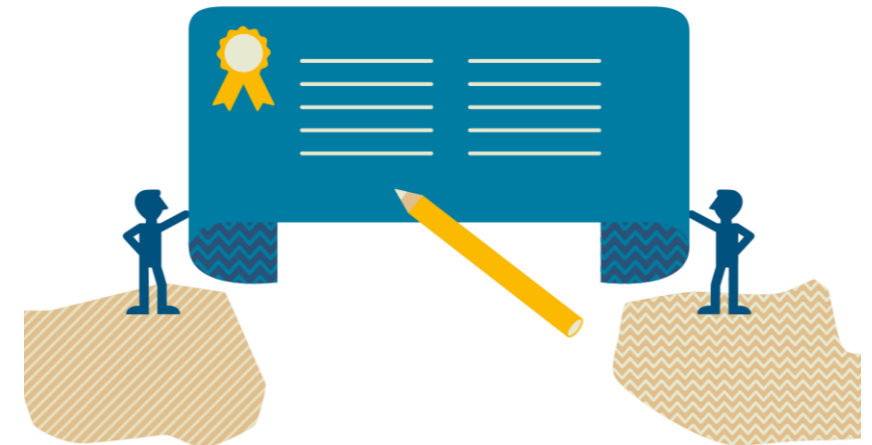


External public procurement: stumbling stone, or...

Interreg IPA – CBC programmes finance meeting
21 November 2019 | Vienna, Austria

Ivana Lazic, Interact

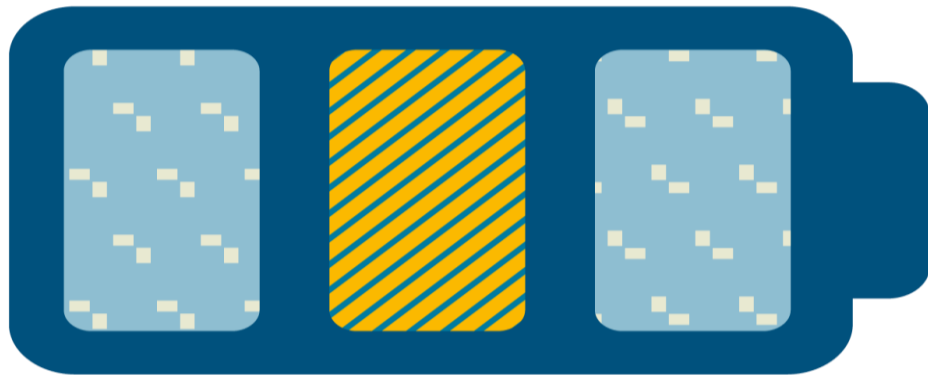
Besiana Ninka, Interact



Preamble



Legal context



Public procurement according to external rules

Compulsory:

Financial Regulation 966/2012

Delegated Regulation 1268/2012 (*Rules of application of 966/2012*)

Recommended:

Use of standard documents and templates from PRAG

Use of procedural steps as described in PRAG

Note: the use of PRAG does not carry legal consequences but rather provided practical proposal of procedures.

IPA Implementation Regulation 447/2014

Article 45:

For the award of **service, supply and work contracts, by beneficiaries** the procurement procedures shall follow the provisions of Chapter 3 of Title IV of Part Two of Regulation (EU, Euratom) No 966/2012 and of Chapter 3 of Title II of Part Two of Delegated Regulation (EU) No 1268/2012 which **apply in the whole programme area**, both on the **Member State and on the IPA II beneficiary/ies' territory**.

For the award of **service, supply and work contracts by the Managing Authority** under the specific budget allocation for **technical assistance operations**, the procurement procedures applied by the managing authority may **either be those referred to in paragraph 1 or those of its national law**.

IPA financing agreement

Section VI - Procurement

Article 33 - Procurement by beneficiaries [45(1) IPA II IP]

For the award of **service, supply and work contracts, by beneficiaries** the procurement procedures shall follow

- the provisions in Articles 190 and 191 of Chapter 3 of Title IV of Part Two of the Financial Regulation;
- the provisions of Articles 260 to 276 of Chapter 3 of Title II of Part Two of Delegated Regulation (EU) No 1268/2012

which **apply in the whole programme area**, both on the **Member State and on the IPA II beneficiary/ies' territory**.

IPA financing agreement (cont.)

Section VI - Procurement

Article 36 - Procurement by the managing authority [45(2) IPA II IP]

For the award of **service, supply and work contracts by the Managing Authority** under the specific budget allocation for **technical assistance operations**, the procurement procedures applied by the managing authority may **either be those referred to in paragraph 1 or those of its national law.**

Legal context – IPA financing agreement (cont.)

Section VI - Procurement

Article 36 - Procurement by the managing authority [45(2) IPA II IP]

For the award of **service, supply and work contracts by the Managing Authority** under the specific budget allocation for **technical assistance operations**, the procurement procedures applied by the managing authority may **either be those referred to in paragraph 1 or those of its national law.**

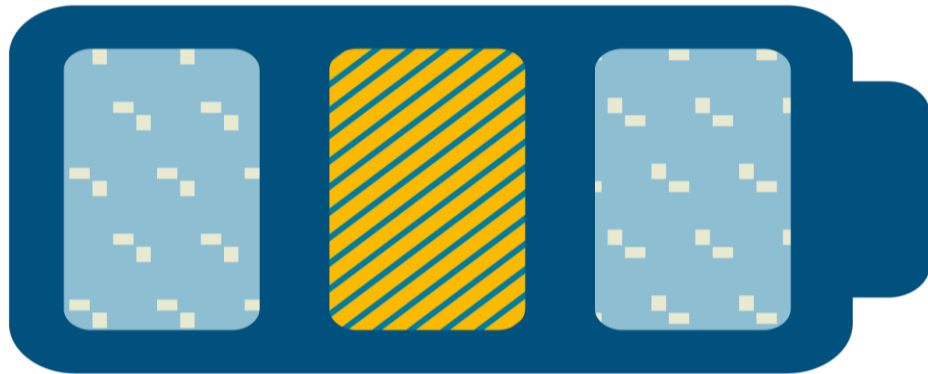
Chapter 3 of Title II of Part Two of Delegated Regulation (EU) No 1268/2012

Articles 260 to 276: "Procurement"

Chapter 3 sets out:

- ✓ Some definitions (art. 261)
- ✓ Provisions on advertising and non-discrimination (263-264)
- ✓ Thresholds and procedures for awarding service contracts (265-266)
- ✓ Thresholds and procedures for awarding supply contracts (267-268)
- ✓ Thresholds and procedures for awarding work contracts (269-270)
- ✓ Information related to the Tender Documents (273)
- ✓ Various time limits for questions, receipt of tenders etc (275)
- ✓ Provisions related to the Evaluation committees (276)

Rules



The rule of nationality and origin

(TITLE III of Regulation (EU) No 236/2014, Article 8)

1. (...) open to **all natural persons** who are nationals of, and legal persons which are effectively established in an eligible country as defined for the applicable Instrument (...), and to international organisations.

4. All **supplies purchased** under a procurement contract, or in accordance with a grant agreement, financed under this Regulation shall originate from an eligible country. However, they **may originate from any country** when the amount of the supplies to be purchased is **below the threshold for the use of the competitive negotiated procedure.**

Derogation from the rule of origin for the supplies higher than 100.000 EUR only in exceptional cases !

Basic procurement rules

TRANSPARENCY: The contracting authority (=subsidy beneficiary) must ensure fair competition. All the conditions of the procedure need to be transparently presented in advance.

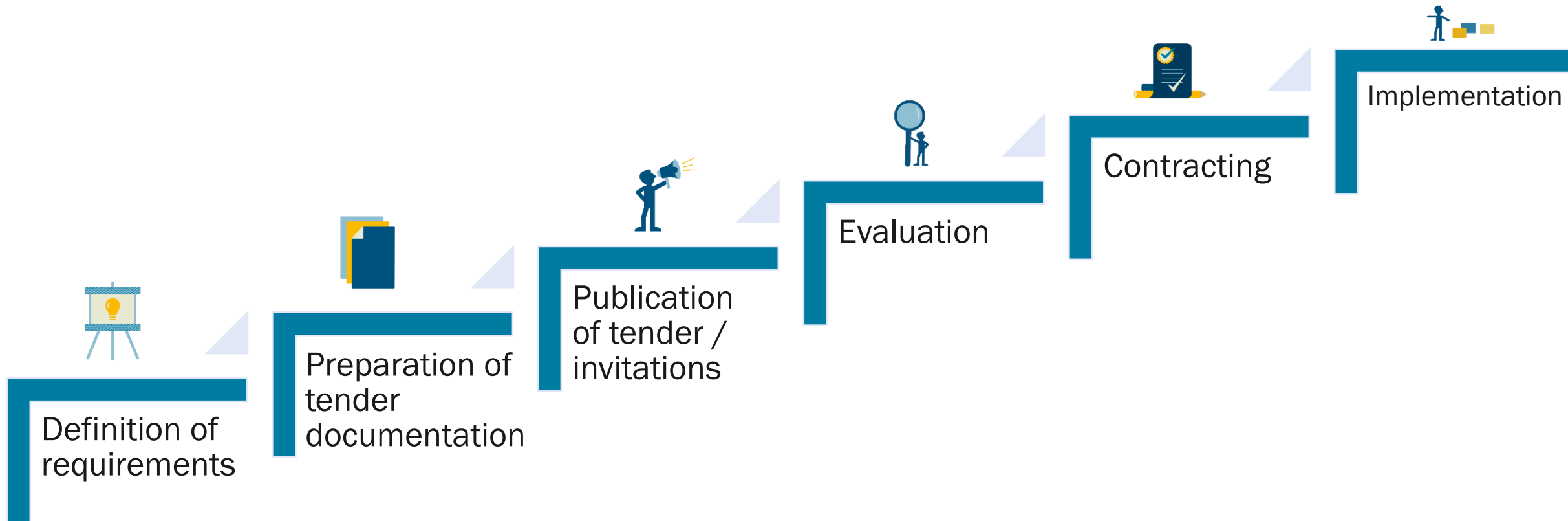
EQUAL CHANCES FOR ALL TENDERERS: The conditions of the procedure need to be drafted in a way that no advantage is given to any potential tenderer (avoiding restrictive criteria)

AVOIDING CONFLICT OF INTEREST: No connection is allowed between persons participating in the procurement process at the side of subsidy beneficiaries and the potential tenderers

EXCLUSION CRITERIA: If the tenderer is in any condition defined as exclusion (bankrupted, convicted of an offence, professional misconduct etc. – see PRAG Point 2.3.3. for reference) it will be excluded from competition.

ORIGIN AND NATIONALITY: Supplies and experts need to correspond to the rule of nationality and origin (waiver for up-to 20.000 EUR orig.)

Main stages of public procurement process



Types of contracts

SERVICE CONTRACT:

studies, technical assistance, consultancies, mentoring, training, analysis, translation, printing of materials, promotion and visibility, catering, renting of space, transport services etc.

SUPPLY CONTRACTS:

purchase of equipment of all types, leasing, purchase of materials and supplies.

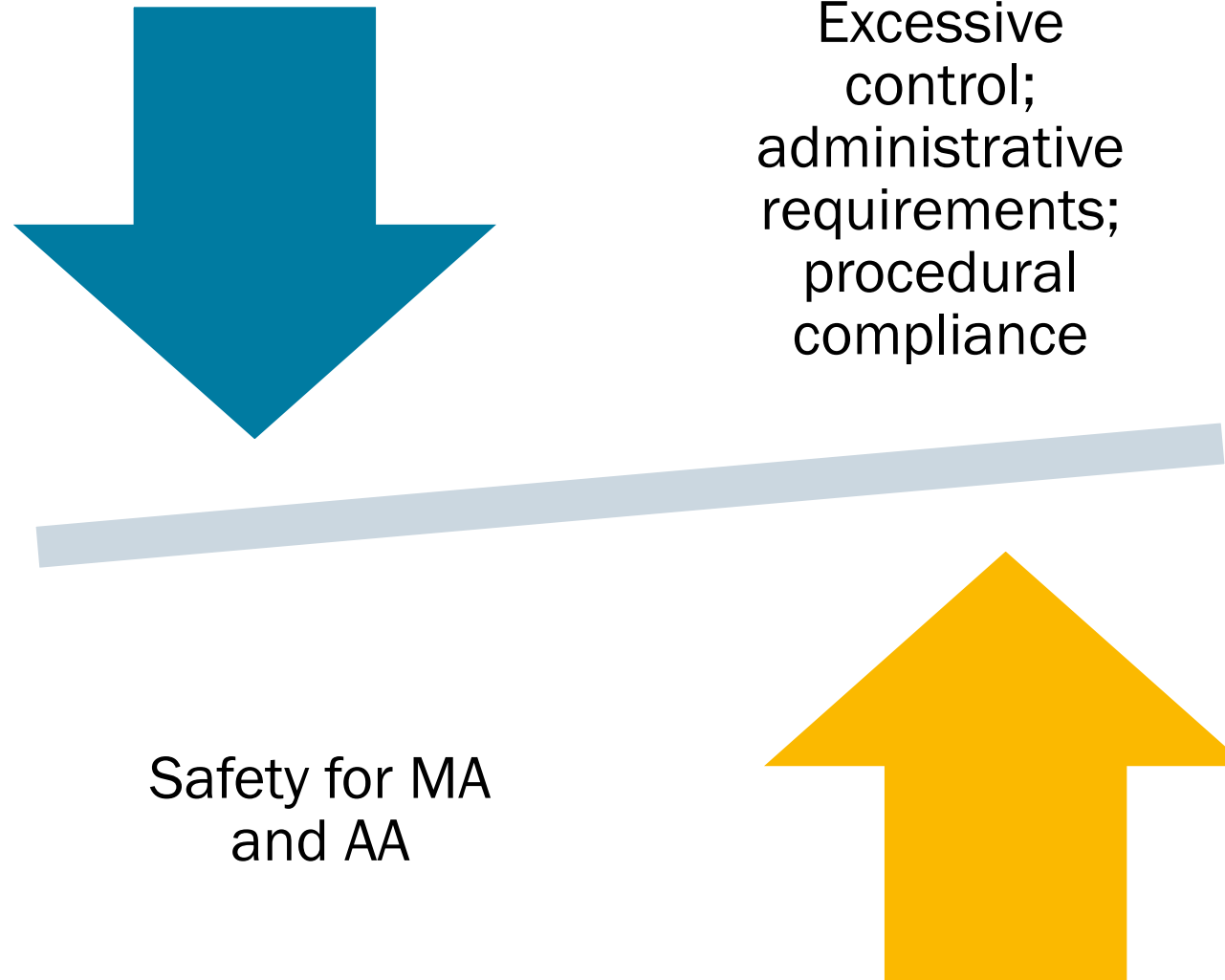
WORKS CONTRACTS:

execution or both execution and design of works (work meaning the outcome of construction or civil engineering project).

Type of contracts and procedures

	Service	Work	Supply
Single offer	Under or equal 20.000€	Under or equal 20.000€	Under or equal 20.000€
Competitive negotiated procedure	Above 20.000 – 300.000€	Above 20.000 – below 300.000€	Above 20.000 – below 100.000 €
Restricted procedure	Equal or above 300.000€	-	-
Local open procedure		Equal or above 300.000 – below 5.000.000€	Equal or above 100.000 – below 300.000€
International open procedure		Equal or above 5.000.000€	Equal or above 300.000€

Eternal dilemma



Lessons learned from IPA I

- Procedural and administrative requirements (for secondary procurement) in IPA I were relatively demanding

Perspective of project beneficiaries

- Obligated to follow PRAG procedures and lack of clear guidance;
- Significant amount of time spent on procurement procedures;
- Significant resources spent on procedures (sometimes 20-30% of overall project resources).

Perspective of MA/AA

- MA/AA checking (a proportion of) procurement procedures ex-ante or ex-post
- Significant resources required – question whether the programme authorities possess sufficient number of qualified and experienced staff

PRACTICAL OVERVIEW – 1

- Relatively small number of **open/restrictive procedures**
- Significant number of **competitive negotiated procedures**:
 - Above 20.000 EUR, upper threshold depending on type of contract
 - 30 days for submission of tenders
 - Simplified tender documentation allowed

PRACTICAL OVERVIEW – 2

- Significant number of **single tender procedures**

OPEN ISSUES:

- Tender documentation **not** defined – often simplified documentation as per competitive negotiated procedure is required
- Steps in procedure **not** defined (how many tenderers inv.)
- Timing for submission of tenders **not** defined – normally from 7 to 15 days
- Lower threshold **not** defined – the beneficiaries were sometimes required to implement procedure for values below 1.000 EUR.

THE SINGLE TENDER PROCEDURE HAS THE WEAKEST RATIO BETWEEN AMOUNT USED AND ADMINISTRATION REQUIRED

Perspectives

MANAGING AUTHORITY

Limited resources and capabilities of following closely the secondary procurement;

Need to ensure minimum standards of procedures and to avoid consequential financial losses.

PROJECT BENEFICIARY

Considers the secondary procurement procedures as unnecessary administrative burden and loss of time;

Not understanding that the formalisation of procedures assists them in maximising outputs of subsidy and enables them to eliminate discrepancies and financial losses.

Interact support



INTERACT
Public procurement in Interreg - IPA CBC
programmes

Version: July 2015

Interreg - IPA CBC 

Manual | Public procurement in Interreg-IPA CBC programmes

Fields of expertise: Interreg-IPA CBC

Date Published: 01/07/2015

Author: Interact Programme

Rate this



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Interact support

- ✓ Preparation and up-date of Interact procurement manual, providing programme authorities and project beneficiaries with an overview of procedures and practical recommendations;
- ✓ Proposal for simplification of tender procedure in the segment, which is not defined in details by PRAG or financial regulation – **single tender procedure;**
- ✓ Proposal of tender documentation for competitive negotiated (simplified) procedure and single tender procedure prepared.

Interact support

- ✓ Proposal for simplification of tender procedure in the segment, which is not defined in details by PRAG or financial regulation – **single tender procedure;**

The proposal is based on the following ideas/elements:

- Clear documented (audit) trail of documentation – Contracting Authority requirements and tenderers' offer are indicated in written
- Potential use of local language
- No procedure (exchange of enquiry and invoice only) for tenders of less than 2.500 EUR
- Clear relations and responsibilities (recommended use of contract)

Managing Authorities approach





- ✓ Firstly assessing internal capabilities and resources – What level of intervention/involvement is realistically possible;
- ✓ Defining clear, transparent and standard procedural criteria to be applied throughout the implementation – The MA would ideally set the criteria at beginning, not changing them through the implementation phase;
- ✓ Setting-up sustainable system of control and monitoring – Based on the capacities and resources and in line with risks – risk analysis of subsidy projects recommended;
- ✓ Support and partnership with the subsidy beneficiaries – promoting monitoring as support rather than supervisory role;
- ✓ Exchange of experiences and lessons learnt – Cooperation and exchange between MA, also through Interact.

... some reflections

- ❖ Clear division of tasks between JTS and FLC is necessary!
- ❖ Programmes (e.g. JS) need to provide clear guidance to projects early on;
- ❖ Controls (FLC and/or JS) should be carried out as soon as possible after the public procurement process has occurred;
- ❖ Procurement plan in application forms could be useful (or before signing the subsidy contract);
- ❖ Check if all documents proving adherence to public procurement rules are kept by project;

Forthcoming events: save the date(s)



-  **Simplified cost options and audit authorities workshop** 05 December in Brussels (BE)
-  **Transitioning from 2014 - 2020 to 2021 – 2027** 9 - 10 December in Frankfurt (DE)
-  **IO Vienna regional network meeting** 11 - 12 December in Frankfurt (DE)
-  **Intervention logic and indicators post-2020: Let us share & harmonise!** 23 – 24 January Vienna (AT)

...and many others on our website

Work plan 2020 – the first quarter



- Small Project Funds, Bratislava, February
- Policy objectives and specific objectives for Interreg, March, Brussels
- Territoriality of future programmes, February, Lisbon/Brussels
- Safer Europe, Q2, Brussels
- Support to programming: overlaps and synergies in Central and South Eastern Europe area, Q1-Q2, Ljubljana or Bologna
- SCO development
- HIT development
- New Interreg monitoring system (*if approved*)

Cooperation works

All materials will be available on:

[**www.interact-eu.net**](http://www.interact-eu.net)

