**PRACTICAL ADVICES IN PUBLIC PROCUREMENT[[1]](#footnote-1)**

***Table 1*: Challenges related to rules of nationality and origin**

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| **CHALLANGES** | **RECOMMENDATIONS** |
| **Specific professional equipment**. Some projects require purchase of specific professional equipment which is supposedly not available as EU or other eligible countries’ origin. | - Implement a wider analysis of potential suppliers.  - In case of non-availability ask for derogation well in advance, providing proper justification (e.g. Proof of sufficient research that no such product of acceptable origin could be found, etc.). |
| **Compatibility of equipment.** On a number of occasions the purchase of equipment is focused on up-grading existing equipment which is non-EU or other eligible countries’ origin. Such cases are particularly frequent in computer equipment and software purchase. | - In general avoid upgrading of existing equipment. In case of such projects check compatibility with similar EU or other eligible countries’ origin equipment. |

***Table 2: Challenges related to fair and transparent competition***

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| **CHALLANGES** | **RECOMMENDATIONS** |
| **Above market prices**. In case of competitive negotiated or in open procedures if the tenderers contact each other, they could raise the tender price above market standards. In single tenders the only invited tenderer could propose price above market standards. | - Even if the financial thresholds stipulate single tender procedure the Contracting Authority should be encouraged to invite more than one company in order to create competition and avoid increasing the prices by the single invited tenderer.  - The project beneficiary could implement preliminary market research/analysis to establish the market price standards for the planned purchases. Other beneficiaries implementing similar purchases could be advised. The beneficiary should have clear indication of the market prices before the start of the evaluation. In case of significant discrepancies between the financial offers and price market standards the procedure should be cancelled and negotiations with one or several tenderer initiated if applicable.  - The MA should check the per-unit prices as presented by the grant beneficiaries in the proposed grant budgets during the budget clearing process. Historical data, market analysis or similar can be taken into account to establish appropriateness of the proposed per-unit prices. |
| **Conflict of interest**. Some of the individuals involved in the process are one way or another connected with one or more tenderers. | - Use independent experts in the process of preparation of tender documentation and in the selection process.  - Check potential connections between involved individuals and tenderers (on the basis of their CV) |

***Table 3: Practical challenges in procurement of services***

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| **CHALLANGES** | **RECOMMENDATIONS** |
| ***DOCUMENTS*** | |
| **Poor quality of Terms of Reference – risk of failure of delivery**. The ToR document needs to specify all the details of services required. If this is not the case, disagreement between the Contracting Authority and the contractor might arise and the latter might refuse to deliver all services expected. | - The Contracting Authority should specify all details of the services expected. Particular attention should be put on the inputs required and results expected.  - The ToR documents could be checked with independent expert to get second opinion on the matter. |
| **Restrictive conditions**. The ToR could contain restrictive conditions, formulations that could limit fair competition. Restrictive conditions are largely manifested through description of requirements for key experts. References to very narrow qualifications or specific skills are such examples. | - ToR document needs to be closely checked, particularly in the part of expert’s requirements. The formulations should be specific enough to maximise the contract impact but should not be restrictive. Reference to very specific and narrow experiences or qualifications should be avoided. |
| **Splitting of contracts.** In order to avoid application of competitive negotiated or open procedure, the grant beneficiaries might decide to split contracts into several parts. Splitting of contracts containing the services of one and the same/similar nature is not allowed. | - The beneficiary’s procurement plan should be carefully checked by project/programme managers in MA, JTSs/Antenna. Services of the same/similar nature should be tendered under one procedure. |
| **Inconsistency between documents**. Specific documents in the tendering documentation are closely connected. The definitions should be consistent. For example the duration of the contract should correspond to the ToR. Specific attention should be dedicated to relation between General and Special conditions. | - The tender documentation should be cross-checked, in particular terms of reference with other documents – contract and special conditions.  - The provisions of the GC should be cross-checked before the publication and amended/regulated in the Special conditions if necessary. |
| ***SELECTION PROCESS*** | |
| **Lack of sufficient number of quality /compliant offers.** The Contracting Authority might face challenges of not receiving sufficient number of quality or compliant offer. Such situation could be caused by one of the following reasons: lack of capacity of invited tenderers, too restrictive provisions of the requested services, limited publication of tender. | - The Contracting Authority should organize support and advice to tenderers in the process. Clarification meetings are recommended in complex tenders. The Contracting Authority should establish list of frequently asked questions (FAQ) and submit it to all tenderers.  - The Contracting Authority should make sure that the tenders are not too restrictive (see above).  - The Contracting Authority should ensure wide publication of the tender (in case of open procedures). In case of competitive negotiated procedure a larger number of potential tenderers than minimum requested (3) could be invited. |
| **Tender price.** In case of service contracts this challenge is important from the perspective of the managing bodies. The grant beneficiaries might deliberately or non-deliberately overestimate the value of services. | - The programme management bodies should carefully estimate the level of expected inputs/outputs and proposed maximum amount available for the contract, either when project proposals are evaluated or when grant beneficiary submits its procurement plan.  - Inputs and outputs should be compared to market standard prices (for instance expert prices on the side of inputs and prices of studies or similar on the side of outputs).  - An independent expert could be invited to participate in review of tender documents. |
| ***IMPLEMENTING PROVISIONS*** | |
| **Replacement of experts.** The contractor might decide to propose replacement of experts (shortly) after the signature of the contract. | - Replacement of experts should only be allowed in exceptional cases. Addendum to the contract needs to be prepared (see point 4.6.).  - The replaced experts should be in line with the requirements from the ToR and should at least match if not exceed qualifications and skills of original experts. |
| **Financial guarantees**. In case of larger and more complex service contracts certain financial risks exists for the Contracting Authority. In case of failure of delivery the Contracting Authority might face the challenge of retrieving pre-paid funds. | - The Contracting Authority should adopt the payment schedule to the complexity and size of contract.  - In case of significant pre-payments a financial guarantee could be requested from the contractor. |

***Table 4: Practical challenges in procurement of supplies***

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| **CHALLANGES** | **RECOMMENDATIONS** |
| ***DOCUMENTS*** | |
| **Poor quality of technical specifications – risk of failure of delivery.** If poorly prepared, the technical specifications could result in failure of delivery of planned supplies. In case of misunderstanding between the Contracting Authority and the contractor the latter might refuse delivery of expected quantities of qualities. | - The Contracting Authority should dedicate particular attention to preparation of technical specifications. They need to be detailed enough in describing quantities and exact specifications of goods required.  - In order to avoid delivery of out-of-date goods the Contracting Authority needs to be particularly careful in formulation of specifications for computer and electronic goods.  - An independent technical expert could be consulted in the process. |
| **Restrictive conditions**. By introducing too restrictive conditions the Contracting Authority might limit the competition. | - Specific attention needs to be dedicated to technical specifications to avoid restrictive conditions and limitation of competition. Any mentioning of specific brand or producer is strictly forbidden.  - The managing bodies could consult an independent technical expert in the process. |
| **Splitting of contracts.** In order to avoid application of competitive negotiated or open procedure, the grant beneficiaries might decide to split contracts into several parts. Splitting of contracts containing the supplies of the same/similar nature is not allowed. | - The beneficiary’s procurement plan should be carefully checked by project/programme managers in MA, JTSs/Antennae. Supplies of similar nature should be tendered under one procedure. |
| **Consistency between documents**. The tender documents are closely connected, in some cases same types of information provided in several of them. Inconsistency in information, for example different delivery provisions mentioned in the special conditions and technical specifications, could confuse the tenderers or even jeopardies the procedure.  Particular attention should be dedicated to definition in the Special conditions. Any specific case of changing provisions of the General conditions should be properly reflected | - Before publication the specific documents in the tender dossier need to be cross-checked with other documents. This is particularly important for Specific conditions and Technical specifications.  - Cross-checking of General and Specific conditions to ensure that any amendment of the standard provisions in the GC is properly reflected. |
| ***SELECTION PROCESS*** | |
| **Lack of sufficient number of quality /compliant offers.** The Contracting Authority might face challenges of not receiving sufficient number of quality or compliant offer. Such situation could be caused by one of the following reasons: lack of capacity of invited tenderers, to restrictive provisions of the requested supplies, limited publication of tender. | - The Contracting Authority should organise support and advice to tenderers in the process. Clarification meetings are recommended in complex tenders. The Contracting Authority should establish list of frequently asked questions (FAQ) and submit it to all tenderers.  - The Contracting Authority should make sure that the tenders are not too restrictive (see above).  - The Contracting Authority should ensure wide publication of the tender (in case of open procedures). In case of competitive negotiated procedure a larger number of potential tenderers than minimum requested (3) could be invited. |
| **Tender price.** The challenge is firstly important from the perspective of the managing bodies. The grant beneficiaries might deliberately or non-deliberately overestimate the value of supplies. Secondly the challenge is important from the perspective of grant beneficiaries, Contracting Authority in the process. The invited or participating tenderers might deliberately or non-deliberately offer the prices exceeding the market standards. | - The programme management bodies should carefully check the expected outputs of the contract against the price, where applicable.  - Comparison of unit-prices with market standards should be implemented.  - An independent expert could be consulted in the process.  - The Contracting Authority should prior to publication of the tender estimate the contract price. In case of significant deviations from the expected price, negotiations with one or more tenderers could be implemented or the procedure should be cancelled. |
| ***PROVISIONS*** | |
| **Quality of goods delivered**. The contractor might fail to deliver goods in quality stipulated in by the technical specifications. | - The Contracting Authority should carefully check the supplies upon delivery. The specifications of the supplies need to exactly match those from the technical specifications of the TD.  - The Managing Authority might require certificate of acceptance with the financial documentation.  - In addition to that the MA might decide to implement sample on-the-spot checks of the equipment procured within the grant financed projects. |
| **Delivery deadlines**. The contractor might fail to deliver goods in time proposed by their offer. Such delays can have negative impact at the overall grant financed project. | - The Contracting Authority should plan penalties for late delivery in the tender documentations. |
| **Guarantees and post-sales services.** The contractor might fail to deliver post sales service, any other services related to supply contract (for instance installation or training) or fail to realise guarantee in case of failures of goods. | - The Contracting Authority should carefully plan not only the specifications of goods but also any services related to the goods. These include accompanying services such as installation or training and usual post-sales services.  - Required guarantees, spare parts or similar should be precisely described in the tender documentation.  - The Contracting Authority should plan penalties in case of failure of delivery of services or guarantees. |
| **Origin of supplies.** The contractor might fail to deliver certificate of origin for supplied goods. | - Failure to deliver certificate of origin will result in ineligible costs. The Contracting Authority should make sure that the certificate is supplied before the final acceptance of goods is made.  - The CA could check in advance before publishing the tender, whether it is realistic to expect the proper origin for the supplies procured. |
| Financial guarantees. In case of larger and more complex supply contracts certain financial risk exists for the Contracting Authority. In case of failure of delivery the Contracting Authority might face the challenge of retrieving pre-paid funds. | - The Contracting Authority should adopt the payment schedule to the complexity and size of contract.  - In case of significant pre-payments a financial guarantee should be requested from the contractor. |

***Table 5: Practical challenges in procurement of works***

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| **CHALLANGES** | **RECOMMENDATIONS** |
| ***DOCUMENTS*** | |
| **Poor quality of tender dossier – risk of delivery.** Poor descriptions in the bill of quantities and the remaining tender documents could result in failure of delivery. In case of misunderstanding between the Contracting Authority and the contractor the later might fail to deliver what was expected. | - The Contracting Authority should make sure that the tender documents are sufficiently precise to guarantee full and unconditional delivery of expected results. |
| **Availability of support documents – building permits.** The challenge is important from the perspective of the managing bodies. In case that the building permits and other accompanying documents are not available at the time of signature of grant contract, risk of failure of the contract exists. | - It is recommended that the managing bodies support only ready-to-go projects.  - In case of works planned under grant contracts, building permit should be requested at the time of signature of the contract. |
| **Complexity of procedure**. The procurement procedure for works contracts is relatively complex. The competitive negotiated procedure is for example requiring full tendering documentation. | - The Contracting Authority should estimate, in the case of works tender of smaller value, whether it makes sense to invest significant efforts for small value works tender procedures.  - Managing bodies could consider limiting the works component (making works ineligible costs) in grant schemes or lots which are typically aimed at soft-type activities. |
| ***SELECTION PROCESS*** | |
| **Lack of sufficient number of quality /compliant offers.** The Contracting Authority might face challenges of not receiving sufficient number of quality or compliant offer. Such situation could be caused by one of the following reasons: lack of capacity of invited tenderers, to restrictive provisions of the requested works, limited publication of tender. | - The Contracting Authority should organize support and advice to tenderers in the process. Clarification meetings are recommended in complex tenders. The Contracting Authority should establish list of frequently asked questions (FAQ) and submit it to all tenderers.  - The Contracting Authority should make sure that the tenders are not too restrictive.  - The Contracting Authority should ensure wide publication of the tender (in case of open procedures). In case of competitive negotiated procedure a larger number of potential tenderers than minimum requested (3) could be invited. |
| **Tender price.** The challenge is firstly important from the perspective of the managing bodies. The grant beneficiaries  might deliberately or non-deliberately overestimate the value of works. Secondly the challenge is important from the perspective of grant beneficiaries, Contracting Authority in the process. The invited or participating tenderers might deliberately or non-deliberately offer the prices exceeding the market standards. | - The management bodies should carefully check the expected outputs of the contract against the price, where applicable (FLC or before).  - Comparison of unit-prices with market standards should be implemented.  - An independent expert could be consulted in the process.  - The Contracting Authority should prior to publication of the tender estimate the contract price. In case of significant deviations from the expected price negotiations with one or more tenderers could be implemented or the procedure should be cancelled. |
| ***IMPLEMENTING PROVISIONS*** | |
| **Quality and supervision**. The contractor might fail to deliver works in quality planned. | - The Contracting Authority should appoint competent supervisory engineer to supervise implementation of the works contract.  - From the perspective of the managing bodies an independent technical expert could be engaged to monitor the implementation of works contract. |
| **Deadlines for implementation.** The contractor could fail to implement works in the planned time. | - Timing of works contract should be carefully planned. Potential delays, for instance due to seasonal nature of works, should be taken into account.  - Penalties for delays caused by the contractor should be planned in tender documentation. |
| **Additional works.** The contractor could, due to unexpected situation, implement additional works from those planned in the tender documentation. | - The Contracting Authority should stipulate planning of 10% contingency reserve in the preparation of financial offers. |
| **Financial guarantees**. In case of larger and more complex supply contracts certain financial risk exists for the Contracting Authority. In case of failure of delivery the  Contracting Authority might face the challenge of retrieving pre-paid funds. | - The Contracting Authority should adopt the payment schedule to the complexity and size of contract.  - In case of significant pre-payments a financial guarantee should be requested from the contractor.  - Retention guarantee should be applied to avoid risks of poor quality construction. |

1. Interreg-IPA CBC Procurement Manual 2015 [↑](#footnote-ref-1)