

Frequently Asked Questions

Related to the management of public procurements
within HU-HR and HU-SRB IPA CBC programmes

Edition of 2010. 11. 29.

New questions and answers and amendments made in connection with the modification of PraG on 1. November 2010 are typed with italic letters

Rules of Origin

1. **Q:** With procurements of what kind of equipment is the confirmation of origin necessary?

A: According to Chapter 2.3.1 of the PraG, to the subsidy contract, as well as to Point II.2.2 of Commission Decision C (2007) 2034, in case of procurement of equipment at the unit price of over 5.000 EUR **a confirmation of origin from the Chamber of Commerce is necessary**. In case of a unit price under 5.000 EUR, **the supplier has to issue a declaration** that the product delivered complies with the requirements regarding the origin of products (PraG Chapter 2.3.1 and Annex A2).

2. **Q:** In case of procurement of equipment in the amount below 5.000 euro a confirmation of origin from the Chamber of Commerce is not necessary, is it sufficient to acquire a confirmation from the supplier that the goods originated in the EU. Are there any requirements as to the form or content of this declaration?

A: There are no requirements as to the form of the declaration; in terms of content, it has to clearly show that the goods conform with the rules set in Chapter 2.3.1 and Annex A2 of the PraG.

3. **Q:** According to Chapter 2.3.2 of the PraG, the Commission can make an exception to the rules of origin. How does this work in practice?

A: Where the PraG speaks about the 'European Commission' this is to be understood as the Delegation of the EU. Since there is no such organization operating in any of the Member States, and the same rules shall be applied in both sides of the border it is the responsibility of the Contractor (the Contracting Authority, i.e. the Project Partner) to decide on the issue. The validity of this decision is subsequently verified during first level control. Accordingly, the Contractor decides on exceptions case-by-case and in advance for every product individually, and informs about it the companies from which offers are requested when requesting the offers.

4. **Q:** What is the minimum requirement for a product to be considered as having a European origin? Configuration assembling? A product of a European company? Or something else?

A: According to Chapter 2.3.1 of the PraG: 'The country of origin is deemed to be the country in which the goods have undergone their **last, economically justified, substantial transformation**'. Accordingly, a configuration assembled in Europe fits into this category; however, a product of a European company produced in China does not.

5. **Q:** Are we obliged to purchase a poor quality GPS, or camera, if good quality products are all of ineligible origin, or at a price ten times higher than the ineligible one? Is it a risk to set up technical specifications to a higher limit, than what the project (description) would imply?

A: You can make derogation to the rules of origin if there is no product of eligible origin with the technical criteria required. If the provision of a technical criterion can not be justified by the nature of the project, than no derogation can be made.

If a product of eligible origin that complies with the technical criteria is lot more expensive than the ineligible products it can be only stated that realization of the project would be impossible, or exceedingly difficult if budget would be exceeded, or reallocation implying contract modification would be needed by purchasing the eligible product.

Applying an earlier framework contract

6. **Q:** We have a still valid framework contract with a company, it was concluded on the basis of 3 price offers as the amount did not exceed 8 million Forint net. If the translation costs in an IPA project do not exceed 10.000 EUR, is it necessary to sign a new contract according to the PraG, or is it acceptable to request an offer in English from the already contracted supplier for the specific task in the specific project?

A: *In this case, we recommend inviting the contractor of the framework contract to the negotiation of the single tender and signing a separate contract with them.*

Framework contract

7. **Q:** In cases of procurement of services in the amount of over 10.000 EUR, when is it necessary to sign a framework contract?

A: According to the Subsidy Contract, 'framework contract' procedure in Chapters 2.4.5 and 3.4.1 of the PraG shall not be applied.

Procurement amounts – aggregation of contractual amounts – joint management of procedures

8. **Q:** Is the 10.000 EUR threshold set by the PraG to be interpreted as net or gross amount?

A: The thresholds refer to the estimated net amounts.

9. **Q:** To what extent is it necessary to aggregate the procurements? Is aggregation necessary at all?

A: Chapters 2.4.1, 2.4.9 and 2.5 of the PraG deal with the aggregation of contractual amounts. All procurements should be carried out with respect to those rules.

10. **Q:** From the point of view of the thresholds, do the procurements of the project partners which are of the same type have to be aggregated, or are they to be viewed separately per project part?

A: The procurements of the individual project partners are to be counted separately.

11. **Q:** In case there are services to be procured while implementing a project that do not fall into the same budget category, and their individual value does not exceed the 10.000 EUR threshold, the procedure of 3 offers is applied. In case that in more than one case the same supplier wins the tender, is it necessary to unite the separate procedures?

A: The provisions contained in the PraG prohibit splitting the services that belong together, also, it is beneficial to achieve contract values that are as high as possible. **According to this, all the services that can be provided by the same supplier should be counted as a single procurement.**

12. **Q:** The organization of two events is planned within the project. While planning the budget there was no possibility to split the activities and the accompanying costs, so they were listed as a single expenditure. Is it in line with the procedures of the PraG that we ask for the price offers for different types of services separately?

A: All the services that can be acquired together have to be contracted together. Only if there is no supplier who can provide all the services at once, is it possible to procure the services in separate procedures.

13. **Q:** Is it possible for a Hungarian and a foreign project partner to procure equipment in a joint procedure but with two contracts as a result?

A: The procedures do not address the issue, but it is also not prohibited for two Partners to carry out one joint procurement procedure. However, the following should be taken care of:

- Both Partners should be announced as the Contracting Authority,
- Both Contracting Authorities should approve the tender materials and should take part in the evaluation,
- If you want the same contractor to supply to both partners, than you should not divide the tender into lots. Both partners would than be Contracting Authorities of the contract and different conditions to the two partners would be detailed in the special conditions.
- If common supplier is not needed, than partners would launch their purchase in two separate lots and two separate contracts would be signed.

Naturally, all other tendering material has to be modified/extended to fit the special procedure. The above applies to the procurement of works and services as well.

14. **Q:** Should we set up the type of procedure on the basis of highest price assumed? Shall we cancel the procedure if there is any offer with a price offer higher than the lower threshold for that procedure?

A: The type of procedure shall be set up according to the budget of the project (PraG 2.4.1) There is no need to cancel a tender, because there was a price offer higher than the lower threshold for that procedure.

Tender Announcement

15. **Q:** How exactly contract forecasts and procurement notices of open tenders should be published on EuropeAid website and in the Official Journal of the European Commission?

A: In case of local open tenders Summary procurement notice (Annex B2B, C3, D3) is to be sent to the European Commission to e-mail address EuropeAid-IPAPUB@ec.europa.eu The Commission publishes the notice on EuropeAid website.

In case of an international open tender procedure the forecast notice, the procurement notice, the shortlist notice and the contract award notice are to be sent **to the European Commission** to the email address EuropeAid-IPAPUB@ec.europa.eu. The Commission publishes the announcements on the EuropeAid website and forwards them to the official journal of the European Union (TED) for publishing.

16. **Q:** How much should be counted with when planning the costs of the public announcement of an international open tender procedure for the procurement of supplies?

A: The European Commission does not charge any fees for the announcements. If local publication can not be arranged through the local Official Journal and costs of an advertisement in newspapers would be too high than “summary procurement notice” can be used.

17. **Q:** In case of a competitive negotiated procedure, is there an obligation to publish the tender in the Public Procurement Bulletin or an EU procurement journal like the TED database, or is the invitation of 3 tenderers enough?

A: It is sufficient to send an invitation for offers to a minimum of 3 selected tenderers. According to your own decision, you can additionally publish the announcements on your website, or send them to any newspaper for publication.

18. **Q:** How to fill „publication reference” in the procurement notice?

Válasz: Publication reference is given by the European Commission in open tenders. In case of international tenders it is the six digit number of the forecast notice. In case of local open tender it is the number of the summary procurement notice. We recommend to indicate this number on the procurement notice too. If the summary procurement notice and the procurement notice are sent paralelly to the Commission and the local official paper, you can refer to the summary procurement notice in the procurement notice and supplement it later, if possible.

Compliance of tenders

19. **Q:** In competitive negotiated procedure should be all tenders administratively compliant? What to do with “tenders” only stating: “I would like to submit no offer”, or “We don’t sell products you required”?

A: It is stated in PraG that the contract can be awarded if there is only one tender that is administratively and technically valid. Nevertheless we would like to draw your attention to the fact that you should require offers in order to assure competition. If the tenderer fails to submit any tender, it means there is no real competition and the principle of competitive tendering (PraG 2.4) is not followed.

Replacement of documents

20. **Q:** According to 3.3.10.3 of PraG missing proofs can be requested. Does it mean replacement of missing documents is allowed?

A: There is no replacement of missing documents in tenders carried out according to PraG. The paragraph in question refers to requirement of proofs as clarification of missing/unclear information provided in the CVs and related documents.

Documentation of procurement procedures

21. **Q:** Could you please send me the full list of templates that are to be used in case of an international open tender procedure?

A: PraG Annexes¹ (B, C, D) relate to the international procedures. This means that, except for those that are listed as optional, all the rest are compulsory to apply. In case of procurement of services or equipment in local open and competitive negotiated procedures, the simplified tender dossier can be used. If any of the templates does not have a simplified version in the simplified tender dossier, but its use is compulsory, the regular version of the template has to be built upon. The general Annexes (A) are applicable, when necessary.

22. **Q:** According to the PraG, which documents should be filled in and documented in case of the procurement of works?

A: For the management of the procedure, besides the tender dossier (D4), the Annexes D2, and D5-D9 are to be used, as well as A3-A4 from the general annexes. In some cases (e.g. in cases where the procedure is not successful) additional (A) annexes might be necessary.

According to the Subsidy Contract, the individual document templates can be modified in case (and to the extent) the nature of the contract demands it. In case of small-value construction – as the templates were developed for large-budget construction works – certain simplifications in the documents can be justified.

23. **Q:** In case of investment projects is it necessary to translate the technical plans into English?

¹ Link for annexes (A to D):

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

A: The Subsidy Contract determines the obligation for the use of English for the templates. Nevertheless, in international tenders all documents should be translated into English.

24. **Q:** Are all the three types of reports listed in Point 7 of the ToR (inception, draft final, final) obligatory, or is it possible to choose among the three according to the type of tender?

A: The reporting obligations, just as the other points of the ToR, are to be determined according to the type of contract.

Early Warning System

25. **Q:** PraG states, that the Contracting Authority has to ensure that there is not a detection of the third party concerned in the Early Warning System (W5). How should it be done?

A: Detection in connection with the Early Warning System (W5) can not be done in programs managed by Shared management (the management system of IPA programmes).

Guarantees

26. **Q:** Shall we require both tender and performance guarantee?

A: Tender guarantee is compulsory for international open tenders. It can be used for local open tenders. It is not recommended for competitive negotiated procedure.

Performance guarantee is also needed for international tenders. It can be used for local open tenders (for works it is compulsory above 345 000 EUR net contract price). It is not recommended for competitive negotiated procedure.