



# **ANNEX 7.3 - PROCUREMENT FOR PRIVATE ORGANISATIONS**

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The implementation of projects in the framework of ENI CBC requires the procurement of works, supplies and/or services by the project Lead Beneficiaries/partners, the so called “secondary procurement”.

Applicable rules are contained in ENI CBC Implementing Rules (EC Regulation 897/2014), Articles 52 - 56.

In addition to specifically quoting from Article 52.2<sup>1</sup> private, profit and non profit, beneficiaries (hereafter “contracting authority”) shall apply the following rules and procedure for contracts.

### 1.1 TYPE OF PROCEDURES

Type of procedure	Definition
<b>Open tender procedure</b>	<p>Procedure in which any natural or legal person or group may submit a tender in response to a procurement notice.</p> <p>The procedure follows <b>one step</b> process where open invitation for submission of tenders is published. The prior information notice and/or the contract notice are to be published in all appropriate media.</p>
<b>Restricted tender procedure</b>	<p>Procedure in which, after publication of a procurement notice, all economic operators may ask to take part but only candidates satisfying the selection criteria and invited simultaneously and in writing by the contracting authority may submit a tender (<b>two steps process</b>).</p> <p>In the first step, the contracting authority issues a public</p>

<sup>1</sup> Article 52.2 stipulates that:

- a) The contract is awarded to the tender offering the best value for money, or as appropriate, to the tender offering the lowest price, while avoiding any conflict of interest;
- b) For contract with a value of more than 60.000€, the following rules shall apply:
  - i. An evaluation committee shall be set up to evaluate applications and/or tenders on the basis of the exclusion, selection and award criteria published by the beneficiary in advance in the tender documents. The committee must have an odd number of members with all the technical and administrative capacities necessary to give an informed opinion on the tenders/applications;
  - ii. Sufficient transparency, fair competition and adequate ex-ante publicity must be ensured;
  - iii. Equal treatment, proportionality and non-discrimination shall be ensured;
  - iv. Tender documents must be drafted according to the best international practice;
  - v. Deadlines for submitting applications or tenders must be long enough to give interested parties a reasonable period to prepare their tenders;
  - vi. Candidates or tenderers shall be excluded if they fall within one of the situations described in article 106(1) of Regulation 966/2012 [...] (bankruptcy, etc.).
  - vii. Procurement procedures set out in Articles 53 to 56 shall be followed.

	invitation for submission of expression of interest. In the second step, the initial offers are reviewed and a short-list of tenderers is formed. Only the short-listed tenders are invited to submit a full offer.
<b>Competitive negotiated procedure without publication</b>	The contracting authority invites at least 3 candidates of its choice to submit tenders and negotiate the terms of the contract with one or more of them.
<b>Orders on the basis of single tender</b>	The contracting authority invites at least two candidates to submit an offer. The MA and NAs have agreed that in the framework of the ENI CBC Med Programme, the contracting authority shall evaluate as far as possible at least two offers, in order to make a financially and technically sound and transparent decision.
<b>Direct award or order</b>	Payments against invoice without a prior tender may be accepted for low-value orders.
<b>Negotiated procedure</b>	<p>The contracting authority may decide to use negotiated procedure on the basis of a single tender in the cases referred to in Article 266 of Delegated Regulation (EU) No 1268/2012 (Article 56 of ENI CBC IR).</p> <p>i.e. in case of: extreme urgency, extension of contracts already started (with respect of certain conditions), additional delivery of original supplies as replacement of normal supplies, contract following a contest; if the tender procedure has been unsuccessful; for technical reasons.</p>

## 1.2 TYPE OF PROCEDURES AND THRESHOLDS<sup>2</sup>

### 1.2.1. SERVICES

Service contracts means contracts having as their object the provision of services including study (e.g.) expenditure verification, feasibility studies, economic and market studies or technical studies) and technical assistance contracts (e.g. advisor services, straightforward services, such as printing, venue rental for an event, catering or transport services).

Range of amounts <sup>3</sup>	Type of procedure	Main features
<b>Up to 2.500€</b>	Direct award or order	Payment against invoice without prior acceptance of a tender
<b>More than 2.500€ to 20.000€</b>	Award on the basis of single tender	Invitation to tenderers with clear pre-set requirements. At least two offers must be <a href="#">requested</a>
<b>More than 20.000€ to 300.000€<sup>4</sup></b>	Competitive negotiated procedure	Invitation to tenderers with clear pre-set requirements. At least three offers must be <a href="#">requested</a>
<b>More than 300.000€</b>	International restricted tender	Two-steps procedure with international publication of tender

<sup>2</sup> To verify if a procedure is above or below the threshold the contracting authority should use the exchange rate method mentioned in the Programme.

<sup>3</sup> All amounts do not include VAT.

<sup>4</sup> Please note that, the competitive negotiated procedure is also requested for service contracts from 60.001 to 300.000 (see article 53)

## 1.2.2 SUPPLIES

Supply contracts means contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A public supply contract may include, as an incidental matter, siting and installation operations.

Range of amounts	Type of procedure	Main features
<b>Up to 2.500€</b>	Direct award or order	Payment against invoice without prior acceptance of a tender
<b>More than 2.500€ to 20.000€</b>	Award on the basis of single tender	Invitation to tenderers with clear pre-set requirements. At least two offers must be <a href="#">requested</a>
<b>More than 20.000€ to 100.000€<sup>5</sup></b>	Competitive negotiated procedure	Invitation to tenderers with clear pre-set requirements. At least three offers must be <a href="#">requested</a>
<b>More than 100.000€ to 300.000€</b>	Open tender in programme area	Tender must be published not only in the country of the beneficiary, but in the whole programme area
<b>More than 300.000€</b>	International open tender	One-step procedure with international publication of tender

<sup>5</sup> Please note that, the competitive negotiated procedure is also requested for supply contracts from 60.001 to 300.000 (see article 54)

### 1.2.3 WORKS

Works contracts means contracts having as their object the execution, or both the execution and design, of works. A work is the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function.

Range of amounts	Type of procedure	Main features
<b>Up to 2.500€</b>	Direct award or order	Payment against invoice without prior acceptance of a tender
<b>More than 2.500€ to 20.000€</b>	Award on the basis of single tender	Invitation to tenderers with clear pre-set requirements. At least two offers must be <a href="#">requested</a>
<b>More than 20.000€ to 300.000€<sup>6</sup></b>	Competitive negotiated procedure	Invitation to tenderers with clear pre-set requirements. At least three offers must be <a href="#">requested</a>
<b>More than 300.000€ to 5.000.000€</b>	Open tender in programme area	Tender must be published not only in the country of the beneficiary, but in the whole programme area
<b>More than 5.000.000€</b>	International open tender	One-step procedure with international publication of tender

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<sup>6</sup> Please note that, the competitive negotiated procedure is also requested for works contracts from 60.001 to 300.000 (see article 55).

### 1.3 PRINCIPLES TO BE RESPECTED

Principles to be respected in any procurement procedure, regardless of the value are described as follows.

Principle	Description
<b>Transparency</b>	<p>The beneficiaries have to work as openly as possible in the implementation of the budget, so that stakeholders and citizens are able to know where, and for what purpose, funds are spent by the Union. This principle should be achieved by the <b>publication</b>, preferably using electronic communication tools, <b>of relevant information concerning final contractors</b>, while taking into account such contractors' legitimate interests of confidentiality and security and, as far as natural persons are concerned, their right to privacy and the protection of their personal data.</p> <p>The procurement procedures need to draw up <b>clear</b> eligibility (for formal submission), exclusion, selection and award criteria.</p>
<b>Publicity</b>	<p>If tender needs to be published in the programme area, the beneficiary, the publication should be in <b>English</b>, and may be done in the Official Journal of the European Union through the EU's <b>Tenderers Electronic Daily (TED)</b> database (<a href="http://simap.ted.europa.eu">http://simap.ted.europa.eu</a> ).</p> <p>As the publication in the Official Journal of the European Union is not obligatory for most contracts, publication in the press, Programme web-site, Web-sites of all project partners, Regional web-sites or any other appropriate means to ensure adequate publicity.</p>
<b>Fair competition</b>	<p>Publication of certain information after the contract has been awarded would hinder application of the law, would be contrary to the public interest, would harm the legitimate business interests of public or private undertakings and, therefore, might distort fair competition between them. The contracting authority needs to ensure <b>adequate ex-ante publicity</b>, that is, adequate publication, in reasonable time, of the prior information notices, contract notices and award notices, as well as sufficient information in the invitations to tenders on the award and contract criteria and requirements.</p>

<b>Avoid conflict of interest</b>	<p>The contracting authority must take all measures to prevent any situation where: the impartial and objective exercise of its functions, or the respect to the principles of competition, non-discrimination or equality of treatment of tenderers with regards to the award procedure or contract <b>is compromised</b> for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest with other concerned parties, including Programme bodies and external assessors who assessed the proposal.</p> <p>These restrictions also apply to any sub-contractors and employees of the tenderer or contractor.</p>
<b>Equal treatment</b>	All participants in a procurement procedure need to have equal rights and obligations.
<b>Proportionality</b>	The complexity of the procedure and the measures taken to ensure the compliance with all the principles has to respect the proportionality between the importance of the amount to be awarded and the need to control the best use of the funds.
<b>Non-discrimination</b>	<p>Removal of any discriminatory practice or technical specifications liable to hamper wide participation on equal terms by all natural or legal persons.</p> <p>No restriction on nationality<sup>7</sup> of tenderers .</p> <p>No restriction on the origin of supplies for purchases below 100.000€<sup>8</sup>.</p>

<sup>7</sup> Article 52.3 stipulates that “In all cases, the rules of nationality and origin set forth in articles 8 and 9 of Regulation 236/2014 shall apply.”

<sup>8</sup> There is a list of restrictive measures (sanctions) in force can be found here.



**Clear exclusion  
criteria**

Tenderers will be excluded from participation in the procurement procedures if:

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;

they, or persons having powers of representation, decision making or control over them, have been convicted of an offence concerning their professional conduct by a judgment of a competent authority which has the force of res judicata; (i.e. against which no appeal is possible);

they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;

they are not in compliance with their 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 contracting authority or those of the country where the contract is to be performed;

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 or any other illegal activity, where such an illegal activity is detrimental to the EU's financial interests;

they are currently subject to an administrative penalty.

Contracts may not be awarded to candidates, applicants or tenderers who, during the procurement or grant award procedures:

are subject to a conflict of interest;

are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information;

find themselves in one of the exclusion situations for this procurement or grant award procedure.

Additionally, Regulation 1929/2015, Article 106, points e and f, allows contracting authorities to manage risks associated with previously "bad behaving" tenderers"

**Appropriate  
deadlines**

The tenderers should be given sufficient time for **submission of their offers**. A reasonable period would be at least **10 working days for supply and services and 15 working days for works**.