

Interreg



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Meuse – Rhine (NL – BE – DE)

Introduction to Public Procurement

**provided by
Interreg Meuse-Rhine (NL-BE-DE)**

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1. Introduction

This document aims to support project partners in following the correct procedures and regulations regarding public procurement.

Please note that the Programme Interreg Meuse-Rhine (NL-BE-DE) 2021-2027 cannot under any circumstances or for any reason whatsoever be held liable for the completeness, correctness and currency of the following recommendations. The same applies to its compatibility with European Union (EU) and national law. As described in section 6, project partners are encouraged to follow the evolution of the EU/local rules by contacting their national/local authorities in charge of public procurement.

2. General Principles

Organisations receiving public funds must apply public procurement rules when choosing and contracting providers of goods, services and works. They must ensure **transparency, non-discrimination, and equal treatment** of the potential providers.

The procurement procedure depends on the estimated contract value and the general needs of the partner.

The European Commission (EC) defines in Article 4 of Directive 2014/24/EU and Article 15 of Directive 2014/25/EU the specific value thresholds for EU wide tenders.

Partners must apply a corresponding national (regional, local or institutional) procedure or Programme rules for contracts with an estimated value below these thresholds.

3. Private Partners

Are all beneficiaries subject to public procurement rules?

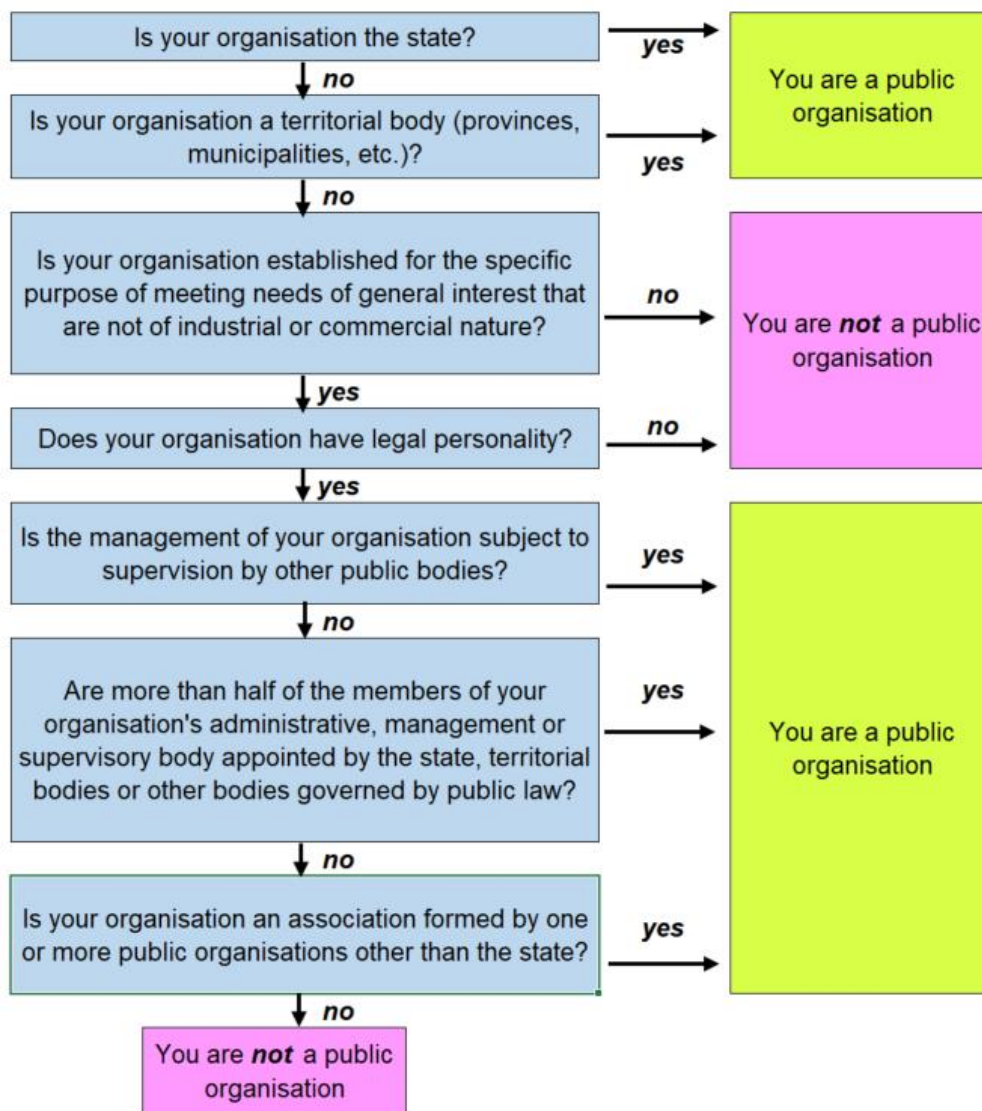
According to the EC Directives, private bodies are only required to apply public procurement rules if they qualify as '*bodies governed by public law*'.

a. Bodies governed by public law

A 'body governed by public law' means any organisation/body:

1. established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character,
2. and having legal personality,
3. and either
 - a. financed, for the most part, by regional or local authorities, or other bodies governed by public law.
 - b. or subject to management supervision by those bodies.
 - c. or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

You can also use the scheme below to quickly check how you should consider your legal entity and whether you need to apply public procurement rules:



➔ In case your status evolves during the project, **you must inform** the Programme via **your Project Manager** in the Joint Secretariat and **update your declaration in JEMS** (the programme's monitoring system).

b. Good practice

If your organisation or your partners are neither a public organisation nor a body governed by public law, public procurement rules may not apply.

Does this mean that private organisations do not have to follow any rules when making purchases?

- ➔ NO, the principles of sound financial management and value for money apply to every organisation. For example, it is still good practice to ask for several offers.
- ➔ The Programme recommends applying the same general principles when choosing and contracting providers (see chapter 2).

4. Tender Procedures in short

Below is a simplified timeline to help you with preparing your tender procedures :

Preparation & Planning

- Detect & assess future needs
- Analyse the market and define the target/value
- Choose and plan the procedure

Publication & Transparency

- Draft procurement documents
- Define specifications and standards
- Define the criteria and set the time limits
- Advertise the contract (if applicable)

Submission of Tenders / Selection of Tenderers

- Ensure a delivery of tenders according to instructions
- Set up the evaluation committee (if applicable)
- Acknowledge receipt and open tenders
- Assess and select tenders

Evaluation of Tenders & Awards

- Apply the award criteria and request clarifications
- Finalise the evaluation and decide
- Deal with contract modifications, as well as complaints
- Award the contract

Contract Implementation

- Manage the relationship with the contractor
- Terminate a contract during its term
- Close the contract

5. Recommendations

a. Definition of the need

Often, the subject matter of a contract is decided too quickly without properly defining why the contract is needed and what it is for. As a result, the works, supplies or services provided end up being partially (or totally) disconnected from the need that was supposed to be fulfilled. This results in inefficient use of public funds and poor value for money.

It should be clarified that the need is not the product or the service we want to obtain.

The need is the function which is missing to achieve an objective or carry out an activity.

For example, procurers should not start their reasoning with 'We need to buy a printer' but rather with 'We need to print'. In that case, the printing function may be achieved through options other than purchasing, for example by sharing a printer with other departments, or renting or leasing one from an in-house company. All these alternatives must be taken into account before launching the procurement procedure.

In a nutshell, the key process procurers should have in mind is:

- **Identify the need** with relevant stakeholders,
- **Choose the procedure**,
- **Write the technical specifications** if purchasing services.

When determining what to buy, estimating costs, and before developing selection and award criteria in a procurement procedure, it is helpful for public buyers to know and understand the market. Therefore, an important stage of the preparation phase is to conduct a preliminary market analysis of the needs identified. For smaller contracts, the scope of this analysis can be limited, but it is still useful in better defining the subject matter and scope of the contract.

Analysing the market allows the contracting authority to:

- **gain prior knowledge** and understanding of the potential solutions available to satisfy the needs,
- further focus and **define the subject** matter and **the budget** of the contract,
- apply the principle of sound financial management and achieve the best value for money.

It is strongly recommended that contracting authorities conduct a preliminary market analysis when planning a negotiated procedure without prior publication for a contract that can be awarded only to one particular economic operator.

b. Artificial splitting

Artificially splitting the contract value is illegal!

The contracting authority must not artificially split larger works/supplies/services into smaller units to avoid the European Union thresholds for advertising in the Official Journal of the European Union (OJEU), national thresholds or to avoid applying certain competitive procedures. For works, there must be an amalgamation of all separate contracts where there is a functional and timing relationship between them.

In general, if the contracts relate to the same subject matter, the values must be aggregated together. If the amalgamated values are above the thresholds, the contracts must be advertised in the OJEU.

For example, if a contracting authority needs to paint a building with 10 rooms, it cannot split the contract into 10 contracts or fewer (for instance 6) and award the contracts without tendering. All those services/supplies or works must be 'pooled' together to create a functional whole. Consequently, in this example the contract value must be the total value of the 10 contracts. The overall value determines whether or not a tender is required to follow [Directive 2014/24/EU](#).

c. Joint procurement

Joint procurement involves combining the procurement procedures of two or more contracting authorities. In concrete terms, only one procurement procedure is launched on behalf of all participating contracting authorities to purchase common services, goods or works. This can be done either between several contracting authorities from the same Member State, or between contracting authorities from different Member States through

cross-border procurement. Occasionally, two or more contracting authorities may agree to conduct a single joint procurement procedure. If a procurement procedure is carried out jointly in the name and on behalf of all the contracting authorities concerned, they must be **jointly responsible for fulfilling their legal obligations**.

Be extremely careful if creating a joint procurement. It often leads to many questions during the control process of your expenses. The allocation of **responsibilities** between contracting authorities from different Member States, including management of the procedure, distribution of the works, supplies or service to be procured, conclusion of contracts and the applicable national law **must be clearly specified in the procurement documents**. For example, you have to explain the responsibility of each partner during the different steps of the procedure in detail, to define the procurement thresholds/regulations to be applied, to explain the invoicing towards the several partners or even the split of VAT.

Previous experiences of the Programme have shown that small errors or mistakes in the management of a joint procurement often translate into the rejection of major costs and significant financial corrections for the many partners involved in the procedure.

We advise you to consider during the *Application* phase of your project whether the budget dedicated to the concerned action/activity could rather be fully assigned to one of the project partners instead of several partners. Thus, only one contracting authority would purchase the concerned services, goods, or works on behalf of the whole partnership according to its 'usual' procurement rules.

d. Examples of DO's & DON'Ts

DO's

- Cross-check which procurement procedure is applicable to you.
- Always apply the strictest procedure of those specified in the Programme rules, EU directives, or the national legislation.
- Translate the documents in several languages to consult companies in the cross-border region or on a wider scale.
- **Divide into lots** when possible or explain why it is not possible.
- The selection and award criteria must be stated in the procurement documents.
- **Describe** your criteria and **explain** your final selection.
- Be clear about the date and time of delivery.
- Anticipate possible risks, even for small and simple contracts (e.g. contractor being unable to deliver, or not delivering the expected quality).
- **Inform every participant of the tender** of the results.
- Submit all supporting documents in the monitoring system JEMS.
- **Archive** every step of your procurement.

DON'TS

- Artificially splitting the contract value is **illegal**.
- Never amend the award criteria during the procurement process.
- Don't treat tenderers **unequally**.
- Do not modify the contract unless strictly in line with the **rules on modifications**.

6. For more Information

a. ...on National/Local regulations

- European Commission: [Public procurement \(europa.eu\)](https://ec.europa.eu/eu-procurement/), changes every two years
- Belgium: <https://www.publicprocurement.be/>
 - Wallonia: <https://marchespublics.wallonie.be/>, attention specific rules apply for Interreg projects
 - Flanders: <https://overheid.vlaanderen.be/overheidsopdrachten-en-raamcontracten/belgische-regelgeving>
- Netherlands: <https://www.pianoo.nl/>
- Germany:
 - NRW: <https://www.wirtschaft.nrw/oeffentliches-auftragswesen-vergaberecht-nordrhein-westfalen>
 - RP: <https://mwvlw.rlp.de/themen/oeffentliche-auftraege-und-vergabe>

Your Regional Antenna can also help you with finding support on your national/local regulations.

b. ...on best practices

- European Commission: guidance for practitioners [Inforegio - Public Procurement - Guidance for practitioners \(2018\) \(europa.eu\)](https://ec.europa.eu/eu-procurement/guidance-for-practitioners-2018/)

Useful links

- European Commission: [Directive 2014/24/EU](https://ec.europa.eu/eu-procurement/directive-2014-24/)
- European Commission: [Directive 2014/25/EU](https://ec.europa.eu/eu-procurement/directive-2014-25/)
- European Commission: [simplified guidance on tender procedures](https://ec.europa.eu/eu-procurement/simplified-guidance-on-tender-procedures/)