

**DETERMINING
& PLANNING
THE
PROCEDURE**

**TERMS
OF
REFERENCE**

**PUBLICATION
OF
PROCUREMENT
NOTICE**

**REQUEST
FOR
OFFERS**

**OFFERS /
QUOTES
RECEIVED**

**EVALUATION/
SELECTION
REPORT**

**NOTIFICATION
OF
REJECTION
AND APPROVAL**

**SIGNATURE OF
CONTRACT**

**PROOF OF
DELIVERY OF
GOODS,
SERVICES,
OR WORKS**

INVOICES

**ARCHIVING OF
ALL
DOCUMENTS**

**(INCL. PROOF
OF PAYMENT)**

CONFLICT OF INTEREST

According to **article 24 of the European Directive on Public Procurement (EU) 2014/24**, "the concept of conflict of interest shall at least cover any situation where staff members of the contracting authority (...) who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure **have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.**".

National rules transposing the directive may provide further detail.

TIP for partners:

Each partner should check their organisation's internal rules and procedures for dealing with conflict of interest.

Different rules may apply depending on the threshold of the procurement:

EU public procurement rules
National rules
Internal Rules

NB: There is no additional programme rules for procurement in Interreg Europe

Eg. If internal rules are stricter than national rules, they should be applied even if the procurement amount is above the national threshold.

TIP for private partners:

- Check if based on national rules you have to follow public procurement rules when receiving EU funding.
- Always document how you ensured that the price paid is reasonable (sound financial management principle).

THE STRICTEST RULE APPLIES

PROCUREMENT TAKES TIME

Depending on applicable rules, compulsory time limits may apply.

Eg. Minimum duration for publication of the tender based on the EU Directive on public procurement.

Minimum time between information of unsuccessful and successful companies.

TIP for partners:

Check procurement requirements and plan the procurement procedures well in advance to ensure that you have enough time for all steps (see also procurement timeline).

TRANSPARENCY

EQUAL TREATMENT

NON - DISCRIMINATION

Transparency: Eg. The same information/reply to question is communicated to all consulted companies – The criteria for selection are clearly indicated in the terms of reference.

Equal Treatment: Eg. All offers are assessed through the application of the announced criteria and companies are treated the same way when they are in the same situation.

Non-discrimination: Eg. The criteria for selection of the offers should not be discriminatory (no nationality criteria or criteria which indirectly discriminates against companies from another EU country).

UNJUSTIFIED DIRECT AWARD

We highly advise to carefully consider reasons such as:

“Urgency” – usually only possible in case of unforeseeable events such as natural disasters

“This company is the only one” – technical/exclusivity reasons would have to be proved.

“More economic – no cost for training new person” – not acceptable justification not to compare if comparison required by applicable rules.

“Good value (based on old comparison)”

FINANCIAL CORRECTIONS

Flat rate corrections of up to 100% of costs can be applied by controllers or auditors in case of non-compliance with procurement rules.

Reference:

[Commission guidelines C\(2019\) 3452](#) for determining financial corrections to be made to expenditure financed by the Union for non-compliance with the applicable rules on public procurement

Make sure to apply the right procedure and comply with procurement rules to avoid corrections!

LACK OF DOCUMENTATION

It is necessary to keep all **documentation related to each step of the procedure**.

These documents will have to be submitted to the controller to report your costs to the programme and may also be checked by auditors in case of audit.

The fact that supporting documents now have to be uploaded in the portal will minimize the risk of lack of documentation in case of audit as auditors will have access to all the documents included in the Portal.

CONTRACT SPLITTING

Contract splitting is the practice of **artificially breaking up purchases of goods and services**, bringing the expenditure below organizational and legislative public procurement thresholds.

Contract splitting can result in

- **financial corrections** if it was done by mistake;

a **fraud investigation** if it was done with the intention of avoiding public procurement rules.

INADEQUATE ESTIMATION OF THE NEED

When planning the purchase of an equipment or the contracting of a service, it is necessary to check with your financial department the **organisation's need for the same type of equipment or service over one year** in order to assess the need at the level of the organisation.

This amount will allow you to determine the threshold for public procurement rules.

Exception: if the purchase or service is part of a group of purchase or services specifically for the purpose of a particular activity, such as the organisation of an event, the amount to take into account will be the total budget of the event.

INADEQUATE PROCEDURE

Examples:

- **Direct award** used when a competitive procedure should have been used.
- **EU negotiated procedure** when only an open procedure without negotiation was possible (negotiated procedure above EU thresholds are only possible in certain cases indicated in the Directive on Public Procurement).

INSUFFICIENT PUBLICITY

The publicity should ensure that all interested companies that could potentially apply are informed about the tender procedure.

For example, it is not enough to publish a tender procedure in a local or national public procurement journal if the tender could interest companies from other EU countries ("cross-border interest"). When there is a "cross border interest", the publication should allow a wider audience to be reached.

NB: It is possible to publish a tender notice in the Official Journal of the EU (OJEU), even if the threshold for EU publicity is not reached and the procedure used is not an EU procedure.