

Fact Sheet 12: Tender procedures

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CORE MESSAGE

It is essential that *all contracts* for any amount over €10.000 (excluding VAT) are offered to a range of bidders and that advertisement and selection procedures are documented. Failure to do so may mean that the project partner has to repay the whole value of the contract. This fact sheet also sets out the very limited cases where alternative procedures may be used including the use of Framework Contracts.

Background

All expenditure on externally provided products and services must be market tested in order to ensure the best possible value for money. Only very small amounts (under €10.000, excluding VAT) are exempted. These requirements apply to all partners of the North Sea programme (public and private) unless they are participating in the programme as part of an approved State Aid scheme. Failure to use and document these procedures may result in the contracted amount being found ineligible by the relevant Controller.

Which rules apply to which amounts?

There are four situations to consider. The first step when making any external purchase is to decide which applies:

- **Large value contracts over European Union threshold value.** Large contracts must be advertised at European level and are subject to rigidly defined procedures. It is not possible to define one value at which these rules enter into force because this depends on the types of contract. See Directive 2014/24/EU Article 4 and Directive 2014/25/EU Article 15 for details.
- **Contracts that are substantial but below the European threshold amount** are generally subject to national and/or organisational rules. If you grant a contract you will be expected to know these rules and to be able document that you adhere to the rules when checked by controllers and auditors. These rules may also apply to low amounts.
- **Contracts that are below national/organisational limits** but above €10.000 are subject to the programme rule that stipulates that at least three offers be requested (see explanation below). Even

if the rules of the partner country/organisation do not require tendering for these amounts, programme rules take precedent, and this means that you *must always request three offers for amounts equal to or larger than €10.000 (excluding VAT)* In contrast to the above, a project partner is allowed to purchase various goods or services from the same supplier without having to apply the programme minimum rule for procurement. However, the cost of the individual purchase must be below the limit and the purchases cannot be considered part of the same purchase (i.e. contract).

Types of procurement procedures

Depending on the estimated contract value the various principles from the previous sections apply. If a partner has to procure a product or a service, the following procedures are considered most prevalent:

- **Open procedure:** In an open procedure anyone may submit a full tender.
- **Restricted procedure:** Anyone may ask to participate in a restricted procedure, but only those who are pre-selected may submit tenders.
- **Competitive negotiated procedure:** In competitive negotiated procedures anyone may ask to participate, but only those who are pre-selected will be invited to submit initial tenders and to negotiate.
- **Competitive dialogue:** This procedure can be used by a contracting authority with the aim of proposing a method of addressing a need defined by the contracting authority.
- **Three-offer rule:** Programme specific rule on a minimum threshold for minimum degree of procurement (you can read more about this in the section "Three offer" Rule).
- **Framework contract:** The contracting partner already has or will have a framework contract in place for the needed purchase/service (you can read more on this in the section "Other forms of procedures" below).
- **Other:** Other procedures, not mentioned here.

The procurement methods mentioned here are also offered as options in the full application form. The applicant must indicate (for relevant cost items) the envisaged applicable procurement procedure in the application form.

When choosing the procurement procedure, it is important to acknowledge and follow the applicable requirements governed by either the EC directive(s), national law, the organizational rules of the partner organisation, or the programme rule.

Documenting a procurement process (audit trail)

In general, the following aspects should be reflected in all requests for an offer (although in a brief form for small amounts):

1) **Terms of reference** – All information about the subject and the tendering process is included in this document. The terms of reference, based on the required procurement procedure, should include at least

the following sections:

- a) **General provisions** – A brief description of the general framework
 - b) **Subject of the procurement** – A detailed description of works, services and goods required, stating the complete list of requirements for the product/service. A separate technical specification may be included or attached as an annex to the Terms of Reference.
 - c) **Timeframe** – The timeline for delivery of the goods / providing the service
 - d) **Price and/or other limitations** – The price limit and any specific limitations related to the contract
 - e) **Eligibility criteria** – Specific requirements that companies must fulfil in order to be eligible to submit an offer. The criteria have to be objective, non-discriminatory and relevant to the subject of the procurement procedure
 - f) **Award criteria** – Criteria for assessing the offers submitted. The criteria have to be objective, transparent, non-discriminatory and relevant to the subject of the procurement procedure
 - g) **Contracting and payment** – Details on contracting procedures and payment
 - h) **Information/formal requirements** – Conditions of the procurement procedure (e.g. details on how to submit offers, formal requirements about how offers should be presented)
- 2) **Publication of the notice** – Different rules apply, depending on the procurement procedure, contract size and national requirements. As a minimum, publication should be in a format and for a sufficient length of time that effectively allows potential bidders to take action.
- 3) **Registration of offers** – All offers received must be carefully documented to ensure transparency and equal treatment of all bidders.
- 4) **Assessment and decision-making** – The offers submitted must be assessed according to the same criteria that were set out in the terms of reference. No additional criteria may be added to the assessment process. The assessment of each offer has to be well documented.
- 5) **Contracting** – A signed contract setting out all terms for the assignment must be available.

These requirements represent the minimum standard for correct procurement procedures and should be followed along with any additional requirements specified in European Union regulations or national legislation applicable to the chosen award procedure.

Principles of sustainability

The programme encourages sustainable measures and supports the inclusion of additional 'green' criteria in tendering whenever legally possible.

"Three offer" rule

For purchases of goods or services with a value below the European Union and national thresholds, the programme requires that all partners use the "three offers" procedure¹. This procedure has been introduced to ensure transparent selection procedures, equal treatment and cost effectiveness for goods and services.

According to this rule, all partners must ask for at least three offers for all goods and services costing **€ 10.000 (excl. VAT) or more** but below the national, organisational and EU thresholds. In such cases, the partner must keep the correspondence requesting the offers and written evidence of the bids received. It is acceptable if fewer than three offers are received, provided that there is evidence that three suppliers were contacted about the contract on equal terms.

If it is not possible to collect three offers, the activities undertaken to try and obtain the offers still need to be documented. This will ensure that prices for similar goods, services or works have been compared and the selection procedure is transparent.

Please note that if stricter national or institutional rules exist these should be observed to avoid contradictions and possible rejection of costs on national/institutional level. National rules will, if they are stricter, overrule the programme rules.

Consequences in case of errors or failure to use procurement

Failure to comply with procurement rules or the use of inappropriate / incomplete procedures according to national or European Union rules (including the "three offer" rule set out above) will have financial consequences. Based on the type and importance of the failure, a financial correction will be determined, according to the guidelines developed by the European Commission (Decision No C (2019) 3452). In the worst cases, the full contract amount will be considered ineligible.

Other form of procedures

There are two possible alternatives to regular procurement procedures. These are 'In-house' contracting and use of framework contracts. Each partner must consult the applicable national / European Union regulations to see whether they can use such exceptions in different situations. Minimum requirements and recommendations related to procedures are outlined here.

"In-house" contracting

In-house contracting refers to situations where a public authority contracts another organization, which is fully owned and/or controlled by the contractor (e.g. inter-departmental arrangements), to provide certain goods, services or works. In such cases the contractor might decide not to follow public procurement procedures provided that:

¹ Unless the partner is participating under a state aid scheme

- a) There is no private ownership involved
- b) The subsidiary organisation itself carries out the majority of the activities for the contracting authority
- c) The parent organisation exercises control over the subsidiary in a similar manner as to its own departments.

To ensure transparency and efficiency, in-house sub-contractors will still have to follow public procurement rules when procuring goods, services and works from any third parties.

Framework contracts

Framework contracts are umbrella agreements that set out all or some of the terms on which the parties of the agreement will enter into contracts in the future. Where a project partner organisation has already procured (or will procure) a provider for certain types of goods and services **according to the relevant public procurement rules**, any goods and services provided for the project and in line with the framework contract are eligible. If required, the partner may need to provide evidence of the original procurement.

Reporting

A contracting project partner must be clear on the type of procurement procedure applied prior to contracting an external provider. The reason for this is that during project reporting the partner will be asked, per cost item, to indicate the exact type of procurement procedure applied when the good or service was contracted.

The partner controller must ensure the correctness of the procurement procedure applied.

References

- Directive 2014/24/EU of 26 February 2014 on public procurement²
- Directive 2014/25/EU of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors³
- Interreg Regulation No. 2021/1059 Article 58
- Financial corrections - European Commission Decision No C (2019) 3452

² Latest amended by Commission delegated Regulation 2019/1828 (version of 01.01.2020)

³ Latest amended by Commission delegated Regulation 2019/1829 (version of 01.01.2020)