

PUBLIC PROCUREMENTS IN IPA PROGRAMMES



Legal background 1.

In line with Article 121 of the IPA Implementing Regulation for the award of service, supply and work contracts, the procurement procedures shall follow the provisions of Chapter 3 of Part 2, Title IV of Regulation (EC, Euratom) No 1605/2002 and Chapter 3 of Part 2, Title III of Regulation (EC, Euratom) No 2342/2002, as well as Commission Decision C (2007) 2034 on the rules and procedures applicable to service, supply and work contracts financed by the general budget of the European Communities for the purposes of cooperation with third countries.



Legal background 2.

Part one of the Decision states:

The authorising officer by delegation, in association with the relevant departments of the European Commission, will adopt standard contracts and operational instructions to implement these rules. The standard contracts and operational instructions are annexed to the „Practical Guide to contract procedures for EC external actions

The subsidy contract states:

With regard to Part one of Commission Decision C (2007) 2034 chapters 1-5 of “Practical Guide to contract procedures for EC external actions (PraG)” and the standard contracts and operational instructions annexed to PraG shall be used.



Legal background 3.

- **According to point e) of Paragraph 29. of Act CXXIX of 2003. on Public Procurement “ The procedure laid down in this Chapter shall not apply to procurements pursuant to a particular procedure laid down by an international organization”.**



Practical Guide to Contract procedures for EC external actions (PRAG) explains the contracting procedures applying to all EC external aid contracts

Document can be downloaded from the following website:

http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/index_en.htm



Regulations and PraG

- The provisions of the legal texts referred to in Article 121. of IPA Regulation are built in PraG
- One contradiction: According to Articles 242, 244, 246-247 of Regulation (EC, Euratom) 2342/2002 where the Commission is not the contracting authority, the use of the negotiated procedure is **subject to the prior agreement of the responsible authorising officer.**
- No requirement as such in PraG
- Authorising Officer: Head of MA



Commission Decision and PraG

- According to the Commission Decision C (2007) 2034 the contractor must submit proof of origin for equipment and vehicles of a **unit purchase price higher than EUR 5 000.**
- No such requirement in PraG
- No such threshold in PraG



Which chapters to apply?

General chapters and sections 1-5. 7, 7.3 and 8-9. are to be applied for all tenders.

Chapter 6. and sections 7.1-7.2 7.4-7.5 are not to be applied for IPA programmes.



What language to apply?

- **No provision for language in PraG**
- **No official translation**
- **Documents shall be prepared in English. The only exceptions are the evidences (as of 2.3.3 and 2.4.11 of PraG) originally set out for a purpose different, than the given procurement procedure.**
- **These shall be translated to English, or any language of the European Union.**
- **No templates for single tenders – No language provisions**



Management mode

1.

- According to the terms set out in the PRAG the Lead Beneficiary and the Project Partners act as Contracting Authorities
- The procurements will be financed from the budget of the European Union, that means at every optional step BUDGET must be chosen, EDF must be ignored.



Management mode 2.

- Decentralised management: Decisions are taken by the Contracting Authority without prior reference to the European Commission
- Ex post control: Procurements will be subject to verification audits afterwards, prior to reimbursements

This means that at every optional step **DECENTRALISED**, **EX POST** must be chosen.



Mangement mode 3.

- **According to the National co-financing contract for public procurements exceeding the thresholds of international procurements prior approval of the tender documents is needed by the body performing verification audit (Váti Nonprofit Kft.)**
- **For these procurements under paragraphs 3.3.1.2, 3.3.3, 4.3.1.2, 4.3.2, 5.3.1.2, 5.3.2 DECENTRALISED, EX-ANTE version shall be applied.**



Derogations by the Subsidy contract

- **The standard annexes of PraG shall be used without translation. Amendments of the templates can be made only due to the special nature of a contract, or tender. These amendments shall be in line with the basic rules of the PraG.**
- **Wherever consultation with the Commission or prior approval of the Commission is required, the Contracting Authority shall take the decision at its own risk. The decision will be subject to verification audit.**
- **Chapters 2.4.5 and 3.4.1 (Framework contracts) of PraG shall not be applied.**



Single tender 1

- **Up to 10 000 EUR**
- **PraG section 2 applies**
- **No templates, Hungarian language can be used.**
- **No rules, but also no exception from general rules**

To be applied:

- **Rules of origin**
- **Conflict of interest**
- **Ethics clauses**
- **Award principles**

Not to apply:

- **Grounds for exclusion**
- **Selection criteria**
- **Standard documents**



Single tender 2

Additional requirements by the national co-financing contract

- **Unit prices can not exceed market prices.**
- **It should be justified upon request.**
- **3 bids shall be obtained above 1 000 EUR**
- **Award by lowest price, or best value for money**
- **Supporting documents shall not be dated more than 3 months before the order/contract.**



Publishing notices

- In case of local open tender procedure notices shall be forwarded in Hungarian and in English to e-mail address hirdetmeny@kozbeszerzesek-tanacsa.hu The Public Procurement Council publishes the notices in the “Közbeszerzési Értesítő” under web page: www.kozbeszerzes.hu.
- English notices shall be forwarded to the European Commission (EuropeAid) to e-mail address: europaaid-ipapub@ec.europa.eu.
- The notices of International open tender procedures shall be forwarded in the same way to these addresses. The European Commission (EuropeAid) is responsible for the publication of these notices in TED.



How control will be performed?

If the Contracting Authority would like to its expenditures to be funded, it has to submit all the documents of the public procurement procedure with the first invoice(s) to the Certifying Authority performing verification audit (Váti Nonprofit Kft.)



Irregularities

Irregularities can be set out by the Certifying Authority, the Audit Authority and other actors performing audit in the framework of IPA programmes. Judgment of a Court or any other Authority is not a prerequisite to the Decision on the irregularity by the Certifying Authority.

The procedures to be applied in case of irregularities revealed in public procurements are those established for the Structural Funds Programmes set out in the following guidelines:

- http://ec.europa.eu/regional_policy/sources/docgener/presenta/eligibility/eligibility_2009_en.pdf



Overview 1

Originally created for the procurements of external aid projects

– occasional procurements only

- the EU Delagation is meant (behind)

• Functions and responsibilities - regarding the (body representing) European Commission are not clear.



Overview 2

- Impossible to adjust to national procurement rules
- Impossible to publish notices
- 3 bids only in many cases without publication
- Real procedures only on international level

Lack of transparency on local level



Overview 3

- **Basic rules only - Free of good practices and also bad practices introduced to national procurement act.**
- **Utilisation of templates: difficult to fill, easy to evaluate**
- **Service section created for advisory activities – application for other activities is difficult.**

