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**ENPI
CBCMED**
CROSS-BORDER COOPERATION
IN THE MEDITERRANEAN

Project Implementation Manual

Procurement of Services, Supplies and Works

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Introduction

There are specific rules and procedures that must be followed for procurement and some of the procedures include specified time periods. When developing your work plan of activities, ensure it includes a procurement plan with a timeline¹ to avoid delays to the implementation of required activities.

Which rules apply?

Article 23 of the ENPI CBC Implementing Rules states:

"The procedures and related standard documents and contract templates to be used shall be those included in the **Practical Guide to contract procedures for EC external actions (PraG)**² with Annexes in force at the time of the launching of procurement procedures or calls for proposals"

Although PraG provides a full set of procedures and templates, grant Beneficiaries and Partners can find the procurement rules applicable to them in **Annex IV of their Grant Contract**: "*Procurement by grant Beneficiaries in the context of European Community external actions*", as modified by the Special Conditions of the Grant Contract (see article. 7.3)

Annex IV of the Grant Contract is applicable to the Beneficiary and all Partners, regardless of their legal status (public or private) or nationality (EU Member State or Partner Country).

What is in Annex IV of your Grant Contract? See the list below.

1. General principles
2. Eligibility for contracts (rules of nationality & origin)
3. Rules common to all tender procedures
4. Rules applicable to service contracts
5. Rules applicable to supply contracts
6. Rules applicable to work contracts
7. Use of negotiated procedure
8. Special cases

Annex IV, as modified by the Special Conditions of the Grant Contract, includes terminology which is defined in the main chapters of PraG, as we will see in the section below.

¹ Some examples of Procurement Plan Template are annexed to the present chapter.

² Practical Guide to contract procedures for EC external actions you can consult the last version at http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/index_en.htm. Furthermore, a user-friendly application to enable users to search and access the guide and associated annexes is now available at <http://capacity4dev.ec.europa.eu/article/introduction-new-ePraG-tool>



Are all sections of Annex IV applicable to everybody?

- Sections 1 and 2 are applicable to all Beneficiaries and Partners
- Sections 3 to 7 are **not applicable to public bodies (contracting authorities) in EU Member States**. These bodies should apply their own national rules, except when they contradict article 2 (rule of nationality and origin) which has to be respected in all cases.

How should you understand Section 8.2: Special cases and what organisations are considered as a public administration in an EU Member State?³

Under Section 8.2: Special Cases, Contracting Authorities or contracting entities within the meaning of the Community Directives refers to State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or one or several of such bodies governed by public law.

A body governed by public law is a body:

- established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and
- having a legal personality, and
- is financed, for the most part, by the State, Regional or Local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law.

In order to avoid any kind of misunderstanding, please note that an organization can be considered a “Body Governed by Public Law” only when all the above mentioned requirements as per points 1, 2, and 3 are respected.

Additionally, the criteria as per point 3 of the list, shall be interpreted in a restrictive sense, which means that:

1. more than 50% of the budget of the body has to come from State, regional or local public authority/ies or other body/ies governed by public law as promoter/s, partner/s or stakeholder/s; **or**
2. the management of the body shall be supervised by personnel charged by the bodies described above as controllers or auditors; **or**
3. more than 50% of the members of the board in charge of managing the body or to supervisory the body has to be appointed by a State, regional or local public authority or body/ies governed by public law.

³ According to Art. 1.9 of the public contracts directive: DIRECTIVE 2004/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.



Moreover, the compliance with national public law in the matter of employment and procurement contracts could be another criterion that confirm the nature of "body governed by public law".

This does not necessary mean that the Beneficiaries and Partners, other than public bodies in EU Member States, will have to use procedures described in chapter 3, 4 and 5 of PraG and its templates. Annex IV indicates that **tender documents** have to follow **best international practice (which include PraG)**.

Therefore, even if Annex IV indicates that the Beneficiary or Partner **may use PraG models when they do not have their own models, please note that** if no specific restriction are envisaged according to the national legislation, the use of PraG procedures and templates is strongly recommended by the JMA since it's certainly corresponding to one of the possible "best international practices" as requested in the same Section 3 of Annex IV.

Key message 1: Before starting procurement procedure please check the table below.

Type of institution	Rules to apply
Contracting authorities and bodies governed by public law in Member States	National procurement rules and procedures
Public authorities and other public bodies in Partner Countries (as defined in their national legislation)	The use of PraG Procedures and Templates is strongly recommended by the JMA , unless in case of duly justified restriction and limitation due to National/Local laws or organizational compulsory internal procedures ⁴
Private bodies (profit and non-profit) in Member States and Partner Countries	PraG procedures and documents, as detailed in Annex IV of Grant Contract, unless other proven best practices are usually applied
International Organizations	PraG procedures and documents, as detailed in Annex IV of Grant Contract, unless other proven best practices are usually applied

Key message 2: In all cases, the general principles and rules on nationality and origin set out in sections 1 and 2 still apply to all.

Key message 3: The Beneficiary must inform its Partners about the applicable procedures as sections 3 to 7 may also apply to them.

⁴ National procurement rules and procedures may be used if a revision is made in order to avoid any contradiction with Annex IV general principles and thresholds. In case of doubts, before launching the procedure, please consider to consult the referent of the National Contact Point of the Programme you may find at <http://www.enpicbmed.eu/en/contacts/>



Nevertheless take care also of the differences between PraG and Annex IV as per the following list:

- Publication of the individual contract forecast: not required by Annex IV.
- Tender publication requirements are different.
- To be published in all appropriate media, in particular on the Beneficiary's web site, in the international press, national press or in other specialist periodicals (Annex IV).
- Deadline for submission: long enough, allowing reasonable and appropriate period in Annex IV (PRAG: 60 days for Supplies and 90 days for Works in international tenders, 30 for Supplies and 60 for Works in local tenders).
- Most economically advantageous tender to be selected according to Annex IV, i.e. the tender offering the best price-quality ratio, best value for money (whereas price is the only criterion for supplies and works in PraG).⁵
- Number of Evaluation Committee members - odd number of voting members, at least 3 according to Annex IV (PraG – at least 5 for International open tender for Works).
- Framework contract procedure for services not foreseen in Annex IV (PraG – possible for services of < € 200,000 but > € 10,000).
- Negotiated procedure in Annex IV (similar to Competitive negotiated procedure in PraG): Beneficiary consults at least 3 suppliers of its choice and negotiate the terms of contract with one or more of them.
- Use of negotiated procedure for higher amounts, than allowed by standard ceilings - listed in article 7 of Annex IV (combination of all correspondent articles of PraG).

What are the key factors to take into account in procurement?

See the list of “Dos’ and Don’ts” in the table below.

⁵ Moreover, please consider that, as per art. 53 of the Directive 2004/18 “Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criteria on which the contracting authorities shall base the award of public contracts shall be either:

(a) when the award is made to the tender most economically advantageous from the point of view of the contracting authority, various criteria linked to the subject-matter of the public contract in question, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, **or**

(b) the lowest price only.”



What to do	What NOT to do
Do identify the applicable rules to your organisation	Do not acquire services, supplies and works 'as usual'
Do plan all procurement at the beginning of the project	Do not assume that procurement can be done quickly
Do be aware of the thresholds for all subcontracting	Do not artificially split contracts to avoid the requirements e.g. by year or by category or by Partner. Artificial splitting is not allowed and will make the total amount of all contracts ineligible (more information on artificial splitting is in section below)
Do consult the National Contact point of the Programme in your country and then the JTS/JMA officers	Do not trust only your past experience even if you had similar grants in the past – rules change
Do revise your usual procedures to verify that they are compliant with Annex IV of your Grant Contract	Again do not trust to it 'as usual'
Do provide all information required, make sure the Terms of Reference are clear and include check-lists for tenderers	Do not assume that tenderers have enough experience to submit eligible bids



Procurement procedures

Which procurement procedures to apply and under which conditions, as mentioned in Annex IV, can be found in section 2.4 of the main body of PraG. These procedures are:

- Open procedure
- Restricted procedure
- Negotiated procedure without publication (3 offers)
- Negotiated procedure

These are described in more detail in the lists below.

Open Procedure

Calls for tenders (publicised internationally or locally) are open when all interested economic operators may submit a tender. Therefore:

- The call should be given maximum publicity.
- Any natural or legal person wishing to tender receives the tender dossier upon request.
- When the received tenders are examined, the contract is awarded by conducting:
 - A selection procedure (i.e. verification of the eligibility and of the financial, economic, technical and professional capacity of tenderers), and
 - A procurement procedure (comparison of tenders).
- No negotiation is allowed.

Restricted Procedure

Calls for tenders are restricted when all interested economic operators may ask to take part (in response to a procurement notice) but only candidates satisfying the selection criteria may submit a tender. Therefore the contracting body:

- Uses a selection procedure to examines all responses to the procurement notice.
- Draws up a short list of candidates based on their qualifications according to the selection criteria.
- The contracting body invites the shortlisted candidates to submit a tender.
- No change in the identity or the composition of the tenderer is permitted (**unless duly justified and where the Contracting Authority has given its prior approval in writing, after having consulted the Evaluation Committee**)
- The successful tenderer is chosen by a procurement procedure.
- No negotiation is allowed.

Negotiated Procedure without Publication (3 offers)



The contracting body invites at least three candidates, with competence in the relevant field, to submit tenders.

At the end of the procedure, it selects one the tenders which is technically compliant and provides:

- The best value for money in case of service tenders.
- The cheapest compliant offer in case of supplies or works tenders.

Please note that the procedure for evaluating the submitted tenders (including the use of an evaluation committee) and awarding the contract is the same as under the restricted procedure.

Negotiated Procedure

The contracting body may **exceptionally** use a negotiated procedure on the basis of a single tender when:

- There is extreme urgency which is in no way attributable to the Beneficiary or Partner. Nevertheless please consider that the circumstances invoked to justify extreme urgency must in no way be attributed to the Beneficiary (or to the Partner).
- The contract extends activities already under way because of unforeseen circumstances.
- The tender procedure has been unsuccessful.
- For technical reasons, the contract can be awarded only to a particular provider (**see full list in section 7 of Annex IV of your Grant Contract**).

Key message 4: As procurement is a crucial element in any project, it is important to ensure it is conducted correctly so the expenditure is eligible and also to avoid giving grounds for complaint by tenderers and therefore delays associated with the possible cancellation and re-launch of the procedure.

Anticipation is the key. What could go wrong and key preventative measures are given in the table below.

What could go wrong	Key preventative measures
The procurement process is not transparent	<ul style="list-style-type: none">• Ensure that the tender documents are clear.• Establish clear selection and award criteria beforehand and ensure that they are known by the relevant stakeholders.• Ensure that the entire procurement process is clearly documented and keep minutes of all evaluation sessions.



The procurement process does not obey the principles of non-discrimination and equal treatment	<ul style="list-style-type: none"> • Ensure that the bidding process is as open as possible and is accessible to all potential suppliers and that tender specifications are not restrictive to avoid competition. • Dispatch invitations or publish notices early enough to give sufficient time to respond. • Ensure the same information is given to all participants at the same time. • Ensure that all offers are open at the same time in a 'controlled environment'.
The evaluation process is not objective or impartial	<ul style="list-style-type: none"> • Make sure that none of the evaluators has a conflict of interest (e.g.: their nomination shall be finalized only after the envisaged deadline of the tender). • Ensure that the selection and award criteria are correctly applied. • Ensure that the offers are evaluated only after the date set for their submission.
The wrong procedure is used	<ul style="list-style-type: none"> • Check that the procedure is correct according to the applicable rules before launching it. Moreover take care to <u>archive all supporting documents</u> in order to demonstrate the full respect of previous recommendations

General principles and common rules in Annex IV

The **general principles** applicable to all Beneficiaries and Partners are described in section 1 of Annex IV to your Grant Contract. They are linked to the principles of sound financial management described in section 4.1 below.

As already mention, contracts must be awarded:

- To the **most economically advantageous** tender i.e. to the tender offering the best price-quality ratio, and
- In accordance with the principles of **transparency and fair competition** for potential contractors, taking care to avoid any conflicts of interest, **even below the thresholds for direct award**⁶.

To this end, the Beneficiary and Partners must comply with the rules set out in sections 2-7 of Annex IV with the exceptions explained above.

⁶ That is ≤ €10,000 as described below in *Thresholds and procedures for procuring services, supplies and works* or national thresholds for public administrations in Member States.



In the event of a **failure** to comply with the rules referred to above, **all the expenditure will not be eligible**. The compliance with the rules will be verified by the auditor carrying out the expenditure verification needed for each payment request. It may also be verified by JMA, EC and other authorized bodies (i.e.: the European Anti-Fraud Office, of the European Court of Auditors).

- The **common rules applicable to all tender procedures** are described in section 3 of Annex IV (and therefore not applicable to public bodies in EU Member States):
- The tender documents must be drafted in accordance with **best international practice**. The Beneficiary and Partners **may** use the models relating to external actions published on the EC website, namely PraG Chapters 3 (Services), 4 (Supplies) and 5 (Works) and related annexes (note, this is not compulsory). In case of doubt, you could compare your procedures to the EC best practice as described in these chapters and annexes and adapt as needed.
- The **time-frames** for receipt of tenders and requests to participate must be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders.
- All requests to participate, and tenders which are declared as satisfying requirements, must be **evaluated and ranked by an evaluation committee** on the basis of exclusion, selection and award criteria announced in advance. This principle is applicable also in case of direct awarding, meaning that the selection and awarding criteria shall be defined in advance and inserted in the invitation letter to be sent to the potential participants.
- This **committee** must have an **odd number of members**, and at least three members, with all the technical and administrative capacity necessary to give an informed opinion on the tenders.

Rule of nationality

Both the ENPI Regulation (article 21) and Annex IV (section 2) as modified by article 7.3 of the of the Grant Contract Special Conditions, oblige all Beneficiaries and Partners to respect the rule of nationality (described below).

ENPI Regulation article 21

Participation in the award of procurement contracts financed under this Regulation shall be open to all natural persons who are national of, and legal persons established in, a Member State, a country that is a beneficiary of this Regulation, a country that is beneficiary of an Instrument for Pre-Accession (IPA) or a member State of European Economic Area (EEA). It will also be open to International Organisations.

Key message 6: The rule is applicable for Beneficiaries and Partners in EU Member States even if it's in contradiction with national procurement rules, as these national



rules derive from the EC Public Contracts Directive which is lower in the legal hierarchy than the ENPI Regulation.

Regardless of the eligible area of the programme, all natural persons (such as experts, interpreters, etc.) and legal persons (service providers and suppliers, etc.) from the countries listed in the ENPI Regulation can participate in a tender and sign a contract with a Beneficiary or Partner.

The countries listed in the ENPI Regulation are given in the table below.

“Rule of nationality” countries listed in the ENPI Regulation	
EU Member States	Portugal, Spain, France, Italy, Malta, Greece, Cyprus, Bulgaria, Romania, Poland, Czech Republic, Slovakia, Hungary, Slovenia, Austria, Germany, Lithuania, Latvia, Estonia, Finland, Sweden, Denmark, The Netherlands, Belgium, Luxemburg, United Kingdom and Ireland
ENPI Partner Countries	Russia, Belarus, Ukraine, Moldova, Georgia, Armenia, Azerbaijan, Algeria, Egypt, Israel, Jordan, Lebanon, Lybia, Morocco, Occupied Palestinian Territories, Syria and Tunisia
IPA Countries	Croatia, Turkey, Albania, Bosnia, Montenegro, Serbia, Kosovo and FYROM
EEA	Norway, Iceland and Liechtenstein

Please take note that:

- The fact that some of these countries do not participate in ENPI CBC Mediterranean Sea Basin Programme does not affect their eligibility for procurement procedures.
- Those submitting tenders must state in which country they are nationals in the tender and present the usual proof of nationality under their national legislation.

The same rule however, does not apply to experts proposed by service providers taking part in tender procedures or service contracts financed under the grant. For example, a Beneficiary or Partner can sign a service contract with a Dutch company which includes a Japanese expert in the team of experts providing the services.



Exceptions to the Rule

In duly substantiated exceptional cases, the JMA may allow the participation of nationals from countries other than those previously referred to (e.g. when the service provider is the only one available with the required expertise). In this case, ensure you have written confirmation of the derogation to the rule before launching the tender procedure. **For further information please check the Appendix I.**

Rule of origin

Both the ENPI Regulation (article 21) and Annex IV (Section 2.2) as modified by article 7.3 of the of the Grant Contract Special Conditions, oblige all Beneficiaries and Partners to respect the rule of origin when procuring supplies, regardless of the amount of equipment purchased.

ENPI Regulation article 21

All supplies and materials purchased under contracts financed under this Regulation shall originate in the community or a country eligible under this article.

Key Message 7:

Be aware that the rule is also applicable to Beneficiaries and Partners (and their subcontractors) in EU Member States even if it is in contradiction with national procurement rules, also because as they derive from the EC Public Contracts Directive which, as described above, is lower in the legal hierarchy than the ENPI Regulation.

Regardless of the eligible area of the programme, all supplies purchased (such as equipment, furniture and material etc.) shall originate in the same list of countries as for the nationality rule (listed again below).

“Rule of origin” countries listed in the ENPI Regulation	
EU Member States	Portugal, Spain, France, Italy, Malta, Greece, Cyprus, Bulgaria, Romania, Poland, Czech Republic, Slovakia, Hungary, Slovenia, Austria, Germany, Lithuania, Latvia, Estonia, Finland, Sweden, Denmark, The Netherlands, Belgium, Luxemburg, United Kingdom and Ireland
ENPI Partner Countries	Russia, Belarus, Ukraine, Moldova, Georgia, Armenia, Azerbaijan, Algeria, Egypt, Israel, Jordan, Lebanon, Lybia, Morocco, Occupied Palestinian Territories, Syria and Tunisia



IPA Countries	Croatia, Turkey, Albania, Bosnia, Montenegro, Serbia, Kosovo and FYROM
EEA	Norway, Iceland and Liechtenstein

What is meant by the term “origin” ?

For the purpose of Annex IV, the term ‘origin’ is defined by Council Regulation⁷ as **the economic nationality of goods** in international trade:

- Goods originating in a country shall be those wholly obtained or produced in that country (article 23)
- Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture (article 24)

Supplies and materials affected by the rule of origin:

- Include the materials to be used in construction
- Do not apply to the Contractor’s own equipment (machines, tools, etc.) to be used during construction

Key Message 8: For equipment and vehicles with **a unit cost on purchase of more than €5,000**, the contractors providing the supplies must present **proof of origin** no later than when they present their first invoice. The certificate of origin must be made out by the competent authorities in the country of origin for the supplies (e.g. Chamber of Commerce, Government Ministry etc.). Remember to request this certificate from your supplier and clearly insert it as a requirement in the tender dossier.

For supplies with a unit cost on purchase of less than **€5,000**, **a statement from your supplier specifying the origin** of the equipment is enough. Still, remember that the rule of origin applies to all supplies so in the absence of this statement, the cost of the supplies is considered ineligible. Note, the origin is also often inscribed on the equipment itself (e.g. ‘made in’ or ‘assembled in’ or can be demonstrated via the annexed instruction manual and/or the related internet website).

⁷ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and other Community legislation governing non-preferential origin. For further details please check and consider the concerned documents you may find at:
http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/index_en.htm



Both the ENPI Regulation (article 21.7) and Annex IV (section 2.3) allow for derogations in duly substantiated exceptional cases as described below.

Exceptions to the rule of origin

Exceptions may be justified in certain circumstances:

- Unavailability of the products in the markets of the countries concerned
- For reasons of extreme urgency
If the rule were to make the realisation of a project, a programme or an action impossible or exceedingly difficult.

The exception is **not** applicable just because a product that does not meet the rule of origin is cheaper than one that does.

The exception is only applicable when the derogation has the prior approval of the JMA. For further information please check the Appendix I.

Important last remarks:

- All Beneficiaries and Partners, whatever their status (public, private) or nationality (EU or Partner Country) must respect the rule of origin of supplies or the cost will be ineligible. **This applies even if the equipment is bought with your own resources as part of co-financing!**
- **You only need to produce an official certificate of origin for supplies above €5,000** per unit so for instance, if you buy five computers of € 1,050 each, your supplier does not need to provide an official certificate. In this case you should ask the supplier to state in writing the origin of supplies as this is a formal requirement
- under Annex IV article 2.2 to make the cost eligible. The same statement should be requested from construction companies regarding materials used for works paid by the project.
- **Do not take the risk** of purchasing equipment not respecting the rule. Usually the origin is written on the equipment itself ('made in') and you would face recovery of the cost in case of on-the-spot checks or audits! If you cannot find the equipment or supplies you need originating in the eligible countries, ask your JMA what you need to do to request a derogation to the rule (as described in the box above). For example, for a derogation, it may be considered sufficient that you asked at least three main suppliers for equipment originating in the eligible countries and received three (written) negative answers. **However, whatever the justification for the derogation, do not purchase the equipment before the derogation is approved by the JMA !**



Type of contracts and thresholds

Type of contracts for procuring services, supplies and works

Three types of contracts are mentioned in Annex IV of your Grant Contract, each with specific procurement procedures to be carried out by the Beneficiary or Partner (as relevant). These are described in PraG as follows:

- **Service contracts concluded with a service provider** could include⁸.
 - Study contracts such as feasibility studies, economic and market studies, technical studies, evaluations and audits.
Study contracts generally specify an outcome, i.e. the contractor must provide a given product. The technical and operational means by which it achieves the specified outcome are irrelevant. These are therefore lump-sum (global-price) contracts and the contractor will be paid only if the specified outcome is achieved.
 - Technical assistance contracts for example, when an expert is needed in an advisory role or to provide the experts specified in the Grant Contract.
Technical assistance contracts are usually fee-based. Technical assistance contracts often only specify the means i.e. the contractor is responsible for performing the tasks entrusted to it in the Terms of Reference and ensuring the quality of the services provided. The budget consist of fees (daily fee rate for the days experts work under the contract) and incidental expenditure which covers all actual expenses incurred by the expert which are not included in the fees (travel costs, etc.).
- **Supply contracts concluded with a supplier**⁹ cover the purchase, leasing, rental or hire purchase, with or without the option to buy, of products (equipment, material, etc.). Supply contracts include incidentally, the transport to site and installation of the supplies bought.
- **Works contract concluded with a construction or engineering company**¹⁰.
Works contracts cover either the execution, or both the execution and the design, of works or the realization by whatever means of a work. A 'work' is the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function e.g. infrastructure for a border crossing point.

Can the contract be a hybrid (mix) of the types of contracts?¹¹

Usually contracts are split according to the types defined above. When necessary, some contracts may cover two or more components, works, supplies and services.

⁸ See PraG 3.1

⁹ See PraG 4.1

¹⁰ See PraG 5.1

¹¹ Please consider also the section "Basic Tips for special cases"



In this case the Beneficiary or Partner must determine the procurement procedure to be used depending on which of the components prevails. This assessment is to be made on the basis of:

- The value, and
- the strategic importance of each component relative to the contract as a whole.

Thresholds and procedures for procuring services, supplies and works

Annex IV of your Grant Contract provides different thresholds for procurement procedures, depending on the type of contract. The thresholds for Services are found in Section 4, Supplies in Section 5 and Works in Section 6. Check 3.2 above to clarify the different kinds of procurement procedures.

The thresholds are given in the table below.

SERVICES	≥ €200,000	< €200,000 but > €10,000		
	International restricted tender procedure	Competitive negotiated procedure		
SUPPLIES	≥ €150,000	< €150,000 but ≥ €60,000	< €60,000 but >€10,000	≥ €10,000 Single tender (direct award)
	International open tender procedure	Local open tender procedure	Competitive negotiated procedure	
WORKS	≥ €5,000,000	< €5,000,000 but ≥ €300,000	< €300,000 but > €10,000	
	International open tender procedure	Local open tender procedure	Competitive negotiated procedure	

Key Message 9: Annex IV sets the compulsory scope for sub-contracting but it does not provide detailed procedures or templates for tender documents. Therefore for what is not described in Annex IV, Beneficiary and Partners may use:

- Either their own procedures, as long as these are compliant with the rules in Annex IV in particular, 'best international practice' (but consider the previous Key Message 1).
- Either PraG Chapters 3 (Services), 4 (Supplies) or 5 (Works), and related annexes, which describe detailed procedures for the whole procurement process and may also provide useful templates (but consider also the differences between main text of PraG and Annex IV indicated in Key message 3).



What do you include in the tender and how do you calculate the contract value?

The thresholds given in the table above are based on the maximum budget for the contract in question (including any co-financing). Where contracts are subdivided in lots, the value of each lot shall be taken into account when calculating the overall threshold.

Moreover, please consider that:

- VAT is never included in the above-mentioned thresholds.
- As far as procedures thresholds are concerned, in case of tender not in Euro, you shall use the exchange rate level of the month of the launch of the procedure. You can find it at Inforeuro web-site:
http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm
- From the project start you need to consider **the value of services, supplies and works needed for the duration of the whole project** and how many procurement procedures you will need to conduct.

A budget line is not in itself a sufficient ground for splitting contracts! For instance, in your budget under the title 'equipment' you may have listed under separate lines 'computers' and 'printers' as they had different unit prices, but when you organise the tender they should be in the same contract - all office equipment should normally be supplied under one contract.

Contracts can only be split when fully justified by the different categories of service/supply/work requested, or when their delivery must occur at different time in the project.

For instance in an environmental project you may organise separate procurements under supplies for e.g. office equipment and waste water treatment equipment.

Finally, please note that according to the already mentioned set of rules, in case of a “centralized” tenders to purchase work, services or equipment or supplies for the partnership members as a whole (see Annex VI – article 8.4), they are eligible, provided that:

- the selected providers shall be able to release separate invoices for each organization that will pay its own quota of the service received.
- each organization must agree to have a common procedure based on a clear legal basis (e.g. Partnership Agreement) and all tender documents shall refer to it.
- each organization has to make sure that it has the possibility to pay an invoice issued by the provider contracted by a different legal entity (Beneficiary or Partner that launched the tender according to the applicable procurement rules).



Key message 10: Important Final Remarks

Never artificially split the procurements, as the whole amount of the split contracts will become ineligible! Check carefully and consult your National Contact Point before launching a procurement procedure if you have any doubt about what should be included in each procurement. Inappropriate splitting of contracts is a common reason for the need to recover funds!

- **National thresholds** also have to be applied when national procurement rules are compulsory for the Beneficiary or Partner. In case of a contradiction between Annex IV of your Grant Contract and national thresholds, **use the lower one**. Remember that the thresholds described in sections 3 to 7 of Annex IV, are not applicable to Public Bodies **(Contracting Authorities)** in EU Member States.
- **Make sure that the procurement cannot be considered as artificially mixed to circumvent procurement thresholds** as described in the table below! For example, if you apply the procedures for works when there are also large amounts of equipment or services.

Basic tips for Special Cases

Under which circumstances is in-house contracting acceptable?

Since the condition of “In house” organization occurs for EU entities only, according to case law of the European Court of Justice (C-26/03)¹², there are preconditions that must be met in order for in-house contracting to be applicable:

- the contracting authority has to have full control over the contractor (i.e. like it was its own department)
- and
- the contractor shall work in essence exclusively for the public authority (or public authorities) by which it is owned (i.e. more than 90% of the turnover is made with these public bodies).

Changes of contracts - Which changes are still acceptable and which not?

In principle, after you have awarded the contract, you cannot change the essential terms of it and it makes no difference if the contractor or the contracting authority wants these changes. If it becomes clear that changes are artificial and made to avoid a procurement procedure, this can lead to ineligibility of expenditure and you should undertake a new procurement.

However, there are certain aspects to consider, including:

¹² For further details <http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-02/cp050002en.pdf>



- If the terms modified are not for the benefit of the contractor, there should not be a problem.
- Within certain reasonable limits (e.g. 10%) you can allow changes, but you cannot modify essential parts. For instance, you could have a clause in the contract saying that additional services of up to 10% of the contract value are possible, provided they are duly justified.
- For direct contract awards it can also be allowed to adapt the contract as needed, as long as its value stays within the concerned threshold

For direct contract awards (i.e. below the lowest threshold when single tender is allowed), is it recommendable to obtain three offers to prove transparency?

In general terms, obtaining three offers by potential contracting companies directly could be sufficient to demonstrate the full respect of “market price” and transparency” principles. In any case, the principle of proportionality has to be applied and this is not necessary for very low amounts.

However, some additional “proving” elements are strongly recommended such as:

- To publish the intended procurement via adequate means (e.g. the project and/or the organization website) and to ask for non-binding price information.
- To give as much time as companies need to respond, including companies in other countries. It is not necessary to totally standardize but you could have several cases and use them as basis.
- To avoid all phone offers in order to prove the reality/existence of any process. There should always be written communication.

International organizations: which rules apply?

According to article 8.3 Annex IV as modified by article 7.3 of the Special Conditions of the Grant Contract “Where the Beneficiary or a Partner is an international organisation, it applies its own procurement rules if they offer guarantees equivalent to internationally accepted standards. If they do not or in specific cases, **the Contracting Authority and the Beneficiary or Partner** agree on the use of other procurement procedures which offer such guarantees. In all cases the general principles and rules on nationality and origin set out in article 2 still apply”.

To this end:

- Check main requirements and rules as described at http://ec.europa.eu/europeaid/work/procedures/faq/index_en.htm



- Consider that the “**Standard Contribution Agreement (specific “General and Special Conditions” for IOs)**”¹³ has to be used, instead of the Standard Grant Contract, when:
 - the IO is the Beneficiary of the grant;
and
 - the IO has successfully undergone a four-pillar review carried out by the European Commission. It means that the accounting, audit, control and procurement procedures standards applied by the IO offer guarantees equivalent to internationally accepted standards.

By consequence:

When the IO is involved as Partner, it cannot use the Standard Contribution Agreement, even though the four-pillar review is satisfactory.

Moreover, the IO applies its own procurement rules if they offer guarantees equivalent to internationally accepted standards; otherwise it will have to follow the same procurement rules foreseen for any Partners.

If the IO has not undergone a four pillar assessment carried out by the Commission and for any other issues, whether it participates as Applicant or Partner, it will have to apply the same rules as for the other partners (signing a declaration where it accepts them) and the Partnership Agreement concluded between the Beneficiary and the Partners.

Useful contacts

This document has been drawn up by the JTS officers. For further information, the Beneficiaries can contact the following officer, preferably by email:

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¹³ All concerned documents are available at
<http://www.enpicbmed.eu/en/index.php?xsl=866&s=29&v=9&c=5902&na=1&n=10>