

# PraG 2008

applicable from 1 January 2009.



- **I. WIDER PERSPECTIVE - 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](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
- 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



# 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.**



# Which chapters to apply?

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

**Chapter 6. is not to be applied for IPA  
programmes.**

**Chapter 7. is to the Implementation  
institutions**



# 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.**
- **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 1

- **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.**



## Derogations by the Subsidy contract 2

- **Chapters 2.4.5 and 3.4.1 (Framework contracts) of PraG shall not be applied.**
- **By derogation to 2.3.1 of PraG the tenderer must submit proof of origin for equipment and vehicles of a unit purchase price higher than EUR 5 000.**



- **II. BASIC RULES**



# Eligibility criteria

## *The rule of nationality and origin 1*

Participation in the procurement is normally open **on equal terms to all natural and legal persons from:**

- Member State of the European Community (EU 27)
- Member State of the European Economic Area (Lichtenstein, Norway, Iceland)
- Official candidate country/ a country that is a Beneficiary of the Instrument for Pre-Accession Assistance (candidate countries- Croatia, FYR Macedonia, Turkey; potential candidate countries- Albania, Bosnia and Herzegovina, Montenegro, Serbia)
- ...

All supplies and materials purchased under a contract financed under an EU instrument must originate from the EU or from an eligible country

The country of origin is deemed to be the country in which the goods have undergone their last, economically justified, substantial transformation.

- Experts engaged by tenderers may be of any nationality.

# Eligibility criteria

## *The rule of nationality and origin 2*

Exceptions (derogations) to the rule on nationality and origin

- unavailability of products and services in the markets of the countries concerned
- duly justified reasons of extreme urgency
- eligibility rules would make the realisation of a project or an action impossible or exceedingly difficult

**Decided by the Contracting Authority (subject to ex-post control)**

***Derogation must be mentioned in the procurement notice – if not, can not be awarded to any tenderer supplying goods subject to derogation***

***It is recommended to obtain a declaration from a supplier on the unavailability of a product prior to launch a tender with derogation.***

- **In case that product of ineligible origin is cheaper than the Community or local product it would not alone constitute grounds for awarding derogation.**



# Eligibility criteria

## *The rule of nationality and origin 3*

**The supplier must certify that the goods tendered comply with the origin requirement specifying the country or countries of origin.**

- **Under 5 000 EUR unit price by a declaration by the supplier**
- **Above 5 000 EUR unit price by proof issued by the Chamber of Commerce of the supplier's or supply's country of origin**



# Grounds for exclusion 1

- A) Bankruptcy
- B) Res judicata
- C) Professional misconduct
- D) Pending tax and social security payment
- E) Fraud, corruption, criminal organization
- F) Subject to administrative penalty

Signed declaration in the Tender form (supply and works and service - competitive negotiated)

Signed declaration in the Application Form (service - international)

Winner must supply the proof usual under the law of the country

- A) B) E) Extract from the judicial record (Cégkivonat)
- D) certificate issued by the competent authority of the State (APEH igazolás)



# Grounds for exclusion 2

- *Evidences:*
  - *1 year before tender submission date*
  - *a statement, no alteration since*
  - *Originals, or copies*

If the supporting documents are not written in one of the **official languages of the European Union**, a translation into the language of the procedure must be attached.

*Contracts under 10 000 EUR: no obligation to require declaration*

*Contracts under international thresholds: no obligation to submit evidences, but Contracting Authority may request*



# Awarding principles

- All contract awards, partially or totally financed by the EU Budget must respect the principles of transparency, proportionality, equal treatment and nondiscrimination.
- Contracts or contract addenda cannot be awarded retroactively (i.e. after the end of the execution period) under any circumstances.



# Award criteria

- a) under the automatic procurement procedure: lowest price;
- b) under the best-value-for-money procedure (i.e. the most economically advantageous tender): combination of technical offer and price



# Use of standard documents

Standard contracts and document formats must be used without translation

To be modified just in case where it's impossible to complete the standard documents.



# Record keeping

- **Written records of the entire tender/call for proposals procedure must be kept confidential and retained by the Contracting Authority.**
- **Unsuccessful tenders have to be kept for five years from the submission deadline of the tender.**
- **The contractual and financial documents have to be kept for a minimum period of seven years from payment of the balance.**



# Suspensive clause

**In duly justified cases, tender procedures may be published with a suspensive clause before a financing decision is adopted.**

**Because of its implications, the existence of a suspensive clause must be explicitly mentioned in the procurement notice or the guidelines to grant applicants.**



# Environmental aspects

**Environmental matters should where possible be duly considered. This could e.g. include more environmental-friendly terms of reference / guidelines / specifications, increased use of electronic means, reduction in paper consumption (recto/verso prints) etc.**



# Planning of procedures

- **The procurements in the projects have to be handled separately from the other procurements of the beneficiary - Concluding separate contract to an IPA financed procurement will not mean artificial split of contracts.**
- **The estimated value of a contract may not be determined with a view to evading the public procurement requirements nor may a contract be split up for that purpose.**



# How to estimate the value of a contract (procurement)?

Care must be taken to design projects to allow for maximum contract size and consequently to avoid the unnecessary fragmentation of programmes into a series of small contracts.



# Selection criteria

The information requested by the Contracting Authority as proof of the financial, economic, technical and professional capacity of the candidate or tenderer and the minimum capacity levels required fixed by the selection criteria **may not go beyond the subject of the contract.**



# Selection criteria: Financial and economic capacity

Proof of economic and financial capacity may in particular be furnished by one or more of the following documents:

- (a) appropriate statements from banks or evidence of professional risk indemnity insurance;
- (b) the presentation of balance sheets or extracts from balance sheets for at least the last two years for which accounts have been closed;
- (c) a statement of overall turnover and turnover concerning the works, supplies or services covered



# Selection criteria:

## Technical and professional capacity

- (a) the educational and professional qualifications of the service provider
- (b) a list of the services/supplies/works provided and supplies delivered in the past three/five years, with the sums, dates places/recipients.
- (c) a description of the technical equipment, tools and plant to be employed by the firm for performing a service or works contract;
- (d) a description of the technical equipment and measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;
- (e) an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;
- (f) in respect of supplies: samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies
- (g) a statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;
- (h) The proportion of the contract which the service provider subcontracts.
- (i) an indication of the environmental management measures



# Selection criteria - proofs

- For service and supply procedures, only successful tenderers have to supply proof documents before the award of the contract – tenderers have to submit declaration
- For works procedures the mentioned proofs have to be submitted in accordance with the tender dossier.
- For contracts with a value less than the international thresholds the Contracting Authority may decide not to require the proofs, but then no pre-financing shall be made unless a financial guarantee of an equivalent amount is provided.
- If the documentary evidence submitted is not written in **one of the official languages of the European Union**, a translation into the language of the procedure must be attached.



# Conflict of interest

- **Any firm or expert participating in the preparation of a project must be excluded from participating in tenders based on this preparatory work, unless they can prove to the Contracting Authority that the involvement in previous stages of the project does not constitute unfair competition.**



# Ethics clauses1

- The contractor and its staff are bound to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the contractor during the performance of the contract are confidential.



# Ethics clauses2

- The Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the Contracting Authority fails to take all appropriate measures to remedy the situation.
- The contractor undertakes to supply the Commission on request with all supporting documents relating to the conditions of the contract's execution. The Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.



# Tendering procedures and financial thresholds (net amounts)

SERVICES	≤ € 10 000	> € 10 000 < € 200 000		≥ € 200 000
	Single tender	1. Competitive negotiated 2. Framework contracts		International restricted
SUPPLIES	≤ € 10 000	> € 10 000 < € 60 000	> € 60 000 < € 150 000	≥ € 150 000
	Single tender	Competitive negotiated	Local open	International open
WORKS	≤ € 10 000	> € 10 000 < € 300 000	> € 300 000 < € 5 000 000	≥ € 5 000 000
	Single tender	Competitive negotiated	Local open	1. International open 2. International restricted



# Single tender 1

- **Up to 10 000 EUR**
- **PraG section 2 applies**
- **No rules, but also no exception from general rules**
- **No templates**
- **Hungarian language can be used**
- **Not compulsory to ask declaration/proof for:**
  - **Grounds for exclusion**
  - **Selection criteria**



# 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.**



# The indicative timeframe of the procedures:

- **10-20 days in case of single tender**
- **30-75 days in case of framework contracts**
- **40-90 days in case of competitive negotiated procedure or local open tender**
- **80-150 days in case of international tenders**



- **III. SERVICE TENDERS**



# Types of service tenders

- **Negotiated procedure (all budgets)**
- **Competitive dialogue (all budgets)**
- **International restricted procedure (above 200 000 EUR)**
- **Framework contract (between 10 000 EUR and 200 000 EUR) – not to be applied**
- **Competitive negotiated procedure (between 10 000 EUR and 200 000 EUR)**



# Negotiated procedure 1

Can only be used in the following cases:

- a) where, for reasons of extreme urgency brought about by events which the Contracting Authorities could not have foreseen,
- b) where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field;
- c) where contracts extend activities already under way;  
complementary services: due to unforeseen circumstances  
additional services: The contract can be extended only once, such that the value and duration of the extension do not exceed the value and duration of the initial contract.
- d) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received.



# Negotiated procedure 2

Can only be used in the following cases (continuing):

- e) where the contract concerned follows a contest and must, under the applicable rules, be awarded to the winner of the contest
- f) where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider;
- g) where one attempt for the use of the competitive negotiated procedure has failed following the unsuccessful use of a framework contract /unavailability of a suitable lot of the framework contract.
- h) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures



# Negotiated procedure 3

The procedures for and contract preparation and signature must be followed by analogy, with the Negotiation Report being included in the contract dossier.

The Contracting Authority must prepare a Negotiation Report justifying the manner in which the negotiations were conducted and the basis for the contract award decision resulting from these negotiations.



# International restricted procedure

- **Two steps procedure**
- **Applicants to the procurement notice: long list**
- **First round: creation of short list from long list based on selection criteria.**
- **Second round: tendering phase**
- **Invitations sent to the short listed candidates**



# International restricted procedure

## Contract Forecast and procurement notice

- Forecast is compulsory for international tenders
- Forecast notice must be published at least 30 days before the publication of the procurement notice.
- The publication of the forecasts do not bind the Contracting Authority to finance the contracts proposed.
- To be sent to the Commission 15 days before the intended time of publication.
- The contract forecasts and procurement notices are published in the Official Journal of the European Union, on the EuropeAid website and in the Közbeszerzési Értesítő



# Publishing notices

- Notices for local publication shall be forwarded in Hungarian and in English to e-mail address [hirdetmeny@kozbeszerzesek-tanacsa.hu](mailto:hirdetmeny@kozbeszerzesek-tanacsa.hu) The Public Procurement Council publishes the notices in the “Közbeszerzési Értesítő” under web page: [www.kozbeszerzes.hu](http://www.kozbeszerzes.hu).
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# The Evaluation Committee

Composition:

- non-voting Chairperson,
- non-voting Secretary
- odd number of voting members (minimum of three)

All members of the Evaluation Committee and any observers must sign a Declaration of Impartiality and Confidentiality.

Participation in the Evaluation Committee meetings is strictly limited to the members of the Evaluation Committee designated by the Contracting Authority and any authorised observers



## International restricted procedure

### Short listing

- **Allow minimum 30 days for submission of the application in the Procurement notice**
- **Short listing by Evaluation Committee:**
  - establishing a long list summarising all the applications received;
  - eliminating candidates who are ineligible
  - applying the published selection criteria without modification

**Short list: between 4 and 8 candidates. If less than 4 meeting selection criteria, than those, who satisfy**

**To record in Short list report**



# International restricted procedure

## Documents of tender initiation and short listing

- **1** [Individual contract forecast](#)
- **B2a** [Procurement notice](#)
- **B2b** [Summary procurement notice - Local publication](#)
- **B3** [Standard application form](#)
- **B4** [Long list](#)
- **B5** [Shortlist report](#)
- **B6** [Shortlist notice](#)
- **B7** [Letter to candidates who have not been short-listed](#)



## International restricted procedure Tender dossier

- Details of the service in the Terms of Reference (ToR)
- The Terms of Reference will become an annex of the eventual contract awarded as a result of the tender.
- ToR must afford equal access for candidates and tenderers - ensure clarity and conciseness.
- It may not be too specific and therefore limiting competition.
- Drafting may require the assistance of one or more external technical specialist(s). They must sign a Declaration of Objectivity and Confidentiality
- Award criteria: combination of technical quality and price



## International restricted procedure

# B8Standard tender dossier

- B8 Letter of invitation to tender
- B8 Instructions to tenderers
- B8 Draft contract
- B8 Shortlist notice
- B8 Administrative compliance grid
- B8 Evaluation grid
- B8 Tender submission form
- B8 Tax and customs arrangements



# International restricted procedure

## Draft Contract

- B8 [Draft contract: General conditions \(Annex I\)](#)
- B8 [Draft contract: Terms of reference Fee-based \(Annex II\)](#)
- B8 [Draft contract: Terms of reference Global \(Annex II\)](#)
- B8 [Draft contract: Organisation & methodology \(Annex III\)](#)
- B8 [Draft contract : list and CV's of key Experts \(Annex IV\)](#)
- B8 Draft contract : Budget (Annex V)
  - [Budget for a global-price contract](#)
  - [Budget breakdown for a fee-based contract](#)
- Forms and other relevant documents (Annex VI)
  - [Bank account notification form](#)
  - [Financial guarantee template](#)
  - [Legal Entity File \(individual\)](#)
  - [Legal Entity File \(private companies\)](#)
  - [Legal Entity File \(public bodies\)](#)
- [Expenditure verification: Terms of Reference and Report of factual Findings \(Annex VII\)](#)



## International restricted procedure Tendering phase

- The minimum period for receipt of tenders is 50 days.
- Questions in writing up to 21 days before the deadline for submission of tenders. Reply at least 11 days before the deadline for receipt of tenders.
- Double envelope system, i.e., in an outer parcel or envelope containing two separate, sealed envelopes, one bearing the words "Envelope A - technical offer" and the other "Envelope B - financial offer"



# International restricted procedure

## Opening Session

- **Not open to the tenderers**
- **1. Preparatory phase:** First meeting of Evaluation Committee is held before starting the actual evaluation.
- **2. Compliance with formal submission requirements**  
Tender opening checklist in Annex B9.  
Summary of tenders received in Tender Opening Report (Annex B10)

Time to check that no member of the Evaluation Committee has a potential conflict of interest with any of the tenderers.



## International restricted procedure Evaluation of technical offers

- Checking administrative compliance (Administrative compliance grid)
- Ranking technical compliance (Evaluation grid) Method: scoring
- Maximum score: 100, minimum threshold: 80 point
- The aggregate final score is the arithmetical average of the individual final scores
- Possibility for interview
- Any tender falling short of the 80-point threshold is automatically rejected.
- Final technical score = final score of the technical offer in question / final score of the best technical offer x 100



## International restricted procedure

### Evaluation of financial offers and conclusion

To the tenders that were not eliminated during the technical evaluation.

Arithmetical errors are corrected. Tenders exceeding the maximum budget allocated for the contract are eliminated.

The tender with the lowest total fees receives 100 points.

The financial score of others = lowest total fees / total fees of the tender being considered x 100

- The best value for money is established by weighing technical quality against price on an 80/20 basis.
  - the scores awarded to the technical offers by 0,80
  - the scores awarded to the financial offers by 0,20.



# Service tenders - Documents of evaluation

- B9 [Tender opening checklist](#)
- B10 [Tender opening report](#)
- B8 [Administrative compliance grid](#)
- B12 [Evaluation grid](#)
- B11 [Evaluation report](#)



# Competitive negotiated procedure

- **No publication of notices: send by post to minimum 3 companies**
- **Implementation like restricted procedure by analogy**
- **Simplified tender dossier**
- **Submission deadline: 30 days**
- **Possibility to award the contract even if there is only one administratively and technically valid bid.**
- **In case of failure, change to negotiated procedure must be approved by the Commission**



## Service tenders - B8Simplified tender dossier

- **B2 Procurement notice simplified**
- **B8 Administrative compliance grid simplified**
- **B8 Contract simplified**
- **B8 invitation simplified**
- **B8 Instructions to tenderers simplified**
- **B8 List of the entities invited**
- **B8 Tender form simplified**



- **IV. SUPPLY TENDERS**



# Types of supply tenders

- **Negotiated procedure (all budgets)**
- **Dynamic purchasing system (all budgets)**
- **Competitive dialogue (all budgets)**
- **International open procedure (above 150 000 EUR)**
- **Local open procedure (between 60 000 EUR and 150 000 EUR)**
- **Competitive negotiated procedure (between 10 000 EUR and 60 000 EUR)**



# Negotiated procedure 1

Can only be used in the following cases:

- a) where, for reasons of extreme urgency brought about by events which the Contracting Authorities could not have foreseen
- b) where warranted by the nature or particular characteristics of the supplies, for example, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents;
- c) for additional deliveries by the original supplier intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations,
- d) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received.



# Negotiated procedure 2

Can only be used in the following cases (continuing):

- e) where after **two attempts** the competitive negotiated procedure has been unsuccessful
- f) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures;
- g) for contracts in respect of supplies quoted and purchased on a commodity market;
- h) for contracts in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law.



# Negotiated procedure 3

The Contracting Authority must prepare a Negotiation Report justifying the manner in which the negotiations were conducted and the basis for the contract award decision resulting from these negotiations.

The procedures for and contract preparation and signature must be followed by analogy, with the Negotiation Report being included in the contract dossier.



# International open procedure

## Contract Forecast and procurement notice

- Forecast is compulsory for international tenders
- Forecast notice must be published at least 30 days before the publication of the procurement notice.
- The publication of the forecasts do not bind the Contracting Authority to finance the contracts proposed.
- To be sent to the Commission 15 days before the intended time of publication.
- The contract forecasts and procurement notices are published in the Official Journal of the European Union, on the EuropeAid website and in the Közbeszerzési Értesítő



# Publishing notices

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# International open procedure

## Documents of tender initiation

- **C1** Individual contract forecast
- **C2** Procurement notice
- **C3** Summary Procurement Notice –  
Local Advertisement
- 



# International open procedure

## Drafting tender dossier

- Technical specifications will be included in the Tender Dossier and will become an annex of the eventual contract awarded as a result of the tender.
- TS must afford equal access for candidates and tenderers - ensure clarity and conciseness.
- Division into lots, where possible
- May not be too specific and therefore limiting competition.
- May not point to particular brands and types.
- Drafting may require the assistance of one or more external technical specialist(s) - each specialist must sign a Declaration of Objectivity and Confidentiality
- Award criterion: price
- In exceptional cases and for particularly complex supplies: the best value for money.



# International open procedure

## C4Standard tender dossier

- **C4** [Letter of invitation to tender](#)
- **C4** [Instructions to tenderers](#)
- **C4** [Draft contract](#)
  - [Draft contract: Special Conditions](#)
  - [Draft contract: General Conditions \(Annex I\)](#)
  - [Technical Specifications and Offer \(Annex II and III\)](#)
  - [Financial Offer \(Annex IV\)](#)
  - [Performance Guarantee \(Annex V\)](#)
  - [Pre-financing Guarantee \(Annex V\)](#)
- **C4** [Administrative compliance grid](#)
- **C4** [Evaluation grid](#)
- **C4** [Tender submission form](#)
- **C4** [Tender guarantee](#)
  - [Bank account notification form](#)
  - [Legal Entity File \(private companies\)](#)
  - [Legal Entity File \(public bodies\)](#)
- **C4** [Tax and customs arrangements](#)



# International open procedure

## The Evaluation Committee

Composition:

- non-voting Chairperson,
- non-voting Secretary
- odd number of voting members (minimum of three)

All members of the Evaluation Committee and any observers must sign a Declaration of Impartiality and Confidentiality

Participation in the Evaluation Committee meetings is strictly limited to the members of the Evaluation Committee designated by the Contracting Authority and any authorised observers



# International open procedure

## Tendering phase

- The minimum period for receipt of tenders is 60 days.
  - can be shortened in exceptional cases
- Questions in writing up to 21 days before the deadline for submission of tenders. Reply at least 11 days before the deadline for receipt of tenders



# International open procedure

## Opening Session

- **Public process** - the committee and the representatives of the companies can be present
- **1. Preparatory phase:** First meeting of Evaluation Committee is held before starting the opening session.
- **2. Opening session: compliance with formal submission requirements**  
Tender opening checklist in Annex C5.  
Summary of tenders received in Tender Opening Report (Annex C6)

Time to check that no member of the Evaluation Committee has a potential conflict of interest with any of the tenderers.



## International open procedure Evaluation of technical offers

- Checking administrative compliance (Administrative compliance grid)
- Checking technical compliance (Evaluation grid)
- Checking the compliance with the rule of origin



## International open procedure

# Evaluation of financial offers and conclusion

Only tenders that were not eliminated during the technical evaluation.

Arithmetical errors are corrected. Tenders exceeding the maximum budget allocated for the contract are eliminated.

Contracts are awarded by lot. Discounts have to be taken into consideration.

In case of abnormally low tender price explanation has to be required.



# Supply tenders - Documents of evaluation

- **C5** [Tender opening checklist](#)
- **C6** [Tender opening report](#)
- **C4** [Administrative compliance grid](#)
- **C4** [Evaluation grid](#)
- **C7** [Evaluation report](#)



# Local open tender

- **Application of the provisions of the International Open tender Procedure by analogy**
- **Procurement notice is published in the EuropeAid website and in the beneficiary country.**
- **English notices shall be forwarded to the European Commission (EuropeAid) to e-mail address: [europaaid-ipapub@ec.europa.eu](mailto:europaaid-ipapub@ec.europa.eu).**
- **Notices shall be forwarded in Hungarian and in English to e-mail address [hirdetmeny@kozbeszerzesek-tanacsa.hu](mailto:hirdetmeny@kozbeszerzesek-tanacsa.hu)**
- **Simplified tender dossier**
- **No tender guarantee needed**
- **Equal opportunities to non local firms**
- **Submission deadline: 30 days**



# Competitive negotiated procedure

- **No publication of notices: send by post to minimum 3 companies**
- **Implementation like international open procedure by analogy**
- **No tender guarantee needed**
- **Simplified tender dossier**
- **Submission deadline: 30 days**
- **Possibility to award the contract even if there is only one administratively and technically valid bid**
- **Negotiation allowed only in case of 2 failures**



# Supply tenders – C4 Simplified tender dossier

- **C2 Procurement notice simplified**
- **C3 Summary procurement notice simplified**
- **C4 Technical specifications simplified**
- **C4 Contract Simplified**
- **C4 Evaluation Grid Simplified**
- **C4 Invitation Simplified**
- **C4 Instructions to tenderers simplified**
- **C4 Special conditions simplified**
- **C4 Tender form simplified**



- **V. WORKS TENDERS**



# Types of works tenders

- **Negotiated procedure (all budgets)**
- **Competitive dialogue (all budgets)**
- **International open procedure (above 5 000 000 EUR)**
- **International restricted procedure (above 5 000 000 EUR)**
- **Local open procedure (between 300 000 EUR and 5 000 000 EUR)**
- **Competitive negotiated procedure (between 10 000 EUR and 300 000 EUR)**



# Negotiated procedure 1

Can only be used in the following cases:

- a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen the timelimit for the competitive procedures cannot be met.
  
- b) for additional works not included in the initial contract which have, through unforeseen circumstances, become necessary for carrying out the works:
  - where such works cannot be technically or economically separated from the main contract
  - where such works, although separable from the performance of the original contract, are strictly necessary to its completion; The value of additional works does not exceed 50% of the original contract.



# Negotiated procedure 2

Can only be used in the following cases (continuing):

- c) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received.
- d) where after two attempts the competitive negotiated has been unsuccessful,
- e) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the beneficiary country so requires.



# Negotiated procedure 3

The Contracting Authority must prepare a Negotiation Report justifying the manner in which the negotiations were conducted and the basis for the contract award decision resulting from these negotiations.

The procedures for and contract preparation and signature must be followed by analogy, with the Negotiation Report being included in the contract dossier.



# International open procedure

## Contract Forecast and procurement notice

- Forecast is compulsory for international tenders
- Forecast notice must be published at least 30 days before the publication of the procurement notice.
- The publication of the forecasts do not bind the Contracting Authority to finance the contracts proposed.
- To be sent to the Commission 15 days before the intended time of publication.
- The contract forecasts and procurement notices are published in the Official Journal of the European Union, on the EuropeAid website and in the Közbeszerzési Értesítő
- The procurement notices of local open tenders are published in the Közbeszerzési Értesítő



# Publishing notices

- For local publication notices shall be forwarded in Hungarian and in English to e-mail address [hirdetmeny@kozbeszerzesek-tanacsa.hu](mailto:hirdetmeny@kozbeszerzesek-tanacsa.hu) The Public Procurement Council publishes the notices in the “Közbeszerzési Értesítő” under web page: [www.kozbeszerzes.hu](http://www.kozbeszerzes.hu).
- English notices shall be forwarded to the European Commission (EuropeAid) to e-mail address: [europaaid-ipapub@ec.europa.eu](mailto:europaaid-ipapub@ec.europa.eu). The European Commission (EuropeAid) is responsible for the publication of these notices in TED.



# International open procedure

## Documents of tender initiation

- **D1** Individual contract forecast
- **D2** Procurement notice
- **D3** Summary Procurement Notice –  
Local Advertisement

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# International open procedure

## Drafting tender dossier

- Technical specifications will be included in the Tender Dossier and will become an annex of the eventual contract awarded as a result of the tender.
- TS must afford equal access for candidates and tenderers - ensure clarity and conciseness.
- Division into lots, where possible
- May not be too specific and therefore limiting competition.
- May not point to particular brands and types.
- Drafting may require the assistance of one or more external technical specialist(s) - each specialist must sign a Declaration of Objectivity and Confidentiality
- Award criterion: price
- In exceptional cases and for particularly complex supplies: the best value for money.



# Works tenders – D4Standard tender dossier

- D4 [Letter of invitation to tender](#)
- D4 [Instructions to tenderers](#)
- D4 [Draft contract](#)
- D4 [Draft contract: Special Conditions](#)
- D4 [Draft contract: General Conditions](#)
- D4 [Technical Specifications](#)
- D4 [Technical Offer Questionnaire](#)
- D4 [Technical Offer Form 4.1 - 4.6](#)
- D4 [Financial Offer](#)
- D4 [Design Drawings](#)
- D4 [Administrative compliance grid](#)
- D4 [Evaluation Grids](#)
- D4 [Tender Form](#)
- D4 [Tender Guarantee](#)
- D4 [Pre-financing Guarantee](#)
- D4 [Performance Guarantee](#)
- D4 [Retention Guarantee](#)



# The Evaluation Committee

Composition:

- non-voting Chairperson,
- non-voting Secretary
- odd number of voting members (minimum of five – international tenders, minimum of three – local open tenders)

All members of the Evaluation Committee and any observers must sign a Declaration of Impartiality and Confidentiality

Participation in the Evaluation Committee meetings is strictly limited to the members of the Evaluation Committee designated by the Contracting Authority and any authorised observers



# International open procedure

## Tendering phase

- The minimum period for receipt of tenders is 90 days.
  - can be shortened in exceptional cases
- Questions in writing up to 21 days before the deadline for submission of tenders. Reply at least 11 days before the deadline for receipt of tenders



# International open procedure

## Opening Session

- **Public process** - the committee and the representatives of the companies can be present
- **1. Preparatory phase:** First meeting of Evaluation Committee is held before starting the opening session.
- **2. Opening session: compliance with formal submission requirements**

Tender opening checklist in Annex D5.

Summary of tenders received in Tender Opening Report (Annex D6)

Time to check that no member of the Evaluation Committee has a potential conflict of interest with any of the tenderers.



## International open procedure Evaluation of technical offers

- Checking administrative compliance (Administrative compliance grid)
- Checking technical compliance (Evaluation grid)



## International open procedure

# Evaluation of financial offers and conclusion

Only tenders that were not eliminated during the technical evaluation.

Arithmetical errors are corrected. Tenders exceeding the maximum budget allocated for the contract are eliminated.

Contracts are awarded by lot. Discounts have to be taken into consideration.

In case of abnormally low tender price explanation has to be required.



# Works tenders - Documents of evaluation

- **D5** [Tender opening checklist](#)
- **D6** [Tender opening report](#)
- **D4** [Administrative compliance grid](#)
- **D4** [Evaluation Grids](#)
- **D7** [Evaluation report](#)



# International restricted procedure

- **Two steps procedure.**
- **Applicants to the procurement notice: long list**
- **First round: creation of short list from long list based on selection criteria by analogy with restricted service tender**
- **Second round: tendering phase by analogy with international open tender**
- **Invitations sent to the short listed candidates**
- **Minimum 60 days for tendering**



# Local open tender

- Application of the provisions of the International Open tender Procedure by analogy
- Procurement notice is published in the EuropeAid website and in the beneficiary country.
- English notices shall be forwarded to the European Commission (EuropeAid) to e-mail address: [europaaid-ipapub@ec.europa.eu](mailto:europaaid-ipapub@ec.europa.eu).
- For local publication notices shall be forwarded in Hungarian and in English to e-mail address [hirdetmeny@kozbeszerzesek-tanacsa.hu](mailto:hirdetmeny@kozbeszerzesek-tanacsa.hu)
- Equal opportunities to non local firms
- Submission deadline: minimum 60 days
- No tender guarantee needed



# Competitive negotiated procedure

- **No publication of notices: send by post to minimum 3 companies**
- **Implementation like international open procedure by analogy**
- **No tender guarantee needed**
- **Submission deadline: 30 days**
- **Possibility to award the contract even if there is only one administratively and technically valid bid.**
- **Negotiation allowed only in case of 2 failures.**



- **VI. ACTIVITIES AFTER EVALUATION**



# Contract award

1. The Contracting Authority notifies the successful tenderer in writing that its tender has been accepted.
2. The Contracting Authority requests the successful tenderer to submit the evidence required by the tender dossier to confirm the declarations made in the tender submission form. (if needed so in the tender documents)

Note: For contracts with a value of less than the international thresholds there is no obligation to submit the above mentioned documents.



# Contracting

- Contracting Authority signs and date all originals of the contract and initial all pages of the Special Conditions.
- Contracting Authority sends the three signed originals of the contract to the successful tenderer/applicant,
- Successful tenderer countersigns them within 30 days of receipt and returns two originals to the Contracting Authority together with the eventual financial guarantee(s) required in the contract.

The standard contract annexes for the General conditions and Forms and other relevant documents must be reproduced.



# Publicising the award of the contract

The award notice shall be published for procedures where a publication of the procurement notice has taken place or if the value of the contract is above international thresholds.

Once the contract has been signed, the Contracting Authority must prepare contract award notice and send it to the European Commission and Közbeszerzési Értesítő, which publishes the results of the tender procedure in the Official Journal, on the EuropeAid website and in Közbeszerzési Értesítő.

The Contracting Authority informs candidates and tenderers of decisions reached concerning the award of the contract as soon as possible by a standard letter.



# Cancellation of procurement procedures 1.

- The Contracting Authority may, before the contract is signed cancel the procurement procedure.
- Cancellation may occur where:
  - the tender procedure has been unsuccessful,
  - the economic or technical data of the project have been fundamentally altered;
  - exceptional circumstances or force majeure render normal performance of the contract impossible;
  - all technically compliant tenders exceed the financial resources available;
  - there have been irregularities in the procedure, in particular where these have prevented fair competition.
- All tenderers must be notified in writing and as soon as possible. A cancellation notice must be published (open tenders).



# Cancellation of procurement procedures 2.

**After cancelling a tender procedure, the Contracting Authority may decide:**

- to launch a new tender procedure;**
- to open negotiations with one or more tenderers who participated in the tender procedure,**
- not to award the contract.**



# Contract modification

For substantial modifications.

Not for administrative modifications.

No modification to the contract may alter the award conditions prevailing at the time the contract was awarded. Fundamental alteration of the Terms of Reference/Technical Specifications, cannot be made by means of an addendum or an administrative order.

Contracts can only be modified within the execution period of the contract.

Where the modification of the contract extends activities already under way such cases are considered as negotiated procedures.



# Documents of awarding, contracting and accomplishment of contract

- B13 C8 D8 [Letter to unsuccessful tenderers](#)
- B14 C9 D9 [Contract award notice](#)
- B15 C10 D10 [Contractor assessment form](#)
- C11 [Provisional and Final Acceptance](#) (supplies)
- B16 C12 D11 [Addendum to contract](#)
- B17 C13 D12 [Budget modification](#)



# Appeals

- Tenderers may petition the Contracting Authority directly. The Contracting Authority must reply within 90 days of receipt of the complaint.
- If there is no result, the parties can turn to the European Commission.
- Where the European Commission is informed of such a complaint, it must communicate its opinion to the Contracting Authority and do all it can to facilitate an amicable solution between the complainant (tenderer) and the Contracting Authority.
- Should a Contracting Authority fail to adhere to the procurement procedures provided for in this Practical Guide, the European Commission reserves the right to refuse to finance the contract or to suspend, withhold or recover funding for the contracts concerned.



# 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](http://ec.europa.eu/regional_policy/sources/docgener/presenta/eligibility/eligibility_2009_en.pdf)

