

SPECIAL REPORT No 4/2023

Direct awards: when do direct awards of public contracts or awards following a negotiated procedure ensure the objective integrity of the process?

EXECUTIVE SUMMARY

Public procurement without a tendering procedure is a matter of constant challenge in the public debate.

By auditing 64 public bodies and a sample of 5,073 contracts, the Court of Audit attempted to answer the question how to ensure the objective integrity of the process in the case of direct awards by identifying practices that may give rise to suspicions of misuse, non-transparency and arbitrariness.

The audit findings are as follows:

- I.** There is no planning for meeting the needs of public bodies in a timely and rational manner. Public bodies adjust their needs to the limit of direct awards, thus covering them in a fragmentary manner and through partitions.
- II.** There is insufficient justification of the unforeseen and urgent nature of the needs covered through recourse to the negotiated procedure. Public bodies treat the concept of “reasons of extreme urgency” and “events unforeseeable” as being identical.
- III.** There is considerable scope for improvement regarding the effective involvement of the administrative services of the body during the procedure preceding the final decision so as not to give rise to suspicions of arbitrariness and non-transparency.
- IV.** In many cases, the subject-matter of the contract or the manner in which the estimated cost is calculated are not clearly defined. There is no evidence of a previous market investigation.
- V.** There is no guarantee of transparency as to the selection of the contractor and the determination of the price, in particular when it comes to repeated awards to the same contractor. There are no predetermined and therefore verifiable selection criteria for those invited to tender. The price is not negotiated. Low to zero discount rates are offered. Electronic marketplace systems are not widely implemented.
- VI.** The highest percentage of direct awards was observed in hospitals. A small percentage of their contracts is awarded through tendering processes due to chronic systemic weaknesses combined with the imperative needs for the supply of medicines and other consumables. Frequent recourse to the adoption of legal provisions ratifying the process ex ante.
- VII.** Public bodies do not have a system for assessing complaints and taking advantage thereof to improve the integrity of the direct award process.