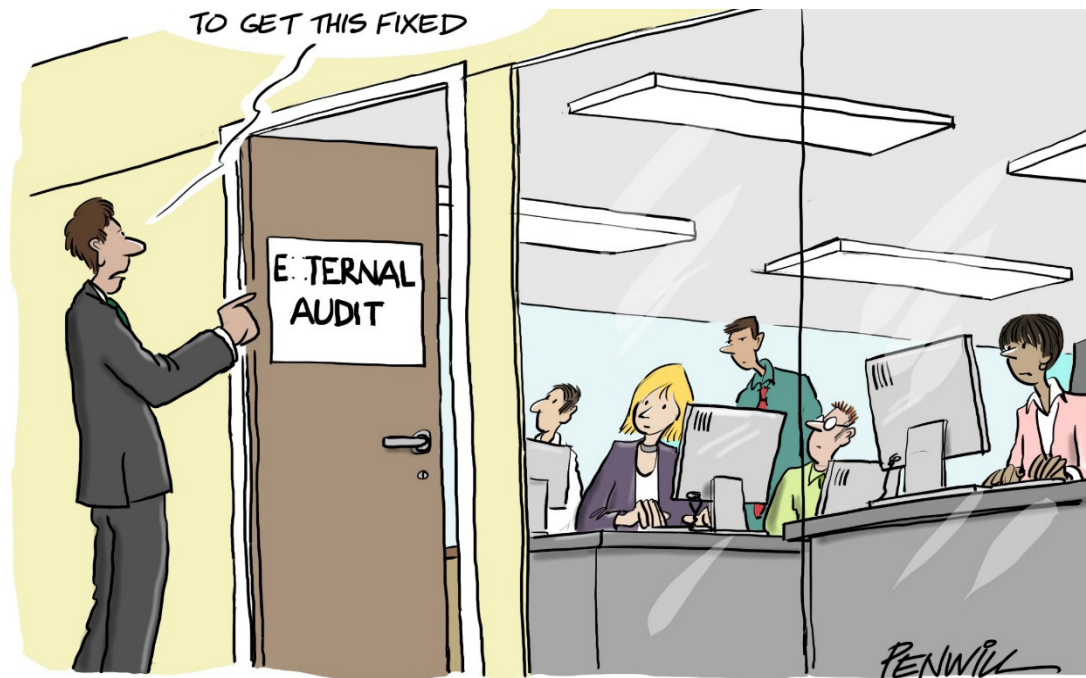


# Audit in the field of public procurement and relevant documentation for Auditors



# **Audit in the field of public procurement and relevant documentation for Auditors**

- Content:
  - Main types of audit performed by AA
    - System audit
    - Audit of operations
  - Main features of auditor's checklist
  - Structure of AA checklist and standard format
  - Audit red flags- sensitive areas identified during AA audits
  - Verification of selection and award criteria
  - Capitalization of audit work

# AUDIT OF PUBLIC PROCUREMENT

**Main audit obligation:**

**to express independently an opinion whether:**

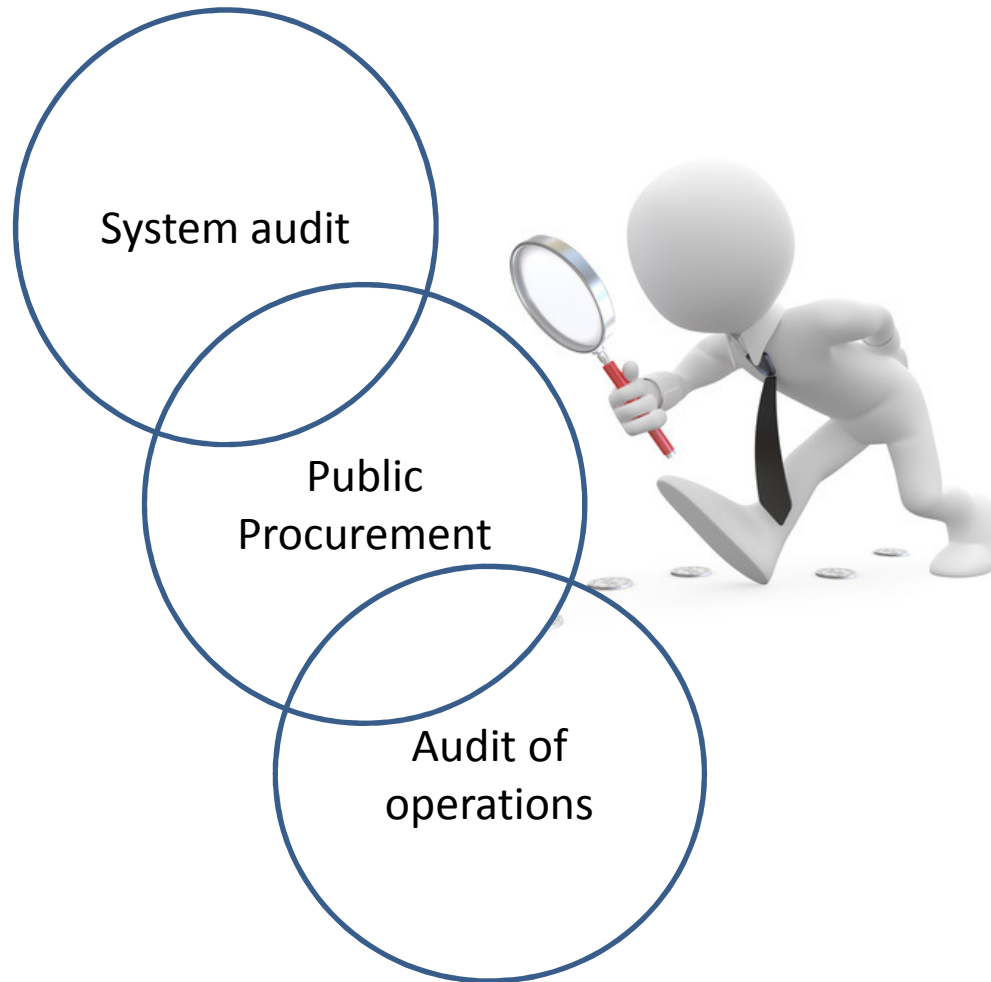
1) The management and control system put in place functions properly.

2) Expenditure for which reimbursement has been requested from the Commission and which are declared in the accounts is legal and regular

3) The accounts give a true and fair view,



# AUDIT OF PUBLIC PROCUREMENT



# Main Audit Authority verifications during System Audit



Verifications in relation to public procurement procedures should aim to ensure that Union public procurement rules and related national rules are complied with.

# Main Audit Authority verifications during System Audit

**AA conducts control tests in order to gain assurance over the effectiveness of Managing Authority controls in the field of PP**



MA has the obligation to verify the compliance of the expenditure with national and Union rules in terms of public procurement during the administrative verifications of the expenditures.

# Main Audit Authority verifications during System Audit

Auditor's verifications may include:

- ➔ MA internal control environment, segregation of duties, number and experience of staff in charge with MV verification,
- ➔ Procedures and checklists used by the MA for PP verifications,
- ➔ Effectiveness of those verifications through re-performance of a sample of controls applied by the entity.



# Main Audit Authority verifications during **System Audit**

Auditor examines if administrative checks performed by MA cover at least the following aspects:

- ➔ Cost estimation of the contracts;
- ➔ Selection of the correct procedure to be applied;
- ➔ Conformity with publicity requirements;
- ➔ Quality of tender documents;
- ➔ Evaluation and selection criteria to be used;
- ➔ Supplementary works awarded in the implementation
- ➔ Modification to the initial contract during execution of the contract

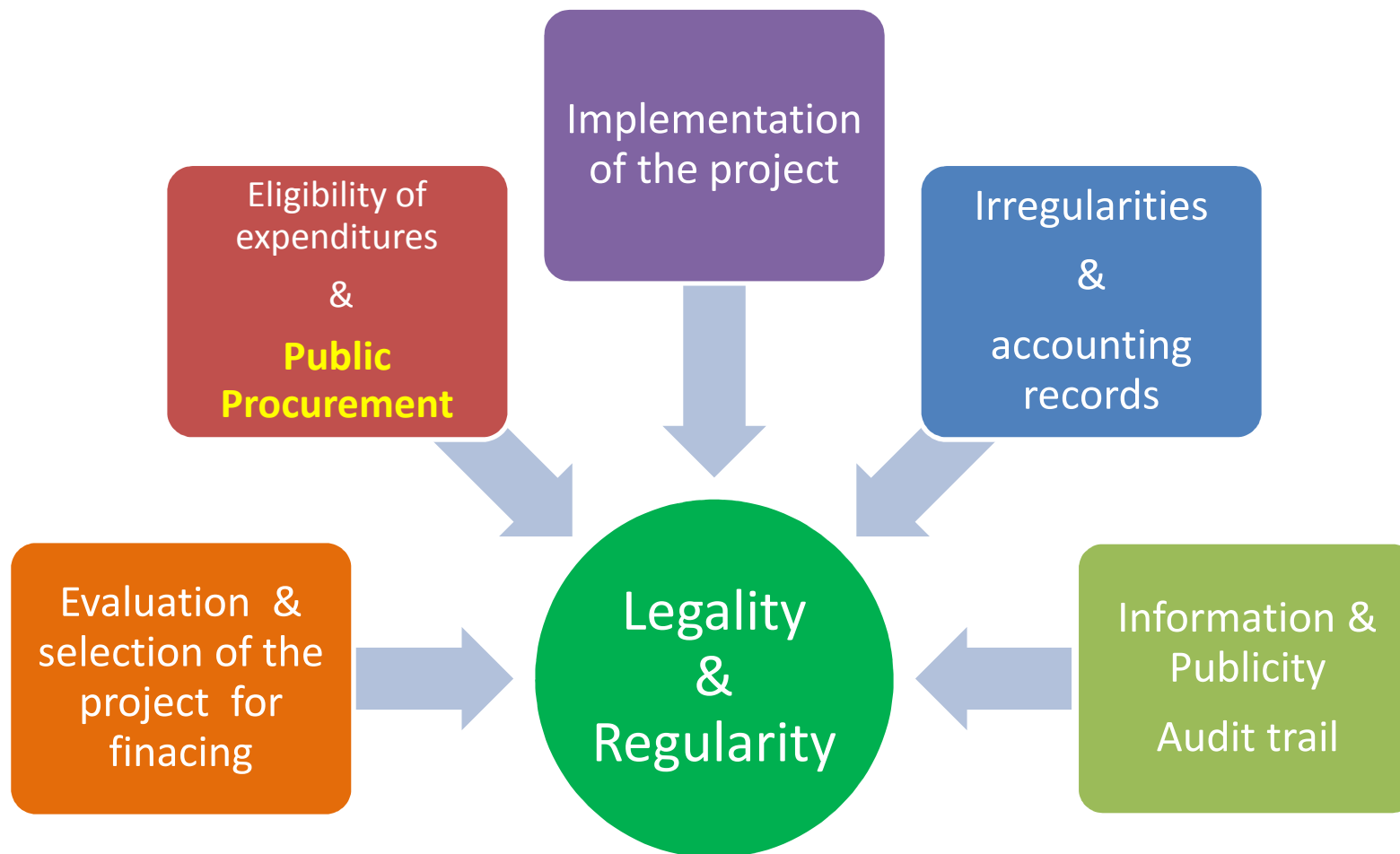


## AUDIT CHECKLIST

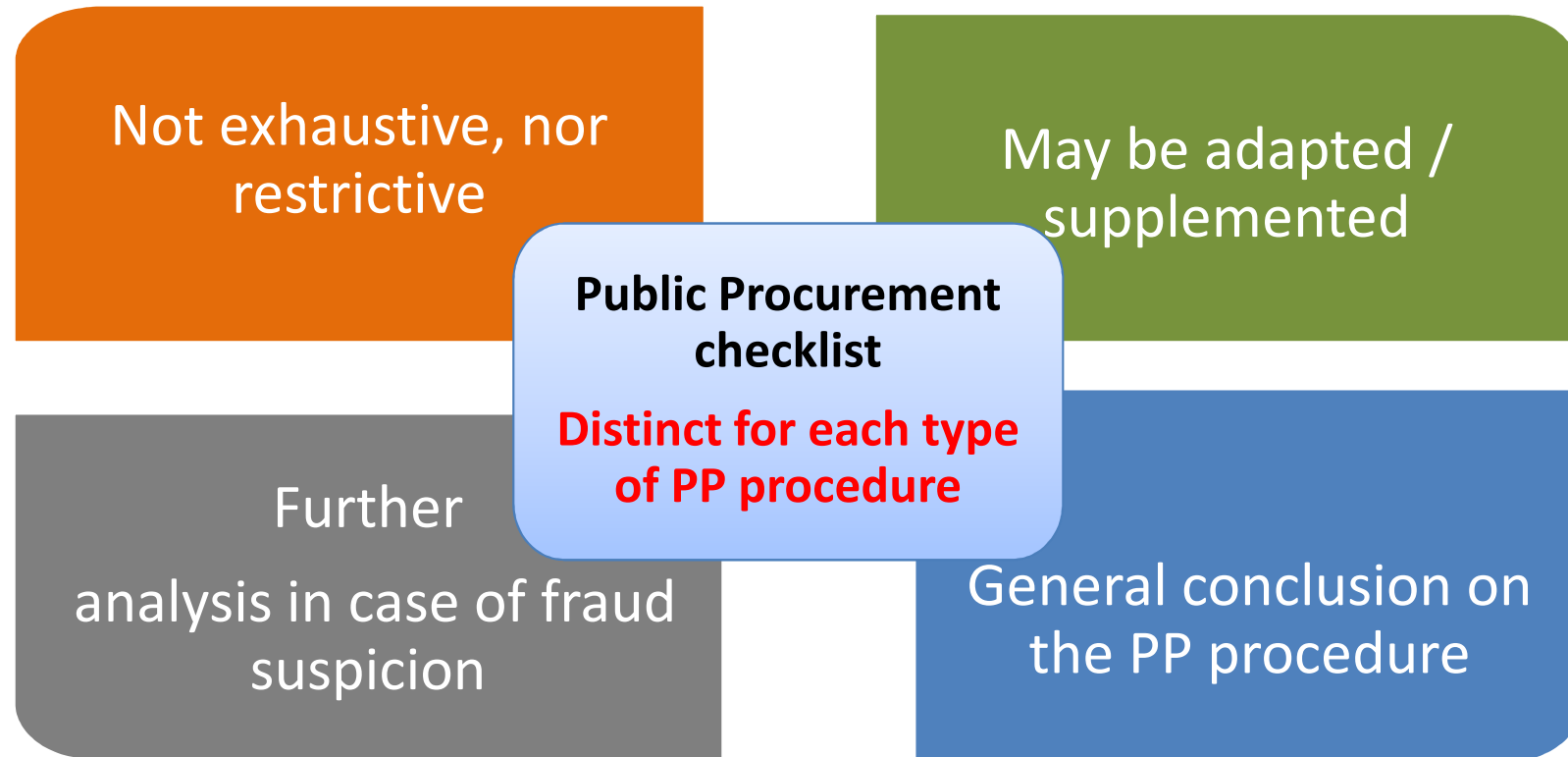
- Audit Satisfactory
- Non-conformances found
- Observations made



# Audit of operations



# Checklist for the control of public procurement main features



# Standard format for a Checklist for PP

No	Elements checked	Legal Provisi on	Yes/ No /N/A	Justify the answer	Audit evidence
<b>Main Public Procurement Area: <span style="color: red;">Publicity and transparency rules</span></b>					
1.	<p><b>Question ?</b> - Has the CA published a procurement notice in the Official Journal of the European Union and at national level?</p> <p><i>Guidance, explaining the question and giving some relevant information regarding the areas and directions in which that item should be checked It also highlights the points where the most common and serious errors arise.</i></p> <p><i>Check whether:</i></p> <ul style="list-style-type: none"> <li>✓ <i>there is evidence of the submission for publication / publication in the OJEU</i></li> <li>✓ <i>there is evidence of publication at national level and is identical to the version from OJEU;</i></li> <li>✓ <i>publication in the OJEU is prior to national publication</i></li> </ul>	Art. 2 alin. (2), art. 211-213 from Law no. 98/ 2016, Art. 59, 145-146 from GD nr. 395/2016			



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	<p> baza următoarelor:</p> <p> a) fie valoarea reală globală a tuturor contractelor similare succesive atribuite în ultimele 12 luni sau în anul bugetar anterior, ajustată, acolo unde este posibil, pentru a lua în considerare modificările cantitative și valorice care pot surveni într-un interval de 12 luni de la data contractului inițial;</p> <p> b) fie valoarea estimată globală a tuturor contractelor succesive atribuite într-un interval de 12 luni de la prima livrare.</p>	Directiva nr. 2014/24/UE		
12.	<p>Prin calculul valorii estimate, AC s-a asigurat că nu s-a produs o divizare artificială a contractelor de lucrări/produse/servicii?</p> <p>Se verifică dacă AC nu a divizat contractul de achiziție publică în mai multe contracte distincte de valoare mai mică și nici nu a utilizat metode de calcul care să conducă la o subevaluare a valorii estimate a contractului de achiziție publică, cu scopul de a evita aplicarea procedurilor de atribuire.</p> <p>Se verifică dacă există următoarele:</p> <ul style="list-style-type: none"> <li>- două sau mai multe achiziții consecutive și asemănătoare ca obiect situate imediat sub pragurile de la Art.7</li> <li>- separarea nejustificată a achizițiilor, de exemplu contracte separate pentru manoperă și materiale, fiecare având o valoare inferioară pragurilor din Lege;</li> <li>- achiziții consecutive la valori situate imediat sub praguri.</li> </ul> <p><b>Atenție nerespectarea acestei cerințe poate constitui abatere sancționată prin aplicarea unei corecții financiare!</b></p>	Art. 11 alin (1) și (2) din Legea 98/2016, art. 5 par (3) din Directiva nr. 2014/24/UE , Anexa la HG 519/2014, H.G. nr. 875/2011 – anexa 1		
13.	<p>In situația în care AC nu recurge la atribuirea contractului pe loturi, aceasta a justificat decizia de a nu atribui contractul pe loturi?</p> <p>Se verifică dacă la dosarul achiziției există această justificare și se evaluează dacă este relevantă în raport cu achiziția efectuată.</p>	Art. 141 alin. (3) din Legea nr. 98/2016		
<b>ELABORAREA DOCUMENTAȚIEI DE ATRIBUIRE</b>				
14.	AC a elaborat o documentație de atribuire care să conțină toate informațiile necesare pentru a asigura operatorilor economici o informare completă, corectă și precisă cu privire la cerințele achiziției, obiectul contractului și modul de	Art. 154 din Legea nr. 98/2016		

Anexa MA\_VI\_35 LV achizitii licitatie deschisa [Mod compatibilitate] - Word

INSTRUMENTE TABEL

FIȘIER PORNIRE INSERARE PROIECTARE ASPECT PAGINĂ REFERINȚE CORESPONDENȚĂ REVIZUIRE VIZUALIZARE PROIECTARE ASPECT

Decupare Copiere Descriitor de formate

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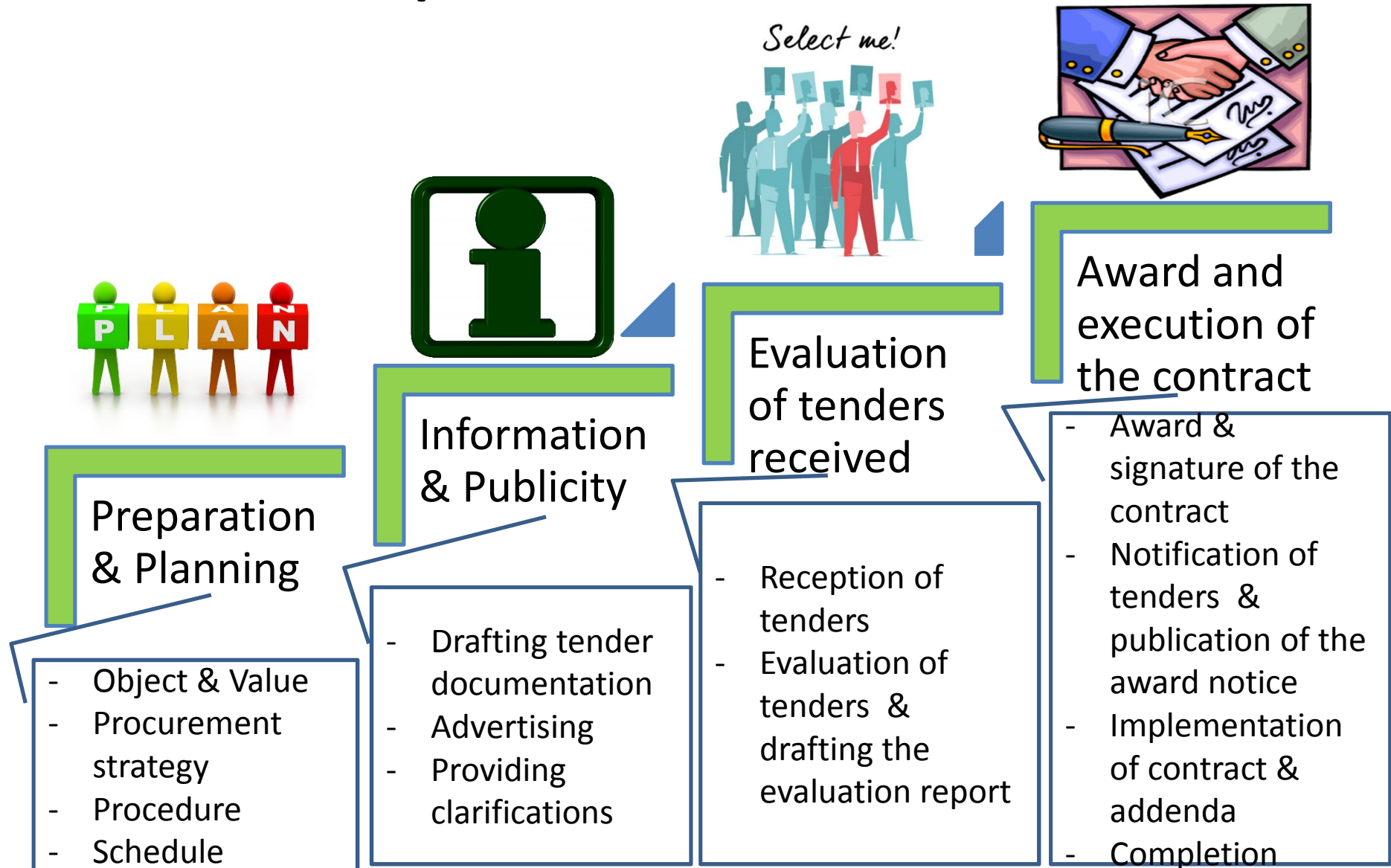
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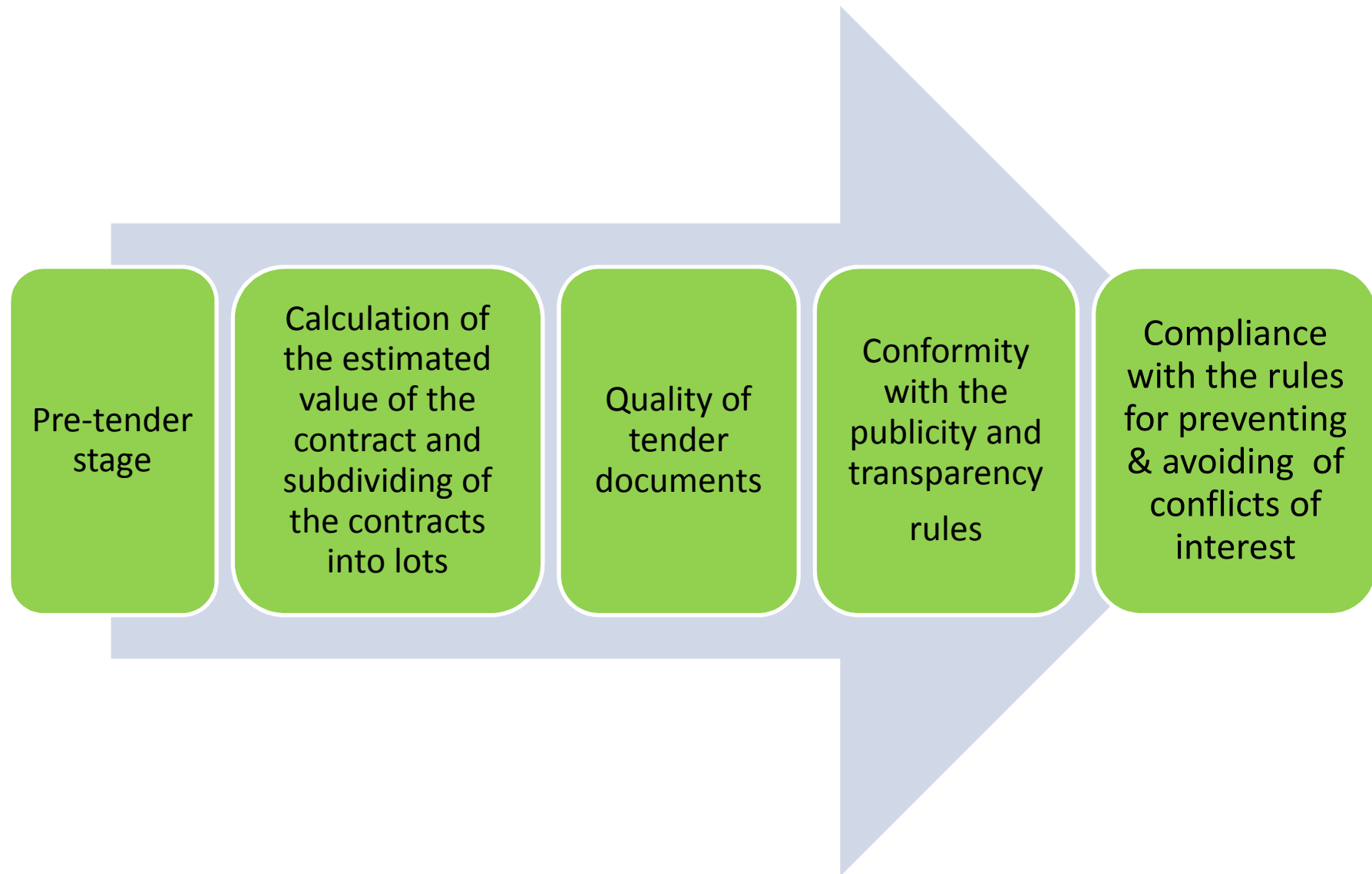
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	<p>acestora.</p> <p><b>Atenție nerespectarea acestei cerințe poate constitui abatere sancționată prin aplicarea unei corecții financiare!</b></p>			
26.	<p>AC a indicat operatorilor economici, în documentele achiziției, informațiile și documentele prin care pot face dovada îndeplinirii cerințelor privind capacitatea tehnică și profesională?</p> <p><i>Se verifică dacă AC a indicat ofertanților posibilitatea de a face dovada îndeplinirii cerințelor privind capacitatea tehnică și profesională, prin prezentarea documentelor/informațiilor prevăzute la lit. (a)- (m) de la Art.179 din Legea 98/2016.</i></p> <p><i>Se corelează și cu Instrucțiunea nr.1 ANAP emisă în aplicarea prevederilor art. 179 lit. g) și art. 187 alin. (8) lit. a) din Legea nr. 98/2016 privind achizițiile publice, respectiv a art. 192 lit. g) și a art. 209 alin. (8) din Legea nr. 99/2016 privind achizițiile sectoriale și cu Instrucțiunea nr. 2/2017 din 19 aprilie 2017 emisă în aplicarea prevederilor art. 178 și art. 179 lit. a) și b) din Legea nr. 98/2016 privind achizițiile publice, cu completările ulterioare, respectiv a prevederilor art. 191 și art. 192 lit. a) și b) din Legea nr. 99/2016 privind achizițiile sectoriale</i></p> <p><b>Atenție nerespectarea acestei cerințe poate constitui abatere sancționată prin aplicarea unei corecții financiare!</b></p>	<p>Art. 154, 179, 181 și 182 din Legea nr. 98/2016, art 63 par (1) alin 2 și Anexa XII, Partea II din Directiva nr. 2014/24/ UE</p>		
27.	<p>În cazul în care AC a solicitat prezentarea unor certificate eliberate de organisme independente care să ateste că operatorul economic respectă anumite</p>	<p>Art.200 din Legea</p>		

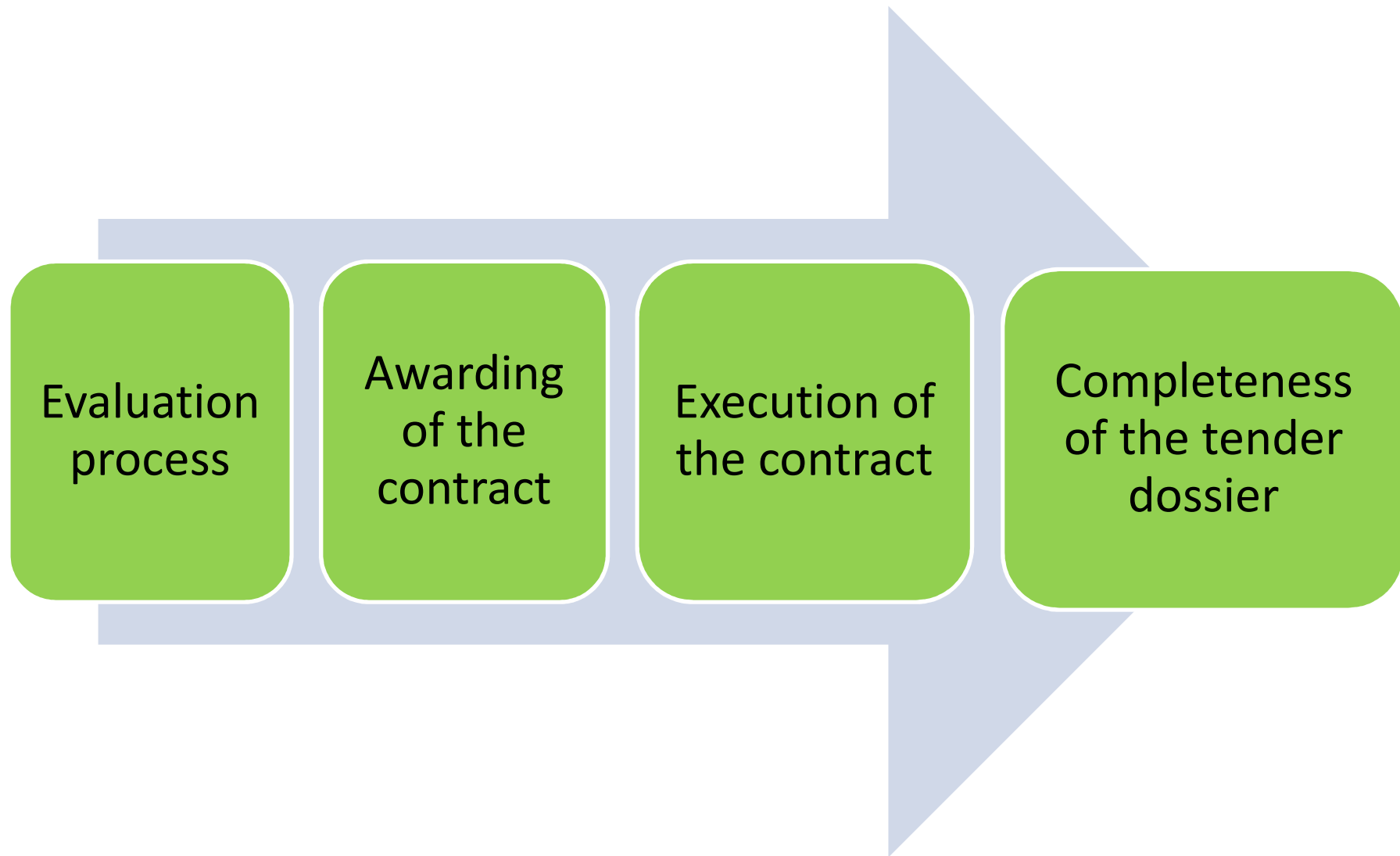
# PP Checklist is based on the public procurement process



# Audit of operations checklist structure



# Audit of operations checklist structure





# Audit of operations – main documents under verification

Pre-tender  
stage

Calculation of  
the estimated  
value of the  
contract and  
subdividing of  
the contracts  
into lots

Quality of  
tender  
documents

Conformity  
with the  
publicity and  
transparency  
rules

Compliance  
with the rules  
for preventing  
& avoiding of  
conflicts of  
interest

- PP strategy
- planning documents
- market consultation

- PP strategy & justification notes

- Tender documents including criteria
- Technical specifications
- ESPD
- Contract model
- Various Standards

- Invitation to tender or for pre-qualification
- Contract notice

- Statement of the decision makers within CA and evaluation committee

# Audit of operations – main documents under verification

## Evaluation process

- Evaluation Report
- tenders received
- ESPD
- Clarifications during evaluation
- Exclusions
- Abnormally low tenders
- Subcontractors & third parties documents

## Awarding of the contract

- ESPD supporting documents for the winning tender
- Award notice & communication letters to the bidders
- The signed contract
- Complaints to the PP procedure

## Execution of the contract

- Documents for the subcontractors and third parties
- Addenda to the contract
- Justification notes for modification of the contract

## Completeness of the tender dossier

- From PP strategy to the document attesting the fulfillment of the contractual obligations by the contractor;

# AUDIT



## Sensitive areas identified during audits

### Estimated value

- Overestimated against market prices
- Artificial splitting in order to avoid a competitive procedure
- Could have been considered multiple procedure as a single one + lots?



### Information & Publicity

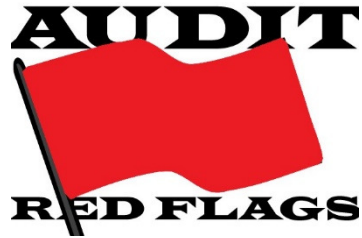
- No OJEU publication of CN and errata to CN or to a later stage than national publication
- Advertising also for contracts under the EU thresholds or in order to ensure that the Treaty's general principles of equal treatment and transparency are respected
- Too restrictive time limits for obtaining the documentation or for submission of tenders,
- Weaknesses in tender clarification;



### Criteria used

- Restrictive criteria used or national permits requested at tendering stage
- Selection criteria not linked to the subject matter of the contract.
- Confusion between selection criteria and award criteria
- Criteria not published integral in the contract notice or significant modification occurred after publication without a corrigendum





## Sensitive areas identified during audits

### Evaluation process

- Unjustified decisions of the evaluation committee with an impact on the result of the procedure
- Modification/incorrect application of the selection/award criteria laid down in the contract notice or tender documents during the evaluation phase
- Conflict of interest
- Negotiation during an open or restricted award procedure



### Contract addenda

- Additional (supplementary or complementary) works – direct award in the absence of circumstances which a diligent contracting authority could not foresee
- Additional works generating a contract value exceeding EU thresholds
- Substantial modifications of the initial tendering conditions during implementation



### Audit trail

- Failure to provide an adequate audit trail
- Lack of relevant documents from the PP procedure



# Verification of selection and award criteria

Who has no right to participate as per art.57 from Directive 24/2014 ?



Who is qualified to perform the contract?



Whose tender meets the results in a optimal way?



Application of the exclusion grounds



Fulfilling the selection criteria



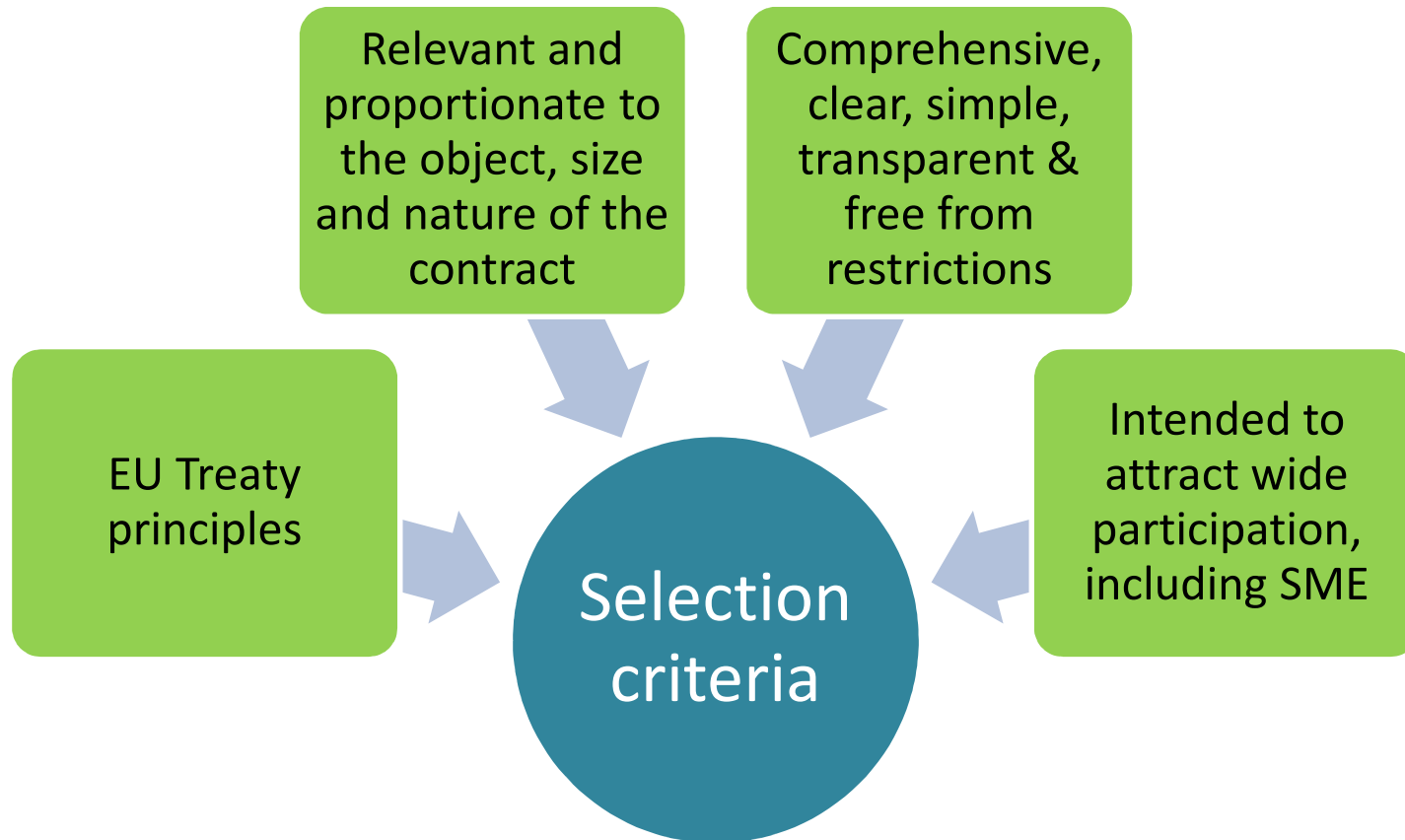
Application of the award criteria



# Main features of good selection criteria

Selection criteria = aim to identify the tenderers which are capable of delivering the contract and its expected results.

Selection criteria = the minimum levels of ability which are required to participate



# Types of selection criteria

## Suitability to pursue the professional activity

- Registered in the official trades registers
- Official authorization to perform some activities

## Economic & financial capacities

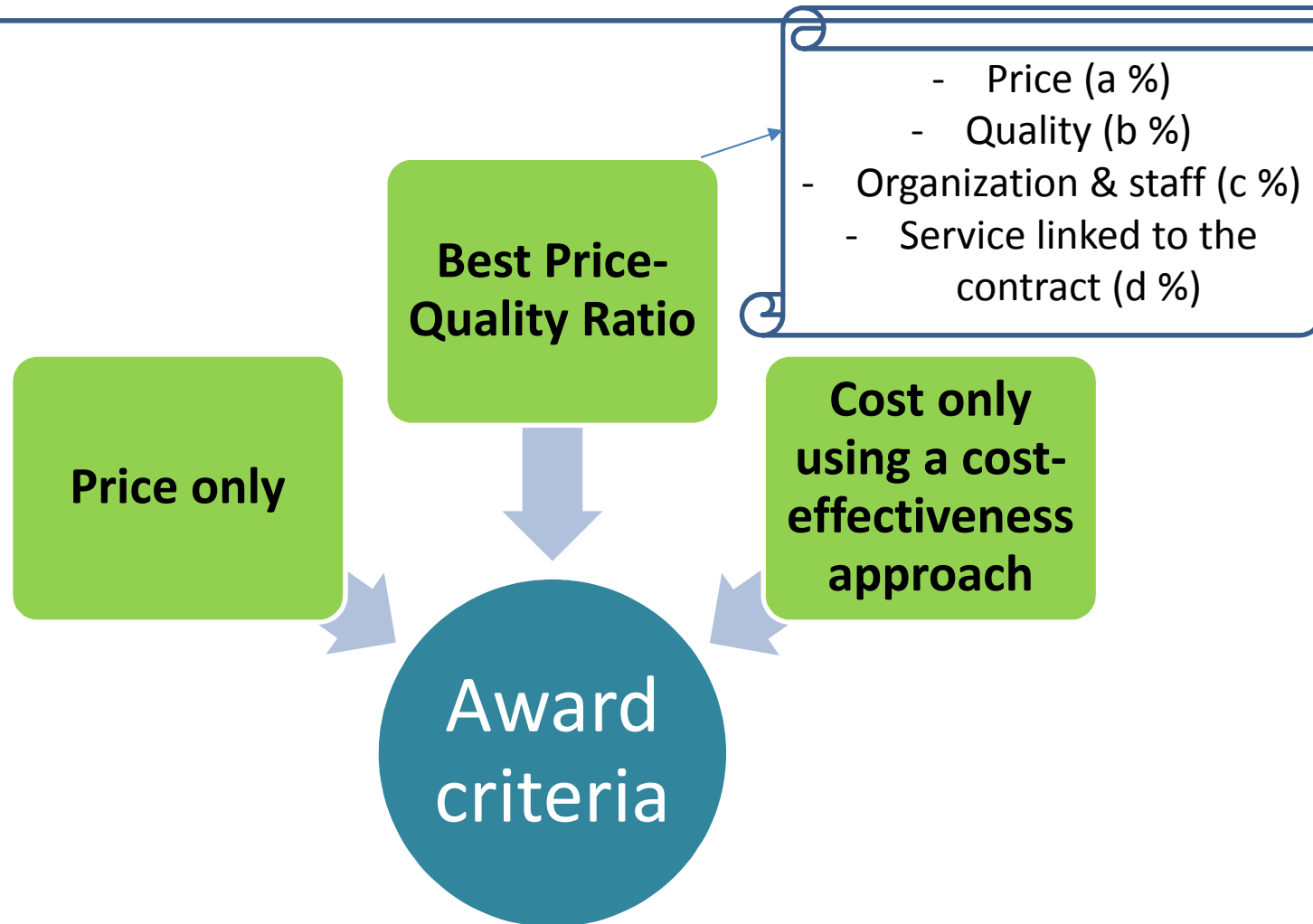
- Minimum yearly turnover which must not exceed two times the estimated contract value
- a certain minimum turnover in the area covered by the contract
- Information on their annual accounts showing the ratios between assets and liabilities (e.g. minimum solvency level of 25% or more)
- *Appropriate level of professional risk indemnity insurance*

## Technical & professional abilities

- Necessary human resources (e.g. qualifications of key staff) and technical resources (e.g. specific equipment) to perform the contract to an appropriate quality standard
- Experience of the contractor itself to perform the contract to an appropriate quality standard (e.g. References from previous contracts within the last three years including at least two in similar contracts)
- Skills, efficiency, experience and reliability to provide the service or to execute the installation or the work

# Methods for award criteria

Award criteria = choosing the best tender based on the most economically advantageous tender (MEAT).





# Use of award criteria

## Price only or lowest price

- Recommended for:
- Works where designs are provided by CA (pre-existing design)
- Standardized services (e.g. cleaning or publishing, etc.)
- Supplies which are simple and standardized

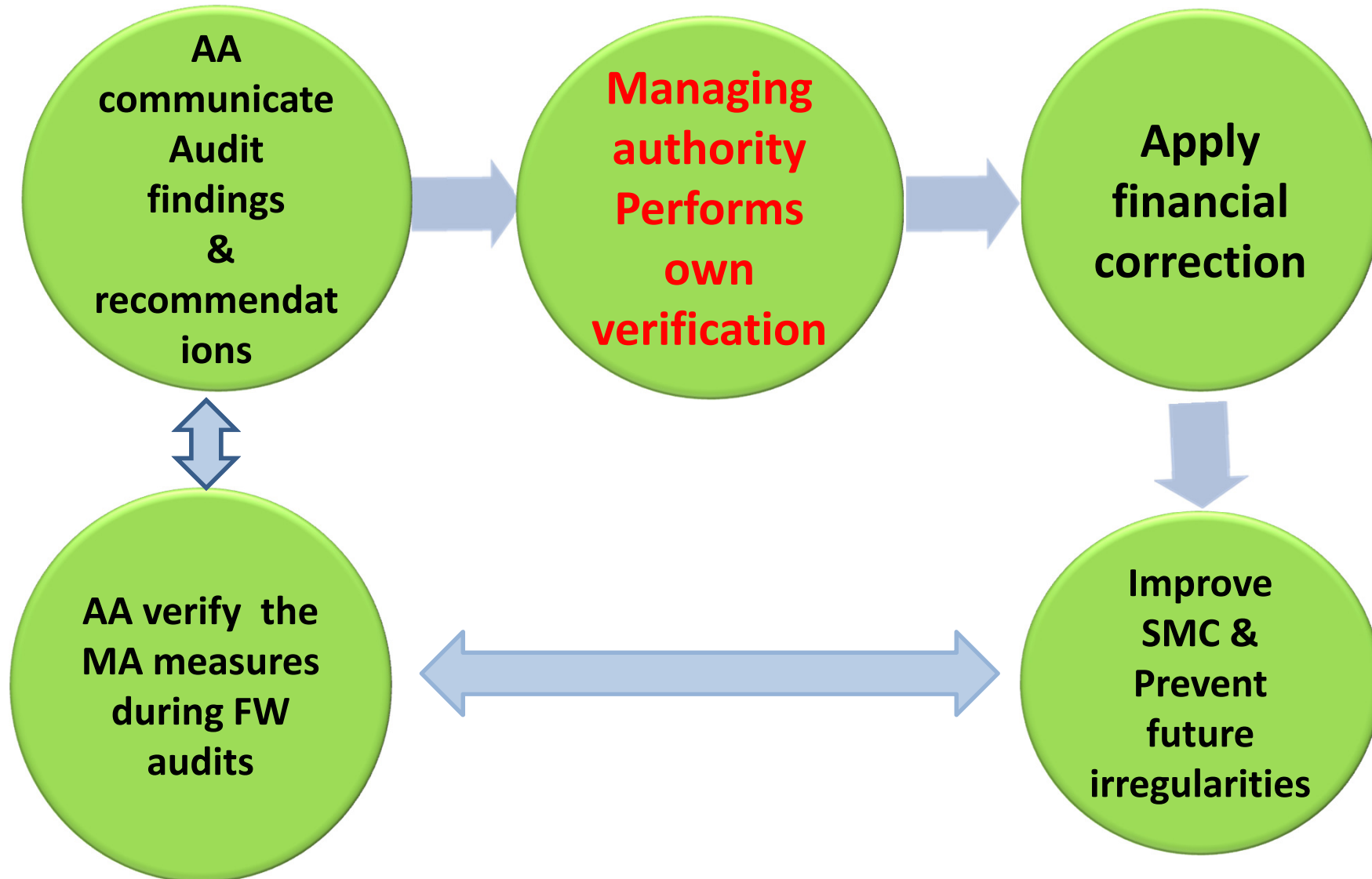
## Best Price- Quality Ratio or best value for money

- Recommended for:
- Works designed by the tenderer
- Services linked to intellectual activity (consultancy, training, etc.)
- Specialized/complex supplies or which requires complex/specialized product installation

## Cost –effectiveness, life –cycle costing or the lowest total cost

- Life –cycle cost cover all costs:
- Acquisition cost (purchase + installation + initial training)
- Operational costs (raw materials, energy, consumables, maintenance)
- Disposal costs at the end of life
- Environmental costs

# Capitalization of audit findings



**THANK YOU**  
**for your attention!**

Daniel Drăgan  
Audit Authority  
Methodology and Coordination Directorate

