



INTERREG NEXT BSB PROGRAMME FICHE

PROCUREMENT

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1. Introduction

Let's remember...

The overview of the legal framework for procurement

- Included in the Application Packs published for the calls for proposals (regular and small scale projects)
- For easy reference, published also in the Implementation section of the website (*Procurement Overview*)¹

In brief, 2 separate legal frameworks

- National law
 - **Bulgaria², Greece³, Romania** - contracting authorities / entities as defined by the European Union law

TAKE NOTE!

Partners from Bulgaria, Greece and Romania are advised to check with their respective National Authorities whether or not their organizations fall under the definition of contracting authorities / contracting entities as provided by the EU law.

- Financial Regulation⁴
 - **Armenia, Georgia, Republic of Moldova, Türkiye, Ukraine** - all Partners (public or private)
 - **Bulgaria, Greece, Romania** - other entities than contracting authorities / entities as defined by the EU law
 - Annex II of Financing Agreement, which is a structured compilation of the rules laid down in the Financial Regulation for Armenia, Georgia, Republic of Moldova, Türkiye, Ukraine

¹ Annex 2 Public procurement overview of the Application Pack is similar for all the calls.

² As regards the beneficiaries from **Bulgaria**, private beneficiaries fall under the category of “contracting entities” and comply with the rules for procurement procedures stipulated in the national legislation.

³ As regards the beneficiaries from **Greece**, the national Laws are fully adapted to the relevant provisions of the EU legislation.

⁴ REGULATION (EU, Euratom) 2018/1046 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012

TAKE NOTE!

The legal provisions mentioned in the present Fiche are not exhaustive. The Partners are still required to thoroughly check the legal provisions of the Financial Regulation / Annex II of the Financing Agreement before carrying out procurement procedures, in order to avoid errors and ineligible expenditure.

TAKE NOTE!

Annex II of the Financing Agreement reflects the main procurement provisions of the Financial Regulation applicable for external actions and it is structured in the following procedural logic:

- A. General provisions
- B. Types of procedures
- C. Preparation of the procedure
- D. Technical specifications and criteria for assessment
- E. Submission, evaluation and award decision
- F. Contract performance

2. Common aspects for all Partners

2.1. Artificial split

Contract splitting is the practice of artificially breaking up purchases of goods/services/works to bring total expenditure below the legal thresholds in order to avoid the procurement rules.

The Partner shall not artificially split the contract into several distinct, lower-value contracts for the purpose of reducing the total value so that it falls underneath the legal threshold and thereby becomes exempt from the application of a more complex procedure.

Please see also the concept of division of a contract into lots, which should be used whenever appropriate.

2.2. Division into lots

The Partner shall divide a contract into lots whenever possible, with due regard to broad competition. Only if there is a plausible reason not to do so, the Partner shall tender a single contract for the entirety of the object of the procurement.

TAKE NOTE!

In case the Partner does not divide a contract into lots, a justification for not subdividing contract into lots should be recorded in the procurement file.

2.3. Conflict of interests

The Partners shall avoid any situation in which any of their staff may be in conflict of interests, including by making sure that:

- There is no (sub)contracting services/supplies/works to the staff of the Partner
- There is no (sub)contracting services/supplies/works to the other Partners' staff
- There is no other suspicion, for example the ones listed below:
 - (sub)contracting services to member(s) of the family
 - (sub)contracting services to a service provider (e.g. company, legal authorized person, etc.) in which any representative of the (Lead) Partner, its' staff or (a) project staff is owner or partner

In case such situations appear, the affected expenditure shall be ineligible.

2.4. Jems⁵

- Audit trail
 - All **supporting documents** related to procurements shall be uploaded in section *Public Procurements* of Jems⁶.
 - The **information** on contractors and contracts shall be filled in in the relevant fields of the section *Public Procurements* of Jems, irrespective of the value of the procurement.
 - *Where public procurement procedures above the Union thresholds⁷ are concerned:*
Information on **beneficial owners** of the contractor, as defined in Article 3(6) of Directive (EU) 2015/849⁸, namely first name(s) and last names(s), dates(s) of birth and VAT registration number(s) or tax identification number(s) of these beneficial owners, is filled in in the relevant fields in Jems.
 - *Where public procurement procedures above the Union thresholds are concerned and only for sub-contracts above EUR 50 000 total value:*
Information on whether the contractor uses **sub-contractors** and if so, once the corresponding sub-contracts are signed, information on all sub-contractors listed in the procurement documents (of the contractor), namely name and VAT registration or tax identification number and information on sub-contracts (date of the contract, name, reference and contract amount) is filled in in the relevant fields in Jems.

⁵ Joint electronic monitoring system of the Programme

⁶ Jems user manual is available on the Interact website: <https://jems.interact.eu/manual/>

⁷ Please check the Union thresholds as set out in art. 4 of Directive 2014/24/EU (or art. 15 of Directive 2014/25/EU, if the case).

⁸ Please check the definition of beneficial owner under art. 3(6) of Directive (EU) 2015/849.

- Link expenditure - procurement

- Where procurement is involved, the Partners shall **link** the reported costs with the related procurement from Jems section *Public Procurements*.

As an exception, having in view the provisions of the *Methodology for risk-based management verifications* of the Programme, the costs related to direct procurements shall not be linked to *Public Procurements* section from Jems, as they should not be included in the Jems sample of key-items. However, please note that, according to the *Methodology*, such costs may still be verified by the Controllers based on their professional judgement.

- In case of Partners which must apply the Financial Regulation, the threshold is up to **2 500 EUR**.

In case of Partners which must apply the national law, the threshold is according to the national law.

3. Specific aspects for Partners applying FR/Annex II FA

3.1 Introduction

The Financial Regulation lays down a set of procurement procedures to be used depending on the scope and value of the contract. The present Fiche addresses the most common procedures carried out in BSB Programme, which are **single tender procedure** and **simplified procedure**.

Legal framework

- Financial Regulation (FR), Annex II of Financing Agreement (FA)
 - Thresholds of the estimated value of the contract

Single tender procedure

> 2 500 EUR⁹ ≤ 20 000 EUR

Simplified procedure

> 20 000 EUR < 100 000 EUR (supplies)

> 20 000 EUR < 300 000 EUR (services / works)

⁹ Payments of amounts less than or equal to EUR 2 500 in respect of items of expenditure may be carried out simply as payment against invoices, without prior acceptance of a tender.

3.2 MAIN STEPS

A. Preparation of procedure

- Avoid artificial split, explore division into lots
- Market consultation - recommended

Before launching a procurement procedure, the Partner may conduct a preliminary market consultation with a view to preparing the procedure.

- The Partner shall identify the subject matter of the procurement
 - description of its needs and the characteristics required of the works, supplies or services to be bought
 - applicable exclusion, selection and award criteria
 - minimum requirements to be met by all tenders

B. Procurement documents

- Invitation to tender
- Tender specifications
 - exclusion and selection criteria
 - award criteria
 - technical specifications, etc.
- Draft contract

☞ Annex I FR - point 16.1
(Annex II FA - point 14.1)

Invitation to tender

- Check what information needs to be included
- For simplified procedure - sent to minimum 3 tenderers
- For single tender procedure - recommended to be sent to more than 1 tenderer

☞ Annex I FR - points 16.2, 38.5
(Annex II FA - points 14.2, 5.5)

Exclusion and selection criteria

- They refer to the tenderers (not the tender)
- Exclusion criteria - tenderers must not fall in the situations of art. 136(1) and 141(1) of FR
Required from tenderers (> 15 000 EUR):
declaration on honour + evidence (optional)

☞ Annex I FR - point 18.1
(Annex II FA - point 18.1)

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- Selection criteria - capacity to pursue the professional activity, economic and financial capacity, technical and professional capacity

Required from tenderers (> 15 000 EUR):
declaration on honour + evidence (optional,
conditions applicable - see below)

☞ Annex I FR - points 18.2 - 20
(Annex II FA - points 18.2 - 20)

TAKE NOTE!

DECLARATION ON HONOUR

A declaration on honour shall be requested by Partners to be provided by tenderers, in order to prove the fulfilment of the exclusion and selection criteria.

The declaration on honour may not be requested for estimated value contracts up to 15 000 EUR.

TAKE NOTE!

EVIDENCE

Evidence (supporting documents) to be requested by Partners (in case of estimated value contracts > 15 000 EUR)

- for the exclusion criteria - optional
- for the selection criteria - optional, depending on the Partner's risks assessment; if not requested, then pre-financing can be made to the contractor only in duly justified cases

In case it is required in the procurement documents, evidence for selection

- may be requested from any tenderer at any moment during the procedure where this is necessary to ensure the proper conduct of the procedure
- must be requested to the successful tenderer

If required to be submitted together with the tender, the Partner has to initially accept the declaration on honour stating that the tenderer fulfils the selection criteria.

Award criteria

- They refer to the tenders (not the tenderers)
- Award methods: lowest price, lowest cost or best price-quality ratio
- Check legal provisions for details

☞ Art. 167 FR, Annex I FR - point 21
(Annex II FA - points 17, 21)

Technical specifications

- Check legal provisions for details

☞ Annex I FR - points 17.1-17.2, 17.8
(Annex II FA - point 16)

Draft contract

- Check what information needs to be included

☞ Annex I FR - point 16.4
(Annex II FA - point 14.4)

TAKE NOTE!

The draft contract needs to be communicated as well, together with the invitation to tender.

C. Submission, evaluation and award decision

○ **Submission**

- Time limits for submission of tender

Single tender procedure

No specific number of days in FR

However, it must be considered the complexity of the purchase, leaving an adequate period for economic operators to prepare their tenders

Simplified procedure

Min. 30 days

- Contacts during the procurement procedure - conditions

☞ Art. 169 FR
(Annex II FA - point 23)

- Tender guarantee - optional

☞ Art. 168.2 FR
(Annex II FA - point 24.2)

○ **Evaluation**

- Evaluation committee

<i>Single tender procedure</i>	not mandatory
<i>Simplified procedure</i>	min. 3 members

TAKE NOTE!

The evaluation committee members must sign declarations of impartiality and confidentiality prior to carrying out any task related to the evaluation.

- Check legal provisions for details

- unsuitable tenders
- irregular tenders
- unacceptable tenders
- admissible tenders
- abnormally low tenders

☞ Annex I FR - points 11.2, 12.2, 12.3, 29.3
(Annex II FA - points 6.2, 24.4-24.6)

☞ Annex I FR - point 23
(Annex II FA - point 25)

○ **Results of the evaluation and award**

- Evaluation report - check details and what information needs to be included
- Award decision

☞ Annex I FR - points 30.1, 30.2
(Annex II FA - points 26.1, 26.2)

☞ Art. 170.1 FR, Annex I FR - points 30.3-30.5
(Annex II FA - points 26.3-26.6)

- Information to candidates or tenderers

☞ Art. 170.2, 170.3 FR, Annex I FR - point 31
(Annex II FA - point 27)

- Standstill period before signature of the contract

- 10 days when using electronic means of communication
- 15 days when using other means
- exceptions - only one tender submitted, etc.

☞ Art. 178.1 FR, Annex I FR - point 35
(Annex II FA - points 27.1, 29)

- If contract cannot be signed with the successful envisaged tenderer → contracting authority may award it to the following best tenderer

D. Contract performance

- Implementation of procurement contract - not before it is signed
- Modifications without a new procurement procedure - check conditions
- Performance and retention guarantees

☞ Art. 172 FR
(Annex II FA - point 30)

3.3 Templates - examples

- Indicative
 - The templates were developed by the TESIM project and are presented for illustrative purposes only.
 - Most of the templates were adapted from PRAG¹⁰ and therefore they may have some different terminology. Also, they may contain references to other PRAG templates, which are not included in this Procurement Templates pack.
 - Any template should be adapted by the Partners to their specific needs.

¹⁰ Practical guide on contract procedures for European Union external action
<https://wikis.ec.europa.eu/display/ExactExternalWiki/ePRAG>

TAKE NOTE!

The Partners must take into consideration that the legal provisions set in the Financial Regulation prevail. The Partners shall use the templates on their own responsibility, in particular as far as the eligibility of expenditure is concerned, and with the requisite care as regards the compliance with the legal provisions.

- *General templates*
- *Publication international procedure*
- *Services / Supplies / Works tenders*
- *Evaluation templates*
- *Single tender*
- *Negotiated procedure¹¹*

- **Templates for single tender procedure and for simplified procedure**

TAKE NOTE!

Even though these templates are in English, the Partners may use the national language.

Single tender procedure

- *G1_declaration objectivity confidentiality tender preparation*
- *G2_declaration impartiality confidentiality tender evaluation*
- *G3_Declaration on honour*
- *G5a_legal entity form individuals*
- *G5b_legal entity form companies*
- *G5c_legal entity form public*
- *ST1_Invitation to tender_services*
- *ST2_Invitation to tender_supplies*
- *ST3_Invitation to tender_works*
- *ST4_Tender Form_services*
- *ST5_Tender Form_supplies*
- *ST6_Tender Form_works*
- *ST7_Evaluation report*
- *EV8_award decision*

Simplified procedure

- *General templates for services, supplies, works*
 - *G1_declaration objectivity confidentiality tender preparation*

¹¹ Other templates for negotiated procedures may be adapted from the templates for simplified procedure.

- *G2_declaration impartiality confidentiality tender evaluation*
- *G3_Declaration on honour*
- *G4_Financial identification form*
- *G5a_legal entity form individuals*
- *G5b_legal entity form companies*
- *G5c_legal entity form public*
- *Services*
 - *SV5a_invitation to tender simplified*
 - *SV5b_contract notice simplified*
 - *SV7_instructions tenderers simplified*
 - *SV8_admingrid services*
 - *SV9_evalgrid fees*
 - *SV10_evalgrid global price*
 - *SV12_tender form open - simplified*
 - *EV1_open checklist*
 - *EV2_open report*
 - *EV3_evaluators grid services fee-based*
 - *EV4_evaluators grid services global price*
 - *EV5_evaluation report services*
 - *EV8_award decision*
 - *SV13_contractors assessment*
- *Supplies*
 - *SP1a_invitation to tender simplified*
 - *SP1b_contract notice simplified*
 - *SP2_instructions tenderers*
 - *SP3_admingrid*
 - *SP4_evaluation grid*
 - *SP5_tender form*
 - *SP6_tender guarantee*
 - *EV6_evaluation report supplies*
 - *EV8_award decision*
 - *SP7_performance guarantee*
 - *SP8_contractor assessment*
- *Works*
 - *WK1a_invitation to tender simplified*
 - *WK1b_contract notice simplified*
 - *WK2_instructions tenderers*
 - *WK3_tender form*
 - *WK4_tender guarantee*
 - *WK5_admingrid*
 - *WK6_evaluation grid*
 - *EV7_evaluation report works*



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- *EV8_award decision*
- *WK7_perfguarantee*
- *WK8_prefinance guarantee*
- *WK9_retention guarantee*
- *WK10_interpretative note financial offer*