



## *Annex II to the Guidelines for Applicants and Beneficiaries*

# **GENERAL RULES OF PROCUREMENT BY LEAD BENEFICIARIES AND BENEFICIARIES WITHIN PROJECTS**

## **LEGAL BASIS**

The current document has been elaborated basing on the best international practice, inter alia on approaches and solutions of the Practical Guide to Contract Procedures for EU External Actions (PRAG).

Furthermore, the document includes the requirements formulated in the following legal acts:

- 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;
- Commission Implementing Regulation (EU) No 897/2014 of 18 August 2014 laying down specific provisions for the implementation of cross-border cooperation programmes financed under Regulation (EU) No 232/2014 of the European Parliament and the Council establishing a European Neighbourhood Instrument;
- Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002;
- Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union;
- Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action.

## **1. MAIN PRINCIPLES**

1.1. If the implementation of a project requires procurement of goods, works or services by a Lead Beneficiary or Beneficiaries (hereinafter referred to as 'Beneficiary(-ies)'), the following rules shall apply:

(a) where the Beneficiary is a contracting authority or a contracting entity within the meaning of the Latvian (LV) and Lithuanian (LT) legislation applicable to the procurement procedures, it may apply national laws, regulations and administrative provisions adopted in connection with European Union (EU) legislation or rules of Point 1.2 of these *General Rules of Procurement by Lead Beneficiaries and Beneficiaries within Projects* (hereinafter - Annex II);

(b) where the Beneficiary is a non-contracting authority within the meaning of the Lithuanian legislation, national rules, approved by The Order of the Minister of Interior, shall be applied. Where the Beneficiary is a non-contracting authority within the meaning of Latvian legislation, national rules approved by the Regulations of the Cabinet of Ministers of the Republic of Latvia No 299 of June 4, 2013 regarding the Procurement Procedure and the Procedures for the Application thereof to the Projects Financed by the Commissioning Party, shall apply;

(c) where the Beneficiary is an international organisation, it may apply its own procurement rules if they offer guarantees equivalent to the internationally accepted standards.

1.2. In all other cases the following obligations shall be complied with:

(a) the contract is awarded to the tender offering best value for money/most economically advantageous, or as appropriate, to the tender offering the lowest price, while avoiding any conflict of interests;

(b) for contracts with a value of more than EUR 10 000, the following rules shall apply in addition:

(i) an Evaluation Committee (hereinafter – the Committee) shall be set up to evaluate applications and/or tenders on the basis of the exclusion, selection and award criteria published by the Beneficiary in advance in the tender documents. The Committee must have an odd number of members (at least three) with all the technical and administrative capacities necessary to give an informed opinion on the tenders/applications. Decisions of the Committee shall be recorded in the Minutes. The Minutes shall specify reasons of the Committee’s decision, give explanations and the separate opinion of each member of the Committee. The Minutes shall be signed by all the members present at the Committee’s meeting.

(ii) sufficient transparency, fair competition and adequate ex-ante publicity must be ensured;

(iii) equal treatment, proportionality and non-discrimination shall be ensured. Beneficiaries shall treat suppliers equally, without discrimination and shall act in a transparent and proportionate manner within the whole period of the implementation of procurement procedure;

(iv) tender documents must be drafted according to the best international practice;

(v) deadlines for submitting applications or tenders must be long enough to give interested parties a reasonable period to prepare their tenders;

(vi) candidates or tenderers shall be excluded from participating in a procurement procedure if they fall within one of the situations described in Article 106(1) of the Regulation (EU, Euratom) No 966/2012 (see Chapter 3). Candidates or tenderers must certify that they are not in one of these situations. In addition, contracts may not be awarded to candidates or tenderers which during the procurement procedure fall within one of the situations referred to in Article 107 of the Regulation (EU, Euratom) No 966/2012 (see Chapter 4);

(vii) procurement procedures set out in Articles 53 to 56 of the Regulation (EU, Euratom) No 897/2014 shall be followed (see Chapter 10).

1.3. In all cases, the rules of nationality and origin set forth in Articles 8 and 9 of the Regulation (EU) No 236/2014 (see Chapter 2) shall apply.

1.4 Beneficiaries shall avoid conflict of interest arising in the conduct of the procurement procedures. The concept of conflict of interest covers any situation where the staff members of the Beneficiary or of a procurement service provider, acting on behalf of the Beneficiary, who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

In the event of conflict of interest, the Beneficiaries shall immediately take all necessary steps to resolve it. The Beneficiaries shall ensure that their staff, participating in procurement procedures, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligation under grant contract, the Beneficiaries shall replace, immediately and without compensation from the Managing Authority of the Programme (hereinafter – MA), any member of its staff, participating in procurement procedures, in such a situation.

1.5. The Lead Beneficiary has to coordinate preparation of the project Procurement Plan (see template on the Programme website [www.eni-cbc.eu/llb/en](http://www.eni-cbc.eu/llb/en)) and submit it to the Joint Technical Secretariat (hereinafter – the JTS) before the signature of the grant contract. All planned procurements for all Beneficiaries within the project must be included in the Procurement Plan.

1.6. Supplier (supplier/service provider/contractor) which can submit a tender shall mean any economic entity that may be either a natural person, or a private legal person, or a public legal person, other organisation and division thereof or any group of such persons (including consortia), which is able to offer or is offering supplies, services or works.

1.7. When the contract value is EUR 10 000 or less, evaluation of applications and/or tenders may be performed by the employee assigned to carry the procurement of the Beneficiary's organisation. Grounds of the selection of the winner in this case have to be indicated in the procurement note filled in according to the template attached (Annex I to this Annex II);

1.8. When communicating with the suppliers, Beneficiaries must ensure integrity of information and confidentiality of tenders. If Beneficiaries are clarifying procurement documentation, the same information must be communicated for all (potential) suppliers via appropriate channels: in written, if procurement is performed in written procedure, and verbally in case of verbal procedure.

## **2. RULES ON NATIONALITY AND ORIGIN**

2.1. Where there is a co-financing from EU Member State, the national rules of nationality and origin of the respective Member State may be applied. In all other cases, the rules of nationality and origin set forth in Articles 8 and 9 of the Regulation (EU) No 236/2014, also listed in this Chapter 2, shall apply.

2.2. Participation in the award of procurement contracts shall be open to all natural persons who are nationals of, and legal persons which are effectively established in an eligible country as defined in this Chapter 2, and to international organisations.

2.3. All purchased supplies with a value of EUR 100 000 or more shall originate from an eligible country.

2.4. This rule also applies to procurement of works involving the supply of products. In case of works contracts which involve multiple purchases, the EUR 100 000 threshold applies by type of supply. Where the contract has a fixed price, the threshold has to be applied to the unit price of the supply. Rules of origin do not apply to supplies purchased in order to carry out the works contract, where the supplier keeps the purchased items at the end of the project.

2.5. List of countries eligible to participate in the procurement procedures is indicated in the Articles 9 of the Regulation (EU) No 236/2014, and include:

- (a) Member States, beneficiaries listed in Annex I to Regulation (EU) No 231/2014, and contracting parties to the Agreement on the European Economic Area;

(b) developing countries and territories, as included in the list of ODA recipients published by the OECD-DAC ('list of ODA recipients'), which are not members of the G-20 group, and overseas countries and territories covered by Council Decision 2001/822/EC;

(c) the Republic of Belarus;

(d) developing countries, as included in the list of ODA recipients, which are members of the G-20 group, and other countries and territories, when they are beneficiaries of the action financed by the Union under the Instruments covered by the Article 9 of the Regulation (EU) No 236/2014;

(e) countries for which reciprocal access to external assistance is established by the Commission. Reciprocal access may be granted, for a limited period of at least one year, whenever a country grants eligibility on equal terms to entities from the Union and from countries eligible under the Instruments covered by the Article 9 of the Regulation (EU) No 236/2014. The Commission shall decide on the reciprocal access and on its duration in accordance with the advisory procedure referred to in Article 16(2), and after consultation of the recipient country or countries concerned.

2.6. The Rules on nationality and origin do not apply to, and do not create nationality restrictions for, natural persons employed or otherwise legally contracted by an eligible contractor or, where applicable, subcontractor.

2.7. Eligibility as set out in this Chapter 2, may be restricted with regard to the nationality, geographical location or nature of applicants, where such restrictions are required on account of the specific nature and the objectives of the project where they are necessary for its effective implementation as it is indicated in the provisions of points 2.8 and 2.9 of this Chapter 2.

2.8. In duly substantiated cases, the MA may extend eligibility to natural and legal persons from an ineligible country and allow the purchase of goods and materials originating in an ineligible country. Derogations may be granted on the grounds of:

(a) economic, traditional, trade or geographical links with neighbouring countries;

(b) unavailability of products and services in the markets of the related countries concerned;

(c) extreme urgency/crisis situation<sup>1</sup>; or

(d) extreme difficulties to carry out a project, Programme or other action with the general rules on eligibility. The argument that a product of ineligible origin is cheaper than the EU or local product would not alone constitute grounds for awarding a derogation.

2.9. Exemptions from the rule of nationality and rule of origin can be granted by derogation only. In order to prove that necessary goods are not available in the market, Beneficiaries shall implement the market research for the planned purchases. As an example for the request for derogation can be letters to and from at least 3 biggest goods providers confirming that relevant goods are not available in the countries concerned and/or failed at least one procurement procedure due to the related reason. In case it was identified that necessary goods are not available in the market, the Beneficiary prepares and sends to the JTS the request for derogation providing also results of implemented market research. The JTS will check the request and in case all necessary information is provided, the request will be sent to the MA for decision on which the Beneficiary will be informed thereafter.

Note: the market research and tender procedures have to be started early in advance to clarify if the requested goods/supplies according to the Programme requirements are available on the market.

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<sup>1</sup> The circumstances invoked to justify extreme urgency must not, in any event, be attributable to the Beneficiary's organization.

2.10. Rule of nationality and origin should be included in the procurement documents and in the contract.

2.11. Suppliers must present a proof of origin – the certificate, to the Beneficiary no later than when the first invoice is presented, for equipment and vehicles of a cost of supplies for EUR 100 000 or more. The certificate of origin must be issued by the competent authority of the country of origin of the supplies and must comply with the rules laid down by the relevant Community legislation.

### **3. GROUNDS FOR EXCLUSION FROM PARTICIPATION IN PROCUREMENT PROCEDURES**

3.1. Candidates or tenderers shall be excluded from participation in procurement procedures if:

(a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(b) they or persons having powers of representation, decision making or control over them have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a state which has the force of res judicata;

(c) they have been guilty of grave professional misconduct proven by any means which the Beneficiary can justify including by decisions of the EIB and international organisations;

(d) they are not in compliance with their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Beneficiary or those of the country where the contract is to be performed;

(e) they or persons having power of representation, decision making or control over them have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such illegal activity is detrimental to the Union's financial interests;

(f) they are subject to an administrative penalty referred to in Article 109(1) of Regulation No 966/2012<sup>2</sup>.

3.2. Subparagraphs (a) to (d) of the point 3.1. shall not apply in the case of the purchase of supplies on particularly advantageous terms from a supplier which is definitively winding up its business activities or from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

3.3. Subparagraphs (b) and (e) of the point 3.1. shall not apply where the candidates or tenderers can demonstrate that adequate measures have been adopted against the persons having power of representation, decision making or control over them, who are subject to a judgement as referred to in subparagraphs (b) or (e) of the point 3.1.

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<sup>2</sup> The contracting authority may impose administrative and/or financial penalties on the following: (a) contractors, candidates or tenderers in the cases referred to in point (b) of Article 107(1); (b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget. In all cases, however, the contracting authority shall first give the person concerned an opportunity to present his or her observations.

#### **4. GROUNDS FOR EXCLUSION FROM AWARD OF CONTRACTS**

4.1. A contract may not be awarded to candidates or tenderers who, during the procurement procedure for that contract:

- (a) are subject to a conflict of interests;
- (b) are guilty of misrepresenting the information required by the Beneficiary as a condition of participation in the procurement procedure or fail to supply that information;
- (c) find themselves in one of the situations of exclusion, referred to in Article 106(1) of the Regulation No 966/2012 (see point 3.1.), for the procurement procedure.

4.2. The European Commission shall be empowered to adopt delegated acts in accordance with Article 210 of the Regulation No 966/2012 concerning detailed rules on the exclusion criteria applicable during the procurement procedure, and the establishment of what evidence may be considered satisfactory to show that an exclusion situation does not exist. Furthermore, the European Commission shall be empowered to adopt delegated acts in accordance with Article 210 of the Regulation No 966/2012 concerning the duration of an exclusion.

#### **5. REQUIREMENTS FOR PROCUREMENT DOCUMENTATION**

5.1. Procurement documents shall be clear, concrete and without ambiguities.

5.2. In the procurement documentation at least the following information shall be provided:

- (a) qualification criteria, tender evaluation criteria and contract award criteria;
- (b) list of documents which must be provided to prove the tender's compliance with the selection criteria;
- (c) deadlines for submission of tenders;
- (d) technical specification of the procurement object;
- (e) requirement that no alternative tenders can be submitted;
- (f) main conditions of the contract.

5.3. Technical specification of the procurement object must ensure fair competition and be a non-discriminatory with respect to all suppliers. Requirements in the technical documentation may not refer to a specific model or source, or a particular process, or to trade mark, patent, type or production with the effect of favouring or eliminating certain undertakings or certain products from participation in procurement procedure.

5.4. If concluded in writing, the contract must specify: rights and obligations of the parties; the purchased supplies, services or works and their exact quantities (if possible); the price or pricing rules; settlement and payment procedures; deadlines for discharging obligations; security for discharging obligations; the procedure for settling disputes; the procedure for terminating the contract; the contract period; subcontractors, sub-suppliers or sub-providers, where they are engaged in execution of the contract, and the procedure for changing them; possibility of changes of the contract and its procedure.

5.5. A proper deadline shall be set for tender submission.

5.6. Procurement documents may not be prepared and the contract may be concluded verbally when the value of the contract is EUR 3 000 or less (excluding value added tax). Nevertheless, Beneficiaries

must have documents which prove that procurement procedures were performed, e.g., procurement note, invoices, acceptance acts, emails, etc.

## 6. EVALUATION OF TENDERS

### 6.1. Qualification criteria

(a) The Committee/the employee assigned to carry the procurement of the Beneficiary's organisation is evaluating qualification of tenderers in accordance with the criteria indicated in the procurement documentation, e.g.: whether there are no grounds for exclusion from participation in procurement procedures and award of contracts as it is indicated in Chapter 3 and Chapter 4 of this Annex II; whether the supplier is a registered legal entity; whether it has capacity to implement the contract, etc. If the tenderer does not submit some document(s) for the proof of compliance with the qualification criteria, the document(s) should be repeatedly requested by the Beneficiary setting the deadline for submission.

(b) If the tender does not meet any of the requirement of qualification criteria, it must be rejected.

(c) Evaluation of qualification must be in accordance with the requirements written in the procurement documentation. No new criteria can be raised after submission of the proposals.

(d) No scoring is allowed in this stage of evaluation of tenders. Qualification criteria shall be checked on "failed/passed" basis.

(e) If only one tender is submitted or passed the qualification evaluation stage, it shall be assessed further.

### 6.2. Tender evaluation criteria

(a) The Committee/the employee assigned to carry the procurement of the Beneficiary's organisation is evaluating: (a) correspondence to the requirements of the submission of tender (e.g. whether it is signed; whether all parts of the tender are provided, etc.); and (b) correspondence to the technical specification: whether the tender corresponds with the technical specification.

(b) Beneficiaries may request the tenderers to clarify their tenders but they cannot ask, offer or let to change the substance of the tender: to change the price or to make other changes that would modify the tender from non-corresponding to the requirements of procurement documents to corresponding to the requirements of procurement documents. If there are arithmetical mistakes in a tender, Beneficiaries must ask to correct it.

(c) If the tender does not meet any of the requirement of tender evaluation criteria, it must be rejected.

(d) Please note that evaluation of tenders must be in accordance with the requirements written in the procurement documentation. No new requirement can be raised after submission of the tenders.

(e) No scoring is allowed in this stage of evaluation of tenders. Tender evaluation criteria shall be checked on "failed/passed" basis.

### 6.3. Contracts award criteria

(a) Beneficiaries shall base the award of contracts on the **most economically advantageous** tender or on **the smallest price** tender, depending on the criteria set in the procurement documentation.

(b) **The most economically advantageous** tender from the point of view of Beneficiary shall be identified on the basis of the price or the best price-quality ratio, which shall be assessed according to the set criteria, including qualitative criteria, environmental and/or social aspects, linked to the subject-matter of the contract in question. Such criteria may comprise, for instance:

- (i) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- (ii) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
- (iii) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.

Scores must be given to the tenders. Clear and transparent methodology of scoring must be indicated in the procurement documentation. The contract is awarded to a supplier whose tender has received the highest score.

(c) If the contract award criteria indicated in the procurement documentation is the **smallest price** – then the contract is awarded to the tenderer which offers the smallest price.

(d) No preferential discounts for suppliers or goods of certain nationality/origin are allowed when evaluating tenders.

(e) Despite the chosen contract award criteria: most economically advantageous or the smallest price, tenders must be evaluated in accordance with the points 6.1 and 6.2, i.e. the contract must be awarded to a supplier which meets the qualification and tender evaluation criteria indicated in the procurement documentation.

## **7. REQUIREMENTS FOR CONCLUSION AND IMPLEMENTATION OF THE CONTRACT**

7.1. Procedures to award contracts may be initiated and contracts may be concluded by the Beneficiaries before the start of the implementation period of the project, provided the provisions of Sections 2.2.3-2.2.4 and 3.4 of the Guidelines for Applicants and Beneficiaries, as well as Annex I “Detailed Rules on Eligibility of Expenditure” and this Annex II have been respected.

7.2. When awarding the contract, the price set in the successful tender/ the final negotiations price recorded in the negotiations minutes or the final tender submitted after the negotiations as well as the contract terms and conditions specified in the procurement documents and in the tender **may not be altered**.

7.3. No modifications to the contracts may be made without a new procurement procedure except in one of the following cases:

(a) where the modifications, irrespective of their 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 they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract;

(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 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 30 % 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 Annex II;

(c) where all of the following conditions are fulfilled:

(i) the need for modification has been brought about by circumstances which a diligent Beneficiary could not foresee;

(ii) the modification does not alter the overall nature of the contract;

(iii) any increase in price is not higher than 30 % 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 Annex II;

(d) where a contractor which is taking over the obligations and replaces the one to which the Beneficiary had initially awarded the contract as a consequence of:

(i) an unequivocal review clause or option in conformity with subparagraph (a); and

(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 Annex II;

(e) where the modifications, irrespective of their value, are not substantial within the meaning of point 7.5 of this Chapter 7.

7.4. Furthermore, and without any need to verify whether the conditions set out under subparagraphs (a) to (d) of point 7.5. are met, contracts may equally be modified without a new procurement procedure being necessary where the value of the modification is below 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. Where several successive modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive modifications.

7.5. A modification of a contract during its term shall be considered to be substantial within the meaning of subparagraph (e) of point 7.3. where it renders the contract materially different in character from the one initially concluded. In any event, without prejudice to points 7.3. and 7.4., a modification shall be considered to be substantial where one or more of the following conditions are met:

(a) the modification introduces conditions which, had they 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 in favour of the contractor in a manner which was not provided for in the initial contract;

(c) the modification extends the scope of the contract 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 points 7.3.

7.7. A new procurement procedure in accordance with Annex II shall be required for other modifications of the provisions of a contract during its term than those provided for under points 7.3. and 7.4.

## 8. VISIBILITY ELEMENTS IN PROCUREMENT PROCEDURES

8.1. The following main visibility elements must be followed in carrying out procurement procedures and in producing or receiving project outputs:

- (a) on all procurement notices and letters to potential tenderers – as a minimum title of the Programme, title of the project, EU logo, Programme logo, inscription about the EU funding in English and national language must be indicated;
- (b) on all agreements/contracts, evaluation reports – project reference number/title of the project must be indicated. It is also recommended to indicate the Programme title;
- (c) on all invoices – the project number must be indicated.

## 9. IRREGULARITIES IN PROCUREMENT PROCEDURES

9.1. In the event of breaching the regulations or principles on the award of contracts, the relevant expenditure related to the contract shall be deemed, in whole or in part, ineligible (applies to all Beneficiaries).

9.2. Determining the amount of ineligible expenditure takes place pursuant to the regulations or procedures adopted in the given country. If the given Member State has not adopted the national regulations or procedures for determining the amount of ineligible expenditure, *the European Commission's Guidelines on determining financial corrections to be made to expenditure financed by the EU for non-compliance with the rules on public procurement*, in the version which is up-to-date as of the day of finding the irregularities, is applicable.

## 10. VALUE AND PROCEDURES OF THE SERVICES, SUPPLIES AND WORKS PROCUREMENT

**1 table. Thresholds and types of procurement<sup>3</sup>:**

<b>SERVICES</b>	≥ EUR 300.000 International restricted tender procedure	< EUR 300.000 but > EUR 10.000 Competitive negotiated procedure without publication	≤ EUR 10.000 but > EUR 3.000 Single tender	≤ EUR 3.000 Verbal procedure
<b>SUPPLIES</b>	≥ EUR 300.000 International open tender procedure	< EUR 300.000 but ≥ EUR 100.000 Open tender procedure published in the Programme area	< EUR 100.000 but > EUR 10.000 Competitive negotiated	≤ EUR 10.000 but > EUR 3.000 Single tender ≤ EUR 3.000 Verbal procedure

<sup>3</sup> More strict procedure can be applied in all cases despite the threshold, e.g., competitive negotiated procedure without publication instead of single tender for the contract with a value of EUR 6.000

			procedure without publication		
<b>WORKS</b>	≥ EUR 5.000.000 International open tender procedure /restricted tender procedure	< EUR 5.000.000 but ≥ EUR 300.000 Open tender procedure published in the Programme area	< EUR 300.000 but > EUR 10.000 Competitive negotiated procedure without publication	≤ EUR 10.000 but > EUR 3.000 Single tender	≤ EUR 3.000 Verbal procedure

10.1. No other types of procedures, e.g., electronic auction, except those, indicated in the table above can be used for the procurement.

10.2. In the case if the procurement is organised in the national currency other than euro, InforEuro (<http://ec.europa.eu/budget/inforeuro/>) exchange rate of the month of the launch of the tender should be used in order to choose the relevant procurement procedure.

10.3. It is not allowed to split the procurements into separate procurement procedures artificially, as the whole amount of the split contracts will become ineligible. If the contracts are split because of procurement at different periods of time, the procuring Beneficiary shall use more competitive procedure applicable for the total unsplit amount.

10.4. When counting the value of the procurement, value of all similar procurement contracts which will be awarded within the implementation of the whole project duration must be cumulated per Beneficiary. Value of the procurement should be counted without value added tax.

10.5. If a few different (unsimilar) objects are being purchased within one procurement procedure, e.g., tables, books and vehicles, the procurement should be divided into lots. In this case the total value of such procurement is counted as the sum of all lots<sup>4</sup>.

#### **10.6. Procurement procedures for service contracts:**

(a) Service contracts are concluded with a service provider.

(b) Service contracts with a value of EUR 300 000 or more shall be awarded by means of an international restricted tender procedure following publication of a procurement notice. The procurement notice shall be published in all appropriate media beyond the Programme area, stating the number of candidates which will be invited to submit tenders within a range of four to eight candidates and ensuring genuine competition.

(c) Service contracts with a value of more than EUR 10 000 but less than EUR 300 000 shall be awarded by means of a competitive negotiated procedure without publication. The Beneficiary shall consult at least three service providers of its choice and negotiate the terms of the contract with one or more of them.

(d) For services of a value of EUR 10 000 or less, the Beneficiary may place orders on the basis of a single tender.

<sup>4</sup> Note: If procurement has become unsuccessful for some lot(s), a new procurement procedure(s) should be organized for it (them). Meanwhile contract(s) should be signed for the successful lot(s).

## **10.7. Procurement procedures for supply contracts**

(a) Supply contracts are concluded with a supplier and cover the purchase, rental or hire purchase, with or without the option to buy goods (equipment, material, etc.). A public supply contract may include, as an incidental matter, siting and installation operations.

(b) Supply contracts with a value of EUR 300 000 or more shall be awarded by means of an international open tender procedure following publication of a procurement notice, which shall be published in all appropriate media beyond the Programme area.

(c) Supply contracts with a value of EUR 100 000 or more, but less than EUR 300 000 shall be awarded by means of an open tender procedure published in the Programme area. Any eligible tenderer must be provided with the same opportunities as local firms.

(d) Supply contracts with a value of more than EUR 10 000 but less than EUR 100 000 shall be awarded by means of a competitive negotiated procedure without publication. The Beneficiary shall consult at least three suppliers of its choice and negotiate the terms of the contract with one or more of them.

(e) For supplies of a value of EUR 10 000 or less, the Beneficiary may place orders on the basis of a single tender.

## **10.8. Procurement procedures for works contracts**

(a) Works contracts are concluded with a construction or engineering company (contractor). A “work” is the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function, e.g., infrastructure object for a border crossing point.

(b) Works contracts with a value of EUR 5 000 000 or more shall be awarded by means of an international open tender procedure, or in view of the specific characteristics of certain works by means of a restricted tender procedure, following publication of a procurement notice which shall be published in all appropriate media beyond the Programme area.

(c) Work contracts with a value of EUR 300 000 or more but less than EUR 5 000 000 shall be awarded by means of an open tender procedure published in the Programme area. Any eligible tenderer must be provided with the same opportunities as local firms.

(d) Work contracts with a value of more than EUR 10 000 but less than EUR 300 000 shall be awarded by means of a competitive negotiated procedure without publication. The beneficiary shall consult at least three contractors of its choice and shall negotiate the terms of the contract with one or more of them.

(e) For works of a value of EUR 10 000 or less, the Beneficiary may place orders on the basis of a single tender.

# **11. TYPES OF AWARD PROCEDURES**

## **11.1. INTERNATIONAL RESTRICTED TENDER**

11.1.1. The procurement notice shall be published in all appropriate media beyond the Programme area (detailed information indicated in the Chapter 11.7.).

11.1.2. All interested economic operators may submit a request to participate in response to a call for competition. But only candidates satisfying the selection criteria and invited in writing by the Beneficiary may submit a tender.

11.1.3. The minimum time limit for receipt of requests to participate shall be 30 calendar days from the date on which the contract notice or, where a prior information notice is used as a means of calling for competition, the invitation to confirm interest was sent. Beneficiaries state the number of suitable candidates to be invited to participate in the procedure within a range of four to eight. However, where the number of candidates meeting the selection criteria is below the minimum number, Beneficiaries may continue<sup>5</sup> the procedure by inviting the candidates with the required capabilities. In the context of the same procedure, Beneficiaries shall not include economic operators that did not request to participate, or candidates that do not have the required capabilities. The minimum time limit for the receipt of tenders shall be 30 calendar days from the date on which the invitation to tender was sent.

11.1.4. Where a state of urgency<sup>6</sup> duly substantiated by the Beneficiary renders impracticable the time limits laid down in this Chapter 11.1, they may fix:

- (a) a time limit for the receipt of requests to participate which shall not be less than 15 calendar days from the date on which the contract notice was sent;
- (b) a time limit for the receipt of tenders which shall not be less than 10 calendar days from the date on which the invitation to tender was sent.

## **11.2. INTERNATIONAL OPEN TENDER**

11.2.1. The procurement notice shall be published in all appropriate media beyond the Programme area (detailed information indicated in the Chapter 11.7.).

11.2.2. In open procedures, any interested economic operator may submit a tender in response to a call for competition.

11.2.3. The minimum time limit for the receipt of tenders shall be 35 calendar days from the date on which the contract notice was sent.

11.2.4. Where a state of urgency duly substantiated by the Beneficiary renders impracticable the time limit laid down in this Chapter 11.2, it may fix a time limit which shall be not less than 15 calendar days from the date on which the contract notice was sent.

## **11.3. OPEN TENDER PROCEDURE PUBLISHED IN THE PROGRAMME AREA**

11.3.1. In open procedures, any interested economic operator may submit a tender in response to a call for competition.

11.3.2. The minimum time limit for the receipt of tenders shall be at least 7 working days from the date on which the contract notice was sent.

11.3.3. The procurement notice is to be published in all appropriate media but it is sufficient to publish it only in the Programme area of the country in which the project is implemented – at least in the Programme area of the country of the Beneficiary which is performing procurement procedure.

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<sup>5</sup> The continuation of a procedure is not obligatory.

<sup>6</sup> Late start of procurement procedures cannot be considered as a state of urgency.

#### **11.4. COMPETITIVE NEGOTIATED PROCEDURE WITHOUT PUBLICATION**

11.4.1. The Beneficiary consults at least 3 candidates of its choice and negotiates the terms of the contract with one or more of them.

11.4.2. Main conditions of the contract should be indicated in the written invitation sent to the potential candidates.

#### **11.5. SINGLE TENDER**

11.5.1. The Beneficiary consults 1 candidate or more of its choice and negotiates the terms of the contract with it.

11.5.2. The Beneficiary may decide to use negotiated procedure on the basis of a single tender in the cases referred to in Articles 266, 268, 270 of Delegated Regulation (EU) No 1268/2012 which are listed below.

##### **Rules applicable to service contracts**

11.5.3. For service contracts, Beneficiaries may use the negotiated procedure with a single tender in the following cases:

- (a) where, for reasons of extreme urgency brought about by events which the Beneficiaries could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in points (a), (b) and (c) of Article 104(1) of the Financial Regulation<sup>7</sup> cannot be kept;
- (b) where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to people in the social field;
- (c) for services which are an extension of services already started, subject to the conditions laid down in point 11.5.4;
- (d) where the tender procedure has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the Beneficiary may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered;
- (e) where the contract concerned follows a contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates, in which case, all successful candidates shall be invited to participate in the negotiations;
- (f) where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider;

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<sup>7</sup> Regulation (EU, Euratom ) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.

(g) for contracts declared to be secret, or for contracts which performance must be accompanied by special security measures or when the protection of the essential interests of the Union or the Beneficiary country so requires;

(h) where a new contract has to be concluded after early termination of an existing contract.

For the purposes of subparagraph (a) of the point 11.5.3., operations carried out in crisis situations as referred to in Article 190(2) of the Regulation (EU) No 1268/2012 shall be considered to satisfy the test of extreme urgency<sup>8</sup>. The authorising officer by European Union delegation (hereinafter – delegation), where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

Activities of an institutional nature referred to in subparagraph (b) of the point 11.5.3. include services directly linked to the statutory mission of the public sector bodies.

11.5.4. Services which are an extension of services already started, as referred to in subparagraph (c) of point 11.5.3, are as follows:

(a) additional services not covered by the principal contract but which, as a result of unforeseen circumstances, have become necessary for the performance of the contract, provided that the additional service cannot be technically and economically separated from the principal contract without serious inconvenience for the contracting authority and the aggregate amount of additional services does not exceed 50 % of the value of the principal contract;

(b) additional services consisting in the repetition of similar services entrusted to the contractor providing services under a first contract, provided that:

(i) a contract notice was published for the first service and the possibility of using the negotiated procedure for new services for the project and the estimated cost were clearly indicated in the contract notice published for the first service;

(ii) the extension of the contract is for a value and duration not exceeding the value and the duration of the initial contract.

### **Rules applicable to supply contracts**

11.5.5. Supply contracts may be awarded by negotiated procedure with a single tender in the following cases:

(a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in points (a), (b) and (c) of Article 111(1) of the Financial Regulation cannot be kept;

(b) where warranted by the nature or particular characteristics of the supplies, for example, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents;

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<sup>8</sup> Crisis situations in third countries shall be understood as situations of immediate or imminent danger threatening to escalate into armed conflict or to destabilise the country. Crisis situations shall also be understood as situations caused by natural disasters, manmade crisis such as wars and other conflicts or extraordinary circumstances having comparable effects related inter alia to climate change, environmental degradation, privation of access to energy and natural resources or extreme poverty.

(c) for additional deliveries by the original supplier 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 Beneficiary to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance;

(d) where the tender procedure has been unsuccessful, that is where no qualitatively or financially worthwhile tender has been received;

(e) for contracts declared to be secret, or for contracts which performance must be accompanied by special security measures or when the protection of the essential interests of the Union or the Beneficiary country so requires;

(f) for contracts in respect of supplies quoted and purchases on a commodity market;

(g) for contracts in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law;

(h) where a new contract has to be concluded after early termination of an existing contract.

In cases referred to in subparagraph (d) of the point 11.5.5, after cancelling the tender procedure, the Beneficiary may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.

11.5.6. For the purposes of subparagraph (a) of point 11.5.5, operations carried out in crisis situations as referred to in Article 190(2) of the Regulation (EU) No 1268/2012 shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

#### **Rules applicable to works contracts**

11.5.7. Works contracts may be awarded by negotiated procedure with a single tender in the following cases:

(a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in points (a), (b) and (c) of Article 111(1) of the Financial Regulation cannot be kept;

(b) for additional works not included in the initial contract concluded but which have, through unforeseen circumstances, become necessary for carrying out the work described therein, subject to the conditions laid down in point 11.5.8;

(c) where the tender procedure has been unsuccessful, that is where no qualitatively or financially worthwhile tender has been received;

(d) for contracts declared to be secret, or for contracts which performance must be accompanied by special security measures or when the protection of the essential interests of the Union or the beneficiary country so requires;

(e) where a new contract has to be concluded after early termination of an existing contract.



For the purposes of subparagraph (a) of the point 11.5.7, operations carried out in crisis situations as referred to in Article 190(2) of the Regulation (EU) No 1268/2012 shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

In cases referred to in subparagraph (c) of the point 11.5.7, after cancelling the tender procedure, the Beneficiary may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.

11.5.8. The additional works referred to in subparagraph (b) of point 11.5.7. shall be awarded to the work contractor already carrying out the work:

- (a) where such works cannot be technically or economically separated from the main contract without serious inconvenience for the contracting authority;
- (b) where such works, although separable from the performance of the original contract, are strictly necessary for its completion;
- (c) where the aggregate value of contracts awarded for additional works does not exceed 50 % of the value of the principal contract.

#### **11.6. VERBAL PROCEDURE**

11.6.1. The Beneficiary consults 1 candidate or more of its choice and negotiates the terms of the contract with it verbally (no procurement documentation is needed): by phone, e-mail, via internet, etc.

11.6.2. Despite the fact that no written procurement documents must be prepared, the Beneficiary must fill in the procurement note (template provided by the Programme in the Annex I of this Annex II).

#### **11.7. INTERNATIONAL PROCUREMENT NOTICE**

11.7.2. International procurement notice must be published when international open tender and international restricted tender procedures are performed.

11.7.3. Procurement notice is to be published in all appropriate media, in particular on the Beneficiary's website, in the international press and in the national press of the Beneficiary's country, or in other specialist periodicals. The example of media for international publication is Tenders Electronic Daily (TED) - online version of the "Supplement to the Official Journal of the European Union" dedicated to European public procurement: <http://ted.europa.eu/TED/browse/browseByBO.do>.

11.7.4. Link to the international publication must be sent to the JTS Project Manager and submitted with the progress/final report.

**PROCUREMENT NOTE**

\_\_\_\_\_ 20\_\_ y.  
 (day) (month) (year)

**Candidates consulted:**

<b>Title of the procurement, short description of the procurement object:</b>
<b>Contract award criteria (the smallest price or the most economically advantageous tender):</b>
<b>Date of the invitation sent to suppliers with a request to participate in procurement:</b>
<b>Type of procurement procedure:</b> Written <input type="checkbox"/> Verbal <input type="checkbox"/>
<b>Justification for selected procedure (reference to point of the Annex II "Detailed Rules on Procurement" and to No of line of Procurement Plan):</b>

No.	Title of candidate	Contact person from candidate's organisations (position, name, surname, phone No.)	Date of submission of the tender	Price of the tender / main characteristics

<b>Candidate announced as a winner and reasons for such a decision</b>	
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**Procurement procedure performed and procurement certificate filled in by:**

..... (position)                      ..... (name, surname)                      ..... (signature, date)