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 Serbia's perspective for sustainable growth

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REPUBLIC OF SERBIA
 MINISTRY OF EUROPEAN INTEGRATION
 MINISTRY OF FINANCE
 Department for Contracting and Financing
 of EU Funded Projects



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BASIC PRAG PRINCIPLES & REQUIREMENTS



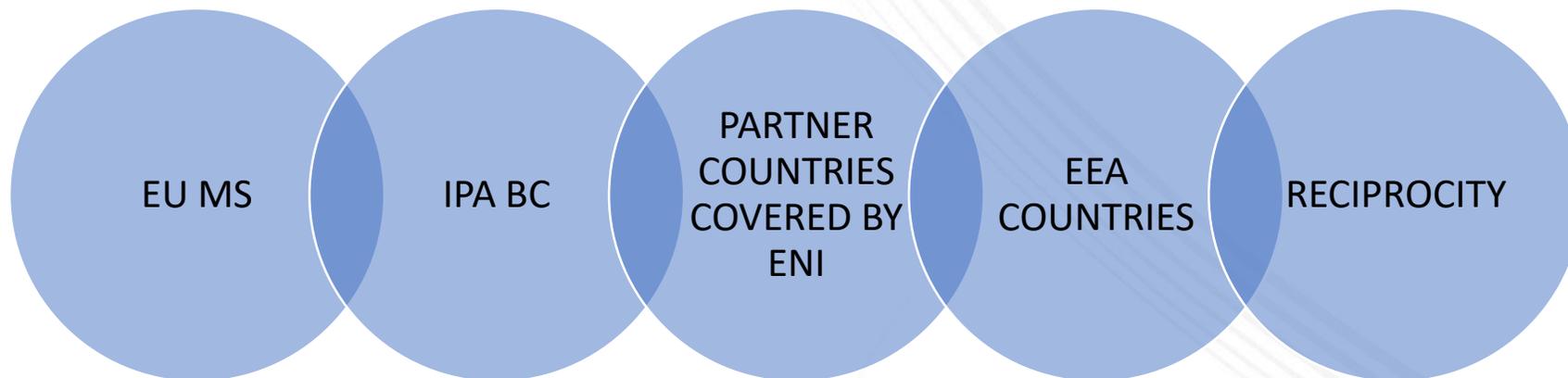
PRINCIPLES & REQUIREMENTS

Rule of origin & nationality

PRAG, section 2.3

*Eligibility criteria such as the rule of nationality and origin determine the **conditions for participating in the call for tender and the call for proposals** and are **essential requirements that each applicant, candidate and tenderer must comply with.***

Requirements depend on specific provisions of the external financing instrument under which respective project is financed (current: IPA 2, financial perspective 2013-2020)



PRINCIPLES & REQUIREMENTS

Rule of origin & nationality

...with some exceptions, e.g.

- Actions implemented through an international organization
- Indirect management through entrusted bodies such as IFIs
- Shared management
- Joint co-financing with other donors
- Goods under thresholds for simplified procedure (less than EUR 100k)

Infrastructural projects – materials, goods & components procured in the context of permanent works through IPA 2 funds all fall under corresponding eligibility requirements.

In case of works contracts involving multiple purchases, the EUR 100 000 threshold applies by the type of supply. Where the contract takes the form of a lump sum price, the breakdown of the lump sum price must be used to verify the EUR 100 000 threshold by the type of supply.

PRINCIPLES & REQUIREMENTS

Avoiding conflict of interest & distortion of competition

Case 1: beneficiary institution staff member previously involved in preparation of tender documentation/tender evaluation has started working for the contractor. How this affects on-going contract/contractor?

Case 2: Project is implemented through separate phases. Shortlisted candidate has filled a complaint on the decision to shortlist the economic operator who was contracted to provide services under the previous phase on the grounds of privileged access to information resulting in distortion of competition. Contracting authority has accepted the complaint and invited another shortlisted candidate. What is missing here?

PRAG, section 2.5.4 :

The term 'conflict of interest' is used with different meanings in different contexts. Four cases can be distinguished:

(1) conflict of interest for the contracting authority (2) grave professional misconduct (3) involvement in drafting tender specifications and distortion of competition (4) professional conflicting interests.

PRINCIPLES & REQUIREMENTS

Avoiding conflict of interest & distortion of competition

(1) conflict of interest for the contracting authority

*A conflict of interest exists **where the impartial and objective exercise of the authorising officer** (namely, any financial actor including national authorities at any level involved under direct, indirect and shared management) **is compromised** for reasons involving family, emotional life, political or national affinity, economic interest or any other **direct or indirect personal interest**.*

(2) grave professional misconduct

Grave professional misconduct refers to all wrongful conducts denoting a wrongful intent or gross negligence.

*Cases where an expert or company **attempts to obtain information leading to an unfair advantage** in subsequent or related procedures or **attempts to influence the decision making process** of the contracting authority or **enters into an agreement with other economic operators with the aim of distorting competition** are rather to be treated as **grave professional misconducts** and are a basis to **reject/exclude the economic operator concerned**.*

PRINCIPLES & REQUIREMENTS

Avoiding conflict of interest & distortion of competition

(3) involvement in drafting tender specifications and distortion of competition

*The contractor can be rejected from the subsequent procedure when the contractor, its staff or subcontractors, such as expert(s), were involved in the preparation of procurement documents and this entails a **distortion of competition which cannot be remedied otherwise**. The rejection is subject to a **contradictory procedure**, so the tenderer must be given the opportunity **to prove that its prior involvement cannot distort competition**.*

(4) professional conflicting interests.

There are specific cases where the operator has a professional conflicting interest that negatively affects its capacity to perform a contract (e.g. auditing accounts which has previously certified, evaluating contract on which he/she provided services).

PRINCIPLES & REQUIREMENTS

Transparency

CA should ensure openness and clarity on procurement policy and its delivery. This obligation consists of ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the market to be opened up to competition and impartiality of procurement procedures to be reviewed.

Case 3: Contract was awarded to the local company without tender opportunity being previously advertised. Auditors however did not consider this as the infringement of procurement rules. Which condition was fulfilled?

PRINCIPLES & REQUIREMENTS

Equal treatment & non-discrimination

All interested parties should be treated in the same way, meaning that all tenderers must be afforded equal opportunities when formulating their tenders, which therefore implies that the tenders of all competitors must be subject to the same conditions.

This principle requires that identical situations be treated in the same way or that different situations not be treated in the same way. It does not depend on nationality (as with the principle of non-discrimination) but is based on the idea of fairness to individuals. Thus treating two economic operators from the same country differently could be unequal treatment but, since they are of the same nationality, there would be no discrimination (on grounds of nationality).

Case 4: Evaluation committee observed discrepancy between information about specifications of offered item provided in the Technical offer and manufacturer's brochure in case of tender no. 2. Consequently tenderer was offered to clarify described issue. On account financial offer slightly exceeding maximum budget, evaluation committee decided not to clarify the same in case of tender no. 4. Would you consider that the principle of equal treatment has been breached?

PRINCIPLES & REQUIREMENTS

Competition

Procurement should be **carried out as a competition**, unless there are justified reasons to the contrary; this obligation also means, that the estimated value of a contract may not be established in such a way as to avoid the competitive tendering procedure or to circumvent the rules which apply to certain procurement procedures or above a certain threshold, nor may a contract be split for that purpose (practice known as salami-slicing).

Case 5: On account of assuring compatibility with existing hardware, beneficiary has described in the technical specifications a product produced by particular manufacturer. Beneficiary however was observant of not making a direct reference to a particular brand & model as well as that whenever any other brand/model is mentioned, it is accompanied by the expression “or equivalent”. So contracting authority should not worry, right?

PRINCIPLES & REQUIREMENTS

Proportionality

*This principle requires that **measures adopted do not exceed the limits** of what is **appropriate and necessary in order to attain the set objectives**. When there is a choice of several suitable measures, recourse must be made to the least onerous.*

*The principle of proportionality requires that **any measure chosen be both necessary and appropriate** in the light of the **objectives sought**. In the case of contracting authorities, for instance, it could be said that when selecting candidates and tenderers, contracting authorities should **not impose technical, professional or financial conditions which are excessive and disproportionate to the subject of the contract**.*

***Case 6:** As decided by the evaluation committee, clarifications shall equally be asked or not asked from all tenderers, irrespective if the discrepancies are between the technical offer and the brochure or the technical specifications and the technical offer. Is such approach in line with the principle of proportionality?*

PRINCIPLES & REQUIREMENTS

Sound financial management

Overarching budgetary principle which can be transposed to any procedure dealing with public funding (e.g. public procurement) incorporates 3 principles:

*Economy - requires that the **resources** used by the institution for the pursuit of its activities shall be **made available in due time, in appropriate quantity and quality and at the best price.***

*Efficiency - is concerned with the **best relationship between resources employed and results achieved.***

*Effectiveness - the principle of effectiveness is concerned **with attaining the specific objectives set and achieving the intended results.***

PRAG definition - Budget appropriations must be used in accordance with the principles of economy, efficiency and effectiveness.

PRINCIPLES & REQUIREMENTS

Sound financial management

Case 7: *Due to frequent non-availability of the Evaluation committee members, CA failed to conclude tender evaluation procedure within tender validity period (90 days). Procedure was extremely demanding, requiring almost full time presence of the evaluation committee members throughout tender validity period. Using mentioned reason as grounds for the request, CA has requested approval of the extended validity period while EUD refused to approve said request stating that mentioned grounds do not constitute an exceptional case prescribed under section 2.9.5 of PRAG. Which principle can be alternatively invoked as the grounds for extension in this particular case?*

PRINCIPLES & REQUIREMENTS

Other PRAG essentials

- *Requesting information only once*
- *Non-retroactivity*
- *Record keeping*
- *Co-financing*
- *Avoiding double funding*
- *Cross-cutting issues*
- *Availability of funds*
- *E—post publication of beneficiaries*

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All documents, information, materials and pictures from this EU PPF training are available for download in the download section of our site www.ppf.rs

Questions and assistance

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Thank you for your attention!