

## Public procurement

### ➔ Background Information

The European Community has set up a number of directives with the aim of opening public procurement within the Internal Market to increase cross-border competition and improve prices paid by public authorities. Under these Community rules public sector procurement must follow transparent open procedures and ensure fair conditions of competition for suppliers.

The directives only apply for purchases above certain thresholds:

- + 206.000, -- Euro exclusive of value added tax (VAT) for public supply and service contracts,
- + 412.000, -- Euro exclusive of VAT for supply and service contracts in the fields of water, energy, transport and postal services and
- + 5.150.000, -- Euro exclusive of VAT for public works contracts

Member States are obliged to transfer these directives into their national law. For purchases below these thresholds Member States have more flexibility in regulating their procurement law. Therefore, the national rules for such procurements vary between Member States. However, also when regulating these purchases Member States have to obey certain fundamental principles as laid down in the Treaty as well as the jurisdiction of the European Court of Justice that constantly further develops the procurement law.

According to the structural funds regulations the programme bodies have to ensure that programme and project implementation is carried out in compliance with the applicable EU and national rules; which include the rules of public procurement.

### ➔ Guidance

In general, purchases of goods, services and public works by the state, regional or local authorities, or

bodies governed by public law have to follow the procurement rules set up on EU- and national level.

Since the projects are co-funded with public funds and as these shall be used in compliance with the principles of efficiency, economy and expediency the Partner States of the Alpine Space Programme have agreed that also private partners, which normally would not be subject to procurement rules, shall follow the public procurement rules of the country in which they are located.

By signing the Application Form (AF), the Partnership Agreement (PA) and the Subsidy Contract (SC) the Lead Partner (LP) and the Project Partners (PP) commit themselves to ensure that the project is implemented in compliance with the EU and applicable national legislation, including the provisions on public procurement (see also factsheets 5.1 *Partnership Agreement* and 5.2 *Subsidy Contract*). Thus, any purchase of goods, services and public works by the project participants has to be carried out in accordance with the applicable procurement provisions.

The First Level Control body of each project participant (see also factsheet 6.2 on *Financial Control System of the Programme*) checks, inter alia, if the public procurement rules have been followed. Therefore project participants have to ensure that any procurement procedure is orderly carried out and documented. In case that the FLC body comes to the result that public procurement rules were not obeyed the respective costs are not eligible for co-funding by the programme.

In addition to the First Level Control audits are respectively may be carried out by auditing bodies of the programme, the EU or of the state the respective project participant is situated in. Also these audits may cover the check if public procurement rules have been obeyed. Any irregularity detected might lead to the obligation of the project to repay ERDF-funds already received.

In general it can be stated that the higher the value of a contract to be awarded the stricter the procurement rules that have to be followed (e. g. as regards the requirement of publication of the call for tenders or the procurement procedure to be applied). In case of small contract values national laws foresee the possibility of direct contracting, i.e. to commission a company without any need for a formalised procurement procedure (however it has to be ensured that the selection procedure is laid down transparently and that the principles of economic and efficient use of funds is obeyed).

In the following it is set out where more information on the applicable public procurement rules of the single Member States involved in the programme can be found. For further information about the applicable rules in the respective countries the Alpine Contact Points (ACP) can be contacted.

AUSTRIA: there is one single law regulating the procurement law for whole Austria, namely the *Bundesvergabegesetz 2006*, BGBl I Nr 17/2006, (<http://www.ris.bka.gv.at>). Direct contracting is possible up to an amount of 40.000 Euro (exclusive of VAT).

FRANCE: the threshold under which direct contracting is possible differs from region to region. French project participants shall therefore check *Décret n° 2006-975 du 1er août 2006 portant code des marchés publics*.

GERMANY: German Partners must act in respect of the *Verordnung über die Vergabe öffentlicher Aufträge (Vergabeverordnung –VgV)*. Further details about the application of the VgV are set out in the *Verdingungsordnung für Leistungen (VOL)* and in the *Verdingungsordnung für freiberufliche Leistungen (VOF)*. All documents can be found on the following website:

<http://www.bmwi.de/BMWi/Navigation/Wirtschaft/Wirtschaftspolitik/oeffentliche-auftraege.html>

ITALY: Italian Partners must act in respect of the Italian Public Procurement Code, Law n. 163 dated 12-04 2006.

SLOVENIA: Slovenian Partners must act in respect of the Slovenian Public procurement Law, *Zakon o javnem naročanju ZJN -2 (Uradni list RS, 128/2006)*. Direct contracting is possible for procurements below the threshold of 10.000 Euro (exclusive of VAT) for goods and services respectively of 20.000 Euro (exclusive of VAT) for constructions.

## **Reference Document**

- + Article 9 (5) and Article 60 lit a) of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999

## **Annexes**

- + Model Application Form (AF) with guidance
- + Partnership Agreement
- + Subsidy Contract