



Technical support to the implementation and management of ENI CBC programmes

Guide on procurement by private project beneficiaries in Ukraine

Applicable rules, templates, tips and recommendations

February 2018

DISCLAIMER

This **non-binding document** has been developed by the TESIM project.

It does not necessarily reflect the views of the European Commission on the topic, and is presented to programme practitioners **for illustrative purposes only.**



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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 therefore for the use of national legislation and programme specific rules, including the **use of PRAG**, if so decided.

Most programmes with Ukrainian participation decided the **compulsory use of PRAG** for the private non-profit beneficiaries. For those where it is not explicitly compulsory, it may be an excellent reference.

Find PRAG in https://ec.europa.eu/europeaid/funding/about-funding-and-procedures/procedures-and-practical-guide-prag_en

The present factsheet **aims** to describe the applicable rules, procedures and templates for awarding contracts related to works, supplies and services for the **Ukrainian non-profit private¹ beneficiaries**, as agreed by the Ukrainian National Authority (NA) and the Managing Authorities (MAs) of the four concerned programmes:

- Poland-Belarus-Ukraine,
- Hungary-Slovakia-Romania-Ukraine,
- Romania-Ukraine and,
- Black Sea Basin.

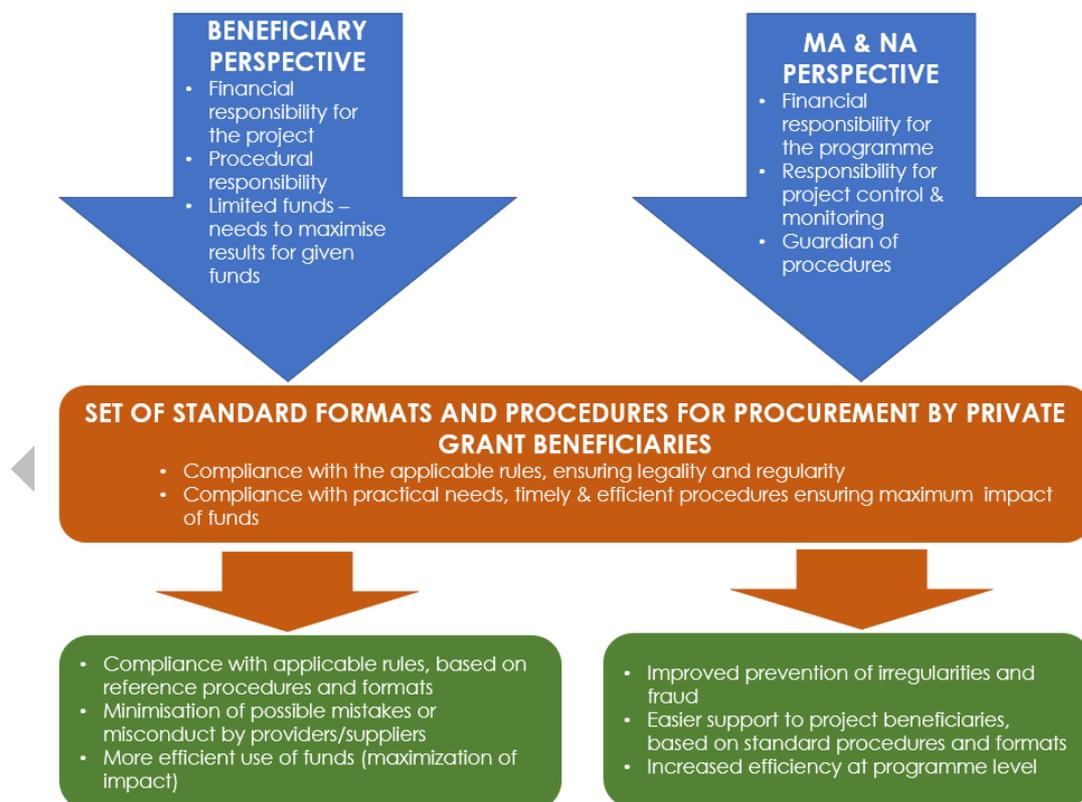
¹ For the purpose of this note, the notion of “private beneficiary” should be understood as private non-profit organization, as none of the programmes in which Ukraine is involved allows for the participation of profit-making bodies (e.g., businesses).

1.2. Main challenges in procurement

This guide is developed taking into account the potential extensive administrative burden and time-consuming procurement procedures, as well as the high risk of ineligibility due to mismanagement or low understanding of the rules, as it happened in the past. 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 MAs and NA, who have the responsibility for preventing, detecting and correcting irregularities, including fraud. A clear ground for the secondary procurement² is a key prevention measure.

The following scheme shows the perspectives of both project beneficiaries, MAs & NA:



² Procurement by the beneficiaries. See definition in Glossary

The approach used in this necessarily-long guide can be summarised in the following points:

- **Understandable** for non-expert practitioners. Even though PRAG provides detailed answers to a number of questions, its size and complexity may make it hard to understand and apply, especially for users only interested in very specific sections;
- **Balanced** between the need of compliance with the applicable legal framework – from the Regulation to the grant contract -and the timely and efficient use of the procedures, in particular in low-value contracts;
- **Practical** for the practitioners, with specific instructions on how to perform the procedures and indication of the concrete formats of the different needed documents;
- **Standardized**, by promoting a harmonized approach for all the ENI CBC programmes in Ukraine.

1.3. Structure of the guide

This guide is adapted to the concrete needs of the private non-profit organisations in Ukraine and it is structured by type of procedure. Following a general introduction on the legal provisions and the thresholds and principles for secondary procurement, the guide describes the following **key elements** for each type of procurement procedure:

- 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 Regulation (competitive negotiated procedure, 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 instructions 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 used in the Regulation, in PRAG, in the Guidelines for Applicants and grant contracts.

A key issue: any **grant beneficiary becomes** the entity responsible for contracting 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.

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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 Ukrainian beneficiaries are as follows:

Article	Content
52.2	General principles
52.3	Rules of nationality and origin
53	Procedures and thresholds for service contracts
54	Procedures and thresholds for supply contracts
55	Procedures and thresholds for work contracts
56	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 article 106(1) of Regulation 966/2012 [...] (bankruptcy, etc.).

These principles are further detailed later on in the guide.

Regardless of threshold, the beneficiary must be able to justify how either a) best value for money or b) lowest price. This is the underlying principle behind all the requirements for each procedure chosen

2.1.2. Rules of nationality and origin

Article 52.3 stipulates that *"In all cases, the rules of nationality and origin set forth in articles 8 and 9 of Regulation 236/2014 shall apply."* This rule is also included in article 5 of the General Conditions of the Financing Agreements signed between the European Union and Ukraine for the ENI CBC programmes.

What does it mean in practice?

The **rule of nationality**, that is, the eligibility conditions for the participation of economic operators in procurement procedures, is the same as the one applied in the Member States. Therefore, there is **no restriction on nationality of tenderers**.

The Common Implementing Rules (EC Regulation 236/2014) make reference to the threshold of the competitive negotiated procedure, which corresponds to EUR 100 000. This indeed means that when the value of the supplies to be purchased is below EUR 100 000 per purchase, the supplies do not have to originate from an eligible country (full untying). It shall also be mentioned that this Regulation provides that in the case of actions implemented under shared management with a Member State, as it is the case in the ENI CBC Programmes, **countries that are eligible under the rules of that Member State are also eligible**. According to the Romanian, Polish and Hungarian legislations, no restrictions regarding origin are foreseen, so there is **no restriction on the origin of supplies**.

As an exception, the sanctions currently imposed by the EU on Russia (and vice versa) may lead to restrictions in the acquisition of goods and services from this country.

2.1.3. Conversion of thresholds from Euro to Ukrainian Hryvnia (UAH)

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 UAH 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 [...]."

The exchange rate shall be "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

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.

Tip #1. Check the threshold in UAH 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 UAH **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 take into account 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.

2.1.4. 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 beneficiary, the publication should be in English, so that the potential contractors from other countries may have equal opportunity to participate.

2.1.5. Use of negotiated procedure

Article 56 of the ENI CBC IR stipulate that:

“The beneficiary may decide to use negotiated procedure on the basis of a single tender in the cases referred to in Article 266 of Delegated Regulation (EU) No 1268/2012.”

This article provides a list of reasons for justified use of the negotiated procedure and need to be complemented with the instructions and thresholds stipulated in section 2.4.8. of PRAG.

“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,
- Extension of contracts already started (with respect of certain conditions),
- Additional delivery of original supplies as replacement of normal supplies,
- Contract following a contest,
- 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 below 60.000€

There is no specific reference in the ENI CBC IR on the procedures with a value **below 60.000€**. Also in these cases, beneficiaries need to refer to **this guide (from section 3 onwards), as well as any applicable internal rules of the organisation.**

2.3. Requirements on procurement for Ukrainian non-profit organizations

With regards to non-profit, non-government organizations, the term applied in the national legislation to such entities is “Civic Association” and their activities are regulated by the Law of Ukraine on Civic Associations (3AKOH

УКРАЇНИ “Про громадські об’єднання” Відомості Верховної Ради України (ВВР), 2013, № 1, ст.1, <http://zakon3.rada.gov.ua/laws/show/4572-17>).

The Law distinguishes between “civic organizations” (founded by physical persons) and “civic associations” (founded by legal persons), underlining their non-profit making and independent from the state character. Both civic organizations and civic associations can have legal personality.

The Law has no specific provisions on procurement procedures to be followed. It only obliges civic associations with legal personality to keep accounting, financial and statistical reporting, be registered with the tax authorities and ensure contributions to the state budget according to the national legislation.

Therefore, the applicable legal framework for procurement for the non-profit organizations would be:

- Decree of Cabinet of Ministers of Ukraine (*in preparation*) on CBC programmes implementation;
- The requirements of the Financing Agreements, which stipulates the procedures in the ENI CBC IR, as previously described;
- **The additional rules included in this guide**, which are jointly agreed by the National Authorities and the programmes’ MAs
- Any additional rules stipulated by the programmes.

This guide, as well as the specific programme rules stipulated in the Guidelines for applicants and the grant contract, include as a requirement the **use of PRAG** for private non-profit organisations.

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
Transparency	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 by the Union. This principle should be achieved by the publication , preferably using modern communication tools, of relevant information concerning final contractors , while taking into account 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.
Fair competition	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

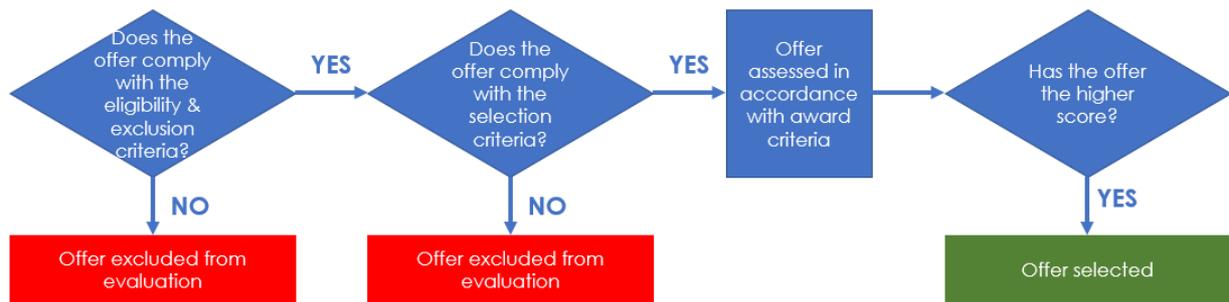
	<p>between them. The Contracting Authority needs to ensure adequate ex-ante publicity, that is, adequate publication, in reasonable time, of the prior information notices, contract notices and award notices, as well as sufficient information in the invitations to tenders on the award and contract criteria and requirements.</p> <p>Additionally, the contracting authority needs to ensure the absence of any conflict of interest³ during the procedure.</p>
Equal treatment	All participants in a procurement procedure need to have equal rights and obligations.
Proportionality	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.
Non-discrimination	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 criteria⁴, following the above-mentioned principles.

³ See the definition of conflict of interest in the glossary

⁴ 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 requirements 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 2.4.11. of PRAG 2016. 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.

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 (based on item 3 of the application form). In case of candidate being a public body, equivalent information should be provided. 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. In case of a consortium this criterion must be fulfilled by each member.

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 best value for money, or as appropriate, to the tender offering the lowest price, that is:

- 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. EC usually applies 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. That is why EC gives a much **higher importance to quality criteria than the price**, especially in the case of service contracts.

Where the technical characteristics may not differ significantly, such as certain supplies or works, the lowest price is acceptable. Nevertheless, also in the case of supplies and works there may be circumstances where best quality-price is recommendable, such as:

- time for delivery;
- post-sales service;
- training to users;
- etc.

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

As already stated, in the context of ENI CBC grant, procurement serves to get the maximum impact of the funds received, so there is no interest by the beneficiary in awarding contracts for a low price. Therefore, **abnormally low tenders may be rejected**. See further details in PRAG 2016 in points 3.3.4. for services, 4.3.11. for supplies and 5.3.11. for works.

3.3. Grounds for exclusion

3.3.1. Exclusion criteria for participation in any procurement procedure

Tenderers will be excluded from participation in the procurement procedures if (see section 2.3.3 in Prag 2016):

- they are **bankrupt** or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- they, or persons having powers of representation, decision making or control over them, have been **convicted of an offence concerning their professional conduct** by a judgment of a competent authority which has the force of *res judicata*; (i.e. against which no appeal is possible);
- they have been guilty of **grave professional misconduct** proven by any means which the contracting authority can justify;
- they are **not in compliance** with their obligations relating to the **payment of social security contributions or the payment of taxes** in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- they, or persons having powers of representation, decision making or control over them, have been the subject of a judgment which has the force of *res judicata* for **fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity**, where such an illegal activity is detrimental to the EU's financial interests;
- they are currently subject to an **administrative penalty**.

The cases referred to in point (e) are the following:

- 1) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995;
- 2) cases of corruption as referred to in 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;

- 3) cases of involvement in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;
- 4) cases of money laundering as defined in Article 1 of Directive 2005/60/EC of the European Parliament and the Council;
- 5) cases of terrorist offences, offences linked to terrorist activities, and inciting, aiding, abetting or attempting to commit such offences, as defined in Articles 1, 3 and 4 of Council Framework Decision 2002/475/JHA.

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 or grant award 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 for this procurement or grant award procedure.

Additionally, Regulation 1929/2015, Article 106, points e and f, allows contracting authorities to manage risks associated with previously 'bad behaving' beneficiaries, such as:

- the economic operator has shown significant deficiencies in complying with main obligations in the performance of a contract financed by the 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 an authorising officer, OLAF or the Court of Auditors;
- 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.

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 2.3.3.3. of PRAG 2016. 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 20.000€ or less, the contracting authority may refrain from requiring a declaration depending on its risk assessment⁵.

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) of 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 no such document or certificate is issued in the country concerned and for the other exclusion criteria, it may be replaced by a sworn/solemn statement made before a

⁵ The decision of the contracting authority needs to be duly documented

judicial or administrative authority, a notary or a qualified professional body in the country of origin or provenance.

Whenever one candidate, tenderer or applicant, due to its nature or the legal provisions for the given issue in the state where it is registered (for instance, national public administrations and international organisations), cannot fall into some of the categories above and/or cannot provide the documents indicated above, a simple declaration explaining their situation will suffice.

Tip #7. Declaration on honour.

The tenderer 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 latter provided in this guide includes indication to the exclusion criteria.

Tip #8. Documentary evidence.

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 who have made false declarations, made substantial errors, committed irregularities or fraud may be **excluded from participation** in all procurement procedures financed by the EU for a maximum of five years from the date on which the infringement is established, following a contradictory procedure with the contractor.

Tenderers who have made false declarations, or who have committed substantial errors, or irregularities, or fraud, may also be subject to **financial penalties** representing 2 % to 10 % of the total estimated value of the

awarded contract. The percentage is decided in accordance with the principle of proportionality.

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 2.4.14 of PRAG 2016.

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, unless your regular report is due in less than two months.

3.5. Use of language

Though the use of the language 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 Ukrainian.

The use of the English language also increases the possibility for tenderers from different countries to be properly informed, so it needed in any open tender.

Similarly as the tender documentation, also the tenderers offers should be as a general principle in English. For smaller size tenders of below 20.000€ the tendering in Ukrainian is acceptable.

3.6. Procedures with a suspension clause

In duly justified cases, tender procedures may be published with a suspension clause. Article 48.1 (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.

Some programmes required the name of the service provider carrying out the expenditure verification (the **auditor**) before signing the grant contract. In this case, it is inevitable to launch the procurement procedure with a suspension clause.

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 substantial errors, irregularities or frauds in the procedure, in particular where these have prevented fair competition;

See further details in point 2.4.13 of PRAG 2016.

3.8. Complaints

Where a tenderer believes 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, 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.

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 should respect the following conditions:

- 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;

3.10. Procurement plan

The secondary procurement procedures represent a significant challenge for the grant beneficiary, the Lead Beneficiary and the MA/JTS 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.

An example of procurement plan is presented in the scheme below:

Budget line	Amount (EUR)	Item	Type	Procedure	Planned publication date	Planned contract signature
3.2.	22.500,00	Supply of computers	Supply	Competitive negotiated	20.12.2014	31.01.2015
5.2.	11.350,00	Printing services	Services	Single tender	15.03.2015	30.03.2015

3.11. Failure 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 receives⁶”, including the awards of contracts to the third parties, failures 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 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;

⁶ 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, as described in this guide;
- 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.

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4. Which type of procedure?

4.1. Basic definitions

The main procedures that should be implemented in case of procurement are described in the following chapters. Which procedure is applicable depends on the nature of the acquisition (works, supplies, services or hybrid⁷) and the value of the contract.

Main procedures identified in the ENI CBC IR are thoroughly **described in PRAG** and this guide is only giving some tips and indications on where to find the details.

However, **low-value contracts**, that is, **below 20.000€**, are **described in more detail in the guide**, as PRAG has no specific provisions for them. Therefore, **the rules for such contracts are set in this document** and jointly approved by the MAs and the Ukrainian NA.

The types of procedure usually applied in ENI CBC projects are⁸:

Type of procedure	Definition
Open tender procedure	Procedure in which any natural or legal person or group may submit a tender in response to a procurement notice. The procedure follows one step 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.
Restricted tender procedure	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

⁷ See definition of "hybrid contract" in the glossary

⁸ See section 2.4 of PRAG 2016 for further details and full list of procedures

	<p>simultaneously and in writing by the Contracting Authority may submit a tender (two steps process).</p> <p>In the first step, the contracting authority issues a public invitation for submission of expression of interest. In the second step, the initial offers are reviewed and a short-list of tenderers is formed. Only the short-listed tenders are invited to submit a full offer.</p>
Competitive negotiated procedure without publication	The contracting authority invites at least 3 candidates of its choice to submit tenders and negotiate the terms of the contract with one or more of them.
Orders⁹ on the basis of single tender	The contracting authority invites at least one candidate to submit offer. MAs and NA have agreed that in the context of ENI CBC, the contracting authority will be obliged to evaluate at least two offers, in order to make a financially and technically sound and transparent decision.
Direct award	Payments against invoice without a prior tender may be accepted for low-value orders. This type of direct award for procurement is also consider as single tender in PRAG. However, MAs and NA have agreed that two offers are only a recommendation. An invoice from one provider/supplier will be accepted, if duly justified.

4.2. Geographical scope of publication

Procurement procedures of higher values will require the launch of open or restricted tenders, either in the **programme area** or **international**.

What does it mean in practice?

In order to ensure the full eligibility of the expenditure, the beneficiary needs to prove that the publicity has been done at the adequate geographical

⁹ See definition of "order" in the Glossary

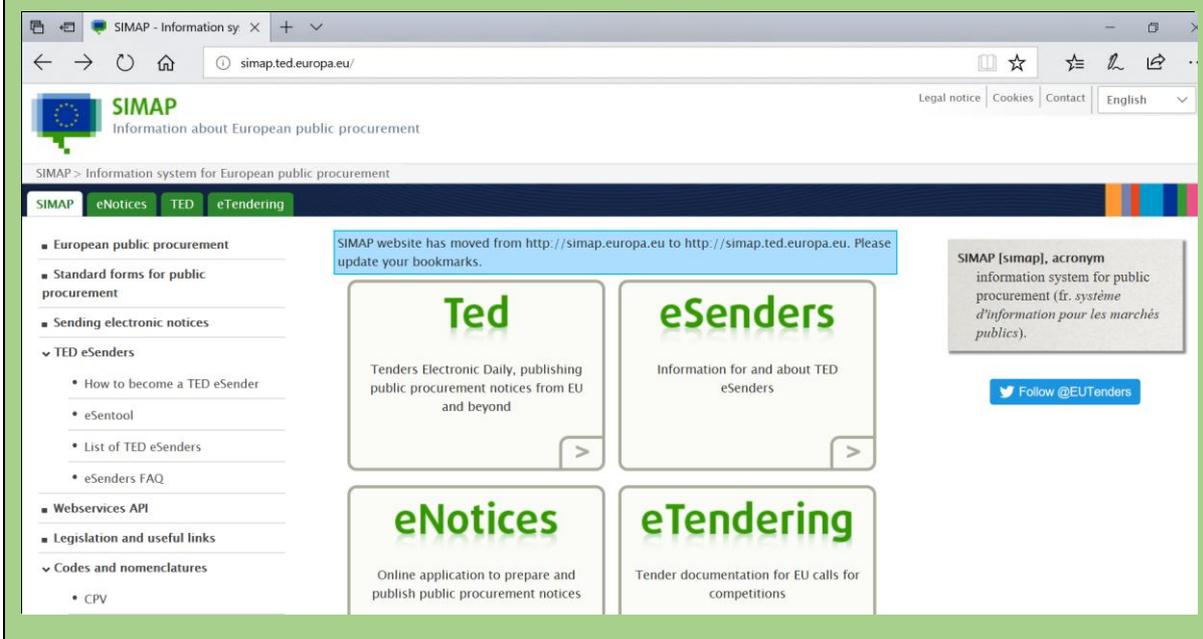
scope. If the publication is not complying with this scope, there may be a flat rate correction of 25% of the eligible expenditure, in accordance with the article 72.7 of ENI CBC IR. In the case of no publication at all, the financial correction will be 100% which in practice means that a concrete cost will be fully ineligible.

Tip #10. Where to publish international calls for tender?

International calls for tenders, either open or restricted, are intended for the contracts with higher value (see the thresholds in the following section).

International calls for tender have to be published in the Official Journal of the European Union (OJEU).

This publication may be done by any project beneficiary, either public or private, through the EU's **Tenderers Electronic Daily (TED)** database (<http://simap.ted.europa.eu>).



This on-line system may be used in parallel with any other appropriate means, but it is compulsory to publish the international tenders at least in the OJEU.

The system is user friendly and it has already been successfully used by private grant beneficiaries in the previous programming period, as shown in the example below.

Example #3. Publication in TED of an international tender for a 668.000€ supply contract by a Lebanese private beneficiary¹⁰ in the context of the @gmiproject, financed by ENPI CBC Mediterranean Sea Basin 2007-2013

	European Union Publication of Supplement to the Official Journal of the European Union 2, rue Mercier, 2985 Luxembourg, Luxembourg Fax: +352 29 29 42 670 E-mail: ojs@publications.europa.eu Info & on-line forms: http://simap.europa.eu
	Contract notice (Directive 2004/18/EC)
Section I : Contracting authority	
I.1) Name, addresses and contact point(s):	
□	
Official name: Averda Servus, SAL	National ID: <i>(if known)</i>
Postal address: Averda House, 145 Al Marfa'a, Abdel Malak Street, Beirut Central District	
Town: Beirut	Postal code: 14/5159, Beirut Country: Lebanon (LB)
Contact point(s): Averda Servus	Telephone: +961
For the attention of: Saleh	
E-mail: saleh. @averda.com	Fax: +961
Internet address(es): <i>(if applicable)</i>	
General address of the contracting authority/entity: (URL) http://www.averda.com	
Address of the buyer profile: (URL)	
Electronic access to information: (URL) http://www.gmiproject.eu	
Electronic submission of tenders and requests to participate: (URL) http://www.gmiproject.eu	

The ENI CBC Implementing Rules require the publication of calls for tenders in the programme area. Project beneficiaries have to ensure that the call is published in appropriate media covering the whole area, not only the region or country where the beneficiary is located.

Tip #11. Appropriate media in programme area

On top of the usual media used by your organisation for publicizing tenders, we recommend, whenever possible, to insert posts with link to your prior notices and/or contract notices in web-sites or social media which, altogether, cover all the programme area, such as:

- Project web-site

¹⁰ Personal contact details have been removed

- Web-sites of all project partners
- Programme web-site¹¹
- EU Delegations of the area of the programme
- Regional web-sites, such as <http://www.euneighbours.eu>

4.3. Financial thresholds and related tendering procedures

The thresholds are as follows:

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

The thresholds for lower amounts are as follows. Please take into account that the MAs and the NA jointly agreed to request competitive negotiated procedures for any contract above 20.000€, even though articles 53 to 55 of ENI CBC IR request this procedure only over 60.000€. **The thresholds indicated below are compulsory.**

	Competitive negotiated procedure without publication	Award on the basis of a single tender	Payment against invoices without prior acceptance of a tender
Services	≥ 20.000€ < 300.000€	≥ 2.500€ < 20.000€	< 2,500€
Supplies	≥ 20.000€ < 100.000€	≥ 2.500€ < 20.000€	< 2,500€
Works	≥ 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

¹¹ Check with your MA/JTS if this option is available

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.

4.4. Direct award (payment against invoice)

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

Tip #12. 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/europeaid/work/procedures/financial-management-toolkit_en.htm_en



THIS TOOLKIT COVERS EIGHT FINANCIAL MANAGEMENT AREAS

- ▶ [Module 1 - Internal Controls](#)
- ▶ [Module 2 - Documentation, Filing and Record Keeping](#)
- ▶ [Module 3 - Procurement](#)
- ▶ [Module 4 - Asset Management](#)
- ▶ [Module 5 - Payroll and Time Management](#)
- ▶ [Module 6 - Cash and Bank Management](#)
- ▶ [Module 7 - Accounting](#)
- ▶ [Module 8 - Financial Reporting](#)

Any procurement below 20.000€ is considered by PRAG as a type of single tender, so you need to **use the “negotiation report for single tenders”** (annex a10b_singletenderreport_en.doc).

This is the first time we mention one template from PRAG in this guide. There is a long list of templates in PRAG, so this guide is giving concrete indication of which ones to use for each type of procedure and nature of contract (services, supplies or works). Do not download all of them; only the ones strictly necessary.

Where can you find the PRAG templates?

Tip #13. Where to find PRAG templates

The core text of PRAG and its templates are downloadable from the

following URL: <https://goo.gl/Ungxi6>¹²

You can download the annexes individually or in a compressed zip file:



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.

Example #4. Artificial split

The procedures of your organisation may allow for low-value purchases to the same provider/supplier without specific tender procedure. Recurrent orders to the same supplier might lead to **artificial split**.

The typical example would be the flight costs paid to a travel agency or to event organisers. If your budget includes several trips or several events for a combined value over 2.500€, you need to use the single procedure described in the next section. Even if the trips or the events are independent one from the other, they will be considered as a single contract if they are contracted to the same supplier or service provider.

¹² This is a shortened URL address

4.5. Single tender procedures

PRAG does not elaborate on the procedure for single tender and only stipulates that:

The Contracting Authority may award service contracts of a value of EUR 20.000 or less on the basis of a single tender.

The specific annexes for simplified tenders must be used (administrative compliance grid, contract, contract notice, invitation letter, instructions to tenderers, and tender form) for this procedure. They can be adjusted to the procedure, including deleting non-relevant sections, without this requiring derogation.

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

The **goal** of these instructions 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.

**THE RULES DESCRIBED IN THIS SECTION GO BEYOND PRAG PROVISIONS.
THEY ARE COMPULSORY FOR ALL PRIVATE UKRAINIAN BENEFICIARIES.**

Tip #14. 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 simplified evaluation report;

- Signature of contract with the successful tenderer.

Even though the single procedure, as described in PRAG allows inviting only one tenderer, the MAs and NA jointly agreed that at least two offers will be evaluated by the beneficiary in procurement procedures between 2.500€ and 20.000€. Additionally, article 52.2(a) of the ENI CBC obliges that the contract is awarded to the tender offering best value for money, or as appropriate, to the tender offering the lowest price. Having two offers would allow the contracting authority to justify more easily either best value for money or the lowest price was chosen and:

- increase openness of the procedure by increasing competition,
- increase the possibility to get a better value for money.

If some invited tenderer is not able to submit an offer in time and you only have one tender, extend the deadline and invite other tenderers, so you can evaluate two offers.

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

4.5.1. 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 documentation is divided into two parts: one part providing information from the contracting authority and the other part providing format for submission of tenders/offers by the secondary providers/suppliers.

PART A contains **information about the tender**, that is:

- Background information on the project and the source of funding
- Clearly stated requirements, in particular the technical specifications;
- Required timing for the delivery of services, supplies or goods;
- Format of the contract to be signed with the successful tenderer.

PART B contains the **format of the offer to be submitted** by the supplier/provider:

- Submission form, indicating the tenderer's contact details, the acceptance of the conditions of the tender and the signature by duly authorised representative;
- Clear indication of the offered services, supplies or works, in compliance with the technical specifications defined by the contracting authority. Additional details, such as the brand of supplies or the involved inputs may be included;
- Clear indication of the offered price for the indicated items;
- Additional documents, if required (as per section 3.3 of this guide).

PRAG-inspired documents for simplified tender dossiers for single tenders for services, supplies and works **are developed and available as an annex to this guide**. The templates are a simplification of the PRAG ones and may be used as an alternative to PRAG templates, which are compulsory for more complex procedures.

The documents in annex for the tender dossier cover almost all the requirements in PRAG with some adaptations. The only compulsory one not included is the invitation letter. **Please use also the templates for invitation to tender in PRAG¹³**: b8o4_invit_simp_en.doc (services), c4a_invit_en.doc (supplies) or d4a_invit_en.doc.

4.5.2. Evaluation documents and reports for single tenders

The evaluation procedure needs to follow a similar logic as in the Competitive Negotiated 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. You will find indications about the evaluation committee in the description of the evaluation process for the competitive negotiated procedures in the next section of the guide.

¹³ No simplified template has been developed for this document

The **recommended set of documents** for evaluation is¹⁴:

Name of document	PRAG reference
Forms for the evaluation process	
Declaration of impartiality and confidentiality	a4_decl_imp_conf_en.doc
Administrative Compliance Grid	b8o1_adminingrid_simp_en.doc (services); c4j_adminingrid_en.doc (supplies); d4l_adminingrid_en.doc (works)
Evaluation grid	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	b13b_lettersecond_best_en.doc (only for services)
Letter to unsuccessful tenderer (if more than 2 offers available)	b13c_letterunsuccessful_en.doc (services); c8b_letterunsuccessful_en.doc (supplies); d8_ letterunsuccessful_en.doc (works)

¹⁴ We provide a set of recommended documents, but remember that the evaluation grid and the negotiation report for single tender are compulsory in any case

4.6. Competitive negotiated procedure

In this kind of procedure, PRAG allows for the use of simplified tender documentation for services. We strongly recommend it, at least for the tenders between 20.000€ and 60.000€. Anyhow, the thresholds for procurement without call for tender (open or restricted) is very high; **be extremely careful with the choice of companies to invite.**

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

Tip #15. 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 direct award procedure, the **solidity of internal control** is a key factor for the proof of the respect of the principles.

4.6.1. Tender dossier for services

The PRAG simplified tender dossier for competitive negotiated procedure (**simplified tender dossier – b80**) is to 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. This evaluation has to be documented in the **Negotiation Report for single tenders (annex A10b)**.

The **minimal set of documents** recommended is:

Name of document	PRAG reference
Information about the tender	
Invitation to Tender	b8o4_invit_simp_en.doc
Instructions to Tenderers	b8o5_itt_simp_en.doc

Contract notice	b8o3_contractnotice_simp_en.doc
Terms of Reference (Annex II)	b8e_annexiitorfee_en.doc (fee-based) or b8f_annexiitorglobal_en.doc (global price)
Draft contract	b8o2_contract_simp_en.doc
General Conditions (Annex I)	b8d_annexigc_en.doc
List of Entities Invited to Submit a Tender	b8o6_list_simp_en.doc
Documents to be submitted by the tenderer	
Tender Submission Form	b8o7_tenderform_simp_en.doc
Declaration of honour on exclusion and selection criteria	a_14_declaration_honour_en.doc
Organisation and Methodology (Annex III)	b8g_annexiiiom_en.doc
Key experts (including templates for the summary list of key experts and their CVs) (For contracts requiring key experts) (Annex IV)	b8h_annexivexperts_en.doc
Budget (Annex V)	b8i1_budgetglobal_en.doc or b8i2_budgetfee_en.doc
Forms and other supporting documents (Annex VI)	B8j1_annexvifif_en.doc b8j3_annexviefind_en.doc (individuals) b8j4_annexviefcompany_en.doc (companies) b8j5_annexviefpublic_en.doc (public bodies) Documents according to the point 3.3. of

	the guide (if applicable)
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4.6.2. Tender dossier for supplies

The relevant PRAG templates for the tender dossier are to be used. The **minimal set of documents** recommended is:

Name of document	PRAG reference
Information about the tender	
Invitation to Tender	c4a_invit_en.doc
Instructions to Tenderers	c4b_itt_en.doc
Contract notice	c2_contractnotice_en.doc
Technical specifications (Annex II) ¹⁵	c4f_annexiitechspeciitechoffer_en.doc
Draft contract	c4c_contract_en.doc
General Conditions (Annex I)	c4e_annexigc_en.doc
Documents to be submitted by the tenderer	
Tender Submission Form	c4l_tenderform_en.doc
Declaration of honour on exclusion and selection criteria	a_14_declaration_honour_en.doc
Technical offer (Annex III) ¹⁶	c4f_annexiitechspeciitechoffer_en.doc
Financial offer (Annex IV)	c4g_annexivfinoffer_en.doc
Forms and other supporting documents (Annex V)	c4o1_fif_en.doc c4o2_lefing_en.doc (individuals)

¹⁵ This document includes also Annex III, which has to be fill-in by the tenderer

¹⁶ This document includes also Annex III, which has to be fill-in by the tenderer

	c4o3_lefcompany_en.doc (companies) c4o4_lefpublic_en.doc (public bodies) Documents according to the point 3.3. of the guide (if applicable)
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4.6.3. Tender dossier for works

The relevant PRAG templates for the tender dossier are to be used. The **minimal set of documents** recommended is:

Name of document	PRAG reference
Information about the tender	
Invitation to Tender	d4a_invit_en.doc
Instructions to Tenderers	d4b_itt_en.doc
Contract notice	d2_contractnotice_en.doc
Technical specifications	No specific template in PRAG
Draft contract	d4n_contract_en.doc
Special conditions	d4o_specialconditions_en.doc
General Conditions	d4p_annexgc_en.doc
Documents to be submitted by the tenderer	
Tender Submission Form	d4c_tenderform_en.doc
Declaration of honour on exclusion and selection criteria	a_14_declaration_honour_en.doc
Technical offer	d4e_techofferquestion_en.doc d4g_techofferform_4dot2_en.doc d4h_techofferform_4dot3_en.doc d4i_techofferform_4dot4_en.doc d4u_techspec_en.doc

	d4y_designdrawing_en.doc
Financial offer	d4v_finoffer_4dot1_en.doc d4w_finoffer_4dot2_en.doc d4x_finoffer_4dot3_en.doc
Forms and other supporting documents	d4j1_fif_en.doc d4j2_lefind_en.doc (individuals) d4j3_lefcompany_en.doc (companies) d4j4_lefpublic_en.doc (public bodies) Documents according to the point 3.3. of the guide (if applicable)

4.6.4. Evaluation process for competitive negotiated procedure

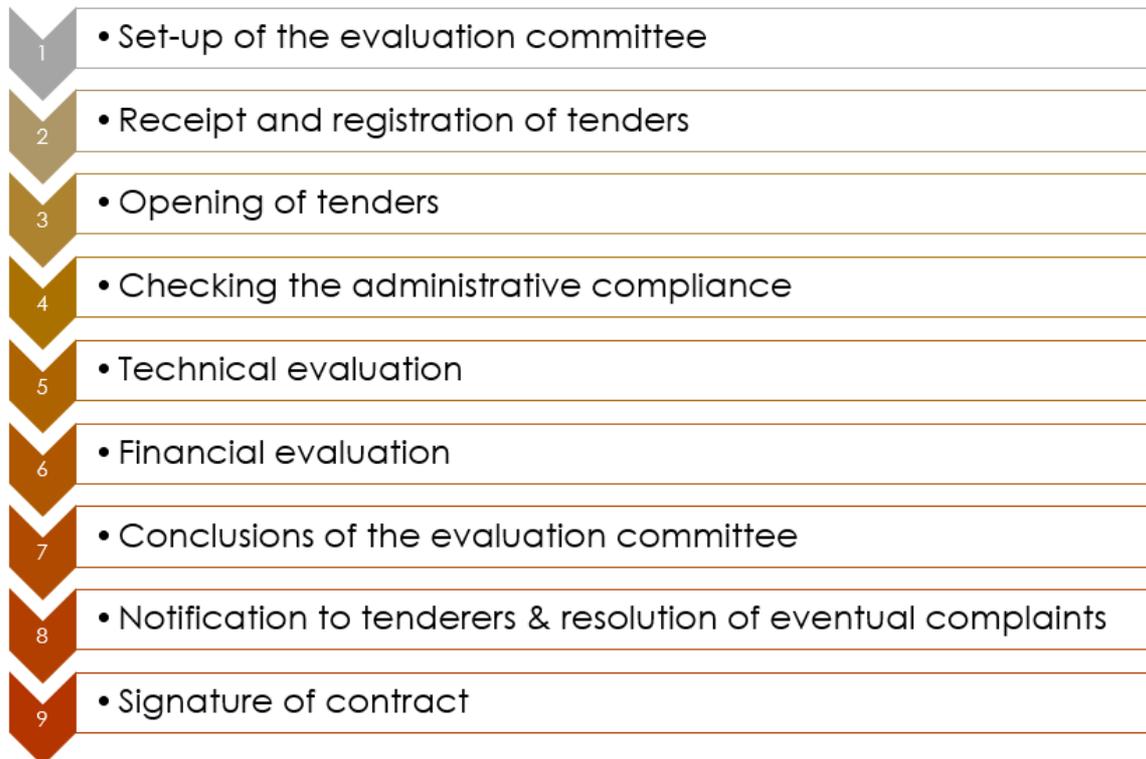
As in the case of single tender, the evaluation of the tenders has to be carried out by an evaluation committee appointed by the grant beneficiary in its role of the contracting authority.

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 member. See section 2.8 of PRAG 2016 for more details on the basic requirements of the committee.

The main steps in the evaluation process are:



Tip #16. 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.

The non-respect of this rule would lead to the cancellation of the procedure.

Check the relevant section in PRAG for further details on the evaluation procedures for the different types of tenders:

- Chapter 3 for services
- Chapter 4 for supplies
- Chapter 5 for works

4.7. Restricted tender

Remember, in the framework of ENI CBC, (international) restricted procedures are applicable **only for services with a value of EUR 300 000 or more.**

The criteria for the set-up of the evaluation committee are described in the previous section on competitive negotiated procedure.

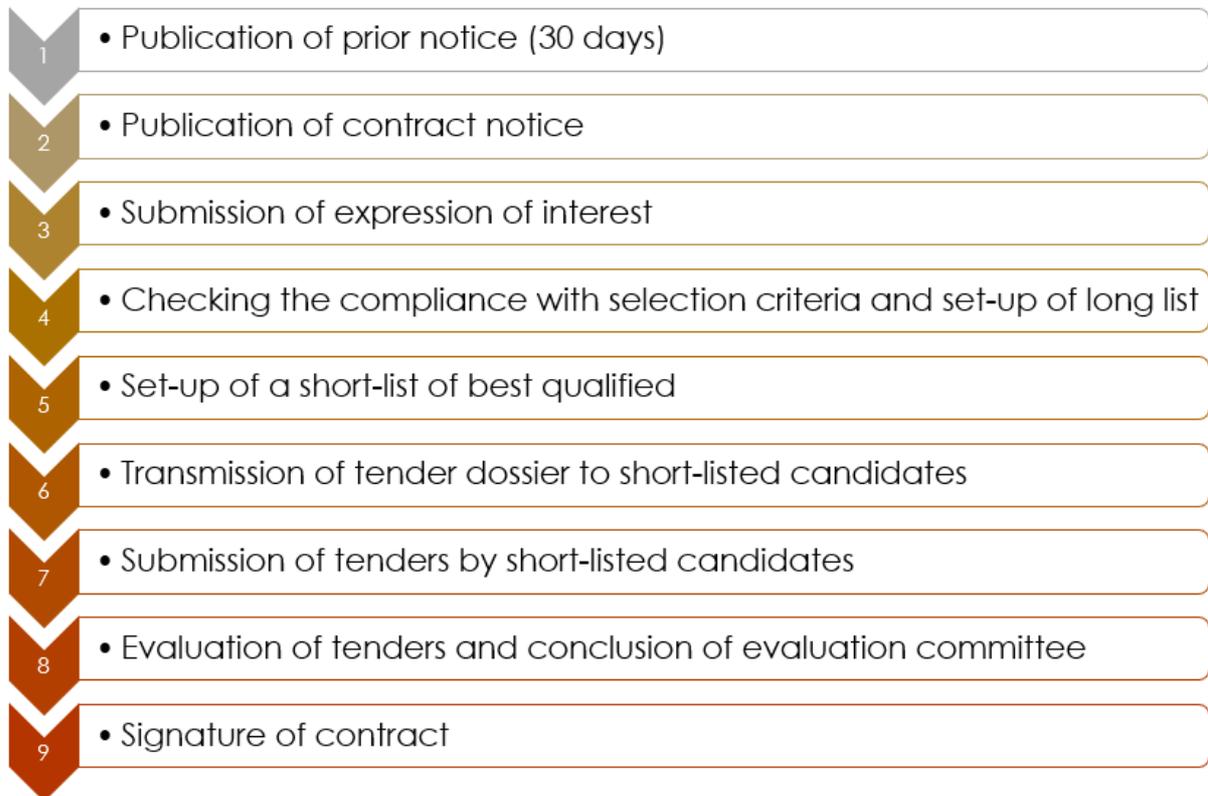
In 'restricted' calls for tender, all economic operators may ask to submit a tender but only those who satisfy the selection criteria may be invited to do so.

The selection criteria and the tasks to be undertaken are described in the published contract notice. A 'long list' of all the candidates replying to the notice is cut down to a shortlist of the best qualified, on the basis of their replies. At the shortlisting stage, before the list is approved by the evaluation committee, the contracting authority checks that none of the candidates or their partners is in exclusion situation.

The contracting authority prepares the shortlist notice using the appropriate template. The contracting authority also sends the tender dossier to the shortlisted candidates.

Once the tenders have been analysed, they are compared and the successful tenderer is chosen. No negotiation is allowed.

In summary, this **two-step process** is as follows:



For the international restricted procedure, the contracting authority shall shortlist a maximum of 8 candidates (6 in case of an international restricted procedure for works). The contracting authority will also publish criteria in addition to the financial, professional and technical ones. These additional criteria will only be used to reduce the shortlist to 8 candidates (6 for works). These criteria shall therefore not be drafted in such a way that they would reduce the shortlist to less than 8 candidates (6 for works) fulfilling that criterion. For example, a criterion such as "experience in the country" could reduce a shortlist to 5 candidates only. This type of criteria should be avoided.

4.7.1. Tender dossier for restricted procedures

In addition to the PRAG templates mentioned in the competitive negotiated procedure, for the restricted ones you must add¹⁷:

¹⁷ Most forms are already listed in the section for the competitive negotiated procedure. There are not listed again in this section.

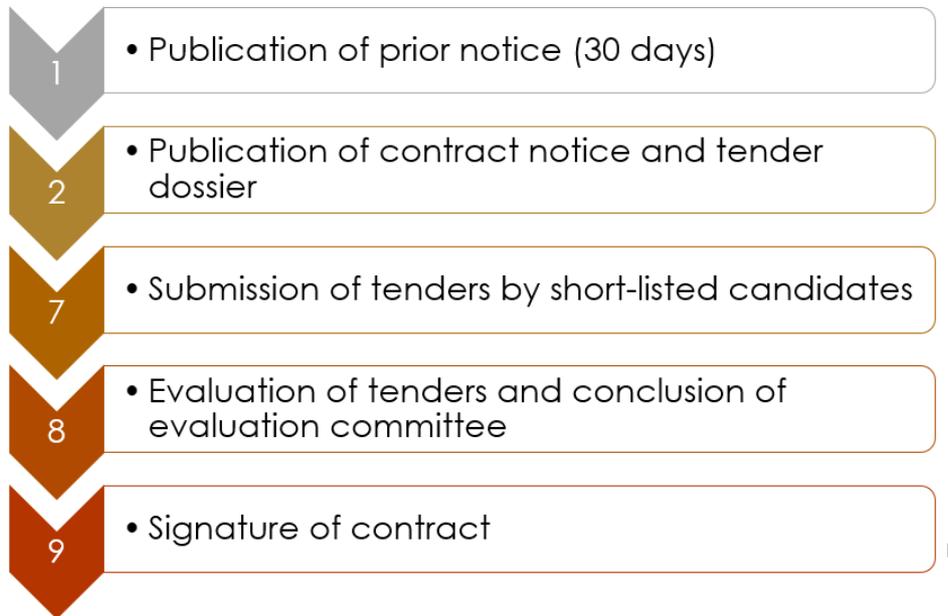
Name of document	PRAG reference
Prior notice	b1_priorinfo_en.doc
Contract notice	b2a_contractnotice_en.doc
Application form for expression of interest	b3_applform_en.doc (services)
Long list of candidates	b4_longlist_en.doc
Short-list report	b5_shortreport_en.doc
Short-list notice	b6_shortnotice_en.doc
Letter notification to non-short-listed candidates	b7_letternotshort_en.doc
Award notice for international calls	b14a_awardnotice_internationalcalls_en.doc
Award notice for non-international calls	b14b_awardnotice_en.doc

4.8. Open procedure

In 'open' calls for tender (international or programme area), all economic operators may submit a tender. The contract is given maximum publicity in any other appropriate media.

Any natural or legal person wishing to tender may ask to receive the tender dossier (which may have to be paid for), in accordance with the procedures specified in the contract notice. The tenders are examined, the eligibility and the financial, economic, technical and professional capacity of the tenderers are checked to arrive at a selection, the tenders are compared and the contract is awarded. No negotiation is allowed.

In summary, this **one-step process** is as follows:



4.8.1. Tender dossier for open procedures

There are no additional PRAG templates for the open procedures, on top of the mentioned in previous sections. However, you need to check the adequate ones for works, as in the previous section the list includes the specific ones for restricted calls.

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5. Nature of contracts

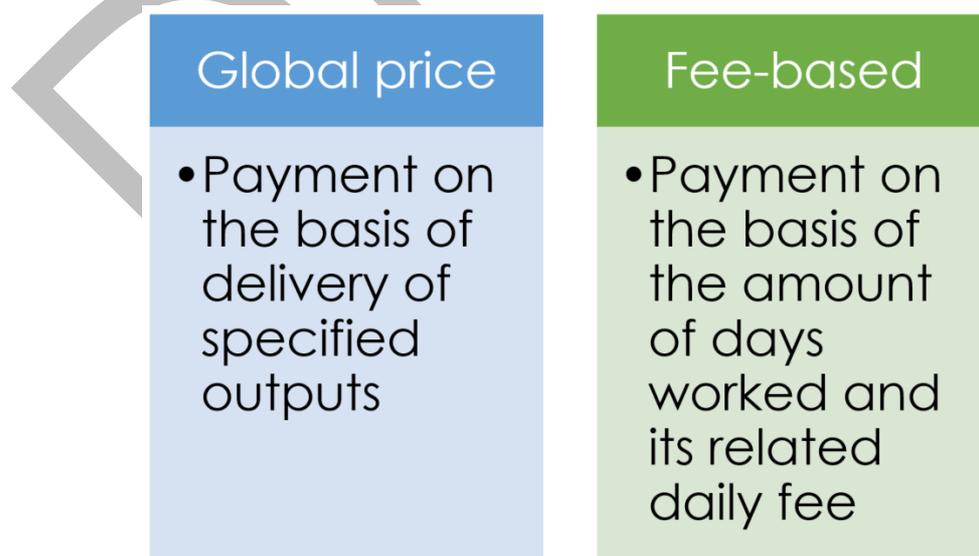
5.1. Service contracts

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.

<p>Study contracts</p>	<p>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.</p>
<p>Technical assistance contracts</p>	<p>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.</p>

5.1.2. Types of service contracts



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:

- several budget lines per output, which may be required but are not compulsory
- negotiations with the service provider;

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 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**¹⁸, 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"> • List and CV's of experts must be included in the tender • Statements of availability and exclusivity are compulsory for all experts 	<ul style="list-style-type: none"> • List and CV's of experts may be required for the tender • Even if CV's are included, they are not evaluated. Only organisation and methodology is evaluated¹⁹.

¹⁸ See definition in Glossary

¹⁹ See indications on evaluation grids in section 3.2.3.

Tip#17. 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 #18. 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
<p>Poor quality of the terms of reference (ToR) 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.</p>	<p>The ToR must include adequate level of details on the expected services.</p>

<p>Restrictive conditions in the selection criteria, which might contain formulation limiting fair competition, e.g. request of very narrow qualifications of very specific skills for experts.</p>	<p>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.</p>
<p>Splitting of contracts, either intentionally, so to avoid more complex procedures, or unintentionally, due to the recurrent use of the same provider for similar orders in the same project.</p>	<p>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 this guide, in accordance with the nature and size of the contract.</p>
<p>Lack of sufficient number of quality or compliant offers, either due to the low capacity of the invited tenderers, too restrictive requirements or inadequate publication</p>	<p>Organize clarification 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 competitive negotiated, consider inviting more than 3 tenderers.</p>

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 hybrid**. 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

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

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 hybrid**. 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

Challenges	Recommendations
<p>Poor quality of the tender dossier, including the technical specifications, 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.</p>	<p>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.</p>
<p>Availability of support documents, including building permit, 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</p>	<p>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.</p> <p>Ideally, it is recommended to launch the procedure for ready-to-go</p>

expected results.	building projects.
Complexity of procedure for works. Even the negotiated competitive procedure is complex and need careful preparation.	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 ²⁰ .
Lack of sufficient number of quality or compliant offers , either due to the low capacity of the invited tenderers, too restrictive requirements or inadequate publication	Organize clarification 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 competitive negotiated, consider inviting more than 3 tenderers.
Inadequate quality of works and supervision , which may lead the contractor to fail in the delivery.	Appoint a competent supervisory architect or engineer, with proved independence from the works contractor.
Non-respect of the deadlines for implementation , due to unforeseen difficulties in the work or lack of adequate input by the contractor	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.
Additional works , due to unexpected situations, which may delay or increase the cost of the works execution.	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.

²⁰ Any service provider (or related company) participating in the preparation of the tender dossier will not be able to participate in it.



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Technical support to the implementation
and management of ENI CBC programmes

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Glossary of terms and acronyms

Term or acronym	Definition
Addendum	A document modifying the terms and conditions of a contract.
Ancillary services	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.
Appropriate media	As the publication in the Official Journal of the European Union is not obligatory for most contracts covered by this Guide, publication in the press, the web-site of the beneficiary and/or project, as well as the web-site of the programme or any other appropriate means to ensure adequate publicity may be necessary.
Award criteria	The contracting authority must draw up be precise, non-discriminatory and not prejudicial to fair competition criteria, which determine the award decision during the evaluation procedure.
Beneficiary	Natural or legal person with whom a grant contract has been signed. Amongst the project beneficiary, one of them is selected as Lead Beneficiary before submitting the proposal. The Lead Beneficiary is the counterpart of the grant Contracting Authority.
Best value for money	See "most economically advantageous tender"
Bid	Offer, tender (see definitions for tender, financial and technical offer in this glossary)
Bidder	See definition of tenderer in this glossary

<p>Conflict of interest</p>	<p>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 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 tenderer or 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>
<p>Consortium</p>	<p>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.</p>
<p>Contract award procedure</p>	<p>Procedure followed by the Contracting Authority to identify a service provider/supplier/construction firm and conclude a contract</p>
<p>Contracting Authority</p>	<p>In the context of procurement 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 grant in ENI CBC, the public entity concluding the grant contract as provided for in the Joint Operational Programme (JOP). It may be the Managing Authority (MA) or the Joint Technical Secretariat (JTS).</p>
<p>Contractor</p>	<p>Natural or legal person with whom a procurement contract (services/supplies/works) has been concluded. It</p>

	is the counterpart of the procurement Contracting Authority
Contradictory or adversarial procedure	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.
Corrigendum	Correction of a procurement notice or tender documents already published in appropriate media, before the set deadline for submission of tenders.
Defects liability period	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.
Direct award	The award of contract through a single procedure with only one tenderer. A direct award is only appropriate under certain circumstances and must always be the subject of a report.
e.g.	Abbreviation of the Latin expression " <i>exempli gratia</i> ". It means "for example"
Eligibility criteria	A set of conditions for a candidate to take part in a tender.
ENI CBC	Cross-border cooperation strand of the European Neighbourhood Instrument
ENI CBC IR	Implementing Rules of ENI CBC, that is COMMISSION IMPLEMENTING REGULATION (EU) No 897/2014
Evaluation committee	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.
Ex-ante publicity	"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.
Exclusion criteria	Formal admissibility criteria, which have to be respected by the tenderers, so that their offer is considered as eligible for the evaluation procedure.
Execution period	The period from contract signature until final payment for services, or until release of the performance guarantee after final acceptance for supplies and works.
Expert	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.
Fee-based contract	A contract under which the services are provided on the basis of fixed fee rates for each day worked by experts.
Final acceptance certificate	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.
Financial offer	The part of the tender which contains all financial elements of a tender, such as the summary budget or the detailed price breakdown.
General Conditions	The general contractual provisions setting out the administrative, financial, legal and technical clauses governing the execution of contracts
Global price contract	A contract under which the services provided are paid on the basis of the delivery of the specified outputs.
Grant	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).
Grant contract	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.
Hybrid	A contract between the Contracting Authority and a

contract	service provider, supplier or construction firm covering two or more of the following: works, supplies and services.
Incidental expenditure	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.
Invitation to tender	Letter sent to shortlisted candidates in a restricted procedure or competitive negotiated procedure inviting them to submit a tender.
i.e.	Abbreviation of the Latin expression " <i>id est</i> ". It means "that is".
Lot	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.
Managing Authority (MA)	Authority or body appointed by the participating countries as responsible for managing of each ENI CBC programme, located in a Member State.
Most economically advantageous tender	The tender proposal judged best in terms of the criteria laid down for the contract, e.g. quality, technical properties, aesthetic and functional qualities, after-sales service and technical assistance in relation to the price offered. These criteria must be announced in the tender dossier.
Negotiated procedure	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.
Negotiated competitive	Procurement procedure without prior publication of procurement notice, in which only the candidate or

procedure or single tender procedure	candidates invited by the Contracting Authority may submit a tender. The differences between competitive negotiated procedure and single tender are indicated in the guide.
Open procedure	Procedure in which any natural or legal person or group may submit a tender in response to a procurement notice.
Order	A request to a provider/supplier to deliver a service or a product
PRAG	"Procurement and Grants for European Union external actions – A Practical Guide".
Public procurement	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.
Restricted procedure	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.
Rule of nationality	It defines in which countries the tenderers and contractors have to be registered.
Rule of origin	It is used to determine the country of origin of a product (supplies or equipment).
Secondary procurement	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.
Selection criteria	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.
Service contract	A contract between a service provider and the Contracting Authority for the provision of services such as

	studies or expertise.
Service provider	Any natural or legal person or public entity or consortium of such persons and/or bodies offering services.
Special conditions	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
Supervisor (Engineer as per FIDIC rules)	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.
Supplier	Any natural or legal person or public entity or consortium of such persons and/or bodies offering to supply products.
Supply contract	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.
Technical offer	The part of the tender which contains all non-financial elements of the tender dossier.
Technical specification	Document drawn up by the Contracting Authority setting out the requirements and/or objectives in respect of the provision of supplies or works.
TED	Tenderers Electronic Daily – Database of all public procurement under obligation to be published in the Official Journal of the European Union (http://ted.europa.eu).
Tender	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
Tenderer	Any natural or legal person or group of such persons submitting a tender with a view to concluding a contract
Tender dossier	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.
Tender procedure	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
ToR	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.)
Works contract	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.

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Annex: simplified tender dossiers for service, supplies and works (single tender)

(PLEASE SELECT, REMOVE OR FILL-IN THE TEXT IN YELLOW, AS RELEVANT)

Name and address of the contracting authority: <XXX>
Contact person: <XXX>
Title of the tender: <XXX>
Reference number: <XXX>

PART A: INFORMATION FOR THE TENDERER

1. INFORMATION ON SUBMISSION OF TENDERS

Subject of the contract:

The subject of this tender is (select as appropriate, depending on the nature of the contract):

- Provision of **services**, as indicated in the technical information in point 2 of this section
- Provision of **supplies**, as indicated in the technical information in point 2 of this section
- Performance of **works**, as indicated in the technical information in point 2 of this section

Deadline for submission of the tenders:

The deadline for submission of tenders is <day, month, year until XX:XXh>. Any tender received after this deadline will be automatically rejected.

Address and means of submission of the tenders:

The tenderers will submit their tenders using the **standard submission form available in Part B of this tender dossier**. The tender will be submitted in 1 (one) original. In case of e-mail submission, the tenderer may provide a

scanned original. Any tenders not using the prescribed form shall be rejected by the contracting authority.

If delivery by post or courier, the tenders will be submitted in two separate envelopes:

- **envelope one** for the tenderer's information, the tenderer's statement and the technical offer and
- **envelop two** for the financial information.

An envelop including both envelopes will contain the following information at the external part:

Name and address of the contracting authority
Contact person
Title of the tender
Reference number

Name and address of the tenderer

If delivery by e-mail, the message will clearly indicate:

Title of the tender
Reference number
Name and address of the tenderer

The tender submission form and any supporting documentation will be provided as attachment to the e-mail.

2. TECHNICAL INFORMATION

The tenderers are required to provide **services/supplies/works** as indicated below. In the technical offer, the tenderers will indicate more details on the deliveries, referring back to the below table (**choose one of the tables, except for hybrid contracts**).

In case of service tenders

No.	Title of item	Description	Required timeframe	Required inputs (if applicable)
1				
2				
n				

In case of supply tenders

No.	Number of items	Title of item	Technical specifications	Required timeframe
Supplies				
1.1				
1.2				

n			
Installation (use this section only when necessary)			
2.1.			
n			
Other (use this section only when necessary)			
3.1.			
n			

In case of works tenders

Description of works

Description of the details of works: current situation on-field, works required, technical details, etc.

Designs and drawings

Description of applicable designs and drawings. The documents are to be attached to this tenderers' information as

annexes

Inputs required from the tenderer

Type of equipment, estimated labour input, type of expertise, vehicles, tools, etc.

Time frame for completion of works and implementation of phases

Timeframe for implementation of situations, completion of works, etc.

Bill of quantities

No.	Number of items	Title of item	Technical specifications
1			
n			



3. FINANCIAL INFORMATION

The maximum available value of the contract is <XX.XXX,XX><EUR or UAH>.

4. ADDITIONAL INFORMATION

The selection criteria are:

- <add the selection criteria, such as explained in section 3.2.2.>

The award criterion is:

- <lowest price of technically compliant offers (select in case of supplies and works)>
- <best value for money, weighting 80% technical quality and 20% price (select in case of services)>

The successful and unsuccessful tenderers will be informed of the results of the evaluation procedure in written.

The estimated time of response to the tenderers is <XX> working days from the deadline for submission of the tenders.

5. FORMAT OF CONTRACT

CONTRACT TITLE: <title of the contract>

REFERENCE: <reference number>

Concluded between:

<Name of the contracting authority>

<Address of the contracting authority>

Represented by: < name of legal representative><position>

AND

<Name of the contractor>

<Address of the contractor>

Represented by: <name of legal representative><position>

Article 1: Subject of the contract

The subject of the contract are the <services/supplies/works> as indicated in the contractor's offer.

Article 2: Contract value

The total contract value for implementation of **services/delivery of supplies /execution of works** indicated in the Article 1 is: **<XXX EUR>** (in case of fee-based service contracts, indicate a maximum amount and a breakdown of daily fees, number of days and maximum amount of incidental expenditure)

Article 3: Contracting documents

The documents which form the part of this contract are (by the order of precedence):

- Contract agreement
- Contractor's offer as provided in the tendering phase (see documents in "Part B: Format of offer to be provided by the tenderer")
- Any other supporting documentation if applicable (in case of request for registration of company, compliance with tax obligations or other documentation)

Article 4: Deliveries and payments

The contractor will deliver without reservation the **services/supplies/works** indicated in the contractor's offer. The deliveries will be implemented within the indicated dates.

The contracting authority will pay to the contractor the **services/supplies/works** in the amount indicated in the Article 2 of this contract document. The payments will be issued by the following time schedule.

Month		<EUR/UAH>
1	Initial pre-financing payment	<XX% of the contract value>
<Month>	Interim payment	<XX% of the contract value>
<Month>	Balance payment	<XX% of the contract value>
Total		<Total contract value>

(in the case of service contracts) The contractor will provide contracting authority with the report on execution of the services. (in case of fee-based

service contracts). The report will include in attachment the summary of time devoted, the list of incidental expenditure and the signed timesheets.

Article 5: Duration of the contract

The duration of the contract is <XX> months.

Article 6: Cancellation of the contract

The contract can be suspended by the Contractor if the contracting authority does not fulfil payment and other obligations.

The contract can be terminated by the Contracting Authority due to one of the following reasons:

- The Contractor is in serious breach of the contract, failing to meet contractual obligations
- The Contractor is bankrupted or being wound up, is having its affairs administrated by courts, has entered into arrangements with creditors, has suspended business activities, is the subject of proceedings concerning those matters, or is in any analogous situations arising from a similar situation provided for in national legislation or regulations.

Article 7: Resolving of disputes

Any disputes arising out of or relating to this Contract which cannot be settled otherwise shall be referred to the exclusive jurisdiction of (specify responsible court or arbiter body in accordance with the national legislation of the state of the Contracting Authority).

For the Contractor

Name:
Position:
Signature:
Date:

For the contracting authority

Name:
Position:
Signature:
Date :

PART B: FORMAT OF OFFER TO BE PROVIDED BY THE TENDERER

1. TENDERER'S INFORMATION

Offer submitted by:

Name of legal entity or entities submitting the tender	
Address	
Legal registration number	

Contact person:

Name	
Telephone	
e-mail address	

2. TENDERER'S STATEMENT

I undersigned hereby confirm that the **services/supplies/works** offered in this tender are in full conformity with the specifications submitted to us by the contracting authority. The detailed description of the offered services/supplies/works is provided in the technical offer.

In addition, I confirm that our entity is fully eligible for providing **services/supplies/works** under a contract financed by the EU and it is not in any of the situations that would mean an exclusion from a tender.

Finally, I declare to have no conflict of interest with any other concerned party in the tender procedure at the moment of submitting this tender.

3. TECHNICAL OFFER

Please provide details on the offered **services/supplies/works** by using the standard tables below **(choose one of the tables, except for hybrid contracts)** and by adding any other relevant information and/or documentation.

In case of service tenders

No.	Title of item	Description of services offered	Proposed timeframe	Proposed inputs
1				
2				
n				

In case of supply tenders

No.	Number of items	Title of item	Technical specifications of proposed items	Proposed timeframe
Supplies				
1.1				
1.2				
n				
Installation (use this section only when necessary)				
2.1.				

n				
Other (use this section only when necessary)				
3.1.				
n				

In case of works tenders

Description of works

Description of the details of works offered: current situation on-field, works required, technical details, etc.

Designs and drawings

Description of applicable designs and drawings. The documents are to be attached to this tenderers' information as annexes

Inputs offered

Type of equipment, estimated labour input, type of expertise, vehicles, tools, etc.

Proposed time frame for completion of works and implementation of phases

Timeframe for implementation of situations, completion of works, etc.

Bill of quantities			
No.	Number of items	Title of item	Technical specifications
1			
n			

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4. FINANCIAL OFFER

The total price for the offered **services/supplies/works** is **<XX.XXX,XX><EUR/UAH>**. This price does not include VAT²¹.

The offered price includes the execution/delivery of the items described in the technical offer, as well as all the related incidental costs, such as transport, logistics, etc., when required.

Please include a detailed breakdown, in accordance with the items in the technical offer. For fee-based service contracts, include the number of expert days and the daily fees, as well as the breakdown of the incidental costs.

Name	
Signature	
Date	

²¹ **Ukrainian beneficiaries of ENI CBC grants are tax exempted, so the contractors must issue the invoices without VAT**