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Public procurement in Interreg - IPA CBC programmes

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Interreg - IPA CBC



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GLOSSARY

Interreg - IPA CBC	IPA cross-border cooperation in this Manual refers to CBC implemented under shared management
Contracting Authority	The party concluding the contract. Differentiation must be made between Contracting Authority in the sense of public procurement for service, supply and works contracts and Contracting Authority in the sense of grant contracts signed after the selection within the context of Open call for projects (in most cases it is Managing Authority of the programme)
Contractor	A generic term for the firm, consortium, or individuals with whom any of the contract types (service, supply, works) is signed. Counterpart of the contractor is the Contracting Authority, which is also bound by the contract to pay the price to the contractor, against the delivery of service, supply or work.
Contract	An agreement with specific terms between two or more persons or entities in which there is a promise and an obligation to provide services and/or supplies for an agreed price. According to the type there are service contracts, supply contracts and works contracts. In the financial regulation the definition is: "Contract for pecuniary interest between economic operators and contracting authorities, in order to obtain, against payment of a price the supply of movable or immovable assets, the execution of works or the provision of services."
CBC	Cross-border cooperation - cooperation between neighbouring regions across the EU internal or external borders with the aim of promoting regional development and improvement of living conditions.
CC	Candidate Country - Countries started the process of accession to the EU
IPA beneficiary country	A country which is using IPA funds, see also CC
IPA IR	IPA Implementing Regulation - COMMISSION IMPLEMENTING REGULATION (EU) No 447/2014 on the specific rules for implementing Regulation (EU) No 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession assistance (IPA II)
CIR	Common rules and procedures for the implementation of the Union's instruments for financing external action (CIR; Council Regulation 236/2014) REGULATION (EU) No 236/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL - laying down common rules and procedures for the implementation of the Union's instruments for financing external action

IPA II Regulation	REGULATION (EU) No 231/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL - establishing an Instrument for Pre-accession Assistance (IPA II)
Financial regulation	Legal act defining principles for the establishment and implementation of the general budget of the EU. Financial regulation applicable to the general budget of the European Communities - Council regulation (EC) No. 966/2012, detailed implementing rules are contained in the Commission regulation (EC) No. 1268/2012
EU	European Union
MS	Member State
MA	Managing Authority - authority designated by the Member State to manage the cross-border programme
PRAG	Procurement and Grants for European Union external actions - a Practical Guide. Document providing guidance and formats for procurement procedures, including IPA pre-accession funds. The manual is based on the EU Financial Regulation and the Common Rules and Procedures for the Implementation of the Union's instruments for External Action (Council Regulation 236/2014) http://ec.europa.eu/europeaid/prag/?header_description=DEVCO+Prag+to+financial+and+contractual+procedures+applicable+to+external+actions+finance+d+from+the+general+budget+of+the+EU+and+from+the+11th+EDF&header_keywords=ePrag%2C+europa
FLC	First Level Control
Managing bodies	General term for all authorities involved in direct management of CBC programmes. In the context of this manual these are the bodies implementing the programme under shared management.
CA	Certifying Authority - a body in charge of certifying a statement of expenditure and applications for payment before they are sent to the EC.
AA	Audit Authority. In charge of the audit of programme expenditures (system audit and sample audits), also called second level control
Subsidy contract	Contract between Managing Authority and Lead beneficiary (Lead partner, also called Subsidy contract). The purpose of the grant contract is a donation, instead of purchase of service, supply and work, which is the typical purpose of the contract referred to in this manual.
Grant beneficiary	Recipient of a grant. Either the lead partner (lead beneficiary), or project partner. The lead partner signs the grant/subsidy contract with the programme Managing Authority, while the other partners sign a partnership agreement with the lead

	partner.
Public procurement	Public procurement contracts cover supplies, services and works financed from the project budget with aim of implementation of the project activities. Public procurement also includes the expenditures made necessary for managing the programme, paid out of Technical Assistance budget. NOTE: this definition refers to procurements under grants (see definition below of 'secondary procurement').
Secondary procurement (procurement under grants)	In the Interreg - IPA CBC environment – where funds are allocated to final beneficiaries in the form of grants following an open call for proposals– 'secondary procurement' means the procurement of supply, service or works carried out by the grant beneficiary for the purpose of implementing the project for which he/she received the grant. In this context, the grant beneficiary (or final beneficiary) becomes the contracting authority of these procurements.
Works contract	A contract between a construction firm and the Contracting Authority for the execution of works of building of the structure
Supply contract	A contract between a supplier and the Contracting Authority for the purchase, lease, hire or hire-purchase (with or without the option to buy) of goods. It may also cover such tasks as installation, servicing, repairs, training and after-sales service.
Service contract	A contract between a service provider and the Contracting Authority for the provision of services such as studies, etc.
Sub-contracting	The power of the contractor, who signed a contract upon selection following on a call for tender, to sub-contract the object of the service, supply or work to a third party, which is usually regulated in the contract and specified in the tender dossier (also referred to as secondary contractor).
Call for proposals	In Interreg - IPA CBC implemented in the shared management mode, this is a public invitation by the programme Managing Authority for the submission of project proposals by clearly identified eligible types of applicants and eligible actions falling within the context of a specific EU policy programme and programming document agreed by partner countries
Tender	A written or formal offer to supply goods or perform services/works for an agreed price
Tenderer	Any natural or legal person or group of such persons submitting a tender with a view to concluding a

	contract
Tender procedure	The overall process of putting a contract out for tender, starting with the publication of a procurement notice and ending with the award of the tendered contract. There are various types of tender procedures: open, restricted, local, international, negotiated, simplified
Tender dossier	Set of documents compiled by the Contracting Authority. It includes a set of documents which indicate requirements of tender and related information and a set of documents which need to be submitted by the tenderers when preparing a tender.
Most economically advantageous tender	The tender regarded as the best according to the criteria laid down for the contract in question e.g. quality, technical properties, functional qualities, after sales service and technical assistance, delivery date or performance period and the price. These criteria must be published in the procurement notice or stated in the tender dossier,
ETC	European Territorial Cooperation - In the programming period 2014-2020, Objective 2 of the EU Cohesion Policy aiming at strengthening cross-border, transnational and interregional/paneuropean cooperation. More commonly known as INTERREG.
ERDF	European Regional Development Fund
EC	European Commission
DG NEAR	Directorate General for European Neighbourhood Policy and Enlargement Negotiations. A part of the EC in charge of the EU's enlargement policy. In terms of financial assistance it is responsible for implementation of IPA
DG REGIO	Directorate General for Regional and Urban Policy - A part of the EC in charge of the EU cohesion policy. In terms of pre-accession assistance it is responsible for IPA for cross-border cooperation between MS and pre-accession countries (IPA shared management programmes)
Shared management	Method of implementation of EU budget where certain implementation tasks are delegated by the European Commission to the Member States.
Expression of Interest	A document, in a pre-designed format, completed by companies who, following the publication of a procurement notice for a restricted service tender procedure, wish to be considered for the short list for a service, work and supply provision (sometimes also called project).

Negotiated procedure	Procedure without prior publication of a procurement notice, in which the Contracting Authority consults the candidate or candidates of its choice and negotiates the terms of the contract with one or more of them. This procedure is used only in exceptional circumstances.
Eligibility criteria	A set of conditions for a candidate to be allowed to take part in a tender or to be awarded a grant contract. Three different types apply: eligibility of applicant, eligibility of action, eligibility of costs.
Rule of Origin	A rule by which origin of all supplies and equipment financed from an EU assistance programme is defined. In external aid environment specific rules of origin apply for external actions public procurement as defined by Financial regulation.
Rule of Nationality	An external aid rule by which a legal person participating in a tender for a project financed by an EU assistance programme must be registered in the EU or an eligible country as defined by programme rules. Natural persons (experts) may be of any nationality
Publication of tenders	Depending on the tender procedure, tenders can be published locally or at European level. On the European level they should be published in the Official Journal of the European Communities and on the European Commission websites (TED or EuropeAid). Also, publication in the local press and/or specialised publications may be advisory.
TED	Tenderers Electronic Daily - Data base of all public procurement under obligation to be published in the Official Journal of the European Union (OJ). Website: http://ted.europa.eu/
Tender evaluation	Evaluation of tenders received in response to a call for tenders
Evaluation Committee	A committee made up of an odd number of voting members, appointed by the Contracting Authority. Members of the Evaluation committee should possess the necessary technical, linguistic and administrative capacities to evaluate submitted tenders.
General conditions	The general contractual provisions setting out the administrative, financial, legal and technical clauses governing the execution of all contracts of particular type (service, supply, works)
Special conditions	Clauses specific to the contract laid down by the Contracting Authority as an integral part of the contract, including amendments to the General conditions
Annex to the contract	Documents attached to the contract and

	representing its constituent part.
Open procedure	Procedure in which any natural or legal person or group may submit a tender in response to a procurement notice
Restricted procedure	Procedure in which, after publication of a procurement notice, only candidates invited by the Contracting Authority may submit a tender
Simplified procedure	Procedure without prior publication of procurement notice, in which only candidates invited by the Contracting Authority may submit a tender
Contract award procedure	Procedure followed by the Contracting Authority to identify a consultant/supplier/contractor to provide defined services/supplies/works and conclude a contract with them.
External actions	Programmes which EU finances in third countries. Pre-accession programmes are considered third country programmes by their nature, and are in the area of responsibility of DG Enlargement or DG Regional and Urban Policy
Contract budget	Breakdown of costs performing the contract. The total of these costs is contract value.
Budget breakdown	Specification of project costs per budget lines
Supplies	All items which supplier is required to supply to the beneficiary, including, where necessary, services such as installation, testing, provision of expertise, supervision, maintenance, repair, training, and other such obligations connected with the items to be provided under the contract
Technical offer	The part of the tender which contains all non-financial elements of the tender dossier. Technical offer must not contain any financial indications.
Financial offer	The part of tender which contains all financial elements of the tender, including its summary budget and any detailed price breakdown or cash flow forecast required by the tender dossier
ToR	Terms of Reference - In case of service contracts this document defines the tasks required of a contractor and indicating project background and objectives, planned activities, expected inputs and outputs, budget, time tables and job descriptions
Technical specification	Document drawn up by the Contracting Authority setting out the requirements and/or objectives in respect of the provision of supplies or works, specifying where relevant the methods and resources to be used and/or the results to be achieved

Bill of Quantities	In the context of works contracts, this document contains and itemised breakdown of the tasks to be carried out in a unit price contract, indicating a quantity for each item and the corresponding unit price.
EuropeAid	EuropeAid Cooperation Office - Directorate General of EC in charge of implementing and monitoring external aid instruments of the EC which are funded by the EC budget and EDF. Although its area of responsibility does not include pre-accession programmes, the website contains useful information on tenders under those programmes https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome&userlanguage=en

INTRODUCTION

In 2014 the EU is completing the implementation of the first programmes of Instrument for pre-accession assistance (IPA I), providing assistance to Western Balkans countries and Turkey. Prepared in partnership with the beneficiaries, IPA II sets a new framework for providing pre-accession assistance for the period 2014-2020.

Based on the lessons learned from IPA I and the political, social and economic developments in the region the IPA II programmes for period from 2014 to 2020 will continue to support the beneficiaries in adopting and implementing political, institutional, legal, administrative, social and economic reforms, in order to ensure compliance with the EU values and principles. The beneficiaries of the IPA II are: Albania, Bosnia and Herzegovina, Iceland, Kosovo^{*1}, Montenegro, Serbia, Turkey and the former Yugoslav Republic of Macedonia.

The assistance under IPA II shall mainly address the following policy areas:

- public administration reform;
- rule of law;
- sustainable economy;
- people;
- agriculture and rural development.

The cross-border cooperation is defined specifically in the IPA II Implementing regulation (447/2014), under TITLE VI CROSS-BORDER COOPERATION. More specifically this Manual refers to cross-border cooperation programmes **between EU MSs and IPA Beneficiary countries** as described in Chapter II of Title IV *Cross-border cooperation between Member States and IPA II beneficiaries*. In these programmes the general rule is that the Managing Authority (MA) in the participating MS takes over the responsibility for implementation of the programme. Within the CBC programmes the following thematic priorities can be supported:

- promoting employment, labour mobility and social and cultural inclusion across borders;
- protecting the environment and promoting climate change adaptation and mitigation, risk prevention and management ;
- promoting sustainable transport and improving public infrastructures;
- encouraging tourism and cultural and natural heritage;
- investing in youth, education and skills;
- promoting local and regional governance;
- enhancing competitiveness, the business environment and the development of small and medium-sized enterprises, trade and investment;
- strengthening research, technological development, innovation and information and communication technologies.

The Implementing Regulation indicates that maximum four of those priorities shall be selected for each cross-border programme.

The implementing regulation defines implementing provisions of those programmes, including implementation of procurement procedures.

¹ This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence

Background

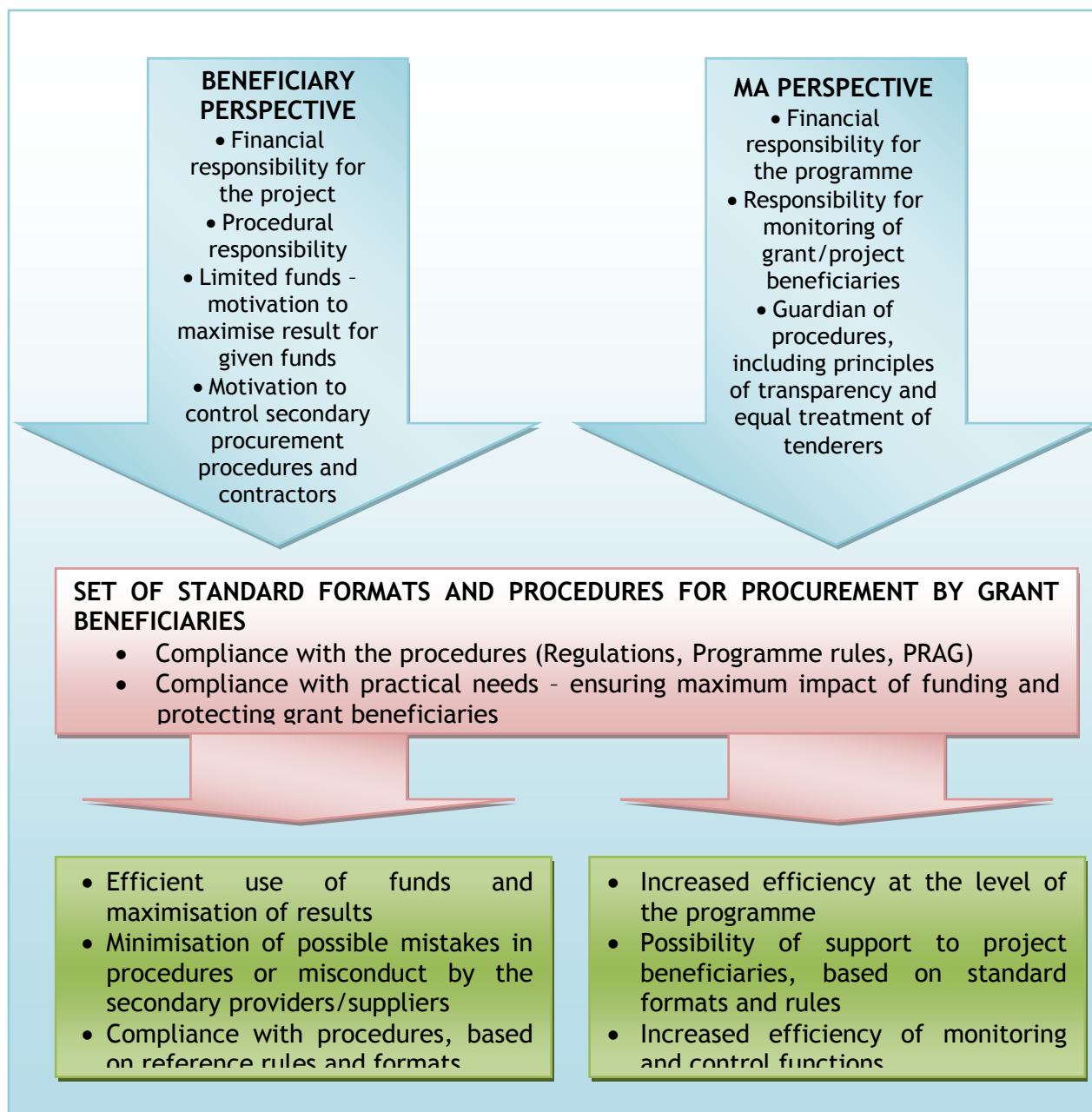
The IPA II Implementing Regulation indicates that *“for the award of service, supply and work contracts, by beneficiaries the procurement procedures shall follow the provisions of Chapter 3 of Title IV of Part Two of Regulation (EU, Euratom) No 966/2012 and of Chapter 3 of Title II of Part Two of Delegated 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”*. This effectively means that the EU External Action procurement rules are to be used in awarding of service, supply and works contracts from the CBC grant scheme financed projects.

This type of procurement is applicable when grant beneficiaries are awarded grants on the basis of public calls for proposals (CfP). Following the grant award some of the budget items might be sub-contracted to third parties in case when the grant beneficiary does not possess internal resources necessary for realisation of these budget items (example: supply of equipment, recruitment of external services, works and renovations). This “second step” procurement procedures are addressed throughout this document as **“secondary procurement”**.

In addition to the formal rules stipulated by the regulations, the secondary procurement procedures of the grant beneficiaries have a number of practical implications. The implementation of competitive procurement procedures allows the beneficiaries to obtain the best possible result for the given funds and thus maximise the effects of the grant. In addition to that the secondary procurement formalises relations with the secondary contractors. By this the grant beneficiary avoids eventual issues with the secondary contractors (for example failure of delivery, delays, inadequate deliveries in quality and quantity sense).

From the perspective of the EU and MAs the compliant implementation of procurement procedures strengthens the monitoring efforts, provides better possibilities for guidance and support to grant beneficiaries and enables standardisation and comparison. The MA would ideally establish partnership relation with the project partners, where the procurement procedures would be seen as support element rather than enforcement.

The following scheme demonstrates perspectives and issues in secondary procurement procedures.



Having in mind the relatively extensive administrative burden and the fact that the procurement procedures are time consuming a proper balance needs to be established between the formal requirements and the resources, capabilities and interest of the project beneficiaries. This manual aims at providing proposal for balanced and procedurally compliant approach to procurement by the project beneficiaries (secondary procurement). The proposal is elaborated on the basis of procedural requirements and practical implications which have been generated through implementation of IPA I CBC programmes.

AIM

To provide proposal for balanced and procedurally compliant approach with examples and templates for procurement by grant beneficiaries in the context of IPA II CBC programmes

Legal context

Rules for public procurement in case of award for service, supply and work contracts for Interreg - IPA CBC are defined in Article 45 of No 447/2014. According to this article:

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.

METHODOLOGY

2.1. Basic documents

The main principles used in this Manual are those described in in 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. The Practical Guide PRAG will be used only as a reference and general guidance in description of practical application of the procedures and definition of standard documents for implementation of the procedures with aim to achieve more simplified and harmonised approach.

Apart from these basic documents used in elaboration of the Manual, its content was based on inputs from Interreg - IPA CBC programmes, experiences from previous programming periods, in particular IPA I, inputs from EC and other documents relevant for public procurement in EU funded programmes.

2.2. Target groups

The target groups of the INTERACT Procurement manual are primarily **organisations and individuals managing and supporting the IPA II CBC Programmes with MS**. These include Managing Authorities (MA), Joint Secretariats (JS), JS Antennas, as well as programme control bodies (First Level Controllers - Audit Authorities). The Manual is presenting the procurement procedures having in mind specific needs and position of these entities. The perspective of the Manual will be more on management issues (with some advises how to help project beneficiaries) and the level of details presented should sufficiently cover management and control provisions. In addition to that the manual is highly relevant for the project beneficiary side, in particular with the provided formats of simplified tender documentation. Nevertheless the use of these tender documents and overall applications at the beneficiaries' level should always be introduced to the beneficiaries by MA, JS or relevant authorities.

2.3. Approach

The experience from IPA I showed that in some cases the secondary tender procedures can take as much as 20-30% project resources. A usual situation in projects was that a number (sometimes up to 15) of single tender procedures was necessary within one subsidy contract. The number of competitive negotiated and open procedures was lower but these took more time and efforts. The secondary procurement procedures were often a cause of delays and discrepancies within projects.

On the other hand, apart from legal requirements, the procurement procedures proved extremely valuable tool of resolving the issues between the project beneficiaries and their secondary contractors. It is obvious that the procurement procedures which followed some kind of formal approach, secured the project beneficiary against delays, failure of delivery of poor quality of service by the secondary contractors.

The main challenges of this INTERACT Procurement Manual is therefore finding balance between satisfying legal and practical requirements on one side and providing practical and comprehensive answer to the administrative burden on the other side. The approach in the Manual can be summarised in the following points:

- **Understandable.** While the text of the Regulation is focused, it does not provide answers on a number of specific questions and issues. On the other hand the Practical Guide (PRAG) provides detailed answers to a number of specific questions. However the size and complexity makes it hard to understand and apply, particularly for users which are interested only in specific segments. The aim of the INTERACT Procurement Manual is to present the key issues in elaborate but still understandable way. The document will be focused on concrete needs, which were identified in discussion with Interreg - IPA CBC Programmes.
- **Balanced.** The Procurement Manual is looking for proper balance within the procurement procedures. It is ensuring compliance with the procedures and takes into account the procedural and administrative burden. For less complex procedures (for example single tenders), where risks and complexity are lower the proposed approach is consequentially more straightforward. This is especially evident in the format tender documentation provided in Annexes.
- **Practical.** Both documents mentioned in the above point present relatively extensively all aspects related to public procurement procedures. Nevertheless they both lack practical advice, often needed in concrete practice. The Procurement Manual will go beyond theoretical and procedural descriptions of the both basic documents. In addition to basic requirements it will provide concrete example from practical cases of application. Each of the key sections of the document contains specific part *“practical aspects and common challenges”*. These parts will describe some of practical challenges, not addressed in the either of the basic documents.
- **Standardised.** The Procurement Manual will promote standardised and harmonised approach for all programmes under Interreg - IPA CBC with MS implemented in shared management. This includes use of standard procedures and use of standard documents as far as possible. The practice will not only enable control and comparison throughout the Interreg - IPA CBC area, but should also bring benefit to final beneficiaries. Namely even in the countries where several different IPA Programmes are being implemented, the same approach and rules should be used in all programmes. It is understandable that one and the same approach applicable to all Interreg - IPA CBC programmes in shared management cannot be developed, but the intention was to create a **common framework** that could be used by all in order to facilitate easier implementation of public procurement according to external rules.

2.4. Key elements

Contracting procedures for EU external actions are defining an extensive area of interventions related to different types of contracts. The procedures are covering steps in contracting procedures from basic principles and programming to selection procedure and implementation.

Content of this Manual is adapted to concrete specific needs of the target groups. The proposed procedures, formats and provided practical examples are focusing on the needs of the MAs and the beneficiaries in the CBC programmes. Specific aspects such as cross-border partnership and impact are taken into account.

The structure of the manual is based on the **type of procurement** (services, supplies and works) and on the **financial thresholds**. The latter namely defines the level of complexity which is applied for each procedure (single tenders, competitive negotiated procedure, and open procedure - as indicated below). For each type of the procurement the manual is describing the following key elements:

- **Procedure.** The financial thresholds define the level of complexity for each procedure. For example single tender procedures require limited time and efforts while the open procedures are

complex and lengthy. Each chapter describing specific type of procurement provides overview of applicable procedure.

- **Use of standard format documents.** In order to enable comparison and control the Financial Regulation lists mandatory documents and PRAG provides a number of standardised templates, covering every step in the procedure. Depending on the financial threshold and type of procurement specific provisions apply. This Manual aims to find the best use of existing templates and to fit them better to Interreg - IPA CBC programmes needs. Each chapter reflects on the tender documentation required for specific procedure. The basic logic is that the complexity and extent of the documentation rises with the financial thresholds. The Manual provides example formats of the documentation in Annexes.
- **Evaluation procedure.** Following the submission of the tenders within each procurement procedures the contracting authority needs to select the best tenderer or, in the case of single tender procedures, decide on the compliance of the one received offer. Each of the chapters for specific types of procurement provides description and practical instructions on the evaluation procedures.

2.5. Lessons learned from IPA I

At the end of 2007-2013 period after the implementation of the IPA I CBC programmes a number of valuable lessons are becoming evident. Apart from the content and institutional issues a significant pool of procedure related lessons was collected. Some of the most evident conclusions are the following:

- **Administrative burden.** Significant resources were used by the project beneficiaries on implementation of procurement procedures. In some cases it was questionable whether the procedural requirements and size/type of procedures were unbalanced. The programmes on several occasions expressed interest for simplification of procedures.
- **Lack of clear guidance.** In some cases the project beneficiaries faced the situation that PRAG did not provide clear answer to their specific issues. One such example is the matter with the simplified tender documentation, where the format provided in PRAG does not fully correspond to the project beneficiaries needs (e.g. no ToR provided in the simplified tender dossier).
- **Undefined single tender procedures.** The single tender procedures (below 20.000 EUR) remain undefined. Financial Regulation (No 966/2012 and No 1268/2012) make no reference to any procedures or documents needed below 20.000 EUR. On the other hand PRAG indicates that the procedure should be formalised and registered (format of evaluation report provided), however few details are provided on procedural steps. In addition eventual use of simplified tender dossier would still anticipate relatively complex procedure, from the perspective of the contracting authority (project beneficiary) as well from the perspective of the secondary tenderers.
- **Large volume of single tender procedures.** The large number of single tender procedures represented significant bottleneck in the implementation of subsidy projects. The balance between the size of the project and administrative burden clearly indicates the need for simplification of the procedure.

Building on the above conclusion the INTERACT Procurement Manual provides the following:

- Proposed approach to simplification of procedure, taking into account thresholds and types of procurement;
- Proposal of simplified tender documentation to be used in competitive negotiated procedures (adapting the existing formats provided in PRAG);
- Proposed approach in single tender procedures, including formats for tender documentation.

BASIC RULES

The PRAG 2014 recognised a new management mode “shared management”. The mode was used in practice in the IPA-MS programmes in IPA I, however it was not recognised in the past. In the case of “shared management” the EU delegates implementation tasks to the EU Member State. The specifically mentioned case of application of such a mode is the use in CBC programmes, which is also relevant in the context of this Manual.

Based on the definitions from CIR the procurement rules for EU external action apply for all the beneficiaries in IPA-MS CBC programmes. The minimum legal requirements (basic rules, types of contracts, financial thresholds) are indicated in the Implementing Regulation 1268/2012 and the practical guidance is provided in the PRAG Manual.

The MA, FLC, AA, JS and other involved structures on the whole programme area will be required to apply these procedures in the cases of secondary procurement. The procedures can in a way be split into general procedures applicable for all types of contracts and specific provisions for each type of contracts.

Basic rules to be observed are described in the following chapters.

3.1. The rules of nationality and origin

The usual rule of nationality, applicable on the level of subsidy contract states that “*the beneficiaries of grants comply with the eligibility rules for public procurement foreseen in the respective regulations for different cooperation programmes...*” - meaning that grants are made to final beneficiaries according to programme rules and territorial eligibility for applicants usually specified in the programme documents, such as calls for proposal at programme level. The rules of nationality are laid down in CIR.

The nationality of experts and other natural persons employed or legally contracted does not have to follow the nationality rules. Therefore, unless otherwise provided for in the applicable financing decision/agreement, experts recruited or otherwise legally contracted by an eligible contractor / sub-contractor, may be of any nationality.

All supplies purchased under a procurement contract, or in accordance with a grant contract, financed under the EU budget or the EDF shall originate from an eligible country as per the corresponding Instrument. However, according to the CIR, when the value of the supplies to be purchased is below 100.000 € per purchase, the supplies do not have to originate from an eligible country².

This derogation will practically mean that a relatively small share of purchases will apply the origin rule. In case when the rule is applied the tenderers are required to state the origin of their supplies in their tenders and provide certificates of origin as applicable with the delivery of supplies. The provision does not apply to IPA I and in cases where the applicable financing decisions or financing agreements expressly set out other rules (other than the standard reference to the basic act).

3.1.1. Derogation from the Rule of Origin

As indicated in the previous point the general derogation applies for purchases under 100.000 €.

For the supplies higher than 100.000 € a derogation from the rule of origin can be approved in exceptional cases. The derogation needs to be done prior to publication of tender and indicated in the procurement notice.

² Art.8(4) of REG No 236/2014

Derogations may be granted, depending on derogations provided for in the basic acts, on the grounds of economic, traditional, trade or geographical links with neighbouring countries, on the grounds that products and services are unavailable in the markets of the related countries concerned; for reasons of extreme urgency; or if the eligibility rules would make it extremely difficult to carry out a project, programme or other action. Note, however, that the argument that a product of ineligible origin is cheaper than the EU or local product would not alone constitute grounds for awarding derogation.

Example - derogation:

In the case of Hungary-Serbia CBC programme the FLC expects a market research from the beneficiaries on the availability of the given supply (it can be proven with a declaration from at least 3 different distributors, in which they claim that they do not distribute the supply under the question with EU/IPA origin). Within a single tender procedure this step should be the first one and followed by the request for price quotation of supply with similar technical specifications, originating from a non-eligible country.

For actions implemented in shared management the relevant MS to which the Commission has delegated implementation tasks shall be entitled to accept as eligible, on behalf of the Commission, tenderers, applicants and candidates from non-eligible countries or goods from a non-eligible origin³.

Tip: It is recommended to document and store the reasons on which this decision is based in some specific/exceptional/extremely expensive cases ((see table below as example). In the event of similar doubtful cases repeatedly occurring, an ex-ante consultation with the control bodies, the programme audit authority, as well as even with the audit unit of the European Commission, might be useful to prevent later finding of irregularities and therefore possible recovery procedures. Nonetheless, the use of this opportunity must be carefully evaluated and as far as possible coordinated by the managing authority of the programme, as the work load for these bodies is usually rather heavy.

Some of the possible challenges related to rules of nationality and origin are presented in the Table 1.

Table 1: Challenges related to rules of nationality and origin

CHALLENGES	RECOMMENDATIONS
Specific professional equipment. Some projects require purchase of specific professional equipment which is supposedly not available as EU or other eligible countries' origin.	<ul style="list-style-type: none"> - Implement a wider analysis of potential suppliers. - In case of non-availability ask for derogation well in advance, providing proper justification (e.g. Proof of sufficient research that no such product of acceptable origin could be found, etc.).
Compatibility of equipment. On a number of occasions the purchase of equipment is focused on up-grading existing equipment which is non-EU or other eligible countries' origin. Such cases are particularly frequent in computer equipment and software purchase.	<ul style="list-style-type: none"> - In general avoid upgrading of existing equipment. In case of such projects check compatibility with similar EU or other eligible countries' origin equipment.

³ CIR, Article 10

3.2. Fair and transparent competition⁴

If the implementation of an action which is supported by a grant from the Community for the purposes of external actions requires procurement by the project beneficiary, the contract must be awarded to the **most economically advantageous tender** (i.e. the tender offering the best price-quality ratio), in accordance with the principles of transparency and fair competition for potential contractors and taking care to avoid any conflicts of interest.

In the event of failure to comply with these rules, planned or occurred expenditures related to the projects and activities in question **will not be eligible** for Community financing.

Some of the possible challenges related to the fair and transparent competition are presented in the Table 2.

Table 2: Challenges related to fair and transparent competition

CHALLENGES	RECOMMENDATIONS
<p>Above market prices. In case of competitive negotiated or in open procedures if the tenderers contact each other, they could raise the tender price above market standards. In single tenders the only invited tenderer could propose price above market standards.</p>	<ul style="list-style-type: none"> - Even if the financial thresholds stipulate single tender procedure the Contracting Authority should be encouraged to invite more than one company in order to create competition and avoid increasing the prices by the single invited tenderer. - The project beneficiary could implement preliminary market research/analysis to establish the market price standards for the planned purchases. Other beneficiaries implementing similar purchases could be advised. The beneficiary should have clear indication of the market prices before the start of the evaluation. In case of significant discrepancies between the financial offers and price market standards the procedure should be cancelled and negotiations with one or several tenderer initiated if applicable. - The MA should check the per-unit prices as presented by the grant beneficiaries in the proposed grant budgets during the budget clearing process. Historical data, market analysis or similar can be taken into account to establish appropriateness of the proposed per-unit prices.
<p>Conflict of interest. Some of the individuals involved in the process are one way or another connected with one or more</p>	<ul style="list-style-type: none"> - Use independent experts in the process of preparation of tender documentation and in

tenderers.	the selection process. - Check potential connections between involved individuals and tenderers (on the basis of their CV)
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3.3. Grounds for exclusion⁵

I- Exclusion criteria applicable for participation in procurement and grant procedures:

Candidates, tenderers or applicants will be excluded from participation in procurement and grant 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 Member State which has the force of *res judicata*; (i.e. against which no appeal is possible);
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify, including by decisions of the European Investment Bank 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 contracting authority or those of the country where the contract is to be performed;
- (e) they, or persons having powers 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 an illegal activity is detrimental to the EU's financial interests;
- (f) they are currently subject to an administrative penalty referred to in Article 109(1) of the EU Financial Regulation (for programmes funded by the EU budget and the 11th EDF) and in Article 99 of the 10th EDF Financial Regulation (for programmes funded by the 10th EDF).

The cases referred to in point (e) are the following:

- 1) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995;¹²
- 2) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997;¹³
- 3) cases of involvement in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA¹⁴
- 4) cases of money laundering as defined in Article 1 of Directive 2005/60/EC of the European Parliament and the Council¹⁵;

⁵ Based on PRAG

- 5) cases of terrorist offences, offences linked to terrorist activities, and inciting, aiding, abetting or attempting to commit such offences, as defined in Articles 1, 3 and 4 of Council Framework Decision 2002/475/JHA¹⁶

II- Exclusion criteria applicable during the procurement and grant procedures

Contracts may not be awarded to candidates, applicants or tenderers who, during the procurement or grant award procedures:

- a) are subject to a conflict of interest;
- b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information;
- c) find themselves in one of the exclusion situations for this procurement or grant award procedure.

Candidates, tenderers or applicants other than those in a restricted procedure, negotiated procedure or competitive dialogue, must sign a declaration together with their applications, certifying that the entity does not fall into any of the exclusion situations cited under points I and II.

Information on the ownership/management, control and power of representation of the entity and a certification that they do not fall into the relevant exclusion situations must be provided where specifically requested by the contracting authority. This may be the case where there are doubts about the personal situation and in consideration of the national legislation of the country in which the tenderer, candidate or applicant is established.

However, for procurement contracts with a value of EUR 20 000 or less, the contracting authority may refrain from requiring a declaration depending on its risk assessment.

Following the notification of award, tenderer(s) to which the contract is to be awarded (including consortium members), must supply evidence that they do not fall into the exclusion situations, unless such evidence has already been submitted earlier in the procedure. The CA might waive this requirement in the case of lower value tender, upon its judgement.

As satisfactory evidence that the candidate, tenderer or applicant is not in one of the situations described in:

- (a), (b) or (e) of point I (Exclusion criteria applicable for participation in procurement procedures), the contracting authority will accept a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that the requirements are satisfied. For (d), the contracting authority will accept a recent certificate issued by the competent authority of the State concerned. Where no such document or certificate is issued in the country concerned¹⁷ and for the other exclusion criteria listed in point I, it may be replaced by a sworn/solemn statement made before a judicial or administrative authority, a notary or a qualified professional body in the country of origin or provenance.

Whenever one candidate, tenderer or applicant, due to its nature or the legal provisions for the given issue in the state where it is registered (for instance, national public administrations and international organisations), cannot fall into some of the categories above and/or cannot provide the documents indicated above, a simple declaration explaining their situation will suffice.

Tip 1: The tenderer submission form includes a tenderer's statement which among other confirms that the tenderer is not in any of the above situations. The statement should be included in the simplified tender dossier and the tender dossier for single tender procedures. The format of the latter provided in this Manual includes indication to the exclusion criteria.

Tip 2: The grant beneficiaries should decide on case-by-case basis which of the above situations should be confirmed by documentary evidence. For example the evidence could be asked for larger tenders or in

cases where the exclusion criteria directly jeopardise the delivery of the secondary contract. The grant beneficiaries should nevertheless bear in mind that obtaining of the documentary proof means additional cost and effort for the beneficiaries. The documents could possibly be asked only from successful tenderer before the signature of the contract.

If national rules are stricter than external, programme might decide that they still apply

3.4. Administrative and financial penalties

Candidates, tenderers and applicants, who have made false declarations, made substantial errors, committed irregularities or fraud may be excluded from participation in all procurement and call for proposal procedures financed by the EU for a maximum of five years from the date on which the infringement is established, following an adversarial procedure with the contractor or beneficiary. That period may be extended to 10 years in the event of a repeated offence within five years of that date. The decision is adopted by the relevant Authorising Officer following an adversal procedure.

Tenderers, candidates or applicants who have made false declarations, or who have committed substantial errors, or irregularities, or fraud, may also be subject to financial penalties representing 2 % to 10 % of the total estimated value of the contract being awarded. The percentage is decided in accordance with the principle of proportionality. Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the contracting authority must suspend the procedure and may take whatever measures are necessary, including cancellation. Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the contracting authority may, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract or, where appropriate, terminate the contract. Where such errors, irregularities or fraud are attributable to the contractor or beneficiary, the European Commission may also refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with this contractor or beneficiary, in proportion to the seriousness of the errors, irregularities or fraud.

3.5. Visibility

Unless otherwise requested or agreed by the European Commission, all EU partners, whether they may be contractors, grant beneficiaries or entities managing funds on behalf of the European Commission, must ensure the visibility of EU financing.

Tip: National rules might require additional visibility arrangements and they have to be taken into account.

3.6. The rule on the language to be used

Though the use of the language is not defined in applicable Regulations it would be recommended to use English for secondary procurement procedures above 20.000 €. For single tender procedures below 20.000€ the MA might decide to allow use of local languages. The use of English could contribute to efficiency of the programme, standardisation of the approach and enable comparison between procedures.

The use of the English language also increases the possibility for tenderers from different countries to be properly informed; therefore this may not be fulfilled if only national languages are used. Some tenderers might decide to publish tenders in both English and local language, however this approach somewhat gives advantage to the local tenderers against the third country tenderers (those not using English as a mother tongue). Similarly as the tender documentation also the tenderers offers should be as a general principles in English. For smaller size tenders of below 20.000€ the tendering in local language seems like an acceptable option.

In all public procurement procedures the professional judgement about what value and leading principle should prevail by the responsible contracting bodies, as well as by controllers and auditors, is not to be avoided!

PROCEDURES

Main procedures that should be implemented in case of procurement according to external rules are described in the following chapters. Which procedure is applicable always depends on the type and size of the contract. The initial part of this chapter describes the procedures which are equally applicable for all types of procurement. The chapters on specific procedures are describing the following elements:

- Procedural overview;
- Preparation of tender documentation;
- Evaluation procedure;

Practical recommendations and formats of tender documentation are provided for each type of procedure.

Since the beneficiaries in IPA and MS countries are obliged to use the EU external action procedure in their secondary procurement, they should keep in mind that minimum procedural requirements need to be respected throughout these procedures.

Detailed procedures for each type and size of contracts are also provided in the following chapters. Described procedures are based on what is **normally and commonly implemented** in public procurement in the context of EU external actions and could be used as a **basic approach to public procurement** for IPA II CBC programme. Some of the procedures may differ in some of the programmes, but they must always respect provisions given in Financial Regulation. Therefore please always be aware of **possible procurement rules or conditions defined by respective IPA II CBC programme in addition to existing external procurement rules (where applicable)**⁶.

*Templates and annexes mentioned in the description of procurement procedures are based on standard PRAG templates used for EU external action programmes. It should be noted that these templates change over time, therefore amendments might be required. The formats are **recommended for use in order to simplify and unify tendering dossiers** in Interreg - IPA CBC programmes and they provide sufficient basis for preparation of tender documentation. However, these templates can be adapted, modified and adjusted to programme/country needs, but should be applicable in all participating countries in a given Interreg - IPA CBC programme in order to avoid confusion for grant beneficiaries.*

4.1. Selection and award criteria

Selection criteria differ between different types of contract. They are as follows:

- **Service contracts.** The offer which provides **the best value for money** is awarded with the contract. Normally the ratio 20% price and 80% technical quality is used.
- **Supply contracts.** The contract shall be awarded to the **cheapest technically compliant offer**.
- **Works contracts.** The contract shall be awarded to the **cheapest technically compliant offer**.

⁶In the past some Interreg - IPA CBC Programmes chose to adapt or add to obligatory external procurement rules to make procurement more operational for project beneficiaries, whereas others decided to completely implement PRAG rules.

4.2. Open procedure

The **open procedure** is applicable for **supply and works contract**. The procedure follows one step process where open invitation for submission of tenders is issued either on national and international level.

Depending on whether it is a local or international open procedure the contract notice is to be published in all appropriate media, in particular on the **project beneficiary's website** (in its role of Contracting authority) and in the national press of the country where the action is being carried out - in case of **local and international open**; in the **international press** - in case of **international open**. In addition to that all contract notices for contracts above 300.000 EUR must be published in the Official Journal of the European Union and on the EuropeAid web site.

In addition to the contract notice the CA might decide to publish a prior information notice. The use of the latter is however compulsory when the CA intends to make a use of a possibility to shorten procedure. If applied the prior-information notice is published at least 30 days before publication of the contract notice.

4.3. Restricted procedure

Restricted procedure applies **only in case of service contracts** and is in a way similar to open procedure in supply and works. The procedure follows **two step process**. In the **first step** a **public invitation for submission of express of interest is issued**. In the **second step** the **initial offers are reviewed and a short-list of candidates is formed**. The short-listed candidates are invited to submit full proposal.

The initial contract notice should be published in the Official Journal of the European Union (S Series) and in any other appropriate media (on the EuropeAid web site if applicable). The publication must state the number of candidates which will be invited to submit tenders. This number will be in the range of four to eight and must be **sufficient to ensure genuine competition**. The guidance for eventual prior-information notice follows the same logic as with the open procedure, described in the previous point.

4.4. Competitive negotiated procedure

Competitive negotiated procedure applies to **service, supply and works contracts**.

Under the competitive negotiated procedure, the Grant Beneficiary (in its role of Contracting authority) **invites candidates of its choice to submit tenders**. At least 3 competent candidates should be invited. The procedure could be implemented using simplified tender documents in case of service and supply procedures. At the end of the procedure the Contracting Authority selects the **tender which offers the best value for money in case of service tenders** and the **cheapest technically compliant offer in case of supplies or works tenders**.

4.5. Orders on the basis of single tender

Orders on the basis of **single tender** apply to **service, supply and works contracts**.

Under the **single tender** procedure the Project Beneficiary (in its role of Contracting authority) in principle **invites one candidate to submit offer**. Offers are normally submitted using simplified tender documents. At the end of the procedure the Contracting Authority checks whether the single offer corresponds to the requirements in case of services or is technically compliant in case of supply and works tenders.

A programme could opt for a rule where more than one (for example 3) candidates should be invited in the case of single tender procedures. Such an approach would be reasonable if it is estimated that efficiency and transparency can be considerably improved this way.

Tip: Even though one offer is procedurally enough, it is strongly recommended that grant beneficiary, i.e. Contracting Authority collects more than one (at least 2) offer, in order to be able to make a

financially and technically sound and transparent decision to be able to get a clear information on real market prices and similar

The Regulations do not provide detailed instructions or formats as regards the single tender procedure (with the exception of the evaluation report). The approach used by some programmes in the past was to propose that a standardised template is provided to the candidates, where prices were to be inserted. Such an approach enabled clear price comparison of the offers.

This Manual goes a step further by providing recommendations (point 8.1) and examples of formats that can be used (Annex TD1).

4.6. Modifying contracts

Contracts may need to be modified during their duration if the circumstances affecting project implementation have changed since the initial contract was signed. **Contract modifications must** be formalised through an **administrative order or an addendum** to the contract in accordance with the provisions of the General Conditions of the contract. **Substantial modifications** to the contract must be made by means of an **addendum**. Such an addendum must be signed by the contracting parties. Changes of address and changes of bank account may simply be **notified in writing** by the contractor to the Grant Beneficiary, in its role of Contracting authority, although this does not affect the right of the Grant Beneficiary (in its role of Contracting authority) to oppose the contractor's/beneficiary's choice of bank account.

Following this logic, major changes, such as a fundamental alteration of the Terms of Reference/Technical Specifications, **cannot be made** by means of an addendum or an administrative order.

A request for contract modifications **should not automatically be accepted** by the Contracting Authority (Grant Beneficiary). There must be **justified reasons** for modifying a contract. The Contracting Authority (Grant Beneficiary) must examine the reasons given and reject requests which have little or no substantiation. Contracts can only be modified within the execution period of the contract. The purpose of the addendum or administrative order must be closely connected with the nature of the project covered by the initial contract.

Tip 1: Interreg - IPA CBC Programmes may decide to determine from the start in top-down approach what constitutes as 'significant modification' that has to be made by means of addendum. Alternatively programme management bodies may leave this decision up to the Grant Beneficiaries in their role as Contracting Authorities. In either case, how this decision on using addendum or not using addendum procedures for contract modifications was made, has to be clearly justified for the needs of the control, as well as any reasons for contract modifications.

Tip 2: Programme bodies may request from Contracting Authority/Project partners to request from programme confirmation or approval prior to making a decision on significant contract modifications. However, this could mean more work load for programmes, but could be useful as a tool for more safety.

Tip 3: The modifications of secondary contracts within the grant projects should always be observed in the context of the overall grant project. The grant beneficiaries should under no circumstances allow that modification of the secondary contract jeopardizes the implementation of the overall grant contract. For example, delays/extensions in implementation of secondary contracts could have negative impact at overall level.

Requests for contract modifications must be made (by one contracting party to the other) well in advance to allow for the addendum to be signed by both parties before the expiry of the execution period of the contract.

In preparing an addendum, the Grant Beneficiary in its role as Contracting Authority must use the template for an addendum (Annex B16, C12, D11⁷)

4.7. Financial thresholds and related tendering procedures

SERVICE CONTRACTS	≥EUR 300 000 International restricted tender procedure	< EUR 300 000 but > EUR 20 000 • Framework contracts or • Competitive negotiated procedure		Single tender For service and supply contracts, a payment may be made against invoice without prior acceptance of a tender if the expenditure is ≤EUR 2 500
SUPPLY CONTRACTS	≥EUR 300 000 International open tender procedure	< EUR 300 000 but ≥EUR 100 000 • Local open tender procedure or • Framework contract	<EUR 100 000 but > EUR 20 000 • Competitive negotiated procedure or • Framework contract	
WORKS CONTRACTS	≥EUR 5 000 000 • International open tender procedure or • International restricted tender procedure	< EUR 5 000 000 but ≥ EUR 300 000 Local open tender procedure	< EUR 300 000 but > EUR 20 000 Competitive negotiated procedure	

4.8. Procurement plans

The secondary procurement procedures represent a significant challenge for the MA from the perspective of monitoring. Significant volume of procedures makes it difficult for the MA to follow closely the developments, what often results in delays and discrepancies at the secondary procurement as well as at the overall grant project level.

A possible way to facilitate the monitoring is the use of procurement plans. The grant beneficiaries could be encouraged after the start of their project to provide a list of all procurement procedures within their projects, with indication of budget line, procedure and key milestones. The MA would use the procurement plans to identify delays, as well as discrepancies in the procedure (for example absence of secondary procurement procedure for relevant budget lines). The procurement plan can also be used for cross-checks, for example if proper procedure is used depending on the financial threshold. An example of procurement plan is presented in the scheme:

⁷ PRAG - Practical Guide to Contract procedures for EC external actions - Annexes

Scheme: Example of procurement plan

Budget line	Amount (EUR)	Item	Type	Procedure	Planned publication date	Planned contract signature
3.2.	22.500,00	Supply of computers	Supply	Competitive negotiated	20.12.2014	31.01.2015
5.2.	11.350,00	Printing services	Services	Single tender	15.03.2015	30.03.2015

SERVICE CONTRACTS⁸

5.1. What is a Service contract?

Service contracts comprise study and technical assistance contracts. The leading principle in the context of secondary procurement would be that service contracts are intended to engage support in the segments/areas which are not covered internally (within the partnership or project team) and require additional external support.

A study contract is a service contract concluded between a service provider and the CA, which includes studies for the identification and preparation of projects, feasibility studies, economic and market studies, technical studies and audits.

A Technical assistance contract is a service contract where a service provider is called on to play an advisory role, to manage or supervise a project, or to provide the expertise specified in the contract

In a practical sense the studies would normally understand more complex and extensive services. The TA on the other hand can cover complex consultancy or advisory services but can also cover very simple and straightforward services, for example printing, catering, transport services etc.

Global price vs. fee-based contracts

A service contract may be concluded in two different ways:

- **Global price** - where specified outputs are set out. The service will be paid on the basis of the delivery of the specified outputs. Payments might be totally or partially withheld if the contractual results have not been reached. Partial payments have to be determined according to the partial implementation of the outputs, and are subject to:
 - several budget lines per output, which may be required but are not compulsory
 - negotiations with the service provider;
- **Fee-based** - where the output is unpredictable, or where the workload to achieve the specified output is impossible to quantify in advance. Therefore it is economically more advantageous to pay the services on the basis of time actually worked.

Examples of global price activities:

Studies, evaluations, audits, organisation of events such as conferences, trainings. Studies include a variety of tasks like identification and preparation of projects, feasibility studies, economic and market studies, technical studies, drafting a legal document, evaluations and audits. Global price always specify the output, i.e. the contractor must provide a given product.

The tenderer must announce his intentions in terms of mobilisation of means in its tender. However, during the implementation, the technical and operational means by which the contractor achieves the specified output are not relevant for the method of measurement.

⁸Specific provisions are taken from PRAG - Practical Guide to Contract procedures for EC external actions

In case of global price contracts the candidates' budget is prepared as a global figure, without further breakdown. The CA monitors delivery of outputs, which also represent the basis for issuing payments.

Examples of fee-based activities:

Project supervision, resident technical assistance, facilitation in a multi-stakeholder process (depending of the complexity of the environment).

In case of fee-based contracts the candidates' budget is prepared in a manner of budget breakdown. Budget lines are presented per expert (for example see PRAG standard annex B8i2). In the implementation phase the inputs by experts provide a basis for monitoring and approval of payments. Signed time-sheets are required by experts to confirm the inputs.

The Contracting Authority would always ask for key experts in the case of fee-based contracts. Their CVs and statement of availability and exclusivity would be included in the technical offer.

In case of global price contracts the CA might decide to identify experts' profiles in advance and ask for CVs and statements of exclusivity and availability (optional). Even if the CVs are required the experts would not be evaluated directly in global price contracts. They would only be evaluated through organisation and methodology as suggested in the standard evaluation grids.

The recent developments are pointing in the direction of increased use of global price contracts. The advantages of such contracts include absence of requirement to identify experts in advance and thus simplified procedure for change of experts (only when CVs are not required with the tender).

In the context of secondary procurement the grant beneficiaries should estimate which type of the contract suits better their needs. Having in mind the complexity of the fee-based contracts the beneficiaries could consider favouring global price in case of single tenders and for smaller competitive negotiated procedures. Even in the case of global price contracts the grant beneficiaries could introduce the profiles of required experts in the ToR and ask for CVs.

Tip 1: The MA should dedicate specific attention to potential overlapping between internal and external resources. The lead principles should be that external services cannot be approved for the segments, knowledge or expertise already available within the project partnership or project team. The checks should be implemented in the contracting phase for the grant projects during the budget clearing process.

Possible example of service procedures in the context of a grant contract (a project) may include the following:

Establishment of joint tourism area in cross-border region

The objective of the project financed from cross-border cooperation grant scheme is establishment of joint tourism destination in the border region of two countries. The activities within the project will among other include:

- Analysis of existing tourism providers, their capacities and interests
- Creation of common brand of joint tourism destination
- Establishment of tourism guides services
- Establishment of joint information centre
- Development of promotional publications

The listed activities will be implemented by a combination of internal and external resources as presented in the following table:

Specific activity/WP	Sub-activities	Internal or external resources	External services plan
Analysis of tourism providers	<ul style="list-style-type: none"> Preparation of questionnaire On-the-spot survey Analysis of results 	<ul style="list-style-type: none"> Analysis expert member of project team - OK Interviewers - not part of the budget - engagement of external services Analysis expert - OK 	<ul style="list-style-type: none"> Engagement of external services - company - to provide interviewers for on-the-spot survey
Creation of common brand	<ul style="list-style-type: none"> Development of brand, including graphical design and overall image 	<ul style="list-style-type: none"> No such expert available internally - engagement of external services necessary 	<ul style="list-style-type: none"> External services - company or physical person - to develop the brand - marketing expert
Establishment of tourism guide services	<ul style="list-style-type: none"> Engagement of experts - tourism guides Training and certification of tourism guides 	<ul style="list-style-type: none"> Tourism guides planned as short-term experts in the project team - OK External services required - only certified institutions able to deliver such services 	<ul style="list-style-type: none"> Engagement of a competent certified external institution to deliver services of training and certification of tourism guides
Development of promotional publications	<ul style="list-style-type: none"> Preparation of text and photos Translation into foreign languages Printing of materials 	<ul style="list-style-type: none"> Project manager and internal marketing expert competent and experienced to prepare photos and text - OK External translator required to ensure coherent translation External printing house required to print the materials 	<ul style="list-style-type: none"> Engagement of qualified external translator (possibly merging all the translation services within the project) Engagement of printing company to print the materials as required

Introduction of quality standards into SMEs

The objective of the project financed from cross-border cooperation grant scheme is improvement of performance and possibilities for cooperation between CB SMEs. The cooperation would be increased by joint introduction of quality standards (ISO 9010) into SMEs. The activities within the project will among other include:

- Motivation workshops with potential participant SMEs
- Initial training and joint workshops between SMEs from both sides of the border
- Selection of participants
- Development of quality standards and certification of selected SMEs

The listed activities will be implemented by a combination of internal and external resources as presented in the following table:

Specific activity/WP	Sub-activities	Internal or external resources	External services plan
Motivation workshops with potential participant SMEs	<ul style="list-style-type: none"> Organisation, logistics, invitations Implementation of workshops Analysis of conclusions 	<ul style="list-style-type: none"> Training coordinator, member of project team- OK Project manager & internal SME expert - OK Project manager & internal SME expert - OK 	<ul style="list-style-type: none"> Engagement of external services not necessary
Initial training and joint workshops	<ul style="list-style-type: none"> Initial preparatory training of SMEs Joint workshops with SMEs from the other side of the border 	<ul style="list-style-type: none"> Short term trainers, members of the project team - OK Short term trainers, members of the project team - OK Interpreter - external expert required 	<ul style="list-style-type: none"> Engagement of external interpreter required Renting of space and catering services required

Selection of participants	<ul style="list-style-type: none"> • Development of quality criteria • Selection of participants 	<ul style="list-style-type: none"> • In order to ensure transparent competition it is suggested that external experts - evaluation committee be invited to develop the criteria and select participants 	<ul style="list-style-type: none"> • Engagement of external experts - evaluation committee. Either one contract with company or several contracts with physical persons.
Development of quality standards and certification	<ul style="list-style-type: none"> • Analysis in selected companies • Development and upgrading of processes in companies • Certification 	<ul style="list-style-type: none"> • The activities can only be implemented by external certified institutions (in cooperation with SMEs' staff) 	<ul style="list-style-type: none"> • Engagement of qualified external certifying institution. Cooperation of the SMEs' staff assumed.

5.2. Procedures for Service contracts

5.2.1. On the basis of single tender (up-to 20.000€)

The tenders of 2.500 € and less can be awarded on the basis on an invoice, without prior acceptance.

For the tenders higher than 2.500 and up-to 20.000 € a single tender procedure must apply. The PRAG Manual does not precisely define the details for this type of the procedure, with the exception of providing a format of negotiation report.

For further guidance on this procedure the Manual provides proposal of the procedure to be used with suggestion on the formats. The description of the single procedures for all types of contracts is available in the Point 8.1. The templates of the documentation are available in the Annex TD1.

5.2.2. Competitive negotiated procedure (from 20.000 - 300.000€)

Tender documents:

- Tender dossier

In the competitive negotiated procedure for services the grant beneficiaries are allowed to use simplified tender documentation. According to the Financial Regulation, Article 190, the tender documentation should include at least the following:

- instructions to tenderers, which must include:
 - the type of contract;
 - the award criteria and their weightings;
 - the possibility of interviews and the timetable for them;
 - whether variants are permitted;
 - the proportion of sub-contracting which may be authorised;
 - the maximum budget available for the contract;
 - the currency of tenders;
- shortlist of candidates selected (mentioning the ban on association);
- general conditions for service contracts;
- specific conditions which amplify, supplement or derogate from the general conditions; terms of reference indicating the planned timetable for the project and dates from which it is planned that the principal experts must be available;
- price schedule (for completion by the tenderer);

- (g) tender form;
- (h) contract form;
- (i) if applicable, bank (or similar) guarantee forms for the payment of pre-financing.

On the basis of the above definitions this Manual provides example templates of simplified tender documentation for consideration and eventual use by the Programmes. The simplified templates for tender documentation for Service contracts are available in INTERACT IPA CBC Public procurement forum⁹. The standard PRAG templates for services (reports, grids etc.) can be downloaded from the web-site: <http://ec.europa.eu/europeaid/prag/annexes.do?group=B>

- Terms of reference

The Terms of reference (ToR) is the key document in the tender dossier for Service contracts. It describes all details of the assignment under questions. Required inputs include type and number of experts requested and any other (material) contributions. The expected outputs describe the results and outcomes of the contract. Both aspects should be covered in sufficient details to avoid problems during the implementation (non-delivery of services or results). The terms of reference document can be drafted on the basis of the standard document provided on the above mentioned EuropeAid web-page (see Annex B8).

- Special conditions

The **Special conditions** is the document defining specific provisions of contract. The document is supplementing the General conditions for service contracts. Unless the special conditions provide otherwise the General conditions remain fully in place.

Tip: The relation between General and Special conditions is very important from the perspective of the contracting authority in secondary procurement (grant beneficiary). Namely the definitions in the General conditions which is a standard PDF document might not always be in line with the beneficiary's needs. For example deliveries, payment schedules, obligations might be altered. The beneficiary should always check whether and how the provisions are defined in the General Conditions. Any changes need to be properly reflected in the Special conditions to have legally coherent documentation.

- Contract notice

The CA might decide to provide with the tender dossier a contract notice which would define the selection criteria and rules for submission. Further details on the contract notice are provided in the chapter for restricted tenders, point 5.2.3 below. When using a contract notice the CA should ensure that sufficient number of candidates, fulfilling selection criteria are invited.

Publication:

In case of competitive negotiated procedure no publication is done. The Grant Beneficiary in its role



⁹ Available only for representatives of programme bodies

as Contracting Authority **invites at least 3 tenderers** to submit offers.

Submission of tenders:

The invited tenderers are **normally** given minimum 30 days¹⁰ for submission of their offers.

Selection process:

The selection process in competitive negotiated procedure is based on comparison of received **offers**. The selection is based on **combination of price (20%) and technical quality (80%)**.

The **Evaluation Committee** consists of **odd number of voting members** (minimum 3), **non-voting secretary** and **non-voting president**.

Tip: Observers from programme structures (JTS/Antenna, MA) or other organisations could be invited to observe the evaluation process. This could be considered/recommended in case of large contracts, possible doubts in procedures, or in case of language problems e.g. when Evaluation committee has doubts about sufficient command of English language.

The Evaluation Committee members should be appointed by official nomination of the Grant Beneficiary in its role as Contracting Authority, based on their qualifications and skills (CVs should accompany the nomination). Each member must have a reasonable command of the language in which the applications are submitted. All members of the Evaluation Committee are obliged to sign a Declaration of Impartiality and Confidentiality (see Annex A4, under General annexes), available on the web page: <http://ec.europa.eu/europeaid/prag/annexes.do?group=A>

The steps in the selection process are as follows:

1. Receipt and registration of tenders

On receiving tenders, the Grant Beneficiary in its role as Contracting Authority must register them mentioning the date and time of reception and provide a receipt for those delivered by hand. The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened. The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

2. Opening of tenders

Opening procedure is implemented in line with the **check-list provided** (see Annex B9 on the website). The Evaluation Committee must decide whether or not tenders comply with the formal submission requirements at this stage. The Summary of tenders received, which is attached to the Tender Opening Report (see Annex B10 on the EuropeAid website) should be used to record the compliance of each of the tenders with the formal submission requirements.

NOTE: Only the tenders received within the deadline for submission are opened.

3. Checking of administrative compliance

The Evaluation Committee checks the compliance of tenders with the instructions given in the tender dossier and in particular the administrative compliance grid (see Annex B8l EuropeAid website). Any major formal errors or restrictions affecting performance of the contract or distorting competition result in the rejection of the tender concerned.

¹⁰ This is usual practice, number of days can be modified, giving enough time to tenderers to prepare proper offers or to correspond to national laws when necessary

Nationality of sub-contractors: the Evaluation Committee must check at this stage that the nationalities of any sub-contractors identified in the technical offers satisfy the Interreg-IPA CBC programme nationality rule.

For larger and complex tenders, the tenderers could be requested to provide proof documents for the key experts proposed. This can include copies of the diplomas mentioned in the CV and employers' certificates or references proving the professional experience indicated in the CV. If missing proofs are requested it should only be for the relevant experience and diplomas which are among the requirements in the Terms of Reference.

The administrative compliance grid included in the Tender Dossier must be used to record the administrative compliance of each of the tenders.

4. Technical evaluation

The Evaluation Committee then examines the technical offers; the financial offers must remain sealed at this stage. When evaluating technical offers, each member awards each offer a score out of a maximum 100 points in accordance with the technical evaluation grid laid down in the tender dossier. Under no circumstances may the evaluation grid be changed.

In practice, it is recommended that tenders be scored for a given criterion one after another, rather than scoring each tender for all criteria before moving on to the next. Where the content of a tender is incomplete or deviates substantially from one or more of the technical award criteria laid down in the tender dossier (e.g. the required profile of a certain expert), the tender should be automatically rejected, without being given a score, but this should be justified in the evaluation report.

For experts the scores should be given in comparison to the requirements stated in the Terms of Reference.

Each voting member of the Evaluation Committee completes an evaluation grid (see Annex B12) to record his/her assessment of each technical offer in order to establish a general appreciation of strengths and weaknesses of the individual technical offers.

On completion of the technical evaluation, the points awarded by each member are compared at the Committee's session. Besides the numerical score, a member must explain the reasons for his/her choice and defend his/her scores before the Committee.

The Evaluation Committee discusses each technical offer and each member awards it a final score. The Committee members may modify their individual evaluation grids as a result of the general discussion on the merits of each offer.

Once discussed, each Evaluation Committee member finalises his/her evaluation grid on each of the technical offers and signs it before handing it over to the Secretary of the Evaluation Committee. The Secretary must then compile a summary of the comments of the Committee members as part of the Evaluation Report.

In the case of major discrepancies, a full justification has to be provided by dissenting members during a meeting of the Evaluation Committee.

The Secretary calculates the aggregate final score, which is the arithmetical average of the individual final scores.

The Evaluation Committee might decide to implement interviews with proposed key experts to assess their competences, either by telephone or personally. *Depending on the type of service and the size of the contract this can be strongly recommended.*

Once the Evaluation Committee has established each technical offer's average score (the mathematical average of the final scores awarded by each voting member), any tender falling short of the 80-point threshold is automatically rejected. If no tender achieves 80 points or more, the tender procedure will be cancelled.

Out of the tenders reaching the 80-point threshold, the best technical offer is awarded 100 points. The others receive points calculated using the following formula:

Technical score = (final score of the technical offer in question/final score of the best technical offer) x 100.

	Maximum possible	Tenderer 1	Tenderer 2	Tenderer 3
Evaluator A	100	55	88	84
Evaluator B	100	60	84	82
Evaluator C	100	59	82	90
Total	300	174	254	256
Average score (mathematical average)		174/3= 58,00	254/3= 84,67	256/3= 85.33
Technical score (actual final score/highest final score)		Eliminated*	84.67/85.33 x 100 = 99.22	100.00

* Only tenderers with average score of at least 80 points qualify for the financial evaluation.

5. Financial evaluation

Upon completion of the technical evaluation, the envelopes containing the financial offers for tenders who were not eliminated during the technical evaluation (i.e., those which have achieved an average score of 80 points or more) are opened and all originals of these financial offers are initialled by the Chairperson and the Secretary of the Evaluation Committee.

The Evaluation Committee has to ensure that the financial offer satisfies all formal requirements. A financial offer not meeting these requirements may be rejected. Any rejection on these grounds will have to be fully justified in the Evaluation Report.

The Evaluation Committee checks that the financial offers contain no arithmetical errors. Any arithmetical errors are corrected without penalty to the tenderer. The envelopes containing the financial offers of rejected tenderers following the technical evaluation must remain unopened and retained. They must be archived by the Contracting Authority together with the other tender procedure documents.

In the case of fee-based contracts, the total contract value comprises the fees (including employment-related overheads), the incidental expenditure and the provision for expenditure verification, which are specified in the tender dossier. In the case of lump-sum contracts only total contract value is provided. The total contract value is compared with the maximum budget available for the contract. Tenders exceeding the maximum budget allocated for the contract are eliminated.

Tip: In cases when financial offers are required in local currency and the maximum available budget is indicated in EUR, the currency exchange differences could cause the tenderer's offer exceeding the indicated maximum budget (i.e. tenderer using. The beneficiaries are therefore recommended either to ask for financial offers in EUR or clearly indicate the calculation rate in the instructions to tenderers. A usual formulation would be "the maximum available budget for the contract is XXX EUR (calculated in Inforeuro rate for the month of publication of the tender)".

The Evaluation Committee then proceeds with the financial comparison of the fees between the different financial offers. The provision for incidental expenditure, as well as the provision for expenditure verification is excluded from the comparison of the financial offers as it was specified in the tender dossier. In case of lump-sum contract the total contract value is used as basis for financial evaluation.

The tender with the lowest total fees receives 100 points. The others are awarded points by means of the following formula:

Financial score = (lowest total fees / total fees of the tender being considered) x 100.

Specimen Tender Evaluation Summary:

Part 2: Financial Evaluation *

	Maximum possible	Tenderer 1	Tenderer 2	Tenderer 3
Total fees		Eliminated following technical evaluation	€ 951.322	€ 1.060.452
Financial score (lowest total fees/actual total fees x 100)			100	$951.322/1.060.452 \times 100 = 89.71$

* Only tenderers with average scores of at least 80 points in the technical evaluation qualify for the financial evaluation

6. Conclusions of the Evaluation Committee

The best value for money is established by weighing technical quality against price on an 80/20 basis. This is done by multiplying:

- the scores awarded to the technical offers by 0,80,
- the scores awarded to the financial offers by 0,20.

Specimen Tender Evaluation Summary:

Part 3: Composite Evaluation

	Maximum possible	Tenderer 1	Tenderer 2	Tenderer 3
Technical score x 0.80		Eliminated following technical evaluation	$99,22 \times 0.80 = 79.38$	$100.00 \times 0.80 = 80.00$
Financial score x 0.20			$100.00 \times 0.20 = 20.00$	$89.71 \times 0.20 = 17.94$
Overall score			$79.38 + 20.00 = 99.38$	$80.00 + 17.94 = 97.94$
Final ranking			1	2

As a result of its deliberations, the Evaluation Committee may make any of the following recommendations:

- Award the contract to the tenderer which has submitted a tender:
 - which complies with the formal requirements and the eligibility rules;
 - whose total budget is within the maximum budget available for the project;
 - which meets the minimum technical requirements specified in the tender dossier; and
 - which is the best value for money (satisfying all of the above conditions).
- Cancel the tender procedure in exceptional circumstances, such as:
 - none of the tenders satisfies the selection/award criteria of the tender procedure;
 - no tenders achieved the minimum threshold during the technical evaluation;
 - total price (comprising both the fees, the incidental expenditure and the provision for expenditure verification) of all tenders received exceed the maximum amount available for the contract.

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex B11) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee.

7. Notifications and signature of the contract

The successful and unsuccessful tenderers are informed on the results of the evaluation (see Annex B13). The successful tenderer is invited to the signature of the contract. Format of the contract is provided in the tender documents (and available at the above web-page - see annex B8: Draft Contract).

5.2.3. Restricted tenders (above 300.000€)

Tender documents:

In the case of the restricted tenders **full tender dossier needs to be prepared** (in the second step where short-listed tenderers are invited to submit the full proposal) .

The specific documentation related to services mentioned in the continuation of this point can be downloaded from the EuropeAid website.

Additional documentation which applies to the restricted procedure is:

- **Prior information notice.** The document setting out the specific characteristics of the planned tender procedure must be published, at least 30 days before the publication of the contract notice. The prior information notice must briefly state the subject, content and value of the contracts in question. The prior information notice is prepared using the PRAG template (EuropeAid web-site, Annex B1). The use of the prior information notice is optional unless the CA decides to shorten the standard deadlines for submission of offers.
- **Contract notice.** A minimum of 30 days after publication of the prior information notice, a contract notice must be published (EuropeAid web-site, Annex B2). The selection criteria identified in the Contract Notice must be:
 - clearly formulated,
 - easy to verify on the basis of information submitted (recommended use of the standard application form - see annex B3 on the EuropeAid web-site),
 - devised to allow a clear YES/NO assessment to be made as to whether or not the candidate satisfies a particular selection criterion,
 - possible to prove by the tenderer.

The criteria given in the templates are given by way of illustration and must be adapted to the nature, cost and complexity of the contract.

Publication:

In case of restricted procedures the prior information notice and the contract notice are published on the website of the organisation (Grant Beneficiary in its role as Contracting Authority), Official Journal of the EU and in national and international media. The prior information notice is published at least 30 days before the contract notice. The contract notice is published 30 days before the deadline for submission of express of interest.

Tip: Publication on EuropeAid website is optional

Submission of tenders:

The tendering procedure is implemented in two steps. In the first step the applicants submit the expression of interest, based on the standard format (see Annex B3 on EuropeAid web-page). ,

The applicants are given minimum 30 days from publication of the contract notice to submit their expression of interest

After forming the short-list (see below, Selection Process), the applicants are invited to the submission of the full application. They are sent full tender dossier and given minimum 50 days deadline to submit their offers.

Selection process:

In case of restricted procedure the selection process is implemented in two stages.

Following the publishing of procurement notice and receipt of expressions of interest, the first stage in the process is implemented.

The short-listing of candidates must be carried out by an Evaluation Committee appointed by the Grant Beneficiary in its role as Contracting Authority comprising a non-voting Chairperson, a non-voting Secretary and an odd number of voting members (minimum of three) possessing the technical and administrative capacities necessary to give an informed opinion on the applications. Each member must have a reasonable command of the language in which the applications are submitted. All members of the Evaluation Committee are obliged to sign a Declaration of Impartiality and Confidentiality (see Annex A4), available on the web page: <http://ec.europa.eu/europeaid/prag/annexes.do?group=A>

The selection procedure involves:

- establishing a long list (see template in Annex B4) summarising all the applications received;
- eliminating candidates who are ineligible
- applying the published selection criteria without modification

After examination of the responses to the procurement notice, the service providers offering the best guarantees for the satisfactory performance of the contract will be short-listed. The shortlist shall contain between four and eight candidates. If the number of eligible candidates meeting the selection criteria is greater than eight, the additional criteria published in the procurement notice will be applied in order to reduce the number of eligible candidates to eight.

If the number of eligible candidates meeting the selection criteria is less than the minimum of four, the Grant Beneficiary in its role as Contracting Authority may invite to submit a tender only those candidates who satisfy the criteria to submit a tender.

Tender documents will be sent to the short-listed candidates and they are invited to submit full proposals.

The second stage in the evaluation - evaluation of the received full proposals - is implemented under the same principles as within competitive negotiated procedures. Please refer to point 5.2.2., Selection process, for further details.

5.3. Common challenges

The Table 3 is presenting some practical challenges in managing and controlling the service contract procedures. The list is prepared following the procedural logic as presented above.

Table 3: Practical challenges in procurement of services

CHALLENGES	RECOMMENDATIONS
DOCUMENTS	
Poor quality of Terms of Reference - risk of failure of delivery. The ToR document needs to specify all the details of services required. If this is not the case, disagreement between the Contracting Authority and the contractor might arise	<ul style="list-style-type: none"> - The Contracting Authority should specify all details of the services expected. Particular attention should be put on the inputs required and results expected. - The ToR documents could be checked with independent expert to get second opinion

and the latter might refuse to deliver all services expected.	on the matter.
Restrictive conditions. The ToR could contain restrictive conditions, formulations that could limit fair competition. Restrictive conditions are largely manifested through description of requirements for key experts. References to very narrow qualifications or specific skills are such examples.	- ToR document needs to be closely checked, particularly in the part of expert's requirements. The formulations should be specific enough to maximise the contract impact but should not be restrictive. Reference to very specific and narrow experiences or qualifications should be avoided.
Splitting of contracts. In order to avoid application of competitive negotiated or open procedure, the grant beneficiaries might decide to split contracts into several parts. Splitting of contracts containing the services of similar nature is not allowed.	- The beneficiary's procurement plan should be carefully checked by project/programme managers in MA, JTSs/Antenna. Services of similar nature should be tendered under one procedure. A formulation of "similar nature" is normally services which can be provided by one contractor.
Inconsistency between documents. Specific documents in the tendering documentation are closely connected. The definitions should be consistent. For example the duration of the contract should correspond to the ToR. Specific attention should be dedicated to relation between General and Special conditions.	- The tender documentation should be cross-checked, in particular terms of reference with other documents - contract and special conditions. - The provisions of the GC should be cross-checked before the publication and amended/regulated in the Special conditions if necessary.
SELECTION PROCESS	
Lack of sufficient number of quality /compliant offers. The Contracting Authority might face challenges of not receiving sufficient number of quality or compliant offer. Such situation could be caused by one of the following reasons: lack of capacity of invited tenderers, too restrictive provisions of the requested services, limited publication of tender.	- The Contracting Authority should organise support and advice to tenderers in the process. Clarification meetings are recommended in complex tenders. The Contracting Authority should establish list of frequently asked questions (FAQ) and submit it to all tenderers. - The Contracting Authority should make sure that the tenders are not too restrictive (see above). - The Contracting Authority should ensure wide publication of the tender (in case of open procedures). In case of competitive negotiated procedure a larger number of potential tenderers than minimum requested (3) could be invited.
Tender price. In case of service contracts this challenge is important from the perspective of the managing bodies. The grant beneficiaries might deliberately or non-deliberately overestimate the value of services.	- The programme management bodies should carefully estimate the level of expected inputs/outputs and proposed maximum amount available for the contract, either when project proposals are evaluated or when grant beneficiary

	<p>submits its procurement plan.</p> <ul style="list-style-type: none"> - Inputs and outputs should be compared to market standard prices (for instance expert prices on the side of inputs and prices of studies or similar on the side of outputs). - An independent expert could be invited to participate in review of tender documents.
IMPLEMENTING PROVISIONS	
<p>Replacement of experts. The contractor might decide to propose replacement of experts (shortly) after the signature of the contract.</p>	<ul style="list-style-type: none"> - Replacement of experts should only be allowed in exceptional cases. Addendum to the contract needs to be prepared (see point 4.6.). - The replaced experts should be in line with the requirements from the ToR and should at least match if not exceed qualifications and skills of original experts.
<p>Financial guarantees. In case of larger and more complex service contracts certain financial risks exists for the Contracting Authority. In case of failure of delivery the Contracting Authority might face the challenge of retrieving pre-paid funds.</p>	<ul style="list-style-type: none"> - The Contracting Authority should adopt the payment schedule to the complexity and size of contract. - In case of significant pre-payments a financial guarantee could be requested from the contractor.

SUPPLY CONTRACTS

6.1. What is a Supply contract?

Supply contracts cover the purchase, leasing, rental or hire purchase (with or without option to buy) of products. A contract for the supply of products and, incidentally, for sitting and installation shall be considered a supply contract.

Specific provisions and challenges in purchasing supplies are **depending on type and scope of equipment**. Equipment could be divided into two general categories. First category includes less complex equipment which is frequently purchased within the EC co-financed contracts, for instance: computer equipment, vehicles, audio-visual equipment. The second category is a wide range of complex professional equipment, for instance: laboratory equipment, meteorological sensors, nuclear safety equipment or similar.

Unlike in the case of services the equipment purchases are practically always requiring engagement of external resources/purchase.

Mixed contracts

A procurement contract could contain elements of several different types of contract. A common example is a supply contract containing elements of service contract. A concrete example is purchase of computer or specialist equipment, where a supply contract would include services of installation and possibly training of operators

Possible practical examples of supply procedures in the context of grant contract can include the following:

Support to cross-border emergency services

The objective of the project is strengthening of cross border emergency services, by coordinating work and building capacities of emergency services at both sides of the border. The project activities among other include the following:

- Strengthening the emergency services by purchase of specialist vehicles and equipment
- Establishment of joint information system
- Building physical base of equipment in response to emergency situations

Specific activity/WP	Sub-activities	Type of equipment needed	Comments and connections
Strengthening by purchase of vehicles and equipment	<ul style="list-style-type: none"> • Purchase of personal protection equipment • Purchase of specialist tools and equipment • Purchase of vehicles 	<ul style="list-style-type: none"> • Tender for purchase of personal equipment • Tender for purchase of specialist tools • Tender for purchase of vehicles 	<ul style="list-style-type: none"> • To be checked whether one or more tenders are to be published - in case when one supplier can provide all equipment, one tender, 1 lot. One tender with several lots could also be published.
Establishment of joint information system	<ul style="list-style-type: none"> • Purchase of computers and server • Purchase of software • Connecting computers into network • Training of information operators 	<ul style="list-style-type: none"> • Tender for purchase of computers and equipment • Tender for purchase of software • Installation to be included in the supply tender • Training to be included in the supply tender 	<ul style="list-style-type: none"> • It is assumed that one tenderer can deliver computers, server and software - 1 tender, 1 lot. • The installation and supply can be included in the supply tender - mixed contract
Building physical base of equipment for emergency situation	<ul style="list-style-type: none"> • Purchase of first aid kits and medical equipment • Purchase of mobile tents, generator and beds • Purchase of mobile kitchen 	<ul style="list-style-type: none"> • Tender for purchase of medical equipment and first aid kits • Tender for purchase of mobile tents, generator and beds • Tender for purchase of mobile kitchen 	<ul style="list-style-type: none"> • Assumed that the first aid and medical would be a separate tender or separate lot in one tender • It is assumed that one supplier can provide tents, generator, beds and mobile kitchen - to be checked

Establishing mobile environmental supervisory unit

The objective of the project is improvement of sustainable environment planning in the cross-border region. The project will above all focus on checking the quality of water flows in the cross-border region and impact of agriculture and waste disposal on water resources. The project activities among other include the following:

- Establishment of mobile laboratory
- Regular collection and analysis of samples
- Establishment and maintenance of database of water markers

Specific activity/WP	Sub-activities	Type of equipment needed	Comments and connections
Establishment of mobile laboratory	<ul style="list-style-type: none"> • Purchase of personal protection equipment • Purchase of specialist tools and equipment • Purchase of vehicles 	<ul style="list-style-type: none"> • Tender for purchase of personal equipment • Tender for purchase of specialist tools • Tender for purchase of vehicles 	<ul style="list-style-type: none"> • To be checked whether one or more tenders are to be published - in case when one supplier can provide all equipment, one tender, 1 lot. One tender with several lots could also be published.
Regular collection and analysis of samples	<ul style="list-style-type: none"> • Establishing methodology and time-frame • Collection of samples • Storing of samples 	<ul style="list-style-type: none"> • Tender for purchase of supplies - chemicals to be used in collection and storage process 	<ul style="list-style-type: none"> • Assumed one tender for supply of chemicals
Establishment and maintenance of database	<ul style="list-style-type: none"> • Establishment of database • Regular entries of data 	<ul style="list-style-type: none"> • Purchase of physical equipment - computers to maintain the database • Purchase of database software • Training of staff on the use of database software 	<ul style="list-style-type: none"> • Assumed one tender for supply of computers and software. Service component of training on the use of database software included

6.2. Procedures

6.2.1. On the basis of single tender (up-to 20.000€)

The tenders of 2.500 € and less can be awarded on the basis on an invoice, without prior acceptance.

For the tenders higher than 2.500 and up-to 20.000 € a single tender procedure must apply. The PRAG Manual does not precisely define the details for this type of the procedure, with the exception of providing a format of negotiation report.

For further guidance on this procedure the Manual provides proposal of the procedure to be used with suggestion on the formats. The description of the single procedures for all types of contracts is available in the Point 8.1. The templates of the documentation are available in the Annex TD1.

6.2.2. Competitive negotiated procedure (from 20.000 - 100.000€)

Tender documents:

- Tender dossier

In the competitive negotiated procedure for supplies the grant beneficiaries are allowed to use simplified tender documentation. According to the Financial Regulation, Article 190, the tender documentation should include at least the following:

- instructions to tenderers, which must include:
 - the selection and award criteria;
 - whether variants are authorised;
 - the currency of tenders;

- (b) general conditions for supply contracts;
- (c) specific conditions which amplify, supplement or derogate from the general conditions;
- (d) technical annex containing any plans, technical specifications and the planned timetable for performance of the contract;
- (e) price schedule (for completion by the tenderer) and the breakdown of prices;
- (f) tender form;
- (g) contract form;
- (h) if applicable, bank (or similar) guarantee forms for:
 - (i) the tender;
 - (ii) payment of pre-financing;
 - (iii) proper performance.

On the basis of the above definitions this Manual provides example templates of simplified tender documentation for consideration and eventual use by the Programmes. The simplified templates for tender documentation for supply contracts is available in INTERACT IPA Public procurement forum. The standard PRAG templates for supply (reports, grids etc.) can be downloaded from the EuropeAid web-site: <http://ec.europa.eu/europeaid/prag/annexes.do?group=C>

- **Technical specifications**

The **technical specification** is the **key document** in the supply tender dossier. It describes all details of the equipment to be supplied. The expected outputs should precisely describe the number and specifics of the equipment to avoid potential non-delivery. The technical specifications should be drafted on the basis of the standard document provided on the above web-page (see Annex C4).

Tip: Technical specifications do not only provide detailed specifications on the equipment to be supplied but also elaborate other important elements of the supply. Such additional information could include presentation of existing space outlay, electrical wiring, other installations, especially in the cases where installation is required. The Technical specifications would also elaborate on necessary maintenance conditions, training to be provided with the supply, delivery and installation.

- **Special conditions**

The special conditions amplify and supplement, if necessary, the General conditions governing the Contract. Unless the Special Conditions provide otherwise, those General Conditions remain fully applicable. Specific attention should be given to coherence between General and Special conditions. Any specific provisions (different as the GC) related, for example to payment schedules, deliveries etc. should be properly reflected in the Special conditions.

- **Contract notice**

The CA might decide to provide with the tender dossier a contract notice which would define the selection criteria and rules for submission. Further details on the contract notice are provided in the chapter for local open procedure, point 6.2.3 below. When using a contract notice the CA should ensure that sufficient number of candidates, fulfilling selection criteria are invited.

Publication:

In case of competitive negotiated procedure, no publication is done. The Grant Beneficiary in its role as Contracting Authority **invites at least 3 tenderers** to submission of offers.

Submission of tenders:

The invited tenderers are given minimum 30 days for submission of their offers.

Selection process:

The award criterion for selection in the competitive negotiated procedure is the lowest price of technically compliant offers.

The **Evaluation Committee** consists of **odd number of voting members** (minimum 3), non-voting secretary and non-voting president. *Observers from the programme structures (JTS/Antenna, MA) or other organisations could be invited to the process.* The Evaluation Committee members should be appointed by **official nomination** of the Grant Beneficiary in its role as Contracting Authority, **based on their qualifications and skills** (CVs should accompany the nomination). Each member must have a **reasonable command of the language in which the applications are submitted**. All members of the Evaluation Committee are obliged to sign a Declaration of Impartiality and Confidentiality (see Annex A4 available at web-page: <http://ec.europa.eu/europeaid/prag/annexes.do?group=A>)

The selection process is based on the documents provided in the web-page: <http://ec.europa.eu/europeaid/prag/annexes.do?group=C>

The steps in the selection process are as follows:

1. Receipt and registration of tenders

On receiving tenders, the Grant Beneficiary in its role as Contracting Authority must register them mentioning the date and time of reception and provide a receipt for those delivered by hand. The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened. The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

2. Preparatory meeting

First meeting of the Evaluation Committee to be held before the tender opening session. The tender dossier should have been distributed in advance to the members of the Evaluation Committee. The Chairperson presents the purpose of the tender, the procedures to be followed by the Evaluation Committee including the evaluation grid and selection and award criteria specified in the tender dossier.

3. Tender opening session

The purpose of the tender-opening session is to check that the tenders are complete, that the requisite tender guarantee has been provided and that the tenders are generally in order. The tender opening session is a formal, public process. The Evaluation Committee opens the tenders in public at the place and time fixed in the tender dossier. Although it is public, participation in the tender opening session is restricted to representatives of the companies which are tendering for the contract. See tender opening checklist in Annex C5 for the detailed formalities to be carried out by the Chairperson with the assistance of the Secretary.

The Chairperson must check that no member of the Evaluation Committee has a potential conflict of interest with any of the tenderers (on the basis of the tenders received, consortium members and any identified subcontractor).

Note: Only tenders received before the deadline for submission can be opened.

The Evaluation Committee must decide whether or not tenders comply with the formal requirements. The Summary of tenders received, which is attached to the Tender Opening Report (see Annex C6) must be used to record the compliance of each of the tenders with the formal submission requirements. The minutes of this meeting are included in the Tender Opening Report and this must be made available to the tenderers on request.

4. Evaluation of technical offers

It is obligatory that the Evaluation Committee uses the administrative compliance grid and the evaluation grid published in the tender dossier. As part of the technical evaluation, the Evaluation Committee analyses the commercial aspects and, where applicable, the service component of the tenders to determine whether they satisfy the requirements set in the tender dossier. The results are recorded in a YES/NO grid for all elements specified in the tender dossier. No scoring method should be used. If the tender is divided into lots, the evaluation should be carried out lot-by-lot.

With the agreement of the other Evaluation Committee members, the Chairperson may communicate in writing with tenderers whose submissions require clarification, offering them the possibility to respond within a reasonable time limit to be fixed by the Committee.

Part 1: Administrative compliance

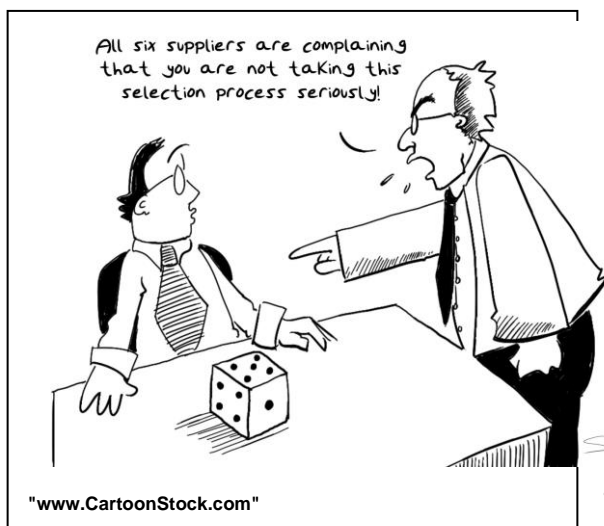
Before conducting a detailed evaluation of the tenders, the Evaluation Committee checks that they comply with the essential requirements of the tender dossier (i.e. the administrative compliance grid).

A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them. Substantial departures or restrictions are those which affect the scope, quality or performance of the contract, differ widely from the terms of the tender dossier, limit the rights of the Contracting Authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply.

Each offer is examined for compliance with the tender dossier, in particular that:

- the documentation is complete
- the language required by the tender dossier has been used

The administrative compliance of each of the tenders must be recorded in the Evaluation Report (see Annex C7).



Part 2: Technical compliance of tenders

The detailed technical evaluation of the tenders takes place after the administrative compliance check. The criteria to be applied are those published in the tender dossier and, accordingly, the evaluation grid included in the tender dossier must be used. Under no circumstances may the Evaluation Committee or its members change the evaluation grid communicated to the tenderers in the tender dossier.

The purpose of this evaluation is to assess whether or not the competing tenders meet the selection criteria and the minimum technical requirements.

Rule of origin: All tenders must satisfy the rule that the goods to be supplied fulfil the requirements of the Interreg - IPA CBC programmes. In case of any doubt as to the origin of goods,

additional information must be requested. The tenderer will be required to provide, if possible prior to the signature of the contract, proof of origin in the form of a Certificate of Origin or other official documentation. To establish origin, one must determine where the product in question has been obtained or produced according to the rules of the Programme and relevant Regulation.

However it should be noted that CIR provides global derogation from the rule of origin (See Point 3.1 for details). The global derogation does not apply to IPA I.

Tenders which clearly fail to satisfy the rule of origin must be rejected.

Tip: Having in mind that this kind of proof bears additional costs, and, having in mind differences between national laws and IPA procurement rules for external actions regarding origin of goods, the MA may use own discretion to ask for certificated whenever deemed necessary. The project beneficiaries should be informed of the approach in advance.

Nationality of sub-contractors: The Evaluation Committee must check at this stage that the nationalities of any sub-contractors identified in the technical offers satisfies the nationality rule of the Interreg - IPA CBC programme.

Having evaluated the tenders, the Evaluation Committee rules on the technical compliance of each tender, classifying it as technically compliant or not technically compliant. Where contracts include after-sales service and/or training, the technical quality of such services is also assessed during the technical evaluation in accordance with the published criteria.

5. Evaluation of financial offers

Once the technical evaluation has been completed, the Evaluation Committee checks that the financial offers contain no arithmetical errors. Any arithmetical errors are corrected without penalty to the tenderer.

If the tender is in one lot, the cheapest technically compliant offer is awarded contract.

If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot, taking into consideration any eventual discounts granted by the tenderers.

Specimen of application of discounts:

Company A offers a discount of 20% if awarded Lots 1 and 3, Company B offers a discount of 10% if awarded all three Lots, Company C offers NO discount

	Company A	Company B	Company C	Ranking without discount
LOT 1	90	80	70	Company C
LOT 2	Not bidding	40	50	Company B
LOT 3	60	70	55	Company C

After applying the discount:

	Company A (20% discount)	Company B (10% discount)	Company C (no discount)
LOT 1	72	72	70
LOT 2	Not bidding	36	50
LOT 3	48	63	55

The 3 combinations possible:

Combination 1: $72 + 40 + 48 = 160$

Combination 2: $72 + 36 + 63 = 171$

Combination 3: $70 + 50 + 55$, but since for Lot 2 there is a cheaper price offered, the sum becomes: $70 + 40 + 55 = 165$

The Contracting Authority must choose combination 1, awarding contracts for Lots 1 and 3 to company A and Lot 2 to company B for the initial price offered.

6. Choice of contractor

The successful tenderer is the one submitting the least expensive tender classified as "technically compliant" during the technical evaluation. It must be declared the successful tender if it is equal to or lower than the maximum budget available for the contract. If the chosen tender exceeds the maximum budget available for the contract, the Contracting Authority might enter into negotiations with one or more tenderers. If agreement cannot be achieved the tender procedure will be cancelled.

In the case of abnormally low tenders, the Evaluation Committee must request any relevant information concerning the composition of the tender. If, for a given contract, tenders appear to be abnormally low, the Contracting Authority must, before rejecting such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and verify those constituent elements, after due hearing of the parties, taking account of the explanations received.

The justification for accepting or rejecting an abnormally low offer must be recorded in the Evaluation Report.

7. Conclusions of the Evaluation Committee

As a result of its deliberations, the Evaluation Committee may make any of the following recommendations:

- Award the contract to the tenderer which has submitted a tender:
 - which complies with the formal requirements and the eligibility rules;
 - whose total budget is within the maximum budget available for the project;
 - which meets the minimum technical requirements specified in the tender dossier; and
 - which is the least expensive tender (satisfying all of the above conditions).
- Cancel the tender procedure, for example when:
 - none of the tenders satisfies the selection/award criteria of the tender procedure;
 - all tenders received exceed the maximum budget available for the contract.

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex C7) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee.

8. Notifications and signature of the contract

The successful and unsuccessful tenderers are informed on the results of the evaluation (format available at the above web-page). The successful tenderer is invited to the signature of the contract. Format of the contract is provided in the tender documents and available at the above web-page (see Annex C4: Draft Contract).

6.2.3. Local open procedure (from 100.000 - 300.000€)

Tender documents:

In case of local open procedure the full tender documentation needs to be prepared. The formats for tender documentation are available in the EuropeAid web-site: <http://ec.europa.eu/europeaid/prag/annexes.do?group=C>

Additional practical recommendations related to the tender documents are presented in the point 6.2.1., Tender documents, of this document.

In addition to the full tender dossier the Contracting Authority is required to prepare:

- **Contract notice (Annex C2).** The Contract notice elaborates the conditions of the contract and

invites the tenderers to submit their offers. The contract notice must provide would-be suppliers with the information they need to determine their capacity to fulfil the contract in question. The Contract notice is published locally.

Tip: Publication on EuropeAid website is optional

The tender dossier for the contract in question is published on the website of the Grant Beneficiary in its role as Contracting Authority; it must also be sent to would-be suppliers upon request.

Publication:

In case of local open procedures the Contract notice is published on website of the organisation (Grant Beneficiary in its role as Contracting Authority) and in national media¹¹.

Submission of tenders:

The tenderers are given minimum 30 days from publication of procurement notice for submission of their offers.

Selection process:

The selection process in the local open procedure is implemented under the same principles as in the competitive negotiated procedure. Please refer to the point 6.2.2., Selection process.

6.2.4. International open procedure (above 300.000€)

Tender documents:

The tender documents are corresponding to the ones recommended for the open local procedure (full tender dossier and the Contract notice).

Please refer to the point 6.2.3., Tender documents for further details.

In addition to the above the Contracting Authority is required to prepare and publish:

- **Prior information notice (Annex C1).** The document is setting out the specific characteristics of the planned procedure. It is not binding the Contracting Authority to finance the contract. The Prior information notice is published at least 30 days before publication of the Contract Notice.). The use of the prior information notice is optional unless the CA decides to shorten the standard deadlines for submission of offers.

*In case of international open procedure the tender dossier may be made available at EuropeAid website and it must be sent to would-be suppliers upon request. **English notices of Local Open and International tenders should be forwarded to the European Commission (EuropeAid) to e-mail address EuropeAid-IPAPUB@ec.europa.eu. The European Commission (EuropeAid) is responsible for the publication of the notices of international tenders in the Official Journal of the European Union.***

Publication:

In case of international open procedures, the Prior information notice (optional) and the Contract notice are published on web page of the organisation (Project Beneficiary in its role as Contracting Authority), Official Journal of the EC and in national and international media¹².

¹¹Reference can be published on the EuropeAid website if wished.

¹²Provisionally also on EuropeAid website

Submission of tenders:

The tenderers are given minimum 60 days from publication of procurement notice for submission of their offers.

Selection process:

The selection process in the international open procedure is implemented under the same principles as in the local open procedure. Please refer to the point 6.2.3., Selection process.

6.3. Common challenges

The Table 4 is presenting some practical challenges in managing and monitoring the supply contract procedures. The list is prepared following the procedural logic as presented above.

Table 4: Practical challenges in procurement of supplies

CHALLENGES	RECOMMENDATIONS
DOCUMENTS	
Poor quality of technical specifications - risk of failure of delivery. If poorly prepared, the technical specifications could result in failure of delivery of planned supplies. In case of misunderstanding between the Contracting Authority and the contractor the latter might refuse delivery of expected quantities of qualities.	<ul style="list-style-type: none"> - The Contracting Authority should dedicate particular attention to preparation of technical specifications. They need to be detailed enough in describing quantities and exact specifications of goods required. - In order to avoid delivery of out-of-date goods the Contracting Authority needs to be particularly careful in formulation of specifications for computer and electronic goods. - An independent technical expert could be consulted in the process.
Restrictive conditions. By introducing too restrictive conditions the Contracting Authority might limit the competition.	<ul style="list-style-type: none"> - Specific attention needs to be dedicated to technical specifications to avoid restrictive conditions and limitation of competition. Any mentioning of specific brand or producer is strictly forbidden. - The managing bodies could consult an independent technical expert in the process.
Splitting of contracts. In order to avoid application of competitive negotiated or open procedure, the grant beneficiaries might decide to split contracts into several parts. Splitting of contracts containing the	<ul style="list-style-type: none"> - The beneficiary's procurement plan should be carefully checked by project/programme managers in MA, JTSs/Antennae. Supplies of similar nature should be tendered under one procedure. A formulation of "similar

supplies of similar nature is not allowed.	nature'' is normally supplies which can be provided by one contractor (for instance computer equipment, furniture, laboratory equipment etc.).
<p>Consistency between documents. The tender documents are closely connected, in some cases same types of information provided in several of them. Inconsistency in information, for example different delivery provisions mentioned in the special conditions and technical specifications, could confuse the tenderers or even jeopardise the procedure. Particular attention should be dedicated to definition in the Special conditions. Any specific case of changing provisions of the General conditions should be properly reflected</p>	<ul style="list-style-type: none"> - Before publication the specific documents in the tender dossier need to be cross-checked with other documents. This is particularly important for Specific conditions and Technical specifications. - Cross-checking of General and Specific conditions to ensure that any amendment of the standard provisions in the GC is properly reflected.
SELECTION PROCESS	
<p>Lack of sufficient number of quality /compliant offers. The Contracting Authority might face challenges of not receiving sufficient number of quality or compliant offer. Such situation could be caused by one of the following reasons: lack of capacity of invited tenderers, to restrictive provisions of the requested supplies, limited publication of tender.</p>	<ul style="list-style-type: none"> - The Contracting Authority should organise support and advice to tenderers in the process. Clarification meetings are recommended in complex tenders. The Contracting Authority should establish list of frequently asked questions (FAQ) and submit it to all tenderers. - The Contracting Authority should make sure that the tenders are not too restrictive (see above). - The Contracting Authority should ensure wide publication of the tender (in case of open procedures). In case of competitive negotiated procedure a larger number of potential tenderers than minimum requested (3) could be invited.
<p>Tender price. The challenge is firstly important from the perspective of the managing bodies. The grant beneficiaries might deliberately or non-deliberately overestimate the value of supplies. Secondly the challenge is important from the perspective of grant beneficiaries, Contracting Authority in the process. The invited or participating tenderers might deliberately or non-deliberately offer the</p>	<ul style="list-style-type: none"> - The programme management bodies should carefully check the expected outputs of the contract against the price, where applicable. - Comparison of unit-prices with market standards should be implemented. - An independent expert could be consulted in the process.

prices exceeding the market standards.	<ul style="list-style-type: none"> - The Contracting Authority should prior to publication of the tender estimate the contract price. In case of significant deviations from the expected price, negotiations with one or more tenderers could be implemented or the procedure should be cancelled.
IMPLEMENTING PROVISIONS	
Quality of goods delivered. The contractor might fail to deliver goods in quality stipulated in by the technical specifications.	<ul style="list-style-type: none"> - The Contracting Authority should carefully check the supplies upon delivery. The specifications of the supplies need to exactly match those from the technical specifications of the TD. - The Managing Authority might require certificate of acceptance with the financial documentation. - In addition to that the MA might decided to implement sample on-the-spot checks of the equipment procured within the grant financed projects.
Delivery deadlines. The contractor might fail to deliver goods in time proposed by their offer. Such delays can have negative impact at the overall grant financed project.	<ul style="list-style-type: none"> - The Contracting Authority should plan penalties for late delivery in the tender documentations.
Guarantees and post-sales services. The contractor might fail to deliver post sales service, any other services related to supply contract (for instance installation or training) or fail to realise guarantee in case of failures of goods.	<ul style="list-style-type: none"> - The Contracting Authority should carefully plan not only the specifications of goods but also any services related to the goods. These include accompanying services such as installation or training and usual post-sales services. - Required guarantees, spare parts or similar should be precisely described in the tender documentation. - The Contracting Authority should plan penalties in case of failure of delivery of services or guarantees.
Origin of supplies. The contractor might fail to deliver certificate of origin for	<ul style="list-style-type: none"> - Failure to deliver certificate of origin will result in ineligible costs. The Contracting

supplied goods.	<p>Authority should make sure that the certificate is supplied before the final acceptance of goods is made.</p> <p>- The CA could check in advance before publishing the tender, whether it is realistic to expect the proper origin for the supplies procured.</p>
<p>Financial guarantees. In case of larger and more complex supply contracts certain financial risk exists for the Contracting Authority. In case of failure of delivery the Contracting Authority might face the challenge of retrieving pre-paid funds.</p>	<p>- The Contracting Authority should adopt the payment schedule to the complexity and size of contract.</p> <p>- In case of significant pre-payments a financial guarantee should be requested from the contractor.</p>

WORKS CONTRACTS

7.1. What is a Works contract?

Works contracts cover either the **execution**, or **both the execution and design**, of works or a work related to one of the following activities:¹³

- Building site preparation,
- Building of complete constructions or parts thereof; civil engineering,
- Building installation,
- Building completion,
- Renting of construction and demolition equipment (normally forming a part of the overall works contract).

A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.

Practical examples of works procedures in the context of grant contract can be as following:

Cross-border flood protection project

The objective of the project is to improve flood protection in the cross-border region between two countries. The project is above all aimed at strengthening the protection embankments and draining channels. The activities implemented in the project will among other include:

- Building the protection embankments and draining channel.

¹³ Taken from Directive 2004/18/EC Annex 1

Specific activity/WP	Sub-activities	Type of works needed	Comments and connections
Building embankments and draining channel	<ul style="list-style-type: none"> • Implementation of works (it is assumed that the project documentation is fully available) • Works supervision 	<ul style="list-style-type: none"> • Works tender for implementation of works • Separate service tender 	<ul style="list-style-type: none"> • One works tender. It is assumed that one provider can implement the works on the embankment and draining channel.

Construction of cross-border bicycle track

The objective of the project is to increase tourist attractiveness of the cross-border region by building recreational facilities - bicycle track. The activities will among other include:

- Building the cycle track.

Specific activity/WP	Sub-activities	Type of works needed	Comments and connections
Building the cycling track	<ul style="list-style-type: none"> • Implementation of works (it is assumed that the project documentation is fully available) • Works supervision 	<ul style="list-style-type: none"> • Works tender for implementation of works • Separate service tender 	<ul style="list-style-type: none"> • One works tender for building the cycle track.

7.2. Procedures

7.2.1. On the basis of single tender (up-to 20.000€)

The tenders of 2.500 € and less can be awarded on the basis on an invoice, without prior acceptance.

For the tenders higher than 2.500 and up-to 20.000 € a single tender procedure must apply. The PRAG Manual does not precisely define the details for this type of the procedure, with the exception of providing a format of negotiation report.

For further guidance on this procedure the Manual provides proposal of the procedure to be used with suggestion on the formats. The description of the single procedures for all types of contracts is available in the Point 8.1. The templates of the documentation are available in the Annex TD1.

7.2.2. Competitive negotiated procedure (from 20.000 - 300.000€)

Documents:

The Contracting Authority is required to use complete tender documentation in the competitive negotiated procedure. The templates of the documents to be included in the tender dossiers are available at the EuropeAid web-page:<http://ec.europa.eu/europeaid/prag/annexes.do?group=D>

The Contracting Authority is required to prepare **Contract Notice**, though the document is published but only included in the tender documentation as it contains important information for those firms which are invited to tender.

Technical specifications:

As with the ToR for service contracts, particular care must be taken when drafting the technical specifications. They are the key to successful procurement, a sound works contract and a successful project.

Technical specifications state - where applicable, lot by lot - the exact nature and performance characteristics of the works. Where applicable, they also specify conditions for delivery and installation, training and after-sales service.

It is essential that the performance characteristics suit the intended purpose. If there needs to be an information meeting or a site visit to clarify technical requirements at the site where the works are to be carried out, this should be specified in the instructions to tenderers, together with details of the arrangements.

The purpose of the technical specifications is to define the required works precisely. The minimum quality standards, defined by the technical specifications, will enable the evaluation committee to determine which tenders are technically compliant.

Publication:

In case of competitive negotiated procedure no publication is done. The Contracting Authority **invites at least 3 tenderers** to submission of tenders.

Submission of tenders:

The invited tenderers are given minimum 30 days for submission of their tenders.

Selection process:

The award criterion for selection in the competitive negotiated procedure is **the lowest price of technically compliant offers**.



The Evaluation Committee consists of **odd number of voting members (minimum 5)**, non-voting secretary and non-voting president. Observers from the programme authorities (JTS/Antenna, MA) or other organisations could be invited to the process. The **Committee members** should be appointed by official nomination of the Contracting Authority, **based on their qualifications and skills** (CVs should accompany the nomination). Each member must have a **reasonable command of the language in which the applications are submitted**. All members of the Evaluation Committee are obliged to sign a Declaration of Impartiality and Confidentiality (see Annex A4), available at web page: <http://ec.europa.eu/europeaid/prag/annexes.do?group=A>

The selection process is based on the documents provided in the web-page: <http://ec.europa.eu/europeaid/prag/annexes.do?group=D>

The steps in the selection process are as follows:

1. Receipt and registration of tender

On receiving tenders, the Grant Beneficiary (in its role as Contracting Authority) must register them mentioning the date and time of reception and provide a receipt for those delivered by hand. The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened. The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

2. Preparatory meeting

The first meeting of Evaluation Committee to be held before the tender opening session. The tender dossier should have been distributed in advance to the members of the Evaluation Committee. The Chairperson presents the purpose of the tender and explains the procedures to be followed by the Evaluation Committee including evaluation grids, selection and award criteria specified in the tender dossier.

3. Tender opening session

The purpose of the tender-opening session is to check that the tenders are complete, that the requisite tender guarantee has been provided and that the tenders are generally in order. The tender opening session is a formal, public process. The Evaluation Committee opens the tenders in public at the place and time fixed in the tender dossier. Although it is public, participation in the tender opening session is restricted to representatives of the companies which are tendering for the contract.

Note: Only the tenders received by the deadline for submission of tenders can be opened!

See tender opening checklist in Annex D5 for the detailed formalities to be carried out by the Chairperson with the assistance of the Secretary.

The Chairperson must check that no member of the Evaluation Committee has a potential conflict of interest with any of the tenderers (on the basis of the eventual shortlist, the tenders received, consortium members and any identified subcontractor).

The Evaluation Committee must decide whether or not tenders comply with the formal requirements. The Summary of tenders received, which is attached to the Tender Opening Report (see Annex D6) must be used to record the compliance of each of the tenders with the formal submission requirements. It must be made available to the tenderers upon request. Eventual tender guarantees must be returned to the tenderers. This implies that any tenders which arrive after the submission deadline must also be opened (after the opening session) so that the guarantees can be returned.

4. Evaluation of offers

It is obligatory that the Evaluation Committee uses the administrative compliance grid and the evaluation grid published in the tender dossier.

As part of the technical evaluation, the Evaluation Committee analyses the commercial aspects, and, where applicable, the service component of the tenders to determine whether they satisfy the requirements set in the tender dossier. The results are recorded in a YES/NO grid for all elements specified in the tender dossier. No scoring method should be used. If the tender is divided into lots, the evaluation should be carried out lot-by-lot. With the agreement of the other Evaluation Committee members, the Chairperson may communicate in writing with tenderers whose submissions require clarification, offering them the possibility to respond within a reasonable time limit to be fixed by the Committee.

Part 1: Administrative compliance

Before conducting a detailed evaluation of the tenders, the Evaluation Committee checks that they comply with the essential requirements of the tender dossier (i.e. the administrative compliance grid). A

tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them. Substantial departures or restrictions are those which affect the scope, quality or performance of the contract, differ widely from the terms of the tender dossier, limit the rights of the Contracting Authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply.

Each offer is examined for administrative compliance with the tender dossier in accordance with the published administrative compliance grid. The administrative compliance of each of the tenders must be recorded in the Evaluation Report (see Annex D7).

Part 2: Technical compliance of tenders

The detailed technical evaluation of the tenders takes place after the administrative compliance check. The criteria to be applied are those published in the tender dossier and, accordingly, the evaluation grid included in the tender dossier must be used. Under no circumstances may the Evaluation Committee or its members change the evaluation grid communicated to the tenderers in the tender dossier. The purpose of this evaluation is to assess whether or not the competing tenders meet the minimum technical requirements and selection criteria.

Rule of origin: All tenders must satisfy the rule that the goods to be supplied and the materials to be used for the construction fulfil the requirement of the Interreg - IPA CBC programme. Tenders which clearly fail to satisfy the rule of origin must be rejected. The rule of origin does not apply to the contractor's equipment which will be used during the construction. For details about derogation to the rule of origin please look at Chapter 3.1.1

Nationality of sub-contractors: The Evaluation Committee must check at this stage that the nationalities of sub-contractors identified in the technical offers satisfy the nationality rule of the Interreg - IPA CBC programme.

Having evaluated the tenders, the Evaluation Committee rules on the technical compliance of each tender, classifying it as technically compliant or not technically compliant.

5. Financial evaluation

Once the technical evaluation has been completed, the Evaluation Committee checks that the financial offers contain no arithmetical errors. Any arithmetical errors are corrected without penalty to the tenderer.

If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot, taking due account of any discounts offered.

For a specimen of application of discounts, see the point 6.2.2., Selection process (competitive negotiated procedure under supplies).

6. Choice of contractor

The successful tenderer is the one submitting the least expensive tender classified as "technically compliant" during the technical evaluation. It must be declared the successful tender if it is equal to or lower than the maximum budget available for the contract.

If the chosen tender exceeds the maximum budget available for the contract, the Contracting Authority can step into negotiations with one or several tenderers. If the negotiation procedure fails the procedure will be cancelled.

In the case of abnormally low tenders, the Evaluation Committee must request any relevant information concerning the composition of the tender. If, for a given contract, tenders appear to be abnormally low, the Contracting Authority must, before rejecting such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and verify those constituent elements, after due hearing of the parties, taking account of the explanations received.

The justification for accepting or rejecting an abnormally low offer must be recorded in the Evaluation Report.

7. *Conclusions of the Evaluation Committee*

As a result of its deliberations, the Evaluation Committee may make any of the following recommendations:

- Award the contract to the tenderer which has submitted a tender:
 - which complies with the formal requirements and the eligibility rules;
 - whose total budget is within the maximum budget available for the project;
 - which meets the minimum technical requirements specified in the tender dossier; and
 - which is the least expensive tender (satisfying all of the above conditions).
- Cancel the tender procedure for example when:
 - None of the tenders satisfies the selection/award criteria of the tender procedure
 - All tenders received exceed the maximum budget available for the contract.

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex D7) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee.

8. *Notificatons and signature of the contract*

The successful and unsuccessful tenderers are informed on the results of the evaluation (format available at the above web-page). The successful tenderer is invited to the signature of the contract. Format of the contract is provided in the tender documents and available at the above web-page (see Annex D4: Draft Contract)

7.2.3. Local open procedure (from 300.000 - 5.000.000 €)

Documents:

The Contracting authority is required to prepare full tender documentation. The templates of the documents are available in the EuropeAid web-site: <http://ec.europa.eu/europeaid/prag/annexes.do?group=D>

As in the competitive negotiated procedure the Contracting Authority is required to prepare **Contract Notice**. In case of local open procedure the Notice is published.

The Contracting Authority must send tender dossiers to would-be tenderers upon request. Because of their size and printing costs, tender dossiers for works contracts are usually sent out for a fixed fee. The tender dossier will also be available for inspection at the premises of the Contracting Authority.

Publication:

In case of local open procedures, the Contract notice is published on web page of the Contracting Authority and in national media¹⁴.

Submission of tenders:

The tenderers are given minimum 60 days from publication of the Contract notice for submission of their offers.

¹⁴See above

Selection process:

The selection process in the local open procedure is implemented under the same principles as in the competitive negotiated procedure. Please refer to the point 7.2.2., Selection process.

7.2.4. International open procedure (above 5.000.000 €)

Documents:

The tender documents are corresponding to the ones recommended for the open local procedure (full tender dossier and Contract notice).

Please refer to the point 7.2.3., Tender documents for further details.

In addition to the Contract notice the Contracting Authority is required to prepare **Prior information notice**. The document is setting out the specific characteristics of the planned tender procedure. It must give a brief indication of the subject and content of the tenders (see template in Annex D1). The Prior information notice is published at least 30 days prior to publication of the Contract notice.). The use of the prior information notice is optional unless the CA decides to shorten the standard deadlines for submission of offers.

Publication¹⁵:

In case of international open procedures, the Prior information (optional) and the Contract notice are published on web page of the Contracting Authority, EuropeAid web-site, Official Journal of the EC and in national and international media .

Submission of tenders:

The tenderers are given minimum 90 days from publication of the Contract notice for submission of their offers.

Selection process:

The selection process in the international open procedure is implemented under the same principles as in the Local open procedure. Please refer to the point 7.2.3., Selection process.

7.3. Common challenges

The Table 5 is presenting some practical challenges in managing and monitoring the works contract procedures. The list is prepared following the procedural logic as presented above.

Table 5: Practical challenges in procurement of works

CHALLENGES	RECOMMENDATIONS
DOCUMENTS	
Poor quality of tender dossier - risk of delivery. Poor descriptions in the bill of quantities and the remaining tender documents could result in failure of delivery. In case of misunderstanding between the Contracting Authority and the contractor the later might fail to deliver	- The Contracting Authority should make sure that the tender documents are sufficiently precise to guarantee full and unconditional delivery of expected results.

what was expected	
<p>Availability of support documents - building permits. The challenge is important from the perspective of the managing bodies. In case that the building permits and other accompanying documents are not available at the time of signature of grant contract, risk of failure of the contract exists.</p>	<ul style="list-style-type: none"> - It is recommended that the managing bodies support only ready-to-go projects. - In case of works planned under grant contracts, building permit should be requested at the time of signature of the contract.
<p>Complexity of procedure. The procurement procedure for works contracts is relatively complex. The competitive negotiated procedure is for example requiring full tendering documentation.</p>	<ul style="list-style-type: none"> - The Contracting Authority should estimate, in the case of works tender of smaller value, whether it makes sense to invest significant efforts for small value works tender procedures. - Managing bodies could consider limiting the works component (making works ineligible costs) in grant schemes or lots which are typically aimed at soft-type activities.
SELECTION PROCESS	
<p>Lack of sufficient number of quality /compliant offers. The Contracting Authority might face challenges of not receiving sufficient number of quality or compliant offer. Such situation could be caused by one of the following reasons: lack of capacity of invited tenderers, to restrictive provisions of the requested works, limited publication of tender.</p>	<ul style="list-style-type: none"> - The Contracting Authority should organise support and advice to tenderers in the process. Clarification meetings are recommended in complex tenders. The Contracting Authority should establish list of frequently asked questions (FAQ) and submit it to all tenderers. - The Contracting Authority should make sure that the tenders are not too restrictive. - The Contracting Authority should ensure wide publication of the tender (in case of open procedures). In case of competitive negotiated procedure a larger number of potential tenderers than minimum requested (3) could be invited.
<p>Tender price. The challenge is firstly important from the perspective of the managing bodies. The grant beneficiaries</p>	<ul style="list-style-type: none"> - The management bodies should carefully check the expected outputs of the contract against the price, where applicable (FLC or before).

might deliberately or non-deliberately overestimate the value of works. Secondly the challenge is important from the perspective of grant beneficiaries, Contracting Authority in the process. The invited or participating tenderers might deliberately or non-deliberately offer the prices exceeding the market standards.	<ul style="list-style-type: none"> - Comparison of unit-prices with market standards should be implemented. - An independent expert could be consulted in the process. - The Contracting Authority should prior to publication of the tender estimate the contract price. In case of significant deviations from the expected price negotiations with one or more tenderers could be implemented or the procedure should be cancelled.
IMPLEMENTING PROVISIONS	
Quality and supervision. The contractor might fail to deliver works in quality planned.	<ul style="list-style-type: none"> - The Contracting Authority should appoint competent supervisory engineer to supervise implementation of the works contract. - From the perspective of the managing bodies an independent technical expert could be engaged to monitor the implementation of works contract.
Deadlines for implementation. The contractor could fail to implement works in the planned time.	<ul style="list-style-type: none"> - Timing of works contract should be carefully planned. Potential delays, for instance due to seasonal nature of works, should be taken into account. - Penalties for delays caused by the contractor should be planned in tender documentation.
Additional works. The contractor could, due to unexpected situation, implement additional works from those planned in the tender documentation.	<ul style="list-style-type: none"> - The Contracting Authority should stipulate planning of 10% contingency reserve in the preparation of financial offers.
Financial guarantees. In case of larger and more complex supply contracts certain financial risk exists for the Contracting Authority. In case of failure of delivery the	<ul style="list-style-type: none"> - The Contracting Authority should adopt the payment schedule to the complexity and size of contract.

Contracting Authority might face the challenge of retrieving pre-paid funds.	<ul style="list-style-type: none"> - In case of significant pre-payments a financial guarantee should be requested from the contractor. - Retention guarantee should be applied to avoid risks of poor quality construction.
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SINGLE TENDER PROCEDURES

8.1. Approach

Having in mind that the grant beneficiary is fully responsible for implementation of grant contracts, including the awards of contracts to the third parties, failures in secondary procurement procedures or discrepancies in deliveries could mean factual and financial losses for the grant beneficiary. Namely from the perspective of the MA such cases could be defined as cost ineligible events.

Potential cases of discrepancies in awarding contracts to third parties (secondary procurement):

- Failure of delivery by secondary provider/supplier of the agreed services, supplies or works
- Delays in delivery of services, supplies or works, having negative impact on overall timing of the grant financed project
- Provision of inadequate quality or specifications of services, supplies or works by the secondary provider/supplier (for example second hand equipment or specifications other than agreed)
- Arguments in relation to the price of agreed/delivered services, supplies or works

In order to avoid any of the situations above it is of the best interest of the grant beneficiary to establish transparent and secure relations with the third parties - secondary providers/suppliers. In order to achieve that it is recommended to define conditions and relations in written form, with clearly set obligations for both parties involved in the matter.

The Regulation recognises the “single tender procedures” for the contracts below 20.000 EUR. For the contracts of below 2.500 EUR it clearly states that invoices represent sufficient basis for purchases. However it does not define what form of documentation and procedures are recommended for the purchases between 2.500 and 20.000 EUR. The only exception is indication of the negotiation report which needs to be drafted (Annex A10b).

Having in mind that the grant beneficiary is fully responsible for implementation of grant contracts, including the awards of contracts to the third parties, it would be recommended that a formal procedure is applied also in the case of single tenders to ensure transparency of procedure, full implementation of services / delivery of equipment and thus guarantee the grant beneficiary that the costs will be accepted as eligible.

The basic principles of EU External Action procedures fully apply to single tenders and for direct purchase also. The main principles which are described in details in the point 3 of this Manual are:

- Transparency,
- Equal treatment of all tenderers,
- Rules of origin and nationality.

Since the technical procedure for the single tenders is not elaborated it is recommended to apply minimum necessary steps to insure respecting of the above principles, to ensure coherence in the procedure and maximum efficiency. On the other hand, having in mind significant potential number of

single tender procedures and reluctance of the tender to provide complex offers for small-value projects, the applied procedures should bring the least of the administrative burden for the Contracting Authority and secondary contractors.

A possible balanced approach is presented in the below box.

Recommended approach in single tender procedures between 2.500 and 20.000 EUR:

- Clear definition of the Contracting Authority's requirements for services, supplies or works, with specifications and time frame
- Communication of requirements to tenderers in written, possibly in standardised format
- Receiving tenderers offers in written, possibly in standardised format
- Checking of compliance of received tenders with the original requirements (in case of receipt of several tenders, evaluation of tenders to identify most advantageous offer)
- Preparation of simplified evaluation report
- Signature of contract with the successful tender is recommended

This manual provides template documents which allow implementation of the above described procedure.

8.2. Procedure

Tender documentation:

The tender documentation could contain minimum information necessary to communicate the requirements of the grant beneficiary as the contracting authority. At the same time the documentation should be kept simple to ensure that secondary providers/suppliers remain interested and motivated to provide their offer.

This manual provides in the **Annex TD1** an example of tender documentation that could be used in the cases of single tender procedure. The documentation is divided into two parts: one part providing information from the contracting authority and the other part providing format for submission of tenders/offers by the secondary providers/suppliers. The two parts contain the following information:

Part A: Information about the tender

- Clearly stated requirements from the contracting authority, in particular specifications about services, supplies or works (the CA should provide sufficient details, in particularly in the sense of technical specifications for supplies/works and any specific requirements for services - scope, required inputs etc.);
- Required timing of deliveries and/or services;
- Format of the contract (in case when the grant beneficiary decides to enforce the contract a simplified version of the PRAG format contract can be provided).

Part B: Format of the offer to be provided by the secondary supplier/provider

- Submission form, indicating tenderers contact details, acceptance of the CA's conditions and signature;
- Clear indication of the offered services, supplies or works - the offer should reflect the CA's requirement but could provide more details, such as indication of brand and making in case of supplies or involved inputs in case of services;
- Clear indication of the offered priced for indicated items.

Publication:

Though the single tender procedure allows inviting only one compliant tenderer the grant beneficiary might decide to invite more than one tenderer also in the case of single tender procedure. Inviting of more than one tenderer could have the following positive effects:

- Increasing transparency and openness of the procedures, giving chances to more tenderers,
- Increasing possibilities to obtain better value for money - in case of more tenderers it can be realistically expected that the competition could increase quality of services/supplies/works or decrease prices.

The tenderers should be given sufficient time for submission of their offers. A **reasonable** deadline could be 10 working days for supply and service contracts and 15 working days for works contracts.

If the use of standard tender documentation is enforced by the CA, the tenderer (or several tenderers) should submit their offers in the standard format. The submission in standard format will increase transparency and allow clear comparison between several offers in cases where more tenderers are invited.

Evaluation procedure and reports:

The evaluation procedure differs for the cases where only one or several tenderers are invited.

In the case of inviting only one tenderer the Contracting Authority has to establish whether the services, supplies or works offered by the invited tenderer correspond to the original requirements. In this case the evaluation procedure serves only for confirming the compliance of the offer. The final decision by the Contracting Authority is YES or NO.

In the case where more than one tenderer is invited (and more than one offer is received) the evaluation procedure follows similar logic as in the competitive negotiated and open procedures. The Contracting Authority needs to establish which of the received tenders provides the best option for the CA (either the lowest price in the case of supply and works contracts or best value for money in the case of service tenders).

It would be recommended that for any of the above cases the evaluation committee consists of at least 2 voting members.

The Contracting Authority should in any case complete evaluation/negotiation reports for the tenders between 2.500 and 20.000 EUR. The template of the report is available in EuropeAid web-page (annex A10b). In case where more than one tenderer is invited the negotiation report should explain the method for selection of the successful tenderer. It is recommended for all types of procedures to estimate technical compliance of the received tenders (based on the specific sections of the tenderers offers, by indicating YES/NO score). The cheapest technically compliant offer would be proposed for contract.

Contracting:

Though not obligatory, the Contracting Authority is recommended, due to the reasons mentioned in this manual (possibility of discrepancies, delays, failures of delivery by the secondary providers/suppliers), to conclude a contract with the secondary providers/suppliers. Such contract will formalise some of the issues related to secondary procurement procedure and it might as well strengthen the sense of obligations by the secondary providers/suppliers. A sample of contract which can be used is provided in the Annex TD1 of this document.

The following example provides another possibility (in addition to guidance and formats provided by this Manual) to approach the single tender issue that could be used for inspiration.

Single tender procedure example Hungary-Serbia programme in 2007-2013 period

Rules of validation of expenditures procured within single tender procedures -
(Hungary-Serbia IPA CBC Programme - First Level Control of Hungary)

Justifying the market price is the obligation of the Project Partner.

Procurements below 1 000 EUR gross amount (programme specific decision)

- No need to justify the market price but rules for conflict of interest shall be respected.

Procurement between 1 000 EUR gross and 20 000 EUR net amount (in this respect the national rule is stricter than the PRAG thresholds)

- Project Partner has to submit 3 received, valid and comparable price offers.
- Price offer shall not be older than 3 month at the time of the contracting/ordering.
- Rules for conflict of interest shall be respected during the whole procedure (from request to price offer to signing the contract).
- Best price or best value for money (with thorough justification) shall be awarded with the contract.

Documents to be submitted by the Project Partner:

- 3 request for price offers (with detailed and clear specifications avoiding brand names)
- 3 comparable price offers (the best way to have them is a price offer template already annexed to the request for offers which contains all the specifications and only the prices shall be indicated by the tenderer)
- Negotiation report (official template of PraG) - minimum data requested: name of tenderers, subject of tender, price of supply/service, evaluation aspects, decision, justification of the decision.
- Declaration for justifying of market price - template prepared by the FLC: Project Partner has to sign the declaration, which refers to applying rules of PraG, to conflict of interest.
- Contract/Order letter
- Further documents to be submitted together with the Partner Level Report: acceptance form, invoice, bank statement

Tender dossier for the single tender procedures shall not be prepared by the Project Partner!

If the Controller finds the contracted price way to high comparing to the usual market prices it is her/his right to deny the validation of the given expenditure.

Derogation

- Project Partner has to prove that the supply in subject is not available with EU/IPA origin. This requires a market research prepared by the Project Partner. In practice this market research is consisting of at least 3 declaration signed by different service providers/suppliers in which they declares that the company does not distribute the supply in subject with EU/IPA origin.
- Project Partner collects these declarations and based upon the received documents prepares the Declaration on Derogation. Being aware that the supply is not available from EU/IPA producers Project Partner launches the single tender procedure and asks for at least three different price offers.
- The Declaration on Derogation shall be submitted to the FLC together with the declarations of the distributors and with the already mentioned documents.

PERSPECTIVE OF THE PROGRAMME MANAGEMENT BODIES

9.1. Perspective of the programme managing bodies

In order to be able to successfully manage and control the procurement process in procurement under grant contracts, the all relevant management bodies Managing authorities, Joint Technical Secretariats (incl. antennas) and First level control bodies need to possess sufficient knowledge of procurement procedures according to external rules. The level of procedures presented in this document should cover the majority of issues the management bodies will come upon when managing, monitoring and controlling the process.

Some of the **key issues in management and controlling of the procurement process** from the perspective of management bodies to be considered are:

- **Procurement plan.** In order to be able to successfully and efficiently manage and control the procurement process, the management bodies should ask the grant beneficiaries to prepare a procurement plan immediately after the signature of the grant contract. The procurement plan should list all the tendering procedures, describing the type, short summary and size of contracts.
- **Level of involvement in procedures.** Due to relatively large number and complexity of the tendering procedures, the managing bodies might not be able to cover in details each and single procedure implemented under their programmes. Ultimately this could potentially result in larger number of procedural mistakes or failures of procedure at the side of grant beneficiaries (Contracting Authorities in tendering process). In such cases the costs occurred might be declared ineligible. Possible solution to this challenge could be:
 - **Checking the process before publication of tender.** The management body, for example first level controllers, could decide to check prepared tender documentation prior to publication of the tender. This keeps the possibility of mistakes at the minimum or eliminates them. It could be useful especially in countries where public procurement according to EU external rules is a new thing. However, it requires big workload for managing bodies and is probably very difficult to achieve. In addition to that the MAs should clearly state that ex-ante check by the controllers does not stipulate that the cost will be approved as eligible in the ex-post check of the reports. It should be clearly stated that the ex-ante check is done only in advisory capacity. To lower the administrative burden the management bodies could decide to check the documentation on sample basis. Different criteria, such as risk estimation or size of the secondary contract could be used in defining the samples.
 - **Checking the process before signature of contracts.** The management body could, depending on number and complexity of procedures, define the financial limit from which the procurement procedures will be checked prior to signature of the contracts. Normally the share of these procedures should not be larger than 10% of all tendering procedures. However, by checking the largest contracts in advance, risks related to failure of procedures and ineligibility of costs could be significantly lowered or eliminated. Also, an option that could be considered, depending of the workload level, is to offer to project partners to contact JTS/MA or even first level control bodies as needed and then to provide advice. Similarly as above the management bodies should clearly state that ex-ante approval of the secondary procurement procedure does not stipulate eligibility of costs. Final decision is to be taken in the ex-post check of the reports.
 - **Checking the procurement process after signature of contracts**(as a part of regular FLC checks). Tendering procedures will only be checked at the time of regular checks and interim/final reporting. This approach automatically stipulates risk for failure of procedure and re-payments of potential ineligible funds. The grant beneficiaries should be aware of this fact and should receive appropriate training and support to decrease risks to minimum.
- **Coherence with the rules.** The management bodies should ensure, that the procurement procedures implemented under grant contracts are in line with basic rules for EC external aid

funding. This Manual is providing instructions that could be considered minimum requirements to be respected. The large majority of issues related to procurement procedures are described in the document. Eventual further explanation could be sought in PRAG, the national procurement rules or developed by programmes.

- The secondary procurement procedures should also be kept in mind in the phase of approval of the grant financed projects and the budget clarification. This above all anticipates checking that the proposed secondary procurement procedures are in line with market standards and that they are in line with the proposed activities.
- Substantial and relevant **training** should be provided to **first level controllers and other MA's staff, for example JTS**, in regards to public procurement and procedures to control tendering documentation, especially in MSs.
- The grant beneficiaries should be provided with proper support during the implementation of their grant financed projects. The support could include:
 - Initial training on EU External Action procurement procedures,
 - Written instructions or manual on procurement procedures,
 - Help line, providing additional clarifications as regards the procurement procedures.
- Possible sample checks by managing bodies could be considered, especially for larger contracts.
- **Practical implementing provisions.** The managing bodies should establish systems that will allow management, monitoring and controlling of procedures not only in the selection of projects to be awarded with grants but also in their implementation phase. The challenges in the implementation phase are related to changes and amendments of contracts, cancellations of contracts, failure to deliver services, supplies and works.

	Services	Works	Supply
Procedure			
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€
Documents			
Tender dossier	Yes	Yes	Yes
Terms of reference	Yes - describing details of service contracts - outputs and inputs required.	No	No
Technical specifications	No	Technical description	Yes - describing technical details and quantities of equipment
Bill of quantities	No	Yes - describing technical details and quantities of works and materials	
Financial offer	Per-unit price or global price	Price breakdown or global price	Per-unit price or global price
Guarantees	Pre-financing guarantee	Pre-financing, performance and retention guarantee	Pre-financing and performance guarantee

Selection and award			
Evaluation Committee	3 voting members, president, secretary, observer	5 voting members, president, secretary, observer	3 members, president, secretary, observer
Selection criteria	Technical quality: 80% Price: 20%	Price: 100% (of technically compliant offers)	Price 100% (of technically compliant offers)

Annex 1

Example of publishing procedures

INSTRUCTIONS FOR BENEFICIARIES

UNDER THE BULGARIA-SERBIA IPA CROSS-BORDER PROGRAMME

RELATED TO PUBLICITY OF PUBLIC PROCUREMENT PROCEDURES

Having regard to the Art. 103 of 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 and Art. 264 of 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 and considering p. 2.4.2 Open procedures, Practical Guide to contract procedures for EU external actions, the beneficiaries are obliged to ensure widest possible participation in competitive tendering and the requisite transparency.

Depending on the type of tender procedure, the following documents should be published:

- For Local open tender procedures: Contract notice (annexes B2a, C2 or D2 of PRAG); Summary Contract notice (annexes B2b, C3 or D3 of PRAG); Contract award notice for other procedures (annexes B14b, C9b or D9b of PRAG) should be published in all appropriate media, in particular on the Programme's web site and the grant beneficiary's website (in its role of Contracting authority). Additionally, Summary Contract notice should be published in national press of the country in which the action is being carried out.
- For International open/restricted tender procedures: Individual contract forecast (annexes B1 and C1 of PRAG); Individual contract prior information notice (annex D1 of PRAG); Contract notice (annexes B2a, C2 or D2 of PRAG); Shortlist notice (Annex B6 of PRAG); Contract award notice for international calls (annexes B14a, C9a or D9a of PRAG) should be published in all appropriate media, in particular on the Programme's web site and on the grant beneficiary's website (in its role of Contracting authority). Additionally, contract forecast/contract prior information notice; Shortlist notice; Contract notice and Contract award notice should be published in the Official journal of the European Union (OJEU)*;
- FAQ/Clarifications; Cancellation notice (Annex A5a of PRAG) and Corrigendum (Annex A5b of PRAG), if any, should be published in all appropriate media, in particular on the Programme's web site and on the grant beneficiary's website (in its role of Contracting authority). Additionally, for International open tenders the forms of documents required by the administration of the web site of the OJEU should be used.

All the above-mentioned documents, depending on the type of the respective procurement procedure, should be sent on electronic carrier (CD, DVD or flash memory stick), accompanied by an official cover letter, to the Managing authority of the Programme (MA). In addition, the beneficiaries should submit to MA, in electronic version, the tender documentation (Tender dossier) related to Local open tender procedures, International restricted tender procedures and International open tender procedures, together with the Contract notice. The electronic documents and the cover letter should be sent by an official representative of the Contracting authority (Lead partner or Project partner) under each procurement procedure. The documents should reach (be delivered to) MA at least 5 days before the date of publication needed. In order to ensure the simultaneous publication to the Programme's web site and other media, beneficiaries should note the date of publication needed (e-mail for contacts and any other specific information) in the cover letter. Beneficiaries will receive confirmation for the date of publication to the Programme's web site on the contact e-mail, mentioned in the cover letter.

MA will not issue publication reference numbers, but will apply the reference numbers proposed by the beneficiaries (in free format). Since for international tenders the reference numbers issued by the OJEU are provided after publication, MA recommends the use of both numbers (issued by the beneficiaries and by the OJEU) in the process of evaluation, contracting and reporting.

The publication to the Programme's web site: <http://www.ipacbc-bgrs.eu> is done by MA administration. All publications will be available in the "Public tenders" section of the site.

The beneficiaries bear responsibility for the content and the quality of tender documents, published on the Programme's website, as well as for the simultaneous publication to all other media (web site of the OJEU, grant beneficiary's website and/or national press).

The beneficiaries should respect all other requirements for publication, stipulated in the Practical Guide to Contract Procedures for EU external actions, particularly related to templates of documents and deadlines for publications.

Annex TD 1

Simplified tender dossiers for service, supply and works - SINGLE TENDER

Name and address of the contracting authority: xxxxx
 Title of the tender: xxxxxxxx
 Reference number (if applicable): xxxxxxxx

PART A: INFORMATION FOR THE TENDERER

1. INFORMATION ON SUBMISSION OF THE TENDERS

Subject of the contract:

The subject of this tender is (select as appropriate, depending whether service, supply or works contract is under question):

- Implementation of **services** as indicated in the technical information in the point 2 of these information;
- Provision of **supplies** as indicated in the technical information in the point 2 of these information;
- Implementation of **works** as indicated in the technical information in the point 2 of these information.

Deadline for submission of the tenders:

The deadline for submission of tenders is **XX (day), XX (moth), at XX:XX hours**. Any tender received after this deadline will be automatically rejected.

Address and methods for submission of the tenders:

The tenderers will submit their tenders using the **standard submission form available in the Part B of the tender dossier**. The tender will be submitted in 1 original. In case of e-mail submission the tenderer may provide a scanned original of the tender (if required). Any tenders not using the prescribed form might be rejected by the contracting authority.

In addition to the offer the tenderer is required to provide the following supporting documentation (in copies or scanned versions in case of e-mail submission):

- Copy of legal registration

* - Select if appropriate...in case e-mail submission is allowed the tenderer should provide a scanned copy of supporting documents

If delivery by post:

The tenders will be submitted via post/currier, containing the following information:

- Name and address of the tenderer
- Title of the tender: xxxxxx
- Reference number (if applicable): xxxxxx

The tenders will be submitted in person, by post or courier service to the following address:

Name and
Address of the contracting authority
(optional contact person)

The tenderers are reminded that in order to be eligible the tenders need to be received by the contracting authority by the deadline indicated above.

The tenders can also be submitted by e-mail. In this case the base e-mail message will clearly indicate:

- Title of the tender (in the subject of e-mail): XXXX
- Reference number (if applicable, in the subject of e-mail): XXXX
- Name and address of the tenderer (in the e-mail text)

The tender submission form and any supporting documentation will be provided as attachment to the e-mail.

The tenderers will be submitted by e-mail to the following address:

E-mail address of the contracting authority

The tenderers are reminded that in order to be eligible the tenders need to be received by the contracting authority by the deadline indicated above.

Select submission method above as appropriate - e-mail or post.

2. TECHNICAL INFORMATION

The tenderers are required to provide services / supplies / works as indicated below. In the tenderer's technical offer, the tenderers will indicated more details on the deliveries, referring back to the below table.

* - to be used in case of service tenders

No.	Title of item	Description	Required time frame	Required inputs, if applicable
1.1.	-	-		-
1.2.	-	-		-
1.3.	-	-		-
1.4.				

* - to be used in case of supply tenders

No.	Number of items	Title of item	Technical specifications	Required time frame
Supplies				
1.1.		-	-	-
1.2.		-	-	-
1.3.		-	-	-
Installation (*- use this section only when necessary)				
2.1.		-	-	-

2.2.	-	-	-
Other (*- use this section only when necessary)			
3.1.	-	-	-

*** - To be used in case of works tenders**

No.	Number of items	Title of item	Technical specifications
Description of works			
<i>Describing the details of works: description of current situation on-field, works required, technical details etc.</i>			
Designs and drawings			
<i>Description of applicable designs and drawings. The documents to be attached to this Tenderer's information as annexes.</i>			
Inputs required from the tenderer			
<i>Type of equipment, estimated labour inputs, type of experts, vehicles, tools etc.</i>			
Description of time frame for completion of works and implementation of phases			
<i>Timeframe for implementation of situations, completion of works, any other requirements.</i>			
Bill of quantities			
1.1.	-	-	
1.2.	-	-	
1.3.	-	-	

3. FINANCIAL INFORMATION

*** - To be inserted only in the case of service tenders**

The tenderers are reminded that the maximum available value of the contract is **XX EUR**.

4. ADDITIONAL INFORMATION

The selection criteria is:

- Lowest price of technically compliant offers (* - select in the case of supply and works tenders)
- Best value for money, weighting 80% technical quality, 20% price (* - select in case of service tenders)

The CA is advised to amend the selection criteria to a specific tender. In case of specific services the sole criteria could be price also. Weighting could be changed if necessary.

The **unsuccessful**/successful tenderers will be informed of the results of the evaluation procedure in written.

The estimated time of response to the tenderers is **XX** days from the deadline for submission of tenders.

PART B: FORMAT OF OFFER TO BE PROVIDED BY THE TENDERER

1. TENDERER'S INFORMATION

Submitted by:

	Name(s) and address(es) of legal entity or entities submitting this tender
Tenderer	

Contact person:

Name	
Address	
Telephone	
e-mail	

2. TENDERER'S STATEMENT

I undersigned hereby confirm that the services / supplies / works offered in this tender are in full conformity with the specifications submitted to us by the contracting authority. The detailed description of the offered services / supplies / works by us is provided in the next point.

In addition to that we confirm that our organisation/company is fully eligible for providing services under a contract financed by the EU funds. We confirm that we are not in any of the situations that would exclude us from competing in the EU financed tenders as indicated in the point 2.3.3. in the PRAG Manual (*apply as appropriate*).

Furthermore we agree to abide by the ethics clauses in Section 2.4.14 of the PRAG Manual (*apply as appropriate*) and have no conflict of interests or any equivalent relation with other short-listed candidates or other parties in the tender procedure at the time of submitting this tender

3. TECHNICAL OFFER

The tenderers are required to provide technical offer, based on the requirements indicated by the contracting authority in the Part A: Information for the tenderer, Point 2: Technical information.

The tenderers are encouraged to provide details on the planned services / supplies / works, including detailed specifications and/or brand names.

(* - the table to be used for service tenders)

No.	Title of item	Technical offer - the services provided by the tenderer on the basis of contracting authority's enquiry in	Tenderer's proposed time frame	Proposed inputs by the tenderer (<i>the tenderers are</i>
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		the Part A, Point 2		encourage to provide detailed information, for example qualifications of the proposed staff)
1.1.	-			
1.2.	-			
1.3.	-			
1.4.				

(* - the table to be used for supply tenders)

No.	Number of items	Title of item	Technical offer - items offered by the tenderer, based on the contracting authority's requirements in the Part A, Point 2	Tenderer's proposed time frame
Supplies				
1.1.		-		
1.2.		-		
1.3.		-		
Installation (*- use this section only when necessary)				
2.1.		-		
Other (*- use this section only when necessary)				
3.1.		-		

(* - the table to be used for works tenders)

No.	Number of items	Title of item	Tenderer's offer with specifications
Description of works			
CA Definitions: Describing the details of works: description of current situation on-field, works required, technical details etc.		Tenderers offer/response to the CA requirements	
Designs and drawings			
Description of applicable designs and drawings. The documents to be attached to this Tenderer's information as annexes.		Tenderer's comments to drawings, approach and application in execution of works	
Inputs required from the tenderer			
Type of equipment, estimated labour inputs, type of experts,		Tenderer's offer of equipment, labour, tools, vehicles etc. as response to the C'A's requirements	

vehicles, tools etc.			
Description of time frame for completion of works and implementation of phases			
Timeframe for implementation of situations, completion of works, any other requirements.		Tenderer's offer and comments as regards the time-frame of activities.	
Bill of quantities			
1.1.	5	Examples: - Cubic meters of concrete	- Provisions as offered by the tenderer
1.2.	5	Examples: - 5 meters of wiring	- Provisions as offered by the tenderer
1.3.	1	Examples: - Metal pipes (m)	- Provisions as offered by the tenderer

4. FINANCIAL OFFER

The offered total price for the **services / supplies / works** indicated in the previous point is:

XXX EUR

The offered price includes implementation/delivery of described items as well as all accompanying costs, for example transport, logistics, material costs, when required.

Name	
Signature	
Date	

FORMAT OF THE CONTRACT BETWEEN THE CONTRACTOR AND THE CONTRACTING AUTHORITY

CONTRACT TITLE: title of the contract

REF (if applicable): reference number

Concluded between:

Title

Address of the contracting authority

Represented by:

(Contracting Authority)

AND

Title

Address of the contractor

Represented by:

(Contractor)

Article 1: Subject of the contract

The subject of the contract are the services / supplies / works as indicated in the contractor's offer - "Part B: Format of offer to be provided by the tenderer"

Article 2: Contract value

The total contract value for implementation of services / delivery of supplies / execution of works indicated in the Article 1 is: XXX EUR.

Article 3: Contracting documents

This documents which form the part of this contract are (by the order of precedence):

- Contract agreement
- Contractor's offer as provided in the tendering phase - "Part B: Format of offer to be provided by the tenderer"
- Any other supporting documentation if applicable (* - in case of asking for registration of company or other information)

Article 4: Deliveries and payments

The contractor will deliver without reservation the services / supplies / works indicated in the contractor's offer "Part B: Format of offer to be provided by the tenderer". The deliveries will be implemented within the indicated dates.

The contracting authority will pay to the contractor the services / supplies / works in the amount indicated in the Article 2 of this contract document. The payments will be issued by the following time schedule.

Month		<EUR/**>
1	Maximum Pre-financing payment	<XX % of the contract value>
<Month>	Interim payment (*if applicable)	<XX % of the contract value>
<Month>	Balance payment	<XX % of the contract value>
	Total	<Total contract value>

* - The contractor will provide contracting authority with the brief report on execution of the services (* could be introduced in the case of service tenders)

Article 5: Duration of the contract

The duration of the contract is XX months.

Article 6: Cancellation of the contract

The contract can be suspended by the Contractor due to one of the following reasons:

- Contracting Authority not fulfilling payment and other obligations

The contract can be terminated by the Contracting Authority due to one of the following reasons:

- The Contractor is in serious breach of the contract, failing to meet contractual obligations
- The Contractor is bankrupted or being wound up, is having its affairs administrated by courts, has entered into arrangements with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situations arising from a similar situation provided for in national legislation or regulations.

Article 7: Resolving of disputes

Any disputes arising out of or relating to this Contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of (* - specify responsible court or arbiter body) in accordance with the national legislation of the state of the Contracting Authority.

For the Contractor

Name:

Title:

Signature:

Date:

For the Contracting Authority

Name:

Title:

Signature:

Date:

