**Romanian Ministry of Development, Public Works and** **Administration**

**Managing Authority**

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| **INTERREG VI-B NEXT Black Sea Basin Programme**  **GUIDELINES FOR GRANT APPLICANTS Reference: First Call for Proposals** |

**Annex …..**

**PUBLIC PROCUREMENT OVERVIEW**

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1. **INTRODUCTION**

This document is meant as a general overview of the legal provisions for public procurement to be followed by the project beneficiaries under Interreg VI-B NEXT Black Sea Basin Programme.

The beneficiaries should thoroughly check the legal provisions **before** carrying out procurement procedures, in order to avoid errors and ineligible expenditure.

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| **TAKE NOTE**  This document is not a comprehensive presentation of the public procurement rules. |

1. **LEGAL FRAMEWORK**

The public procurement rules are included in the following legal acts:

**NATIONAL LAW**

Contracting authorities/ entities in EU Member States

**or**

Public authorities in partner countries with co-financing transferred to the managing authority

**INTERREG REGULATION**

**NDICI REGULATION**

**and**

**and**

**NATIONAL LAW + FINANCING AGREEMENT**

**or**

**FINANCIAL REGULATION + FINANCING AGREEMENT (where applicable)**

Other beneficiaries

By country and type of beneficiary, the procurement rules may be summarised as follows:

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| **Country** | **Contracting authorities/entities** | **Other entities** |
| **Bulgaria** | National law | *As regards the beneficiaries from Bulgaria, private beneficiaries fall under the category of “contracting entities” and comply with the rules for procurement procedures stipulated in the national legislation.*  *[To be confirmed by the National Authority in Bulgaria]* |
| **Greece** | National law | *As regards the beneficiaries from Greece, [to be filled in according to the point of view of the National Authority in Greece]* |
| **Romania** | National law | Financial Regulation |
| **Armenia** | Financial Regulation | Financial Regulation |
| **Georgia** | Financial Regulation | Financial Regulation |
| **Republic of Moldova** | Financial Regulation | Financial Regulation |
| **Turkey** | Financial Regulation | Financial Regulation |
| **Ukraine** | Financial Regulation | Financial Regulation |

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| **Q:** Is it possible for the beneficiaries required to apply the Financial Regulation to apply the national law for public procurement?  **A:** This would be possible only **on the condition** **that the provisions of the Financial Regulation are fully respected**.  Please note that the beneficiary is the sole responsible for checking that there are no discrepancies whatsoever between the provisions of the national law and the provisions of the Financial Regulation. In case of discrepancies, the Financial Regulation prevails.  **Q:** Is it possible for the beneficiaries required to apply the Financial Regulation to use the templates of the Practical Guide for contract procedures for European Union external actions (PRAG)?  **A:** This would be possible only **on the condition that the provisions of the Financial Regulation are fully respected**.  Please note that the beneficiary is the sole responsible for checking that there are no discrepancies whatsoever between the PRAG templates and the provisions of the Financial Regulation. In case of discrepancies, the Financial Regulation prevails. |

1. **QUICK LEGAL REFERENCES**

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| --- | --- |
| Topic | Interreg Regulation[[1]](#footnote-1) |
| Applicable rules | Article 58 |

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| Topic | NDICI Regulation[[2]](#footnote-2) |
| Rules of nationality and origin | Article 28 |

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| **TAKE NOTE**  According to NDICI Regulation, there is a **rule on nationality**, which needs to be followed by all types of beneficiaries, irrespective whether they are contracting authority/entity in EU Member State or not. There is **no rule on origin**.  The rule on nationality refers to the economic operators participating in the procurement procedures. These economic operators, in order to be accepted in the procedure, need to be established in one of the countries referred to in the NDICI Regulation.  The rule on nationality does not refer to the natural persons employed or otherwise legally contracted by an eligible contractor or, where applicable, subcontractor.  The rule of origin refers to the supplies and materials. No rule of origin means that the supplies and materials may originate from any country. |

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| Topic | Financial Regulation[[3]](#footnote-3) |
| Key principles | Article 160 |
| Mixed contracts and common procurement vocabulary | Article 162 |
| Rules of nationality and origin | Article 179 |
| Publicity | Articles 163 and 178 and points 2.5, 5, 37-38 of Annex I |
| Overview of types of procedure | Article 164 and point 38 of Annex I |
| Thresholds | Point 38 of Annex I |
| Negotiated procedure | Points 11 and 39 of Annex I |
| Competitive procedure with negotiation | Article 164.4, point 12.1.b of Annex I |
| Call for expression of interest | Point 13.1-13.2 of Annex I |
| Use of electronic auctions | Point 22 of Annex I |
| Electronic catalogues | Point 27 of Annex I |
| Joint procurement | Article 165 |
| Preparation of the procedure | Article 166 |
| Procurement documents | Points 16, 17.1-17.2, 17.8, 25.1, 40 of Annex I |
| Time limits | Point 41 of Annex I |
| Exclusion and selection criteria | Articles 136 and 137, point 18 of Annex I |
| Economic and financial capacity | Point 19 of Annex I |
| Technical and professional capacity | Point 20.1-20.3 and 20.5-20.6 of Annex I |
| Award criteria | Article 167 and point 21 of Annex I |
| Evaluation committee | Article 150.2 |
| Submission, evaluation and contacts | Articles 168 and 169, Points 29.3, 11.2, 12.2-12.3 of Annex I |
| Abnormally low tenders | Point 23.1-23.2 of Annex I |
| Award decision and information to tenderers | Article 170, points 30-31 of Annex I |
| Standstill period | Article 178.1, point 35 of Annex I |
| Cancellation of procedure | Article 171 |
| Performance of contract and modification | Article 172 |
| Performance and retention guarantees | Article 173 |

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| **TAKE NOTE**  Regarding the applicable articles from the Financial Regulation:   * + Chapter 3 of Title VII (i.e. Articles 178 and 179) and Chapter 3 of Annex I (i.e. points 36 to 41) apply entirely, being dedicated to the procurement in the field of external actions;   + Chapter 1 of Title VII (i.e. Articles 160 to 173) and Chapter 1 Annex I apply with the exceptions entailed by the special provisions relating to the arrangements for awarding external contracts laid down in Chapter 3 of Annex I;   + Other articles, to which reference is made in the chapters mentioned above, apply. |

1. **KEY PRINCIPLES (according to Financial Regulation)**

There is no threshold for the principles applicable according to art. 160 of the Financial Regulation:

1. All contracts financed in whole or in part by the budget shall respect the principles of **transparency, proportionality, equal treatment and non-discrimination**.
2. All contracts shall be put out to **competition on the broadest possible basis**, except when use is made of the negotiated procedure.

**The estimated value of a contract shall not be determined with a view to circumventing the applicable rules, nor shall a contract be split up for that purpose.**

The contracting authority shall **divide a contract into lots, whenever appropriate, with due regard to broad competition**.

1. Contracting authorities **shall not use framework contracts improperly or in such a way that their purpose or effect is to prevent, restrict or distort competition**.
2. **MAIN TYPES OF PROCUREMENT PROCEDURES AND THRESHOLDS (according to Financial Regulation)**

The following table presents part of the procedures described by the Financial Regulation, which are most likely to be encountered in the field of external actions (these are not the only ones described in the Financial Regulation):

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| Type of procedure  (according to Financial Regulation) | Services | Supplies | Works |
| Open or restricted procedure | ≥ 300.000€ | ≥ 300.000€ | ≥ 5.000.000€ |
| Local open procedure | Not applicable | ≥ 100.000€  < 300.000€ | ≥ 300.000€  < 5.000.000€ |
| Simplified procedure | > 20.000€  < 300.000€ | > 20.000€  < 100.000€ | > 20.000€  < 300.000€ |
| Single tender | ≤ 20.000€ | | |
| Payment against invoice | ≤ 2.500€ | | |
| Negotiated procedure | in certain cases (no threshold) – points 11 and 39 of Annex I | | |
| Competitive procedure with negotiation | in certain cases (no threshold) – point 12 of Annex I | | |

1. REGULATION (EU) 2021/1059 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 June 2021 on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments [↑](#footnote-ref-1)
2. REGULATION (EU) 2021/947 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU and repealing Regulation (EU) 2017/1601 and Council Regulation (EC, Euratom) No 480/2009 [↑](#footnote-ref-2)
3. REGULATION (EU, Euratom) 2018/1046 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 [↑](#footnote-ref-3)