



Fact Sheet 11 - Tender procedures

	Valid from	Valid to	Main changes
Version 2	27.04.15	23.05.18	Specified that the €5,000 threshold for the 3-offer rule is excluding VAT. Clarified the situation regarding use of existing purchasing agreements.
Version 3	24.05.18		Three offer rules - modifications about beneficiaries asking for offers instead of collecting them.

Core message: See also Fact Sheet 05 – Contracting External Experts and Services. It is essential that *all contracts* for any amount over €5,000 (excluding VAT) are offered to a range of bidders and that advertisement and selection procedures are documented. Failure to do so may mean that the beneficiary has to repay the whole value of the contract. This fact sheet also sets out the very limited cases where alternative procedures may be used including the use of Framework Contracts.

Fact Sheet 11

Background

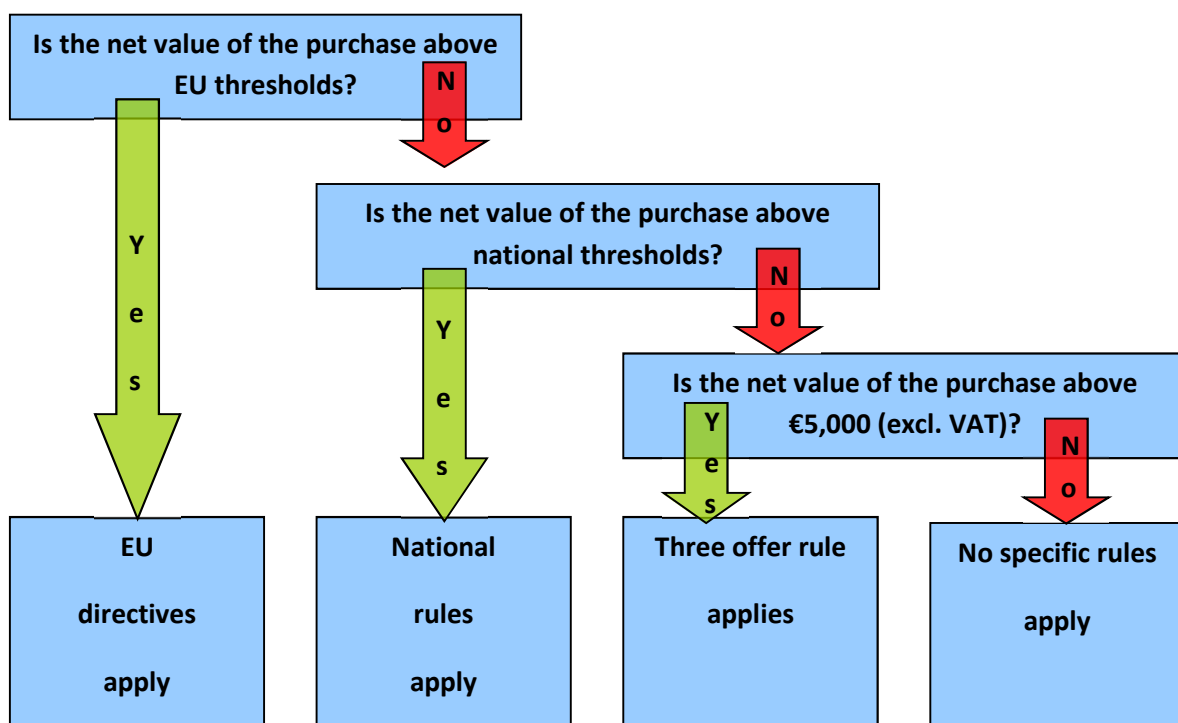
All expenditure on externally provided products and services must be subject to standard procedures that ensure the best possible value for money. Only very small amounts (under €5,000) are exempted – though the requirements for small amounts are much lighter. These requirements apply to all beneficiaries of the North Sea Region programme (public and private) unless they are participating in the programme as part of an approved State Aid scheme. Failure to use and document these procedures may well result in the whole contract value being found ineligible.

Which rules apply to which amounts?

There are four different situations to consider. The first step when making any external purchase is to decide which one applies:



- **Large value contracts over European Union threshold value.** Large contracts must be advertised at European level and are subject to rigidly defined procedures. It is not possible to define one value at which these rules enter into force because this depends on the types of contract. See Directive 2014/24/EU Article 4 and Directive 2014/25/EU Article 15 for details.
- **Contracts which are substantial but below the European threshold amount** are generally subject to national and/or organisational rules. If you grant a contract you will be expected to know these rules and to be able to show them to controllers and auditors. These rules may go down to quite low amounts.
- **Contracts which are below national/organisational limits** but above €5,000 are subject to programme rules requiring that at least three offers are collected (see explanation below). Even if the rules of the beneficiary country/organisation do not require tendering for these amounts, programmes rules take precedent and mean that you *must always get three offers for amounts over €5,000 (excluding VAT)* unless there is an existing purchasing agreement in place which complies with national and organisational rules. For example, if an organisation normally starts tendering for amounts over €8,500 according to national rules, for contracts related to the project they will have to collect 3 offers for amounts between €5,000 and €8,499, and follow national rules for amounts of €8,500 and above.
- **Contracts and purchases below €5,000 (excluding VAT)** are not subject to any specific procedure but must of course still comply with value for money and sound financial management requirements





Main principles always apply: transparency, equal treatment and non-discrimination

It is possible to use stricter rules than those required by legislation but not to do less than is required. In particular, statements from beneficiaries that it was not possible to find more than one bidder will **never** be accepted unless a project can document that it made extensive efforts to find alternative suppliers and offered the contract on the open market.

Documenting a procurement process (audit trail)

Precise requirements for each type of procedure will be set out in the rules for different sizes of contract and must be respected in full. In general, however, the following aspects should be reflected in all requests for an offer (though of course in a brief form for small amounts):

1) **Terms of reference** – All information about the subject and the tendering process is included in this document. The terms of reference, based on the required procurement procedure, should include at least the following sections:

- a) *General provisions* – A brief description of the general framework
- b) *Subject of the procurement* – A detailed description of works, services and goods required and stating the complete list of requirements for the product/service. A separate technical specification may be included or attached as an annex to the Terms of Reference
- c) *Timeframe* – The timeline for delivery of the goods / providing the service
- d) *Price and/or other limitations* – The price limit and any specific limitations related to the contract
- e) *Eligibility criteria* – Specific requirements that companies have to fulfil in order to be eligible to submit an offer. The criteria have to be objective, non-discriminating and relevant to the subject of the procurement procedure
- f) *Assessment criteria* – Criteria for assessing the offers submitted. The criteria have to be objective, non-discriminating and relevant to the subject of the procurement procedure
- g) *Contracting and payment* – Details on contracting procedures and payment
- h) *Information/formal requirements* – Conditions of the procurement procedure (e.g. details on how to submit offers, formal requirements about how offers should be presented)

2) **Publication of the notice** – Different rules apply depending on the procurement procedure, contract size and national requirements. As a minimum, publication should be in a format and for a sufficient length of time that effectively allows potential bidders to take action.



3) **Registration of offers** – All offers received must be carefully documented to ensure transparency and equal treatment of all bidders.

4) **Assessment and decision-making** – The offers submitted have to be assessed according to the same criteria which were set out in the terms of reference. No additional criteria may be added to the assessment process. The assessment of each offer has to be well documented.

5) **Contracting** – A signed contract setting out all terms for the assignment must be available.

These requirements represent the minimum standard for correct procurement procedures and should be followed along with any additional requirements specified in European Union or national legislation.

Principles of sustainability

The programme encourages sustainability and supports the inclusion of additional 'green' criteria in tendering whenever legally possible.

“Three offer” rule

For purchases of goods or services with a value below the European Union and national thresholds, the programme requires that all beneficiaries use the “three offers” procedure. This procedure has been introduced to ensure transparent selection procedures, equal treatment and cost effectiveness for goods and services.

According to this rule, all beneficiaries must ask for at least three offers for all goods and services costing more than **€ 5,000 (excl. VAT)** but below the national, organisational and EU thresholds. In such cases, the beneficiary must keep the correspondence requesting the offers and written evidence of the bids received. It is acceptable if less than 3 offers are received provided that there is evidence that 3 suppliers were offered the contract on equal terms.

If it is not possible to collect three offers, the activities undertaken to try and obtain the offers still have to be documented. This will ensure that prices for similar goods, services or works have been compared and the selection procedure is transparent.

Please note that if stricter national or institutional rules exist these should be observed to avoid contradictions and possible rejection of costs on national/institutional level. National rules will, if they are stricter, over-rule the programme rules.



Consequences in case of errors or failure to use procurement

Failure to comply with procurement rules or the use of inappropriate / incomplete procedures according to national or European Union rules (including the “three offer” rule set out above) will have financial consequences. Based on the type and importance of the failure, a financial correction will be determined according to the guidelines developed by the European Commission (Decision No C (2013) 952710). In the worst cases, the full contract amount will be ineligible.

Other forms of value for money procedure

There are two possible alternatives to regular procurement procedures. These are ‘In-house’ contracting and use of framework contracts. Each beneficiary must consult the applicable national / European Union regulations to see whether they can use such exceptions in different situations. Minimum requirements and recommendations related to procedures are outlined here.

1) **“In-house” contracting** refers to situations where a public authority contracts another organization, which is fully owned and/or controlled by the contractor (e.g. inter-departmental arrangements), to provide certain goods, services or works. In such cases the contractor might decide not to follow public procurement procedures provided that:

- a) There is no private ownership involved
- b) The subsidiary organisation itself carries out 90% or more of activities for the contracting authority
- c) The parent organisation exercises control over the subsidiary in a similar manner as to its own departments.

To ensure transparency and efficiency, in-house sub-contractors will still have to follow public procurement rules when procuring goods, services and works from any third parties.

Framework contracts

Framework contracts are umbrella agreements which set out all or some of the terms on which the parties of the agreement will enter into contracts in the future. Where a project beneficiary organisation has **already procured** a provider for certain types of goods and services **according to the relevant public procurement rules**, any goods and services provided for the project and in line with the framework contract are eligible. If required, the beneficiary may need to provide evidence of the original procurement.



References

- Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts¹
- Directive 2014/24/EU of 26 February 2014 on public procurement and repealing Directive 2004/18/EC
- Directive 2014/25/EU of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC
- Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 (the CPR Regulation), Article 67.4

¹ Public procurement reform. In December 2011 the Commission proposed the revision of Directives 2004/17/EC (procurement in the water, energy, transport and postal services sectors) and 2004/18/EC (public works, supply and service contracts), as well as the adoption of a directive on concession contracts. The directives were voted by the European Parliament on 15 January 2014 and adopted by the Council on 11 February 2014. The Member States have until April 2016 to transpose the new rules into their national law (except with regard to e-procurement, where the deadline is September 2018).
