

Public procurement in Interreg-IPA-CBC

Financial management of IPA Programme

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 @InteractEU

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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: does not carry legal consequences but rather provided practical proposal of procedures

Or...

use [INTERACT IPA CBC Public procurement manual](#)



Public procurement Interreg-IPA CBC

Article 45 I.R.

Procurement

1. 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.**
2. 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.**



Public procurement Interreg-IPA CBC – 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.

(...)

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, including when contracting on behalf of the Joint Secretariat or intermediate bodies acting under its responsibility, under the specific budget allocation for technical assistance operations, the procurement procedures applied by the managing authority may either be those referred to in Article 33 or those of its national law.



Title V of Part One of Regulation (EU, Euratom) No 966/2012

Article 102

- §1. All public contracts financed in whole or in part by the budget shall respect the **principles of transparency, proportionality, equal treatment and non-discrimination.**



Chapter 3 of Title IV of Part Two of Regulation (EU, Euratom) No 966/2012

Article 190

- §2. The provisions of Chapter 1 of Title V of Part One relating to the general provisions on procurement shall be applicable to contracts covered by this Title subject to the special provisions relating to thresholds and the arrangements for awarding external contracts to be laid down in the delegated acts.

Article 191

- §1. Participation in tendering procedures shall be open on equal terms to all persons coming within the scope of the Treaties and to any other natural or legal person in accordance with the specific provisions in the basic instruments governing the cooperation sector concerned.



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)



TITLE III of Regulation (EU) No 236/2014


Rules on nationality and origin for public procurement, grant and other award procedures

Article 8 - Common rules

(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**.

(6) In order to promote local capacities, markets and purchases, priority shall be given to **local and regional contractors** when Regulation (EU, Euratom) No 966/2012 provides for an **award on the basis of a single tender**. In all other cases, participation of local and regional contractors shall be promoted in accordance with the relevant provisions of that Regulation.



Article 10 - Eligibility under IPA II

- ✓ Member States, beneficiaries listed in Annex I to Regulation (EU) No 231/2014, contracting parties to the Agreement on the European Economic Area and partner countries covered by the ENI
- ✓ Tenderers, applicants and candidates from non-eligible countries or goods from a non-eligible origin may be accepted as eligible by the Commission in cases involving an urgency or the unavailability of products and services in the markets of the countries concerned, or in other duly substantiated cases where application of the eligibility rules would make the realisation of a project, programme or action impossible or exceedingly difficult.
- ✓ For actions implemented in shared management, the relevant Member State to which the Commission has delegated implementation tasks shall be entitled to accept as eligible, on behalf of the Commission, tenderers, applicants and candidates or goods from non-eligible countries...



Chapter 3 of Title II of Part Two of 1268/2012

- ✓ **Thresholds and procedures for awarding service contracts**
- ✓ Use of the **negotiated procedure for service contracts**
- ✓ **Thresholds and procedures for awarding supply contracts**
- ✓ Use of the **negotiated procedure for supply contracts**
- ✓ **Thresholds and procedures for awarding works contracts**
- ✓ Use of the **negotiated procedure for works contracts**
- ✓ Use of the negotiated procedure for buildings contracts
- ✓ Choice of procurement procedure for mixed contracts

ETERNAL DILEMMA

Finding balance between excessive control, administrative requirements, procedural compliance and “safety for MA and AA”

- On one hand the beneficiaries could be thoroughly checked, monitored, required to report and keep full records
- On the other hand they could be given a lot of flexibility; in this case the MA and AA risk that some of the spending would not be implemented in line with the procedure

ONE IMPORTANT FACT:

- Extensive administrative procedures does not necessarily mean that full consistency and efficiency will be enforced – the beneficiaries could still find their “way around procedure” if they desire so



LESSONS LEARNT FROM IPA 1

- Procedural and administrative requirements (for secondary procurement) in IPA 1 were relatively demanding
- **PERSPECTIVE OF PROJECT BENEFICIARIES**
 - Obligated to follow PRAG procedures
 - Significant amount of time spent on procurement procedures
 - Significant resources spent on procedures (sometimes 20-30% of overall project resources – less resources left for core content issues)
- **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
 - OPEN ISSUES:
 - Content of simplified TD – the version provided with PRAG manual (EuropeAid web-site) is not necessarily correct (for example ToR is missing)



PRACTICAL OVERVIEW – 2

- Significant number of **single tender procedures**:
 - Below 20.000 EUR
 - 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 1000 EUR.

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



New developments in financial regulation

- Definition of minimum tender documentation to be provided with competitive negotiated procedure – **provided in Implementing Regulation 1268**
- Definition of thresholds provided in Financial Regulation – threshold of 2.500 EUR defined for “purchases on the basis of invoice only
- Global derogation of up-to 100.000 EUR for purchase of goods of non-eligible origin (with IPA 2)

Meaning that also EC is aware of the extensive administrative burden, therefore certain simplifications are introduced.



Support provided by INTERACT

- 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 procedure and single tender procedure prepared



Objectives of Public procurement manual

- **OVERALL OBJECTIVE:** Increasing efficiency of EU funding within cross-border cooperation programmes in IPA II
- **SPECIFIC OBJECTIVES:**
 - Clarification and harmonisation of secondary procurement procedures
 - Proposal of documentation to be used in secondary procurement procedures
 - Identification of practical challenges for all parties involved and proposal of mitigation measures



Structure of the procurement manual

- Overview of procurement procedures generally and per each type of contract
- Specific rules for each procedure and each type of contracts
- Practical recommendations and reflections for the MA and the subsidy beneficiaries
- Annex: Proposal of tender documentation for competitive negotiated procedures
- Annex: Proposal of tender documentation for single tender procedures



APPROACH

- The proposals by Interact are closely aligned with the Financial Regulation and Implementing regulation
- None of the proposals is in conflict with PRAG Practical Guide (which in any case does not carry legal consequences but rather provided practical proposal of procedures)
- The procedures are aimed at simplification of procedures for programme authorities and subsidy beneficiaries
- At the same time they are taking into account practical aspects and the general spirit of the EU External Action approach (transparency, accountability, record-keeping, responsibilities etc.)



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.)

Single tender

- How far can we simplify single tenders? What is a minimum content?
- Clearly define templates and deadlines for single tender procedure provided
- Assuring the competitive framework in case of single tender
- Harmonisation between the participating countries respecting needs of FLCs should be possible



Single tender procedure – General approach

- Details on single tender procedure are not available neither in PRAG nor in financial regulation
- Interact drafted proposal for implementation of 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 2500 EUR
 - Clear relations and responsibilities (recommended use of contract)



Single tender procedure – tender documents

- Structure of documentation
 - Document – conditions of the contract, listing requirements, technical specifications, number of items, etc; providing format of contract
 - Document – format of tenderer's offer – technical offer (as a response to requirement), declaration, financial offer
 - The documents are similar for all types of contracts
 - Evaluation report – standard template for negotiated procedure
 - Example of documents



Competitive negotiated procedure

- Procedure described in the Interact manual follows the provisions of financial regulations and recommendations in PRAG Manual
- Proposal of simplified tender dossier was prepared – the simplified tender dossier follows the provisions of Financial Implementing Regulation – all required documents are included (in difference of PRAG simplified tender dossier, where for example ToR are missing)
- The tender documents are further simplified to reflect practical aspects and simplify work of the subsidy beneficiaries and programme authorities



General considerations for FLC

- Clear division of tasks between JTS and FLC is necessary!
- Programmes (e.g. JTS) need to provide clear guidance to projects early on
- **Controls** (FLC and/or JTS) should be carried out as soon as possible after the public procurement process has occurred
- A list of new contracts with all claims for each project is useful
- Check if all documents proving adherence to public procurement rules are kept by project



CONCLUSIONS

- The proposal of procurement procedures and procurement documentation is aligned with the procedure (above all Financial Regulation)
- Some of the elements might differ from PRAG Manual (for example simplified TD for competitive negotiated procedure)
- The proposed approach and documentation means far less administration for subsidy beneficiaries and programme authorities
- The resources saved can be allocated for substantial and contact activities and results
- Programme authorities to decide the principles – recommended to adopt standard approach from the beginning of IPA II



- Basecamp support group



**IF YOU ONLY
FOCUS ON THE PROBLEM**



**YOU MIGHT
MISS THE EASY SOLUTION**



Cooperation works

All materials will be available on:

www.interact-eu.net

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