

# Guide on procurement by project beneficiaries using PRAG in the ENI CBC Black Sea Basin programme

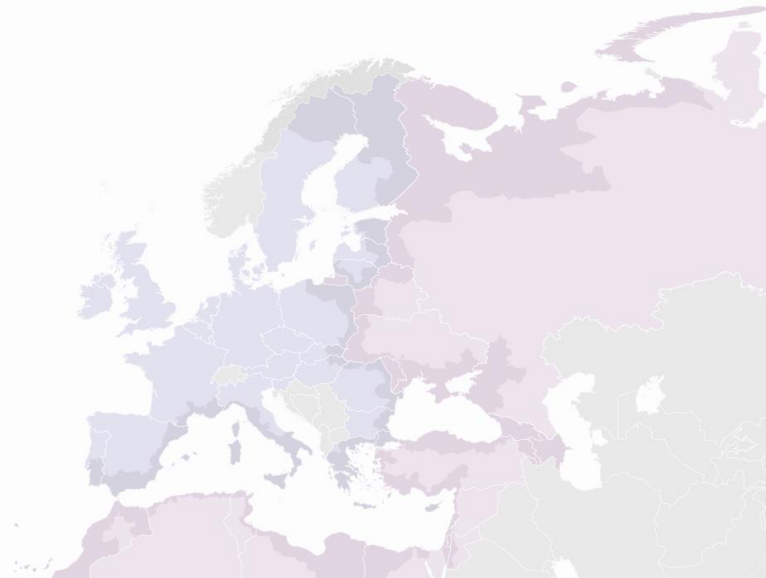
Applicable rules, templates, tips and recommendations

Update June 2021

## DISCLAIMER

This **non-binding document** has been developed by the TESIM project and adapted by the Black Sea Basin programme. It does not necessarily reflect the views of the European Commission on the topic, and is presented to programme and project practitioners **for illustrative purposes only**.

In case the document is endorsed by an ENI CBC programme and renders it compulsory for use by project beneficiaries, **neither TESIM experts nor the TESIM consortium members shall be held liable for its contents**, in particular as far as audit findings on the eligibility of expenditure are concerned.



## Table of contents

<b>QUICK-REFERENCE TO THIS GUIDE</b>	5
Type of procedures and thresholds	6
Services	6
Supplies	6
Works	6
<b>1. Introduction</b>	8
1.1. Aim and scope	8
1.2. Main challenges in procurement	9
1.3. Structure of the guide	10
1.4. Terminology	11
<b>2. Applicable legal provisions</b>	12
2.1. Provisions in the ENI CBC Implementing Rules	12
2.1.1. General principles	12
2.1.2. Conversion of thresholds from Euro to national currency	13
2.1.3. Procurement procedures and thresholds	14
2.1.4. Use of negotiated procedure	15
2.2. Procedures up to 60.000€	16
<b>3. Basic rules</b>	17
3.1. Key principles	17
3.2. Eligibility, exclusion, selection and award criteria	18
3.2.1. Eligibility and exclusion criteria	19
3.2.2. Selection criteria	19
3.2.3. Award criteria	21
3.3. Grounds for exclusion	22
3.3.1. Exclusion criteria for participation in any procurement procedure	22
3.3.2. Exclusion criteria applicable in a given procurement procedure	25
3.3.3. Verification of non-exclusion situation	25
3.4. Administrative and financial penalties	27

3.5. Use of languages .....	28
3.6. Procedures with a suspension clause .....	28
3.7. Cancellation of procurement procedures .....	29
3.8. Complaints .....	30
3.9. Modifying contracts .....	30
3.10. Procurement plan.....	31
3.11. Artificial split.....	32
3.12. Failure or errors in procurement procedure .....	32
<b>4. Which type of procedure? .....</b>	<b>34</b>
4.1. Basic definitions.....	34
4.2. Financial thresholds and related tendering procedures .....	35
4.3. Payment against invoice without prior acceptance of a tender .....	36
4.4. Single tender procedures .....	38
4.4.1. Content of tender dossier for single tenders .....	38
4.4.2. Evaluation documents and reports for single tenders.....	39
4.5. Simplified procedure (previously known as competitive negotiated procedure) .....	41
4.5.1. Tender dossier for services .....	42
4.5.2. Tender dossier for supplies .....	42
4.5.3. Tender dossier for works .....	42
4.5.4. Evaluation process for simplified procedure .....	42
<b>5. Nature of contracts .....</b>	<b>44</b>
5.1. Service contracts.....	44
5.1.1. What is a service contract? .....	44
5.1.2. Types of service contracts.....	44
5.1.3. Key challenges and recommendations for service contracts...	46
5.2. Supply contracts .....	47
5.2.1. What is a supply contract? .....	47
5.2.2. Key challenges and recommendations for supply contracts....	48
5.3. Works contracts .....	48
5.3.1. What is a works contract? .....	48
5.3.2. Key challenges and recommendations for works contracts .....	49

<b>Glossary of terms and acronyms .....</b>	<b>51</b>
<b>Annex 1: Declaration on honour .....</b>	<b>59</b>



## QUICK-REFERENCE TO THIS GUIDE

### What to do when YOU are the CONTRACTING AUTHORITY? How should you procure works, supplies and services

You will find in this guide:

Cover & table of contents (4 pages)	<u>Introduction</u> (4 pages)	Overview of applicable legal provisions (5 pages)	Basic rules (6 pages)
What type of procedures (10 pages)	Nature of contracts (7 pages)	Glossary (8 pages)	Annex 1: declaration on honour (8 pages)

KEY INFORMATION	GO TO SECTION
Conversion to Euro	2.1.2
Criteria for selection of providers	3.2
Definition of the different types of procedures	4.1
Thresholds for each type of procedure	4.2
Direct award (payment against invoice) < 2.500€	4.3
Low-value contracts up to 20.000€ (single tender procedure)	4.4
Simplified procedure	4.5
What is a service contract	5.1
What is a supply contract	5.2
What is a works contract	5.3
What if I get lost with the technical words	Glossary
Adapted declaration of honour for bidders	Annex 1

## Type of procedures and thresholds

### Services

Range of amounts	Type of procedure	Main features	Go to section
Up to 2.500€	Direct award or order	Payment against invoice without prior acceptance of a tender	4.3
From 2.501€ to 20.000€	Award on the basis of single tender	Invitation to tenderers with clear pre-set requirements	4.4
From 20.001€ to 299.999€	Competitive negotiated procedure (simplified procedure)	Invitation to tenderers with clear pre-set requirements. At least three offers must be consulted.	4.5.1
From 300.000€	International restricted tender	Two-steps procedure with international publication of tender	

### Supplies

Range of amounts	Type of procedure	Main features	Go to section
Up to 2.500€	Direct award or order	Payment against invoice without prior acceptance of a tender	4.3
From 2.501€ to 20.000€	Award on the basis of single tender	Invitation to tenderers with clear pre-set requirements	4.4
From 20.001€ to 99.999€	Competitive negotiated procedure (simplified procedure)	Invitation to tenderers with clear pre-set requirements. At least three offers must be consulted.	4.5.2
From 100.000€ to 299.999€	Open tender procedure in programme area	Tender must be published not only in the country of the beneficiary, but in the whole programme area	
From 300.000€	International open tender	One-step procedure with international publication of tender	

### Works

Range of amounts	Type of procedure	Main features	Go to section
Up to 2.500€	Direct award or order	Payment against invoice without prior acceptance of a tender	4.3
From 2.501€ to 20.000€	Award on the basis of single tender	Invitation to tenderers with clear pre-set requirements	4.4
From 20.001€ to 299.999€	Competitive negotiated procedure	Invitation to tenderers with clear pre-set requirements. At least three offers must be consulted.	4.5.3

	(simplified procedure)		
From 300.000€ to 4.999.999€	Open tender procedure in programme area	Tender must be published not only in the country of the beneficiary, but in the whole programme area	
From 5.000.000€	International open tender	One-step procedure with international publication of tender	

## 1. Introduction

### 1.1. Aim and scope

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

During the programming period 2007-2013 ENPI CBC projects were obliged by the applicable EU Regulation to use the procedures of the “*Practical Guide to Contract procedures for EC external actions*” (PRAG). This obligation has not been included in the ENI CBC Implementing Rules (EC Regulation 897/2014), hereinafter ENI CBC IR, which is applicable for the period 2014-2020.

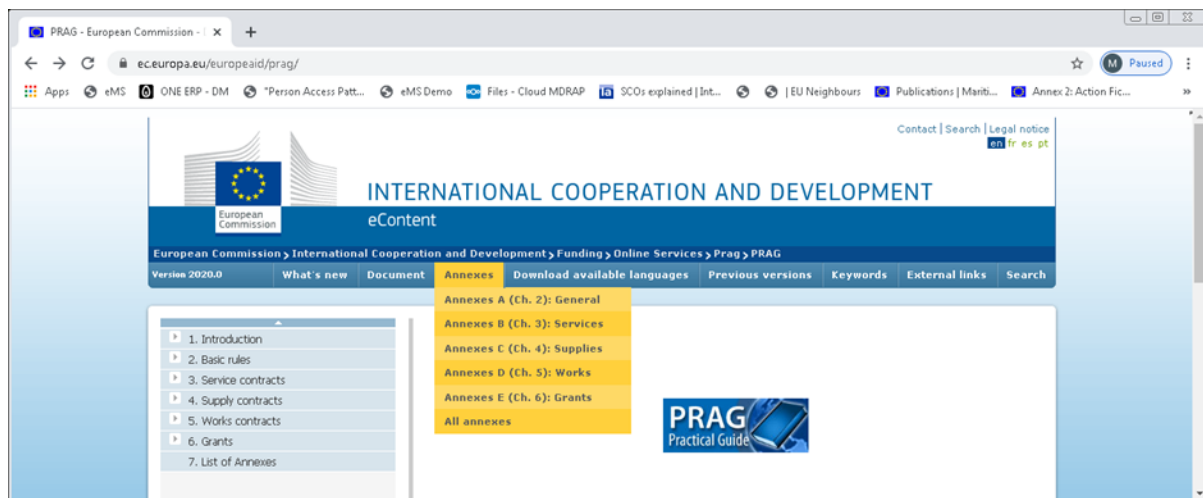
On top of the provisions included in the above-mentioned Regulation, the new regulatory framework allows for the use of national legislation and programme specific rules, including the **use of PRAG**, if so decided.

The Black Sea Basin programme decided the use of Procurement and Grants for European Union external actions – A Practical Guide (PRAG) supplementing the ENI CBC IR. For the types of beneficiaries required to use PRAG, please check the programme website: <https://blacksea-cbc.net/news/archive-news/procurement-rules-national-legislation-or-prag/>.

The present guide **aims** to describe the main elements of the applicable rules and procedures, as well as to offer tips and recommendations for awarding contracts related to works, supplies and services. For full applicable rules and procedures, please check PRAG provisions.

Find PRAG in [https://ec.europa.eu/europeaid/funding/about-funding-and-procedures/procedures-and-practical-guide-prag\\_en](https://ec.europa.eu/europeaid/funding/about-funding-and-procedures/procedures-and-practical-guide-prag_en)





Please make sure to use the PRAG version in force at the moment of the launch of the procurement procedure. The present Guide takes into account the 2020 version.

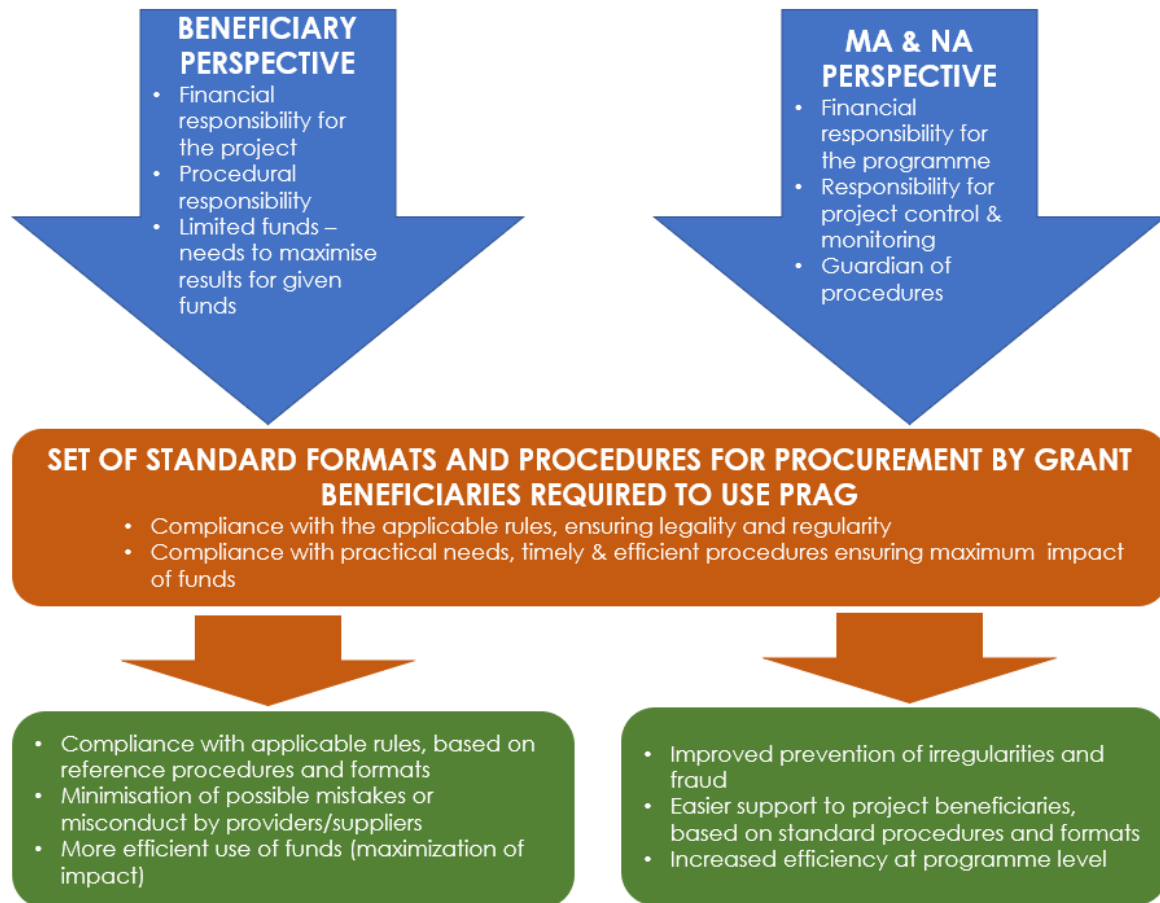
Please be reminded that PRAG is a supplement to the provisions set out in art. 52.2 to 56 of the ENI CBC IR, which are to be followed as well.

## 1.2. Main challenges in procurement

This guide has been developed considering the potential extensive and time-consuming administrative burden of the procurement procedures, as well as the high risk of ineligibility due to mismanagement or low understanding of the rules. A **proper balance** must be established between the necessary formal and legal requirements and the capabilities and interest of the project beneficiaries.

This guide also has in mind the perspective of the programme bodies, namely Managing Authorities (MAs) and National Authorities (NAs), who have the responsibility for preventing, detecting and correcting irregularities, including fraud and corruption. A clear ground for the secondary procurement is a key prevention measure.

The two perspectives of both project beneficiaries, MAs & NA are considered:



### 1.3. Structure of the guide

This guide is adapted to the concrete needs of the beneficiaries and it is structured by type of procedure. Following a general introduction on the thresholds and principles, the guide describes the following **key elements** for the procurement procedures most encountered BSB projects (simplified procedures, single tender procedures, payment against invoice without prior acceptance of a tender):

- Definition of the nature of the procedure
- Procedures overview for publication/invitation and submission of tenders
- Tender dossiers, including standard format documents
- Procedure for evaluation of submitted bids

PRAG gives extensive information on the procedures identified in the ENI CBC IR (competitive negotiated procedure - simplified procedure according to PRAG 2020, restricted and open tenders), but little details on the most frequent

procedures in CBC projects, which are the single tender. For these ones, the guide provides specific recommendations to beneficiaries.

#### 1.4. Terminology

For the purpose of improved understanding of the necessarily complex framework, this guide includes a **comprehensive glossary** of the main technical terms related to procurement.

**A key issue:** any **grant beneficiary becomes** the entity carrying out the contracting of the part of the budget under its responsibility. The term used in PRAG for the beneficiaries performing secondary procurement is "**contracting authority**". From now onwards in this guide, whenever this term is used, it is meant in this sense.

## 2. Applicable legal provisions

### 2.1. Provisions in the ENI CBC Implementing Rules

Section 1 of the chapter 4 of the ENI CBC Implementing Rules (hereinafter ENI CBC IR) regulates procurement. The articles relevant to beneficiaries in CBC partner countries are as follows:

Article	Content
<b>52.2</b>	General principles
<b>52.3</b>	Rules of nationality and origin
<b>53</b>	Procedures and thresholds for service contracts
<b>54</b>	Procedures and thresholds for supply contracts
<b>55</b>	Procedures and thresholds for work contracts
<b>56</b>	Use of negotiated procedure

#### 2.1.1. General principles

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 articles 136 and 141 of Regulation 2018/1046 [...]<sup>1</sup>.

These principles are further detailed later on in the guide.

Regardless of threshold, the beneficiary must be able to justify **why and how** either **best value for money or lowest price** criterion was applied. This is an underlying principle behind all the requirements for each procedure chosen.

### 2.1.2. Conversion of thresholds from Euro to national currency

**A preliminary consideration:** the amounts indicated in the ENI CBC IR and in the programme rules are all in EUR, while in the actual procurement procedures, mainly national currency will be used. **So, which exchange rate should be used to verify if a procedure is above or below the threshold?**

Article 8 of the General Conditions of the Financing Agreements stipulates that:

*"[...] in case of procedures in currencies other than Euro, the amount shall be converted to Euro using the exchange rate method mentioned in the Programme [...]."*

As the Programme does not mention an exchange rate for procurement, the exchange rate may be the "monthly accounting rate of the Commission", which can be found in the **Inforeuro website** at the following URL address: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/inforeuro/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/index_en.cfm)

Exchange rate fluctuations are expected during the project cycle, from the development of the budget during the submission of the project proposal to the beginning of the project implementation period (when the procurement plan has to be prepared) and to the actual moment of the launching of the procedures.

---

<sup>1</sup> The ENI CBC IR mentions articles 106 and 107 of Regulation 966/2012, which has been substituted by Regulation 2018/1046

### Tip #1. Check the threshold in national currency and EUR twice!

You need to ensure the use of the right procurement procedure, in accordance with the threshold in Euro indicated later on in this guide. Please check the conversion to national currency **when preparing your procurement plan and again before launching the procedure.**

We strongly recommend to indicate the conversion rate in the tender documents to facilitate the work of the auditors carrying out the expenditure verification, as well as the programme and national bodies responsible for control.

Additional fluctuations may take place during the project implementation, once the procurement contracts are awarded.

Please remark that the **rate used to check the compliance with the thresholds for the type of procedure will NOT be the same one than the reporting of the expenditure.**

In accordance with the programmes rules, the exchange for reporting will be *"the monthly accounting exchange of the Commission of the month during which the expenditure was submitted for examination"* to the auditor carrying out the Expenditure Verification Report.

### 2.1.3. Procurement procedures and thresholds

Articles 53 to 55 of the ENI CBC IR define the type of procedure and thresholds for services, supplies and works, as follows:

Article 53	Service contracts
> 60.000€ < 300.000€	Competitive negotiated procedure without publication
≥ 300.000€	International restricted tender

Article 54	Supply contracts
> 60.000€ < 100.000€	Competitive negotiated procedure without publication
≥ 100.000€ < 300.000€	Open tender procedure published in the programme area
≥ 300.000€	International open tender

Article 55	Work contracts
> 60.000€ < 300.000€	Competitive negotiated procedure without publication
≥ 300.000€ < 5.000.000€	Open tender procedure published in the programme area
≥ 5.000.000€	International open tender

In the cases where the tender needs to be published in the programme area, the publication should be in English, so that the potential contractors from other countries may have equal opportunity to participate. The specific/additional requirements regarding publication included in the programme grant contract should also be checked.

**This guide does not focus on the restricted and open tender procedures**, as they would be exceptional, considering the size of the grants in the Black Sea Basin programme.

#### 2.1.4. Use of negotiated procedure

Article 56 of the ENI CBC IR stipulates that:

*"The beneficiary may decide to use negotiated procedure on the basis of a single tender in the cases referred to in points 11 of Chapter 1 and 39 of Chapter 3 of Annex I of the Regulation 2018/1046<sup>2</sup>."*

This article provides a list of reasons for justified use of the negotiated procedure, which needs to be complemented with the instructions and thresholds stipulated in section 2.6.8. of PRAG 2020.

*"Negotiated procedures" should not be confused* with the *"Competitive negotiated procedure"* mentioned in article 53 to 55.

A non-exhaustive list of the cases referred in Article 56 of ENI CBC IR is:

- Extreme urgency,
- Additional delivery of original supplies as replacement of normal supplies,
- Contract following a contest,

---

<sup>2</sup> The ENI CBC IR mention article 266 of the Delegated Regulation 1268/2012, which has been substituted by article 178 of Regulation 2018/1046. This article refers to the above-mentioned points in the annex of the Regulation.

- The tender procedure has been unsuccessful,
- Where for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular provider,
- Where a new contract has to be concluded after early termination of an existing contract.

## 2.2. Procedures up to 60.000€

There is no specific reference in the ENI CBC IR on the procedures with a value **up to 60.000€**. The grant contract, art. 9.3, imposes the use of PRAG provisions regarding the templates and details for the types of the procedures.

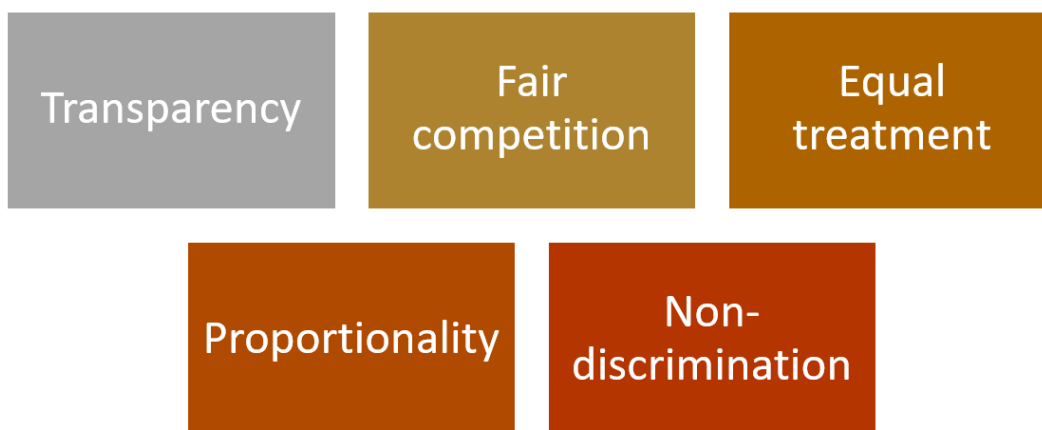
In case there are **any applicable internal rules of the organisation**, these shall be used as well, on the condition that they are not in conflict with the programme rules.



### 3. Basic rules

#### 3.1. Key principles

There are five basic principles to be respected in any procurement procedure, regardless of the value:

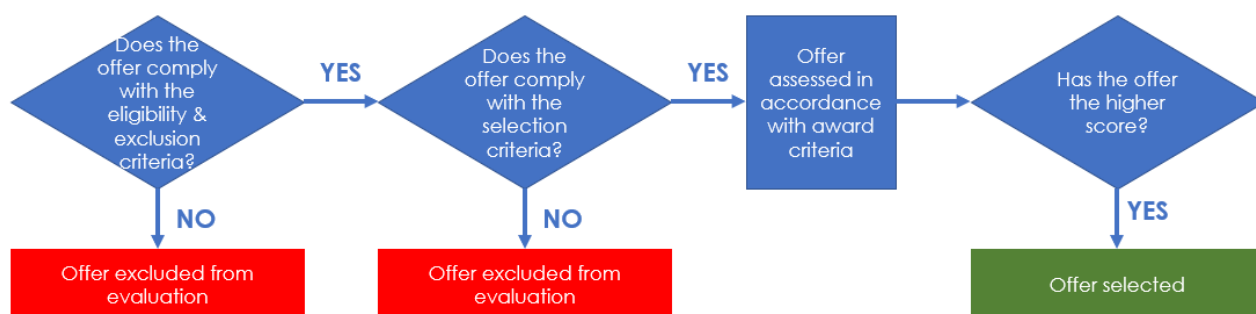


Principle	Description
<b>Transparency</b>	The beneficiaries have to work as openly as possible in the implementation of the budget, so that stakeholders and citizens are able to know where, and for what purpose, funds are spent. This principle should be achieved by the <b>publication</b> , preferably using modern communication tools, <b>of relevant information concerning contractors</b> , while considering 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.
<b>Fair competition</b>	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,

	<p>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> <p>Additionally, the contracting authority needs to ensure the absence of any <b>conflict of interest</b><sup>3</sup> during the procedure.</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>	Removal of any discriminatory practice or technical specifications liable to hamper wide participation on equal terms by all natural or legal persons.

### 3.2. Eligibility, exclusion, selection and award criteria

The procurement procedures need to draw up clear eligibility (for formal submission), exclusion, selection and award criteria<sup>4</sup>, following the above-mentioned principles.



<sup>3</sup> See the definition of conflict of interest in the glossary

<sup>4</sup> See the meaning of these terms in the glossary

### 3.2.1. Eligibility and exclusion criteria

There are three types of eligibility and exclusion criteria:

- Exclusion criteria for the participation in any procurement procedure
- Exclusion criteria for the participation in a given procurement procedure
- Formal requirements for eligibility in a given procurement procedure

The first two types are described in detail in the following section. The formal eligibility requirements for participation have to be clearly detailed in the tender dossier or the invitation to submit a tender.

#### **Tip #2. Examples of potential formal criteria for eligibility:**

- Deadline for submission respected
- Amount offered below the maximum amount indicated in tender dossier or invitation
- Original signature by duly authorised legal representative
- Submission of all requested documents
- Documents submitted in the requested language

### 3.2.2. Selection criteria

They are thoroughly described in section 2.6.11. of PRAG 2020. Find the main indications below, but consult PRAG for further details.

Regardless of the type of procurement procedure used, the **capacity of the tenderer** to implement the contract is always assessed on the basis of objective selection criteria.

The contracting authority needs to check that the tenderer has sufficient financial, economic, technical and professional capacity to implement the tasks of the contract. The chosen criteria shall be proportionate and may not go beyond the scope of the contract.

#### **Tip #3. Examples of potential selection criteria:**

- Minimum average annual turnover of the bidder during the last 3 years;
- Minimum average number of technical staff in the last 3 years;
- Minimum number of previous contracts of similar nature and size during a period of time;

- Specific educational and professional qualifications of the team proposed by the service provider or contractor.

**Tip #4. Examples of selection criteria NOT to use:**

- disproportionate annual turnover, number of staff, number of previous projects etc. as regards the amount of the contract;
- imprecise terms such as 'sufficient', 'major', 'relevant' as it is not absolutely clear what these words mean in the context, or whether a proposed experience fulfils the criterion;
- a percentage of the staff working in specific fields, as this may be discriminatory for large companies;
- technical experience relating to EU-funded projects only, as this may in general be regarded as discriminatory;
- prior experience in the country, region or town, unless specific justification is provided, as this could in general be regarded as discriminatory;
- technical experience in an overly prescriptive manner which effectively restricts the number of eligible candidates to one or a few firms
- requirements for technical capacity of the staff of the tenderer overlapping with the award criteria defined for key experts of the team.

The selection criteria must be specified in the contract notice, instructions to tenderers and/or invitation to tender and applied by the contracting authority without modification unless a corrigendum is published.

**Example #1. Selection criteria for a service contract providing expertise on environment:**

**1) Economic and financial capacity of candidate** The reference period which will be taken into account will be the last three years for which accounts have been closed. Criteria for legal and natural persons:

1. The average annual turnover of the tenderer over the last three financial years must exceed EUR 300,000 (three hundred thousand euro);
2. Current ratio (current assets/current liabilities) in the last year for which accounts have been closed must be at least 1.

**2) Professional capacity of candidate** (based on items 4 and 5 of the application form). The reference period which will be taken into account will be the last five years from submission deadline.

Criteria for legal and natural persons:

1. At least 10 staff members currently work for the candidate in fields related to this contract;

**3) Technical capacity of candidate** (based on items 5 and 6 of the application form). The reference period which will be taken into account will be the last five years from submission deadline.

Criteria for legal and natural persons:

The candidate has provided services under at least one other contract with a total budget of at least EUR 100,000 (One Hundred Thousand) in technical assistance to [...]

### 3.2.3. Award criteria

The contract is awarded to the tender offering the most economically advantageous tender, either:

- under the **best price-quality ratio**, the contracting authority takes into account the price and other quality criteria linked to the subject matter of the contract, and apply a weighting formula 20% to price and 80% to technical quality;
- under the **lowest price**, provided the tender satisfies the minimum requirements laid down, that is, the tender is technically compliant. It is often used for supplies and works.

#### **Example #2. Award criteria for a service contract providing expertise on environment:**

Best price-quality ratio:

1. Price: 20%
2. Technical quality: 80%

**Tip #5. Evaluation grids available**

You may use the standard evaluation grids for the assessment of the best-quality price ratio available as annexes of PRAG (see templates b12a & b12b for services).

The **goal of the procurement** is not only efficiency, that is maximizing the impact with the given funds, but also enhancing the project **effectiveness**, that is contributing to the achievement of the project expected results.

EC gives a much higher importance to quality criteria than the price in the case of service contracts.

For supplies and works, the lowest price is to be used. Nevertheless, also in the case of supplies and works there may be exceptional circumstances where best quality-price may be acceptable, such as, for supplies, post-sales service, training to users.

**Tip #6. What to do in case of abnormally low tenders?**

**Abnormally low tenders may be rejected.** See further details in PRAG 2020 in points 3.4.4. for services, 4.3.9.6. for supplies and 5.3.9.6. for works.

### 3.3. Grounds for exclusion

#### 3.3.1. Exclusion criteria for participation in any procurement procedure

A tenderer will be excluded from participation in the procurement procedures if (see section 2.6.10.1 in Prag 2020):

- a) it is bankrupt, subject to insolvency or winding-up procedures, where its assets are being administered by a liquidator or by a court, where it is in an arrangement with creditors, where its business activities are suspended, or where it is in any analogous situation arising from a similar procedure provided for under national laws or regulations;
- b) it has been established by a final judgment or a final administrative decision that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;
- c) it has been established by a final judgment or a final administrative decision that the economic operator is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical

standards of the profession to which the economic operator belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes a wrongful intent or gross negligence, including, in particular, any of the following:

- i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;
  - ii) entering into agreement with other economic operators with the aim of distorting competition;
  - iii) violating intellectual property rights;
  - iv) attempting to influence the decision-making process of the contracting authority during the procurement procedure;
  - v) attempting to obtain confidential information that may confer upon it undue advantages in the procurement procedure;
- d) it has been established by a final judgment that the economic operator is guilty of any of the following:
- i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law and Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995;
  - ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 and Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997, and in Article 2(1) of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, as well as corruption as defined in the law of the country where the contracting authority is located, the country in which the economic operator is established or the country of the performance of the contract;
  - iii) conduct related to a criminal organisation referred to in Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime;
  - iv) money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European



Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance) of the European Parliament and of the Council;

- v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision of 13 June 2002 on combating terrorism, respectively, or inciting or aiding or abetting or attempting to commit such offences, as referred to in Article 4 of that Framework Decision;
- vi) child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA;
- e) the economic operator has shown significant deficiencies in complying with main obligations in the performance of a contract financed by the EU, which has led to the early termination of a legal commitment or to the application of liquidated damages or other contractual penalties or which has been discovered following checks and audits or investigations by an authorising officer, OLAF or the Court of Auditors;
- f) it has been established by a final judgment or final administrative decision that the economic operator has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests.
- g) it has been established by a final judgment or final administrative decision that the person or entity has created an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations of mandatory application in the jurisdiction of its registered office, central administration or principal place of business.
- h) it has been established by a final judgment or final administrative decision that an entity has been created with the intent provided for in point (g).



The contracting authority must exclude the economic operator where:

- a natural or legal person who is member of the administrative, management or supervisory body or has power of representation, decision or control on the economic operator is in a situation listed in points c) to h);
- a natural or legal person that assumes unlimited liability for the debts of that economic operator is in a situation listed in points a) or b);
- a natural or legal person who is essential for the award or for the implementation of the legal commitment and is in a situation referred to in point c) to h).

For full information on exclusion criteria, please check PRAG.

### 3.3.2. Exclusion criteria applicable in a given procurement procedure

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

- a) are subject to a conflict of interest;
- b) 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;
- c) find themselves in one of the exclusion situations established under section 2.6.10.1.1 of PRAG.

### 3.3.3. Verification of non-exclusion situation

A detailed explanation on the documentary evidence needed for the verification of non-exclusion situation is available in section 2.6.10.1.3. of PRAG 2020. The main elements are described below.

Tenderers must sign a declaration together with their applications, certifying that the entity does not fall into any of the above-mentioned exclusion situations.

Information on the ownership/management, control and power of representation of the entity and a certification that they do not fall into the relevant exclusion situations must be provided where specifically requested by the contracting authority. This may be the case where there are doubts about

the personal situation and in consideration of the national legislation of the country in which the tenderer, candidate or applicant is established.

However, for procurement contracts with a value of 15.000€ or less, the contracting authority may refrain from requiring a declaration depending on its risk assessment<sup>5</sup>.

Following the notification of award, tenderer(s) to which the contract is to be awarded (including consortium members), must supply evidence that they do not fall into the exclusion situations, unless such evidence has already been submitted earlier in the procedure. The contracting authority may waive this requirement in the case of lower value tender, upon its judgement.

As satisfactory evidence that the tenderer is not in one of the situations described in (a), (b) or (e) exclusion criteria applicable for participation in procurement procedures (point 3.3.1), the contracting authority will accept a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that the requirements are satisfied. For (d), the contracting authority will accept a recent certificate issued by the competent authority of the State concerned. Where the certificate is not issued in the country concerned it may be replaced by a sworn/solemn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in the country of establishment.

**Tip #7. Declaration on honour.**

The tender submission form includes a tenderer's statement which among other confirms that the tenderer is not in any of the above situations. The statement should be included in the tender dossier. The format of the declaration of honour provided in this guide is adapted to the specific requirements of the ENI CBC IR.

---

<sup>5</sup> The decision of the contracting authority needs to be duly documented

**Tip #8. Documentary evidence.**

Except for the contracts with a value equal or greater than the international thresholds<sup>6</sup>, The contracting authority should decide on case-by-case basis which of the above situations should be confirmed by documentary evidence. For example, the evidence could be asked for larger tenders or in cases where the exclusion criteria directly jeopardize the delivery of the contract. Please bear in mind that obtaining of the documentary proof means additional cost and effort for the tenderers. The documents could possibly be asked only from successful tenderer before the signature of the contract.

### 3.4. Administrative and financial penalties

Tenderers falling into a situation set out in Section 2.6.10.1. (exclusion criteria) of PRAG 2020, are not entitled to participate in the tender procedure or be awarded a contract. Should they do so, their tender will be considered unsuitable or irregular respectively. Tenderers guilty of making false declarations may also incur financial penalties up to 10% of the total value of the contract and exclusion, in accordance with the Financial Regulation in force.

Tenderers included in the lists of EU restrictive measures (see Section 2.4. of the PRAG) at the moment of the award decision cannot be awarded the contract.

Where the **award procedure** proves to **have been subject to substantial errors, irregularities or fraud**, the contracting authority must suspend the procedure and may take whatever measures are necessary, including cancellation. Consequently, any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors whose aim or effect is to impede, restrain or distort competition, or influence the evaluation committee or the contracting authority during the process of examining, clarifying, evaluating and comparing tenders and applications will lead to the rejection of its tender. See further details on ethic clauses in point 2.5.6 of PRAG 2020.

---

<sup>6</sup> services ≥ EUR 300 000, supply ≥ EUR 300 000, works ≥ EUR 5 000 000

Where, after the award of the contract, the award procedure or **the performance of the contract prove to have been subject to substantial errors, irregularities or fraud**, the contracting authority may, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract or, where appropriate, terminate the contract. Please inform the MA and the NA as soon as possible.

After the contract signature, the contractor who is guilty of grave professional misconduct, has committed irregularities or has shown significant deficiencies in complying with the main obligations in the performance of the contract or has been circumventing fiscal, social or any other applicable legal obligations, including through the creation of an entity for this purpose, may be excluded from all contracts financed by the EU, after an adversarial procedure in line with the applicable Financial Regulation. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, three years.

Also, the contractor who is guilty of fraud, corruption, participation in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings, may be excluded as well. The duration of the exclusion shall not exceed the duration set by final judgement or final administrative decision or, in the absence thereof, five years.

In addition or in alternative to the sanction of exclusion, the contractor may also be subject to financial penalties up to 10% of the contract price in case of services and supplies and of 2-10% in case of works.

### 3.5. Use of languages

Though the use of the languages is not defined in applicable Regulations it would be recommended to use English for secondary procurement procedures above 20.000€. For single tender procedures below 20.000€ the contracting authority might decide to use only the national language.

### 3.6. Procedures with a suspension clause

In duly justified cases, tender procedures may be published with a suspension clause. Article 48.2(a)(iv) of ENI CBC IR stipulates that:

*“procedures to award contracts [...] may have been initiated and contracts may be concluded by the beneficiary(ies) before the start of the implementation period of the project [...]”.*

Because of its implications, the contract notice or invitation to tender must explicitly state that there is a suspension clause.

#### **Tip #9. Time flies!**

Implementation periods usually run faster than expected when writing the project proposals and delays occur very often. Use the time between the notification of the award of the grant and the actual signature of the grant contract (**contracting period**) to start the most urgent procurement procedures, as well as the recruitment ones. That way, you will be ready for a timely project launching at the beginning of the implementation period.

We **do not recommend** to launch any procurement procedure **before the notification** of the award of the grant.

### 3.7. Cancellation of procurement procedures

The contracting authority may, before the contract is signed, cancel the procedure without the tenderers being entitled to claim any compensation. Cancellation may occur, for example, if:

- the tender procedure has been unsuccessful, i.e., no suitable, qualitatively or financially acceptable tender has been received or there is no valid response at all;
- the economic or technical data of the project have fundamentally changed;
- exceptional circumstances or a force majeure render normal performance of the contract impossible;
- all technically acceptable tenders exceed the financial resources available;
- there have been a breach of obligations, irregularities or frauds in the procedure, in particular where these have prevented fair competition;
- the award is not in compliance with sound financial management i.e. does not obey the principles of economy, efficiency and effectiveness (e.g. the price

proposed by the tenderer to whom the contract is to be awarded bears no relation to the market price).

See further details in point 2.6.13 of PRAG 2020.

### 3.8. Complaints

Where a tenderer believes that she/he has been adversely affected by an error or irregularity allegedly committed as part of a procurement procedure, or that the procedure was vitiated by any maladministration, she/he may file a complaint to the contracting authority who will endeavour to investigate the complaint and respond within a number of days specified in the tender dossier.

The complaint shall be substantiated and its sole subject shall not be to obtain a second evaluation for no reason other than the complainant disagrees with the final award decision.

It is recommended to set up the complaint committee, which members should be different from those involved in procurement.

### 3.9. Modifying contracts

Contracts may need to be modified during their duration if the circumstances affecting project implementation have changed since the initial contract was signed.

**Contract modifications must be formalised through an administrative order or an addendum** to the contract in accordance with the provisions of the General Conditions of the contract. Substantial modifications to the contract must be made by means of an addendum. Such an addendum must be signed by the contracting parties. Changes of address and changes of bank account may simply be notified in writing by the contractor to the contracting authority, although this does not affect the right of the latter to oppose the contractor's choice of bank account.

No changes to the contract may alter the award conditions prevailing at the time the contract was awarded.

Following this logic, major changes, such as a fundamental alteration of the Terms of Reference/Technical Specifications, cannot be made by means of an addendum or an administrative order.

A request for contract modifications should not automatically be accepted by the contracting authority. Major changes in the technical specifications or other parameters of the procurement after the grant contract has been signed might lead to the breach of the equal treatment principle (other tenderers who might have had better offers if the new conditions would be known in advance). This in turn might render the costs reported by the beneficiary to the programme bodies ineligible.

**There must be justified reasons for modifying a contract.** The contracting authority must examine the reasons given and reject requests which have little or no substantiation. Contracts can only be modified within the execution period of the contract. The purpose of the addendum or administrative order must be closely connected with the nature of the project covered by the initial contract.

Requests for contract modifications must be made (by one contracting party to the other) well in advance to allow for the addendum to be signed by both parties before the expiry of the execution period of the contract.

The contract modification may take place in some cases, such as:

- the value of the modification is limited to 10 % of the initial contract value for service, and supply contracts, and 15 % of the initial contract value for works contracts and
- the net cumulative value of several successive modifications does not exceed the thresholds indicated above.

See further details in point 2.11.1 of PRAG 2020.

### 3.10. Procurement plan

The secondary procurement procedures represent a significant challenge for the grant beneficiary, the Lead Beneficiary and the programme and national bodies from the perspective of monitoring. Significant volume of procedures makes it difficult for them to follow closely the developments, what often results in procurement delays and discrepancies, as well as delays at the project level.

A possible way to facilitate the monitoring is the use of procurement plans. The grant beneficiaries are encouraged after the communication of the award of



their project to develop a list of all procurement procedures within their projects, with indication of budget line, procedure and key milestones. The procurement plans are extremely useful to identify delays, as well as discrepancies between the foreseen and the actual procedure. The procurement plan can also be used for cross-checks, for example if proper procedure is used depending on the financial threshold.

A procurement plan shall be provided in the first progress report of the project and an update at each following report, according to the template provided in the Project Implementation Manual.

### 3.11. Artificial split

Artificial splitting of contracts is the splitting of contracts which serve to achieve the same objective into smaller contracts to avoid the competitive tendering procedure or to circumvent the rules which apply to certain procurement procedures or above a certain threshold.

### 3.12. Failure or errors in procurement procedure

Having in mind that *“each beneficiary shall be legally and financially responsible for the activities that it is implementing and for the share of the Union funds that it receives<sup>7</sup>”*, including the awards of contracts to the third parties, failures or errors in secondary procurement procedures or discrepancies in deliveries could mean financial losses, as the expenditure may be considered as partially or fully ineligible by the Managing Authority.

#### **Some potential cases of failures, errors or discrepancies in awarding contracts to third parties (secondary procurement):**

- Failure of delivery by provider/supplier of the agreed services, supplies or works;
- Changes in the agreed technical specifications that might render the contract ineligible;
- Delays in delivery of services, supplies or works, having negative impact on overall timing of the grant financed project and/or in the achievement of its results;

---

<sup>7</sup> Article 46.2 of the ENI CBC IR



- Provision of inadequate quality or specifications of services, supplies or works by the provider/supplier;
- Arguments in relation to the price of agreed/delivered services, supplies or works.

In order to avoid any of the situations above, it is of the best interest of the grant beneficiary:

- to establish transparent and secure relations with the providers/suppliers by defining conditions and relations in written form, with clearly set obligations for both parties involved in the matter;
- to prepare carefully all the procurement procedures before contracting, so to ensure their correspondence with the project proposal and their full compliance with the applicable rules;
- to carry out a thorough and documented follow-up of the performance of the suppliers/providers and;
- to ensure that the final acceptance of services/supplies/goods is in line with the specifications of the tender documentation.

## 4. Which type of procedure?

### 4.1. Basic definitions

Which procedure is applicable depends on the nature of the acquisition (works, supplies, services or mixed<sup>8</sup>) and the value of the contract.

**The main procedures** identified in the ENI CBC IR are thoroughly **described in PRAG**. The current guide is focused on simplified procedure, single tender procedure and payment against invoice without prior acceptance of a tender, for which PRAG has fewer provisions, but have high chances to be applied in the Black Sea Basin programme, considering the grant values.

The types of procedure usually applied in ENI CBC projects are<sup>9</sup>:

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 either at international level or at the programme area. 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 procurement notice for submission of expression of interest. These are reviewed and a short-list of tenderers is formed. In</p>

<sup>8</sup> See definition of "mixed contract" in the glossary

<sup>9</sup> See section 2.6 of PRAG 2020 for further details and full list of procedures

	the second step, only the short-listed tenders are invited to submit a full offer.
<b>Simplified procedure<sup>10</sup></b>	The contracting authority invites at least 3 candidates of its choice to submit tenders.
<b>Single tender</b>	The contracting authority invites at least one candidate to submit offer.
<b>Payment against invoice without prior acceptance of a tender</b>	Payments against invoice without a prior tender may be accepted for low-value purchases (up to 2.500€). An invoice from one provider/supplier will be accepted, if duly justified.

## 4.2. Financial thresholds and related tendering procedures

The thresholds are as follows:

	International open tender	International restricted tender	Open tender in programme area
<b>Services</b>	Not applicable	≥ 300.000€	Not applicable
<b>Supplies</b>	≥ 300.000€	Not applicable	≥ 100.000€ < 300.000€
<b>Works</b>	≥ 5.000.000€	Not applicable	≥ 300.000€ < 5.000.000€

The thresholds for lower amounts are as follows. Please consider that the programme has decided to request use of PRAG for any contract not exceeding 60.000€, as articles 53 to 55 of ENI CBC IR set certain procedures only over 60.000€. **The thresholds indicated below are compulsory.**

<sup>10</sup> Previously known as "Competitive negotiated procedure" in PRAG

	Simplified procedure	Single tender procedure	Payment against invoice without prior acceptance of a tender
<b>Services</b>	> 20.000€ < 300.000€	> 2.500€ ≤ 20.000€	≤ 2,500€
<b>Supplies</b>	> 20.000€ < 100.000€	> 2.500€ ≤ 20.000€	≤ 2.500€
<b>Works</b>	> 20.000€ < 300.000€	> 2.500€ ≤ 20.000€	≤ 2.500€

Note that tenders must not be split artificially to circumvent the procurement thresholds.

Irrespective the amounts concerned, all procurements must be awarded to the tender offering best value for money, or as appropriate, to the tender offering the lowest price and respect the **general principles** of avoidance of conflict of interest, transparency, fair competition, equal treatment, proportionality and non-discrimination, as indicated in the previous chapter.

### 4.3. Payment against invoice without prior acceptance of a tender

Even though it is possible to accept payments up to 2.500€ against invoice without prior formal acceptance of a tender, the beneficiary may follow some internal procedures, in order to prove that the basic principles are respected.

#### Tip #11. Basic recommendations for lowest-value procurement

- Since any procurement has to either demonstrate the best value for money, or as appropriate, the lowest price (article 52.2(a) of ENI CBC IR), whenever possible, have **more than one offer**, even if only by e-mail. It is not compulsory, but **highly recommended**. If you have only one offer or even no offer at all, please provide an explanation of the reasons for the choice and how 'best value for money' or 'the lowest price' principles were observed;
- Each organisation has its **own procedure** for acquisition of services/supplies/works, even for very low value ones. Keep the documents describing this procedure;
- **Ensure the compliance with internationally accepted standard for internal control**, such as adequate segregation of functions (request of procurement, authorization of acquisition, accounting and payment by different persons); code of ethics known and formally accepted by

employees, written procedures, organizational chart and job description of concerned persons (even for volunteers), etc.;

- Sometimes, the **description of low-value invoices may not be project-specific** (e.g. the acquisition of a computer). In such cases, attach a short memo describing the relationship with the project (e.g. acquisition of a computer for the project manager recruited for the project).

If you have little experience in managing EU funds, or you faced difficulties in the past, we strongly recommend you to read the **FINANCIAL MANAGEMENT TOOLKIT** developed for recipients of EU external funds.

Read carefully its approach to understand EU' perspective and use the tools offered, especially the **check-lists**, such as the one on internal control or accounting.

As a general rule, the payments should take the form of bank transfers or checks, but **petty cash expenses** may be paid in cash. The toolkit includes recommendations on the petty cash payments.

**Where to find it?** Find below the URL or google the name of the toolkit:

[https://ec.europa.eu/international-partnerships/financial-management-toolkit\\_en](https://ec.europa.eu/international-partnerships/financial-management-toolkit_en)

Please note that the budgetary commitment against which the invoice is paid has to be validated before the contracting authority enters into the corresponding 'legal commitment'. In this context, such legal commitment may take the form, inter alia, of an agreement, a pro-forma invoice, a written acceptance of a quotation, a booking confirmation, an order form, etc.

The payment against invoice is clearly the simpler procedure of all the ones described in this guide, but does it mean it is the less risky one?

**A simple procurement procedure may also have a high risk of inadequate supporting documents to prove the eligibility of the cost.**

## 4.4. Single tender procedures

PRAG stipulates that the Contracting Authority may award contracts of a value of EUR 20.000 or less on the basis of a single tender. Further details about the procedure are found in section 2.6.8 of PRAG 2020.

### 4.4.1. Content of tender dossier for single tenders

The tender dossier should contain the minimum information necessary to communicate the requirements of the grant beneficiary as the contracting authority. At the same time, the documentation should be kept simple to ensure that secondary providers/suppliers remain interested and motivated to provide their offer.

The tender dossier shall include at least the invitation letter, contract notice with the selection and award criteria, instructions to tenderers, the standard draft contract and the relevant annexes and the terms of reference/technical specifications. A negotiation report (annex A10b of PRAG 2020) must be produced, explaining how participant(s) in the negotiations were chosen, how they met the selection criteria, how the price was set, and the grounds for the award decision.

In case of services (see section 3.3.3 of PRAG 2020), the specific annexes for simplified tenders must be used (administrative compliance grid, contract, contract notice, invitation letter, instructions to tenderers, terms of reference and tender form) for this procedure. They can be adjusted to the procedure, including deleting non-relevant sections, without this requiring derogation.

In case of supplies and works, however, no specific references are made to the annexes to be used. Therefore, it is recommended that the PRAG regular annexes for higher value procedures are used, adjusted to the procedure, including deleting non-relevant sections.

It can be expected that the ENI CBC projects will have a significant number of procedures up to the threshold of 20.000€, so it is of utmost importance to set clear rules and instructions.

The **goal** of these instructions for procedures with little description in PRAG is two-fold:

- To provide clear rules to the project beneficiaries, so the risk of ineligible expenditure is reduced;
- To facilitate the control tasks of the programme and national bodies by ensuring coherence in the procedures applied by all concerned beneficiaries.

#### **Tip #13. Recommended approach for single tender procedures**

- Clear definition of the requirements for services, supplies or works in the tender dossier, with adequate technical specifications and time frame;
- Good communication of requirements to tenderers in written standardized form;
- Submission of tenders in standardized form;
- Thorough verification of the compliance of the received tenders with the original requirements;
- Preparation of a negotiated report;
- Signature of contract with the successful tenderer.

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

**Be extremely careful with the choice of companies to invite and make sure to explain how participant(s) in the negotiations were chosen. Please also check tip no 14 below.**

#### 4.4.2. Evaluation documents and reports for single tenders

The evaluation procedure needs to follow a similar logic as in the simplified procedure, that is, the contracting authority assesses which of the received tenders provides the best option, either **best value for money** for services or **lowest price** for technically compliant offers in case of supply and works.

The **recommended set of documents** for evaluation is<sup>11</sup>:

Name of document	PRAG reference
<b>Forms for the evaluation process</b>	
Declaration of impartiality and confidentiality	a4_decl_imp_conf_en.doc
Administrative Compliance Grid	b8o1_admingrid_simp_en.doc (services); c4j_admingrid_en.doc (supplies); d4l_admingrid_en.doc (works)
Evaluation grid	Annex B8m1_evalgrid_fees_en.doc (services fee-based); B8m2_evalgrid_global_en.doc (services global price); c4k_evalgrid_en.doc (supplies); d4m_evalgrid_en.doc (works)
Negotiation report for single tenders	a10b_singeltenderreport_en.doc
Notification Letter to awarded tenderer	b13a_notification_letter_en.doc (services); c8a_notifletter_supply_en.doc (supplies); d8a_notifletter_works_en.doc (works)
Letter to second best tenderer (if more than 1 offer available)	b13b_lettersecond_best_en.doc (only for services)
Letter to unsuccessful tenderer (if more than 2 offers available in case of services and if more than 1 offer available in case of supplies and works)	b13c_letterunsuccessful_en.doc (services); c8b_letterunsuccessful_en.doc (supplies); d8_ letterunsuccessful_en.doc (works)

<sup>11</sup> We provide a set of recommended documents, but remember to check the compulsory templates according to PRAG



#### 4.5. Simplified procedure (previously known as competitive negotiated procedure)

It applies for the tenders between 20.000€ and 300.000€ (for services and works) or 100.000€ (for supplies). These thresholds for procurement without call for tender (open or restricted) are very high; **be extremely careful with the choice of companies to invite and make sure to justify this choice.**

**REMEMBER: even simple procurement procedures have a high risk of inadequate supporting documents to prove the eligibility of the cost.**

##### **Tip #14. The choice of invited companies**

The choice of the invited companies has to be **duly justified**, in order to prove the respect of the basic procurement principles, in particular, the absence of conflict of interest.

As explained in the section 4.3 above, the **solidity of internal control** is a key factor for the proof of the respect of the principles.

Also, please note that, in accordance with the guidelines for determining financial corrections to be made to expenditure financed by the Union for non-compliance with the applicable rules on public procurement<sup>12</sup>, the gravity of an irregularity is assessed taking into account in particular the following factors: level of competition, transparency and equal treatment.

The evaluation (including the use of an evaluation committee) and the award of the contract follow the rules of the open procedure.

Please remember that the contract notice is not published, but it is included in the tender dossier as it contains important information for those service providers that are invited to tender, notably the selection criteria. Regarding the template for the Declaration on honour, it is recommended to use the one included in this guide.

---

<sup>12</sup> Commission Decision of 14.5.2019 laying down the guidelines for determining financial corrections to be made to expenditure financed by the Union for non-compliance with the applicable rules on public procurement, C(2019) 3452

#### 4.5.1. Tender dossier for services

The PRAG specific annexes for simplified tenders (**b8**) are to be used. For any other document of the tender dossier, the regular service annexes must be used.

The contracting authority has to evaluate all tenders according to the best value for money award criterion, by establishing best quality-price ratio and weighing technical quality against price on an 80/20 basis.

#### 4.5.2. Tender dossier for supplies

Although not expressly mentioned in PRAG for this procedure, the regular supply annexes should be used.

#### 4.5.3. Tender dossier for works

The PRAG tender dossier for the simplified procedures is to be used (annex DS1). Although not expressly mentioned in PRAG for this procedure, for any other necessary template, the works annexes should be used.

#### 4.5.4. Evaluation process for simplified procedure

The evaluation of the tenders has to be carried out by an **evaluation committee** appointed by the grant beneficiary in its role of the contracting authority.

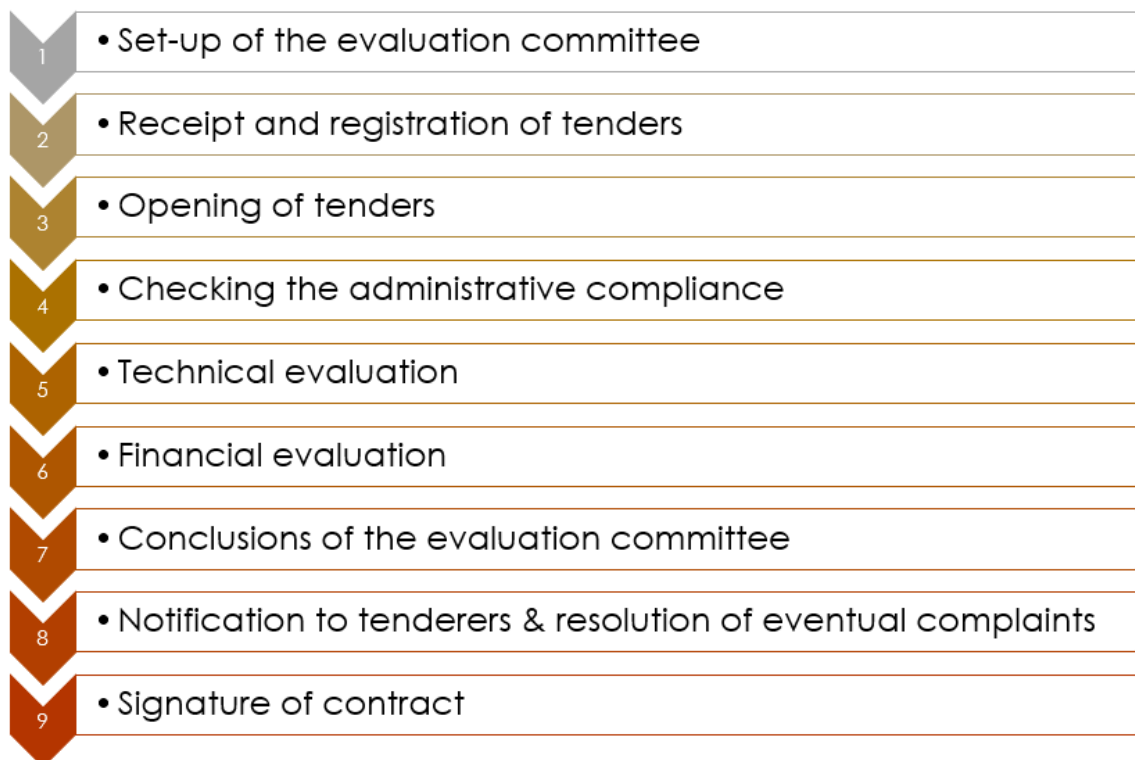
The **key criteria for the appointment of the members of the evaluation committee** are:

- Absence of conflict of interest
- Respect of confidentiality
- Capacity to give an informed opinion on the tender, that is,
  - Technical skills on the subject of the contract
  - Administrative skills on the knowledge of the procedural requirements and applicable legal framework
- Command of the language in which the tenders are submitted

The **composition of the evaluation committee** must consist of: an odd number of members (minimum 3), a non-voting secretary and a non-voting

chairperson. See section 2.9 of PRAG 2020 for more details on the basic requirements of the committee.

The main steps in the evaluation process are:



#### Tip #15. First things first

**Technical evaluation must take place BEFORE opening the financial offers.** Therefore, **the financial offers have to be submitted in separate envelopes and be kept SEALED** until the assessment of the technical offers is finalized.

Check the relevant section in PRAG for further details on the evaluation procedures for the different types of tenders (services, supplies and works).

## 5. Nature of contracts

### 5.1. Service contracts

#### 5.1.1. What is a service contract?

Service contracts comprise **study and technical assistance contracts**. These contracts are intended to engage support or to gain from exterior knowledge in the areas which are not covered internally (within the partnership or project team) and require additional external support.

<b>Study contracts</b>	Service contracts, which include studies such as expenditure verification, feasibility studies, economic and market studies or technical studies. They imply a concrete final deliverable in form of a report or a set of reports.
<b>Technical assistance contracts</b>	Service contracts where a service provider is called on to play an advisory role, to manage or supervise a project, or to provide the expertise specified in the contract, but can also cover very simple and straightforward services, such as printing, venue rental for an event, catering or transport services.

#### 5.1.2. Types of service contracts

Global price	Fee-based
<ul style="list-style-type: none"> <li>• Payment on the basis of delivery of specified outputs</li> </ul>	<ul style="list-style-type: none"> <li>• Payment on the basis of the amount of days worked and its related daily fee</li> </ul>

In **global price contracts**, payments might be totally or partially withheld if the contractual results have not been reached. Partial payments have to be

determined according to the partial implementation of the outputs, and are subject to a price breakdown based on outputs/deliverables.

The tenderer must announce its intention in terms of mobilization of means in its tender. Nevertheless, the technical and operational means used by the provider during the implementation of the contract in order to achieve the outputs is irrelevant for the contracting authority.

Therefore, the **budget is prepared as a global figure**, without further breakdown (except for the price breakdown based on the outputs/deliverables from the terms of reference, if so the case) and the contracting authority monitors the delivery of outputs.

In case of **fee-based contracts** the tenderers' **budget is prepared in a manner of budget breakdown**. Budget lines are presented per expert (see PRAG standard annex b8i2). In the implementation phase the inputs by experts provide a basis for monitoring and approval of payments. **Signed time-sheets** are required by experts to confirm the inputs. The contract may also include **incidental expenditure**<sup>13</sup>, such as travel costs.

#### How relevant is the team of experts participating in the service contracts?

Fee-based	Global price
<ul style="list-style-type: none"> <li>List and CV's of experts <b>must</b> be included in the tender</li> <li>Statements of availability and exclusivity are compulsory for all experts</li> </ul>	<ul style="list-style-type: none"> <li>List and CV's of experts and statements of availability and exclusivity are required for the tender where it is needed for the particularities of the project</li> <li>If key experts are defined, they are evaluated as part of the strategy<sup>14</sup>.</li> </ul>

<sup>13</sup> See definition in Glossary

<sup>14</sup> See indications on evaluation grids in section 3.2.3.

### Tip#16. Which is the best choice?

Each beneficiary has to decide which type of contract best suits its needs for each procurement.

- **Global contracts are easier to monitor**, as only the delivery of outputs is relevant for payments and acceptance of the work. The absence of requirement to identify experts makes it easier for the provider to change them, if needed be. Consider them in cases of easy-to-check deliverables and low amounts (i.e. single tender)
- **Fee-based are needed when the quality of the performance of the experts is essential** for the achievements of the goals of the contract. It requires more work in the monitoring and the payment process, but it gives full control to the contracting authority on the team of the provider. Consider it in complex and lengthy contracts with a mix of experts' time and incidental expenditure.

### Tip #17. The risk of inefficiency

The compliance with the requirements of sound financial management, in particular regarding economy and **efficiency is a key eligibility criterion**.

Make sure that the outputs (both for global price and fee-based) and the amount of work devoted (for fee-based) respect an **adequate quality-price ratio**, both when preparing the procedure and when accepting the final delivery of the services. Inadequate proof of delivery of the services with respect of the efficiency principle is one of the key risks for eligibility of expenditure.

#### 5.1.3. Key challenges and recommendations for service contracts

Challenges	Recommendations
<b>Poor quality of the terms of reference (ToR)</b> may lead to a higher risk of failure in delivery and potential disagreement between the contracting authority and the service provider in the final acceptance.	The ToR must include adequate level of details on the expected services.

<b>Restrictive conditions</b> in the selection criteria, which might contain formulation limiting fair competition, e.g. request of very narrow qualifications of very specific skills for experts.	Ensure that the formulation of the requirements is specific enough to maximise the impact of the contract, but not so restrictive that a very limited number of potential tenderers or experts comply with them.
<b>Splitting of contracts</b> to avoid more complex procedures.	Prepare a detailed procurement plan to identify all the services needed for the project implementation and verify that the type of procedure is the one requested by PRAG, in accordance with the nature and size of the contract.
<b>Lack of sufficient number of quality or compliant offers</b> , either due to the low capacity of the invited tenderers, too restrictive requirements or inadequate publication	Organize clarification / information meetings with all potential tenderers, if needed be and establish a "Questions and answers" document available to all of them; ensure not too restrictive requirements (see above) and wide publication of tenders. In case of simplified procedure, consider inviting more than 3 tenderers.

## 5.2. Supply contracts

### 5.2.1. What is a supply contract?

Supply contracts cover the purchase, leasing, rental or hire purchase (with or without option to buy) of products. A contract for the supply of products and, incidentally, for sitting and installation shall be considered a supply contract.

**Supply contracts** usually include complementary services, such as installation or training of users, that is, the contracts **are often mixed**. As the key element of the contract is the supply of goods, the procedures to use are the ones described in this chapter.



### 5.2.2. Key challenges and recommendations for supply contracts

Challenges	Recommendations
<b>Poor quality of the technical specifications</b> (see table in previous section)	(see table in previous section)
<b>Restrictive conditions</b> (see table in previous section)	(see table in previous section)
<b>Splitting of contracts</b> (see table in previous section)	(see table in previous section)
<b>Lack of sufficient number of quality or compliant offers</b> (see table in previous section)	(see table in previous section)
<b>Inadequate quality of goods delivered</b> , not matching with the technical specifications	<p>Carefully check the supplies upon delivery and issue an acceptance document proving that this verification was done.</p> <p>Use the PRAG template for provisional and final acceptance (c11_provfinalaccept_en.doc)</p>

## 5.3. Works contracts

### 5.3.1. What is a works contract?

Works contracts cover either the execution, or both the execution and design, of works or a work related to one of the following activities:

- Design of the executive architectural project
- Building site preparation,
- Building of complete constructions or parts thereof; civil engineering,
- Building installation,
- Building completion,
- Renting of construction and demolition equipment (normally forming a part of the overall works contract)
- Works supervision.

A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.

The **technical specifications** are essential for an adequate delivery of the executed works by the contractor. They need to make a thorough description of, at least:

- Current situation of the site (land of building) and needed preparation works
- Exact nature and characteristics of the civil engineering work to be performed
- Detailed equipment and installations
- Indication of any specific legal requirements applicable for the type of building (e.g. cross-border points or schools usually have very specific rules to follow)
- Detailed services (architect, quality control, etc.)

As the construction works often imply the acquisition and installation of supplies, as well as complementary services, **the contracts are usually mixed**. Remember the possibility of splitting the **tender in lots**, if the nature of the requirements is very different.

### 5.3.2. Key challenges and recommendations for works contracts

Challenges	Recommendations
<b>Poor quality of the tender dossier, including the technical specifications</b> , which may lead to a higher risk of failure in delivery and potential disagreement between the contracting authority and the supplier in the final acceptance.	Dedicate particular attention to the preparation of the technical specifications. Describe in detail the bill of quantities, exact situation of the site and the required specifications, as well as any complementary equipment (supply) and service.
<b>Availability of support documents, including building permit</b> , which need to be available at the time of signature of the contract. Failure in availability of such documents may lead to delays in the whole project implementation or even in the impossibility to achieve the expected results.	Check that your project work-plan and the procurement plan are consistent and the legal requirements will be available in time not to hamper the start of the works.  Ideally, it is recommended to launch the procedure for ready-to-go building projects.

<p><b>Complexity of procedure</b> for works. Even the simplified procedure is complex and need careful preparation.</p>	<p>Devote enough time and professional expertise for the preparation of the tender dossier. Consider the possibility of contracting an external service provider, if needed be<sup>15</sup>.</p>
<p><b>Lack of sufficient number of quality or compliant offers</b>, either due to the low capacity of the invited tenderers, too restrictive requirements or inadequate publication</p>	<p>Organize clarification / information meetings with all potential tenderers, if needed be and establish a "Questions and answers" document available to all of them; ensure not too restrictive requirements (see above) and wide publication of tenders. In case of simplified procedure, consider inviting more than 3 tenderers.</p>
<p><b>Inadequate quality of works and supervision</b>, which may lead the contractor to fail in the delivery.</p>	<p>Appoint a competent supervisory architect or engineer, with proved independence from the works contractor.</p>
<p><b>Non-respect of the deadlines for implementation</b>, due to unforeseen difficulties in the work or lack of adequate input by the contractor</p>	<p>Timing for the works should be carefully planned and supervised during implementation. Consider the possibility to include penalty clauses in the contract in case of delays due to the contractor.</p>
<p><b>Additional works</b>, due to unexpected situations, which may delay or increase the cost of the works execution.</p>	<p>Plan a contingency amount in the contract and the conditions for its use by the contractor. This reserve should not be higher than 10% of the contract value.</p>

<sup>15</sup> A service provider (or related company) participating in the preparation of the tender dossier may not be able to participate in it. Please see section 2.5.4.3. of PRAG 2020

## Glossary of terms and acronyms

Term or acronym	Definition
<b>Addendum</b>	A document modifying the terms and conditions of a contract.
<b>Ancillary services</b>	All related services which the contractor is required to implement in a supply contract in addition to deliver the goods procured. Where they are necessary they are specified in the contract and may include for example services such as unloading, installation, testing, commissioning, provision of expertise, supervision, maintenance, repair, training and other such obligations connected with the goods to be provided under the contract.
<b>Appropriate media</b>	Please see section 2.1.3. of this guide
<b>Award criteria</b>	The contracting authority must draw up precise, non-discriminatory and not prejudicial to fair competition criteria, which determine the award decision during the evaluation procedure.
<b>Beneficiary</b>	Natural or legal person with whom a grant contract has been signed. Amongst the project beneficiaries, one of them is selected as Lead Beneficiary before submitting the proposal. The Lead Beneficiary is the counterpart of the grant Contracting Authority.
<b>Best value for money</b>	Best price-quality ratio. See “most economically advantageous tender”
<b>Bid</b>	Offer, tender (see definitions for tender, financial and technical offer in this glossary)
<b>Bidder</b>	See definition of tenderer in this glossary
<b>Conflict of interest</b>	Any event influencing the capacity of a tenderer or contractor to give an objective and impartial professional opinion, or preventing it, at any moment, from giving priority to the interests of the Contracting Authority. Any event that

	<p>compromises the impartial and objective exercise of the functions or the Contracting Authority, or the respect to the principles of competition, non-discrimination or equality of treatment of tenderers with regards to the award procedure or contract. Any consideration relating to possible contracts in the future or conflict with other commitments, past or present, of a tenderer or contractor. These restrictions also apply to any sub-contractors and employees of the contractor.</p> <p>There is also a conflict of interests where the impartial and objective exercise of the functions of a player in the implementation of a contract is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with other concerned parties.</p>
<b>Consortium</b>	A grouping of eligible natural and legal persons which submits a tender under a tender procedure. It may be a permanent, legally-established grouping or a grouping which has been constituted for a specific tender procedure.
<b>Contract award procedure</b>	Procedure followed by the Contracting Authority to identify a service provider/supplier/construction firm and conclude a contract
<b>Contracting Authority</b>	<p>In the context of <b>procurement</b> of services, supplies and works by granted projects, the Contracting Authority is the party launching and concluding the procedure, that is, the concerned project beneficiary</p> <p>In the context of a <b>grant</b> in ENI CBC BSB programme, the Contracting Authority is the public entity concluding the grant contract as provided for in the Joint Operational Programme (JOP). It is Managing Authority (MA).</p>
<b>Contractor</b>	Natural or legal person with whom a procurement contract (services/supplies/works) has been concluded. It is the counterpart of the procurement Contracting Authority
<b>Contradictory or adversarial procedure</b>	In case of administrative and/or financial penalties, the contradictory or adversarial procedure requires the opposing side (the contractor) to bring out pertinent

	information, which can be cross-examined by the contracting authority before taking a final decision.
<b>Corrigendum</b>	Correction of a procurement notice or tender documents already published in appropriate media, before the set deadline for submission of tenders.
<b>Defects liability period</b>	In the context of works contracts, the period stated in the contract immediately following the date of provisional acceptance, during which the contractor is required to complete the works and to remedy defects or faults as instructed by the Supervisor of the Contracting Authority.
<b>Eligibility criteria</b>	A set of conditions for a candidate to take part in a tender.
<b>ENI CBC</b>	Cross-border cooperation strand of the European Neighbourhood Instrument
<b>ENI CBC IR</b>	Implementing Rules of ENI CBC, that is COMMISSION IMPLEMENTING REGULATION (EU) No 897/2014
<b>Evaluation committee</b>	A committee made up of an odd number of voting members, appointed by the Contracting Authority. The members of the committee must possess the necessary technical, linguistic and administrative capacities to evaluate the submitted tenders.
<b>Ex-ante publicity</b>	"Ex-ante" is a Latin expression meaning "before the event". In the context of procurement, ex-ante publicity means the information published before the submission of the tenders by the bidders.
<b>Exclusion criteria</b>	Formal admissibility criteria, which have to be respected by the tenderers, so that their offer is considered as eligible for the evaluation procedure.
<b>Execution period</b>	The period from contract signature until final payment for services, or until release of the performance guarantee after final acceptance for supplies and works.
<b>Expert</b>	A natural person employed or otherwise legally contracted by an eligible contractor, or where applicable subcontractor, engaged to provide the expertise required for the proper performance of a contract.



<b>Fee-based contract</b>	A contract under which the services are provided on the basis of fixed fee rates for each day worked by experts.
<b>Final acceptance certificate</b>	Certificate(s) issued by the supervisor (for works) or relevant person (for supplies) to the Contractor at the end of the defects liability period (for works) or warranty period (for supplies) stating that the Contractor has completed its obligations.
<b>Financial offer</b>	The part of the tender which contains all financial elements of a tender, such as the summary budget or the detailed price breakdown.
<b>General Conditions</b>	The general contractual provisions setting out the administrative, financial, legal and technical clauses governing the execution of contracts
<b>Global price contract</b>	A contract under which the services provided are paid on the basis of the delivery of the specified outputs.
<b>Grant</b>	A direct payment of a non-commercial nature by the Managing Authority to a Lead beneficiary and its partner beneficiaries, in order to implement project awarded by the Joint Monitoring Committee (JMC).
<b>Grant contract</b>	Contract between the MA and the Lead Beneficiary (also called Lead Partner), stipulating the technical, legal and financial conditions for the implementation of the project.
<b>Incidental expenditure</b>	The provision for incidental expenditure covers the non-fee expenditure incurred under a service contract, such as travel and subsistence costs or the logistics of the organisation of an event. It cannot be used for costs which should be covered by the contractor as part of its fee rates, such as equipment or office costs for the experts.
<b>Invitation to tender</b>	Letter sent to shortlisted candidates in a restricted procedure or competitive negotiated procedure inviting them to submit a tender.
<b>Lot</b>	One of the main choices in public procurement is to determine whether the works, supplies or services that are the subject matter of the procurement are to be acquired by using one contract or by using a number of separate



	contracts or “lots”, which may be awarded and performed by different economic operators. The different “lots” are part of a same tender procedure, where there may be several successful tenderers.
<b>Managing Authority (MA)</b>	Authority or body appointed by the participating countries as responsible for managing of each ENI CBC programme, located in a Member State.
<b>Mixed contract</b>	A contract between the Contracting Authority and a service provider, supplier or construction firm covering two or more of the following: works, supplies and services.
<b>Most economically advantageous tender</b>	The tender proposal judged best in terms of the criteria laid down for the contract in one of the following ways: <ul style="list-style-type: none"> <li>• Under the best price-quality ratio (e.g., quality criteria, technical merit, aesthetic and functional characteristics, after-sales service or technical assistance);</li> <li>• Under the lowest price</li> </ul>
<b>Negotiated procedure</b>	Procurement procedure without prior publication of procurement notice, in which the Contracting Authority consults the candidate or candidates of its choice and negotiates the terms of the contract with one or more of them. This procedure is used only in exceptional cases.
<b>Open tender procedure</b>	Please see section 4.1. of this guide.
<b>PRAG</b>	“Procurement and Grants for European Union external actions – A Practical Guide”.
<b>Public procurement</b>	It is the procurement (acquisition) of services, supplies and works by a public body or by a private body with public money, as it is the case of ENI CBC beneficiaries.
<b>Restricted tender procedure</b>	Please see section 4.1. of this guide.
<b>Rule of nationality</b>	It defines in which countries the tenderers and contractors have to be registered.

<b>Rule of origin</b>	It is used to determine the country of origin of a product (supplies or equipment).
<b>Secondary procurement</b>	Procurement of services, supplies or works carried out by a grant beneficiary for the purpose of implementing the grant for which the grant is received.
<b>Selection criteria</b>	The contracting authorities must draw up clear and non-discriminatory selection criteria for the purpose of assessing that the tenderer has sufficient financial, economic, technical and professional capacity to implement the tasks of the contract. The chosen criteria shall be proportionate and may not go beyond the scope of the contract.
<b>Service contract</b>	A contract between a service provider and the Contracting Authority for the provision of services such as studies or expertise.
<b>Service provider</b>	Any natural or legal person or public entity or consortium of such persons and/or bodies offering services.
<b>Simplified procedure (competitive negotiated procedure)</b>	Please see section 4.1. of this guide.
<b>Single tender procedure</b>	Please see section 4.1. of this guide.
<b>Special conditions</b>	Clauses specific to a contract laid down by the Contracting Authority as an integral part of the contract, including eventual amendments to the general conditions
<b>Supervisor (Engineer as per FIDIC rules)</b>	The legal or natural person responsible for monitoring the execution of the contract on behalf of the Contracting Authority in the context of a works contract.
<b>Supplier</b>	Any natural or legal person or public entity or consortium of such persons and/or bodies offering to supply products.
<b>Supply contract</b>	A contract between the supplier and the Contracting Authority for the purchase, lease, hire or hire-purchase (with

	or without option to buy) of goods. It may also cover tasks such as installation, servicing, repairs, training and after-sales service.
<b>Technical offer</b>	The part of the tender which contains all non-financial elements of the tender dossier.
<b>Technical specification</b>	Document drawn up by the Contracting Authority setting out the requirements and/or objectives in respect of the provision of supplies or works.
<b>TED</b>	Tenderers Electronic Daily – Database of all public procurement under obligation to be published in the Official Journal of the European Union ( <a href="http://ted.europa.eu">http://ted.europa.eu</a> ).
<b>Tender</b>	A written formal offer to supply goods or to perform services or works at an agreed price under certain conditions specified in the tender dossier documents
<b>Tenderer</b>	Any natural or legal person or group of such persons submitting a tender with a view to concluding a contract
<b>Tender dossier</b>	Set of documents compiled by the Contracting Authority, including the requirements of the tender and related information, as well as the set of documents needed by the tenderers to submit their tender.
<b>Tender procedure</b>	The overall process of putting a contract out for tender, starting with the publication of the tender notice and finalizing with the award of a contract. There are various types of tender procedures: open, restricted, local, international, negotiated or simplified
<b>ToR</b>	Terms of Reference – in case of service contract procedures, this document drawn up by the Contracting Authority defines the tasks required of a contractor and includes relevant project background (objectives, planned activities, etc.)
<b>Works contract</b>	A contract between a construction firm for the execution, or both the design and execution, of works. A 'work' means the outcome of building or civil engineering works taken as

	a whole that is sufficient of itself to fulfil an economic or technical function.
--	---

## Annex 1: Declaration on honour

### DECLARATION ON HONOUR ON EXCLUSION CRITERIA AND SELECTION CRITERIA

The undersigned [*insert name of the signatory of this form*], representing:

(only for natural persons) himself or herself	(only for legal persons) the following legal person:
ID or passport number:  ('the person')	Full official name: Official legal form: Statutory registration number: Full official address: VAT registration number:  ('the person')

The person is not required to submit the declaration on exclusion criteria if the same declaration has already been submitted for the purposes of another award procedure of the same contracting authority, provided the situation has not changed, and that the time that has elapsed since the issuing date of the declaration does not exceed one year.

In this case, the signatory declares that the person has already provided the same declaration on exclusion criteria for a previous procedure and confirms that there has been no change in its situation:

Date of the declaration	Full reference to previous procedure

#### I – SITUATION OF EXCLUSION CONCERNING THE PERSON

(1) declares that the above-mentioned person is in one of the following situations:	YES	NO
(a) it is bankrupt, subject to insolvency or winding up procedures, its assets are being administered by a liquidator or by a court, it is in an	<input type="checkbox"/>	<input type="checkbox"/>

arrangement with creditors, its business activities are suspended or it is in any analogous situation arising from a similar procedure provided for under national legislation or regulations;		
(b) it has been established by a final judgement or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;	<input type="checkbox"/>	<input type="checkbox"/>
(c) it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:		
(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the performance of a contract or an agreement;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) entering into agreement with other persons with the aim of distorting competition;	<input type="checkbox"/>	<input type="checkbox"/>
(iii) violating intellectual property rights;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) attempting to influence the decision-making process of the contracting authority during the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;	<input type="checkbox"/>	<input type="checkbox"/>
(d) it has been established by a final judgement that the person is guilty of any of the following:		
(i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;	<input type="checkbox"/>	<input type="checkbox"/>
(ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 or active corruption within the meaning of Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union,	<input type="checkbox"/>	<input type="checkbox"/>

drawn up by the Council Act of 26 May 1997, or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in other applicable laws, including as defined in Article 14 <sup>16</sup> of the General Conditions of the Financing Agreement for ENI CBC between the partner countries and the European Commission;		
(iii) conduct related to a criminal organisation, as referred to in Article 2 of Council Framework Decision 2008/841/JHA;	<input type="checkbox"/>	<input type="checkbox"/>
(iv) money laundering or terrorist financing, within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(v) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;	<input type="checkbox"/>	<input type="checkbox"/>
(vi) child labour or other offences concerning trafficking in human beings as referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;	<input type="checkbox"/>	<input type="checkbox"/>
(e) it has shown significant deficiencies in complying with the main obligations in the performance of a contract or an agreement financed by the Union's budget or by the national public budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by a contracting authority, the national competent authorities, the Delegation of the European Union in the partner countries, any Managing Authority of ENPI CBC or ENI CBC, Audit Authorities of ENI CBC, the European Commission, the European Anti-Fraud Office (OLAF) or the European Court of Auditors;	<input type="checkbox"/>	<input type="checkbox"/>

<sup>16</sup> "Passive corruption" shall mean the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties, which has, or would have, the effect of harming the Union financial interests.

"Active corruption" shall mean the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official, for himself or for a third party, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties, which has, or would have, the effect of harming the Union financial interests.



(f) it has been established by a final judgment or final administrative decision that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;	<input type="checkbox"/>	<input type="checkbox"/>
(g) it has been established by a final judgment or final administrative decision that the person has created an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business.	<input type="checkbox"/>	<input type="checkbox"/>
(h) <i>(only for legal persons)</i> it has been established by a final judgment or final administrative decision that the person has been created with the intent provided for in point (g).	<input type="checkbox"/>	<input type="checkbox"/>
<p>(i) for the situations referred to in points (c) to (h) above the person is subject to:</p> <p>i. facts established in the context of audits or investigations carried out by the European Public Prosecutor's Office after its establishment, the European Court of Auditors, the European Anti-Fraud Office (OLAF) or the internal auditor, or any other check, audit or control performed under the responsibility of an authorising officer of an EU institution, of a European office or of an EU agency or body, Managing Authority or Audit Authority, the competent national authorities or any other competent body;</p> <p>ii. non-final judgments or non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics;</p> <p>iii. facts referred to in decisions of entities or persons being entrusted with EU budget implementation tasks;</p> <p>iv. information transmitted by Member States implementing Union funds;</p> <p>v. decisions of the Managing Authority, the National Authority appointed for the participating country, the European Commission or a national competent authority relating to the infringement of Union or national competition law; or</p>	<input type="checkbox"/>	<input type="checkbox"/>

vi. decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body or of the Contracting Authority.		
---	--	--

## II – SITUATIONS OF EXCLUSION CONCERNING NATURAL OR LEGAL PERSONS WITH POWER OF REPRESENTATION, DECISION-MAKING OR CONTROL OVER THE LEGAL PERSON AND BENEFICIAL OWNERS

### **Not applicable to natural persons, Member States and local authorities**

(2) declares that a natural or legal person who is a member of the administrative, management or supervisory body of the above-mentioned legal person, or who has powers of representation, decision or control with regard to the above-mentioned legal person (this covers e.g. company directors, members of management or supervisory bodies, and cases where one natural or legal person holds a majority of shares), or a beneficial owner of the person (as referred to in point 6 of article 3 of Directive (EU) No 2015/849) is in one of the following situations:	YES	NO	N/A
Situation (c) above (grave professional misconduct)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (d) above (fraud, corruption or other criminal offence)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (e) above (significant deficiencies in performance of a contract )	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (f) above (irregularity)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (g) above (creation of an entity with the intent to circumvent legal obligations)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (h) above (person created with the intent to circumvent legal obligations)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (i) above	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## III – SITUATIONS OF EXCLUSION CONCERNING NATURAL OR LEGAL PERSONS ASSUMING UNLIMITED LIABILITY FOR THE DEBTS OF THE LEGAL PERSON

(3) declares that a natural or legal person that assumes unlimited liability for the debts of the above-mentioned legal person is in one of the following situations <b><u>[If yes, please indicate in annex to this declaration which situation and the name(s) of the concerned person(s) with a brief explanation]:</u></b>	YES	NO	N/A
--	-----	----	-----

Situation (a) above (bankruptcy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Situation (b) above (breach in payment of taxes or social security contributions)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

#### IV – GROUNDS FOR REJECTION FROM THIS PROCEDURE

(4) declares that the above-mentioned person:	YES	NO
Was previously involved in the preparation of the procurement documents used in this award procedure, where this entailed a breach of the principle of equality of treatment including distortion of competition that cannot be remedied otherwise.	<input type="checkbox"/>	<input type="checkbox"/>

#### V – REMEDIAL MEASURES

If the person declares one of the situations of exclusion listed above, it must indicate measures it has taken to remedy the exclusion situation, thus demonstrating its reliability. This may include e.g. technical, organisational and personnel measures to prevent further occurrence, compensation of damage or payment of fines or of any taxes or social security contributions. The relevant documentary evidence which illustrates the remedial measures taken must be provided in annex to this declaration. This does not apply for situations referred in point (d) of this declaration.

#### VI – EVIDENCE UPON REQUEST

Upon request and within the time limit set by the Contracting Authority the person must provide information on natural or legal persons that are members of the administrative, management or supervisory body or that have powers of representation, decision or control, including legal and natural persons within the ownership and control structure and beneficial owners.

It must also provide the following evidence concerning the person itself and the natural or legal persons on whose capacity the person intends to rely, or a subcontractor and concerning the natural or legal persons which assume unlimited liability for the debts of the person:

For situations described in (a), (c), (d), (f), (g) and (h), production of a recent extract from the judicial record is required or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of establishment of the person showing that those requirements are satisfied.

For the situation described in point (b), production of recent certificates issued by the competent authorities of the State concerned are required.

These documents must provide evidence covering all taxes and social security contributions for which the person is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions. Where any document described above is not issued in the country concerned, it may be replaced by a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

The person is not required to submit the evidence if it has already been submitted for another award procedure of the same contracting authority. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

## VII – SELECTION CRITERIA

(1) declares that the above-mentioned person complies with the selection criteria applicable to it individually as provided in the tender specifications:	YES	NO	N/A
(a) It has the legal and regulatory capacity to pursue the professional activity needed for performing the contract as required in section [insert] of the contract notice/Instructions to tenderers;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) It fulfills the applicable economic and financial criteria indicated in section [insert] of the contract notice/Instructions to tenderers;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) It fulfills the applicable technical and professional criteria indicated in section [insert] of the contract notice/Instructions to tenderers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*The contracting authority must adapt the table above to the criteria indicated in the tender documents (i.e. insert extra rows for each criterion or delete irrelevant rows).*

(2) if the above-mentioned person is the <b>sole tenderer</b> or the <b>leader in case of consortium</b> , declares that:	YES	NO	N/A
(d) the tenderer, including all members of the group in case of consortium and including subcontractors if applicable, complies with all the selection criteria for which a consolidated assessment will be made as provided in the tender specifications.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### VIII – EVIDENCE FOR SELECTION

The signatory declares that the above-mentioned person is able to provide the necessary supporting documents listed in the relevant sections of the tender documents and which are not available electronically upon request and without delay.

The person is not required to submit the evidence if it has already been submitted for another procurement procedure of the same contracting authority. The documents must have been issued no more than one year before the date of their request by the contracting authority and must still be valid at that date.

The signatory declares that the person has already provided the documentary evidence for a previous procedure and confirms that there has been no change in its situation:

Document	Full reference to previous procedure
<i>Insert as many lines as necessary.</i>	

***The above-mentioned person must immediately inform the contracting authority of any changes in the situations as declared.***

***The above-mentioned person may be subject to rejection from this procedure and to administrative sanctions (exclusion or financial penalty) if any of the declarations or information provided as a condition for participating in this procedure prove to be false.***

Full name    Date    Signature