



Guide concerning the competition and procurement rules applicable for Belarusian CCP and Programme Branch Offices in Ukraine and Belarus

LEGAL BASIS

The current document has been elaborated basing on the best international practice, inter alia on approaches and solutions of the Practical Guide to Contract Procedures for EU External Actions (PRAG).

Furthermore, the document includes the requirements formulated in the following legal acts:

- Commission Implementing Regulation (EU) No 897/2014 of 18 August 2014 laying down specific provisions for the implementation of cross-border cooperation programmes financed under Regulation (EU) No 232/2014 of the European Parliament and the Council establishing a European Neighbourhood Instrument (hereinafter – Implementing Rules);
- Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action;
- Financing Agreement between Belarus and European Commission for implementation of the CBC Programme Poland-Belarus-Ukraine 2014-2020;
- Financing Agreement between Ukraine and European Commission for implementation of the CBC Programme Poland-Belarus-Ukraine 2014-2020.

Furthermore, the document is integral with the relevant requirements set in the Joint Operational Programme and the Service Contract signed with each **Contractor** (Belarusian CCP and Branch Offices from Ukraine and Belarus).

§ 1 MAIN PRINCIPLES

1. During procurement of services (procurement of works and supplies is not foreseen by the contract) within the service contracts,
 - a) the contract is awarded to the tender offering best value for money or offering the lowest price, while avoiding any conflict of interests;
2. Contractors shall avoid conflict of interest arising in the conduct of the procurement procedures. Prior to start the procurement, each Committee members/the employee assigned to carry the procurement of the Contractor's organisation shall sign separate Declaration of impartiality and confidentiality (Annex 2). Signed declarations shall be kept as part of the procurement documentation.
3. The concept of conflict of interest covers any situation where the staff members of the Contractor or of a procurement service provider, acting on behalf of the Contractor, who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

In the event of conflict of interest, the Contractor shall immediately take all necessary steps to resolve it. The Contractors shall ensure that their staff, participating in procurement procedures,



is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligation under service contract, the Contractors shall replace, immediately and without compensation from the Managing Authority of the Programme (hereinafter – MA), any member of its staff, participating in procurement procedures, in such a situation.

4. Service provider which can submit a tender shall mean any economic entity that may be either a natural person, or a private legal person, or a public legal person, other organisation and division thereof or any group of such persons (including consortia), which is able to offer or is offering services.
5. When communicating with the suppliers, Contractors must ensure integrity of information and confidentiality of tenders. If Contractors are clarifying procurement documentation, the same information must be communicated to all (potential) suppliers via appropriate channels.

§ 2 RULES ON NATIONALITY AND ORIGIN

The rules of origin and nationality stipulated in art. 8 and art. 9 of the Regulation 236/2014 shall be followed in case of contracted services.

§ 3 GROUNDS FOR EXCLUSION FROM PARTICIPATION IN PROCUREMENT PROCEDURES

1. Candidates or tenderers shall be excluded from participation in procurement procedures if:
 - a) 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;
 - b) 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 of a state which has the force of res judicata;
 - c) they have been guilty of grave professional misconduct proven by any means which the Contractor can justify including by decisions of the EIB and international organisations;
 - d) 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 Contractor or those of the country where the contract is to be performed;
 - e) they or persons having power 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 illegal activity is detrimental to the Union's financial interests;
 - f) they are subject to an administrative penalty¹.

¹ The contracting authority may impose administrative and/or financial penalties on the following: (a) contractors, candidates or tenderers in the cases referred to in point b) of § 5; (b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget. In all cases, however, the contracting authority shall first give the person



2. Subparagraphs a) to d) of the paragraph shall not apply in the case of the purchase of supplies on particularly advantageous terms from a supplier which is definitively winding up its business activities or from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.
3. Subparagraphs b) and e) of the paragraph shall not apply where the candidates or tenderers can demonstrate that adequate measures have been adopted against the persons having power of representation, decision making or control over them, who are subject to a judgement as referred to in subparagraphs b) or e) of the paragraph.

§ 4 GROUNDS FOR EXCLUSION FROM AWARD OF CONTRACTS

A contract may not be awarded to candidates or tenderers who, during the procurement procedure for that contract:

- a) are subject to a conflict of interests;
- b) are guilty of misrepresenting the information required by the Contractor as a condition of participation in the procurement procedure or fail to supply that information;
- c) find themselves in one of the situations of exclusion, referred to § 3, for the procurement procedure.

§ 5 REQUIREMENTS FOR PROCUREMENT DOCUMENTATION

1. Procurement documents shall be clear, precise and without ambiguities.
2. In the procurement documentation at least the following information shall be provided:
 - a) qualification criteria, tender evaluation criteria and contract award criteria;
 - b) list of documents which must be provided to prove the tender's compliance with the selection criteria;
 - c) deadlines for submission of tenders;
 - d) technical specification of the procurement object;
 - e) requirement that no alternative tenders can be submitted;
 - f) main conditions of the contract.
3. Technical specification of the procurement object must ensure fair competition and be a non-discriminatory with respect to all suppliers. Requirements in the technical documentation may not refer to a specific model or source, or a particular process, or to trade mark, patent, type or production with the effect of favouring or eliminating certain undertakings or certain products from participation in procurement procedure.
4. The contract must specify: rights and obligations of the parties; the purchased services and their exact quantities (where applicable); the price or pricing rules; settlement and payment procedures; deadlines for discharging obligations; security for discharging obligations; the procedure for settling disputes; the procedure for terminating the contract; the contract period;



possibility of changes of the contract and its procedure.

5. A proper deadline shall be set for tender submission.
6. Visibility requirements, set by the Programme *Visibility Guidelines* shall be followed.
7. The procurement documents may be drafted in national language or in English.

§ 6 EVALUATION OF TENDERS

1. Qualification criteria:

- a) The Committee/the employee assigned to carry the procurement of the Contractor's organisation is evaluating qualification of tenderers in accordance with the criteria indicated in the procurement documentation, e.g.: whether there are no grounds for exclusion from participation in procurement procedures and award of contracts as it is indicated in § 3 and § 4; whether the supplier is a registered legal entity or individual entrepreneur; whether it has capacity to implement the contract, etc. If the tenderer does not submit some document(s) for the proof of compliance with the qualification criteria, the document(s) should be repeatedly requested by the Contractor setting the deadline for submission.
- b) If the tender does not meet any of the requirement of qualification criteria, it must be rejected.
- c) Evaluation of qualification must be in accordance with the requirements written in the procurement documentation. No new criteria can be raised after submission of the proposals.
- d) No scoring is allowed in this stage of evaluation of tenders. Qualification criteria shall be checked on "failed/passed" basis.
- e) If only one tender is submitted or passed the qualification evaluation stage, it shall be assessed further.

2. Tender evaluation criteria:

- a) The Committee/the employee assigned to carry the procurement of the Contractor's organisation is evaluating:
 - correspondence to the requirements of the submission of tender (e.g. whether it is signed; whether all parts of the tender are provided, etc.); and
 - correspondence to the technical specification: whether the tender corresponds to the technical specification.
- b) Contractors may request the tenderers to clarify their tenders but they cannot ask, offer or let to change the substance of the tender: to change the price or to make other changes that would modify the tender from non-corresponding to the requirements of procurement documents to corresponding to the requirements of procurement documents. If there are arithmetical mistakes in a tender, Contractors must ask to correct it.
- c) If the tender does not meet any of the requirement of tender evaluation criteria, it must be rejected.
- d) Please note that evaluation of tenders must be in accordance with the requirements written in the procurement documentation. No new requirement can be raised after submission of



the tenders.

- e) No scoring is allowed in this stage of evaluation of tenders. Tender evaluation criteria shall be checked on “failed/passed” basis.

3. Contracts award criteria:

- a) Contractors shall base the award of contracts on the most economically advantageous tender or on the smallest price tender, depending on the criteria set in the procurement documentation.
- b) The most economically advantageous tender from the point of view of Contractor shall be identified on the basis of the price or the best price-quality ratio, which shall be assessed according to the set criteria, including qualitative criteria, environmental and/or social aspects, linked to the subject-matter of the contract in question. Such criteria may comprise, for instance:
 - quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
 - organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
 - delivery conditions such as delivery date, delivery process and delivery period or period of completion.

Scores must be given to the tenders. Clear and transparent methodology of scoring must be indicated in the procurement documentation. The contract is awarded to a supplier whose tender has received the highest score.

- c) If the contract award criteria indicated in the procurement documentation is the smallest price – then the contract is awarded to the tenderer which offers the smallest price.
- d) No preferential discounts for suppliers or goods of certain nationality/origin are allowed when evaluating tenders.
- e) Despite the chosen contract award criteria: most economically advantageous or the smallest price, tenders must be evaluated in accordance with the points 1 and 2 of the paragraph, i.e. the contract must be awarded to a supplier which meets the qualification and tender evaluation criteria indicated in the procurement documentation.

§ 7 REQUIREMENTS FOR CONCLUSION

AND IMPLEMENTATION OF THE CONTRACT

1. When awarding the contract, the price set in the successful tender/ the final negotiations price recorded in the negotiations minutes or the final tender submitted after the negotiations as well as the contract terms and conditions specified in the procurement documents and in the tender may not be altered.
2. No modifications to the contracts may be made without a new procurement procedure. Additional services, occurred to be necessary during the project implementation, may be conducted basing on the procedures foreseen by the § 12.



§ 8 IRREGULARITIES IN PROCUREMENT PROCEDURES

1. In case of breaching the regulations or principles on the award of contracts, the relevant expenditure related to the contract shall be deemed, in whole or in part, ineligible (applies to all Contractors).
2. Determining the amount of ineligible expenditure takes place pursuant to *the Guidelines on Financial Corrections in the Cross-Border Cooperation Programme Poland - Belarus - Ukraine 2014-2020 (Annex 1 to the Programme Guidelines on expenditure verification)*, in the version applicable in the day of finding the irregularities.

§ 9 VALUE AND PROCEDURES OF THE SERVICES PROCUREMENT

| Threshold | <2 500 € | 2 500 € < 20 000 € | ≥ 20 000 € |
|---------------------|--------------|--------------------|----------------------------------|
| Service procurement | Direct award | Single tender | Competitive negotiated procedure |

Table 1. Thresholds and types of procurement²

1. Before the selection of the procedure the Contractor should calculate the estimated costs of the service contract basing on the tasks received from the JTS/MA, available open information about market prices and similar services purchased earlier. Value of the procurement should be counted without value added tax.
2. In the case if the procurement is organised in the national currency other than euro, InforEuro (<http://ec.europa.eu/budget/inforeuro/>) exchange rate of the month of the launch of the tender should be used in order to choose the relevant procurement procedure.
3. It is not allowed to split the procurements into separate procurement procedures artificially in order to avoid the binding thresholds. Similar types of services should be joined and tendered under one procedure.
4. In duly justified cases the splitting will not be regarded artificial due to the timing reason. That means that when services are required at different stages of the project the contract could be split. In such situation the threshold for each the procurement may be calculated separately.
5. The procurement could be split by lots, allowing different companies bidding and winning in different lots. In this case the total value of such procurement is counted as the sum of all lots³.
6. Service contracts with a value of EUR 20 000 or more shall be awarded by means of a competitive negotiated procedure described in § 10.
7. For services of a value of less than EUR 20 000 the Contractor may place orders on the basis of a

² More strict procedure can be applied in all cases despite the threshold, e.g., competitive negotiated procedure without publication instead of single tender for the contract with a value of EUR 6.000

³ Note: If procurement has become unsuccessful for some lot(s), a new procurement procedure(s) should be organized for it (them). Meanwhile contract(s) should be signed for the successful lot(s). At the same time the threshold shall be calculated basing on the initial procurement (i.e. including the value of successful lots).



single tender described in § 11.

8. For services of a value of less than EUR 2 500 the Contractor may place orders on the basis of a direct award described in § 13.

§ 10 COMPETITIVE NEGOTIATED PROCEDURE

1. Service contracts with a value of EUR 20 000 or more shall be awarded by means of a competitive negotiated procedure published on the Contractors' web-site (if available), Programme web-site and Facebook page.
2. In addition, the Contractor should directly invite at least 3 potential subcontractors, seeking for JTS approval of the list of potential subcontractors which should be invited. The JTS has the right to increase the number of entities to be informed or to invite potential subcontractors directly.
3. The minimum time limit for the receipt of tenders shall be at least 14 calendar days from the date on which the contract notice was sent. Where a state of urgency, duly substantiated by the Contractor, renders impracticable this time limit, it may be shortened to 7 calendar days from the date on which the contract notice was sent.
4. All tender offers should be sent within the established deadline only in e-versions (zipped and coded files) to the e-mail procurements@pbu2020.eu managed by the JTS (details shall be provided in the procurement notice). The JTS sends to the Contractor only the offers that fulfilled the administrative criteria to participate in the tender (received in the deadline, coded, etc.).
5. For contracts with a value of EUR 20 000 or more, the following rules shall apply in addition:
 - a) an Evaluation Committee (hereinafter – the Committee) shall be set up to evaluate applications and/or tenders on the basis of the exclusion, selection and award criteria presented by the Contractor in advance in the tender documents. The Committee must have an odd number of members (at least three) with all the technical and administrative capacities necessary to give an informed opinion on the tenders/applications. Decisions of the Committee shall be recorded in the Minutes. The Minutes shall specify reasons and provide explanations of the Committee's decision. The Minutes shall be signed by all the members present at the Committee's meeting. The Minutes shall be available to all bidders, who took part in the procedure;
 - b) sufficient transparency, fair competition and adequate ex-ante publicity must be ensured;
 - c) equal treatment, proportionality and non-discrimination shall be ensured. Contractors shall treat suppliers equally, without discrimination and shall act in a transparent and proportionate manner within the whole period of the implementation of procurement procedure;
 - d) tender documents must be drafted according to the best international practice;
 - e) deadlines for submitting applications or tenders must be long enough to give interested parties a reasonable period to prepare their tenders;
 - f) candidates or tenderers shall be excluded from participating in a procurement procedure if they fall within one of the situations described in § 3. Candidates or tenderers must certify that they are not in one of these situations. In addition, contracts may not be awarded to candidates or tenderers which during the procurement procedure fall within one of the situations referred to in § 4;



- g) procurement procedures set out in Articles 53 to 56 of the Regulation (EU, Euratom) No 897/2014 shall be followed (see § 9).
6. The Lviv Branch Office is strongly encouraged to use Prozorro or similar electronic bidding system for service contracts with a value of EUR 20 000 or more. If such an e-system is used, the provisions of p. 4 above do not apply to the procurement.

§ 11 SINGLE TENDER

1. The Contractor consults 3 candidates seeking for JTS approval of the list of potential subcontractors which should be invited. The JTS has the right to increase the number of entities to be informed or to invite potential subcontractors directly.
2. The requests for the offer and responds of candidates shall be made in written (e-mails, paper offer, print out from the web-pages).
3. The Contractor must conclude the written contract and fill in the procurement note in accordance with Annex 1 of these *General Rules*.
4. The Contractor may decide to use negotiated procedure on the basis of a single tender in the cases referred to in § 12.
5. When the contract value is less than EUR 20 000 evaluation of applications and/or tenders may be performed by the employee assigned to carry the procurement of the Contractor's organisation. Grounds of the selection of the winner in this case have to be indicated in the procurement note drafted in accordance with Annex 1.

§ 12 USE OF THE NEGOTIATED PROCEDURE WITH A SINGLE TENDER, PROCUREMENT OF ADDITIONAL SERVICES

1. The contracts may be awarded by negotiated procedure with a single tender consulting one offer in the following cases:
 - a) where, for reasons of extreme urgency⁴ brought about by events which the Contractors could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in above § 10 cannot be kept;
 - b) where the tender procedure has been unsuccessful twice, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the Contractor may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered;
 - c) where the services are entrusted to public-sector bodies or to non-profit institutions or

⁴ Operations carried out in crisis situations shall be considered to satisfy the test of extreme urgency. Crisis situations shall be understood as situations of immediate or imminent danger threatening to escalate into armed conflict or to destabilise the country as well as situations caused by natural disasters, manmade crisis such as wars and other conflicts or extraordinary circumstances having comparable effects related inter alia to climate change, environmental degradation, privation of access to energy and natural resources or extreme poverty. The authorising officer by European Union delegation, where appropriate in cooperation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.



associations and relate to activities of an institutional nature or designed to provide assistance to people in the social field⁵;

- d) where the contract concerned follows a contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates, in which case, all successful candidates shall be invited to participate in the negotiations;
 - e) where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider;
 - f) for contracts declared to be secret, or for contracts which performance must be accompanied by special security measures or when the protection of the essential interests of the Union or the Contractor country so requires;
 - g) where a new contract has to be concluded after early termination of an existing contract;
 - h) additional services – in line with requirements of point 2.
2. The contractor for the already started services may be awarded the contract for additional services, if:
- a) additional services not covered by the principal contract but which, as a result of unforeseen circumstances, have become necessary for the performance of the contract, provided that the additional service cannot be technically and economically separated from the principal contract without serious inconvenience for the contracting authority and the aggregate amount of additional services does not exceed 50 % of the value of the principal contract;
 - b) additional services consisting in the repetition of similar services entrusted to the contractor providing services under a first contract, provided that:
 - a contract notice was published for the first service and the possibility of using the negotiated procedure for new services for the project and the estimated cost were clearly indicated in the contract notice published for the first service;
 - the extension of the contract is for a value and duration not exceeding the value and the duration of the initial contract.

§ 13 DIRECT AWARD

1. The Contractor consults 3 candidates or more of its choice and negotiates the terms of the contract with it verbally: by phone, e-mail, via internet, etc.
2. Despite the fact that no written procurement documents must be prepared, the Contractor must fill in the procurement note in accordance with Annex 1 of *General Rules*.

⁵ Services directly linked to the statutory mission of the public sector bodies.



PROCUREMENT NOTE

_____ 20__.
(day) (month) (year)

Candidates consulted:

| |
|--|
| Title of the procurement, short description of the procurement object: |
| Contract award criteria (the smallest price or the most economically advantageous tender): |
| Date of the invitation sent to suppliers with a request to participate in procurement: |
| Type of procurement procedure: |
| Justification for selected procedure (reference to point of the Guide): |

| No. | Name of candidate | Contact person from candidate's organisations (position, name, surname, phone No.) | Date of tender submission | Price of the tender / main characteristics |
|-----|-------------------|--|---------------------------|--|
| | | | | |
| | | | | |

| | |
|---|--|
| Candidate announced as a winner and reasons for such a decision | |
|---|--|

Procurement procedure performed and procurement note filled in by:

.....

(position) (name, surname) (signature, date)



*Annex 2. Declaration of impartiality
and confidentiality*

DECLARATION OF IMPARTIALITY AND CONFIDENTIALITY

[name of the procurement concerned]

I, the undersigned, hereby declare that I agree to participate in the evaluation of the above-mentioned procurement procedure. By making this declaration, I declare that I am aware of the following:

I hereby declare that, to my knowledge, I have no conflict of interest with the operators who have procurement procedure for this contract, including persons or members of a consortium, or the subcontractors proposed.

I confirm that if I discover during the evaluation that such a conflict exists or might exist, I shall declare it immediately to the chairperson of the evaluation committee. In the case that such conflict is confirmed by the chairperson, I agree to cease from participating in the evaluation committee.

I confirm that I have familiarised myself with the information available to date concerning this procurement procedure, including the provisions of the practical guide relating to the evaluation process.

I shall execute my responsibilities impartially and objectively. I further declare that, to the best of my knowledge, I am not in a situation that could cast doubt on my ability to evaluate the tender(s).

I shall maintain the strictest confidentiality in respect of all information acquired as a result of my involvement in the evaluation process of the above-mentioned call, as well as any information relating specifically to the object of this call.

I undertake neither to disclose such information to any person who is not already authorized to have access to such information, nor to discuss it with any person in any public place or where others could overhear it.

I undertake to use this information only in the context, and for the purposes of, the evaluation of this specific call.

I furthermore undertake to comply with data protection principles⁶ in case personal data are disclosed or become available in any other way in the context of the evaluation procedure.

After the conclusion of the evaluation I undertake not to retain copies of any written information, as well as any templates or models used in the course of my duties.

I understand that any unauthorized disclosure by me will result in the termination of my role as a member of this evaluation committee and may also render me liable to legal action.

I undertake to maintain this duty of confidentiality after the conclusion of my term as a member of this evaluation committee.

| Name | Function | Signature | Date and place |
|------|----------|-----------|----------------|
| | | | |

⁶ As set out in Article 4 of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.