

MODULE 3 - PROCUREMENT

Real life story

The NGO “ALTERNOVI” managed a number of projects in Africa, Asia and Latin America, financed by EU funded grants. Most of these projects involved substantial spending on supplies and equipment.

The auditors engaged by the Contracting Authority noted that, for a number of the projects, many of the procurement contracts for supplies and equipment had been awarded to the same company. When they reviewed a sample of procurement contracts awarded to this particular supplier, the auditors found a number of issues, such as contracts being signed before the date set for evaluating the bids, documents missing in tender procedures, etc. These issues were reported to the Contracting Authority.

The Contracting Authority decided to investigate further, and found that a close relative of the NGO’s Director had an interest in the supplier in question.

What happened: The Contracting Authority decided to recover the funds granted for all the procurement contracts in question from the NGO. As the amount to be repaid exceeded the NGO’s financial capacity, it had to cease activity.



WHY IS PROCUREMENT A KEY FINANCIAL MANAGEMENT AREA?

Key Message:

Procurement is crucial: if it does not comply with the rules, the Contracting Authority may recover the funds.

Sound financial management is a key principle of EU financial regulations and requires EU funds to be used in line with the principles of economy, efficiency and effectiveness.

Good procurement is vital to achieving these objectives.

The European Commission pays great attention to procurement.

If you fail to comply fully with contractual obligations on procurement, the project expenditure could be ineligible and this may result in the Contracting Authority recovering the funds.

Content of this module

- ▶ Minimum contractual conditions.
- ▶ What could go wrong? Key control measures.
- ▶ Basic tips.
- ▶ Tools and templates.





MINIMUM CONTRACTUAL CONDITIONS

Key Message:


Understand the Contractual Conditions.


The rules on procurement are set out in the contract models for EU-funded external actions. They are summarised below.

- **Grant Contracts**  The procurement rules for grant contracts are laid down in a standard annex to the contract (Annex IV).
Useful interpretations of the rules have been published by the “European NGO Confederation for Relief and Development” (CONCORD). These interpretations can be found on the CONCORD website at: <http://www.concordeurope.org>
- **Service Contracts**  Service contracts do not usually involve procurement.
If they do, this will be specified in the Terms of Reference for the action and the relevant costs will be financed under the incidental expenditure heading in the budget.
In such cases, if the Contracting Authority requires the Contractor to follow specific procurement procedures they will be referred to in the Terms of Reference for the action.



MINIMUM CONTRACTUAL CONDITIONS (continued)

- Programme Estimates  The procurement rules for projects managed by means of Programme Estimates are set out in the “Practical Guide to Contract Procedures for EU External Actions” (“PRAG”) drafted by the European Commission.
The PRAG, together with model template documents, can be found at:
http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/index_en.htm
Contracts involving Programme Estimates generally require Recipients to comply with the PRAG.

- Other contract types  If the action is financed by means of some other type of contract, Recipients should refer to its provisions.
International organisations and public sector bodies will need to check the Special Conditions of the Contract to see whether they must follow the procurement procedures of the organisation/country or other procedures specified by the Contracting Authority.

WHAT COULD GO WRONG? KEY CONTROL MEASURES.

What could go wrong?

- The procurement process may not be transparent.

This issue may occur if the selection and award criteria used are not made clear, or if the grounds for the selection decision are not documented properly.



Key control measures

- Ensure that the tender/invitation documents are clear.
- Establish clear selection criteria beforehand and ensure that they are known to all stakeholders.
- Ensure the entire procurement process is clearly documented. Keep minutes of evaluation sessions, explaining selection decisions.

- The procurement process may not obey the principles of non-discrimination and equal treatment.

For example, tender announcements / tender invitations may not be properly drafted or may be dispatched without enough notice. Or the tender specifications may be so restrictive that they limit access to certain potential suppliers.



- Ensure that the bidding process is as open as possible and is accessible to all potential suppliers.
- Dispatch invitations / publish notices early enough to give interested suppliers time to respond. Ensure that invitations cover the market as widely as possible.
- Ensure the same information is given to all participants at the same time.
- Ensure that all offers are opened at the same time in a controlled environment.

- The evaluation process may not be objective or impartial.

For example, the evaluation of offers may not be made in accordance with suitable pre-determined selection and award criteria or the evaluators may not be impartial.



- Make sure that none of the evaluators has a conflict of interest.
- Ensure that the selection and award criteria are correctly applied.
- Ensure that the offers are evaluated only after the date set for their submission.



WHAT COULD GO WRONG? KEY CONTROL MEASURES (continued).

What could go wrong?	Key control measures
<ul style="list-style-type: none">• The wrong procurement procedure may be applied. For example, the procurement procedures of the Recipient or of the beneficiary country might be applied instead of the procedure laid down in the Contract.	<ul style="list-style-type: none">• Ensure that the procedure applied provides at least the same level of competition as that provided for in the Contract signed with the Contracting Authority.• Check that the procedure applied is the right one according to the monetary thresholds specified in the Contract.
<ul style="list-style-type: none">• There may be irregularities in applying the required competitive procedures. For example, procurement needs may be split into smaller amounts, resulting in the use of a negotiated procedure instead of an open tender procedure.	<ul style="list-style-type: none">• Plan procurement well in advance so as to limit the risk of irregularities.• Make sure that all goods/services of a similar nature required in the same time frame are considered together when calculating whether they exceed the monetary threshold that determines the type of procurement procedure to be used.
<ul style="list-style-type: none">• Conflicts of interest may arise.	<ul style="list-style-type: none">• Ask evaluators to sign a declaration that they have no conflict of interest.• Ensure that the tenderers are unrelated.
<ul style="list-style-type: none">• The contract may not be awarded in line with appropriate criteria.	<ul style="list-style-type: none">• Giving reasons, set out award criteria that take into consideration the type of contract and the type of item to be procured.



BASIC TIPS

Key Message:

Plan procurement well in advance!

You should allow enough time to execute the procurement process properly and in accordance with the rules.

If you do not plan procurement long enough in advance, you may be tempted to “cut corners” to make up time.

This increases the risk of irregularities.

Key Message:

The entire process should be documented.

In order to clearly document the procurement process, it is not enough to keep copies of three offers on file. Recipients should be able to show how they managed the entire process.

It is good practice to draft a document describing the steps followed, from the initial identification of suppliers through to the final contracting decision. The document does not need to be long and could take the form of a brief ‘note for the file’.

It will help to demonstrate the management of the entire process at a later date.

BASIC TIPS (continued)

Key Message:

Do not forget the rules of origin! Failure to comply with them is a frequent cause of ineligibility.

Basic principle:

Under EU rules, supplies must originate from eligible States and Territories. These are set out in the basic acts governing the financing instrument under which the action is financed.

A list of the eligible countries for each financing instrument can be found in Annex 2 to the PRAG.

What does “origin” mean?

Under the rules, goods ‘originate’ not in the country of the supplier but in the country where the goods were last produced or assembled. That is what is meant by their ‘country of origin’.

What are the rules?

For actions managed under grant contracts, the rules are explained in Annex IV to the Contract.

For actions managed by means of Programme Estimates, the rules are explained in the PRAG, under “The rule on nationality and origin” and “Exceptions to the rule on nationality and origin” (Sections 2.3.1 and 2.3.2).

Certificate of origin:

The origin of the goods must be attested to by a “certificate of origin”, i.e. an official document delivered by the relevant authorities of the country of origin of the supplies (for example, a Chamber of Commerce).

- ▶ For programme estimates, a certificate of origin is always required.
- ▶ For grant contracts, a certificate of origin is required only for equipment or vehicles with a unit cost in excess of EUR 5 000 (but please note that the rules of origin must be obeyed even for expenditure below this amount).

Without a certificate of origin, the Contracting Authority may consider the expenditure ineligible.

Before entering into a contract with a supplier, it is advisable to make it clear to him or her that an official certificate of origin will be required.

It is advisable to accept delivery from the supplier only if he or she has duly submitted an official certificate of origin.



BASIC TIPS (continued)

Key Message:

Make sure that the contract is in line with the procurement process.

All the information given in the contract with the supplier/consultant/contractor should match that given during the procurement process.

Any deviation from the procurement documents when drafting the contract (for example, stating higher quantities or higher prices) may raise doubts about the whether procedure was correctly followed.

This also means that contracts must not be signed before the procurement process is complete.

For the same reason, if you start to work with the supplier/consultant/contractor before procurement is complete the expenditure will be ineligible.

Key Message:

Make sure that the contract is signed during the correct period.

Recipients may prepare the procurement procedure as early as they wish (even before the official period for implementing the action starts). However, the contract may not be awarded outside of the official implementation period.

- ▶ For grants, the Recipient must award (sign) the procurement contracts during the implementation period stated in the special conditions of the Grant Contract.
- ▶ For actions managed under programme estimates, the procurement contracts must be awarded (signed) before the end of the operational implementation phase of the corresponding financing agreements (see the Practical Guide for Programme Estimates, under “End of the time-limit for performing contracts”).



BASIC TIPS (continued)

Key Message:

Do not let the formalities overshadow the basic substance!

Procurement rules should not be viewed as merely a set of administrative formalities. The rules are there to ensure a transparent, equal-opportunity, competitive process which offers the best value for money.

In the following examples, project staff neglected these basic objectives and concentrated only on the formalities:

Example 1

In certain regions, local suppliers might be illiterate and unable to draft written offers. Project staff might have no alternative but to conduct the local procurement process verbally.

However, an issue would arise if the project staff drafted written offers themselves, “as if” they were drafted by local suppliers, just to have formal-looking documentation for its project files.

In an audit, the “made-up” offers might be considered fraudulent because the way they were drafted actually disguises the true nature of the process.

In such a situation, the project staff should document the local suppliers’ inability to provide written offers and any negotiations held, and do so in a way that properly reflects the reality.

Example 2

If there is not much time, project staff may be tempted to split a large procurement into several requests of a low individual value so they can use a simplified procedure instead of a lengthier competitive tender procedure.

In doing so, the project staff may believe that they have complied with the formalities, because they have documentation on file showing that a simplified negotiated procedure was applied.

But by splitting the procurement, they have not complied with the fundamental principles of good, transparent procurement in reality.



BASIC TIPS (continued)

Key Message:

In case of doubt, contact the Contracting Authority.

From time to time during a procurement procedure, Recipients might encounter a specific situation not covered in the Contract.

When in doubt, Recipients should not hesitate to contact the Contracting Authority, in writing, to obtain clarification about the required procedure.

Recipients are also allowed to use more elaborate procedures, even when these are not mandatory for the Contract. Refer to the “Practical Guide to Contract Procedures for EU External Actions” (PRAG), which can be found at:

http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/index_en.htm

Model templates such as those used for declarations of impartiality, the minutes of evaluation committees, and dispatch letters can also be found in the annexes to the PRAG.

TOOLS AND TEMPLATES

The following tool can be downloaded from the EuropeAid website at:

http://ec.europa.eu/europeaid/financial_management_toolkit/

FMT - MODULE 3 - PROCUREMENT CHECKLIST

Recipients are urged to use the Procurement Checklist presented with this toolkit. The checklist has been drafted to help Recipients ensure that their procurement is transparent, impartial and non-discriminatory and offers the best value for money.