Public procurement according to EU rules - PRAG

Pro bono consulting

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The project is implemented by the Consortium of Podlaska Regional Development Foundation (Poland) and DAS.AM (Armenia)
Objectives

After the workshop participants are able to:

✓ Explain basic principles and rules of EU public procurement

✓ Name different procedures for EU public procurement
Outline

- General principles of EU external public procurement
- Basic rules
- Procedures
- Key success factors
- Practical examples
EU EXTERNAL PROCUREMENT

PUBLIC PROCUREMENT:

“The process used by governments, regional and local public authorities or bodies governed by public law to obtain goods and services with taxpayers’ money”

EU PROCUREMENT IN EXTERNAL FUNDING:

- **WHY:** Because EU allocates significant funding outside EU,
- **WHY:** To keep the process transparent and efficient,
- **HOW:** By using standardised pre-defined procedures,
- **HOW:** By introducing efficient control mechanisms, possibly by delegating responsibilities.
EU EXTERNAL PROCUREMENT

BASIC DOCUMENT

Procurement And Grants for European Union external actions – A Practical Guide

(before Practical Guide to Contract procedures for EU external actions)

http://ec.europa.eu/europeaid/prag/

(PRAG Manual) + Annexes
EU EXTERNAL PROCUREMENT

Procurement And Grants for European Union external actions – A Practical Guide:

- **Purpose**
  Basic document which provides practical advice on implementation of procurement procedures *(PRAG is not a legal document, legal framework is provided by EU Directives)*

- **Structure**
  General part and parts on specific type of procurement, each divided by steps in the procedures *(preparation of tender documents, publication, evaluation)*

- **Annexes**
  PRAG Annexes provide formats for each step of the procedures
EU EXTERNAL PROCUREMENT

TYPES OF PROCUREMENT

- Provision of **Services** (studies, expert assistance etc.),
- Provision of **Supplies** (purchase, rent or leasing),
- Provision of **Works** (construction, reconstruction),
- **Grants** (grant funding of concrete projects).
<table>
<thead>
<tr>
<th>Procurement</th>
<th>Grant</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purchase of Services / Supplies / Works</strong></td>
<td><strong>Action intended to achieve an EU policy objective</strong></td>
</tr>
<tr>
<td><strong>Contract</strong></td>
<td><strong>Functioning of a body</strong></td>
</tr>
<tr>
<td><strong>Contracting Authority</strong></td>
<td><strong>Grant agreement</strong></td>
</tr>
<tr>
<td><strong>100 %</strong></td>
<td><strong>Grant beneficiary</strong></td>
</tr>
<tr>
<td><strong>Financial contribution</strong></td>
<td><strong>Co-financing</strong></td>
</tr>
<tr>
<td><strong>Call for Tenders</strong></td>
<td><strong>Call for proposals</strong></td>
</tr>
<tr>
<td><strong>Profit</strong></td>
<td><strong>No profit allowed</strong></td>
</tr>
</tbody>
</table>

**Object**
GENERAL PRINCIPLES

- Fair Competition
- Transparency
- Proportionality
- Equal Treatment
- Non-discrimination
- Best value for money
BASIC RULES

- **No splitting of tenders.** Tenders must be organised in a logical manner. Supplies of a similar nature must be procured in one tender. No splitting of tender is allowed (*to lower estimates below specific thresholds and consequently avoiding procedure*)

- **Nationality of tenderers and origin of goods.** The tenderers must be of EU, EEA, ENI, IPA country. Origin of goods must be from these countries as well. Experts can be of any origin.

- **Visibility.** All actions financed from the EU budget must fully respect EU Visibility guidelines
The rule of origin

• All supplies and equipment purchased must originate in the EU or in an eligible country as defined above in the nationality rules

• In its tender, a tenderer must state the origin of supplies

• Under the CIR (i.e. not IPA I) and the EDF supplies may originate from any country if the amount of the supplies to be procured is below 100.000 € per purchase
How to establish origin?

- **Origin**: Country where the goods have undergone their last, economically justified, substantial transformation
- **Evidence**: Certificate of Origin

**To be presented either:**
- When bringing supplies to the beneficiary country
- When the first invoice is presented (pre-financing)
- When Provisional Acceptance takes place (if not, breach of contract)
Other essential points

- Conflict of Interest
- Awarding principles
- No retroactive awards
- Use of standard documents
- Record Keeping
- Availability of funds
BASIC RULES

- Grounds for exclusion!
- Administrative and financial penalties
- Conflict of interest (preparation, participation)
- Awarding principles (transparency, proportionality, equal treatment, non-discrimination)
- No retroactive awards! (date of contract signature)
BASIC RULES

• Candidates or tenderers and contractors who have been guilty of
  – making false declarations or
  – making substantial errors or committed irregularities and fraud
  – having been found in serious breach of their contractual obligations

may be excluded from the award of all contracts and grants financed by the Community budget/EDF for a maximum of five years
BASIC RULES

Candidates will be excluded if they:

• are in financial difficulties
• have been convicted or are guilty of grave professional misconduct
• have not fulfilled their obligations relating to social contributions or taxes
• are guilty of serious misrepresentation in supplying the information required
• are in serious breach of contract for failure to comply with obligations in connection with another contract
• are in one of the situations allowing for exclusion referred to in the Ethics Clauses (Section 2.4.14 of PRAG)

Tenderers, must sign a declaration that they do not fall into any of the categories cited above
Use of standard documents
Record keeping
Competitive tendering
Procurement procedures:

- Services (TA, studies, training)
- Supplies (equipments and materials)
- Works (infrastructures and engineering works)
BASIC RULES

• Services: > 300.000 EUR competitive negotiative procedure, >= 20.000 EUR single tender
• Supplies: > 100.000 EUR competitive negotiative procedure, >= 20.000 EUR single tender
• Works: > 300.000 EUR competitive negotiative procedure, >= 20.000 EUR single tender
Mixed contracts: which of the components prevails

**No** contract may be split to evade compliance with the rules!!!

Fair competition: the Contracting Authority must ensure that conditions are such as to allow fair competition!
GENERAL PRINCIPLES

• Clear and non-discriminatory selection criteria
• Minimum requirements!!!
• Financial, economical capacity: statements from banks, balance sheets, statement of annual turnover, etc.
• Technical, professional capacity: services/supplies provided and works carried out
GENERAL PRINCIPLES

• Contract award:
  - Lowest price (supplies, works)
  - Most economically advantageous tender (services)
• ToR-Terms of Reference (service) / TS-Technical Specification (supplies/works):
  - Minimum requirements!!!
  - Detailed, overall! – to give instructions and guidance to contractors at the tendering phase
GENERAL PRINCIPLES

- ToR/TS specialists have to sign the Declaration of Objectivity and Confidentiality
- Evaluation Committee: non-voting chairperson, non-voting secretary, 3/5 voting members
- Good command of English
- All meetings should be attended
- Declaration of impartiality and confidentiality
- Collective responsibility for decisions taken
SERVICE

- Study: global price, TA: fee-based contracts
- > 300,000 EUR competitive negotiated procedure involving minimum 3 candidates
- Min. 30 days for tender submission
- Tender validity: 90 days
Tender Dossier includes:
- procedures to follow
- documents to provide
- cases of non-compliance
- awarding criteria, weightings
- subcontracting

Declaration of Objectivity and Confidentiality must be signed by specialists
• Award criteria:
  - to identify the most economically advantageous tender (by weighting technical quality against price on an 80/20 basis)
  - to cover both the technical quality (CVs, methodology) and price of the tender
  - double envelope system (two separate, sealed envelopes)
• Under 300,000 EUR: without publication
• The Contracting Authority draws up a list of at least three service providers
• Minimum 30 days for tender submission
• The Contracting Authority may award service contracts of a value of 20,000 EUR or less on the basis of a single tender
Supplies/Works

- Supplies: > 100.000 EUR, works: > 300.000 EUR competitive negotiative procedure (min. 30 days for tender submission), >= 20.000 EUR single tender
- Tender validity: 90 days
- No brand names or if it is necessary, ‘or equivalent’ can be added only in very well justified cases
- Lowest price offer (administratively and technically compliant) awards the contract
Supplies/Works

• Tender Dossier includes:
  - procedures to follow
  - documents to provide (original brochures for supplies)
  - minimum requirements
  - yes/no criteria, no weighting!
  - subcontracting

• Declaration of Objectivity and Confidentiality must be signed by specialists
Supplies/Works

• Competitive negotiative procedure: the Contracting Authority draws up a list of at least three suppliers or providers
• Minimum 30 days for tender submission
• 3 voting members for supplies, 5 voting members for works, in the Evaluation Committee
• The Contracting Authority may award supply contracts of a value of 20,000 EUR or less on the basis of a single tender
The basic principle governing the award of contracts is competitive tendering. The purpose is twofold:

– to ensure the transparency of operations;

– to obtain the desired quality of services, supplies or works at the best possible price.
## PROCEDURES

| SERVICES | ≥ € 300,000  
 International restricted tender procedure | < € 300,000 but > € 20,000  
 1. Framework Contracts  
 2. Competitive negotiated procedure |  
SUPPLIES | ≥ € 300,000  
 International open tender procedure | < € 300,000 but ≥ € 100,000  
 Local open tender procedure | < € 100,000 but > € 20,000  
 Competitive negotiated procedure | ≤ € 20,000  
 Single tender  
WORKS | ≥ € 5,000,000  
 1. International open tender procedure  
 2. International restricted tender procedure | < € 5,000,000 but ≥ € 300,000  
 Local open tender procedure | < € 300,000 but > € 20,000  
 Competitive negotiated procedure |
EU EXTERNAL PROCUREMENT

SUPPLIES – TERMINOLOGY

- **Contract Forecast** – Prior information notice of expected tender
- **Contract notice** – Public invitation to submit offer
- **Tenderer** – Organisation providing offer – tender in response to the published procurement notice
- **Contractor** – Successful tenderer, winning the tender and signing the contract
- **Contracting Authority** – The party, as described in the Financing Agreement, who concludes the contract with the Contractor.
PROCUREMENT OF SUPPLIES

• EXAMPLES
  - Purchase of computer equipment for digitalised cadastre,
  - Purchase and installation of radiation sensors for nuclear safety administration,
  - Purchase of vaccines for veterinary administration,
  - Purchase of equipment for state border control.

• GENERAL LOGIC
  - Complex technical equipment for a specific segment of public services. Normally higher value purchases,
  - Support equipment, not so technically complex, to upgrade or support segments of public or civil services (*computers, cars and similar*).

• SELECTION CRITERIA
  - Price!
SUPPLIES - TIMING

**STEPS**

1. Preparation of tender documents
2. Publication of forecast
3. Publication of procurement notice / invitation
4. Call for proposals open
5. Deadline for submission
6. Evaluation procedure
7. Signature of contract

**COMPETITIVE NEGOTIATED:**

- 1 month?
- 30 days
- 0.5 months

**TOTAL:** +2.5 m

**LOCAL OPEN:**

- 1-2 months?
- 30 days
- 1 month

**TOTAL:** +4 m

**INTERNATIONAL OPEN:**

- 2-3 months?
- 30 days
- 60 days
- 1-2 months

**TOTAL:** +7 m
TENDER DOCUMENTATION

- PUBLICATIONS:
  - **Forecast.** Only in the case of international open procedures. Advance announcement of tender. Data + short description,
  - **Procurement notice.** Public invitation. Document contains the following information:
    - **Data.** Reference, identification of Contracting Authority,
    - **Contract specification.** Description of contract, number and titles of lots,
    - **Terms of participation.** Eligibility rules, guarantees, information meetings, period of implementation etc,
    - **Selection and award criteria.** Economic and financial capacity, professional capacity, technical capacity, award criteria,
    - **Tendering.** How to obtain tender dossier, deadline, tender opening session etc.

* TENDER DOSSIER IS AVAILABLE ON WEB-SITE
TENDER DOCUMENTATION

**TENDER DOSSIER:**

- **Documents for information:**
  - Instructions to tenderers,
  - Draft contract,
  - Special conditions,
  - General conditions,
  - Forms,
  - Administrative compliance grid,
  - Evaluation grid.

- **Documents to be provided:**
  - Technical Specifications + technical offer,
  - Budget breakdown (model financial offer),
  - Tender form for a supply contract.
TENDER DOCUMENTATION

• HOW TO PREPARE TENDER DOSSIER – KEY DOCS:

  ➢ **Instructions to tenderers.** Detailed rules for participation in the tender. Who can apply, supplies to be provided, language, submission of tenders, content of tenders, pricing, information before deadline, opening, evaluation, contracting etc.

  ➢ **Special conditions.** Rules for implementation of the contract, supplementing General Conditions (standard rules). Any changes to General Conditions need to be mentioned. Origin, guarantees, implementation of tasks, supply of documents and drawings, tender prices, quality, inspections and testing, payment, delivery, guarantees and post sale services etc.

  ➢ **Technical specifications**
## TECHNICAL SPECIFICATIONS

TECHNICAL SPECIFICATIONS DEFINE THE TYPE OF SUPPLIES TO BE PROVIDED, ALSO REPRESENT THE BASIS FOR TECHNICAL OFFER

<table>
<thead>
<tr>
<th>Item Number</th>
<th>Specifications Required</th>
<th>Specifications Offered</th>
<th>Notes, remarks, ref to documentation</th>
<th>Evaluation Committee’s notes</th>
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TECHNICAL SPECIFICATIONS

- **Completeness.** The Technical Specifications is the key document in supply tenders. If the Contracting Authority (CA) fails to clearly define its requirements, the Contractor could avoid full compliance with the same requirements,

- **Best value for money.** The sole selection criteria in supply tenders is price. It could occur that the CA is forced to accept poorer equipment, which still complies with the technical specifications. The specifications should be defined in such a way as to ensure that the CA gets the best for the available funds. Preliminary market research can be of significant help in this case.
TECHNICAL SPECIFICATIONS

- **IMPORTANT ISSUES IN PREPARATION OF TECHNICAL SPECIFICATIONS – CONT.**

  - **Exceeding the budget.** The CA needs to be careful not to over-estimate the supplies as this may result in all offers exceeding the available funds. The CA also needs to be VERY careful about potential agreements between tenderers and consequently, above-market prices,

  - **Division into lots.** If supplies have different natures or characteristics, the tender could be divided into lots. Tenderers’ offers are then accepted for each lot separately. One tenderer could bid for one or more lots. Evaluation is implemented for each lot,

  - **Compatibility.** If the supply contract is, for example, for up-grading existing equipment, a clause on compatibility of the new upgrading equipment with existing facilities should be entered.
TECHNICAL SPECIFICATIONS

- **Installation.** If equipment requires prior preparatory activities, also these could be included in the technical specifications,
- **Training.** Some specific equipment might require training for its use. Provisions for training can be included in technical specifications,
- **Spare parts.** Eventual needs for spare parts could also be included,
  - **After-sales services.** Technical specifications could also describe requirements for after-sales services.

The tenderer is then obliged to fulfil all requirements.
KEY ISSUES IN DOCUMENTATION

• OTHER COMMON CHALLENGES IN PREPARATION OF TENDER DOCUMENTATION

- **Conditions for participation.** The Contracting Authority (CA) should be careful in defining economic and technical conditions for participation. It should ensure to set the minimum criteria to exclude the companies who cannot deliver.

- **Guarantees.** To secure itself, the CA should use the opportunity to enforce guarantees:
  - Tender guarantee. With tender,
  - Performance guarantee. To secure delivery,
  - Pre-financing guarantee. To secure pre-financing,

- **Origin.** In cases of complex specific equipment, the CA could perform a preliminary market check to determine whether the equipment of requested origin is available at all. If not, derogations may be required.
INSTRUCTION FOR SUBMISSION

- **HOW TO SUBMIT THE TENDER**
  - Technical and financial offers are submitted in a single sealed envelope (different from EU Service procedures, where financial offer is submitted separately).

- **TENDER GUARANTEE**
  - The tenderers are normally asked to submit a tender guarantee, in the size of around 1-2% of available budget.

- **VALIDITY OF TENDERS**
  - The tenders should automatically be valid for 90 days, which should give the Contracting Authority sufficient time to complete the evaluation.
TENDER OPENING

• **DEADLINE FOR SUBMISSION OF TENDERS**
  - Deadline depend on the type of procedure (30 or 60 days),
  - Any tenders received after the deadline must be rejected.

• **INFORMATION DURING THE PROCEDURE:**
  - Information meeting and/or site-visit may be organised. Recommended in cases of complex supplies.
  - Tenderers may submit questions in writing at the latest 21 days before deadline. The answers must be provided no later than 11 days before the deadline,
  - Answers, clarifications are published on EuropeAid web-site (and web-site of organisation),
  - Principle of transparency and equal treatment – all tenderers should have access to clarifications on equal terms.
EVALUATION PROCEDURE

• BASIC PRINCIPLES
  - **Evaluation Committee (EvC).** Evaluation is implemented by an independent EvC nominated on a personal basis by the CA, prior to evaluation.
  - **Impartiality.** The evaluation procedure must be completely impartial, giving every applicant equal opportunity. Evaluation committee members cannot be in any relationship with, or connected to, tenderers.
  - **Confidentiality.** The procedure must be confidential.

  **STATEMENTS OF IMPARTIALITY AND CONFIDENTIALITY** TO BE SIGNED BY EACH MEMBER OF THE EvC

• STEPS
  - Opening
  - Evaluation of technical offers (administrative and technical compl.)
  - Evaluation of financial offers
EVALUATION COMMITTEE

• COMPOSITION
  - Chairperson, secretary, odd number of voting members (minimum 3),
  - Reasonable command of English + technical and administrative capacities necessary for work,
  - Observers are allowed, in addition to core members, for example an observer from the EUD.

• FUNCTIONING
  - All members should attend all meeting. If not, this must be properly recorded,
  - Decisions are taken by majority of votes, each voting member having equal voting rights.

• NOMINATION
  - Members must be nominated prior to the first session and approval from the EUD is needed. CVs must back-up nominations.
CONCLUSION

- **AWARDING THE CONTRACT**
  - If the procedure is respected and the selected tender is within the available budget, signature of contract is proposed.

- **CANCELLATION**
  - The Contracting Authority may cancel the tender due to:
    - Lack of qualitatively or financially adequate tenders,
    - All offers exceeding available budget,
    - Alteration of conditions,
    - Irregularities in procedure,
    - Non-compliance with sound financial management.

- **REPORT**
  - Evaluation report is prepared covering all the steps in technical and financial evaluation.
KEY SUCCESS FACTORS

- Motivation
- Planning
- Implementation
KEY SUCCESS FACTORS

- **Ownership**
  - The fear of loss is a better motivator than the prospect of gain

- **Responsibility**
  - People abhor losses more than they like equivalent gains

- **Evidence based approach**
  - All rules clear and set in advance

*Good Effects* | *Bad Effects*
### Alternatives to evidence based approach:

<table>
<thead>
<tr>
<th>Basis for Decisions</th>
<th>Marker</th>
<th>Measuring Device</th>
<th>Unit of Measurement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eminence</td>
<td>Radiance of white hair</td>
<td>Luminometer</td>
<td>Optical density</td>
</tr>
<tr>
<td>Vehemence</td>
<td>Level of stridency</td>
<td>Audiometer</td>
<td>Decibels</td>
</tr>
<tr>
<td>Eloquence (or elegance)</td>
<td>Smoothness of tongue or nap of suit</td>
<td>Teflometer</td>
<td>Adhesin score</td>
</tr>
<tr>
<td>Providence</td>
<td>Level of religious fervour</td>
<td>Sextant to measure angle of genuflection</td>
<td>International units of piety</td>
</tr>
<tr>
<td>Diffidence</td>
<td>Level of gloom</td>
<td>Nihilometer</td>
<td>Sighs</td>
</tr>
<tr>
<td>Nervousness</td>
<td>Litigation phobia level</td>
<td>Every conceivable test</td>
<td>Bank balance</td>
</tr>
<tr>
<td>Confidence</td>
<td>Bravado</td>
<td>Sweat test</td>
<td>No sweat</td>
</tr>
</tbody>
</table>

Adjusted from Isaacs D, BMJ, 1999
KEY SUCCESS FACTORS

Budget:

• Supply
  ▪ unit defined
  ▪ number of units
  ▪ unit rate?

• Service
  ▪ simplified ToR
  ▪ short description of references

• VAT
  ▪ not eligible
KEY SUCCESS FACTORS

• Use of standard documents & content of TD
• Supply – the cheapest technically compliant offer
  ▪ unit price, not lump sum
  ▪ rule of origin – country of origin
  ▪ derogation in theory
  ▪ minimum requirements – no brands
  ▪ original brochures
• Service – the best value for money
  ▪ study – global price, TA – fees
  ▪ detailed ToR
• Works – the lowest price
  ▪ external expertise for tender dossier preparation
Key Success Factors

Indicative time frame for procedures:

- 10-20 days in case of single tender
- 40-90 days in case of competitive negotiated procedure or local open tender
- 80-150 days in case of international tenders
KEY SUCCESS FACTORS

“The true method of knowledge is experiment.”

William Blake, 1788

“Of course, it’s a highly experimental procedure, but we’re trying out new techniques from other disciplines all the time.”
Thank you!