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REPUBLIC OF SERBIA
MINISTRY OF EUROPEAN INTEGRATION

MINISTRY OF FINANCE
Department for Contracting and Financing
of EU Funded Projects

This Project is funded
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Supply contracts

From project idea to implementation – Managing supply contracts

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MANAGING SUPPLY CONTRACTS

Know your contract

- Common structure of PRAG contract:
- contract agreement
- special conditions
- general conditions (Annex I)
- technical specifications (Annex II [including clarifications before the deadline for submission of tenders and minutes from the information meeting/site visit];
- the technical offer (Annex III [including clarifications from the tenderer provided during tender evaluation]);
- the budget breakdown (Annex IV);
- specified forms and other relevant documents (Annex V)];

MANAGING SUPPLY CONTRACTS

Know your contract - continued

EIB/EBRD – contract form may vary depending on agreed procedure (PPL – it is up to contracting authority to propose adequate format either at the time of tendering or following award decision). Good practice: contract elements included/announced in tender dossier – improving legal certainty, avoiding (u)necessary negotiations after contract award decision, rapid contract commencement enabled).

PRAG contract design logic

Main body: Contract agreement + Special conditions – key elements (identification of contract parties, contract subject, title, price, contract subject specific requirements)

Annexes: General conditions + technical specifications + technical offer + financial offer + other forms

Tip – if using PRAG model, don’t meddle with the structure. References to GC and SC are already introduced in TD (e.g. Instructions to tenderers). Special and general conditions follow same numbering logic and are mutually related - SC complements/amplifies/supplements provisions of GC).

MANAGING SUPPLY CONTRACTS

Know your contract - continued

Big ten - key contractual information project manager must be acquainted with

1. At which moment is deemed that contract implementation has commenced?
2. Moment of commencement of activities leads to the next point – what is exact period/final date for contract implementation and what is very last moment until activities must commence?
3. How do we signal to the contractor to start with delivery/provision of ancillary services?
4. What exactly is to be delivered, how, what is the place of delivery, packaging requirements, moment of transfer of risk over goods (incoterms clause)?
5. Is there any strict sequence of activities to follow (NB: Programme of implementation of tasks)?
6. How do verify that goods & services have been duly delivered? Do we need external expertise (e.g. independent expert)?

MANAGING SUPPLY CONTRACTS

Know your contract - continued

7. What if things are not going in accordance with the contract? What are our responsibilities?
8. What can be modified, by whom and how it is formalised?
9. If the contractor repeatedly fails to comply with contract provision and/or administrative orders, when to pull the plug? What are the steps for contract termination?
10. How do we close the contract in case of successful or partly successful delivery and are there any contractual obligations going beyond contract implementation period?

If you have answers to all above questions, you are ready to start managing PRAG based supply contract.

MANAGING SUPPLY CONTRACTS

Managing contractors vs managing contracts

Good communication is a centerpiece of good project management.

Tip: appointed contact person is not necessary only person you need to communicate with. Analyze who is who and gather contact details. I never heard of the contract which failed due to too much meaningful communication, but many contracts collapsed due to poor communication between contracting authority, contractor, beneficiary/end recipient.

Have someone to rely on when things get tough

Having technical and legal assistance at your disposal is great advantage, especially when managing complex supply contracts. Remember - Murphy's law is at full swing when it comes to project management.

Programme of implementation of tasks

Good contractual practice embossed in PRAG - Programme setting our key contractual milestones and corresponding fulfillment deadlines. It assures mutual understanding of obligations and timeline.

MANAGING SUPPLY CONTRACTS

Calling meetings

Golden rule is to convene meetings only when manifestly important (e.g. when it is important to set things straight between contract parties and/or beneficiary/end recipient and to formalise what was agreed in the form of minutes). Bear in mind that costs of getting contractor to the meeting (transport and accommodation) are entirely born by himself/herself.

MANAGING SUPPLY CONTRACTS

Procuring ancillary services

IPA rules are more stringent than EIB/EBRD rules – e.g. spare parts and maintenance are consider being an operational costs and therefore do not represent eligible cost under IPA. It is however possible to procure availability of spare parts.

Specific ancillary services such as help-desk, technical support and updates may be procured as long as they are integrated into warranty.

PRAG makes difference between warranty (may not go beyond one year, offered by the contractor, guaranteeing that offered goods are new, unused, without any faults etc.) and the commercial warranty (warranty commonly offered by the manufacturer of goods at given market without any extra cost). Implication is that after-sales considered eligible for financing under IPA may not go beyond one year period.

MANAGING SUPPLY CONTRACTS

Acceptance procedure (provisional, partial & final acceptance)

Unlike in case of EIB/EBRD where exact acceptance procedure could be decided by the contracting authority or contractually agreed with the contractor, PRAG has strictly defined terminology and sequencing.

Provisional acceptance

Taking over of the supplies by the contracting authority when they have been delivered in accordance with the contract, have satisfactorily passed the required tests, or have been commissioned as the case may be, and a certificate of provisional acceptance has been issued or is deemed to have been issued.

Partial acceptance

In case of partial delivery, the contracting authority reserves the right to give partial provisional acceptance.

MANAGING SUPPLY CONTRACTS

Final acceptance

Certificate(s) issued by the project manager to the contractor at the end of warranty period stating that the contractor has completed its obligations.

Pre-financing and performance guarantees

- common under various contractual models (performance guarantee being more frequently requested)

Guarantee for the **repayment of pre-financing** payable under the contract, **released 30 days** at the latest after the **provisional acceptance of the goods**.

Performance guarantee

Guarantee for the **full and proper execution** of the contract, released within 60 days of the issue of the final acceptance certificate by the Contracting Authority, except for the proportion assigned to after-sales service.

MANAGING SUPPLY CONTRACTS

Breach of contract & termination

Breach of contract

Failure of any contract party to perform its obligations in accordance with the provisions of the contract.

Termination is not sole or mandatory outcome of the contract breach. Whenever possible, contracting authority should seek possibility to reach an agreement with the contractor aiming at remedying failure. Failure should be established beyond any doubt – in case of any doubt, best option is to suspend rather than initiate contract termination until facts are established. Typical mistake is to act in haste, without providing other party right to present any argumentation. Bear in mind that termination is last resort – both sides are to suffer a loss.

Guiding principle in case of suspected breach of contract by the contractor is to protect (EU) financial interest. Hence, it is important to suspend any further transfers of funds towards the contractor until issue is fully resolved. After breach is established beyond any doubt, next step is to determine extent of failure with a view of reduction or recovery of payments in proportion to failure's extent.

MANAGING SUPPLY CONTRACTS

Typical omission of contracting authorities in case of EU funded contracts – “forgetting to charge” contractor with liquated damages in case of failed/delayed delivery.

*If the contractor **fails to deliver any** or **all of the goods** or **perform the services within the period of implementation of the tasks specified in the contract**, the contracting authority shall, without formal notice and without prejudice to its other remedies under the contract, **be entitled to liquidated damages** for every day, or part thereof, which shall elapse between the end of the period of implementation of the tasks, or extended period of implementation of the tasks under article 20, and the actual date of completion. **The daily rate of liquidated damages is 5/1000 of the value of the undelivered supplies to a maximum of 15% of the total contract price.***

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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

Borislav Bogunović

Trainer, EU PPF | PPF6/EuropeAid/135637/IH/SER/RS

+381 11 4040721

info@ppf.rs

www.ppf.rs

Thank you for your attention!