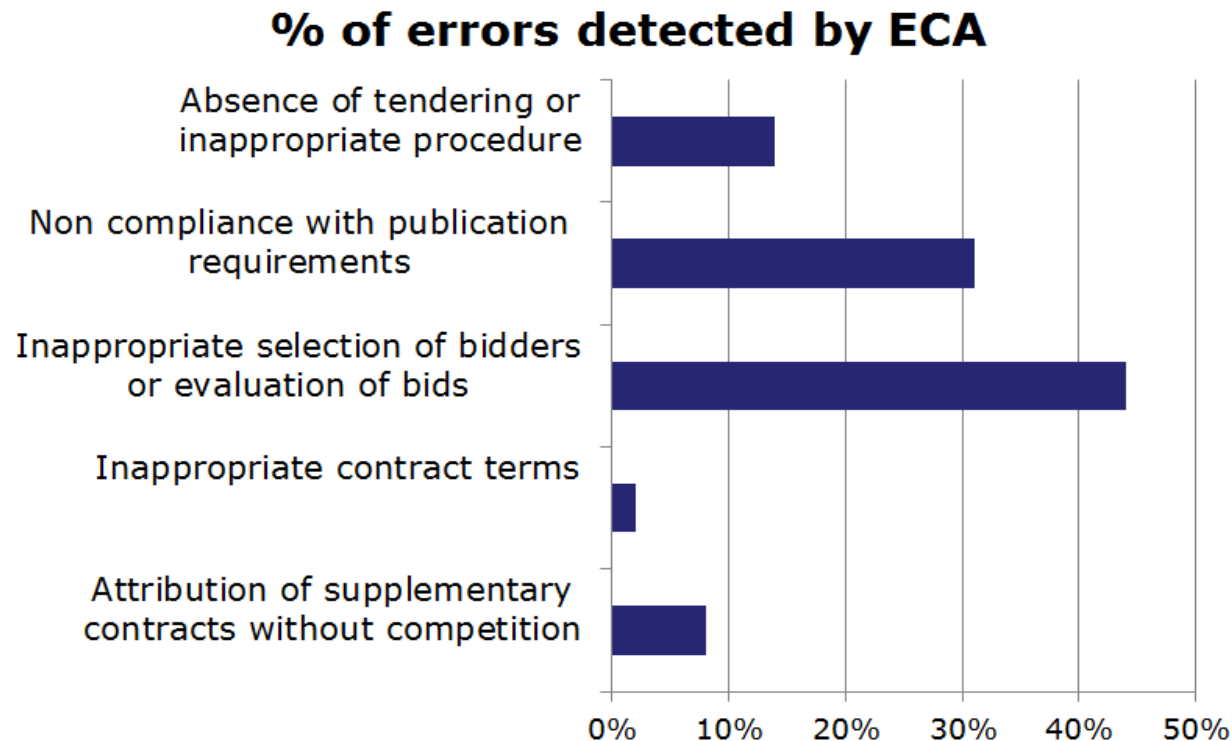
Purchase rules for private partners

Estimated contract value (excluding VAT)	Programme Rule
5.000 Euro or higher	perform adequate market search (e.g. collecting offers from at least 2 market operators, internet price comparison)
50.000 Euro or higher	publication of call for offers on programme and project website

Document the purchase carefully



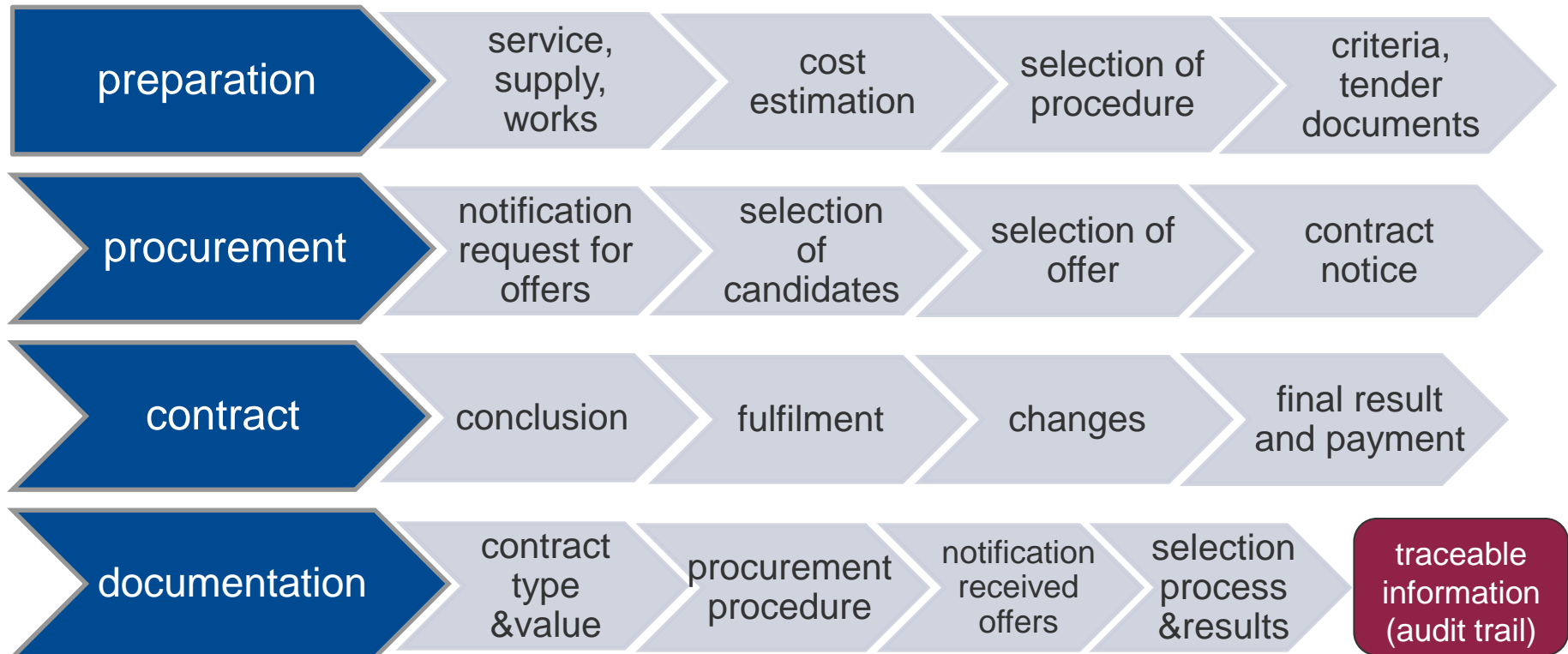
Most common procurement errors



Source: European Commission, Guidance Avoidance Common Errors in ESI-funded Projects, EGESIF 14-0030, 29.8.2014



Main steps in procurement



Most common procurement errors

insufficient publication

- direct awarding without any prior notification
- notification only on regional/national level instead of EU-level

imprecise tender documents

excessively short deadlines for submission of tenders



Most common procurement errors

mix-up of selection and award criteria

- selection criteria: related to company, to assess quality of candidates
- award criteria: related to offer, to select most economically advantageous offer, e.g. price, qualification of staff, methodology

discriminatory or dissuasive criteria, modification of criteria

unlawful splitting of contracts



Most common procurement errors

procurement of human resources

- depends on type of contract
- employment contract not subject to procurement law

changes in the contract/additional tasks

- essential changes to be regarded as new procurement
- additional tasks to be regarded as new procurement, obey prohibition of splitting of contract
- negotiated procedure without prior publication applicable under certain circumstances



Most common procurement errors

negotiated procedure without prior publication

- extreme urgency due to unforeseeable events
- applies to natural disasters rather than to tight time schedules

contract can only be executed by one particular company for technical or artistic reasons or reasons connected to protection of exclusive rights

- limited possibilities, normally more than one potential supplier
- applicable e.g. in case of procurement of specific software

exemptions permitting negotiated procedure
to be interpreted strictly



Consequences of detected errors

consequences on project level

- Financial corrections:
 - for public partners -> Commission Decision C (2013) 9527
 - For private partners -> financial correction of 10% of contract value
- no or only partly EU-funding, repayment of EU-funds
- delay in project implementation, problems in project financing
- negative impacts on project partnership

consequences on programme level

- high administrative efforts
- action plan: corrective, investigative, preventive measures
- stop of payment of EU-funds by EC
- payment of EU-funds to other projects blocked



COM Decision 9527/2013

Guidelines on financial corrections/1

irregularity	recommended correction
lack of public contract notice	100% of contract value 25 % of contract value if advertised to some extent
artificial splitting of contracts	100 % of contract value 25 % of contract value if advertised to some extent
selection/award criteria not stated in tender documents unlawful or discriminatory criteria modification of criteria during selection phase	25 % of contract value (reduction to 10 % or 5% depending on seriousness of irregularity)
insufficient definition of subject-matter of the contract	10 % (reduction to 5 % possible depending on seriousness of irregularity)





COM Decision 9527/2013

Guidelines on financial corrections/2

irregularity	recommended correction
lack of transparency in evaluation modification of tender during evaluation	25 % of contract value (reduction to 10 % or 5% depending on seriousness of irregularity)
negotiation during award procedure	25 % of contract value (reduction to 10 % or 5% depending on seriousness of irregularity)
substantial modification of the contract	25 % of amount of contract plus value of additional amount resulting from modification
award of additional works, supplies or services exceeding the allowed limits	100 % of the amount exceeding 50 % of the original contract value



Do's and don'ts in procurement

	Do's	Don't's
 Planning	spend sufficient time in planning, implementing and documenting procurement	start the procurement without prior planning
	bundle similar contracts to get value-for-money	split similar contracts
 Tendering	check potential cross-border interest and advertise accordingly	launch procurement without prior advertising according relevant laws
	follow time-limits set by regulations and allow sufficient time for bidding	accelerate procedures and go faster than foreseen time-limits



Do's and don'ts in procurement

	Do's	Don't's
Evaluating	define clear selection and award criteria according to subject matter of contract	apply vague or discriminatory selection and award criteria
Implementing	ensure transparent and fair evaluation	modify criteria during evaluation process
	justify why you buy additional works or services from same contractor or tender them	modify contract substantially or exceeding 50 % of original contract value
Documenting	document procurement procedure from cost estimation to final payment to contractor	just keep the contract document



Further recommendations

When you begin with your project

- start to prepare for controls with start of activities
- use seminars for information and exchange and guidance given
- clarify any questions with programme bodies (FLC, JS, ACP, MA) in advance
- get legal advice
- document any procurement properly

When controllers come

- be prepared that they want to know everything
- check if you have all documents and persons available
- take your time to answer the questions of the controllers
- financial corrections can be negotiated
- ensure quick and efficient follow up of findings
- demonstrate importance of the matter

