

# **Beneficiaries online training**

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# **Public procurements**

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# LEGAL FRAMEWORK



- **Financial regulation 1046/2018**
- **Delegated Regulation 1268/2012 (Rules of application of 966/2012 former Financial Regulation)**
- **Directives (i.e. Directive 2014/24/EU)**
- **National Legislations (i.e. D. Lgs. 50/2016; n. 9855 of 26.12.2007;**
- **Guidelines (i.e. PRAG, ANAC Guidelines, ect..)**
- **Tenders, Calls (*Lex Specialis*)**



# Procurement in ETC/IPA – Regulation 447



## Reg. UE 447/2014 (IPA Implementing Regulation)

### Article 45

#### Procurement

1. For the award of **service, supply** and **work contracts**, by beneficiaries the procurement procedures shall follow the provisions of **Chapter 3 of Title IV of Part Two of Regulation (EU, Euratom) No 966/2012** and of **Chapter 3 of Title II of Part Two of Delegated Regulation (EU) No 1268/2012** which apply in the whole programme area, both on the Member State and on the IPA II beneficiary/ies' territory.
2. For the award of service, supply and work contracts by the managing authority under the specific budget allocation for technical assistance operations, the procurement procedures applied by the managing authority may either be those referred to in paragraph 1 or those of its national law.

# Basic Principles on Procurement

## Article 160 Financial Regulation No 1046/2018

1. All contracts financed in whole or in part by the budget shall respect the principles of **transparency, proportionality, equal treatment** and **non-discrimination**.
2. All contracts shall be put out to **competition** on the broadest possible basis.
  - ✓ publicity of proposed procurement contracts;
  - ✓ design of technical specifications;
  - ✓ choice of procurement procedure;
  - ✓ qualification and selection of candidates and tenderers in award of contracts.



# Subjects to the procurement rules

In the Programme, public bodies, bodies governed by public law and non-profit private organisations are eligible. Public bodies and bodies governed by public law must apply the public procurement rules.

In receiving a public subsidy, private non-profit organisations are using public funding, therefore it is necessary that they apply an extra care.



**All public procurement rules and principles set by the IPA Public Procurement rules apply also to private partners.**

# Procurement Procedures

**Art. 127 Reg. UE 1268/2012 (Art. 104 Financial Regulation)**  
*Contracts shall be awarded by call for tender, using the open, restricted or competitive negotiated procedure.*

**OPEN**

All economic operators may submit a tender.

**RESTRICTED**

All economic operators may ask to participate but only candidates satisfying the selection criteria and invited simultaneously and in writing by the contracting authority may submit a tender.

**COMPETITIVE  
NEGOTIATED**

The contracting authority shall consult tenderers of its choice who satisfy the selection criteria and negotiate the terms of the contract with one or more of them.

# Thresholds and tendering procedures



## FINANCIAL THRESHOLDS AND RELATED TENDERING PROCEDURES

Nature of Procurement	Financial thresholds and related Procedures (amount in EUR and excluding VAT)			
<b>SERVICES</b>	<p><math>\geq \text{€ } 300.000</math></p> <ul style="list-style-type: none"> <li>- International restricted tender procedure</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>- International open tender procedure</li> </ul>	<p><math>&lt; \text{€ } 300.000</math> but <math>&gt; \text{€ } 20.000</math></p> <p>Frameworks contracts</p> <p>or</p> <p>Competitive negotiated procedure</p>		<p><math>\leq \text{€ } 20.000</math></p> <p>Single tender</p> <p>For service and supply contracts payments for amounts less than or equal to EUR 2.500 in respect of item of expenditure may consist simply in payment against invoices without prior acceptance of a tender</p>
<b>SUPPLIES</b>	<p><math>\geq \text{€ } 300.000</math></p> <p>International open tender procedure</p>	<p><math>&lt; \text{€ } 300.000</math> but <math>\geq \text{€ } 100.000</math></p> <p>Local open tender procedure</p>	<p><math>&lt; \text{€ } 100.000</math> but <math>&gt; \text{€ } 20.000</math></p> <p>Competitive negotiated procedure</p>	
<b>WORKS</b>	<p><math>\geq \text{€ } 5.000.000</math></p> <ul style="list-style-type: none"> <li>- International open tender procedure</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>- International restricted tender procedure</li> </ul>	<p><math>&lt; \text{€ } 5.000.000</math> but <math>\geq \text{€ } 300.000</math></p> <p>Local open tender procedure</p>	<p><math>&lt; \text{€ } 300.000</math> but <math>&gt; \text{€ } 20.000</math></p> <p>Competitive negotiated procedure</p>	



# Strictest rule principle



**According to the Directive 2014/24/EU and delegated Regulation 1268/2012 (Rules of application of Financial Regulation) the strictest of the applicable procurement rules applies (also taking into account the domestic legislation and the Programme rules).**

**Examples:**

**in Italy the threshold of the single tender is € 40.000,00 but the applicable EU Regulation 1268 establishes a lower threshold of € 20.000,00. also in Albania and Montenegro the thresholds are different.**

**For Italian beneficiaries, the selection of First Level Controller must guarantee the publicity and comparative principles, consequently it is not possible to use the single tender procedure.**



# PRAG – Procurement Guidelines

A useful practical tool (but **not** a source of EU law with the consequence that are not binding rules) in management of public procurement are the so called **PRAG Procurement and Grants for European Union external actions – a Practical Guide**. Document providing guidance and formats for procurement procedures, including IPA pre-accession funds. The manual is based on the EU Financial Regulation and the Common Rules and Procedures for the Implementation of the Union's instruments for External Action (Council Regulation 236/2014).

**Link to PRAG:**

[https://ec.europa.eu/europeaid/work/procedures/index\\_en.htm\\_en](https://ec.europa.eu/europeaid/work/procedures/index_en.htm_en)

# MOST COMMON ERRORS



- ✓ Insufficient publication of procurement procedure (e.g. direct award without any prior notification, notification only on national or regional instead of EU-level);
- ✓ Imprecise definition of the subject-matter of the contract to be awarded or excessively short deadlines for the submission of tenders;
- ✓ Mix-up of selection and award criteria;
- ✓ Use of discriminatory or dissuasive selection or award criteria;
- ✓ Unlawful splitting of contracts;
- ✓ Use of wrong procurement procedure;
- ✓ Unlawful application of exemption rules;
- ✓ Unlawful negotiation during award procedure;
- ✓ Modification of a tender or criteria during evaluation;
- ✓ Unlawful substantial contract modification or purchase of additional works, services of supplies.

# Examples of Audit Authority Findings



**B- Irregularity and/or lack of complete documentation of the procurement (i.e. tender dossier) and assignment procedures, i.e. deficiency in the documentation produced regarding:**

**B1 - justification of the typology of applied tender procedure, the implementation of adequate advertising procedures in line with the applied legislation, reception and assessment of offers and related award communication;**

**B2 - contract terms / awarding to selected contractors / professionals;**

**B3 - absence of conflict of interest of involved staff in tender procedures or assessors in evaluation commission or external consultants/professionals.**

# Subappalto (only for Italian Beneficiaries)

Comunicazione COMMISSIONE UE nota ARES (2019) 7810415 del 19/12/2019

La Commissione ha sanzionato l'Italia per non conformità alla Direttiva 24/2014 sugli Appalti del D.Lgs. 50/2016 (Codice degli Appalti) nella parte in cui pone un limite percentuale massimo al subappalto (ex art. 105 comma 2 D.Lgs. 50/2016)



***In caso di procedure sopra soglia comunitaria nelle quali si intende inserire la clausola di subappalto con limitazione, è necessario evitare il rinvio all'art. 105 D.Lgs. 50/2016 inserendo nella clausola espressa motivazione della limitazione.***

# QUESTIONS



# THANKS!

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