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PROCUREMENT AND NEGOTIATION COMPETITIVENESS
IN CONTRACT MANAGEMENT

Determining the procurement law ensuring contract management in Public
Procurement

Master of Engineering in Project Management
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TIIVISTELMÄ

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Opinnäytetyön nimi	Hankintojen ja neuvottelujen kilpailukyky sopimusten hallinnassa - Hankintalainsäädännön määrittäminen hankintojen hallinnoinnin varmistamiseksi julkisissa hankinnoissa
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Opinnäytetyön päätarkoituksena on lähinnä tutkia hankintojen suunnittelusta ja hallinnasta vastaavien hankintaviranomaisten hankintaprosesseja standardien mukaisesti, jotta ohjataan usein julkisissa hankinnoissa havaittuja virheitä. tarkoituksena on valaista ja edistää projektipäällikön hyviä käytäntöjä, tunnustamalla, miten ne liittyvät toisiinsa ja vaikuttavat hankkeen onnistumiseen.

Ensimmäisessä osassa on mukana hankehallinnossa tarvittavat prosessit hankki- maan tai hankkimaan tuotteita, palveluja tai tuloksia, joita tarvitaan projektiryh- män ulkopuolella. Se sisältää myös sopimusten hallinnan ja muutosten hallinta- prosessit, joita tarvitaan sopimusten tai ostotilausten kehittämiseen ja hallintaan. Se sisältää myös ulkopuolisen organisaation tekemän sopimuksen valvonnan ja sopimusryhmän sopimukseen perustuvien velvoitteiden hallinnoinnin. Siinä esite- tään yleinen kuvaus hankkeiden hankinnan hallintaprosesseista, mukaan lukien Plan Acquisitions Management, hankintamenot, hankintamenettely ja sulkemis- ostot, jotka on kuvattu yksityiskohtaisesti PMBOK®-oppaassa.

Toinen osa on strukturoitu analyysi julkisia hankintoja koskevan prosessin kuu- desta vaiheesta, joka vaihtelee suunnittelusta sopimuksen toteuttamiseen, korosta- malla tietoisuutta ja mahdollisia välttämättömiä virheitä. mahdolliset yhteydet hy- viin käytäntöihin tai välineisiin hankkeen sopimuskauden aikana. Prosessin vai- heiden lisäksi on sisällytettävä tärkeä suunnitteluvaihe, joka kattaa EU: n rahoitta- mat sopimukset rakennusurakoiden, tavaroiden ja palvelujen hankinnasta, kuten direktiivissä 2004/18 / EY säädetään, sovellettavat kynnysarvot ja tiettyjä aiheita, kuten sopimuksia, oikeudellista kehystä ja sopimuksia alle kynnysarvojen.

Opinnäytetyön kirjallisen tarkastelun ja empiirisen tutkimuksen tulokset ovat sa- manlaisia. Empiirisessä osassa esitellään, keskustellaan ja analysoidaan puo- listrukturoitujen haastattelujen tuloksia. Sillä ei ole mitään oikeudellisesti sitovaa, mutta se on pyrkinyt tarjoamaan tutkimuskysymysten esittämiä yleisiä tietoja, kä- sitteitä, ideoita ja ratkaisuja tulkitsemalla sitä oikeudellisessa kehityksessä. Samoin

se ei vaikuta sovellettavien säännösten tulkintaan, jonka komissio on tehnyt. Tarvitaan kuitenkin lisätutkimuksia, koska opinnäytetyö on tapaustutkimus.

Avainsanat

Julkinen sektori, avoimuus, tarjouspyyntö ja sopimuksia

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ABSTRACT

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The primary purpose of this thesis was mainly to examine the bidding processes of the contracting authorities responsible for planning and managing public procurement of works, supplies, or services by the standards. Moreover, to guide the prevention of errors that are observed in public procurement. The Thesis was designed to enlighten and promote good practice of the project manager, recognizing how these interrelate and affect the success of a project.

The first part includes the necessary processes stipulated within the Project Procurement Management to purchase or acquire products, services, or results that are needed outside of the project team. It also includes contract management and changes control processes necessary to develop and manage contracts or purchase orders. The section also consists of controlling any contract issued by an external organization and administering contractual obligations imposed on the project team by the agreement. Finally, it provides a general description of the Project Acquisition Management processes, including the Plan Acquisitions Management, Procurement Acquisitions, Procurement Control, and Closing Acquisitions described in detail in the PMBOK® Guide.

The second part is a structured analysis of the six phases of a public procurement process. It ranges from planning to the execution of the contract, emphasizing the issues to be aware of and the possible errors that must be avoided with possible links to a set of acceptable practices or tools during the contracting cycle. Also, the steps through the process, including the critical planning phase, covering the contracts financed by the EU for the contracting of works, supplies, and services, as stipulated in Directive 2004/18/EC. The applicable thresholds and interpretative communications on specific topics such as contracts, legal framework, and contracting below limits.

The findings from the literature review and the empirical research in this thesis are similar. In the practical part, the results from the semi-structured interviews were

introduced, discussed, and analyzed. The argument presented in this thesis does not have anything legally binding. However, it has tried to provide general knowledge, concepts, ideas, and solutions proposed by the research questions by interpreting it within the legal framework. Similarly, it does not prejudge the interpretation of the provisions of the applicable legislation that the Commission has made. However, it is a need for further research since this Thesis is a case study.

Keywords

Public Sector, Transparency, Tender and Contracts

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1 INTRODUCTION

1.1 Background and goal of the thesis

This thesis is centered on the author's interest in project management and its legal environment. The illustration that the author has obtained through the theory at the university and the previous work experience have influenced in contract management skills that are necessary for an excellent and appropriate administration as a project leader in a given context.

Project management and its legal environment is an excellent method for dealing with the different tasks in an organization, even in everyday tasks; it is using the skills of a project manager, including the legal considerations depending upon what the situation is. It is nothing without having a legal framework to reach an aim, which includes managing the project. All the projects are unique as a whole, but all of them start with an idea. Starting, analyzing, executing, controlling, and concluding any project includes the knowledge and expertise in that field, including its legal framework.

The fundamentals of promoting community institutions in favor of public-private collaboration are explored. These can be summarized in greater social efficiency and the more direct participation of the private sector in solving collective needs. Besides, a better quality of public services. The possibility of avoiding the budgetary restrictions derived from the stability model designed in Europe.

The thesis analyzes the Directives that ensure good governance of public-private collaboration in the coming years. With the conviction that the new demands for quality and equity in the public contracting advise a new strategy, based on the complementarity between public and private efforts, from the perspective of the principle that everyone wins.

The European Parliament and the Council on February 26, 2014, rolled contract legislation in the European Union (EU) with Directive 2014/24/EU repealing Directive 2004/18/EU on public procurement with the relevant text for of the European Economic Area (EEA), which is a turning point for the development of the

Public Procurement Partnership (PPP). This contractual regulation emphasizes the importance of the execution or management phase in front of the awarding stage. It considers aspects of quality in providing the service, incorporating social and environmental criteria, and aspects favorable to the small and medium business and innovation.

1.2 Problem formation, the framework of the thesis, and research questions

The selection topic in this thesis responded to the author's observation of the trends of public procurement in the EU-EEA in Europe. It finds those in constant processes of transformation in search of greater efficiency and participation. The occurrence of contracting cases by non-traditional mechanisms in Europe responds to four main elements that have converged to stimulate new forms of contracting in the continent:

- The presence and maturity of the regulatory bodies of public procurement
- The use of information technologies.
- Improvements in the control and supervision of public procurement
- The growing demand to establish participation or Public-Private Partnerships (PPP)

The European Commission (EC) is the regulatory body within the single European market and on which it will focus the attention in this thesis. The EC established legal norms and implementation of public purchases that, in addition to modernizing the laws and regulations, also actively promote the professional career in acquisitions and the certification of operators.¹ The harmonization of the three directives

¹ European Commission. Internal Market, Industry, Entrepreneurship and SMEs. The European Single Market. Public Procurement. "Legal rules and implementation Internal Market, Industry, Entrepreneurship and SMEs". https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation_en

on public procurement and concessions approved in 2014². New rules were published to modified how EU members must spend a large part of the 1.9 billion euros paid in public procurement each year in Europe.³ April 18, 2016, was the last date that the EU members should have to harmonize the national legislation. Through these new directives that would make it easier and cheaper for Small and Medium Enterprises (SMEs) to tender public contracts. It would guarantee better quality-price in public procurement and respect the principles of transparency and competition of the EU.⁴

The new environmental and social considerations in the rules allow promoting progress towards public policies and other factors that must consider when awarding Public Contracts, such as aspects of innovation. However, this success of the new legislation will depend on its practical implementation in the EU countries and the willingness of the 250,000 public buyers in the EU to capitalize on the benefits of the digital revolution, reduce bureaucracy and make recruitment processes more efficient and commercial for the social benefit of the citizens.

Public procurement is essential for competitiveness due to its magnitude, especially in energy, transport, defense, IT, and health services, since the public sector is a vital source of demand. Having an efficient public procurement system is crucial to

² Directive 2014/24/EU on public procurement.

³ In this estimate, it does not include the expenditure of public utility companies. The previous estimates included such services, represent around 19% of the EU GDP, about 2.3 trillion euros by the USA, the meaning of a billion.

⁴ These new rules make simpler public procurement procedures and make them more flexible. It will benefit public purchasers and businesses, particularly SMEs. Specifically: Simpler procedures for contracting authorities will start the EU's public procurement market, prevent "buy national" policies, and stimulate the free movement of goods and services. As a consequence, contracting authorities will achieve better value for money. The new rules, comprising a new electronic self-declaration for bidders (ESPD), pave the way for the digitalization of public procurement, which will considerably improve the efficiency of the public procurement procedure. For instance, only the winning company must submit all the documentation proving that it qualifies for a contract. It will drastically decrease the volume of documents necessary for pick out companies. Beyond the limiting of turnover requests and the option of splitting tenders into lots, SMEs will achieve simpler access to public procurement. Public procurement is turn out to be a policy strategy instrument. Under the new rules, public procurement procedures will also help public purchasers to fulfill environmental policies, alongside those governing social integration and innovation.

solving many of the great difficulties facing the EU, including growth and employment, fiscal discipline, the modernization of public administration, the fight against corruption and collusion, access of SMEs to the market, citizens trust in public bodies and democracy, as well as innovation and sustainable growth ecologically and socially.

The productive expenditure and investment of public resources are a powerful instrument for restoring economic growth, especially in times of restriction of the budgets of the executive powers. Considering the point of view of the member states and its public contracting, those must take it as a necessary means to implement government policies and achieve national strategic objectives. In addition to the fact that well-functioning public procurement markets increase national competitiveness, these also must improve open accounts (e.g., infrastructure) and the quality of services (e.g., e-government).

Public contracts at the EU level that exceed the minimums set by the harmonized rules⁵ should be published throughout the union to integrate the public procurement markets, improve competition, and increase the quality-price ratio of public spending. However, not all of these are openly posted.

The strengthening of public procurement should be an essential part of the actions of public authorities aimed at creating a more equitable society based on equal opportunities and broad market participation while including sustainable economic growth. In addition to the above, the efficient system of public procurement contributes significantly to the sustainability of open accounts. When the union's regulations on public procurement were designed, it was expected to create the conditions for an increase in cross-border offers, but it seems that this was not the case.

⁵ EU law establishes harmonized minimum standards for contracts whose estimated amount exceeds a certain amount; These amounts can be consulted on the following website: https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds_en

Two forms of Public Cross-Border Purchases are direct and indirect. Around the last ten years, the European Community has increased both in terms of total value and the entire amount of contracts awarded to companies. In the same period, cross-border indirect public procurement has also reflected a general upward trend, noting that this growth has been unstable in recent years. The fact is that indirect cross-border public procurement is usually high when direct contracting is low due to real or perceived obstacles to the presentation of cross-border offers. It was leading companies to use local subsidiaries for cross-border operations.

The techniques that have been applied in the management of Public Administration within the EU have not been an original contribution of administrative modernization programs, but an application of the management sciences or project management and its entire legal framework. This thesis aims to increase the point of view in the research questions about the organization's performance, improving the effectiveness influenced by the public sector focusing on the advantages in project management theory within a broad knowledge of the legal framework. The structure of this thesis is shown in figure 1 on the next page.

The main research question:

How do pre and post contracting in public procurement influence contract management? This question directs the progression of the research and supports the objectives of the theoretical study enlightening the role of the procurement manager in the contractual management arena.

The sub-questions:

How can the avoidance of the most common errors in public procurement lead to excellence in procurement management performance? This question guides positively outlining the best practices in managing acquisitions according to what is stipulated within the legal framework in force.

How does procurement law ensure contract management in public procurement?

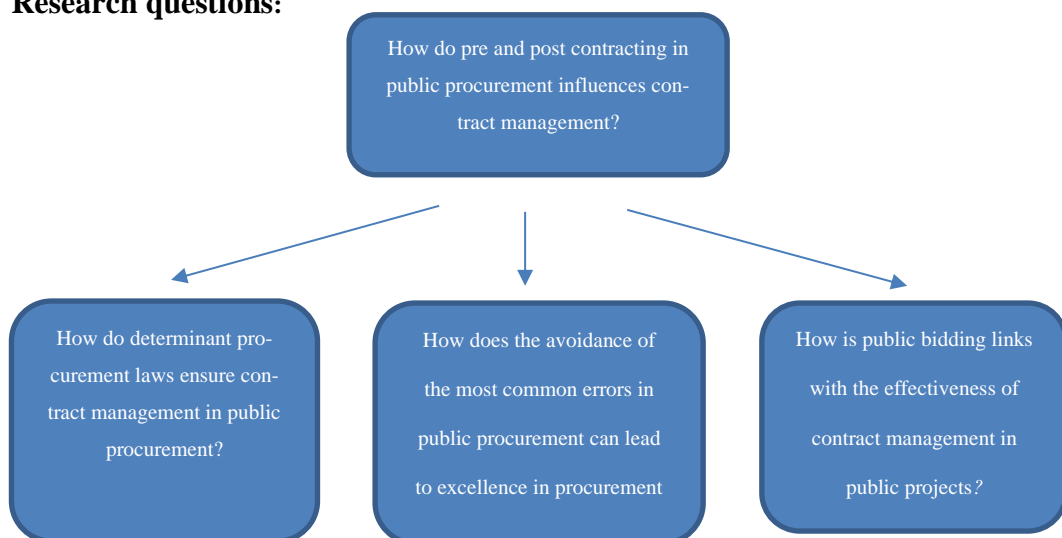
This question supports the objectives of the theoretical study, breaking down the main themes as procurement, negotiation management, and public procurement framework in the EU-EEA, exposing the primary goal of the academic studies to determine and analyze the procurement laws in ensuring public procurement and contract management.

How is public bidding linked with the effectiveness of contract management in public projects? This question will be analyzed during the empirical part of the thesis through the findings of the interviews.

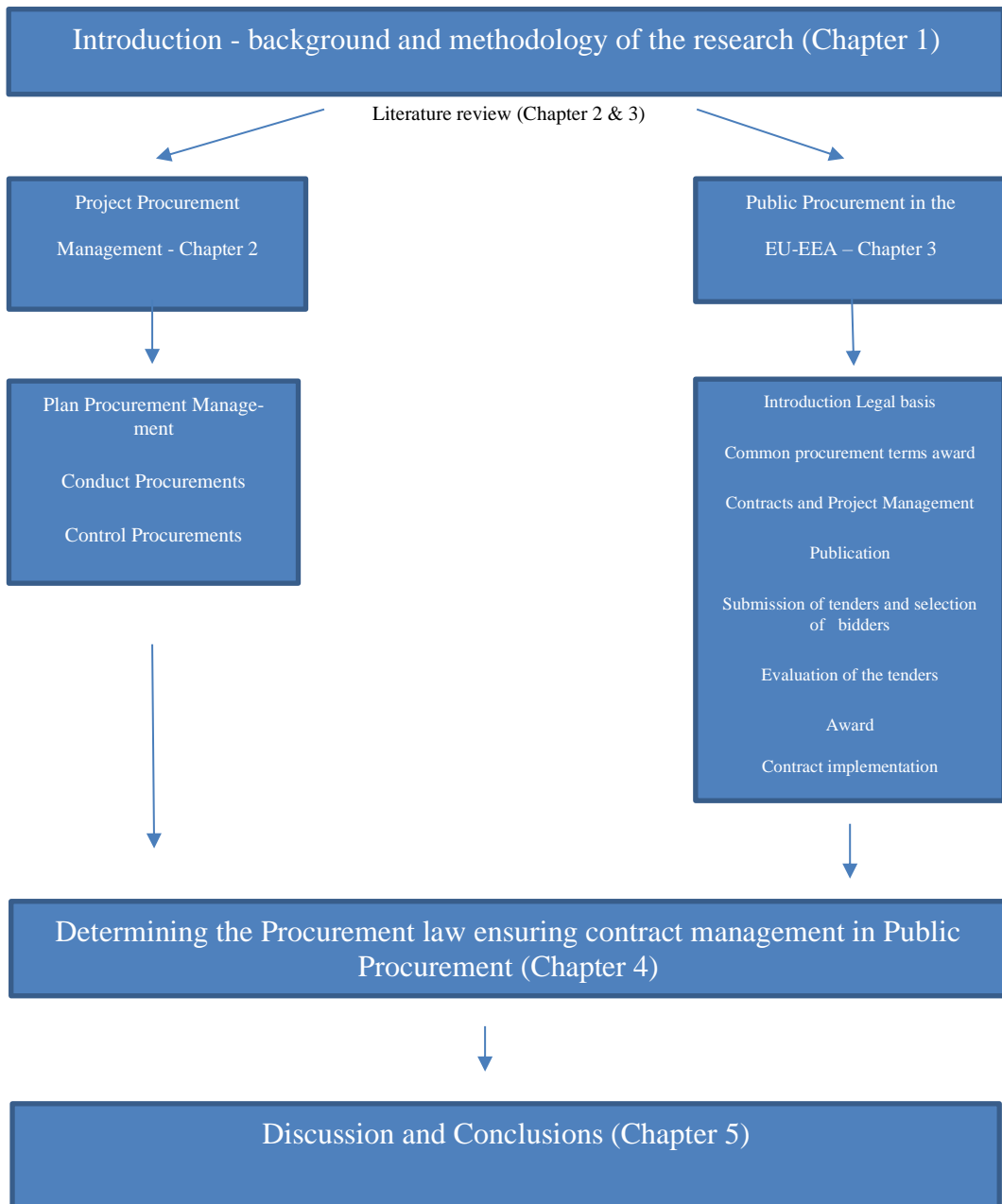
The framework of the thesis can be found in figure 1. The main themes represented with the research questions into which these are related to and supposed the answer. A more detailed description of the structure of this thesis can found in chapter 1.8 and table 3.

Figure 1. The framework of the thesis

Research questions:



Structure of the thesis:



1.3 Definitions

In the following list, the terms from this thesis are described shortly to give the reader a better understanding of the terminology used here. In Public Procurement, there are generally three procurement categories: goods, works, and services.

Public procurement: is the acquisition by government entities and state companies of goods, services, and works.⁶

Goods: objects of all types and descriptions that include raw materials, products, equipment, and objects in solid, liquid, or gaseous form, including electricity, services related to the supply of goods if the value of the related services does not exceed the Goods themselves.⁷

Works (construction): are all those works related to construction, reconstruction, demolition, repair, or renovation of a building, structure, or works, including excavation, installation of equipment, installation of materials, decoration, finishing, including related services with construction, such as drilling, cartography, satellite photography, seismic investigations, and similar services.⁸

Services: any procurement objective without include goods or works.⁹

⁶ The OECD Endorsement on Public Procurement (2015) defines it as the process of identifying what is needed; determining the best person or organization is to supply need; and safeguarding what is required is distributed to the correct place, at the accurate time, for the best value and that all this is done in an impartial and open manner.

⁷ Goods are physical products purchased or manufactured to order. Generally, there is an element of service involved when the agreement is for purchasing goods to be assembled or installed. The scope of the service provided is directly related to the acceptance of the goods purchased. Typical examples of goods are supplies and office equipment, furniture, IT equipment, books, vehicles, medical supplies, and other essential products.

⁸ Works are linked to civil works; this includes new construction of structures of all kinds (buildings, highways, bridges), renovations, extensions, and repairs. This classification can also include water and sanitation, transportation, and electrical plant infrastructure.

⁹ Services are categorized as consulting services and non-consulting services. In some cases, these are categorized as services since of the difficulty, at times, in obviously determining the disparity. The distinguishing element between the two, however, is the degree of importance of the measurable physical output of the requirement. Consulting services are usually intellectual and are considered technical services, which is not equipment intensive. Advisory and project-related services are specific consulting services, including achievability surveys, project management, engineering essential services, finance and accounting customer services, training, and growth. Non-consulting essential services, on the other hand, usually involve the use of the equipment and specific methods to achieve the objectives. Some typical examples of non-consulting services are equipment maintenance and repair, operation and maintenance services, utility management, installation and maintenance services, surveys and field investigations, and similar.

1.4 Delimitations

The contracting process is one of the methods that make up the public supply system that works in all national Public Entities within the single market of the European Community (EU) and European Economic Area (EEA). It has the clear advantage that the same regulations govern most of them. Therefore, completion of the contracting process is uniform, which in the supplier's eyes, assumes the profile of a single type of buyer.

During the realization of this thesis, the Directives mentioned are:

- Directive 92/50/EEC
- Directive 93/36/EEC
- Directive 93/37/EEC
- Directive 93/38/EEC
- Directive 2005/75/EC
- Directive 2004/17/EC
- Directive 2005/51/EC
- Directive 2009/81/EC
- Directive 2014/24/EU
- Directive 2004/18/EC
- Directive 2014/25/EU
- Directive 2004/17/EC
- Directive 2014/23/EU
- Directive 2014/55/EU
- Directive 2014/66/EU

Award of public contracts by the authorities of the EU member, or on the behalf, must respect the principles of the Treaty on the Functioning of the European Union (TFEU). These include the free movement of goods and freedom of establishment. Free services and equal treatment. Mutual recognition, non-discrimination, proportionality, and transparency.

However, for public contracts above an absolute value, regulations should be developed to coordinate national procurement procedures to ensure that these principles have a practical effect and that public procurement is open to competition.

The increasingly diverse forms of public action originate from the need to define more clearly the very concept of contracting. However, this clarification does not extend the scope of this directive in force concerning the Directive 2004/18/EC. The union's rules on public procurement are not intended to regulate all forms of disbursement of public funds, only those aimed at acquiring works, supplies, or services provided through a Public contract. Such procurement of works, supplies, or services is subject to the current directive, whether made through purchase, lease, or any other contractual form.

The concept of acquisition is broadly understood, in the sense of obtaining the benefits of the works, supplies, or services in question, without necessarily implying a transfer of ownership to the contracting authorities. Moreover, mere financing, through subsidies, of an activity, often linked to the obligation to reimburse amounts received when it has not been used for the purposes intended, is not usually regulated by public procurement rules. Similarly, situations in which all operators that meet certain conditions are authorized to perform a task, without any selection procedure, such as systems of choice of customers or service checks, should not be understood as a contracting, but as simple authorization regimes.

Public procurement had the strategy for smart, sustainable, and inclusive growth as one of the market-based instruments that must be used to achieve the same goals mentioned above, ensuring more efficient use of public funds. The current regulations on public procurement adopted under Directive 2004/17/EC, emitted by the European Parliament and the Council, including Directive 2004/18/EC of the European Parliament and by the Council, were reviewed and modernized. Increase the efficiency of public spending, facilitating small and medium enterprises (SMEs) in public procurement. Notions and basic concepts were included to guarantee legal

security, and aspects of reiterated jurisprudence by the Court of Justice of the European Union relating to public procurement were incorporated.

These directives were the product of a stimulus package for the economy, which the Commission recommended to be in force at the latest last year in all member states. The review of the contents and its regulations showed that the regulatory variation has focused on establishing new procedures and methodologies. The methodologies disaggregated and specific to address different cases developed during the years of carrying out recruitment processes focused on the selection process phase. In the preparatory phase, actions were added, and, concerning the contractual execution phase, methodologies for conflict resolution expanded. Therefore, the analysis carried out following the directive regulations in the stage of preliminary acts and the subsequent exceptions prioritizes obtaining efficiency results in public procurement. Above the completion of the process of the legal framework and the method, it remains in force.

Analysis and development of the thesis limited the recruitment processes within the scope of application of the Contracting Directives of the European Council.

1.5 Theoretical framework

This thesis had two main themes to be covered through the conceptual framework: Procurement and negotiation management and the Public Procurement in the EU-EEA and its legal framework (see the structure of the thesis above in Figure 1 and Table 1).

The first part of the theory deal with the general procurement definitions, the processes of purchase or acquisition of the products or services, how contract bidding and negotiations work, and procurement management, competitiveness, and negotiation skills finishing with the sealing of the bidding procedures. Then, the focus was procurement planning, which documents the purchase decisions of the project by specifying the way to do it. Specifications were included in how the project

needs can be met, which are the primary ones to be met, the acquisition of the products, services, or results outside the project organization, and how the project team can meet the needs of the project.

The second part of the theoretical study consisted of defining the legal environment of procurement management within the European Community, which is currently the legal competence. Initially, its legal basis, in general, is introduced and how public project negotiations and contracts handle.

Main areas deal with public contracting, and all its legal environment are discussed with the references for applying the principles of the internal market. Contracts allow the free provision of services and competition, guaranteeing a better distribution of economic resources and more rational use of public funds, thus marking the acquisition model. The same legal framework provided a series of tools and techniques to facilitate procurement management and general management, including the control and management of the project, the power of documents, and the importance of records of problems or incidents.

1.6 Literature review

The management of acquisitions, negotiations, and public procurement in the EU-EEA were, in general, broad areas of research that deals with the subject of this thesis. Drawing attention to the fact that there were several publications available on the procurement and negotiation management skills needed by the project manager, the PMBOK is invoked as a reference bible on this subject.

The preliminary review of the literature found two significant frames of reference. The first one does this thesis within the context of the Project Management area, based on the foundations of the Project Management Institute (PMI). Primarily demarcated in Chapter 12 of the PMBOK® called "Project Procurement Management," which aims to plan, document, audit, and close the contracts in the execution of works utilizing an abbreviated contest.

The above limitations showed aspects related to a preliminary diagnosis that included a degree of knowledge of the professional to seek skills improvement as procurement managers. The thesis does not address issues raised in chapter 12 of the PMBOK® about the management of claims or the selection of vendors.

In the second section of the analysis, it had an immense contribution from the European Parliament and the Council of the European Union. The contribution came from the Treaty on the Functioning of the European Union and article 53, paragraph 1, article 62, and 114. In the previous ones, the proposal of the European Commission considers; the previous transmission of the Legislative project act to national parliaments. The European Economic and Social Committee and Committee of the Regions opinions were considered all the above by the ordinary legislative procedure, limits Directives 92/50/EEC, 93/36/EEC, 93/37/EEC, and 93/38/EEC.

The Directive 2004/18/EC, on the coordination of procedures for the award of public works, supply and service contracts corrected by the Directive 2005/75/EC and Directive 2004/17/EC, on the coordination of procedures the award of contracts in the sectors of water, energy, transport, and postal services. Directive 2005/51/EC modified some annexes of the two Directives cited. Directive 2009/81/EC introduced individual rules for public procurement in the field of defense. Directive 2014/24/EU of February 26, 2014, on Public Procurement repealing Directive 2004/18/EC and Directive 2014/25/EU of February 26, 2014, regarding procurement by bodies running in the areas of water, energy, transport, and postal services, repealing Directive 2004/17/EC. Directive 2014/23/EU, of February 26, 2014, regarding the awarding of concession contracts. On April 16, 2014, Parliament and the Council adopted Directive 2014/55/EU on electronic invoicing in public procurement. Amendment to repeal 32004L0018, 32004R1874, 32005L0075, 32005R2083, 32006L0097, 32007R1422, 32008D0963, 32008R0213, 32009L0081, 32009R0596, 32009R1177, 32011R1251, 32013L0016 and 32013R1336, those above with a partial repeal.

In the third chapter, the current context of public contracting management in the EU is presented. After the approval of the public procurement directives in 2014, the strategic vision of public procurement appears clearly to the legislator. Through

public procurement, public authorities carry out a policy of intervention in the economic, social, and political life of Europe. It enters fully into the contract execution phase to ensure the control of quality and the true satisfaction of the public interest.

Public governance in the design of public-private collaboration requires, in the first place, to correctly identify the needs and solutions that are intended to be covered by the contract, risks, and the proper distribution among the parties involved. It is necessary to overcome the formal inertias to pay attention to the drafting of a planned and strategic bidding document, which precisely regulates the possible incidents of its execution and, above all, encourages its compliance, preserving social rights.

Finally, it is essential to properly exercise the powers of supervision and oversight of the contracting authority since the administration can not disregard the exercise of these powers and leave compliance exclusively in the hands of the contractor because this would put at risk the interested Public. It explains the need to move towards a better professionalization in hiring, both in the public and private sectors.

1.7 Research methodology

Scientific action research aims at deepening the knowledge of a process, whether theoretical, practical, or theoretical-practical, part of scientific knowledge and leads to the solution of problems of society that, in one way or another, have not been investigated or the research conduct in another direction. Arises from the need of man to solve the most pressing problems of daily life, to know the nature that surrounds it, and transform it to satisfy the interests and needs. The quality of scientific research is creative and innovative, applying the latest scientific knowledge.

The research methodology is the science to direct a precise process efficiently and effectively to achieve the desired results and aims to give us the strategy to follow in the process. The main steps for conducting action research are problem identification, plan of action, data collection, analysis of data, and plan for future work.

Research Methodology studies account for the characteristics, laws, and methods of said process, all of which constitute a theoretical model of Scientific Research.¹⁰

Steps in action research, according to McNiff (2002, p.71)¹¹ are some aspects to consider carrying out an investigation; for example:

- The emergence of the IDEA, the TOPIC or the AREA that desired research
- Select the place where to develop the study
- Choice of participants in the study process
- Review of the location of the study
- The realization of the fieldwork of the investigation
- Design the Research Sketch of the group of components (theme, problem, objectives. is the dimension strategic of the research process)
- Preparation or selection of the Instrument
- Stage of the Information Collection
- Processing of Information for further analysis
- Data Analysis Method
- Final Preparation of the Results of the Investigation
- Creation of the Final Report

1.7.1 Phase I - Problem Identification:

The research project is born from the idea to investigate. Then it is initially very vague, ambiguous, does not present any solidity, and arises from the need to solve problems of daily life to not only know nature but to transform it in benefit of the

¹⁰ Action Research: Change in work practice (IDEA), develop a plan (PLAN), act to implement the plan (ACT), observe the action and collect data; (OBSERVE), and reflect on the action and re-plan (REFLECT).

¹¹ Steps in action research according to (McNiff, 2002, p.71): “Review your current practice - Identify an aspect that you wish to improve - Imagine a way forward in this - Try it out - Monitor and reflect on what happens - Modify the plan in the light of what has been found, what has happened, and continue - Evaluate the modified action - Continue until you are satisfied with that aspect of your work (e.g., repeat the cycle)”.

interests and those of society. The investigation arises from any problematic situation. It is based on the scientific knowledge that directs to the improvement of the experimental solution. Its solution is based on the main categories and regularities of the scientific understanding of the area in question.¹²

A rule for the generation of good ideas is found on several premises. These involve if the researcher feels motivated or excited about the idea. It also suggests that if these ideas have something new that is not necessarily current and that these ideas can work as a basis for new theories or practices. With the solutions to the problem, further doubts may arise, which, in turn, lead man to new ideas in other fields of action or new applications in the same area of activity.¹³

¹² Problem-Solving: “Despite what most people accomplish as a profession or where those exist, most folks use many of the waking hours, at a workplace or home, confronting situations. Most circumstances people challenge are little, some are substantial and complex, yet these need to be settled tastefully. There are a few meanings of a situation or how one individual may distinguish a situation. A situation is a chance for development. A situation may be a proper break, the blow of chances, chance thrashing, an occasion to get out of the chill of the ordinary, and significantly improve the situation. A situation is a contrast between a present individual state and a specific objective state. A situation can happen because revamped learning or supposing when a person knows where are and needs, have a situation to fathom in getting to the objective. A situation comes since acknowledging a present defective and the credence in the probability of a preferred fate. The function of this paper will explain the different approaches to the study of problem-solving. Explain the role of insight and creativity in the problem-solving process, analyze the dynamics of problem representation and problem solution, and analyze the function of reasoning, judgment, and decision making in the problem-solving process. Approaches to the Study of Problem-Solving.” <https://www.studymode.com/essays/Problem-Solving-1603628.html>

¹³ The three main methods of problem-solving are behaviorism, gestalt, and cognitive. Behaviorism concentrates on how a person learns to solve a problem. Robinson-Riegler (2008) discusses a study performed by E.L. Thorndike on problem-solving. Thorndike utilized cats and a puzzle box to explain his view on the process of problem-solving and how problem-solving can be realized. In "Thorndike's puzzle box," a pussycat would be fenced in the box. Within the box was a cat that could step on connected to wires that opened the door. When Thorndike, for the first time, place the cat in the box, the cat would meow and scratch at the box. After many attempts and errors can be learned, stepping on the pedal can open the door to the box. Thorndike used this demonstration to show how problems solving can be learned through law and effect (Ciccarelli.S, & Meyer, 2006). The law and effect are a term Thorndike brought forth to explain how if a pleasurable consequence follows a response, it will tend to be repeated (Robinson-Riegler, 2008). The Gestalt methodology to problem-solving believes that problem-solving is learning through attempt and error, just like the behaviorist approach. The Gestalt approach believes the mind tends to organize needed incoming information, and the mind reconstructs the problem elements and finds a solution. Robinson and Riegler (2008) discuss the experiment that Wolfgang Kohle conducted on apes. Kohler put a monkey in pen with objects, some boxes and hung a banana from the ceiling. Kohler remarked and noticed that the ape

1.7.2 Phase II - Plan of Action

Raising the problem is nothing more than refining and structuring more formally, the idea of research. The approach to the problem involves the various phases or aspects that must consider in a very general way, such as:

- The selection of the research theme is the idea of investigation and the area where it will be applied.
- The starting point might consider the subject interesting, does it exist, and what information is about it, where can find it, and if it is known in a general way the results that the investigation.
- Direct observation must know the object of the investigation.
- The bibliographic consultation must consider that a search must be done to be documented as much as possible about the written material referred to the investigation.
- The consultation with the experts can help us delimit the object of knowledge, define the topic, and the preliminary title of the investigation.

1.7.3 Phase III - Data Collection

Among the different methods that help us to collect information about social life is the observation being this one of the most applied qualitative techniques precisely for the richness of its knowledge and the influence of it on us in the student's training during the teaching-learning¹⁴ process at the university. It is susceptible to be applied to any behavior or situation, but an observation without adequate planning loses interest, and the results are none effectively used. As Whitehead (1967: 28)

would sit and peek at the banana fruit and seem to be deliberating on how to solve the problem. The ape, realizing what he had to do, would jump up and push the box into the place under the banana, and the ape would climb onto the box and grab the banana. This experiment brought forth the central critical insight to the Gestalt approach. Insight is a sudden and successful approach to problem-solving. The cognitive methodology to problem-solving focuses on problem-solving along with information of processing, and Ciccarelli and Meyer (2006) suggest that the cognitive approach of problem-solving can be seen in algorithms and heuristic.

¹⁴ When some specific criteria are in place, the next issue affects the actual conduct of the observation, i.e., how it should be assumed. <https://warwick.ac.uk/services/ldc/resource/observing/observation>

states: "To know how to observe is to know how to select," previously consider what is interesting to observe when considering a previous theoretical structure or a conceptual scheme.

The human being has the quality to observe behaviors and conversations, participation and withdrawal, communication, and silence. This common and generalized observation becomes a powerful tool for social research and scientific technique. The tools to be used for collecting information are focusing on a specific research objective formulated in advance. Those are planning it systematically in phases, aspects, places, and people controlling and relating to propositions in social theories, scientific approaches with in-depth explanations, submitting to controls of veracity, objectivity, reliability, and precision. Within the framework of qualitative research, we can find four types of observation that enable us to collect data: panoramic-participant observation - Panoramic observation-non-participant - selective-participant observation, and non-selective observation-participant. This classification has considered as the degree of observer's participation, which may be chosen or combined according to the object of study, generally grouped by many authors into two broad groups as are the participant and the non-participant.

A survey should use by researchers as a technique that allows discovering the components of the participant's worlds and the constructs according to which those words structure. The interview is a vital instrument in the investigations because it can gather information from many different areas related to a problem investigated, the person interviewed, his family, and the environment in which he immersed. An essential aspect that Woods (1987: 77)¹⁵ points out when he refers to the fact that ethnographic interviews by themselves have an extraordinary character, something akin to participant observation. It also highlights that the success or failure of this technique depends directly on the person and the interviewer's disposition. In this

¹⁵ Donald Woods (1987), *Asking for Trouble: The Autobiography of a Banned Journalist*. Atheneum. 1981. ISBN 978-0-689-11159-4. https://books.google.fi/books?id=KIhRAQAAIAAJ&redir_esc=y

common sense, it is especially significant to point out that the personal attributes required by the interview are the same as in other aspects of the research. This one always revolves around trust, curiosity, naturalness, to promote in this field an appropriate interaction, which favors a bond of friendship, a feeling of solidarity and union in search of the solution of the complex object of study.

The success of this technique lies in personal communication, in the bond that is established person to person. The consideration in advance of some elements to consider planning an interview will help select the content and adequate structuring of the questions, create a favorable climate and carry out an appropriate orientation, both in the context of the interview and in the content of it.¹⁶ Otherwise, the group discussion is a research technique that consists of bringing together a group of six to ten people and raising a conversation among them. The topic to investigate should be addressed by one of the members of the teamwork, taking notes and not letting out any good detail for the development of it. Werner Mangold (1973: 249), in his work *Treatise on empirical sociology*, very opportunely points out that the forceful push for the application of group discussions, instead of isolated interviews, originates in the reflection of what opinions and attitudes only rarely do become a reality in an appropriate social behavior under conditions that correspond to the school model. This technique, which applies to sociology studies, seeks to discover how opinions influence people's actions, both to determine them and to modify those.

1.7.4 Phase IV - Analysis of Data

The last steps to be undertaken by a qualitative experimental researcher are examining the data and writing the research report. The researcher's job culminates in synthesizing and interpreting the data into an understandable and enlightening piece

¹⁶ Selecting qualitative research tools: Unstructured interviews may be used to collect data; personal stories tell us how group members perceive and experience the conditions. Structured interviews allow more focused gathering information but may overlook aspects of the group that an unstructured interview might reveal. The interview should be informal or conversational. Interviewees may be selected with the intent to uncover specific information or to gain a cross-section of group members, for instance, both high achievers and those having difficulty with the material.

<https://writing.colostate.edu/guides/page.cfm?pageid=1354&guideid=63>

of writing. However, these steps mark the culmination of the researcher's work. It should not be assumed that it is set aside for the ending of the report. Instead, it is normal for the researcher to scrutinize data and write portions of the final article throughout the research method. In exploring descriptive data, the researcher reviews what was observed, recorded, and synthesizes it with the observations and words of the participants themselves.

The viewer begins with reading a situation as a text, applying as many analytical techniques as possible without violating the sanctity of the book. It is essential to avoid picking and choosing instances of behavior out of context. The evaluation may disclose convergent data, metaphors that operate right through a language, culture, or group thematic analysis. Binding terms or key metaphors may be unpacked and examined for the significance and interrelationships, among other aspects of group dynamics with content analysis.

1.7.5 Phase V - Plan for Future Action

Taking an informed action or acting planning is the last step in investigating the effect, making it particularly satisfactory for the researcher. Each time information is discovered, whether this teaching or learning produces confidence within the frame of wisdom. Although it, classified as trial and error, the researchers find that the research process frees them from continually repeating the past mistakes or, more importantly, with each refinement of the practice, the researchers obtain valid and reliable data on the virtuosity in developing.

The evaluating and writing stages of research also mark the point where researchers wed stories with the stories of research participants. This marriage represents the objective of qualitative research to construct a text that, in conclusion, provides a brighter understanding of the group or culture's behavior, and by doing so, helps us

better understand our individual or group behaviors.¹⁷ Those mentioned above include writing a summary, reporting the findings, finding out the findings, and recommending the steps to follow to improve teaching practices. Discussing whether the results fit conventional wisdom and reviewing the literature to emphasize the points or discuss whether the limitations affect the results recommend future improvements or suggestions for future projects. References should be included in an appropriate format, add appendices with all the tests, instruments, and materials used, and finally share the findings formally or informally.¹⁸

1.8 Data collection methods

The primary data techniques used in this essay were semi-structured interviews, participant observation, group discussion, secondary source analysis, and questionnaires. Personal interviews comprised one of the most important and valuable sources of information.¹⁹

¹⁷ Often, the research article is written as an ethnography or a narrative. However, these two forms are not the only options for presenting qualitative observational research findings. Increasingly, the scope of qualitative observational research reporting is enlarging to include elements of other genres, such as self-narratives, fiction, and performance texts. (Alvermann, et al. 1996).

¹⁸ What researchers select to include or exclude from the final text can have a tremendous effect on how others interpret the results. Alvermann et al. suggest that conscientious qualitative researchers may possibly pose the following doubts when writing up the conclusions: “How much information needs to be included in the text about theories that may have guided the research, disciplinary biases, personal hunches that were followed? Should I include my original research question and its changing forms as I conducted my research? How much background information about the topic and description of research processes do readers need to understand my findings? How much description of myself needs to be included to reveal possible biases or perspectives (gender, ethnicity, age, academic/social theories adhered to)? How can I ensure the report is interesting without compromising credibility? How can I fairly and accurately report my findings within the length limitations of where it will appear (journal, paper presentation, etc.)? Are the representations of myself and the studied group fair? Is it clear that these are mere representations, or have I presented them as definite factual evidence?” <https://writing.colostate.edu/guides/index.cfm>

¹⁹ The social nature of information techniques has led many IS researchers to adopt research methodologies that focus principally on social interpretations and meaning (Walsham, 1995b). Interpretive studies encourage a relativistic understanding of the phenomena being studied (Orlikowski and Baroudi1991). Interpretive researchers perceive the pursuit of meaning and understanding as subjective and knowledge as a social construction (Walsham, 1993). These examine the social reality and subjective meanings of people by eliciting and observing what is significant and essential to them. Those are not writing facts, but the interpretations of other people’s understandings (Walsham, 1995b). There is no rigid disconnection between data collection and analysis. The process is a reiterative cycle of data collection and analysis, with the intent that the findings of the evaluation will help guide the subsequent compilation of data. The cycle is repetitive, and the theory is developed

The taxonomy of the actions research, data, and collections techniques (Educational Research 2e: Creswell)²⁰ is:

Experiencing: through observation and field notes through observation and field notes, participant observation (active participant), a privileged keen observer, and passive observer.

Enquiring: applies when the researcher asks notes informal Interview, structured formal Interview, questionnaires, attitude scales, and standardized tests.

Examining: Using and making records, denotes archival documents, journals, maps, audio and videotapes, artifacts, and field notes.

In evaluating a measurement method, psychologists consider two general dimensions as are reliability and validity. Security refers to the consistency of a measure. Psychologists study three types of unity as over time (test-retest reliability), across items (internal consistency), and different researchers (inter-rater reliability). To talk about validity usually must divide it into several distinct types. However, the right way to interpret these types is that there are other kinds of evidence in addition to reliability that must consider when judging the validity of a measure.

Creswell survey validation methods (2002) and the survey verification of Janesick members (2000) to confirm findings and to ensure the validation of the respondents. A summary of the results should be presented to the interviewees by telephone or email, asking the participants to coincided with any emerging perspectives. That is if the participants saw the viewpoints represented in any or all of the reported findings. The conducting member verifications for confirming the conclusions through

and checked as the process continues. When performing interpretive research, it is typically accepted that researchers should cooperate directly and intensively with the subjects of the research over a period.

²⁰ Creswell, John W. 2002, Educational research : planning, conducting, and evaluating quantitative and qualitative research / John W. Creswell. — 4th ed. University of Nebraska–Lincoln <http://basu.nahad.ir/uploads/creswell.pdf>

the confirmation of the same participants should be asked to remark on the accuracy of the textual citations. Those will obtain approval to use direct personal appointments in the written or verbal reports of the study. It captures all the participants confirm that the summary of the findings adequately and accurately represents the perspectives of the results.

1.9 Case study

The case study method is a valuable research tool. Its greatest strength lies in the fact that the behavior of the people involved in the studied phenomenon is measured and recorded. In contrast, quantitative methods only focus on verbal information. It was obtained through questionnaire surveys (Yin, 1989)²¹. In the case study method, the data can be obtained from various qualitative and quantitative; that is, documents, records or archives, direct interviews, direct observation, observation of participants and facilities, or physical objects (Chetty, 1996).²²

Yin (1989: 23) considers the method of case study appropriate for subjects considered practically new since. Empirical research has the following distinctive features: Examine or inquire about a contemporary phenomenon in its real environment, the boundaries between the event and its context are not light, and multiple sources of user data and a single case or numerous cases can be studied.

It should be emphasized that the main steps are the research method based on empirical data obtained in a field study. The steps have to do with the study of the phenomenon. Pay attention to the context. This phenomenon occurs since the boundaries that separate the couple and the bottom are not clearly defined.

²¹ Robert K. Yin, 1989. Case Study Research: Design and Methods, Second Edition Robert K. Yin - Applied Social Research Methods Series, Volume 5

<http://www.madeira-edu.pt/LinkClick.aspx?fileticket=Fgm4GJWVTRs%3D&tabid=3004>

²² The Case Study Method for Research in Small-and Medium-Sized Firms, Sylvie Chetty First Published October 1, 1996 Research Article <https://doi.org/10.1177/0266242696151005>

The case study motivates to generate opinions and contrast or refine existing ones using an induction process based on diverse sources of documentation and references that can be both qualitative and quantitative.

There are several vital works related in some way to the case study. One of them is the work of Glaser and Strauss (1967) on "grounded theory,"²³ which is a methodological approach aimed at constructing theory conceptualize from the analysis of qualitative data, which are collected and analyzed systematically. At the beginning of the 80s, Yin (1984)²⁴ contributes significantly to clarify the methodological bases of the case study. Yin's explained the multiple weaknesses and stereotypes that were applied at that time to the study of cases in social research and proposing some strategies that, from the design phase of the study, allowing to increase the coherence, the internal validity, the external validity, and the reliability of the results obtained through the study of cases. It proposes a typology for the design of the case study.

The topic of analytical generalization establishes the logic of replication is consistent, specifying the type of research in which the use of the case study is the most appropriate. Miles and Huberman (1984)²⁵ propose various techniques for structuring and observing relationships in the analysis of qualitative data. The already popular article by Eisenhardt (1989)²⁶ which constitutes a synthesis of previous works

²³ (PDF) Available from:

<https://onlinelibrary.wiley.com/doi/abs/10.1002/9781405165518.wbeosg070.pub2#>

²⁴ (PDF) Available from: <https://nsuworks.nova.edu/tqr/vol3/iss3/1/?ref=dizinler.com/>

²⁵ Qualitative Data Analysis: An Expanded Sourcebook, (1994) Michael Huberman, Michael A. Huberman, Prof Michael Huberman link: https://books.google.fi/books?hl=sv&lr=&id=U4IU-wJ5QEC&oi=fnd&pg=PR12&dq=miles+and+huberman+1984+qualitative+data+analysis&ots=kEVH2IVYUV&sig=Nv4XEX5IrrtFJWQFOZh5pTMUwfo&redir_esc=y#v=onepage&q=miles%20and%20huberman%201984%20qualitative%20data%20analysis&f=false

²⁶ Academy of Management Review vol. 16, No. 3 Articles Better Stories, Not Better Constructs, To Generate Better Theory: A Rejoinder to Eisenhardt, W. Gibb Dyer and Alan L. Wilkins - Published Online: 1 July of 1991 <https://journals.aom.org/doi/abs/10.5465/amr.1991.4279492>

and contributes a multi-stage process to generate new theories based on case studies. Finally, the contribution of Voss (2002),²⁷ which is part of the context of the methodological training seminars for Ph.D. students, is also relevant. Opinions regarding the definition of a case study imply several ways to define a case study. However, the reciprocal here is an in-depth investigation of a phenomenon within a real context.

Instead, the case study offers mathematical representation, provides the opportunity to study a phenomenon within its context. It develops a deep understanding of how it relates to its context and identifies what is expected in that case and what is specific about it. The case study can help us explain how or why something happened.

1.9.1 Collecting data

A logical answer to this section will introduce the five standard techniques used qualitative data collection methods mentioned by Voss (2002, p.206). These collection methods are also described by authors, which also explain how to use them in evaluation.

Interviews can be accomplished in person or over the telephone or formally structured, semi-structured, or informally. Questions should be focused, transparent and encourage open-ended responses. Interviews are mainly qualitative.

Questionnaires and Surveys responses analyze with quantitative methods by assigning numerical values to Likert-type scales, results are generally more accessible than qualitative techniques to examine and pretest, and posttest can compare and explain.

Direct observations allow for the study of the dynamics of a situation, frequency counts of target behaviors, or other practices as indicated by the needs of the evaluation. A reasonable basis for providing additional information about a group can use video to provide documentation. It can produce qualitative (e.g., narrative data)

²⁷ Case research in operations management (1991) Chris Voss (London Business School, London, UK) <https://www.emeraldinsight.com/doi/full/10.1108/01443570210414329>

and quantitative data (e.g., frequency counts, mean length of interactions, and instructional time).

Content analysis of documents is a research method for researching documents and interaction artifacts, which may be writings of various formats, pictures, audio, or video. "Researchers use material evaluation to examine patterns in communication in a replicable and systematic manner."²⁸ One of the crucial advantages of using content analysis to analyze social experiences is its non-invasive nature, in contrast to simulating social experiences or collecting survey answers.

The content that is interpreted can be in any form, to begin with, but often converted into written words before explained. The source can print publications, broadcast programs, other tapes, the internet, or life circumstances. All this topic is something that people have created. For example, it cannot do a content analysis of (say) the weather - but if I write a report predicting the weather, I can do a content analysis of that.

1.9.2 Evaluation criteria of reliability and validity

The methods used to measure the validity and reliability criteria of the results of the research base on a series of statistical techniques and coefficients. It can be applied more easily in quantitative studies.

However, the recent case study has managed to overcome the criticisms referred to the fulfillment of the same, since some authors who have pronounced in favor of this method have invested efforts in demonstrating that by following some specific procedures, it is possible to achieve them. The tests to assess the quality and objectivity of a case study are:

²⁸ Reference mentioned by Alan., Bryman, (2011). Business research methods. Bell, Emma, 1968- (3rd ed.). Cambridge: Oxford University Press. ISBN 9780199583409. OCLC 746155102.

The validity of the construction: establishes variables that must be studied—the correct operational measures for the concepts chosen to be explored. The tactics of the case study are the use of multiple sources of evidence (triangulation), the establishment of the chain of evidence, and a review of the preliminary report of the case study by key informants. The research phases in which it applies, in this case, are the obtaining data (for the two first cases mentioned above) and composition (for the third case mentioned above).

Internal validity: establishes the causal relationships under certain conditions and the variations before other states distinguish spurious correlations. The tactics of the case study are the establishment of behavior patterns, construction of the explanation of the phenomenon, and realization of the time analysis. The research phases in which it applies here is the data analysis for all the three cases above.

External validity: establishes the domain in which the results of the study can be generalized. The tactics of the case study apply here is the use of replication in multiple cases of reviews, and the research phase in which it refers to is the design of the investigation (research design).

Reliability: shows to what extent the operations of the study, such as the procedures for obtaining data, can be repeated with the same results by other researchers. The tactics of the case study are the use of case study protocols and the development of databases of the cases of the study. The research phase in which it applies is the data collection for both examples above.

1.10 Structure of the thesis

Table 1, "*Construction of the argument of this thesis,*" is introduced on the next page.

Table 1. Construction of the argument of this thesis.

Chapter and the main topic	Sub-chapters	Description	Research method	Output
Chapter 1 Introduction	1.1.– 1.6.	General background, research questions, and delimitations of the thesis		Introduction to literature and empirical research
Chapter 2 Procurement and negotiation management	2.1.– 2.2.	General Procurement and negotiation management theory as are the concepts, definitions, and perspectives	Literature research	Definition of Procurement and negotiation management according to the PMBOK® and description of its development
Chapter 3 Public Procurement in the EU-EEA	3.1. -3.6.	Integrated analysis of the public procurement directives of the EU, the planning and management of public procurement, Public contracts following standards, and the optimal cost-quality ratio	Literature research	Definition and analysis relating to the coordination of processes for the award of works, supply, and public service contracts according to Directives emitted by the European Commission
Chapter 4 Procurement and negotiation competitiveness in contract management	5.1.– 5.3.	Data collection method, description, and citations of the interview	Empirical research interview	Summary and analysis of the interview finding
Discussions and conclusions	6.1 – 6.3.	Theoretical and managerial contribution, interpretation and description, new insights	A synthesis between literature and interviews	Discussions about the parallelism that takes both procurement management and the legal environment, limitations, and suggestions

2 PROJECT PROCUREMENT MANAGEMENT

The different activities involved in the management processes of the Project Acquisitions form the life cycle of a contract. By carefully drafting the terms and conditions of each agreement, and actively managing the life cycle, many of the risks of the project can be avoided or mitigated. Establishing a deal is a means to transfer the responsibility to maintain or assume a possible threat of loss.

The procurement management of the project, such as purchases, procurement, procurement, is carried out through hiring processes. A contract is an agreement between buyer-client and seller-supplier who legally shield binding on the parties under which the seller must provide the specified products or services. The buyer is required to provide an adequate consideration, generally of a monetary nature.

A contract is also a legal link subject to resolution in the courts. It includes terms and conditions to establish what the seller must perform or provide. It can also add the seller's offer or offer, as well as any other supporting documentation. The project management team must help adapt all procurement contracts to the specific needs of the project, being necessary, in most cases, the support of the legal, purchasing, and contracting areas of the organization, according to its policies regarding procurement.

The executing organization of the Project may act as a buyer when it wishes to acquire products or services from a third party under the project. Also, as a seller, when the project is the result of a contract, in that case:

- The buyer becomes the customer and, therefore, is a crucial stakeholder in the Project
- The project management team must deal with all the work and management processes of the corresponding Project
- The terms and requirements of the contract are essential to many of the jobs. So those can limit the options of the Project team

Processes of Project Procurement Management are:

- *Plan Procurement Management*. It consists of documenting the purchase decisions for the Project and in specifying the way to do it, and identifying potential sellers. It also determines what Project needs can meet through Acquisitions and will be resolved by the Project team.
- *Conduct Procurement*. It consists of obtaining answers from the sellers. Select a seller and award a contract. The team will receive offers and proposals and will apply previously defined selection criteria to select one or more vendors.
- *Control Procurement*. It consists of managing procurement relationships. Supervise the execution of the contract. Make changes and corrections to the agreement as necessary.
- *Close Procurement*. It consists of finalizing each acquisition for the Project. It also supports the Process of Close the Project or phase. It implies verifying that all the work and the deliverables are acceptable.

Most of the projects require external resources to meet the objectives, which implies carrying out adequate purchasing management, again is one of the expertise areas is defined in the PMBOK®. The required in Purchasing management is to know certain key pieces, such as the types of contracts available, how to request and evaluate the proposals and how to treat and manage suppliers because this way can provide the best expertise in a specific task to be carried out.

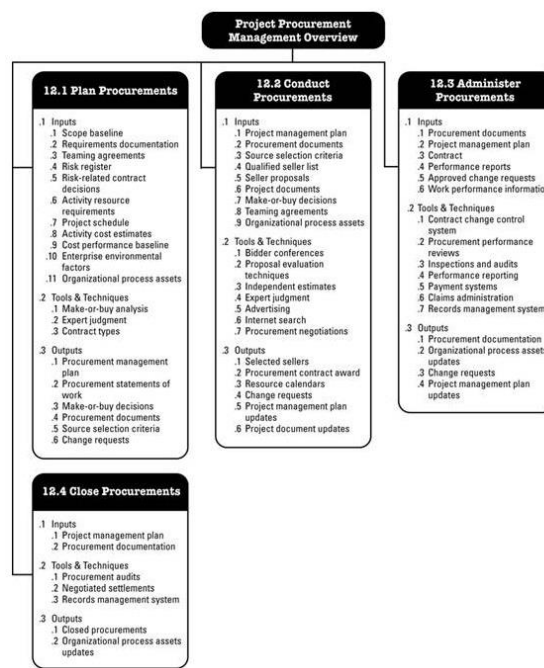
The creation of the procurement management plan begins during the planning phase of the project, where PMBOK® identifies those products or services that must be acquired externally. For each, a definition of the scope of the purchase must prepare, which is known as the scope statement.

This scope statement will be the basis for making other documents used in the procurement process, such as requesting proposals or requesting information. At this stage, potential suppliers are identified for each work package wish to hire, which may be detailed to the project or form part of a supplier base approved by the company. Once the purchasing needs of the project have been identified, and specific

purchasing procedures have been determined, it is time to execute the purchase process.

The normal one begins with the sending of the proposal requests to the selected suppliers and with the analysis and subsequent evaluation of the received proposals. The analysis and evaluation criteria must define in advance. The plans accepted, especially those selected, will update other project documents, such as the cost estimate or the schedule, as seen in Figure 2 below.

Figure 2. Project Procurement Management overview



Source: (PMBOK® Guide), Fifth Edition by Project Management Institute

If it is decided to hire some work packages or tasks outside, this does not mean that it should not control them. Therefore, during the performance of the project, it must monitor the performance of the purchased scope—the correct performance of the contractual agreements defined in the order.

Once the supplier has completed the contracted work, it must be documented this delivery and proceed with the administrative process of closing the contract. Usu-

ally, this includes the acceptance and transfer of ownership of the purchased product, the beginning of the guarantee period, and the execution of the payments conditioned on the final delivery.

The organization can be the buyer or seller of the products, services, or results of a project. The Project Procurement Management must include, apart from all the contract management processes, and control changes required. In this way, it can develop and administer contracts or purchase orders issued by authorized members of the project team. Project Procurement Management must include administration of agreements issued by an external organization, whether the purchaser is acquiring the project to the performing organization or the seller, and all the administration of contractual obligations contracted by the project team under the contract. Depending on the requests of the project, each process can involve the effort of a group or person. Considering that the procedures presented are differentiated components with defined interfaces, in real practice, these same ones are supposed to interact in a way that is not detailed in the PMBOK® Guide.

The Project Procurement Management processes involve contracts, which are legal documents established between a buyer and a seller. A contract represents a binding agreement for the parties under which the seller is obliged to provide the specified products, services, or results. The buyer agrees to give money or any other valid consideration. An acquisition contract includes terms and conditions and may incorporate other aspects specified by the buyer to establish what the seller must perform or provide. It is the responsibility of the project management team to ensure that all acquisitions meet the specific needs of the project while respecting the organization's procurement policies. Depending on the area of application, contracts can also be called agreements, subcontracts, or purchase orders.

All project documents are subject to some or any review and approval, so the legally binding nature of a contract usually means that it will be subject to a more thorough

approval process. The project management team can seek the early support of specialists in contracting, procurement, law, and technical matters. Said participation might be mandatory according to the policy of each organization.

Holding a contract for products or services is a method of assigning responsibility for managing or sharing possible risks. A complex project can involve us in the simultaneous or sequential management of multiple contracts or subcontracts. In such cases, the life cycle of deals can end during any phase of the life cycle of the project.

Depending on the area of application, the seller can be called a contractor, subcontractor, supplier, service provider, or distributor. Depending on the position of the buyer in the project acquisition cycle, this can be called a client, the prime contractor, contractor, purchasing organization, government agency, service requester, or merely a buyer.

In general, the buyer will direct the work as a project if the acquisition is not limited to materials ready for sale, goods, or conventional products. In such cases:

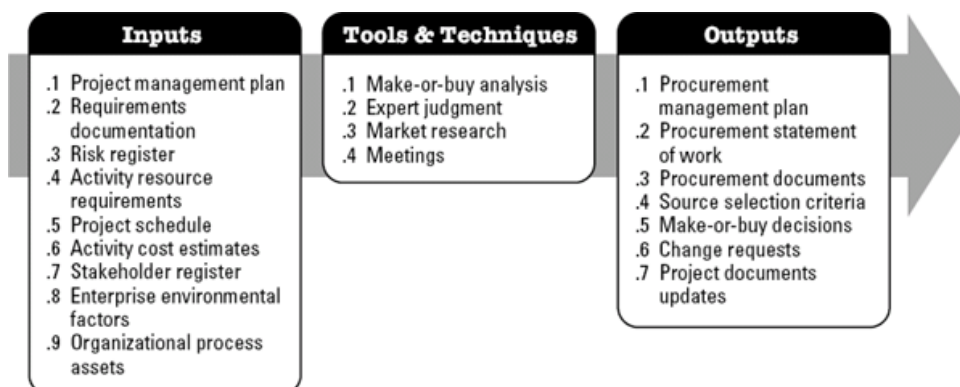
- The buyer becomes the customer and, therefore, a key stakeholder in the project for the vendor.
- The vendor's project management team should deal with all project management processes, and not just those in this area of expertise.
- Contract terms and conditions become key entries in many of the vendor's address processes. The contract can effectively contain the inputs, e.g., significant deliverables, key milestones, cost targets, or limit the options of the project team, e.g., in design projects; the buyer is often required to approve the decisions related to the human resources.

It also assumes that an official contractual relationship will develop and exist between the buyer and the seller. However, most of the content of this chapter can also be applied to non-contractual agreements between departments, concluded with other units of the project team organization.

2.1 Plan Procurement Management

Planning Procurement²⁹ is the process of documenting purchase decisions for the project, specifying the way to do it, and identifying possible vendors. So, this can determine which project needs can be met, or which are the best that must be met, by acquiring products, services, or results outside of the project organization, and what project needs to resolve it by the project team, as seen in the following figure 3 below. In planning, acquisitions should also include the weighting of potential sellers, especially if the buyer exercises influence or exercise some excessive control over purchasing decisions. It must also consider who is responsible for obtaining or holding relevant professional permits and licenses required by legislation, any regulation or policy of the organization to execute the project.

Figurer 3. Plan Procurements. Inputs, Tools and Techniques and Outputs



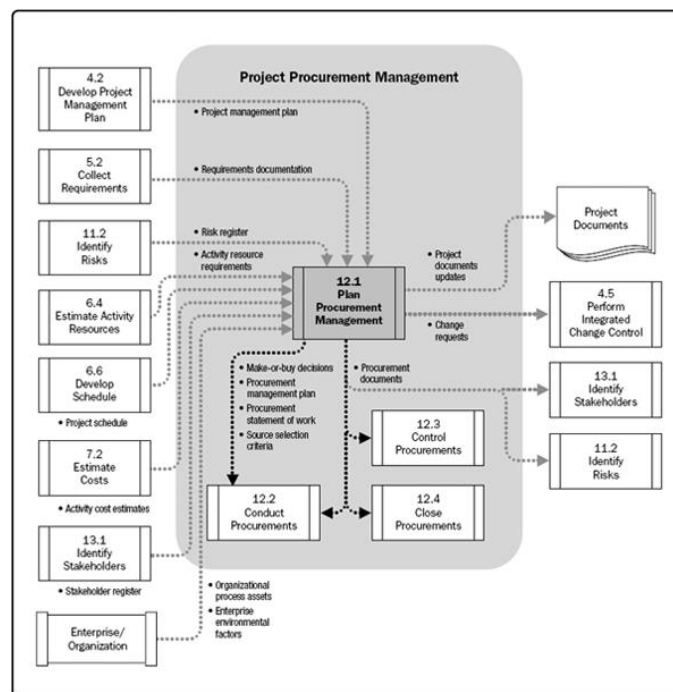
Source: (PMBOK® Guide), Fifth Edition by Project Management Institute

²⁹ Described in Section 4.2.3.1. Project Management Plan - PMBOK®. The project management plan defines the need, justification, requirements, and current boundaries for the project.

The Plan Procurement process includes the consideration of the risks derived from each decision to make or buy. It also includes reviewing the type of contract planned for risk mitigation and sometimes transferring risks to the vendor.

The simple fact of making the acquisitions is to define it as the process that consists of obtaining answers from all the sellers. Selecting one of them and awarding a contract, allowing in this process that the whole team receives offers and proposals. Applying selection criteria previously defined to choose one or more sellers qualified to perform the work is selected or the pre-established contract and accepted as such. In the case of significant acquisitions, it is possible to reiterate the general process of requesting responses from sellers and evaluate said responses. In this way, a more detailed evaluation can be carried out, based on a more specific and comprehensive requirements document, requested from the sellers that make up the restricted list, as seen in the following figure 4 below.

Figure 4. Plan Procurement Management data flow diagram



Source: (PMBOK® Guide), Fifth Edition by Project Management Institute.

It also describes some tools and techniques below, which can be used singly or combined to select vendors. For example, a weighting system can use to:

- Select a single vendor who will be asked to sign a standard contract
- Establish a negotiation sequence by classifying all the proposals according to the evaluation scores assigned to each one.

The project management plan describes and includes the need, justification, requirements, and current limits of the project, but is not limited to the contents of the baseline of the scope. Below is a series of materials to the *Plan Acquisitions*:

a) Project management plan

The development of the project plan uses the results of other planning processes, including strategic planning, to create a reliable and coherent document that can guide both the execution of the project and its control. This process is almost always reiterative. For example, the initial draft may include general resource requirements and a timeless sequence of activities, while later versions of the plan will consist of specific resources and precise dates.

The scope of project work is an iterative process that is usually performed by the project team to capture and then decompose all project work. All the defined work must plan, estimated, programmed, and authorized with the use of integrated and detailed management control plans, sometimes called Control Account Plans (CAPs) in the Earned Value Management process. The sum of all integrated management control plans will constitute the entire scope of the project.

The project plan uses to:

- Guide the execution of the project.
- Document the project planning assumptions.
- Document project planning decisions regarding the chosen alternatives.
- Facilitate communication between customers and shareholders.
- Define essential management reviews in terms of content, extension, and synchronism.
- Provide a baseline for the magnitude of progress and control of the draft.

The project plan is an approved formal document used to manage project execution. In contrast, the project program lists the planned dates to execute the activities and meet the milestones identified in the project plan, as set out in section 6.4.3.1. In the PMBOK®.

The project plan and program should distribute as defined in the communications management plan (for example, performing organization management may require extensive coverage with little detail, while a contractor may require full details of a single subject matter). In some submission areas, the term integrated project plan is used to refer to this document.

A clear distinction must be made between the guidelines for measuring the performance of the project and the project plan. The project plan is a paper or collection of reports of what is projected to change over periods as more information about the project becomes available.

Performance measurement guidelines will only improve, generally, intermittently, and then usually only in response to an approved work scope or a benefit change. There are many approaches to organize and present the project plan, but this includes everything described in section 4.2.3.1 in the PMBOK®.

Although the project management plan is one of the primary documents used to manage the project, other project documents are used. These supplementary documents are not part of the project management plan. The following Figure 5 is a representative list of the components of the project management plan and the project documents.

Figure 5. Differentiation Concerning the Project Management Plan and Project Documents

Project Management Plan	Project Documents	
Change management plan	Activity attributes	Project staff assignments
Communications management plan	Activity cost estimates	Project statement of work
Configuration management plan	Activity duration estimates	Quality checklists
Cost baseline	Activity list	Quality control measurements
Cost management plan	Activity resource requirements	Quality metrics
Human resource management plan	Agreements	Requirements documentation
Process improvement plan	Basis of estimates	Requirements traceability matrix
Procurement management plan	Change log	Resource breakdown structure
Scope baseline <ul style="list-style-type: none"> • Project scope statement • WBS • WBS dictionary 	Change requests	Resource calendars
Quality management plan	Forecasts <ul style="list-style-type: none"> • Cost forecast • Schedule forecast 	Risk register
Requirements management plan	Issue log	Schedule data
Risk management plan	Milestone list	Seller proposals
Schedule baseline	Procurement documents	Source selection criteria
Schedule management plan	Procurement statement of work	Stakeholder register
Scope management plan	Project calendars	Team performance assessments
Stakeholder management plan	Project charter Project funding requirements Project schedule Project schedule network diagrams	Work performance data Work performance information Work performance reports

Source: (PMBOK® Guide), Fifth Edition by Project Management Institute.

b) Requirements Documentation

The process of gathering requirements consists of documenting the quantified and documented needs, wishes, and expectations of the interested parties to convert them into project requirements, including managing the client's expectations and is the starting point for creating the WBS.³⁰

Differences can establish between the needs of the project, such as requirements of the organization, requirements of project management, delivery requirements. Product requirements such as technical requirements, safety requirements, performance requirements, beginning the process with an analysis of the

³⁰ It is described in Section 5.2.3.1. Requirements Documentation - PMBOK®. Requirements documentation may consist of important information about project requirements during planning for procurements and requirements with contractual and legal implications. It might involve health, safety, and security. Moreover, performance, environmental, insurance, intellectual property rights, equal employment opportunity, licenses, and permits—all of which are considered when planning for procurements.

information gathered in the Act of the constitution of the Project, and the Register of Interested Parties.

Inputs

Stakeholder Management Plan: is created and described in the planning process of the Stakeholder Management, which provides criteria to determine the degree of commitment and involvement of the stakeholders and to communicate with them and establish the appropriate participation in the process.

Constitutional Act: it can find the high-level restrictions of both the project and the product. Which condition the acceptance, by the project management team, of the requirements collected from the stakeholders.

Registration of Interested: It is developed in the beginning process when identifying the Interested Parties. Likewise, it identifies all the stakeholders involved with the project, in addition to its main expectations and interests. Among them, some can intervene in this process.

Tools and techniques

Interviews, questionnaires, surveys, and observation: Through these techniques, information is obtained from the interested parties, either formally or informally.

Opinion groups: The key stakeholders of the project are brought together with a moderator who will guide the group.

Workshops facilitated: These are sessions in which inter-functional stakeholders meet to define the product's requirements. These workshops provide a quick definition of functional requirements and help reconcile differences among stakeholders.

Group creativity techniques: There are several activities carried out in a group, which help to identify the requirements of the project and the product, such as the brainstorming and nominal group techniques, the Delphi Technique, Conceptual Map, Affinity Diagram, among others.

Group decision-making techniques: the evaluation process of multiple alternatives, about an expected result.

Observations: Direct from reality, using qualified observers with sufficient experience, external or members of the project team. Through the participation in the use of prototypes of the result, product, or service intended to implement it.

Prototypes: Elaboration of a preliminary version of the final product to obtain feedback on the requirements of the product before building it.

Benchmarking or also called Comparative Studies: It is about comparison with standards and ethical practices, which allows establishing performance objectives for the project result. Such points can be both internal and external to the company and can be found in other departments, in the competition or companies of another industrial sector.

Context diagrams: the project scope representation models that visualize the result of the project and how it interacts with the different stakeholders. Its achieve by using process flow maps to describe the business system to be implemented.

Analysis of Documents: the documentation elaborated in previous phases of the life cycle of the project. It can find useful information to determine new and relevant requirements.

Outputs

Documentation of requirements: Describe how the individual requirements meet the needs of the project. Commonly, these requirements are detailed as more information about them is known. These will be part of the baseline of the scope, so those must be measurable, precise, and valid. Must include the justification of the organization project objectives, the functionality requirements of the product or service, quality, acceptance criteria, assumptions, restrictions, impacts of the project in other areas or entities.

Requirements Traceability Matrix: The crossed table that links the requirements with each other, and with its achievement, throughout the life cycle of the project. The use type matrix helps to ensure that each requirement adds business value and links the objectives of the project to those of the business. Besides, it also helps the approved requirements to be documented and effectively implemented. It should be incorporate but not be limited to the conditions of the following aspects:

- Needs, opportunities, business goals
- Objectives of the project
- Scope, the EDT, and the deliverables
- Product design
- Product development
- Strategy and test scenarios
- High-level requirements and detailed requirements

c) Risk Register

Project Risk Management includes the processes correlated to management planning, identification, analysis, risk response planning,³¹ and monitoring and control in a project. Project Risk Management aims to improve the probability and impact of optimistic actions and reduce the probability and impact of adverse events for the project. These procedures interact with each other and with operations in the different areas of knowledge. Each method can involve the effort of one or more people and depend on the needs. It must be executed at least once in each project and one or more times in each project phase. Those will occur if these are divided into phases.

The risks of a project always locate in the future. A chance is an uncertain event or condition that, if it happens, affects at least one of the project's objectives. The

³¹ It is described in Section 11.2.3.1. Risk Register - PMBOK®. The risk register provides a list of risks and the results of risk analysis and risk response planning. Updates to the risk register are encompassed with project document updates defined in Section 11.5.3.2, from the Plan Risk Responses procedure.

objectives may include scope, schedule, cost, and quality. A risk event may be that the permitting agency may take longer than expected to issue the consent or, in the case of an opportunity, that the limited number of available personnel assigned to the project may complete the work on time and, therefore, perform the task with less use of resources.

If any uncertain events occur, maybe impact the cost, schedule, or performance of the project. The risk conditions could include aspects of the project or organization's environment that can put the project at risk. Such shall be poor project management practices, the lack of integrated management systems, the concurrence of several projects, or the dependence of external participants that can not control it. The risks of the project have them origin in the uncertainty that is present in all projects, and those known risks are those that have been identified and analyzed, which makes it possible to plan responses for such risks.

Once the Risk Management Plan of the project establishes, the identification of the risks process will be carried out how the risks that may affect the project are determined, as well as where the characteristics document it. The people involved in risk identification can include the project manager, the members of the project team, the risk management team if assigned, clients, experts in the field, external to the project team, users final, project directors, interested, as well as experts in Risk Management.

Identifying the risks is an iterative³² process that updates in each of the risk management processes. Since new threats can be discovered or can evolve as the project progresses through its life cycle, the frequency of iteration and who participates in each period varies from one situation to another.

³² The Cambridge English dictionary defines iterative as doing something, again and again, usually to improve it.

The organization must commit to treating risk management proactively and consistently throughout the project to be successful. A mindful choice must be made at all levels of the organization to actively identify and pursue effective control during the life of the project. Risks exist from the moment the project conceived. Advancing in a project without adopting a proactive approach in risk management increases the impact that the materialization of risk may have on the project, and that, potentially, could lead to failure.

d) Activity Resource Requirements

For each activity of the project, estimating the resources of the activities of the Schedule implies determining the people, equipment, and materials necessary to carry it out. Each support will be used, and when will those resources be available—the process of estimating the resources of the activities coordinate with the method of assessing the costs. Previously, an estimate of the need for resources must make the availability determined. The duration of action, typically, is conditioned to the number of resources available for the realization of it and the minimum amount of resources necessary to carry it out. This process is directly related to methods of cost estimating of the activities since most of the expenditures of the project determined by the resources necessary to carry it out and the cost of the same.

Plan Procurement Management: Inputs:

- *Schedule Management Plan*
- *List of Activities with the Attributes*
- *Resource calendars:* Information on the potential availability of resources is also used to estimate the resources of the activities. In addition to when may be available, this information also includes considering other aspects, such as the various skills, experience, and skills required for human resources. Alternatively, for example, the geographic locations of those that are available.
- *Registration of Risks:* Certain events associated with risk can influence the selection and availability of resources. The risk register updates count among the updates of the project documents.

- *Environmental factors*: It refers to the availability and skills of the company's resources.
- *Assets of the Organization's processes*: The policies and procedures of human resources are related to the rental and acquisition of equipment and relevant historical information.

Plan Procurement Management: Tools and Techniques

- *Expert judgment*: Experts with experience in planning and estimating resources.
- *Analysis of alternatives*. Alternative use of resources with different levels of abilities, sizes, and types of machinery, and decisions to purchase, rent, or manufacturing supplies.
- *The published estimation data*: invoke the production indices and unit costs of resources periodically posted by companies.
- *The ascending estimate*: It consists of decomposing in greater detail, the work necessary to carry out an activity that can not be reasonably estimated, and estimating the need for resources of the decomposition, adding then this need to obtain a total of supplies needed in the activity.
- *Project Management Software*: Provides support to plan, organize, and manage resources.

Plan Procurement Management: Outputs

Resource requirements of the activity: The main output of the process is the identification and description of the types and amounts of resources needed for each operation in the schedule of a work package. Allocations can be added to determine the estimated funds for each Work Packages Smartsheet (WBS) so that the level of detail of the assignments and requirements of the funds may vary according to the area of application.

The documentation of the resource requirements of each activity can include the bases for the economic estimation of each assignment and the assumptions to

determine what types of resources are needed, the availability, and what amount will be necessary to use. In developing the Schedule, it learns when the contest and disposition of said resources will be needed.

The resource breakdown structure (RBS): consists of a hierarchical structure of resources, identified by category and type, serves to determine the communication needs within the Project.

Updates: Above all, it is undoubtedly necessary to update the list and attributes of the activities, and also the resource calendars, the amount of each resource available in each temporary period.

e) Project Schedule

Project Time Management involves the methods required to manage the completion of the project on time.³³ These practices interact with each other and with methods from different areas.

In each project's needs, the process can involve the effort of a group or a person, being executed at least once in each project and one or more phases of the project, in case it is divided into phases. Distinguish between the printed information of the project schedule and the data and calculations that allow developing the agenda, designate as a schedule model the system in which the project data load. However, in general practice, the timing and the schedule model are known as a schedule.

This preparation effort is part of developing the Project Management Plan (Section 4.2.3.1 PMBOK®), which produces a schedule management plan that selects a methodology, a planning tool. It establishes the format and criteria for developing and control the project schedule, this being a planning methodology that defines the rules and approaches for the process of preparing the table.

³³ It is described in Section 6.6.3.2. Project Schedule - PMBOK®. Project schedule contains information on required timelines or mandated deliverable dates.

Among the most well-known methodologies are the method of the critical path and that of the critical chain. The development of the schedule uses the outputs of the processes, define the activities, sequence, estimate the resources and estimate the duration of the events, in combination with the planning tool to prepare the schedule.

Defining the activities is the process that consists of identifying the specific actions to be carried out to elaborate on the deliverables of the project. Creating the work breakdown structure (WBS) identifies the deliverables at the lowest level of the WBS, called work packages.

The project work packages are usually broken down into smaller components called activities, representing the work needed to complete the work packages. The events provide a basis for the estimation, planning, execution, monitoring, and control of the project work.

The presentation of the project schedule might present in summary form, called a master schedule or milestone schedule, or it can also give it in detail. Although a project schedule model is present in tabular form, it is usually shown graphically, using one or more formats: presentations, bar charts, milestone charts, and project schedule network diagrams.

See figure 6 on the next page.

Figure 6. Project Schedule Presentations —Examples

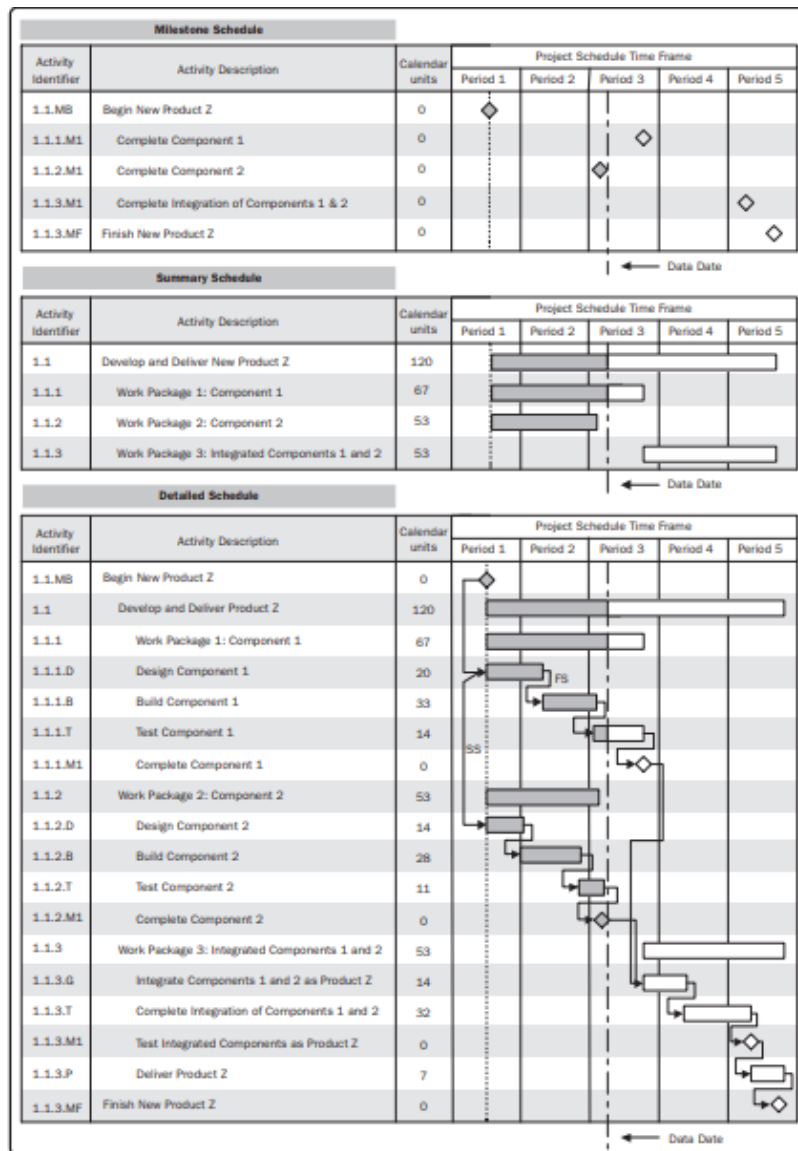


Figure source: (PMBOK © Guide) – Fifth Edition

f) Activity Cost Estimates

Estimating the costs is the process that consists of developing an approximation of the monetary resources necessary to conclude the activities of the project. The cost estimate is a prediction based on the information available at a given time. It includes the identification and consideration of various alternatives for calculating

costs to start and complete the project.³⁴ Concessions between costs and risks must consider manufacturing instead of buying, buying instead of renting, and exchanging resources to achieve optimal value for the project. The cost estimate should refine during the project to reflect additional details as it becomes available. The accuracy of estimating the price of a project increases as the project progresses throughout its life cycle.

The sources of input information derived from the outputs of the project are processes in other areas. Once received, all this information should remain available as inputs for the three methods of Project Cost Management. Costs are estimated by the resources that will be allocated to the project. These include, among others, work, materials, equipment, services, and facilities, as well as special categories such as an allocation for inflation or a cost for contingency, being this a quantitative evaluation of the probable costs of the resources needed to complete the activity.

g) Stakeholders register

The management of project stakeholders is a function that is becoming increasingly important in project management, as it demonstrates that achieving the active participation of stakeholders in the execution and decision making is essential for success. The PMI methodology gives increasing relevance to stakeholder management, including the new knowledge area of control of stakeholders in the PMBOK 5 guide.³⁵

The effective management of the project's stakeholders starts with the timely identification and maintenance of a registry of the same. The project manager has an instrument called the stakeholder register. It documents information on the

³⁴ It is described in Section 7.2.3.1. Activity Cost Estimates - PMBOK®. Cost estimates developed by the procuring activity are used to evaluate the reasonableness of the bids or proposals received from potential sellers.

³⁵ It is described in Section 13.1.3.1. Stakeholder Register - PMBOK®. The stakeholder register provides details on the project participants and the interests in the project.

contact details of each of the interested parties, the requirements, expectations, evaluation of the degree of influence, interest, and position, whether in favor or contrary, among other aspects.

h) Enterprise Environmental Factors

When the project is on management, it cannot be alien to a set of variables that can influence it and that, in a certain sense, are conditioned by the very nature of the organization. It refers to information and databases that its obtain from previous projects and, on the other hand, the procedures and processes of the organization that help in the project, not excluding the environmental factors.³⁶

In a changing situation such as the current one, the role played by markets, competition, or socio-political circumstances introduce variables that can affect projects becoming decisive in the execution. It refers to the environmental factors, external factors, or the company itself involved in the project. It is mostly summarising the ecological factors as factors external to the plan that influence it directly or indirectly, giving as an example, the size of the company, its culture, values, legislation, infrastructure, market evolution, among others.

i) Organizational Process Assets

Whether some are hired to carry out a project or subcontract work packages to external companies, the contract between both parties is the base document that sets the scope, deadline, and payments to make. A project manager has a significant influence on the type of contract that agrees with the company involved and must know the advantages and disadvantages of the types of arrangements to choose the

³⁶ It is described in Section 2.1.5. Enterprise Environmental Factors-PMBOK®. The enterprise environmental factors that can influence the Plan Procurement Management process include, but are not limited to: Marketplace conditions; Products, services, and results that are available in the marketplace; Suppliers, including past performance or reputation; Typical terms and conditions for products, services, and results or for the specific industry; and unique local requirements.

most appropriate in each situation. Exist three influential groups, covering the possible kinds of methods in Project Management.³⁷

Fixed-price contracts

In this type of process, a fixed price is determined for all the activities and materials to supply. This cost will not vary as long as the initial conditions of the agreement do not. It is crucial to comprehend that this type of contract does not set amounts of material or hours of work, but the contractor estimates them based on the documents of the tender generated by the client. The final price contains both risk provisions and a benefit for the contractor.

Although in principle, this type of contract seems to involve a low risk for the client, any change concerning the terms agreed in the contract is an opportunity to demand additional costs or extension of words by the contractor. Therefore, it is advisable to use a fixed price contract when the planning is sufficiently detailed, not to expect massive changes during the execution of the project.

Cost-reimbursable contracts

The philosophy of this type of arrangement is opposite to the fixed price contract. In this case, the client agrees to pay the contractor all project costs, plus an additional percentage agreed to contractually.

³⁷ It is described in Section 2.1.4. Organizational Process Assets - PMBOK®. The different types of contractual agreements used by the organization also influence decisions for the Plan Procurement Management process. The organizational process assets that influence the Plan Procurement Management process include, but are not limited to: Formal procurement policies, procedures, and guidelines. Most organizations have formal procurement policies and buying organizations. When such procurement support is not available, the project team should supply both the resources and the expertise to perform such procurement activities. Management techniques that are considered in developing the procurement management plan and selecting the contractual relationships to be used. An established multi-tier supplier system of prequalified sellers based on prior experience. All legal, contractual relationships generally fall into two broad families: either fixed-price or cost-reimbursable. Also, there is a third hybrid type commonly in use called the time and materials contract. The more popular contract types in use are discussed as discrete types, but in practice, it is not atypical to combine one or more types into a single procurement.

Costs must be shown transparently through invoices and worksheets, and checking them is an extra task on the part of the client. Besides, the final price of the contract is unknown, which hinders the planning of project costs.

Time and Material Contracts (T&M)

This section is a sequence of the last two mentioned where the contract establishes the price per unit of material and hour of work. Also, the final price will be the result of multiplying the quantities by the unit prices. In this way, the final amount is customer risk, while the purchase price per unit is contractor risk. This type of contract supposes an equitable distribution of the uncertainty if the initial planning is not detailed enough to use a fixed price contract. However, in the agreement reimbursable costs, the contractor is interested in increasing the amounts as much as possible to maximize its profits.

The next step is to compare those. Comparing the different types of contracts that should be included in the traditional theoretical framework of project management states that when subcontracting parts of the project, the fixed-price contract is the least risk to the organization. Then there is the contract for time and materials, and finally, the most significant threat is in agreement for reimbursable costs.

However, the risk is closely related to other factors such as the planning carried out, the purchase price, or the contractor with whom it works. A fixed-price contract with a subcontractor with economic problems may end up being much more expensive than initially expected, either because the subcontractor tries to increase the price through change claims or because he refuses to continue doing the job at any given time.

The following table 2 shows the main advantages and disadvantages for the buyer when using the different types of project management contracts. This table helps to understand the differences between them.

Table 2. Advantages and disadvantages of using the different types of contracts in project management

Type of contract	Advantage	Disadvantages
Fixed-price contracts	<p>Lower risk</p> <p>Type of contract very usual</p> <p>Facilitates the planning of project costs</p> <p>Small need for supervision</p>	<p>It requires proper initial planning</p> <p>Risk of claims and change orders</p> <p>Requires experience to avoid buying too expensive or cheap</p>
Cost-reimbursable contracts	<p>Easy comparison of offers</p> <p>Low risk of disputes</p> <p>Equitable distribution of risk</p>	<p>Requires administrative effort to check the planning, execution, and associated quantities</p> <p>Greater risk for the client</p>
Time and Material Contracts (T&M)	<p>Processing speed</p> <p>Greater flexibility: it is not necessary to define a priori the work to be done</p>	<p>Total cost undefined</p> <p>Greater need for supervision to avoid extra costs</p> <p>Lack of incentive for effectiveness</p>

Own source.

To decide which contract must be used, factors exposed in the PMBOK® must take into consideration, such as below:

- *The definition of the scope:* Only proper planning allows the use of a fixed price contract.

- *Possibilities of non-compliance with the preconditions of the contract:* If there are doubts about the fulfillment of the necessary conditions to allow the work of the subcontractor, then it is better to use a deal for reimbursable costs to avoid tedious contractual discussions.
- *The resources destined for the supervision of the subcontractor:* If there is an intention to use a contract for reimbursable costs or for time and materials, these must devote an additional effort to the supervision of the subcontractor and to checking invoices to avoid further charges.
- *The urgency of the beginning of the works:* If the project must start as soon as possible, then a contract for time and materials will be the most advisable since the hiring process of the other two types is considerably higher.
- *The type of project:* The fixed-price contract requires experience typically in the sector and type of project to adequately estimate the possible problems and the price associated with them. Also, it is more challenging to evaluate the different offers and avoid buying too expensive or cheap.
- *The relationship of the company with the subcontractor:* In the case of having worked previously with the subcontractor, the previous experience will help to decide which is the most suitable type of contract.
- *The project economic status and subcontractor:* Financial pressure both in the project and by the companies that are part of the contract is an essential factor in the decision of the same.

The use of incentives, the sharing of risk between the two parties, and the payment conditions also create different subtypes of contracts within the three main classes. It is also feasible to combine different types of arrangements in a single allotment. In this way, there is always the possibility of adopting a commitment to the requirements of each situation. This provision should be made together with the purchasing department to optimize the development of the project.

2.2 Conduct Procurements

The objective of the procurement technique is to obtain responses from suppliers, analyze and select the best quotes, offers, or proposals, negotiating and awarding

the best possible contract with each of the sellers chosen, as seen in the following figures seven bellows and eight next pages. During this process, suggestions or recommendations receive, and evaluation criteria are applied, as appropriate, to choose one or more suppliers-sellers. During this selection, can be evaluated many factors, such as:

- The price or cost may be the primary determinant of a ready-to-sell item. However, the lowest price proposed may not be the most economical cost if the seller proves incapable of delivering the products, services, or results on time.
- Proposals divide into technical (approach) and commercial (price) sections and each evaluation separately. Sometimes, management sections require as part of the project, which also must evaluate it.
- Multiple sources for products, services, and critical results may require mitigating the risks associated with delivery schedules and quality requirements. The potentially higher cost associated with these multiple vendors considers, including any loss of possible quantity discounts and replacement and maintenance issues.

Figure 7. Conduct Procurements: Inputs, Tools & Techniques, and Outputs

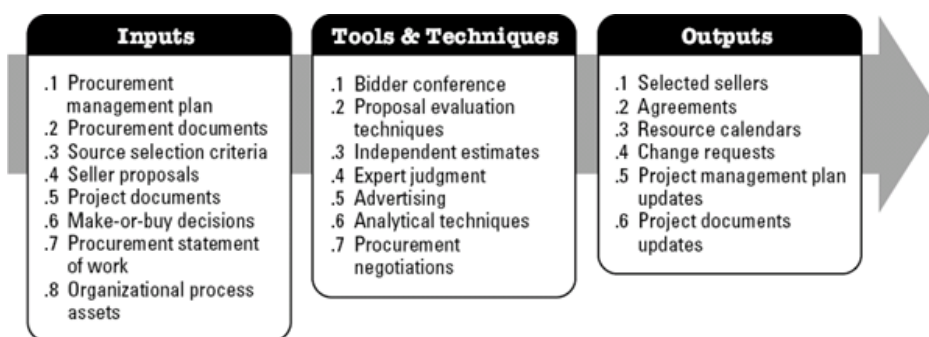


Figure 12-4. Conduct Procurements: Inputs, Tools & Techniques, and Outputs

Source: (PMBOK® Guide), Fifth Edition by Project Management Institute.

Figure 8. The Conduct Procurements Data Flow diagram

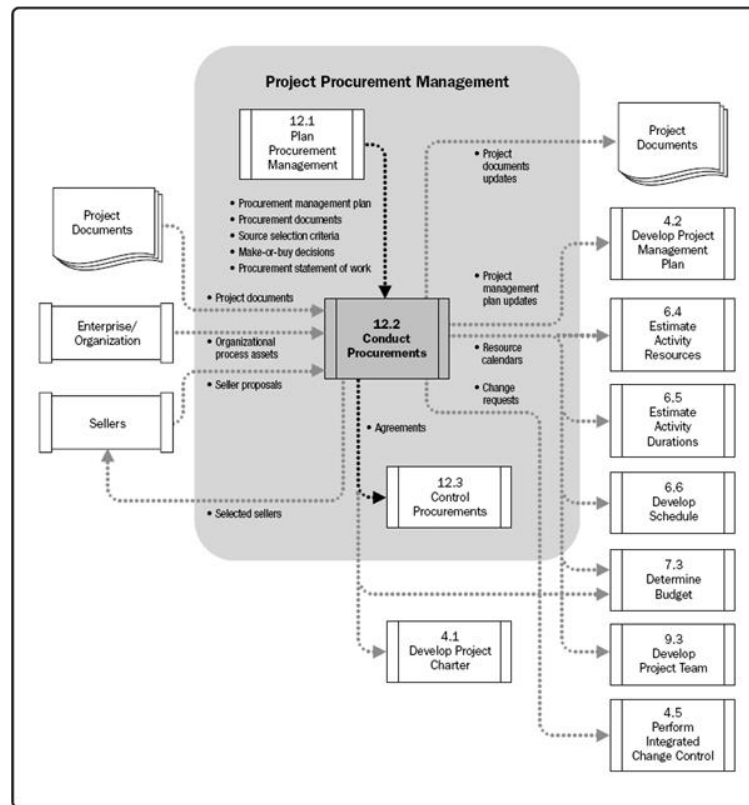


Figure 12-5. Conduct Procurements Data Flow Diagram

Source: (PMBOK® Guide), Fifth Edition by Project Management Institute.

Conduct Procurements: Inputs

*Procurement Management Plan:*³⁸ It describes how procurement processes will be managed, from preparing the procurement documents to the contract.

*Procurement Documents:*³⁹ It provides an audit trail for contracts and other agreements.

³⁸ It is described in Section 4.2.3.1. PMBOK® Guide. The procurement management plan depicts how the procurement processes will be managed from developing procurement documentation through contract closure.

³⁹ It is described in Section 12.1.3.3. PMBOK® Guide. Procurement documents deliver an audit trail for contracts and other agreements.

*Source Selection Criteria:*⁴⁰ It may include information on the provider's required skills, capabilities, delivery dates, product cost, life-cycle cost, technical expertise, and approach to the contract.

Seller Proposals: Prepared in response to a package of procurement documents, it constitutes the basic set of information used in the evaluation and selection of one or more vendors.

*Project Documents:*⁴¹ The registry of risks and the contracts related to the decisions regarding the risks very often consider it.

*Make-or-Buy Decisions*⁴²

*Procurement Statement of Work.*⁴³ It provides suppliers with a clearly defined set of objectives, requirements, and results.

*Organizational Process Assets*⁴⁴

Conduct Procurements: Tools and Techniques

Bidders Conference: Those are meetings with potential sellers before the preparation of an offer or proposal. To ensure that all potential suppliers have a clear and shared understanding of Procurement, are used to grant equal treatment.

⁴⁰ It is described in Section 12.1.3.4. PMBOK® Guide. Source selection criteria can include information on the supplier's required capabilities, capacity, delivery dates, product cost, life-cycle cost, technical expertise, and the approach to the contract.

⁴¹ It is described in Section 11.5.3.2. PMBOK® Guide. Project documents that are often considered include the risk-related contract decisions included within the risk register.

⁴² It is described in Section 12.1.3.5. PMBOK® Guide. Organizations procuring goods or services analyse the need, identify resources, and then compare procurement strategies when deciding to buy. Organizations also evaluate the need to buy products versus making the items themselves.

⁴³ It is described in Section 12.1.3.2. PMBOK® Guide. The procurement statement of work offers suppliers a clearly stated set of goals, requirements, and outcomes to provide a measurable response. The statement of work is a crucial component of the procurement process and can be modified as needed through this process until a final agreement is in place.

⁴⁴ It is described in Section 2.1.4. PMBOK® Guide. Elements of the organizational process assets that can influence the Conduct Procurements process.

Proposal Evaluation Techniques: It can be used with many different techniques, but all of those will use expert judgment to some extent and some form of evaluation criteria.

Independent Estimates: The buying party prepares its estimates independently to verify the proposed prices.

*Expert Judgment.*⁴⁵

Advertising: Advertisements in publications of general circulation, such as newspapers, or specialized magazines, such as professional journals. Most governmental jurisdictions require publicity of government contracts.

Analytical Techniques: Analytical techniques can help organizations, also to identify the preparation of a provider to provide the desired end state, to determine the expected cost for the development of the budget, and to avoid cost overruns due to changes. By studying past performance information, teams can identify areas of higher risk that require close monitoring to ensure the project's success.

Procurement Negotiations: the negotiation to clarify the structure and requirements of the contract so that an agreement can be it before signing the contract. The drafting of the final contract reflects all the agreements reached.

Conduct Procurements: Outputs

Selected Sellers.

Agreement: An acquisition agreement includes terms and conditions. It can also be incorporate other aspects specified by the buyer to establish what the seller must perform or provide.

⁴⁵ Section 12.2.2.4. PMBOK® Guide. Expert judgment may be utilized in evaluating seller proposals. A multi-discipline review team may evaluate proposals with expertise in each area covered by the procurement documents and proposed contracts. Can include expertise from functional disciplines such as contracting, legal, finance, accounting, engineering, design, research, development, sales, and manufacturing.

Resource Calendars: The documentation of the number of available resources. Dates in which each specific support may or may not be available.

*Change requests.*⁴⁶

Project Management Plan Updates.

Project Documents Updates.

2.3 Control Procurements

Manage or control acquisitions are carried out, both by the buyer and the seller, with similar purposes. Each party ensures that the other party complies with its contractual obligations and that its legal rights are protected. This process ensures that the seller's performance will comply with the contractual requirements and that the buyer will act by the terms of the contract.

In larger projects with several suppliers of products, services, and results, an essential aspect of contract management is to manage the interfaces between the various suppliers. The legal nature of the contractual link makes it imperative that the management team of the project is aware of the importance of the legal implications of the actions carried out when administering a contract. For legal reasons, many organizations treat contract administration as an administrative function independent of the project organization. However, the contract administrator belongs to the project team, generally depending on a supervisor from a different department. Usually, this is when the performing organization is also the project's seller to an external client.

⁴⁶ Change demands to the project management plan, its subsidiary plans, and other components are processed for review and disposition through the Perform Integrated Change Control process (Section 4.5 PMBOK® Guide).

Managing the acquisitions includes applying the project management processes appropriate to the contractual relationships and integrating the outputs of these processes in the general management of the project. This integration often occurs at multiple levels when there are numerous vendors and various products, services, or outcomes involved. The project management procedures that are applied include, among others:

- Direct and Manage Project Execution to authorize the contractor's work on time.
- Perform Quality Control to inspect and verify the conformity of the contractor's product.
- Perform Integrated Change Control to ensure that changes are correctly approved and that all people who need to know about them are aware of those changes.
- Control Risks are providing mitigation.

In all the processes of managing procurement relationships, monitoring the performance of the contract, and making changes and corrections as necessary, including that both the buyer and the seller control the acquisition contract for similar purposes. Each must confirm that both parties comply with the respective contractual obligations and that the legal rights are protected.

Due to the legal nature of the contractual relationship, the project management team must be aware of the legal implications of the measures taken when administering an acquisition. In projects with multiple suppliers, a significant aspect of contract management is the management of interfaces between different suppliers.

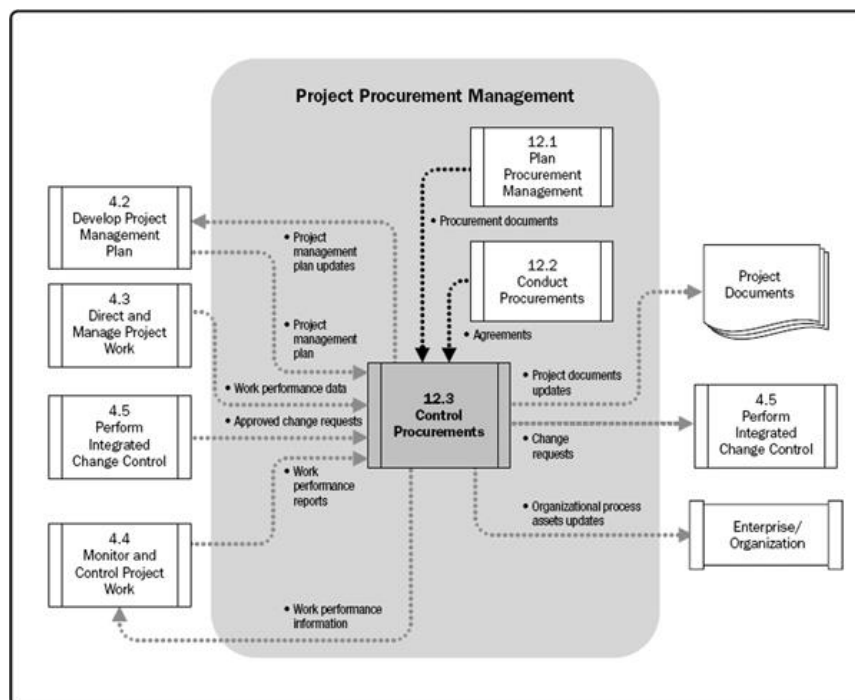
While a procurement administrator may be part of the project team, this person usually reports to a supervisor in a different department. Typically, this happens when the performing organization is also the seller of the project to an external client. The financial management component is also involved in monitoring the payments made to the seller. One of the primary considerations to consider when making payments to suppliers is a close relationship between the payments made and the work finished. All the steps mentioned can see in the following figures nine and ten below.

Figure 9. Control Procurement. Inputs, Tools and Techniques and Outputs



Source: (PMBOK® Guide), Fifth Edition by Project Management Institute.

Figure 10. Control Procurement data flow diagram



Source: (PMBOK® Guide), Fifth Edition by Project Management Institute.

These also carry out similar evaluations when it must confirm that a seller is not fulfilling its contractual obligations and when the buyer contemplates taking corrective actions. Managing acquisitions includes managing the anticipated termination of the contracted work due to cause, convenience, or non-compliance by the contract termination clause. Contracts may be amended by mutual consent at any

time before closing the deal, by terms of the agreement, and the modifications do not always benefit the seller and the buyer equally.⁴⁷

Control Procurements: Inputs

*Project Management Plan:*⁴⁸ It contains the Procurement Management Plan.

*Procurement Documents:*⁴⁹ Support records for procurement management processes.

*Agreements:*⁵⁰ Those include the deal of the duties of each of the parties.

The approved Change Requests: May include modifications to the terms and conditions of the contract, including the statement of contract work, prices, and the description of the products, services, or results that will provide it.

*Work Performance Reports:*⁵¹ The reports from the seller, such as technical documentation prepared by the same or performance reports.

*Work Performance Data:*⁵² Involve the degree of compliance with quality standards, the costs incurred or committed, and the identification of the vendor's invoices paid - all data collected as part of the execution of the Project.

⁴⁷ A Guide to the Project Management Body of Knowledge (PMBOK® Guide), Fifth Edition by Project Management Institute. chapter 12, section 12.3 Control procurements pages 379-386.

⁴⁸ It is described in Section 4.2.3.1. PMBOK® Guide. The project management plan defines how the procurement processes will be operated from developing procurement documentation through contract closure.

⁴⁹ It is described in Section 12.1.3.3. PMBOK® Guide. Procurement documents contain complete supporting records for the administration of the procurement processes; this includes procurement contract awards and the statement of work.

⁵⁰ It is described in Section 12.2.3.2. PMBOK® Guide. Agreements are understandings between parties, including the understanding of the duties of each party.

⁵¹ It is described in Section 4.4.3.2. PMBOK® Guide. Seller performance-related documentation.

⁵² It is described in Section 4.3.3.2. PMBOK® Guide. Work performance data comprises (1) the extent to which quality standards are being fulfilled, (2) the costs that have been sustained or committed, and (3) documentation of the supplier invoices that have been paid. All data are stored as part of the project execution.

Control Procurements: Tools and Techniques

Contract Change Control System: Defines the method by which the agreement can modify and integrate it with the integrated change control system.

Procurement Performance Reviews: A well-defined review of the progress made by the seller, which allows compliance with the scope and quality of the Project, within the cost and schedule, taking the contract as a reference.

Inspections and Audits: The Inspections and Audits can be carried out during the execution of the Project to identify weaknesses in the work processes or the deliverables of the seller.

The performance Reporting: Evaluates according to the requirements of the agreement.

Payment Systems: Expenses to the seller are processed by the buyer's accounts payable system, usually after satisfactory work by an authorized person of the Project team.

Claims Administration: Those requests for change where the buyer and seller can not reach an agreement are called claims, disputes, or appeals. It must be documented, processed, supervised, and managed throughout the contract life cycle.

*Records Management System:*⁵³ It is the specific set of processes, related control functions, and automation tools. These are consolidated and combined into a whole, so those are part of the information system of Project management.

⁵³ A records management structure is used by the project manager to handle contract and procurement documentation and records. It involves of a specific set of processes, related control functions, and automation tools consolidated and merged as part of the project management information system (Section 4.4.2.3. PMBOK® Guide). The system contains a retrievable documentation of contract documents and correspondence.

Control Procurements: Outputs

Work Performance Information: The basis for identifying current or potential problems will serve as a backup for subsequent claims or new acquisitions.

*Change requests*⁵⁴

*Project Management Plan Updates*⁵⁵

*Project Documents Updates*⁵⁶

*Organizational Process Assets Updates*⁵⁷

⁵⁴ Section 12.3.3.2. PMBOK® Guide. Change requests to the project management plan, the subsidiary plans, and other components, as are the baseline cost, the baseline schedule, and procurement management plan, may result from the Control Procurements process. Change requests are managed for review and approval through the Perform Integrated Change Control practice. Requested but unresolved changes can consist of direction provided by the buyer or proceedings taken by the dealer, which the other party considers a beneficial change to the contract. Since any of these constructive adjustments may be disputed by one party and can lead to a claim contrary to the other party, such changes are uniquely identified and documented by project correspondence.

⁵⁵ Section 12.3.3.3. PMBOK® Guide. Project Management Plan Updates Elements from the project plan that might be updated include but are not limited to: • The procurement management plan is updated to reflect any approved change requests that affect procurement management, including impacts on costs or schedules. • Schedule baseline: If there are slippages that impact overall project performance, the schedule baseline may need to be revised to reflect the current expectations. • Cost baseline. If there are changes that impact overall project costs, the cost baseline may need to be updated to reflect the current expectations.

⁵⁶ Section 12.3.3.4. PMBOK® Guide. Project Documents Updates: Project documents that may be updated include but are not restricted to procurement documentation. It may include the procurement contract with all supporting schedules, requested unapproved contract changes, and approved change requests. Its documentation also includes any seller-developed technical documentation and other work performance information, such as deliverables, seller performance reports, warranties, and financial documents—these including invoices and payment records, and the results of contract-related inspections.

⁵⁷ Section 12.3.3.5. PMBOK® Guide. Organizational Process Assets Updates Elements that might be updated include but are not limited to the correspondence. Contract terms and conditions frequently require written documentation of certain aspects of the buyer or seller communications, such as the requirement for warnings of unsatisfactory performance and requests for contract changes or clarification. It can contain the reported results of buyer audits and assessments that indicate weaknesses the seller needs to correct. In addendum to specific contract requirements for documentation, a complete and accurate written record of all written and oral contract communications and actions taken and decisions made are maintained by both parties. • Payment schedules and requests. The procurement contract terms and conditions should make all payments. • Seller performance evaluation documentation. The buyer prepares seller performance evaluation documentation. Such performance evaluations document the seller's capability to continue to execute work on the current contract, indicate if the seller can be authorized to perform work on future tasks, or rate how well the seller is executing the project work. These documents may form the starting point for early closure

2.4 Close Procurements

The process of closing the project or phase is completing all activities through all groups of project management processes to end the project or a period of it formally.

The project manager will review all previous information from the closings of the earlier stages to ensure that all project work is thorough and that the project has achieved its objectives.

The process of closing the acquisitions, among others, also involves administrative activities such as finalizing all open claims, updating all records to reflect the results, and archiving said information for use as documentation to consult in the future. All the steps mentioned can see in the following figures. On this page, figure 11 and figure 12 on the next page.

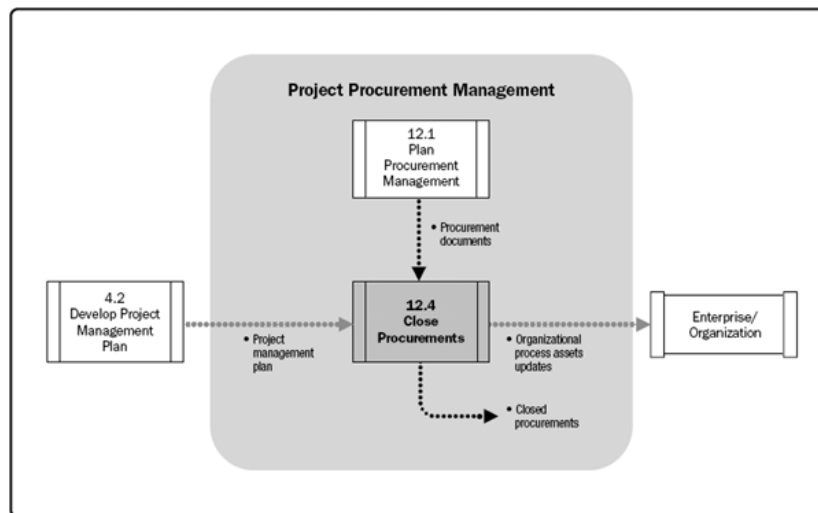
Figure 11. Close Procurements: Inputs, Tools and Techniques and Outputs



Source: (PMBOK® Guide), Fifth Edition by Project Management Institute

of the seller's contract or determine how contract penalties, fees, or incentives are governed. The results of these performing evaluations can also be included in the appropriately qualified seller lists.

Figure 12. Close Procurements data flow diagram



Source: (PMBOK® Guide), Fifth Edition by Project Management Institute

All claims not resolved at the time of closing may be subject to litigation after the end, and the terms and conditions of the contract may prescribe specific procedures within the same contract closure. Corresponding to the terms and conditions stipulated in the acquisition, the buyer may have the right to terminate the entire contract or part of the project, at any time, for just cause or convenience. By terms and contract conditions, there is a possibility that the buyer may have to compensate the seller for the preparations for the latter, and the completed and accepted works related to the part of the contract terminated.⁵⁸

The procedures to establish the necessary interactions and carry out the closing activities are:

Contractual Closure Procedure: It includes all the activities and communications required to close any contractual agreement found in the Project and define the businesses that support the formal closure of the Project. This procedure involves Product verification that all the work completed correctly and satisfactorily, as well as the legal closing, the updating of contract records to reflect the final results, and

⁵⁸ A Guide to the Project Management Body of Knowledge (PMBOK® Guide), Fifth Edition by Project Management Institute. chapter 12, section 12.4 Close procurements, pages 386-390.

the archiving of that information for future use. In the terms and conditions of each contract, specifications must be established to close the deal, which should be part of this procedure. The early termination of a contract is a particular case of contract closure that could entail, e. g., the inability to deliver the product, a budget deviation, or a lack of required resources.

Administrative Closure Procedure: All the activities, interactions, roles, and responsibilities of the project team and other stakeholders are described in detail. Executing the administrative closure process also includes the activities necessary to compile the project records and analyze the success or failure, gathering lessons learned and archiving all Project information for possible future use by the organization.

This phase is also called administrative or internal closure and includes at least these activities:

- Final report of the Project.
- Summary of the last budget, with the balance of resources spent and benefits obtained.
- The final project schedule. It including a balance of deviations between the initial forecasts and the result.
- Directory of participants in the Project (suppliers, subcontractors, equipment)
- Historical of the Project. Archive of all the generated documentation.

Disabling the Team:

- The final evaluation of all the members and the team is made.
- The delivery of the work is made before the team leaves.
- It is keeping updating the qualifications of team members.

Learned lessons:

Answering questions as:

What has to be learned

What has well done?

What is wrong?

Close Procurements: Inputs

- *Project Management Plan*⁵⁹
- *Procurement Documents*

Close Procurements: Tools and Techniques

- *Procurement Audits*⁶⁰
- *Procurement Negotiations*⁶¹
- *Records Management System*⁶²

Close Procurements: Outputs

⁵⁹ It is described in Section 4.2.3.1. PMBOK® Guide. The project management plan contains the procurement management plan, which provides the details and guidelines for closing out procurements.

⁶⁰ Section 12.4.2.1. PMBOK® Guide. Procurement Audits is a structured evaluation of the procurement process originating from the Plan Procurement Management process through Control Procurements. A procurement audit aims to detect successes and failures that permit recognition in the formulation or administration of other procurement agreements on the project or other projects within the performing organization.

⁶¹ Section 12.4.2.2. PMBOK® Guide. Procurement Negotiations in all procurement dealings, the final reasonable settlement of all outstanding issues, claims, and disputes by negotiation is a fundamental goal. Whenever settlement cannot be accomplished through direct negotiation, some form of alternative dispute resolution (ADR), including mediation or arbitration, may be explored. When all else fails, litigation in the courts is the least desirable option.

⁶² Described in Section 12.3.2.7. PMBOK® Guide. A records management system is operated by the project manager to oversee contract and procurement documentation and records. Contract documents and correspondence are archived through the records management system as part of the Close Procurements process.

- *Closed Procurements*⁶³
- *Organizational Process Assets Updates*⁶⁴

⁶³ Section 12.4.3.1. PMBOK® Guide. Closed Procurements: The buyer, generally through its authorized procurement administrator, provides the seller with formal written notice that the contract has been terminated. Requirements for formal procurement closure are frequently defined in the terms and conditions of the contract and are contained in the procurement management plan.

⁶⁴ Section 12.4.3.2. PMBOK® Guide. Organizational Process Assets Updates Elements that might be updated include but are not limited to: The Procurement file: A comprehensive set of indexed contract documentation, plus the closed contract, is prepared for addition with the final project files. Deliverable acceptance: Documentation of formal acceptance of seller-provided deliverables may be required to be retained by the organization. The Close Procurement process ensures that this documentation requirement is satisfied. Requests for formal deliverable acceptance and how to address nonconforming deliverables are usually defined in the agreement. Lessons learned documentation. Lessons learned, experienced, and process improvement recommendations should be developed for the project file to improve future procurements.

3 PUBLIC PROCUREMENT IN THE EU-EEA

3.1 Introduction

Public contracts play an essential role in the economy of the member states, with an estimated value of more than 18% of the union's GDP. Before community legislation began to be applied, only 2% of public contracts award to non-national companies. The importance of these contracts in specific sectors, such as construction, public works, energy, telecommunications, and heavy industry, is crucial.

Traditionally those have been characterized by the preference for national suppliers, which is based on legislative or administrative provisions. This lack of open and active competition represented an obstacle to the completion of the internal market, which increased the costs that had to be assumed by the contracting authorities and inhibited, in specific vital industries, the improvement of competitiveness.

The utilization of the principles of the internal market, the freedom to provide services, and freedom of competition, allows such contracts to guarantee a better distribution of economic resources. It will also allow more rational use of public funds since the authorities public obtains products and services of the best quality available at the best price in a regime of more intense competition.

The above can be possible by giving preference to the companies that offer the best services in the European market. Encourages the competitiveness of European companies, which can increase the size and develop the demands and strengthens the respect of the principles of transparency, equal treatment, Fair competition, and efficiency, which reduces the risks of fraud and corruption. A genuinely open internal market cannot achieve if all companies are not allowed to compete on an equal footing for the award of such contracts.

The community has adopted legislation designed to coordinate national provisions that impose obligations regarding the publicity of tenders and the application of objective criteria for the control. Following the adoption, since the 1960s, of several legislative acts, the Community decided to simplify and coordinate legislation on public procurement, for which it adopted by four Directives (92/50/EEC,

93/36/EEC, 93/37/ EEC, and 93/38/EEC).⁶⁵ Three of the Directives above were merged to simplify and clarify the regulations, in Directive 2004/18/EC,⁶⁶ on the coordination of practices for the award of public works, supply and service contracts corrected by the Directive 2005/75/EC⁶⁷ and Directive 2004/17/EC,⁶⁸ on the coordination of processes for grant of deals in the sectors of water, energy, transport, and postal services. Directive 2005/51/EC⁶⁹ modified some annexes of the two Directives cited. Directive 2009/81/EC⁷⁰ established specific rules for public procurement in the field of defense to facilitate access to the “defense markets” of other Member States.⁷¹

In 2014, the Parliament and the Council adopted a new package regarding public procurement to simplify and make procedures more flexible and stimulate small and medium-sized companies to public procurement and guarantee a higher weight

⁶⁵ Commission Directive 2001/78/EC of 13 September 2001 amending Annex IV to Council Directive 93/36/EEC, Annexes IV, V and VI to Council Directive 93/37/EEC, Annexes III and IV to Council Directive 92/50/EEC, as amended by Directive 97/52/EC, and Annexes XII to XV, XVII and XVIII to Council Directive 93/38/EEC, as amended by Directive 98/4/EC (Directive on the use of standard forms in the publication of public contract notices) (Text with EEA relevance). <https://eur-lex.europa.eu/eli/dir/2001/78/oj>

⁶⁶ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32004L0018>

⁶⁷ Directive 2005/75/EC of the European Parliament and of the Council of 16 November 2005 correcting Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32005L0075>

⁶⁸ Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004L0017>

⁶⁹ 2005/51/EC: Commission Decision of 21 January 2005 authorising Member States temporarily to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of the importation of soil contaminated by pesticides or persistent organic pollutants for decontamination purposes (notified under document number C(2005) 92). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32005D0051>

⁷⁰ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security and amending Directives 2004/17/EC and 2004/18/EC (Text with EEA relevance). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009L0081>

⁷¹ This summary is well specified in the work of Jan M. Hebly, 2008. European Public Procurement. Legislative history of the “Utilities” Directive 2004/17/EC. Published by Austin ; Alphen aan den Rijn : Wolters Kluwer Law & Business.

of the social and environmental criteria. This legislative outline involves Directive 2014/24/EU⁷² of 26 February 2014 on public procurement. It was repealing Directive 2004/18/EC⁷³. The Directive 2014/25/EU⁷⁴ of 26 February 2014, regarding the acquisition by bodies operating in the areas of water, energy, transport, and postal services, repealing Directive 2004/17/EC.⁷⁵ A new Directive completes the new package on public procurement on concessions, Directive 2014/23/EU,⁷⁶ of February 26, 2014. It regarding the awarding of concession contracts, which establishes an adequate framework for the granting of grants, guaranteeing to all economic operators in the Union effective and non-discriminatory access to the Union market, and provides more certainty on the applicable law.

The external component of public procurement took it into account in the Commission proposal of 21 March 2012 on the Regulation on the access of products and services. From third countries to the internal market of the Union in the field of public procurement, as well as procedures to support negotiations for the access of Union products and services to public procurement markets in third countries.

The Commission adopted in April 2012 a strategy on electronic public procurement to achieve the full implementation of electronic public procurement by mid-2016. On June 26, 2013, it published the proposal for a Directive on electronic invoicing in public procurement.

⁷² Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance, being in force until our days. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>

⁷³ Idem. Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114).

⁷⁴ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC Text with EEA relevance. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0025>

⁷⁵ Idem.

⁷⁶ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts Text with EEA relevance. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2014_094_R_0001_01

On April 16, 2014, Parliament and the Council adopted Directive 2014/55/EU on electronic invoicing in public procurement. The deadline for its transposition in the Member States ended on November 27, 2018.

3.2 Legal basis

The legal basis invokes articles 26 and 34, Article 53, paragraph 1, and Articles 56, 57, 62, and 114 of the Treaty on the Functioning of the European Union (TFEU).⁷⁷

Directives 92/50/EEC. Directive 93/36/EEC. Directive 93/37/EEC. Directive 93/38/EEC. Directive 2004/18/EC regarding the coordination of procedures for the award of public works, supply and service contracts corrected by the Directive 2005/75/EC and Directive 2004/17/EC, on the coordination of methods Awarded settlements in the sectors of water, energy, transport, and postal services. Directive 2005/51/EC modified some annexes of the two Directives cited. Directive 2009/81/EC introduced detailed rules for public procurement in the field of defense. The Directive 2014/24/EU of 26 February 2014 on public procurement repealing the Directive 2004/18/EC. The Directive 2014/25/EU of 26 February 2014, regarding the purchase by entities operating in the sectors of water, energy, transport, and postal services, repealing Directive 2004/17/EC. Directive 2014/23/EU, of February 26, 2014, regarding the awarding of concession contracts. On April 16, 2014, Parliament and the Council adopted Directive 2014/55/EU on electronic invoicing in public procurement.

In February 2014, the new public procurement directives were in force, and member states had up until April 2016 to transpose those into the national legislation except in electronic public procurement. The deadline was until September 2018.⁷⁸

⁷⁷ Consolidated version of the Treaty on the Functioning of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12012E/TXT>

⁷⁸ Directive 2014/24/EU of the European Parliament and of the Council, of 26 February 2014, on public procurement and repealing Directive 2004/18/EC, Directive 2014/23/EU of the European

3.3 Common procurement terms award

CA: Contracting Authority.

CN: Contract Notice.

ESI Funds: European Structural and Investment Funds.

EU: European Union.

EC: European Commission.

MEAT: most economically advantageous tender.

NATO: North Atlantic Treaty Organization.

OJEU: Official Journal of the European Union.

PIN: Prior Information Notice.

PPP: Public-Private Partnership.

PQQ: Pre-Qualification Questionnaire.

SIMAP: Information system for public procurement (from French language: Systems d'information sur les Marchés Publics).

SMEs: Small and medium-sized enterprises.

VFM: value-for-money.

Parliament and of the Council , of February 26, 2014, relating to the awarding of concession contracts and Directive 2014/25/EU of the European Parliament and of the Council, of February 26, 2014, regarding contracting by entities operating in the sectors of the water, energy, transport and postal services and repealing Directive 2004/17/EC.

3.4 Contracts and Project Management

The design of the contract organization depends on the size and complexity of the contract and the risks involved. Regardless of the difficulty and size of the arrangements, it will be necessary to incorporate a hiring manager who can also act as a contract, project, or specialist manager to manage specific processes. These are highly recommended in case of signed agreements—value, complicated, or too risky.

The functions and responsibilities that must assume it during the hiring process must clearly define the Contracting Authority (CA). Depending on the expected number of contracts and complexity, it may be necessary to incorporate external advisors specializing in certain aspects of contracting into the team, such as legal issues.

A series of project management tools and techniques⁷⁹ can facilitate the control and management of the project, such as document control and records of issues or incidents. These tools and techniques constitute the function of project guarantees in the organization of the project. The use of phases and revision is a reliable project management technique applied more frequently in more complex contracts. The control process above can ensure that the activities that make up each phase of the agreement have been completed before the CA gives the authorization to proceed to the next stage. Phase reviews should establish at critical moments throughout the

⁷⁹ TOOLKIT – GATEWAYS. Description: Gateways is a mechanism to review procurements at critical points before crucial decisions are taken. Thereby enabling them to progress through the various phases and, if necessary, modify or even stop the procedure. The purpose is to launch a series of ‘health checks’ into the project or contract timetable. Gateways are designed to ensure that the procurement is soundly based, well planned, that all appropriate stakeholders are involved so that the objectives are achieved. The mechanism also improves the consistency of methodology across various contracts and projects. Each gateway contains a series of questions designed to test the robustness of decisions. Evidence is submitted to the Evaluation Committee or the CA to demonstrate that the subjects covered by the gateway questions have been effectively addressed before the procurement can progress to its next stage.

life cycle of the contract. Formal reports are used mainly for high value, complicated and hazardous contracts.

Regarding Human Resources (HR) and its useful function implies assigning the adequate HR award the contract, including people with the appropriate qualifications to participate in the evaluation committee of the CA. People with project management competencies, legal, financial, technical, audit, and others, deciding who will assume the full responsibility for the significant decisions and the allocation of budgets. The owner of the contract or project must be identified, informed, and accepted. If the agreement is complex or involves a risk of incurring high costs, we must consider the possibility of establishing a steering committee in charge of supervising the contract. The steering committee would approve all critical decisions and, in general, would include people who do not participate in the actual awarding of the contract.

It is good practice to create an evaluation committee as soon as the decision to proceed with the hiring is adopted to ensure that the hiring process is carried out most professionally with the participation of personnel who meet all the necessary qualifications from the beginning.

The committee must have permanent member participation. Those responsible for contracting, financial, and legal aspects must be permanent members. The technical employees will be members depending on the type of contract in question. Conventionally, the committee is composed of members with experience in each area under study in the tender.

The management usually falls on the contractor project manager. It is subject to rules and procedures that will result in a balanced judgment based on the individual evaluations of its members. In some Member States, only the CA as an independent body or collective body or with members has absolute powers over the above. It can also count on representatives of external organizations that are interested parties in the conclusion of the contract, appropriately appointed by the CA. Decisions must be based entirely on the criteria published and must demonstrate that those have not been conditioned by political reasons or by other undue influence. The

evaluation committee work must record minus the list of attendees and the summary of the discussions of the meeting or the minutes.

The concept known as conflict of interest covers any situation. These could be if a CA staff member or any service provider acts as a CA member. Involve both actors when those participating in the procurement procedures can influence the outcome of the contract. The said procedure has, directly or indirectly, a financial, economic, or other interest that may appear to compromise its impartiality and independence in the context of the contracting procedure.

Financial agents and other persons involved in the execution and management, including preparatory acts and the audit or control of the budget, shall not take any action that may conflict of interests between those members in the Union. There will be an interesting conflict when the impartial and objective exercise of the functions of the financial agents and other persons is compromised for family, affective reason, political or national affinity, economic interest, or any other cause of community of affairs beneficiary.

These acceptable practices include:

- Each member of the evaluation committee should sign a conflict of the interest declaration form. However, this is not mandatory under Directive 2004/18/EC, and any person who presents a possible conflict of interest must, in one way or another, abstain from participating in the hiring.
- The basic systems, controls, and training must be designed and stipulated to ensure that all the main agents that can influence decisions on the scope or award of a contract are aware of the responsibility to act with impartiality and integrity. Indeed must sign a declaration of conflict of interests. In the opening phase of the hiring process, the evaluation committee should be asked to declare any real or potential conflict of interest. These statements are recorded and kept in the contract file; in turn, each CA must have the appropriate procedures in this regard.

- Tenderers must be asked to declare any conflict of interest, including any conflict of interests with the families of the bidders when submitting bids, as this declaration will be an essential requirement to be established in the bidding documents.

Additional information can be consulted in case C-538/13, eVigilo,⁸⁰ in which the CA is needed to establish possible conflicts of interest and adopt the proper measures to prevent, detect conflicts of interest and remedy these, in particular, points 42 to 44⁸¹ of this case. In the new directives, this defines a conflict of interest and points to it as a reason for exclusion.

3.4.1 Negotiation of the public contracts

When talking about the Negotiations of Public Contracts, it must preestablish that all procedures within these negotiations must respect the principles of the Union

⁸⁰ In Case C-538/13. JUDGMENT OF THE COURT (Fifth Chamber), 12 March 2015. “Reference for a preliminary ruling - Public procurement - Directives 89/665/EEC and 2004/18/EC - Principles of equal treatment and transparency - Connection between the successful tenderer and the contracting authority’s experts - Obligation to take that connection into account - Burden of proving bias on the part of an expert - Such bias having no effect on the final result of the evaluation - Time-limit for instituting proceedings - Challenging the abstract award criteria –Those criteria clarified after the exhaustive reasons for the award of the contract had been communicated - Degree of the tenders’ conformity with the technical specifications as an evaluation criterion”. - REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos Aukščiausiasis Teismas (Lithuania), made by decision of 9 October 2013, received at the Court on 14 October 2013, in the proceedings eVigilo Ltd.

⁸¹ Point 42: “Concerning the rules on evidence in that regard, it should be pointed out that, in accordance with Article 2 of Directive 2004/18, the contracting authorities are to treat economic operators equally and non-discriminately and to act in a transparent way. It follows that these are assigned an active role in the application of those principles of public procurement”.

Point 43: “Since that duty relates to the very essence of the public procurement directives (see judgment in *Michaniki*, C-213/07, EU:C:2008:731, paragraph 45), it follows that the contracting authority is, at all events, required to determine whether any conflicts of interests exist and to take appropriate measures in order to prevent and detect conflicts of interests and remedy them. It would be incompatible with that active role for the applicant to bear the burden of proving, in the context of the appeal proceedings, that the experts appointed by the contracting authority were in fact biased. Such an outcome would also be contrary to the principle of effectiveness and the requirement of an effective remedy laid down in the third subparagraph of Article 1(1) of Directive 89/665, in light, in particular, of the fact that a tenderer is not, in general, in a position to have access to information and evidence allowing him to prove such bias”.

Point 44: “Thus, if the unsuccessful tenderer presents objective evidence calling into question the impartiality of one of the contracting authority’s experts, it is for that contracting authority to examine all the relevant circumstances having led to the adoption of the decision relating to the award of the contract in order to prevent and detect conflicts of interests and remedy them, including, where appropriate, requesting the parties to provide certain information and evidence”.

law and the free movement of goods, freedom of establishment, and freedom to provide services. These services and policies derived from these include equality of treatment and non-discrimination. Furthermore, mutual recognition and proportionality. Transparency without leaving respect for free competition, confidentiality, and efficiency.

These are the thresholds triggering EU-wide rules: EUR 144 000 for supplies contracts for defense only those listed in Annex III of Directive 2014/24, EUR 221 000 for supplies contracts for defense products not listed in Annex III of Directive 2014/24, EUR 443 000 for supplies and services contracts for water, energy, transport, and postal services, EUR 5 548 000 for all works contracts.

The other public authorities:

- EUR 221 000 for all supplies and services contracts
- EUR 443 000 for supplies and services contracts for water, energy, transport, and postal services
- EUR 5 548 000: all works contracts.

Among the types of procedure call for the tenders⁸² must correspond to certain types of procedure based on a system of thresholds completed with methods for calculating the estimated value of each public contract and indications on the procedures to be applied, with mandatory or indicative character, as established the Directives.

⁸² The EU tendering rules and procedures: As a business registered in the EU, have the right to participate in public contracts in other EU countries. EU law sets minimum harmonized rules that apply to tenders above a specific value. For lower value tenders, national rules apply. These must respect the general principles of EU law. 'Below threshold' procedures may be simplified compared to EU-wide tenders. For all tenders, public authorities may not distinguish against businesses registered in another EU country. May not apply to specific brands, trademarks, or patents when describing the characteristics of products and services these wish to purchase. May not deny accepting supporting documents (certificates, diplomas) issued by another EU country. Those that provide the same level of assurance must make all information regarding tenders available to all interested companies, regardless of the EU country those are registered.

In the open procedure,⁸³ any interested economic operator may submit an offer, while, in the restricted process,⁸⁴ only invited candidates may do so. In the bidding procedure with negotiation,⁸⁵ any commercial operator may apply for participation, but only the commercial operators invited after evaluating the information provided by them may submit an initial offer, which will be the basis for further negotiations.

In the competitive dialogue process,⁸⁶ any economic operator can apply for participation, but only invited candidates can participate in the dialogue. This process is

A public authority can exclude a business from a call for tenders if it is bankrupt or wound up. If it has suspended its activities or a court administers its activities. If it has been found guilty of grave misconduct, has not paid taxes or social security contributions, or has made false declarations to a public authority. There are specific cases when public authorities may award contracts without publishing a call for tenders, as are emergencies due to unforeseeable events. Contracts for technical reasons or exclusive rights can only be carried out by one particular company, and contracts that by law are excluded from public procurement (acquisition or rental of existing buildings, employment contracts, program material for broadcasting). https://europa.eu/youreurope/business/selling-in-eu/public-contracts/rules-procedures/index_en.htm

⁸³ In an open procedure, any company may offer a tender. The minimum period limit for submission of tenders is 35 days from the publication date of the contract notice. If a previous information notice was published, this time limit could be reduced to 15 days.

⁸⁴ Any business may expect to participate in a restricted procedure, but only those who are pre-selected will be invited to submit a tender. The time threshold to request participation is 37 days from the publication of the contract notice. The public authority then selects at least five candidates with the required capabilities, who then have 40 days to submit a tender from when the invite was sent. This time limit can be lowered to 36 days if a prior information notice has been circulated. In urgent cases, the public authority may establish a time limit of 15 days to collect participation applications (if the notice is sent electronically, this can be reduced to 10 days) and ten days for the submission of the tenders.

⁸⁵ In a negotiated process, the public authority invites at least three businesses to discuss the terms of the contract. Most contracting authorities can apply this procedure only in a limited quantity of cases, for example, for supplies expected exclusively for research or testing reasons. The contracting authorities in areas as water, energy, transport, or postal services may use it as a standard practice. The time threshold to receive requests to participate is 37 days from the publication of the contract notice. It can be reduced to 15 days in extremely urgent cases or ten days if the notice is sent electronically. Under specified conditions, this procedure can be decided even without publication of a contract notice. An example can be where no tenders were submitted in an open or restricted procedure in extremely urgent cases where, for technical reasons, the contract can be carried out only by a single business.

⁸⁶ This procedure is frequently used for complex contracts such as large infrastructure projects where the public authority cannot identify the technical specifications at the start. After the publication of the contract notice, involved corporations have 37 days to request participation. The public authority must invite at least three candidates to a dialogue where the final technical, legal and economic aspects are defined after this dialogue, and candidates submit the final tenders. Competitive dialogue cannot be used by public service providers in the water, energy, transport, and postal services sectors.

used when the contracting authorities are not able to define the ideal means to satisfy the needs or to evaluate the solutions that the market can offer — the contract award on the sole basis of the award criteria of the best value for money.

Here is a new procedure that is the partnership for innovation, for cases in which an innovative solution require that is not yet available in the market. The contracting authority decides to establish an association for change with one or several partners that carry out independent research and development activities to deal with a new resourceful solution through the tendering process. Finally, in particular cases and circumstances, contracting authorities may award public contracts through a negotiated process without prior publication of a contract notice.

3.4.2 Definition of the object of the contract

The first step is to identify the purpose of the agreement.

The second applied to establish whether the object of the contract constitutes a single work. As described in Article 1, paragraph 2, letter b, Directive 2004/18/EC, and jurisprudence, we can see the Cases C-16/98, Commission v France, C-574/10 Commission v Germany, T-358/08 Spain v Commission and T-384/10, Spain v Commission.

The third step is to establish if the contract exceeds the threshold to publish it in the Official Journal of the European Union (OJEU). In particular, the Contracting Authority (CA) should not divide more significant works, supplies, or services into smaller units to circumvent these thresholds. In the case of works, it must make a merger of all independent contracts in which there is a functional and temporary relationship between them. In general, if the set of contracts pursues the same objective, the values must be added. If the aggregated benefits exceed the thresholds, the agreements shall publish it in the OJEU. Collaboration projects between several partners should consider the public procurement requirements at the project level, not at the level of each partner separately.

After completing the steps above, the CA can decide whether to award a single contract or divide it into lots. Opting for a separate deal can entail economies of scale and scope and facilitate administration to the CA. The drawback is that the demanding financial or technical criteria established for bidders can reduce or eliminate the participation in the market of smaller or more specialized contractors. The division of the contract into lots presents the advantage of opening the competition to more potential bidders. In this case, the drawback is that, with more arrangements, the CA is more complicated to perform the management. Decisions about the agreement and its publication must be justified, which may also examine during the project audits.

The detection of an undeclared conflict of interest may call into question the impartiality of the contracting process and lead to financial corrections.⁸⁷

3.4.3 Thresholds and announcements

The monetary value is an indicator of whether contracting is subject to EU public procurement rules. Therefore, it is necessary to apply tendering and publicity procedures at the EU level. If the contract has a value higher than a specific limit modified every two years, it will be necessary to comply with Directive 2004/18/EC. The estimated value of the contract can be calculated based on the sales statistics of current or previous suppliers. For example, a contracting authority derives the monthly costs for supply or service of 12 months for a total period of four years. The total amount of the contract determines whether the Directive or national procurement regulations should be applied. The highest reference on what is mentioned above is obtained directly in article 9 of Directive 2004/18/EC.⁸⁸

⁸⁷ See more on anti-fraud and anti-corruption measures in Article 125 of Regulation (EU) No 1303/2013. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013R1303>

⁸⁸ From 18 April 2016, new regulations have changed how EU members and public authorities consume a large part of the €1.9 trillion expended in public procurement every year in Europe. This blind date was the transposition deadline for three directives on public procurement, and concessions implemented two years ago. In other words, it was the time by which EU countries must have implemented national legislation conforming to the directives. The new legislation will make it more straightforward and inexpensive for small and medium-sized enterprises (SMEs) to bid for public

way, in the paper, or by fax and standard format, excluding the OJEU just published in electronic format. When contracts below the EC thresholds arouse potential cross-border interest, the Commission must consider the safest measure to avoid any risk of irregularities and possible financial corrections.⁹¹ It will be publishing the contract in the OJEU, a national website dedicated to public procurement, or on a site about known public procurement. If the publication does not exist, one of the most severe errors incurred, and that is why, in case of doubt, it recommends making the publication in the OJEU to guarantee competence at the EU level.

The artificial division of contracts consists in the division of deals with the same objective in smaller settlements to avoid publication in the OJEU, which we can see in article 9, paragraph 3,⁹² of Directive 2004/18/EC; as the determination of the object of the contract as a single contractor in batches. This same Directive applies to all public contracts. The agreement comprises all the parties or lots necessary to fulfill its objective, be it supplies, works, or services with an expected value equal to or higher than the specified thresholds. The characteristics to determine the type of procedure to be used and the different legal obligations are the purpose of the contract and the value of the covenant, of course, without VAT.

If this theoretical framework mentioned above is put within the current reality, it could be said that: shall be the same as a contracting authority that needs to paint a ten-story building with a large office on each of the floors. It should not divide the general contract into ten minor contracts or at least six agreements and award them without bidding.

⁹¹ The term financial corrections cover measures taken by the Commission or a Member State to exclude from co-financing from the EU budget expenditure that does not meet the financing conditions for irregularities. Consult the guide to determine the financial corrections the Commission should make of expenditure financed by the Union in the framework of shared management for non-compliance with the rules for the award of public contracts, approved by Commission Decision C (2013) 9527 , of December 19, 2013, which is available in this link: https://ec.europa.eu/regional_policy/sources/docoffic/cocof/2013/cocof_13_9527_en.pdf

⁹² Article 9, paragraph 3, Directive 2004/18/EC says: “No works project or proposed purchase of a certain quantity of supplies and/or services may be subdivided to prevent its coming within the scope of this Directive”.

What must be done is that all the services, supplies, or works necessary to create a functional whole must be grouped and calculated for the total value of the ten contracts. The total value will determine the need for an offer to comply with Directive 2004/18/EC. It is illegal to artificially split contracts so that these meet the EU thresholds for publication purposes.

That is to say; the contracting authority can divide the contract into phases if it states in the bidding documents and that the bidding process is fair, open, and transparent. In the case of works, a merger must make all the separate contracts in which there is a functional and temporary relationship between them. In general, if the set of contracts pursues the same objective, the values will have to be added, as mentioned in the previous paragraph with its corresponding agreements, in case it executes over a long period.

Each Project Manager must consider that the entire planning phase, in its end, must comply with a series of operational requirements that are key to the bidding process in which, in this case, it could obtain a comprehensive analysis that is applicable in public procurement. It would detail below:

- The collection of the data or information necessary to quantify the specifications. Including all the requirements of information and communication technology databases.
- The preparation of the specifications must include the consultation of customers and users and other interested parties, the development of the specs, and the approval of the final specs.
- The terms of allusion for any additional requirements should be treated separately from the main elements. Moreover, the other or improved conditions should also consider when preparing the price list or the estimate of quantities, calculating the previous ones with the main requirements to calculate the price, the total volume of the contract.
- The calculation of a realistic estimate, before bidding cost of the contract to be awarded

- Confirmation that the specified levels and standards meet within the framework of the available budget
- Consultation with the market on the proposed bidding conditions, hiring proposals, bidding requirements, and deadlines
- The comparable levels and standards evaluation concerning similar provisions

3.4.4 Management of contracts versus Project Management

Each contracting authority has its procedures and methods to organize projects and financing under the European Structural and Investment Fund (ESI Funds).⁹³ The award of the contract is part of a project supported by the EU, carried out in the framework of a single or several agreements. Projects involving several contracts require careful coordination. It is considered a thorough analysis of the causes of failures and errors; it can show inadequate planning, particularly at the beginning of the contracting process. Therefore, the contracting authorities increasingly resort to hiring professional project managers to perform complicated, risky, and high-value public contracts, which should be considered a good practice, thus generating convergence of Principles and methods of good project and contract management.

3.4.5 Competitive bid versus negotiated bid

There are different types of public bidding procedures and specific rules on how contracts award. In some cases, national public procurement rules coincide with EU standards. Companies also have certain rights when bidding on cross-border bids. Public tenders represent a significant source of business in EU countries, not only because of the high public expenditure in these countries but also because those are the headquarters of international organizations such as the European Union or NATO. Each year, more than 250,000 public authorities in the EU spend around 18% of EU GDP on the procurement of services, works, or supplies.

⁹³ Over half of EU funding is directed through the European structural and investment funds (ESIF). Those are jointly managed by the European Commission and the EU members. The goal of all these funds is to invest in job creation and a sustainable and healthy European economy and environment. The ESIF mainly focuses on areas as research and innovation and digital technologies. The Supporting low-carbon economy, sustainable management of natural resources, and small businesses.

3.4.6 Contract management

The new procedures that have to create with directives 2014/23/UE⁹⁴ and 2014/24/UE,⁹⁵ of February 26, 2014, Public Sector Contracts (LCSP) have been the "Tendering procedure with negotiation," and the procedure of "association for innovation," which together with the already existing "competitive dialogue" constitute the three special procedures foreseen in the LCSP.

It supposes that it can only be applied in the cases expressly foreseen in the LCSP. However, through this procedure, all public procurement principles are guaranteed, and there are full publicity and concurrence. A particular method, as is the negotiation bidding procedure, exists according to the LCSP as an alternative to the conventional open or restricted process when it cannot use satisfactorily. Furthermore, it is different from the excellent methods such as negotiated without advertising, minor contracts, and primary healthcare to an average of 30,000 euros.

It will clarify this in separate parts:

1. Article 167 LCSP establishes several contracts for all types of arrangements a *numerus clausus* ("closed number" in Latin) of the cases in which the bidding procedure with negotiation can exclusively apply:
 - To achieve the requirements of the contracting authority, it is essential that the service, as it is available in the market, be the object of a previous design or adaptation work on the part of the bidders.
 - The service object of the contract includes a project. When innovative solutions.

⁹⁴ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts Text with EEA relevance. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2014_094_R_0001_01

⁹⁵ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>

- The contract cannot award without prior negotiations due to specific circumstances linked to nature, complexity, or legal or financial configuration. This benefit constitutes its purpose or the risks inherent to it.
- The contracting authority cannot establish with enough precision the technical specifications by reference to a standard, European professional evaluation, typical technical specification, or professional recommendation, in the terms set in this Law.
- In the open or restricted procedures followed previously, only occasional or unacceptable offers have present it.
- To deal with very personal social service contracts that have one of the determining characteristics, the person's attachment to the social care environment, provided that the object of the contract is to ensure continuity in the care of people who were already beneficiaries of that service.

Without prejudice to make a final list, the need to establish the technical specifications of the tender procedure with negotiation is usually more than a usual circumstance. It is coherent with the spirit of the Directives that raises the need to promote the negotiated process with publicity.

2. In the contents of the Specific Administrative Clauses, the contracting body must approve the specifications, which must determine it in art.166.2 LCSP:

The aspects must be subject to negotiation, needs of the contracting authority, and the required characteristics. The procedure to be followed for negotiating must guarantee the principles of public procurement such as transparency, publicity, equality, and non-discrimination; the elements of the benefit object of the contract that constitute the minimum requirements that all offers must fulfill; and the award criteria.

It is mandatory in the LCSP that there are always negotiation criteria. Moreover, for that reason, the absence of negotiation would generate annulment in full right. On the other hand, note that the general rule is a request for participation and a subsequent invitation.

However, in general opinion, the process of requesting assistance and negotiating with all applicants who meet the required solvency can be eliminated. In an honest opinion on this point, it should include a threshold or procedure where the second-round place not only the best ones but all those allowed. Otherwise, within the first round, probably there will not be substantial improvements.

3. Processing of the tender procedure with negotiation according to the LCSP, the restricted procedure rules are applied in articles 161 to 164.1 LCSP, which are:

A bidding announcement shall publish it by Article 135 LCSP. This announcement is the primary differentiating element of the negotiated procedure without publicity. A preliminary phase of filing applications for participation will open, and the number of companies that will be invited to arbitrate can be limited. However, the minimum amount established should be three. However, the significant competition must be a guarantee, and, as stated in the previous section, this application for participation procedure could suppress it.

Candidates who exceed the minimum requirements set will be selected. When these candidates are less than three, the procedure will be continued, without inviting entrepreneurs who have not requested to participate or candidates who do not possess those conditions, encouraging those companies that have passed the first phase.

Tenderers must present the initial offer allowing the negotiation to begin, which is the crucial aspect of this procedure. Once the negotiation finish, the bidders will submit the final offer.

The Contracting Committee will verify that the bids comply with the minimum requirements and comply with all, evaluating them and making the award proposal to the contracting body. In its final part, the contracting authority will award the contract, concluding the procedure.

4. Negotiation is the main feature of the bidding procedure with negotiation stipulated in Article 169 LCSP.

The contracting body must negotiate the aspects determined in the specifications but never the minimum requirements of the object of the contract nor the award criteria. Also, the contractor must consult the initial and subsequent offers, but not the final proposals. It is essential in all negotiations that tenderers be always informed of the negotiations carried out and of the aspects that are being negotiated to give in the bidding procedure with talk. Equal treatment between all bidders must be guaranteed. All kinds of information that can give advantages to certain bidders concerning the rest should not provide in a discriminatory manner.

According to the LCSP, the invitations made, the offers received, the reasons for the acceptance or rejection, and the advantages obtained are in the file of the bidding procedure negotiations.

3.5 Publication

3.5.1 Publication of EU announcement

This phase aims to obtain offers at competitive prices to award a contract whose results meet the needs of the contracting authority.

A fundamental principle of EU public procurement law is that all contracts above a certain threshold should be published in a guideline format at the EU level in the OJEU. So economic operators in all Member States can bid for contracts whose requirements these believe it can be met. The Prior Information Notice (PIN) signals the market to future deals, the contract notice (CN) launches a specific contracting procedure, and the award announcement informs the demand of the outcome of an offer.

The publication of a PIN is not compulsory. However, this publication at the beginning of the year allows using the reduced deadlines for the presentation of offers. The PINs introduced with the purpose that the contracting authorities could inform the market about future contracts for the next six months or next year. It is essential

to maintain in mind any other proposal for service contracts, works or supplies, around or above the EU thresholds, foreseen by the organization of the contracting authority, in the same period. The PIN can be announced for the next year at the end of the same month in November or December, but in any case, the stipulation that it must publish, 52 days and 12 months before the publication of the specific contract.

If the procurement exceeds the EU threshold and, therefore, is within the scope of Directive 2004/18/EC, it is mandatory to publish a CN. Significant changes to the main content, such as technical product requirements, volume, deadlines, selection and award criteria, and contract conditions, cannot, in principle, be made after the announcement is published since this would require a cancellation of the contract. It is essential that the content of these advertisements is accurate and that it complies with the requirements of the specifications. If minor changes occur in the bidding phase, it is mandatory to publish them in the OJEU and, where appropriate; it is always advisable to extend the deadline for submission of bids.

Under Directive 2004/18/EC, the correction of errors of the published information or forms can send it. Article 51⁹⁶ of the new Directive 2014/24/EU also provides

⁹⁶ Article 51 Form and manner of publication of notices says:

1. "Notices referred to in Articles 48, 49 and 50 shall include the information set out in Annex V in the format of standard forms, including standard forms for corrigenda. The Commission shall establish those standard forms by means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 89(2)".
2. "Notices referred to in Articles 48, 49 and 50 shall be drawn up, transmitted by electronic means to the Publications Office of the European Union and published in accordance with Annex VIII. Notices shall be published not later than five days after these are sent. The costs of publication of the notices by the Publications Office of the European Union shall be borne by the Union".
3. "Notices referred to in Articles 48, 49 and 50 shall be published in full in the official language(s) of the institutions of the Union chosen by the contracting authority. That language version or those language versions shall constitute the sole authentic text(s). A summary of the important elements of each notice shall be published in the other official languages of the institutions of the Union".
4. "The Publications Office of the European Union shall ensure that the full text and the summary of prior information notices referred to in Article 48(2) and calls for competition setting up a dynamic purchasing system, as referred to in point (a) of Article 34(4) continue to be published: (a) in the case of prior information notices, for 12 months or until receipt of a contract award notice as provided for in Article 50 indicating that no further contracts will be awarded during the 12-month

for the publication of error correction. Except for cases, failure to issue a CN for a contract whose value exceeds the thresholds will be considered a breach of EU contracting rules and may involve financial corrections. Compliance with the advertising provisions of Directive 2004/18/EC is guaranteed when all the information required in the standard form, provide clearly and precisely.

The market can report any changes made to documents and announcements. These will include the date offers were received through the post or other announcement. There should be a list of those who showed interest in participating in the contract. If the contracting authority makes necessary changes in the technical specifications, the selection or award criteria, or the contract conditions, it is required to cancel the process. The new Directive 2014/24/EU clearly distinguishes between the substantial modification and the alteration of the general nature of the contract.

3.5.2 Procedure and deadlines

The process must choose and justify such a decision in the planning phase. For contracts that exceed the established thresholds, open and restricted procedures are the ones used. Regardless of the method chosen, the process will strictly regulate it in terms of deadlines, communication, and documentation. The calendar must comply with the deadlines established in Directive 2004/18/EC. It summarises the procedures and timeline in the following table 3 below. Include the deadlines for submitting offers in days from the date of submission for publication in the OJEU.

period covered by the call for competition. However, in the case of public contracts for social and other specific services, the prior information notice referred to in point (b) of Article 75(1) shall continue to be published until the end of its originally indicated period of validity or until receipt of a contract award notice as provided for in Article 50 indicating that no further contracts will be awarded during the period covered by the call for competition; (b) in the case of calls for competition setting up a dynamic purchasing system, for the period of validity of the dynamic purchasing system”.

5. “Contracting authorities shall be able to supply proof of the dates on which notices are dispatched. The Publications Office of the European Union shall give the contracting authority confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication. Such confirmation shall constitute proof of publication”.

6. “Contracting authorities may publish notices for public contracts that are not subject to the publication requirement laid down in this Directive provided that those notices are sent to the Publications Office of the European Union by electronic means in accordance with the format and procedures for transmission indicated in Annex VIII”.

Table 3 continues on the next page.

Table 3. Minimum time limits in days from the date of submission for publication in the OJEU

Minimum time limits in days				
		Open procedure	Restricted procedure	
		Tenders	Applications	Tenders
WITHOUT PIN	Ordinary	52	37	40
WITHOUT PIN	Electronic notice	45	30	35
	Electronic access	47		
	Electronic notice and access	40		
WITH PIN	Ordinary	36	37	36
	Electronic notice	29	30	31
	Electronic access	31		
	Electronic notice and access	34		

Source: Directive 2004/18 / EC

The following are deadlines and steps of an open procedure: A minimum of 52 days for the reception of the offers and the date the advertisement sends. This period can be reduced by 12 days if the contract notice is transmitted electronically, and the contracting authority offers total electronic access to the documents, i.e., 40 days. Likewise, it may be reduced to 36 days from the date of dispatch of the contract

notice if a PIN is published at least 52 days and a maximum of 12 months before the time of shipment of the tender notice.

All responses to questions from tenderers must respect anonymity and must be sent to all interested parties no later than six days before the deadline set for receipt of offers stipulated in Article 39 of Directive 2004/18/EC. The clarifications provided to the tenderers may not modify the initial specifications, including the initial selection and award criteria. Full transparency is ensured before the deadline set for the submission of tenders; all clarifications should be available on the website of the contracting authority so that it will be available to potential bidders. After making an award, an announcement of the awarded contract shall go to the OJEU for publication within 48 days of the prize.

The deadlines and steps for a restricted procedure are: Minimum 37 days can be reduced to 30 days if an electronic announcement publishes from the date on which the decision is sent until the time fixed for the receipt of requests to participate. If the contracting authority wishes to limit the number of tenderers under this procedure, it must comply with a minimum of five, but if it is not desired to impose a limit, it is not obliged to fix it.

The contracting authority must then select and from a pre-qualification questionnaire (PQQ) who will be invited to bid. Written invitations to submit bids must send it to the selected candidates, and the period for receipt of proposals will be at least 40 days after the letters are sent it. The period can be reduced to 35 days if total electronic access is granted to the bidding documents.

The PIN has to be published electronically within a minimum period of 52 days. Within a maximum period of 12 months before the date on which the contract notice is sent, the deadline for submitting bids reduced to 31 days. The PIN should contain as much information as the tender announcement if it is already available.

All responses to questions from tenderers must respect the right of anonymity and must be sent to all interested parties no later than six days before the deadline set for receipt of bids by the provisions of Article 39 of Directive 2004/18/EC. After

making an award, a contract award notification was sent to the OJEU for publication within 48 days.

The third part will indicate the deadlines and the steps of a negotiated procedure with the publication of a tender notice. It is a minimum of 37 days from the date on which the announcement is sent without referring to the original statement that may not have been satisfactory until the time set for the receipt of requests to participate. All responses to questions from tenderers must respect the principle of anonymity and must be sent to all interested parties no later than six days before the deadline set for receipt of bids by the provisions of Article 39 of Directive 2004/18/EC.

After this date, the contracting authority may negotiate with one or several bidders considering that after an award made, shall send it to the Official Journal of the European Union for publication, including a contract award notice within 48 days. The contracting authority discovers that the use of this procedure is justified. It will only be obliged to publish a tender notice in the OJEU. To communicate that the contracting authority uses this procedure, it has received offers in the framework of open or restricted systems irregularities or offers that disqualify after an evaluation and if the other party has decided not to negotiate with all the bidders. Alternatively, if the opposite is exact, if the contracting authority decides to negotiate with all the bidders, it is unnecessary to publish a tender notice in the OJEU.

The competitive dialogue procedure was introduced for incredibly complex contracting calls and stipulated that it should only be used when the circumstances are exceptional. This type of bidding is convenient for contracts for supplies, services, and works. It would not be possible to award an agreement with the routine procedures such as open or restricted procedures, in addition to when all the circumstances do not allow to use of the negotiated system. This process always involves competitive offers, and for the award, only the criterion of the most economically advantageous offer will be using it. It is worth adding that many PPP contracts tender through this type of procedure.

3.5.3 The documents of the public tender

The documents must contain the usual information such as price, award, date of submission of bids. The following information must include it in the bidding documents: a reference to the published contract notice, additional details of the selection criteria, and award of the contract established in the tender notice, the language in which the offer must be drawn up. The contracting authorities may not change the selection or award criteria after the publication of an LA unless it does so by publishing a correction of errors leaving the evaluation committee to use the published standards.

Among the aspects that must be considered necessary is the contracting authority and its early decisions about the selection process, preferably in the planning phase. In any case, do it before publishing any ad and having tested the methodology. To award the contract to a tenderer who can execute it, and the selection methodology of the bidders must be transparent. Therefore, a previously agreed punctuation mechanism must be established that is transparent for possible objectors. Besides, there should be no doubt that there is the possibility that the contracting authority wishes to obtain guarantees on financial, technical, and management capacity, health, and safety, ecological issues, or social criteria.

It is analyzing from the legal point of view that if the contracting authority within the selection of bidders based on a desire to have local or national suppliers, would incur a discriminatory action that contradicts the fundamental principles of the EU Treaty. The rule establishes that the information seeks in this phase by the contracting authority must be proportionate and pertinent for the object of the contract. It must not have any manipulation on the insurance and the financial requirements. Others may be set too high, with the effect of automatically eliminating other fully competent candidates. Alternatively, what may be more common within this type, as these high levels should not be set without being taken seriously, consider the effect these levels can have. A good practice is that the annual billing of bidders will not be set at more than double the value of the contract. This requirement is not

stipulate in Directive 2004/18/EC but contemplated in article 58⁹⁷ of the new Directive 2014/24/EU. This requirement may not apply if the service, supply, or works

⁹⁷ Article 58, Directive 2014/24/EU, "Selection criteria" says: 1. "Selection criteria may relate to: (a) suitability to pursue the professional activity; (b) economic and financial standing; (c) technical and professional ability. Contracting authorities may only impose criteria referred to in paragraphs 2, 3 and 4 on economic operators as requirements for participation. It shall limit any requirements to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the technical and professional abilities to perform the contract to be awarded. All requirements shall be related and proportionate to the subject-matter of the contract".

2. "With regard to suitability to pursue the professional activity, contracting authorities may require economic operators to be enrolled in one of the professional or trade registers kept in the Member State of establishment, as described in Annex XI, or to comply with any other request set out in that Annex. In procurement procedures for services, in so far as economic operators have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in the country of origin the service concerned, the contracting authority may require them to prove that those hold such authorisation or membership".

3. "With regard to economic and financial standing, contracting authorities may impose requirements ensuring that economic operators possess the necessary economic and financial capacity to perform the contract. For that purpose, contracting authorities may require that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract. In addition, contracting authorities may require that economic operators provide information on the annual accounts showing the ratios, for instance, between assets and liabilities. These may also require an appropriate level of professional risk indemnity insurance. The minimum yearly turnover that economic operators are required to have shall not exceed two times the estimated contract value, except in duly justified cases such as relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate the main reasons for such a requirement in the procurement documents or the individual report referred to in Article 84. The ratio, for instance, between assets and liabilities may be taken into consideration where the contracting authority specifies the methods and criteria for such consideration in the procurement documents. Such methods and criteria shall be transparent, objective and non-discriminatory. Where a contract is divided into lots this Article shall apply in relation to each individual lot. However, the contracting authority may set the minimum yearly turnover that economic operators are required to have by reference to groups of lots if the successful tenderer is awarded several lots to be executed at the same time. Where contracts based on a framework agreement are to be awarded following a reopening of competition, the maximum yearly turnover requirement referred to in the second subparagraph of this paragraph shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework agreement. In the case of dynamic purchasing systems, the maximum yearly turnover requirement referred to in the second subparagraph shall be calculated based on the expected maximum size of specific contracts to be awarded under that system".

4. "With regard to technical and professional ability, contracting authorities may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard.

Contracting authorities may require that economic operators have an enough level of experience demonstrated by suitable references from contracts performed in the past. A contracting authority may assume that an economic operator does not possess the required professional abilities where the contracting authority has established that the economic operator has conflicting interests which may negatively affect the performance of the contract. In procurement procedures for supplies requiring siting or installation work, services or works, the professional ability of economic operators

require a trustworthy financial and technical bidder due to the high-risk pose, such as execution, product quality, or price.

Article 58 is relatively straightforward and concise in mentioning that all selection criteria must be proportionate and relevant to assess the ability of a bidder to execute a contract. That rules that may be interpreted as discriminatory or disproportionate under Directive 2004/18/EC and may cause financial corrections will not be considered acceptable. Significant changes to the selection criteria already established are also not fair. After publication, only minor changes to the main selection criteria are accepted, such as changes in the wording or the direction of presentation of the application. Also, changes in requirements are considered essential reforms, such as the financial capacity being the annual income or financial ratios, the number of references or insurance coverage, and requiring an extension of the application period or a cancellation.

According to the above, it gives us to understand that many contracting authorities can mix the selection phase and the selection criteria with the evaluation phase, which is the award criteria. It should remember here that the contracting process consists of two parts, namely the selection of bidders and the evaluation of the bids, these two being very different and should not be confused. In the selection phase, the objective is to select the bidders capable of carrying out the work. In the evaluation phase, the best offer received from the selected bidders is evaluated, establishing the appropriate selection and award criteria in the planning phase of the contract.

a. Preparation of the pre-qualification questionnaire (PQQ)

When the restricted or negotiated procedures or competitive dialogue are intended to have a shortlist of bidders, the list must be prepared in a fair, transparent, and

to provide the service or to execute the installation or the work may be evaluated regarding the skills, efficiency, experience and reliability”.

5. “Contracting authorities shall indicate the required conditions of participation which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm”.

documented manner, treating everyone equally. The information of the bidders that will use for the selection can be obtained in a standard format using a pre-qualification questionnaire (PQQ). The pre-selection questionnaire may include questions and documentation requirements for all selection criteria under articles 44 to 52 of Directive 2004/18/EC.⁹⁸ Controls must be conducted to guarantee that the pre-qualification questionnaires to fulfill do not contradict the principles of transparency and equal treatment. In the bidding announcement of the OJEU or the tender documents, it must always state that one of the selection conditions will be the information provided by the applicant in a pre-selection questionnaire. A scoring system or weights should be made fully known in the tender announcement and the tender documents. The pre-qualification questionnaires should be available through the person responsible for the corporate contracting of the contracting authority or the national public procurement office.

b. Award criteria and the weightings

The evaluation of the bids presented is a fundamental part of the contracting process. Therefore, we must act with caution to ensure that the result is correct and that the decision made it fairly and transparently. The criteria for awarding contracts are the following:

- the lowest price
- the most economically advantageous tender (MEAT).

If the method MEAT is used, all the criteria used will detail it in the contract notice or the tender documents. A good practice would be to disclose the scoring matrix

⁹⁸ Pre-procurement planning is critical to avoid errors. It is suggested that the CA uses one standard template for PQQs, as this makes it more user friendly for both CA and applicants. Exclusively the criteria relating to a personal situation, financial capacity, technical capacity, relevant experience, expertise, and competency of tenderers set out in Articles 45 to 48 of Directive 2004/18/EC are permissible as selection criteria.

or the weights to use in addition to the evaluation methodology in the contract notice or bidding documents.

The evaluation of the tender must:

- Apply weighted award criteria to reflect the importance and priority and focus on the requirements of the unweighted tender specifications when using the lowest price criterion
- Be relevant to the purpose of the contract
- Be based, if possible, on a model that contemplates a balance between price and quality, where the price is the dominant criterion in percent (%). Awareness must be paid to ensure that the weighting between price and quality reflects the requirements of the contract, to have award criteria and an evaluation model including the weightings of each benchmark approved
- Be carried out by an evaluation committee with appropriate and relevant representation with the necessary experience, technical skills, and knowledge.

The evaluation committee must have the relevant professional experience or resort to other qualified employees of the contracting authority, acting as advisers without the right to vote. It is advisable to contact these professionals as soon as possible to guarantee its availability. In the contract planning phase, it is necessary to carefully study adopting the appropriate award criteria for a given contract. The award criteria must be listed in order of importance with the corresponding weights when necessary.⁹⁹

c. Price list

The type of procurement will influence the documents produced on prices. For example, in contracts for construction works, it is usual to have a list of rates or, more

⁹⁹ The award criteria stipulated in Articles 53 to 55 of the Directive 2004/18/EC are the reasons that constitute the basis on which a CA chooses the best tender, i.e., the tender that best meets the conditions set out in the specification and consequently awards a contract. These standards must be established in advance, preferably at the planning stage, and must not be prejudicial to fair competition. Article 67, appearing in the new Directive 2014/24/EU, also provides information on award criteria.

likely, an estimate of quantities. In any case, it must be by the specifications. A good practice would be to elaborate, internally and in detail, a fictitious offer based on the price document and the specifications. In this way, the contracting authority can identify immediately the prices indicated by the bidders if it detects an error in the papers and, if the price is low, which may benefit these later if it is awarded it. It can also help identify the mistakes in tender documents under the observation that several prices are irregular, showing that one or several bidders have misinterpreted the requirement. The offer received for a little cost or fictitious offer with costs calculated with precision will reference. It may be of vital importance to justify the rejection of the said offer. However, denying a shallow offer can only make it after the contracting authority has requested the bidder to justify why the offer is cheap and analyses it.

d. The contract

A draft contract must be attached to the bidding documents to submit bids on the same basis. In the open and restricted procedure, no negotiation will conduct on the details of the contract after the decision, which is the winning bid; the principle of equal treatment would breach it. Good practice shows that a well-written contract would include provisions on the obligation of annual price indexation, regulation, behaviors improper, responsibility, and confidentiality. The deal must be fair and balanced in terms of risk-sharing. In particular, the clauses or contractual conditions for which risks to the contractor are totally out of its control should avoid it, since this may limit the number of offers, significantly influence the price or lead to litigation over the contract. Bidding documents, annexes, and the proposals of the winning bidder must be transferred to the final agreement according to which the contract is executed.¹⁰⁰

¹⁰⁰ The DG GROW website on public procurement is the primary source of information on public procurement matters in the EU: <http://ec.europa.eu/growth/single-market/public-procurement/>

The agreement must contain provisions on the mechanisms of dispute resolution, and mediation solutions should always consider it. Pro-type contracts will often include options for clauses for the resolution of disputes and many other issues that the contracting authority may not have considered initially, such as intellectual property rights. The contracting authority must also have extensive knowledge of contract law about compensated damages and, if this is not the case, it should have recourse to appropriate legal advice.

Regarding the clauses for modifying contracts, the general rule establishes those modifications necessary to hold a new contracting procedure. In the article 31¹⁰¹ of

¹⁰¹ Section 3: “Cases justifying use of the negotiated procedure without publication of a contract notice Contracting authorities may award public contracts by a negotiated procedure without prior publication of a contract notice in the following cases:

(1) for public works contracts, public supply contracts and public service contracts: (a) when no tenders or no suitable tenders or no applications have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of contract are not substantially altered and on condition that a report is sent to the Commission if it so requests; (b) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator; (c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities in question, the time limit for the open, restricted or negotiated procedures with publication of a contract notice as referred to in Article 30 cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.

(2) for public supply contracts: (a) when the products involved are manufactured purely for the purpose of research, experimentation, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs; (b) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the length of such contracts as well as that of recurrent contracts may not, as a general rule, exceed three years; (c) for supplies quoted and purchased on a commodity market; (d) for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national laws or regulations.

(3) for public service contracts, when the contract concerned follows a design contest and must, under the applicable rules, be awarded to the successful candidate or to one of the successful candidates, in the latter case, all successful candidates must be invited to participate in the negotiations.

(4) for public works contracts and public service contracts: (a) for additional works or services not included in the project initially considered or in the original contract but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, on condition that the award is made to the economic operator performing such works or services: — when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities, or — when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion. However, the aggregate value of contracts awarded for additional works or services may not exceed 50 % of the amount of the original contract; (b) for new works

Directive 2004/18/EC, it can be a negotiated process for contract modifications to be used. The contract regulates the possibility of making necessary modifications is of crucial importance. The chance of making modifications to the agreements, the circumstances, and the limits of costs and scope, must be studied carefully during the planning phase. Likewise, the relevant provisions must include it in the contract documents and the specifications.

In the new Directive 2014/24/EU,¹⁰² it indicates the level of authorization necessary to carry out the modification of a contract and the scope of the permitted changes without the need for a new tender. The underlying principle is the modifications to the original bid. It involves significant changes in the object of the contract in terms of value, timing, or scope, to such an extent that it can modify the result of the original tender. It will consider as substantial and, therefore, it will be re-tendered as a new contract for other works or services. The initial contract may provide optional additional work, services, or supplies and request applicable prices at the bidding stage. The reasons are explained in article 72¹⁰³ of the new Directive 2014/24/EU.

or services consisting in the repetition of similar works or services entrusted to the economic operator to whom the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to the open or restricted procedure. As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed, and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities when it is apply the provisions of Article 7. This procedure may be used only during the three years following the conclusion of the original contract”.

¹⁰² Idem.

¹⁰³ Article 72: “Modification of contracts during the term: 1. Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Directive in any of the following cases: (a) where the modifications, irrespective of the monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses, or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which these may be used. These shall not provide for modifications or options that would alter the overall nature of the contract or the framework agreement; (b) for additional works, services or supplies by the original contractor that have become necessary and that were not included in the initial procurement where a change of contractor: (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under

3.5.4 Rules and specifications

The Specifications is an essential document of the bidding process, which must describe the services, supplies, or works subject to the contract, the levels, standards,

the initial procurement; and (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority. However, any increase in price shall not exceed 50 % of the value of the original contract. Where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this Directive; (c) where all of the following conditions are fulfilled: (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee; (ii) the modification does not alter the overall nature of the contract; (iii) any increase in price is not higher than 50 % of the value of the original contract or framework agreement. Where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this Directive; (d) where a new contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of either: (i) an unequivocal review clause or option in conformity with point (a); (ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive; or (iii) in the event that the contracting authority itself assumes the main contractor's obligations towards its subcontractors where this possibility is provided for under national legislation pursuant to Article 71; (e) where the modifications, irrespective of the value, are not substantial within the meaning of paragraph 4. Contracting authorities having modified a contract in the cases set out under points (b) and (c) of this paragraph shall publish a notice to that effect in the Official Journal of the European Union. Such notice shall contain the information set out in Annex V part G and shall be published in accordance with Article 51. 2. Furthermore, and without any need to verify whether the conditions set out under points (a) to (d) of paragraph 4 are met, contracts may equally be modified without a new procurement procedure in accordance with this Directive being necessary where the value of the modification is below both of the following values: (i) the thresholds set out in Article 4; and (ii) 10 % of the initial contract value for service and supply contracts and below 15 % of the initial contract value for works contracts. However, the modification may not alter the overall nature of the contract or framework agreement. Where several successive modifications are made, the value shall be assessed based on the net cumulative value of the successive modifications. 3. For the purpose of the calculation of the price mentioned in paragraph 2 and points (b) and (c) of paragraph 1, the updated price shall be the reference value when the contract includes an indexation clause.

4. A modification of a contract or a framework agreement during its term shall be substantial within the meaning of point (e) of paragraph 1, where it renders the contract or the framework agreement materially different in character from the one initially concluded. In any event, without prejudice to paragraphs 1 and 2, a modification shall be considered to be substantial where one or more of the following conditions is met: (a) the modification introduces conditions which, it had been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure; (b) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement; (c) the modification extends the scope of the contract or framework agreement considerably; (d) where a new contractor replaces the one to which the contracting authority had initially awarded the contract in other cases than those provided for under point (d) of paragraph 1. 5. A new procurement procedure in accordance with this Directive shall be required for other modifications of the provisions of a public contract or a framework agreement during its term than those provided for under paragraphs 1 and 2".

and contributions, in addition to the expected results. When drawing up a list of conditions, do not forget the fact that it has a direct influence on the cost.¹⁰⁴

Many of the acceptable practices of the contracting authorities currently include details of the contract budget in the contract documents in the most transparent way possible. In any case, the budget must be realistic for the works, services, or supplies covered by the contract. On the other hand, setting a budget for an agreement that will be awarded a high-quality weighting, as in the case of professional services, in practice means that most bidders will probably bid for the value of the published budget or just below. A public tender can always hold without setting a budget. However, the contract documents must state that the contracting authority reserves the right not to proceed if no offers are received at a reasonable price or for any actual reason.

The contracting authority should at least internally define an acceptable maximum price before initiating the tender procedure, and the tender specifications must be drawn up in a precise manner. It is worth emphasizing that the inclusion of trademarks and specific products contravenes the rules of fair and open competition. If this mention cannot be avoided, it is essential to include the remark "or equivalent," and the equivalent offers received will be evaluated relatively.

¹⁰⁴ A well-prepared specification must include: a) offer an accurate description of the requirements, b) offer a simple interpretation for tenderers and all interested parties, c) include clearly defined, viable and measurable inputs, outputs and results, d) not mentioning trademark names or requirements that limit competition or, if trade-marks are mentioned, include the mention "or equivalent", e) provide detailed enough information to allow bidders to present realistic offers, e) identify additional or improved requirements separately, but with a total calculation, f) consider, whenever possible, the opinions of the contracting authority, customers and users, other interested parties and the ideas and contributions of the market, g) be developed by people with enough experience, either within the contracting authority or through external experts, h) consider accessibility criteria for people with disabilities or a design for all users when the contracting is intended for individuals, either the general public or the staff of the contracting authority, i) be approved by the evaluation committee or the direction of the contracting authority, according to the relevant internal rules, j) cover for work specifications, at a minimum, include the technical description of the works, a technical report, the design package that includes the sketches, design calculations and detailed plans, assumptions and standards, quantitative estimation, if applicable, and price lists of the works, and the schedule of the program.

A poorly prepared list of conditions is usually the reason for subsequent modifications of the contract since it does not reflect the true magnitude of the proposed agreement. Suppose a significant volume of additional work is added to the contract through modifications or alterations. Once the contract is signed, the magnitude and cost of the contract are increased compared to the initial forecasts. In these circumstances, if these works are assigned to the existing contractor without holding any tendering procedure new, the provisions regarding a fair and open competition will be violated since the contract will move away from the one initially published.

Further, reducing the work reduces if the contract planning phase is carried out professionally and experienced people write the bidding documents. Conveniently, the awarded power gives the appropriate priority to each project. It allows enough time to contemplate all the problems and risks with the participation, if necessary, of internal or external experts to design the specifications and the contract.¹⁰⁵

a) Rules governing the preparation of specifications

The fundamental law establishes that contracting must define concerning relevant European standards. If there are no European standards in this regard, the contracting authority must consider products from the other Member States that have a performance

equivalent to that of products of national origin. Therefore, the contracting authority can choose within: a national standard transposing a European standard, documents of European technical suitability, a typical technical specification, that is, a specification for uniform application In all the Member States and all the cases mentioned above, the words "or equivalent" must be added.

¹⁰⁵ To assist practitioners in designing a comprehensive, high quality specification through a series of questions and answers and a checklist. Relevant legal context: Article 23 and 24 of Directive 2004/18/EC. The requirements are set out in Article 23 and Annex VI of Directive 2004/18/EC. Under Article 24 of Directive 2004/18/EC, CAs are allowed (if those choose) to include in the documentation, the possibility of variant tenders where the award of the contract is based on MEAT. Requirements as set out in Article 24 of Directive 2004/18/EC.

The specification is an essential document that influences the overall quality and competitiveness of the contracting process. From which no condition acceptance is interpreted as discriminatory. In particular, against the bidders of another country or when it is required goods that only a supplier or supplier from another country can offer, always remembering that in the specifications, the word "or equivalent" must appear in order not to restrict competition.¹⁰⁶

b) Social, ethical and environmental criteria

The contracting authorities are increasingly turning to public procurement to achieve objectives other than obtaining the best cost-benefit ratio. These include rules related to the environment,¹⁰⁷ the local economy, such as hiring young people or people who have been out of the labor market for a long time, social or ethical values. Although it is legitimate for public procurement to meet these objectives, care must take any special provision is in line with Directive 2004/18/EC and national legislation to ensure fair and equitable treatment of tenderers. The new EU directives on public procurement are much more explicit about how such considerations should incorporate it into the tender process.

c) Variants

Tenderers must submit bids conforming to the wording of the bidding documents considering that if a strategic decision is made based on the fact. In addition to the proposals based on the bidding documents, the contracting authority should wish to study an additional variant bid as an alternative solution not mentioned in the original documents for the tender. The soft materials must contain the minimum requirements for the various offers. The award criteria must contemplate the possi-

¹⁰⁶ Idem.

¹⁰⁷ The Commission has developed criteria for green public procurement for more than 20 product groups, most of them available in all EU languages; see: http://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm

bility of receiving additional offers. Additional to those established in the specifications, even it is not an easy task and requires appropriate technical expertise on the part of the evaluation committee and has the need to be addressed and approved at the contract planning stage.¹⁰⁸

3.5.5 To obtain - delivering offers.

The contracting authority must grant tenderers a reasonable time to obtain the tender specifications and submit an offer to respect the minimum time limits stipulated in Article 38 of Directive 2004/18/EC.¹⁰⁹ If necessary, the minimum terms may extend it because the object of the contract is complicated. A fee may apply for obtaining precise specifications, which is not disproportionate. A good practice would be to offer the free download of the specifications through web sites, but the offers submitted in writing by delivering them directly on-site or by mail. Said the above and taking another way of public procurement such as electronic should be established as increasingly common practice. It is the preservation of some guarantees about confidentiality and acknowledgment of receipt and acceptance of electronic signatures.

The bids shall present it according to the methods described in the bidding documents, and the deadlines must consider the complexity of the contract. In the case of contracts of Public-Private Partnerships (PPP) or complex works or designs, it should recognize that the periods of preparation of the offers extend from four to six months.

¹⁰⁸ Under Article 24 of Directive 2004/18/EC, CAs allowed to include in documentation, the possibility of variant tenders where the award of the contract is based on MEAT, and this possibility must be included where the CA has drawn up a specification.

¹⁰⁹ Idem.

3.5.6 Claims, resources, and liability

Directive 89/665/EEC¹¹⁰ is entirely related to the laws, regulations, and administrative provisions of appeal practices for the award of public supply and works contracts as amended by Directive 2007/66/EC.¹¹¹ The so-called Directive on appeal procedures aims to ensure that suppliers and contractors can submit claims on different issues and take against alleged errors of contracting authorities. The resources within it include the suspension of any decision made by the contracting authority, the cancellation of unlawful choices, including the contract itself, and compensation to contractors for damages.

Furthermore, non-compliance with the Directive on appeal procedures could be detrimental to future EU subsidies to the organization or the claim of funds already delivered. Likewise, non-compliance with the rules on public procurement can have financial consequences. For the contracting authority and its employees, who may be personally responsible in some legal systems and some crucial cases, could resort to legal advice to process claims.

3.6 Submission of tenders and selection of bidders

The date and place of presentation of bids shall stipulate in the tender notice. If a tenderer requests an extension, such a request must be studied and approved by the evaluation committee or the contracting authority. If it is decided to extend the date for the submission of bids, all bidders will be informed immediately. Furthermore, a notice will be sent to the website in use so that all potential bidders are aware of

¹¹⁰ Council Directive 89/665/EEC of 21 December 1989 on the harmonization of the laws, regulations, and administrative provisions concerning to applying review procedures to the award of public supply and public works contracts. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:31989L0665>

¹¹¹ Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC regarding improving the effectiveness of review procedures concerning the award of public contracts (Text with EEA relevance). <https://eur-lex.europa.eu/eli/dir/2007/66/oj>

the new deadline if it is interested in submitting an offer taking into account the extension of the period.

All bidders submitted bids allow submitting a new submission if those wishing to do so within the original deadline. If the contracting authority extends the period, it must justify it and do so openly and transparently. Extensions may be warranted if the contracting authority needs more time to respond to a tenderer's inquiry.

The tender notice will indicate the place, name, address, a number of the room or office where the bids presented and that bids submitted in a manner other than that stipulated will not be accepted because it is the responsibility of the bidder to ensure the presentation according to the invitation to tender.

The first thing that the evaluation committee must do is to verify that all the offers are valid. The EC has precisely followed the instructions stipulated for the bidders. If it is not, it must reject those as invalid, and an explanation given to the bidder of the reason for the dismissal and both the removal and the reasons should record. It creates the conviction among the bidders that the breach will result in the release and avoidable loss of the essential resources invested.

The contracting authorities must guarantee a system that allows preserving the confidentiality and custody of the bids submitted and if sent electronically. It is also highly advisable that contracting authorities issue supporting documents for tenders submitted personally. A good practice is that the contracting authority creates a list of the bids submitted number and date and provides proof to the bidder to confirm the receipt of the proposal. Additionally, many contracting authorities hold a ceremony officially opening for tenders, a good recommended practice. Indeed, the system varies from one country to another. At least one representative or two of the evaluation committee must be present to record the details of the tender, making

this very transparent when inviting citizens. Finally, all invalid offers must be declined.¹¹²

If an offer does not gather the minimum or selection requirements, it is rejected. In this phase, contracting authorities can only ask tenderers to confirm information or to clarify different details; for example, if there is information that it is not written clearly or is wrong. Article 51 of Directive 2004/18/EC¹¹³ stipulates documentation and complementary information. It is clear to understand that the contracting authority may use its sole criterion and request additional information from the bidders to guarantee the maximum degree of competence, provided that the additional information is not such that it implies a modification of the offer. A contracting authority can request a specific document such as an existing certificate that the tenderer forgot to attach to the proposal. However, if he does, he is obliged to treat everyone

The bidders alike, and as is to be expected, must request additional documentation from all bidders whose documents require a supplement. Clarifications should not interpret it as negotiations, but accidental calculations, arithmetic errors, spelling mistakes, or misprints should accept it as supplementary information or explanations. It is not possible to admit the modifications or the critical alterations of an

¹¹² In a restricted or a negotiated procedure with publication of a CN, no objective selection criteria were listed. Therefore it is unclear how the CA will reduce the number of applicants invited to submit a tender under Article 1(11)(b) of Directive 2004/18/EC. For example, the CA must select a minimum of five candidates to participate in the final tender procedure. The contracting authority is, therefore, required to design objective and non-discriminatory selection criteria. So the candidates know what criteria will be evaluated on, how to avoid: Design transparent and objective selection criteria which could be the highest revenue per year within the matter of the contract over the last three years, or three experiences closest to the tendered contract (evaluated and decided by the CA). If no objective criteria are listed, the selection process is unlawful and violates Articles 2 and 44 of Directive 2004/18/EC.

¹¹³ *Idem* 47.

offer. After evaluating the additional information requested, the evaluation committee must proceed to assess all valid offers.¹¹⁴

3.7 Evaluation of the tenders

a) Lowest price

In the procurement planning phase, the contracting authority must decide which evaluation method to use, which must clearly state in tender notice and the tender documents. If the lowest price chooses, it is the most transparent option, and the bidders find it more challenging to refute the decision.

However, the quality is considered only by the minimum quality requirements stipulated in the specifications. Therefore, the lowest price must take it with the condition that the contracting authority can set the technical requirements in advance, which should be the same in all proposals.

b) Most economically most advantageous tender (MEAT)

The MEAT¹¹⁵ is an evaluation method used in this process. As the contracting authorities acquire more competence in the application, it must have the necessary

¹¹⁴ Relevant legal context in Articles 44 to 52 of the Directive 2004/18/EC. Intended to assist practitioners in designing and carrying out a high standard selection of tenderers' process. The first section advises on designing the selection criteria laid down in the tender documents. The second section gives the best practice for applying selection criteria to identify the most appropriate applications or eligible tenders. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32004L0018>

¹¹⁵ The evaluation methodology used to hinge on the nature and intricacy of the procurement. The methodology selected should allow the Evaluation Committee to objectively and transparently determine which tender offers the best value for money by addressing: a) the degree to which a tender meets qualitative criteria; b) life-cycle costs; c) the level of risk associated with selecting a particular quotation; and d) the criteria must be listed (in order of priority) in the documents (usually the specification) with weightings (if any) and scoring methodology. The main evaluation methods are A. Lowest price: The lowest price methodology is useful for standardized or straightforward procurements. It merely involves choosing the lowest price response that meets all the conditions for participation. B. MEAT: Price/Quality – numeric scoring: This approach is useful for assessing moderately difficult purchases where the qualitative standards are of roughly equal importance. After checking out those tenders that do not fulfill the requirements for participation, a numerical rating is assigned against each of the desirable non-cost or qualitative award criteria, depending on the level of 73 compliance. The ratings are combined for each tender to give an overall quality score. Tenders are then ranked according to the ratio of price/quality score. C. MEAT: Weighted scoring methodology: This methodology is useful for evaluating complex purchases where the award criteria

capacities to evaluate according to the quality and the price, the technical merits, and the functional characteristics; and bidders also need to know how to prepare a tender on this basis. For the prior determination of technical specifications, the verification of proposals concerning such criteria, and the evaluation of offers according to price and quality, high technical skills are required. If the contracting authority lacks them, training and support from independent experts of any tenderer will be required. In an evaluation based on the MEAT, it is possible, when applicable, to include criteria related to environmental and social issues and operational costs.¹¹⁶

c) Management of abnormally low tenders

Before a contracting authority decides to dismiss what it considers an unusually low offer, it first needs to define what is regarded as a shallow offer for all tenders. The contracting authority must first clarify why its bid is so weak and any specific circumstance that reasonably justifies why it is as low as innovative technical solutions or items that allow obtaining supplies at favorable conditions.

After carrying out an analysis of the bidder's justification, the contracting authority must decide whether to accept or decline the offer. The Directive is clearly showing

are of differing importance. After checking out those tenders that do not observe with the circumstances for participation, each reason is allocated a proportion weighting (adding up to 100 percent in total). The weighting allocated to each reason should be disclosed in the tender documents and must not be varied. Price is provided a numerical weighting in the same way as other criteria and combined to give an overall mark. D. MEAT: Numerical scoring methodology. This method is useful for evaluating complex purchases where the different qualitative factors are scored corresponding to a classification order of 0 to 5. After checking out those tenders that do not fulfill the selection conditions, a numerical rating is assigned compared to each of the qualitative award criteria varying on the assessed level of accordance, using a range of 0 (unacceptable) to 5 (exceptional). Price is recorded and considered part of the value-for-money assessment. The lowest tender is usually allocated a 100 % mark and other tenderers a lower percentage depending on the value of the tender in a balanced way. The scores are totaled, and a value for money assessment is then made comparing the total scores, life-cycle costs, and associated risks.

¹¹⁶ The design of award criteria and award phase is intended to assistance practitioners in creating a high level of award criteria in the tender documents and in carrying out the award phase. The relevant legal context is the articles 53 to 55 of Directive 2004/18/EC. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32004L0018>

the obligation for the contracting authority to ask for a justification of why a proposal is abnormally low in all cases and not only when the offer declines it, and this must be addressed mainly in the planning phase of public procurement.

The question asked here is what to do if one or several abnormally low offers are received? An unusually low bid may indicate an error in the bid specifications or may involve a possibly incorrect determination of the estimated total value of the contract. It could be the case that the tenderer has misunderstood the specifications or that it writes incorrectly and, therefore, can make use of it after signing the contract.

d) Clarifications

In an open or restricted procedure, the contracting authority must request explanations from the tenderers about certain aspects of the tenders. However, negotiations on such offers cannot be carried out. These requests can only have the character of minor clarification of information already presented by the bidder. In certain circumstances, the contracting authority must ask the bidder to clarify or complete the documents submitted, applying the same when the tenderer's text is vague or unclear. The circumstances of which the contracting authority has evidence suggest that this ambiguity could easily be explained or eliminated. If the contracting authority acts so that it leads to the exclusion of the tenderer without previously requesting the clarification or presentation of additional documents, it will contradict the principle of good governance.

As an illustration can be referred to the fact that this contradiction is well demarcated in Case C-599/10, *SAG ELV Slovensko*,¹¹⁷ it rules that the contracting authority must request in writing the tenderers to clarify the offers without asking or

¹¹⁷ Judgment of the Court (Fourth Chamber) of 29 March 2012 (reference for a preliminary ruling from the Najvyšší súd Slovenskej republiky - Slovak Republic) - *SAG ELV Slovensko a.s., FELA Management AG, ASCOM (Schweiz) AG, Asseco Central Europe a.s., TESLA Stropkov a.s., Autostrade per l'Italia SpA, EFKON AG, Stalexport Autostrady SA v Úrad pre verejné obstarávanie* (Case C-599/10) (Public procurement - Directive 2004/18/EC - Contract award procedures - Restricted call for tenders - Assessment of the tender - Requests by the contracting authority for clarification of the tender - Conditions) Operative part of the judgment:

accept any modification of the proposals. The contracting authority must treat the different bidders equitably and fairly so that the request for clarification does not seem to favor or disfavor the bidder or the bidders to whom address it. Can refer to paragraphs 45 and 46 of Case C-42/13, *Cartiera dell'Adda*,¹¹⁸ to illuminate this case

1. “Article 55 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as requiring the inclusion in national legislation of a provision such as Article 42(3) of Slovak Law No 25/2006 on public procurement, in the version applicable in the main proceedings, which, in essence, provides that if a tenderer offers an abnormally low price, the contracting authority must ask it in writing to clarify its price proposal. It is for the national court to ascertain, having regard to all the documents in the file placed before it, whether the request for clarification enabled the tenderer concerned to provide an enough explanation of the composition of its tender”

2. “Article 55 of Directive 2004/18 precludes a contracting authority from taking the view that it is not required to ask a tenderer to clarify an abnormally low price”.

3. “Article 2 of Directive 2004/18 does not preclude a provision of national law, such as Article 42(2) of the abovementioned Law No 25/2006, according to which, in essence, the contracting authority may ask tenderers in writing to clarify the tenders without, however, requesting or accepting any amendment to the tenders. In the exercise of the discretion thus enjoyed by the contracting authority, that authority must treat the various tenderers equally and fairly, in such a way that a request for clarification cannot appear unduly to have favoured or disadvantaged the tenderer or tenderers to which the request was addressed, once the procedure for selection of tenders has been completed and in the light of its outcome”. See: <http://curia.europa.eu/juris/documents.jsf?num=C-599/10>

¹¹⁸ JUDGMENT OF THE COURT (Tenth Chamber) 6 November 2014. (Public procurement — Principles of equal treatment and transparency — Directive 2004/18/EC — Grounds for excluding a tenderer from participating — Article 45 — The personal situation of the candidate or tenderer — Compulsory statement concerning the person designated as ‘technical director’ — Statement not included with the tender — Exclusion from the contract without any possibility of remedying that omission). In Case C-42/13. The request for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per la Lombardia (Italy), made by decision of 5 December 2012, received at the Court on 28 January 2013, in the proceedings, *Cartiera dell’Adda SpA*.

Paragraph 45: “It follows that, in circumstances such as those in the main proceedings, Article 45 of Directive 2004/18, read in conjunction with Article 2 of the directive, does not preclude the exclusion of a tenderer on the ground that he has omitted to annex to his bid a sworn statement relating to the person identified in the bid as technical director. In particular, in so far as the contracting authority takes the view that that omission is not a purely formal irregularity, it cannot allow the tenderer subsequently to remedy the omission in any way after the expiry of the deadline for submitting bids”.

Paragraph 46: “Furthermore, in such circumstances, Article 51 of Directive 2004/18, which provides that the contracting authority may invite operators to supplement or clarify the certificates and documents submitted pursuant to Articles 45 to 50 of the directive, cannot be interpreted as permitting that authority to accept any rectification of omissions which, as expressly provided for in the contract documentation, must result in the exclusion of the bid”. See: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-42/13>

in a precise way when the principle of good governance of the Directive contravened.

In the case of Post-bid negotiations in a restricted or open procedure, negotiations are not allowed, and the bidder must ensure not to negotiate the conditions of the contract with the bidders since any change could invalidate the evaluation process. If the tenders contain an obvious arithmetical error in the price of the offer, the contracting authority may contact the tenderer to clarify and correct the cost of the offer.

The president of the evaluation committee must evaluate the offers concluded by the previous committee. Must be done if the steering committee was subsequently established. A full process report with the outcome of the evaluation committee's deliberations will be recorded and kept in the contract file. Bid evaluation reports must be clear and sufficiently detailed to demonstrate how decided to award the contract.

3.8 Award

When an awarding authority has decided whom the contract will award, it must inform all the bidders of the result. After the suspension period and if any submitted claim remains, the deal shall sign. Within 48 days of signing the agreement, the contracting authority has to send a contract's award announcement for publication, even if there has been no response to the report of the OJEU.

The Directive on appeal procedures 89/665/EEC,¹¹⁹ as amended by Directive 2007/66/EC,¹²⁰ provides a provision relating to a suspension period for the review of decisions to award contracts adopted by the contracting authorities. All the participants will send letters informing the bidders of the decision to award the contract, stating that the agreement will grant after the expiration of the suspension period, which will not be less than ten calendar days.

¹¹⁹ Idem 61.

¹²⁰ Idem 62.

The letter will inform the candidates of the decision adopted under Article 41 of Directive 2004/18/EC¹²¹. It will indicate the exact suspensive period applicable by the provisions of the national legislation transposing the Directive on appeal procedures.

The contracting authority may make a decision at any time to cancel a bidding procedure with justification, and in case the bidding is withdrawn, this decision will be notified to all bidders, making this an excellent practice to include in the advertisement the information on the schedule to re-tender.

3.9 Contract implementation

The satisfactory execution of the contract must be guaranteed following the result of the bidding process, making it possible to establish in the first meeting with the bidder how the relationship between the parties will develop, taking into account the frequency of the sessions, attendance, minutes, status reports and escalation plans. During the contract execution phase, the contracting authority must convene regular meetings with the contractor to guarantee compliance with the contract and

¹²¹ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts Article 41, "candidates and tenderers" says: "1. Contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the conclusion of a framework agreement, the award of the contract or admittance to a dynamic purchasing system, including the grounds for any decision not to conclude a framework agreement or award a contract for which there has been a call for competition or to recommence the procedure or implement a dynamic purchasing system; that information shall be given in writing upon request to the contracting authorities. 2. On request from the party concerned, the contracting authority shall as quickly as possible inform: — any unsuccessful candidate of the reasons for the rejection of his application, — any unsuccessful tenderer of the reasons for the rejection of his tender, including, for the cases referred to in Article 23, paragraphs 4 and 5, the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements, — any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement. The time taken may in no circumstances exceed 15 days from receipt of the written request. 3. However, contracting authorities may decide to withhold certain information referred to in paragraph 1, regarding the contract award, the conclusion of framework agreements or admittance to a dynamic purchasing system where the release of such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them".

must include proper supervision and exchange of observations in the process to avoid avoidable conflicts.

In this process, the parties must agree and know the roles and responsibilities before signing the contract. Thanks to proper planning, complete and stable specifications, and a well-designed contract drawn up by a diligent contracting authority, the need to make changes to the agreement to sign other additional commitments during the execution phase will minimize it.

Modifications to contracts¹²² and the use of a negotiated procedure for additional works with an existing contractor without bidding for these other works or services constitute one of the most severe and frequent errors demarcated within the Directives. In most cases, if other important work or services are needed, a new contract will have to be tendered. The only exceptions, in this case, are the general rule established in Article 31¹²³ of Directive 2004/18/EC. However, given that Article 31

¹²² MODIFICATION OF CONTRACTS, description: This is out the issues arising when a contract can be modified, or additional works/services/supplies can be directly awarded to an existing contractor in questions and answers (Q&A) format and give good practice examples of how to avoid this situation, nearly through better planning and controls or through tendering a new contract for additional requirements competitively. Relevant legal context: Articles 30 and 31 (Article 61 on additional works in concessions) of Directive 2004/18/EC.

¹²³ Article 31, Directive 2004/18/EC. "Cases justifying use of the negotiated procedure without publication of a contract notice". Contracting authorities may award public contracts by a negotiated procedure without prior publication of a contract notice in the following cases: (1) for public works contracts, public supply contracts and public service contracts: (a) when no tenders or no suitable tenders or no applications have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of contract are not substantially altered and on condition that a report is sent to the Commission if it so requests; (b) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator; (c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities in question, the time limit for the open, restricted or negotiated procedures with publication of a contract notice as referred to in Article 30 cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority; (2) for public supply contracts: (a) when the products involved are manufactured purely for the purpose of research, experimentation, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs; (b) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the length of such contracts as well as that of recurrent contracts may not, as a general rule, exceed three years; (c) for supplies quoted and purchased on a commodity market; (d) for the purchase of supplies on

is an exception to the general rule that states that it is necessary to re-tender such additional works or services, it should only be used in exceptional circumstances and must always be justified. The burden of proof of the conditions necessary for applying this negotiated procedure rests with the CA, and the audits thoroughly study this issue.

After the execution of the contract, it is vital to hold an analysis meeting to evaluate how the contract is executed about the original forecasts. When closing the deal, it is crucial to recognize the successes. Furthermore, those who participated in its achievement and concluded the problems overcome, in addition to the risks already identified.

Questions would be raised as a component of the finalization of the review of a project are: Have done it achieved what it has been asked? Have done realized what it is needed? Does it find differences between those two aspects? Can these differ-

particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national laws or regulations; (3) for public service contracts, when the contract concerned follows a design contest and must, under the applicable rules, be awarded to the successful candidate or to one of the successful candidates, in the latter case, all successful candidates must be invited to participate in the negotiations; (4) for public works contracts and public service contracts: (a) for additional works or services not included in the project initially considered or in the original contract but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, on condition that the award is made to the economic operator performing such works or services: — when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities, or - when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion. However, the aggregate value of contracts awarded for additional works or services may not exceed 50 % of the amount of the original contract; (b) for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to whom the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to the open or restricted procedure. As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed, and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities when it apply the provisions of Article 7. This procedure may be used only during the three years following the conclusion of the original contract”.

ences be explained? Does he understand how this can influence the bids and contract management that it will be done in the future? Moreover, Have to draw conclusions that may affect future contracts or projects?

3.10 Public-Private Partnership

This thesis also focuses on using PPP procurement, where applicable, on gaining value for money, containing across whole-of-life costing, managing risk, and protecting the public interest. It is known that government entities within the jurisdictions have generally withheld and will retain control of the Core Services.¹²⁴ What PPPs do is to create long-term contractual obligations by sharing the risks and rewards between the two sectors, such as the public and private sectors, generating that these require careful consideration and approval by the government.

a) Overview of the PPPs

As often happens with many concepts, there are several definitions of the term Public-Private Partnership. There is no single accepted definition of PPP,¹²⁵ and countries that have incorporated this figure in the legislation and processes have done so in various ways. It is essential to achieve an understanding of what a PPP is and to understand its essence, beyond the particularities of each context used. It can define it in the following way: long-term validity contract between the two public and private sectors from which the private sector obtains payment from the public sector for infrastructure services and all those related to government responsibilities.

¹²⁴ Governments will generally retain responsibility for the delivery of Core Services, although this will be determined on a jurisdictional basis. Core Services are those where governments have responsibilities to people using the service and the community, such as health and education. The 'related' non-core services included in the scope of private sector provision may encompass accommodation services arising out of the infrastructure, including building-related services such as maintenance, cleaning and security, and various backing services. The fortitude of core and non-core services will happen on a case-by-case basis at the early planning stages of each infrastructure project.

¹²⁵ The Organisation for Economic Cooperation and Development (OECD) outlines Public-Private Partnerships (PPPs) as: "*long term contractual arrangements between the government and a private partner whereby the latter delivers and funds public services using a capital asset, sharing the associated risks.*" This comprehensive description indicates that PPPs can be conceived to achieve a wide range of objectives in various areas, such as transport, social housing, and healthcare, and can be structured under different approaches.

The nature and results of PPPs are not different from traditionally awarded projects. However, it presents some differences in terms of project and contract management. It is the main difference between PPP projects and traditional projects: the distribution of risk between the private sector and the public. In principle, in a PPP project, the risks should be assigned to the party that is best qualified to manage them, to reach the optimum balance between the displacement of the risk and the compensation for the party that assumes it. Concerning the responsibility of the two partners can be appreciated that the private sector is often responsible for the risks associated with the design, construction, financing, operation, and maintenance of the infrastructure. In contrast, the other party in society, the public sector, always assumes normative and political risks.

Among all forms of PPP, the most common is the contract for design, construction, financing, maintenance, and exploitation, where all the phases of the project are entrusted to the private sector partner, covering them from design to installation, exploitation, and the maintenance of infrastructure without neglecting to fundraise. This long-term perspective is called "the lifetime approach."

To emphasize that PPP contract types vary according to the nature of the asset or project in question, the functions assumed by the private party, and how the private party remunerated. It should say that the key features of a PPP are:

- The assets or services provided specifies results rather than products; that is, what achievement is defined instead of finishing it.
- The project functions that transfer to the private party may vary according to the contract, but in all cases, the private party is responsible for the performance of the project.
- The private part assumes a significant risk within the project and the responsibility of the management.
- The payment to the private party depends directly on the performance and the results achieved.

Likewise, it is essential to point out that the objective of the application of the PPP modality.¹²⁶ Regardless of the type of contract, asset, or service to optimize the generated value of the activity, the population receives more significant economic benefits. The public sector distributes its limited resources better, and the private sector drives the necessary profit to justify the investment of financing, as seen in the following figure 13 below.

Figure 13 - Scheme of a typical PPP design, construction, financing, maintenance, and exploitation based on availability



Source: European Court of Auditors

Let us not forget that the Public-Private Partnerships are medium and long-term investment schemes, whose primary function and importance are providing services to the public sector to specify the development and operation of infrastructure.¹²⁷

¹²⁶ The most popular form of PPP is the Design-Build-Finance-Maintain-Operate (DBFMO) contract. It involves the private partner to entrust with all project stages, from design to construction, operation, and maintenance of the infrastructure, including fundraising. This long-term viewpoint is known as the whole life approach.

¹²⁷ The principal features of a PPP are:

- 1) provision of a service involving the creation of an asset involving private sector design, construction, financing, maintenance and delivery of ancillary services for a specific period.
- 2) a contribution by government through land, capital works, risk sharing, revenue diversion, purchase of the agreed services or other supporting mechanisms.
- 3) the private sector receiving payments from government (or users in economic infrastructure) once operation of the infrastructure has commenced and contingent on the private sector's performance in supplying the services.

The execution of these services depends on the tender and award of the PPP. The elaboration of projects by them and the bidding process requires a considerable amount of time, between 12 and 18 months. PPP is responsible for the construction work, the provision of equipment, operation, and maintenance of all this during the specified period funding the different projects with capital and credit for the duration of the contract. It may not require public resources for the execution and generally have better performance when robust business projects must develop.

PPP projects are a component of a broader spectrum of contracted relationships and aim at private provision services. There is an element of public infrastructure and a single financing element. When talking about these guidelines, it does not want to refer to the private sector investment in infrastructure in those jurisdictions where the government does not explicitly direct interest in the provision of public services. What it means is that these guidelines do not cover procurement methods, such as contractor management, contracting, subcontracting, or traditional methods that are applied in the acquisition when the participation of the private sector is also involved in the delivery of infrastructure or associated services.

It is also important to emphasize that the success of the work to be carried out and structure of a Public-Private Partnership is directly related to the creation of agreements between the different parties, including the public sector, investors, contractors or developers, operators, and those who provide the financing, such as banks.

b) Asset and service balance

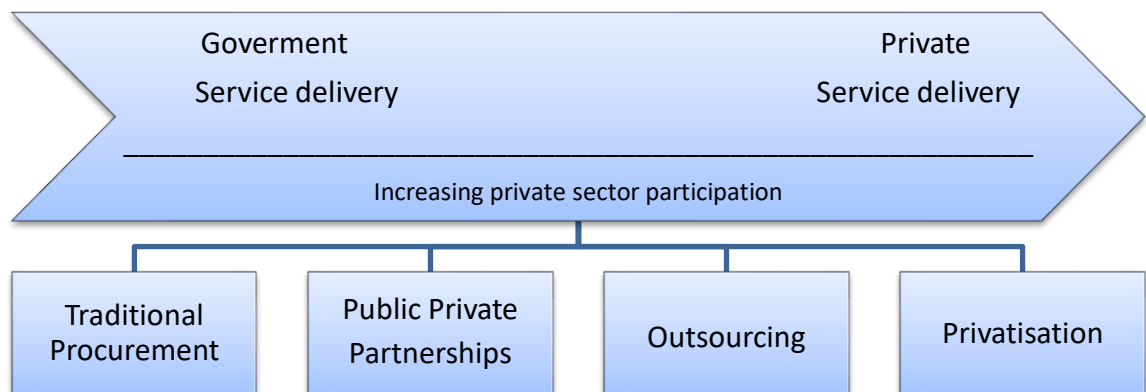
The concept balance assets or services of a Public-Private Partnership involve both the delivery of an asset and some services associated with the asset for a defined period. Variation in the total value balance of the project between the creation of assets and the components of service provision in progress can be high from one project to another. Therefore, consideration of the entire life of the asset and related services is crucial in this case. As an example of a capital-intensive project, we can

take a toll road, which is likely to dominate the creation of assets. In other projects such as schools, courts, prisons, and hospitals, the component of long-term service provision may be more significant, even with the public sector that provides essential services.

c) PPPs are not privatization

It is important to emphasize that the private provision of infrastructure and non-basic services does not imply privatization in one way or another since all governments will generally continue to provide essential services. The assets liability under PPP usually is transferred only for a specific period and with a range of requirements that must meet at the time of the transfer. The following figure shows where PPPs placed within the spectrum of private provision, as can be seen in the following figure number fourteen below.

Figure 14. Public and private sector delivery spectrum



Own source.

d) Benefits of PPPs

For the government departments and agencies, the option of the contracting of the provision of public services and non-core services to the private sector creates several opportunities to deliver improved public services more cost-effectively. PPPs can potentially offer a vast of significant benefits in design, quality of services, and the cost of infrastructure, just drawing upon the best available skills, knowledge, and resources, either those are both in the public sector as these are in the private

sector. The departments and agencies might focus the efforts on the delivery of Core Services and use the savings generated to improve or expand other services, as was mentioned above. Infrastructure costs can also be advanced by delivering projects as part of a single group instead of organizing long-term capital growth. PPPs also provide the construction, service, and finance industries with opportunities to generate efficiency and profitability in delivering infrastructure and complimentary services. These through innovation and specialized experience to develop business by doing so.

The focus of PPPs should try to test the ability to deliver the consequence of value for money to the community. Governments will determine the entire economic amount of private sector participation by evaluating both the costs and the benefits of the project.

PPPs have the possibility of providing industries such as construction, services, or finance many opportunities for them to generate both efficiency and profitability by delivering non-core infrastructure and services through exclusive innovation and specialization so that it can develop business by doing so.

The approach that PPPs have is the ability to demonstrate efficiency when delivering value-for-money results to the community. The governments can determine the economic contribution of the participation of the private sector through the evaluation of the costs and the benefits that the project will bring, as seen in the following table 4 below down the Critical differences in procurement methodology.¹²⁸

¹²⁸ National Public Private Partnership Guidelines Overview, section 2.2.1 page 9.

Table 4: Traditional Procurement and PPPs Traditional

Traditional Procurement	PPPs
Government purchases an infrastructure asset	Government purchases infrastructure services
Short-term design and construction contracts (two to four years)	One long-term commitment integrating design, build, finance and maintenance
Input-based specifications	Output-based specifications
The government retains whole-of-life asset risk	The private sector employs whole-of-life asset risk
Payment profile has a point at the start to pay for capital costs, with ongoing low prices	Payments begin once the asset commission. The payment profile is comparatively even, reflecting the level of service provision over the longer term of the contract
Government is typically liable for construction time and cost overruns	A private contractor is responsible for construction time and cost overruns
Government operates the facility	The government may or may not perform the facility
The government manages multiple contracts over the life of the facility	The government controls one arrangement over the life of the facility
Often no ongoing performance standards	Performance standards are in place. Payments may abate if services deliver to a contractual requirement
Handover quality less defined	End-of-term handover quality defined

e) The value for money

The method of providing services through the private finance initiative (PFI) and offered the date of one of its launch continues to present an opportunity to provide public services under economically more suitable conditions. The latter is a concept adopted by the European Union in its public contract regulations, which recognizes

that the obligation of governments is not necessary to provide services at the lowest prices or through the cheapest infrastructure. Instead, governments should provide public services that find the best balance between the costs of the services offered and the resulting benefits.

However, to evaluate this type, there is no alternative, but rather a long-term cost-benefit analysis. The result has been one of the most fundamental changes in the construction industry in recent decades: creating an entire sector dedicated to the management of facilities management facilities, development of tools for the evaluation of life-cycle costs, and administration completely different from the incentives for the industry.

Indeed, since PFI contracts involve long-term public services, the British Government, through its regulatory institutions, quickly moved away from the idea of cheaper services to adopt the concept of Value for money. Formally, "HM treasury" defined the concept of value for money as the optimal combination of costs throughout the whole life cycle of a project and the quality or capacity to meet the requirements of users.

In effect, as the PFI provided a route to complete projects without needing to find the necessary capital funds for the initial investment required, this quickly became a desirable option for the different departments of the Government. The problem is that this is attractive. The risk that the public policy priorities of the departments distorted in favor of those projects that could be subject to a PFI type route. Likewise, the traditional emphasis of the departments on initial capital costs also results in favoritism over low initial capital investment projects. Therefore, the National Audit Office (NAO) established, at short notice, the need to select plans for PFI carefully, referring to the objectives that avoid such distortions. Also, the NAO confirmed the need for departments to analyze in detail the volume and quantity of services required. Moreover, all costs, in the long term, be analyzed, regardless of the method for awarding contracts. That is to say, at least since 1999, the national

audit office defends the thesis of using life cycle cost techniques for projects of all kinds, whether through PFI or not.

Therefore, the concept of Value for money plays a fundamental role from the beginning of the PFI. The project's selection and the approval of these are directly linked to the value for money expected from them. Furthermore, since 2004, the British Government has formally defined that the PFI method should be used only to the extent that the provision of value for money demonstrates in the preliminary studies.

The PFI also suffered from a series of implementation and learning difficulties in both the public and private sectors. This new method involved radical changes in the processes of project evaluation, bidding, negotiation, and administration. Each of these challenges also meant new risks for the practical realization of value for money projected initially. The British Government formally recognized that it was necessary to develop the skills of the Public Sector in each of these areas.

For this reason, in 1997, the new government of Prime Minister Tony Blair created an organization dedicated exclusively to promoting the PFI and acting as the coordinating entity for all activities related to this initiative. This organization, part of the Treasury Secretariat, was called "Treasury Taskforce" (TTF). The two primary responsibilities of the TTF were: first to establish policies for the implementation of the initiative, and second to promote specific projects. The policy team was made up of treasury officials and other public servants on loan. Moreover, the group related to the development of projects included personnel from the private sector. The Government had recognized that the mechanisms by which the public sector link to the private sector increased in complexity, and these made it necessary to improve and supplement the professional capacities of public officials.

4 DETERMINING THE PROCUREMENT LAW ENSURING CONTRACT MANAGEMENT IN PUBLIC PROCUREMENT

4.1 Data collection and sampling

As mentioned in chapter 1.7.3., the conducted interviews were semi-structured by nature, presenting a higher degree of flexibility based on planned questions adjusted to the interviewees. The advantage that this interview had was the possibility of adaptation to the subjects presenting all the options of motivation on the part of the interlocutors, clarified terms, identified ambiguities, and fewer formalities.

Each interview was conducted in four sections, with members each of which lasted approximately 2 hours. The interviews were conducted in English as instruction language and examination of the curriculum and allowed the interviewees to communicate openly. This language is the most commonly used both within the European Parliament and internationally.

The transcribed text has been coded at the beginning with themes. Each transcript of the interview has been focused on the central issues emphasized. The interviews were analyzed one by one as main topics, and the approach varied as it was developed slightly. In this way, it could be assured that the relevant findings to be mentioned were not forgotten. The entire interview and its four sections are transcribed in chapter 4.2.

The interview and its sections were held in four working days in mid-March 2019 at the headquarters of the European Commission. Due to reasons of confidentiality, personal information of the interviewees and the official information have been omitted. A summary of the interviewees can be found below. The sample in Table 5 below represents different categories of experience and provides a broad perspective in managing contracts. Twelve representatives attended.

Table 5. Summary of interviewed people.

Title/work position	Name	Work experience	Interview date
Board of Supervisors	Team confirmed by A B C	All with < 15 years	18.04.2019
A representative of national supervisory authority	Team confirmed by D E F	All with < 15 years	19.04.2019
A representative of national supervisory authority	Team confirmed by G H I	All with 15 > years	20.04.2019
Commission delegate	Team confirmed by J K L	J with < 25 years, K & L with < 15 years	21.04.2019

4.2 Findings from the interview

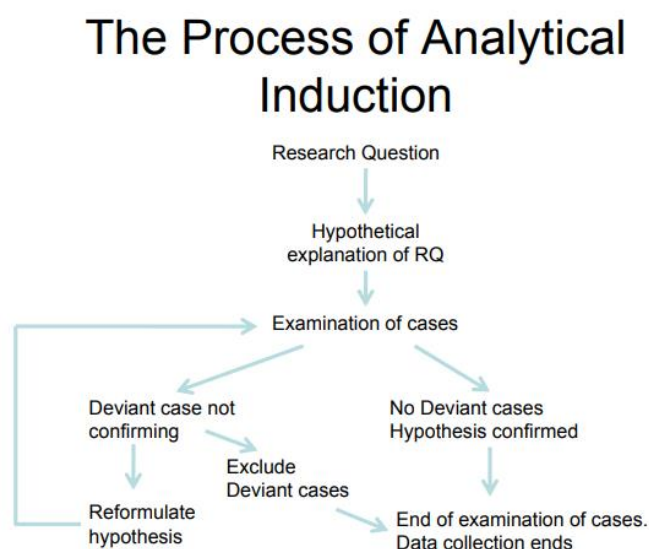
The qualitative data analysis of this interview is exciting because it discovers topics and concepts stuck among the data collected. As the data progresses, those themes and ideas that were woven give a broader explanation of theoretical and practical importance, guiding the final report. This analysis of this interview is systematic and follows a sequence and an order.

This process refers to the phases taken when obtaining this information, capturing, transcribing, and ordering the data. Coding is said information, and, finally, integrating it. Once the information was collected, copied, and ordered, the first task was to try to make sense of it. The challenge was to simplify and make sense of all the complexity of the field notes and textual transcriptions. For that, it used the coding process, allowing to develop of a manageable classification. "Coding is the heart and soul of the analysis of whole texts" (Ryan and Bernard, 2003, p 274).¹²⁹

¹²⁹ Gerry W. Ryan y H. Russell Bernard, 2003. Techniques to Identify Themes, p. 274. <https://journals.sagepub.com/doi/10.1177/1525822X02239569>

The coding of this interview, forced in this case to make judgments about the meaning of contiguous blocks of answers by the interviewees, eliminating chaos and confusion, as shown in Figure 15 by Ritchie et al. (2003).

Figure 15. The process of analytical induction



Source: http://www.samuellearning.org/Research_Methods/Week_8_AnalyzingQualitativeData_2011.pdf

Involved an intellectual and mechanical work that allowed coding the data, finding patterns, labeling the themes, and developing category systems, Creswell (2009, pg. 185) was achieved by analyzing the main content provided by all the interviewees and the observations made from other documents contributed within the same interview. The preceding determined what was significant in it, and from there, the patterns were recognized and transformed into significant categories found below.

Concerning the efficiency expressed by the interviewees, the Directives on appeal procedures have, in general, fulfilling the objectives. It increased the guarantees of transparency and non-discrimination, allowing the adoption of quick and effective

measures when an alleged breach of the Directives occurs and guaranteeing to economic operators that all requests for bids will be treated fairly. The available data on the actual use of the provisions provided additional evidence on the Directives' effectiveness. In general, the resources that the Directives establish are frequently used in most of the Member States. Approximately 50 000 first instance decisions were issued in all Member States during the 2012-2015 period.

The most common type of appeal requested was the annulment resolution, followed at some distance by the preventive measures and the elimination of discriminatory specifications. Regarding the opinions of the interested parties, a clear majority of the interviewees considered that the Directives on appeal procedures had had a positive effect on the public procurement procedure. Find that it is more transparent in 80.59% of the cases in Public Procurement Management (PPM), more justice in 79.42% in PPM, more open and accessible in 77.65% in PPM and that it provides more significant incentives to comply with the substantive rules of public procurement in an 81.77%.

As confirmed by the interviewees, Directive 2007/66/EC¹³⁰ has significantly increased the effectiveness of pre-contractual remedies by introducing a minimum suspension period between the notification of the award decision and the signing of the contract.

Interviewees argue that some national systems require that the administrative bodies of appeal and not the ordinary jurisdictional authorities be responsible for legal protection in the first instance about public procurement procedures. "As a broad trend, these tend must be more effective." Most respondents confirmed it in the interview, with 74.7% considering that the proceedings before the ordinary courts usually take more time and give rise to less strict adjudication criteria than the procedures before administrative bodies of specialized resources. In most cases, it does

¹³⁰ Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC regarding improving the effectiveness of review procedures concerning the award of public contracts (Text with EEA relevance). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32007L0066>

not show that the costs of appeal procedures, although these differ widely between the member states, have a specific deterrent effect on access. Also, the Directives on appeal procedures are well balanced to address the interests of all parties involved. Specifically, 57.06% of the interviewees considered that the Directives strike a balance between the importance of economic operators in guaranteeing the effectiveness of public procurement legislation and the attention of the contracting authorities in curbing excessive resource use in courts. Finally, the Directives on appeal procedures are also useful as a deterrent against erratic behavior in public procurement.

Directives on appeal procedures require the Commission to pay special attention to the effectiveness of alternative sanctions and deadlines. The interview revealed that the member states use alternative sanctions sporadically, and interviewees consider them the least relevant resource. However, some opinions expressed that all the funds provided for in the Directives on appeal procedures contribute to the deterrent effect and offer a comprehensive and useful system to sanction irregularities committed in public procurement.

About the deadlines, no real data was provided in the interview to show that the periods that follow the structure of the Directives on appeal procedures are either too long. These cause undue delays in the public procurement procedure or too short and, therefore, do not allow the valuable exercise of the rights of economic operators.

The interview revealed that certain aspects of the Directives on appeal procedures could be further clarified, confirmed by the contributions received. It applies, e.g., to matters such as the interrelation between the Directives on appeal procedures and the new legislative compendium on public procurement. Furthermore, the development of criteria must be applied for the lifting of automatic suspension of the conclusion of the contract after the presentation of legal action.

Evaluating a priori responses in the interview, problems that persist at the national level in the member states were also detected. Explicitly, several interviewees confirmed that the issues identified have the origin either in National Legislation that is foreign to the Directives on appeal procedures or in National Practices and not in the Directives on appeal procedures themselves.

Finally, interviewees also recognize that in most member states, information on national resource systems is not collected in a structured manner, making it extremely difficult to analyze the results of the Directives. Also, the same method is used infrequently for drafting regulations, to mention some of them, the identification of necessary resources or abusive claims, consistency of resolutions based on useful search tools. The identification of the authorities or contracting entities against which applications with the favorable decision are most frequently filed, and identification of the aspects of the public procurement procedures against which the resources are most successful.

Based on the qualitative evaluation carried out on the interviews, it can be concluded that the Directives on appeal procedures, in particular, the amendments introduced by Directive 2007/66/EC, largely comply with the objectives effectively and efficiently. However, it has not been viable to quantify the detailed scope of the costs and benefits. Although some Member States report specific concerns, those usually come from national measures and not from the Directives on appeal procedures themselves. In general, in qualitative terms, the benefits of the Directives on appeal procedures exceed the costs. The Directives remain relevant and continue to provide added value for the EU.

Despite the overall definite conclusion of the evaluation, some deficiencies have been detected. First, it is recognized that specific provisions of the Directives on appeal procedures are not entirely clear. Despite the update introduced by the new legislative package on public procurement, a need for greater clarity has been detected. For example, references to a "tender notice" in the Directives on appeal procedures do not reflect the reality that the new Directive 2014/24/EU allows the use of a prior information notice, rather than an announcement of tender, as a call for tenders in certain circumstances.

It should also be clarified how the Directives on appeal procedures apply to amendments to concessions and public contracts, the termination of such agreements, and the simplified procurement regime. Also, it is concluded that in most of the Member States, information on national resource systems has not been compiled in a structured way and has been used very rarely for drafting regulations. It makes the evaluation of the results of the Directives more difficult. Finally, it is concluded that in general terms, the administrative bodies of the first instance appeal are more effective than the courts of the first instance in terms of length of procedure and review criteria.

Transparency in the public sphere can be understood as a management model that, using information technologies, offers pertinent and reasonably updated information to citizens about those areas that are of interest to them. Oblige the administration to plan and manage how to relate citizens as competent or task in the public mission. Based on the literature analyzed, it can be said that it is a fundamental tool for improving accountability, reducing corruption, and improving democratic quality. The evaluation of the interview has revealed that the information on national resource systems has not been compiled in a structured manner and has been used very rarely to prepare regulations. To address this fact, to increase transparency should be proposed about the results of national resource systems.

4.3 The interview questions

4.3.1 How does procurement law ensure contract management in public procurement?

Do we have to divide the Contracts into lots?

Response from the team made up of A, B & C: *“The division into lots is the object of contracts as it is possible to do so. It is the general rule. In turn, the decision not to do so must be justified by the contracting authority. The reasons why the contracting authority may decide that it is not appropriate to divide a contract into lots could be, for example: that this same body considers that the division could involve*

the risk of restricting competition. Alternatively, making the execution of the contract excessively difficult or onerous from a technical point of view. Alternatively, when there is a need to coordinate different contractors for different lots, it could carry the risk of undermining the proper performance of the contract.”

How do we proceed to determine solvency demanded from bidding companies when the contract’s object has been divided into lots?

Response from the team made up of D, E & F: *“If the contract object is divided into lots: the solvency to be required from the companies must be determined on each of the lots and must be proportional to these. However, the minimum volume of business to be demanded may be established by reference to the groups of lots. In the case of, the allocation of several lots to the same bidding company must be executed at the same time.”*

If the deadline set for the submission of proposals in the bidding document does not coincide with the period for the bidding announcement, what term must be considered?

“When there is divergence within the period foreseen for submitting the proposals in the bidding and the announcement, the broadest one must always be considered, by the principle of legal certainty, and to achieve greater concurrence in the award procedure.”

In a contracting procedure in which various criteria for evaluating the offers have been established, how should the physical parameters be determined to assess the disproportionate or abnormal nature of the proposals?

Response from the team made up of G, H & I: *“If several award criteria have been established, the physical limits and parameters to determine the existence of a supposedly abnormal or disproportionate offer must be established considering the evaluation of the offers. These are taking into account all the award criteria and not only the price. These parameters and objectives can be materialized in formulas referring to the different economic and technical aspects of the offers. Those can*

also refer to differences in the partial scores and the total score of the offers. Alternatively, the differences between the economic and technical scores, among others, always responding to a global consideration and the set of proposals.”

Is it possible that a clause of a document is considered null if it is considered as an improvement to be presented by the bidding companies when the contribution of the amount of money is valued so that the contracting administration allocates it to a public purpose that it deems appropriate?

Response from the team made up of J, K & L: *“Yes, since the improvements must be directly attached to the object of the contract. Also, the possibility of submitting improvements must be included in the specifications detailing which aspects of the contract are admitted, without being able to predict generically, and specifying which ones will be assessed, the score those will receive, and how this score will be assigned.”*

Is it necessary to extend the term for the presentation of proposals when the specifications are modified?

Response from the team made up of A, B & C: *“The contracting bodies must extend the deadline for receipt of bids when significant changes are made to the bidding documents, in addition to the fact that this extension must be proportional to the importance of the amendment.”*

What is the maximum term that can be established in a concession?

Response from the team made up of D, E & F: *“The contracting bodies must calculate the duration of the contracts for the concession of services and works according to the works or services that constitute the purpose. In general, the term of these contracts is five years, with the possibility of establishing a higher one, without exceeding the reasonable time for the concessionaire to recover the investments made, together with a return on the invested capital.”*

In a work contract for which business classification is required, all the companies that are presented must be classified?

Response from the team made up of G, H & I: *“To assess and appreciate the concurrence of the classification requirement of a company, the contracting body or, where appropriate, the contracting table, must be based on the accumulated characteristics of each of the grouped companies. In any case, to proceed with the accumulation of classifications, all companies must be classified as construction contractors. Except in the case of non-national companies of the Member States of the European Union.”*

4.3.2 How is public bidding linked with the effectiveness of contract management in public projects?

In which bids are a business classification required?

Response from the team made up of J, K & L: *“Business classification is required in bidding for works contracts with an assessed value of 500,000 euros or more that are carried out by public administrations. In service contracts, the business classification will not be required, regardless of its estimated value. However, we can consider here that classification is one-way bidding companies can prove the economic solvency.”*

In bids for contracts divided into lots, can a maximum number of lots be fixed, to which companies can submit proposals, and of which, the same company may be awarded?

Response from the team made up of A, B & C: *“It is possible to limit the number of lots to which companies can submit bids, and the number of lots that may be awarded, to promote competition and, especially, allow the participation of small and medium enterprises in public procurement. If it chooses to make use of this possibility, it must indicate it in the tender announcement. In the bidding documents, the maximum number of lots to which companies can bid and the maximum number of lots can be awarded to the same company. If applicable, the objective criteria that will be applied to determine the lots that will be awarded. What I just*

told would happen in the case that the application of the award criteria may result in the same company being awarded several lots greater than the maximum indicated.”

How and at what procedural moment should the bidding companies prove that meet the prerequisites required in the bidding documents?

Response from the team made up of D, E & F: *“Tendering companies are not obliged to document documentary evidence of the fulfillment of the capacity and solvency requirements at the time of submitting the bids. The contracting bodies must admit a responsible declaration that replaces the documentary accreditation or the single European contract document. Thus, in general, the accreditation of the possession of the supporting documentation and the fulfillment of the prerequisites required in the specifications will have to be carried out only by the bidding company in which the adjudication proposal falls, and this is important, must be before the award.”*

What economic, financial, and technical or professional solvency must be accredited? How, if the specific administrative clauses of a contract not subject to the classification requirement, do not specify the minimum standards and the means for the accreditation?

Response from the team made up of G, H & I: *“The contracting authority must foresee in the specifications the criteria to determine the economic and financial and technical or professional solvency of the companies, the minimum requirements and the means to accredit them. However, when the specifications of a contract do not specify the minimum criteria and requirements, the bidding companies must prove the solvency through the means established as supplementary in the articles of the General Regulation of the Contract Law, stipulated by the public administrations.”*

What volume of business can be demanded, in general, in the bidding of contracts within the public sector?

Response from the team made up of J, K & L: *“The annual minimum turnover required of companies as a means of accrediting economic and financial solvency cannot exceed twice the estimated cost of the contract, excluding in duly justified cases, such as those related to them, with the special risks associated to the nature of the works, services, or supply. If the specifications do not establish it, the annual volume of business will be one and a half times the estimated price of the contract.”*

Is it possible to continue with a contracting procedure and, if applicable, be the winner of a temporary joint venture if one of the companies that integrate it ceases, or is there cause to exclude it before the award?

Response from the team made up of A, B & C: *“There is no precept in the regulations on public procurement that prohibits the awarding of a contract to a temporary joint venture when one of the companies joining in the tender, and that had committed to confirm it desist or is excluded. Therefore, the possibility of continuation of the rest of the companies that have filed together with the commitment to constitute a temporary joint venture will depend on what under this circumstance not violate the guiding principles of public procurement, especially the principles of equal treatment and non-discrimination. In this sense, it considered these principles are respected if the requirements foreseen to participate in the bidding process are fulfilled. The other companies maintain the economic and financial solvency, and the technical or professional or, where appropriate, the required classification and, besides, there is no supervening change in the offer submitted.”*

4.3.3 How can the avoidance of the most common errors in public procurement lead to excellence in procurement?

If there is a tie in the outcomes obtained by the bids from the bidding companies after the award criteria have been applied, and the bidding sheet does not establish additional award criteria or is not provided and implemented. Moreover, the draw continues; could another draw be made between the tied bids to determine the winning bidder?

Response from the team made up of D, E & F: *“By the regulations on public procurement, a bid may not be declared void if there are offers that comply with the specifications. Therefore, the impossibility of resolving the tie in the scores obtained by the offers if the bid has not established additional award criteria. Alternatively, if these were foreseen, the link persists once applied, leads having to resort to a system that allows resolving the tie and that its application. In any case, respects the principles of competence, equal treatment and non-discrimination, and transparency, such as the draw. This Advisory Board has pronounced on this issue in the resolution of the ties report scores obtained by the offers of the bidding companies.”*

Can the evaluation of the experience of bidding companies be established as an award criterion?

Response from the team made up of G, H & I: *“No, since the award criteria must be related to the characteristics of the offers, and not of the bidding companies. The experience of the companies does not allow to identify a higher quality of the offers since it is one of the accreditation means of the solvency of the companies. On the other hand, evaluation of the organization, qualification, and experience of the personnel in charge of executing the contract can be established as an award criterion, provided that the quality of the personnel employed can significantly affect the execution of the contract, as is the case, for example, in contracts relating to intelligence services.”*

Can the contracting authority or, where appropriate, the contracting table, request clarification, or require the amendment of an error observed in the bid submitted by a bidding company?

Response from the team made up of J, K & L: *“Yes. The contracting body or the bureau could request and admit the clarification or amendment of errors in the bids when these are of a material or formal type, not substantial, and do not prevent knowing the meaning of the offer. Therefore, clarification or amendment of errors*

is allowed provided these do not imply a variation or specification of the offer, to guarantee the principle of equal treatment between bidding companies. For example, the error in the economic proposal of lack of signature by the representative of the bidding company may be amended, since such amendment would not imply a variation of the proposal, in the sense of modifying its amount. ”

In a negotiated procedure without publicity, if the contracting authority has invited three companies to participate and only two submit offers, does the contracting authority have to send an invitation to other or third companies?

Response from the team made up of A, B & C: *“If once the companies have been invited to participate in a negotiated process without advertising, only offer two or one, the contracting body has to try to invite and solicit offers from other companies, to guarantee a greater concurrence, provided that it is possible. As a consequence of the direct application as of April 18, 2016, of certain provisions of Directive 2014/24 / EU, this Advisory Board of Administrative Contracts concluded in the Report that only using the negotiated process without advertising. In the assessed cases established in Article 32 of this Directive, the enabling causes related to complementary works and services and the amount, among others, having therefore disappeared ”.*

In a negotiated procedure without publicity, the contracting body must admit to the bidding the companies that appear, despite not having been invited?

Response from the team made up of D, E & F: *“The regulations on public procurement require that in the negotiated procedure without publicity, the contracting body invites participation to a minimum of three companies trained to execute the contract, whenever possible, to ensure minimum competition. Although with the request for tenders to three qualified companies. The contracting authority complies with the obligation imposed by the regulations mentioned. It cannot restrict access to the tender to other non-invited companies if these companies present the bids within the deadline and meet the requirements that are required to consider them. ”*

Can the contracting authority establish in the specifications the possibility that the contractor company subcontracts with third parties the performance of the provision with a percentage higher than 60 percent of the award amount?

Response from the team made up of G, H & I: *“Yes. By the regulations on public procurement, the limit for the subcontracting of 60 percent of the awarding amount is used when the bidding document has not set a specific deadline, and the contracting body may fix a lower or higher percentage in the bidding documents.”*

Does the express resignation of the contractor company to the execution of the contract allow the contracting administration to resolve it?

Response from the team made up of J, K & L: *“Among the causes of resolution foreseen in the legislation on public procurement does not include the relative to the resignation by the contractor company. Only the unilateral waiver of the concessionary works company is envisaged due to the specific resolution of this type of contract. However, the resignation by the contractor may lead to a breach of the essential contractual obligation to execute the contract and, therefore, allow the contracting administration to initiate the resolution procedure.”*

Is there a percentage limit for the modifications foreseen in the documentation governing the tender?

Response from the team made up of A, B & C: *“No. The regulations on public procurement do not establish a general maximum percentage limit for the modifications provided for in the tender specifications. In these cases, a specific one must be indicated for each contract. It must be taken into account that contracts can be modified. It is modified if the cause or causes foreseen in the specifications are detailed in the contracts precisely and unequivocally. The conditions under which those can be agreed and the scope and limits must indicate the percentage of the contract price, the maximum that it can affect, and the procedure that must be followed. In any case, the specifications cannot foresee modifications that alter the global nature of the contract ”.*

Can a company that lacks the solvency required to participate in a tender procedure have recourse to the creditworthiness of other companies?

Response from the team made up of G, H & I: *“A bidding company may use the means belonging to other companies to prove the solvency required in a tender, regardless of the link it maintains with them, provided that it demonstrates to the contracting authority that, for the execution of the contract, it will effectively dispose of the outsiders Likewise, concerning the criteria relating to the titles of studies and professionals, or the relevant professional experience, the bidding companies, may only use the capacity of other companies if those will execute the works or provide the services for which said capacities are necessary.”*

4.4 Summary of the interviews

The following is intended to gather the opinions of the interviewees on the functioning of national appeal procedures and on proposals for improving efficiency in the field of public procurement. However, it has been observed that all the interviewees are responsible for public procurement in the member states and apply the European Community law regarding the procedures for the award of public contracts satisfactorily.

The fact demarcated by the interviewees that the publication rate of the tender notices is low and that this index varies significantly depending on the Member States, the contracting authority, and the sector of activity shows that these Directives have not yet these have full effect. This situation does not allow full advantage to be taken off the high competition between potential bidders at the European Community level. Also, the first consultations initiated in these interviews show that the operation of national appeal procedures does not always allow rapid and effective correction of breaches of European Community law on public procurement. It has also been observed that the effectiveness of appeal mechanisms in the field of public procurement varies considerably from one Member State to another, which can undermine the confidence of some economic operators when those are presented as candidates for the award of public contracts.

It was clear from the interviews that public contracts represent a huge potential market for innovative products and services if used strategically to stimulate the economy and unlock investment. Mainly through the Investment Plan for Europe, to improve productivity, inclusion, and respond to changes in the structures and infrastructures necessary to foster innovation and growth.

The interviewees argued that an essential phase of public purchases and investments in the European economy are made through public contracts. “Each year, the public authorities of the EU spend around 19% of the EU's GDP, to acquire services, works, and supplies,” says interviewee named A.

“Unfortunately, 55% of the contracting procedures are carried out based on the lowest price as the award criteria, that is, without paying special attention to quality, sustainability, innovation or social inclusion,” complements interviewee C.

Nine out of ten large-scale infrastructure projects are not executed according to the planning indicated—neither in terms of the contractual implementation phases of the project. Nor terms of the amounts entered in the budget, nor terms of the calendar of maturities. The often cost overruns of up to fifty (50) %.

Within the perspective that surrounds the normative framework of public procurement, it is demonstrated that it has traditionally had a rather articulated and complex physiognomy, to which must be added a very fragmented institutional framework since a wide range of agents manages it. On a central, regional, and sectoral level, the tasks and functions are not always clearly specified.

Within the management of procurement procedures and investment in infrastructure, it was found that public administrations at different levels are required to have specially developed competencies. On the other hand, several have deficiencies in heterogeneous capacities to program and identify the appropriate instruments and means in due course. Little professionalization of the contracting of services. Multiple public administrations for the managed spending chapters. Lack of organic

support for collecting information, with heterogeneous databases managed by different entities, often with insufficient levels of quality and reliability. The 2014 public procurement package did not fully meet its complexity.

In the EU, the use of digital tools to support the management of public contracts is slow: in 2016, only four countries joined. This situation highlights the need for greater use of new technologies to simplify and accelerate adjudication procedures. The interviewee's (A, B & C) are convinced that only a transparent, open, and competitive public procurement system in the single market, could not only guarantee efficient public spending but also provide quality goods and services for citizens. It is developing an authentic European culture of hiring innovative, intelligent, sustainable, and socially responsible. In this regard, the interviewer recommends that using the "*economically most advantageous offer*" be promoted as a selection criterion for offers, particularly in the case of intellectual services. Interviewees welcome the new package on public procurement and highlight the need to: promote quality and innovation in public procurement, including social and environmental aspects, and favor a smarter and more efficient public procurement.

The interviewees D, E & F welcome the new package on public procurement. Interviewees emphasize that it was expressed at the appropriate time to promote quality and innovation in public procurement. Reduce unnecessary bureaucracy. Including environmental aspects and social organizations to protect the employment and working conditions of people with disabilities or other disadvantages. The aged groups. Promote, together with the most economically advantageous offer, the possibility that for intellectual services, there is a single offer, considered the best, although not the cheapest. Interviewees believe that using environmental and social criteria would favor more intelligent and efficient public procurement. Guarantee greater professionalization, increase the participation of SMEs and social economy companies, combat favoritism, fraud, and corruption, and promote European public contracts cross-border nature.

In particular, interviewees highlight the importance of making smart use of public procurement to address global challenges promptly, such as climate change and resource scarcity, or an aging population. Supporting social policies, accelerating the

transition to more sustainable and competitive supply chains and business models, and giving SMEs better access to contracting opportunities.

In the interviewees' opinion, it is essential to move forward with a resolution towards a significant professionalization of the contracting services. With a certification of the minimum mandatory requirements, it is providing those with a common European framework of technical and computer skills, that makes possible a standard approach throughout the internal market in the European Union based on a single center of competence and an interactive data bank.

Give the enormous importance and value that social and environmental aspects have acquired in public procurement and the guarantee that conformity to them can represent to achieve the objectives of social inclusion and social and ecological sustainability. Propose and recommend that all training programs aimed at improving the professionalization of personnel involved in public contracts include specific content on social and environmental legislation and, in particular, on the social and ecological aspects foreseen in public procurement legislation. The inclusion of these aspects responds to the new challenges posed by the full use of the potential for providing a strategic contribution to horizontal policy objectives and social principles such as innovation, social inclusion, economic, and environmental sustainability.

The interviewees G, H & I fully share the recommendations made by the Commission to the Member States. However, interviewees believe that to guarantee an effective and coherent structure for the professionalization of public procurement. It would have been desirable for the Commission to have adopted a directive instead of a mere non-binding recommendation. In the opinion, such proposals could be widely echoed whenever a pilot initiative of joint training is carried out for the professionalization of the different public and private agents. Those involved in the contracting process, starting with cross-border ones, define the skills and competencies that all professionals of public procurement should possess.

The interviewees agreed that there should be a mandate for elaborating technical standards and regulations for digitizing contracts. It guarantees transparency, accessibility, and full interoperability. For SMEs and social economy companies, a fast start-up of pilot projects stimulates participation through commercial intermediaries and innovation mediators. The access of the agents of the recruitment process to the Justice 2014-2020 program as regards the part related to judicial training, including linguistic training on legal terminology, to promote a common juridical and judicial culture regarding recruitment and mutual learning. Finally, interviewees recommended adopting a code of ethics regarding recruitment by the agents involved in it, at the European level and in the framework of dialogue with civil society, to ensure respect for high social standards and environmental.

The interviewees J, K & L, focused on illustrating the new ex-ante mechanism proposed by the EC can, in the opinion of the Committee, constitute a valid instrument. It could be if it maintains its flexibility and voluntary nature and provides the possibility of using the three components separately. An aid service is articulated, a notification mechanism for projects whose amount exceeds EUR 500 million and a tool for exchanging information; Those should be able to be used efficiently and independently for each project and fully respecting the guarantees of confidentiality.

It is crucial that the standardized notification form remains agile and straightforward and that the electronic procedure guarantees the confidentiality of sensitive information. In the opinion, the aid service should be structured as a network of national/regional sub-services to ensure proximity assistance.

The information exchange mechanism should consist of an interactive, user-friendly database that complies with user requirements, with a specific steering and verification committee of representatives of the contracting services and companies of the Member States. Regarding the ex-ante evaluation mechanism, the interviewees highlighted the need to make it attractive by recognizing an Accreditation Label due to the EC evaluation.

5 DISCUSSION AND CONCLUSIONS

5.1 The theoretical contributions

How does procurement law ensure contract management in public procurement?

What can transform public procurement into a powerful instrument of the economic policy portfolio of each member state is to take clear and concrete action in the substantial improvements of the contracting and the results thereof. Refer to the Communication of the Commission adopted on October 3, 2017,¹³¹ which establishes the general policy framework to improve contracting in practice in the EU and proposes an association to that end. Implementing measures in priority areas would also allow the Member States to correct the deficiencies discussed in the previous chapters.

In the EU Commission's Communication of 2017 mentioned above, it indicates that there are six priority areas: "greater strategic planning of public procurement, the professionalization of public contractors, improved access to public procurement markets, increase and improvement of transparency, integrity, and data, boosting the digital transformation of public procurement and the cooperation to contract jointly."¹³²

Referring to strategic public procurement, it should play a more critical role in addressing the economic, environmental, and social challenges. With the above, the integration of environmental criteria, social and innovation,¹³³ should have more widespread use of prior market consultations and qualitative assessments, generating an economically more advantageous offer¹³⁴ and the hiring of innovative solu-

¹³¹ COM/2017/0572 final.

¹³² Idem.

¹³³ These should also include the obligation to guarantee accessibility for people with disabilities.

¹³⁴ The principle of the economically most advantageous offer allows granting more relevance to quality.

tions in the previous stage to marketing. The member states of the union must organize bids based on the financially most beneficial bidding principle that includes necessary ecological criteria. Understanding this better and achieving optimal results in public procurement, the same states must systematically apply themselves to strategic standards. Something that can be made first through broad practical support, either through the disclosure of norms or by developing methodologies to establish reference parameters or the regular updating of labels¹³⁵ and evaluation criteria and finally a plethora of reasonable public access practices.

Another aspect that is relevant within this contractual frame of reference is the professionalization of it. The increase in strategic public procurement requires a generalization of more flexible practices, knowledge of markets, and innovative tools. The public sector needs to establish a comprehensive strategy to counteract risk aversion and to bring together and develop capabilities throughout the Public Procurement arena. The panorama of the progress of the Member States toward professionalization is asymmetric. Sharing experiences will allow them to improve the hiring practices and increase the impact of public procurement in achieving general interest objectives. Long-term professionalization strategies at the national level are essential to having the right people with the right skills and tools for achieving the best results.

Continuing with the list of essential aspects, it is worth including access to public procurement markets. SMEs are vital for job creation, growth, and innovation, but it faces many difficulties finding access to public procurement. As we could be assessed in the previous chapters, SMEs are currently reduced to achieving only 45% of the accumulated value of contracts above the EU limits, either directly or as joint bidders or subcontractors. In the 2014 directives, it was found that those include¹³⁶ the actions that should facilitate the access of SMEs to public procurement. It considers that the entrance of these improved contracting opportunities for

¹³⁵ Like the ecological, energy, or fair-trade labels.

¹³⁶ Measures to improve the access of SMEs to public procurement markets include favouring the division of contracts into lots, limiting the volume of business required to participate in a tender procedure and reducing documentation requirements.

SMEs should be communicated with much greater emphasis to the general public, companies, and contracting authorities to increase the share of SMEs in public procurement about the total weight within the economy.

How is public bidding linked with the effectiveness of contract management in public projects?

Building trust among market players, including SMEs, to participate in bidding procedures is another excellent way of improving access to public contracting. Its establishment to achieve is that the member states offer fair and efficient possibilities for solving problems, including an independent review of the public procurement decisions. On the other hand, the EU is the most open market globally in terms of public procurement. Companies within the union do not always enjoy reciprocal access in the corresponding markets in other countries. The EU's main trading partners continue to apply discriminatory measures that affect EU companies by granting preferential treatment to national bidders, which does not happen within our single market.

The excellent administration of public procurement should be based on reliable data, as it is essential to know where the problem lies and then prepare appropriate strategic responses by eliminating the percentage of current risk. Measures should be established to make available all the best data and the most accessible public procurement.¹³⁷ It would start a wide range of opportunities to evaluate the performance of the policies related to contracting, giving rise to confirming the strategic decisions to be applied in the future. Electronic public procurement systems within the single market will also allow the generation of data to detect irregularities in them.

¹³⁷ Respecting fundamental rights and protection of personal data, insofar as applicable within the framework of the law.

It must also be said that access to data on public procurement should allow open dialogue with civil society. It must demand more responsibility from governments to ensure that public authorities could be better equipped to fight against fraud and corruption¹³⁸, affecting our European Union is no small extent. It is being sure that one of the ways putting an end to this scourge of public corruption is to recommend the establishment of public access contracts records¹³⁹ in a manner that is accessible to the public and that provides transparency about all contracts awarded and the respective agreements. Modifications allow to establish effective mechanisms for reporting cases of corruption by protecting whistleblowers against reprisals, and this can also help improve the transparency of public procurement and save public money.¹⁴⁰

One of the great chances offered by the latest digital technology is to streamline and simplify the procurement process by implementing electronic public procurement. The public procurement directives have provided that the submission of bids must be submitted electronically, and the regulation should have come into force since October 2018. The problem with this type of system change presentation will only allow the achievement of all the advantages of electronic public procurement when this procedure of public procurement is transformed digitally in its entirety. To emphasize the change authorized by the Commission based on this state-of-the-art technology, especially in this area. It will provide the possibility of fundamentally

¹³⁸ According to the Commission's report on the fight against corruption in the EU in 2014, corruption costs the EU society around EUR 120 billion per year. The PWC and Ecorys for the European Commission's research (2013) report the total direct costs of corruption in public procurement of only five sectors (roads and railways, water and waste, urban construction and public services, training and research and development) in eight Member States ranged between EUR 1.4 billion and EUR 2.2 billion.

¹³⁹ It means that to the extent that such records contain personal data, it must comply with the requirements of the legislation on the protection of personal data.

¹⁴⁰ The research: "Estimating the economic benefits of whistleblower protection in public procurement" prepared by Milieu Ltd and the European Commission had forecasted the potential benefits to the EU from adequate protection of whistleblower in the field of public procurement fluctuate between 5 800 and 9 600 million EUR each year. <https://publications.europa.eu/en/publication-detail/-/publication/8d5955bd-9378-11e7-b92d-01aa75ed71a1/language-en>

rethinking the way public procurement is organized and the relevant sectors of public administration, showing us the opportunity to reconfigure the pertinent systems of general contracting.

Until only 2017, cooperative public procurement has begun to be established throughout the EU. As aggregators,¹⁴¹ contracting centers are managing increasing quotas of public procurement markets in recent years, becoming themselves essential agents in the promotion of public procurement reform within the EU, including the application of a new strategic focus that these are giving to it. In addition to the above, this is seen to increase the influence of public contracting entities, something essential in specific markets dominated by a small number of commercial operators. These hiring centers can be established with a broad mandate at the national level and address sectors such as health or information technology or specialize in something more specific and local such as regional or municipal procurement.

The large volumes of contracting of these plants could boost strategic recruiting by establishing innovative or ecological contracting objectives. Knowledge of themselves in the market will be a crucial element in the professionalization of public procurement because such know-how would trigger positive spillovers, as these often offer support to other contracting authorities. Increased cooperation between contracting authorities can also bring many benefits. In joint cross-border contracting, contracting authorities in different countries can jointly organize the procurement procedures, which is now primarily facilitated by the new rules that the EU has adopted.

The thesis has addressed different vital aspects of public contracting and its legal environment, having paid attention to the study of solutions that ensure the proper

¹⁴¹ When talking about the aggregation of the demand as in this case, refer to contracting authorities or other agents that operate through Central Purchasing Bodies (CPBs) that act as wholesalers or intermediaries.

performance of the project manager within the regulations provided by the European Commission when boundary conditions are unclear or unfavorable.

How can the avoidance of the most common errors in public procurement lead to excellence in procurement?

The analyses carried out through the different chapters have allowed obtaining conclusions for each of the aspects treated. Based on the knowledge acquired in this research, in this chapter, a series of general conclusions are presented to answer the research question, which summarises the personal contributions to the theoretical part of this thesis:

- The regulation of state procurement within the EU to this day is governed mainly by the Public Administration Directives described here within this thesis, which reveals reforms and promotes complementary decrees in the member states, which serve as a basis for each selection modalities.
- The success of the presentation of a simplified technical proposal implies the use of the acceptable practices identified, such as the advanced search of contractual processes of interest and the study of the critical elements that make up the specifications that point to the enabling verification, to the interpretation of the ponderable factors and the economic formulation.
- From the normative and methodological framework developed, it is possible to demonstrate that the interpretation of the specifications as a simple piece of acceptable pre-contractual practices consists of legal, technical, and financial verifications. However, the correct analysis lies fundamentally in the commercial requirements of the proponent, and the work team must be included since these allow estimating the economic behavior, degree of responsibility, and knowledge related to the object to be contracted. At the same time, these provide an acknowledgment of the suitability of the bidder. On the other hand, the study of legal capacity is not so rigorous since the petitions are simple valid documents that must be present the interested party concerning the legitimate constitution as a company, whether a natural or legal person.

- Applying the acceptable practices described offers to identify the needs of each bidding process of interest, thus minimizing the probability of error in the preparation of the proposal to be submitted, which in effect also promotes favorability and guarantees a priori, a place to participate in the qualification and adjudication stage.
- The technical and financial criteria are proportional to the nature and value of the contract to be executed. These mean that the higher the level of complexity, the demand for pre-contractual requirements to be met is much higher.
- The flow of acceptable practices proposed for the pre-contractual stage is applicable only for the open merit contest modality. It only links the analysis variables and the selection procedure for consulting contractors. Therefore, the reader or interested party who wishes to contract with the State through other modalities must refer to the current contractual regime and identify the foundations that govern it.
- It is proposed to give continuity to this research project since it allows other future thesis work. It concerning the contractual regime in the member states of the Union is continuously modernized, changing the conditions established to improve the procurement policies.

5.2 The managerial contributions

How do determinant procurement laws ensure contract management in public procurement? Moreover, how can the avoidance of the most common errors in public procurement lead to excellence in procurement?

The Public Administration acts unilaterally, through the acts and administrative regulations and bilaterally remains looking for the collaboration of the private sector through contracts. In these cases, the contractors selected by the Public Administration itself and by the strict parameters of legality and objectivity. Those selected integrate into the public function to the extent that those are committed to works,

services, or supplies of public interest. These works will be made available to citizens and will be the most appropriate within the technical possibilities existing at the time.

The public administration cannot by itself directly assume the performance of all activities of public interest. It needs the competition of the articulated society. Meaning that the general interest in a social and democratic state is no longer a bureaucratic domain; instead, it must open to a definition and control in which society itself now assumes a central role.

On the question that arose at the beginning of the 21st century about the meaning of the "general principles of the Law" in Administrative Law, it is sure that it can answer it from two very different approaches. From positivism, general principles have little more meaning than recognizing abstract terms the rules that express it in the normative system. Why? Because the normative system gives itself the policies because it is the order, the origin, and the cause of them. On the other hand, there is a perspective of open positivism. That positivism can recognize the existence of a general legal framework of a universal or global legal culture. It can affirm that it represents the rule of law, then things are otherwise.

From this perspective, general principles play a central role because those are the guarantors that the rule of law and its postulates are a reality in all branches of law. Thus, in this way, the principles are not only the source of Administrative Law, which is not a small thing but are inspiring elements and criteria on which administrative law should be built. Indeed, if administrative law is no more than a branch of public law that regulates the relationship between public administration and citizens, the principles will have minimal functionality. If administrative law conceives as the right exercised by public power to provide freedom for the human being, it can easily understand the operational vitality that those have in the global legal-administrative order.

In the case of global public procurement, it has been precisely the general principles that have allowed the development of global rules that have established the regime

of Public Contracts of many public entities of the so-called Global Public Administration. These principles allow knowing if the offers are within the framework of the rule of law. Otherwise, it is if the proposals made by the global public interest by making quality services and public works available to all citizens of the world will allow the real improvement of the living conditions of people in general.

Every human process has as a starting point a need, in the same way, the public administration considered the entelechy¹⁴² representative of society and at the service of it, also has requirements that need to be met. For this reason, for each public administration entity to fulfill the purposes entrusted to it, it is vital that these acquire the goods, services, and works necessary for the proper fulfillment of those functions. It develops the so-called public procurement processes constituted by three phases: the programming phase and preparatory acts, the selection process phase, and the contractual execution phases.

The list of needs that the author gave in the programming phase and preparatory acts included the planning of the entity's needs. Besides, including the annual hiring plan approval and the creation of the hiring file. The appointment of the selection committee and the preparation of the bases and its authorization. However, this first phase has a previous sub-phase within the entity, which allows the coordination of budgets that make the manifestation of the administrative contractual will legally feasible. The conjunction of the physical, legal, accounting, financial, economic, and political feasibility studies of the goods, service, or work object of the future

¹⁴² According to the Collings English dictionary the word Entelechy in British language means quoting it:

- a). (in the philosophy of Aristotle) actuality as opposed to potentiality
- b). (in the system of Leibnitz) the soul or principle of perfection of an object or person; a monad or basic constituent
- c). something that contains or realizes a final cause, esp. the vital force thought to direct the life of an organism

The same word Entelechy in American language means quoting it::

- a). in Aristotelian philosophy, the actualization of potentiality or of essence
- b). in vitalism, the inherent force which controls and directs the activities and development of a living being

Word origin of 'entelechy'

hiring, and the previous information by the budget credit. In this order, each jurisdiction or entity formulates its contracting program adjusted to the nature of its activities and loans assigned to it in the budget law.

Once it is decided to be hired, technical projects are carried out regarding the advantages, benefits, and the possibility of realizing the object of the contract. Further, regarding the economic cost of the agreement, the existence of credits, and its budget allocation. To achieve the above mentioned, the legal regime of the Public Administration has developed a series of management tools in the supply processes of the entities, which links the logistics aspect of the Entities with its budget development.

Contracting goods, services, or works is necessary. The magnitude and number of transactions make public procurement a specialized legal regime of transverse importance that contributes significantly to the revitalization of the economy, especially in the interior of each EU member country, where the presence of small and medium enterprises is predominant. Therefore, it is necessary to ensure that each of these transactions is carried out with transparency and promotion of free competition within a strategy of quality and efficiency in spending for compliance with the public function by the national policy of social inclusion.

The execution of projects in public administrations is strongly conditioned by its specific characteristics, such as personnel with inflexible functions and the performance of many external projects with the intervention of foreign companies, or rigid contracting mechanisms little adaptable to cases. These characteristics of public entities affect different areas of project management. The main difference has to work out with the origin of public resources. In the case of the administration, it is not about projects whose objective is to report an economic benefit and offer a service to the citizens. The way to observe the success of these public projects is to measure the degree of satisfaction of citizens.

The public managers are aware of the specific risks in the projects for the administration due to its sensitivity. Acquisitions and the intervention of external suppliers, changes in requirements, the increasingly active participation of the citizen as

an active stakeholder in the whole project, or political risk are conditioning factors in public projects. Its political component also influences project scope management. When projects exceed periods of rulers, affect the scheme with modifications in the requirements, rethinking, or even cancellations. This circumstance and the continuous changes in criteria that originate is the leading cause of the extra costs and delays in public projects.

5.3 Limitations and further research

Several questions remained to be studied that can serve as a guide for future lines of inquiry. In the first place, the analytical scheme proposed in this thesis would require an empirical test to validate or rethink the proposed relationships.

It would involve determining the most appropriate indicators to measure the factors. One of the factors that require more empirical evidence is the impact of uncertainty in the development of procurement management.

Likewise, although the analysis focused on identifying the main factors that affect the development of acquisitions, it remains to explore the impact of this on the performance of the purchasing function and the performance of the purchasing company.

On the other hand, from the bibliographic research, it was observed that there are aspects that require more attention from the researcher of this thesis. These include the relationship between supplier development, technology transfer and absorption, and mechanisms to mitigate the associated risks of spills and opportunism.

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