

ANNEX IV

Procurement by Grant Beneficiaries

1. General principles

If the implementation of an Action requires procurement by the Beneficiary(ies), the contract must be awarded to the most cost-effective tender (i.e., the tender offering the best price-quality ratio), or, the sole award criterion should be the price – this should be defined in the tender documentation. Contracts must be awarded in accordance with transparency and fair competition, avoiding any conflicts of interest. Contracts must not be split artificially to circumvent procurement thresholds.

To this end, the rules set out in sections 2 to 6 below must be followed. These lay down the minimum procedures to be followed and it is not precluded that other procedures offering more competition are used.

The Contracting Authority will carry out *ex post* checks on the Beneficiary(ies)'s compliance with these rules. Failure to comply with these rules would render the related expenditure ineligible.

The provisions of this Annex apply *mutatis mutandis* to contracts to be concluded by the Beneficiary(ies)'s affiliated entity(ies).

2. Eligibility for contracts

2.1. The nationality rule

Participation in tender procedures managed by the Beneficiary(ies) is open on equal terms to all natural and legal persons unless indicated otherwise in the Special Conditions of the grant contract.

2.2. The rule of origin

Equipment, vehicles and supplies acquired by the beneficiary in the context of the grant may originate from any country unless indicated otherwise in the Special Conditions of the grant contract.

2.3. Grounds for exclusion from participation in procurement

Candidates or tenderers, in observance of the principle of proportionality, will be excluded from taking part in a procurement procedure if:

- (1) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (2) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;
- (3) they have been guilty of grave professional misconduct proven by any means which the Beneficiary(ies) can justify, including misrepresentation;
- (4) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Beneficiary(ies) or those of the country where the contract is to be performed;
- (5) they or persons having powers of representation, decision making or control over them have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering, terrorist offences or offences linked

to terrorist activities, child labour and other trafficking in human beings, or any other illegal activity detrimental to the ICMPD's and or EU's financial interests.

Candidates or tenderers must certify that they are not in one of the situations listed above.

The right of defence and the remedial measures put in place by the tenderer to demonstrate the tenderer's reliability shall be taken into account when deciding on exclusion from funding on the above-mentioned situations.

2.4. Exclusion from award of contracts

Contracts may not be awarded to candidates or tenderers which, during the procurement procedure:

- (1) are subject to a conflict of interests;
- (2) are guilty of misrepresentation in supplying the information required by the Beneficiary(ies) as a condition of participation in the contract procedure or fail to supply this information;
- (3) The beneficiary shall be responsible for the respect of EU restrictive measures (available on: <https://sanctionsmap.eu/>) in respect of award of contract.

3. Common procurement rules

The tender documents must be drafted according to best international practice. The Contracting Authority will not publish notices and tender documents issued by the Beneficiary(ies).

The time-limits for applications and/or tenders must be long enough to give interested parties a reasonable period to prepare and submit their tenders.

An evaluation committee must be set up to evaluate both applications and/or tenders on the basis of the exclusion, selection and award criteria published by the Beneficiary(ies) in advance in the tender documents. This committee must have an odd number of voting members, at least three, with all the technical and administrative capacities necessary to give an informed opinion on the tenders.

4. Specific rules for contracts

4.1. Contracts from EUR 100.000 and above

Contracts from EUR 100.000 and above must be awarded by means of an international open tender procedure following publication of a procurement notice.

The procurement notice is to be published in all appropriate media, in particular on the Beneficiary(ies)'s web site, in the international press and the national press of the country in which the Action is being carried out, or in other specialist periodicals.

All tenderers may take part to the invitation to tender. During evaluation process, conditions of section 2 shall be evaluated. Conditions of section 2 shall be made public in order to ensure transparency of the tender process.

The rules and principles laid down in articles 1, 2 and 3 of this annex shall be followed accordingly.

4.2. Contracts of EUR 100.000 or less

For contracts of a value of EUR 100.000 or less, the procedures established by the Beneficiary(ies) may be used, while respecting the rules and principles laid down in articles 1, 2 and 3 of this Annex. In addition, in order to have harmonised procurement procedures at beneficiary level, a threshold of EUR 20.000 (of total contract amount, irrespective if with or without VAT) is applied for the procurement case. Above this threshold, the “bid-at-three” rule shall be applied by the beneficiaries (unless national/institutional rules are stricter in which case they should be applied). Beneficiaries shall request at least three offers to be submitted for all contracting amounts above EUR 20.000 and below EUR 100.000. In case three offers are not received/cannot be acquired, the activities undertaken to acquire the offers have to be documented and duly justified. If at national/institutional level lower thresholds have to be applied the national/institutional rules must be followed.

5. Use of direct contracting

The Beneficiary(ies) may decide to use the direct contracting procedure on the basis of a single tender in the following cases:

- (1) The value of the commitment is below or equal to EUR 20,000 (single offer procedure);
- (2) There is sufficient evidence that no competitive market exists for the requirement (monopoly, prices fixed by legislation or government regulations, proprietary product or service);
- (3) There is a need for a standardisation of services or supplies rendering competition impracticable or too costly and inefficient, e.g., IT equipment/services where product to be purchased is determined by previous purchase (compatibility) or continuation of an existing contract where single responsibility for the output is required and any change of the supplier would be detrimental;
- (4) The proposed contract relates to services that cannot be evaluated on the basis of objective criteria;
- (5) Tenders for identical products and services have been obtained competitively within a reasonable period (not exceeding one year from the date of contract signature) and the unit prices without VAT (excluding transportation and customs related costs) remain unchanged; Cumulative contract amount awarded using this procedure shall not exceed double the initial contract amount. The thresholds related to the procedure as described in this document shall nevertheless apply;
- (6) The proposed procurement contract is for the purchase or lease of real estate, and market conditions do not allow for effective competition;
- (7) A mandatory condition is attached to funds made available by a government or international development organisation;
- (8) There is a genuine and documented exigency of the activity concerned that does not permit the time required for the issuance of a formal procurement procedure. The exigency of service must be beyond the Beneficiary control or other compelling circumstances which are not due to the lack of planning or slow administrative process within the organisation;
- (9) Contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures (e.g. security standard of hotel or transportation) or for the protection of essential interests of ICMPD, or the beneficiary country so requires.

In case the national/institutional rules are stricter than the provisions in this Article, the national/institutional rules must be applied. For cases indicated in points (2) to (9), the Beneficiary(ies) shall inform the Contracting Authority prior the use of direct contracting procedure which may oppose its use.

6. Special cases

Different rules than those specified in this annex may apply in the following cases, with the exception of the principles described in section 1 and 2 regarding the rules on nationality and origin, which always apply.

6.1. Public administrations of the Member States

Where the Beneficiary(ies) or an affiliated entity is a contracting authority and/or a contracting entity within the meaning of the EU Directives applicable to procurement procedures or pillar assessed by the EU, it must apply the relevant provisions of those texts, in preference to the rules set out in 3 to 5.

6.2. International Organisations

Where the Beneficiary(ies) or an affiliated entity 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(ies) will agree on the use of other procurement procedures offering such guarantees.