

# Practical Guide to Contract Procedures for EC External Actions

## Introduction to PRAG

- Contracting Authorities need to use the Practical Guide to contract procedures for EC external actions (PRAG)
- In EAR/MIASP supported projects the Contracting Authority is mostly the Municipality (but also at times the Public Utility Company)
- An updated PRAG is in force since 1<sup>st</sup> February 2006; full text can be found on:  
[http://europa.eu.int/comm/europeaid/index\\_en.htm](http://europa.eu.int/comm/europeaid/index_en.htm)
- The PRAG provides all information to undertake procurement and to award contracts
- Various procurement and award stages need to be approved by the EC representation in Serbia i.e. European Agency for Reconstruction (EAR) who mostly delegates to MIASP



# PRAG: Basic Rules for Service, Supply & Works Contracts

## Overview

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- Before starting a tender procedure for Service, Supply or Works Contracts, there must be a Grant Contract and funds must be available
- The Contracting Authority must submit the following documents to MIASP for approval:
  - ❑ Tender dossier / document
  - ❑ Result of tender evaluation
  - ❑ Contract award proposal
- The Municipality must submit procurement notices and award notices to the MIASP for “no objection” after which the MIASP forwards such documents to EAR for approval
- The MIASP needs to be invited for tender opening and evaluation sessions as observers



# PRAG: Basic Rules for Service, Supply & Works Contracts Eligibility Criteria and Other Essentials

## Rule on Nationality and Origin

- Nationality: Legal Persons should be from EU and CARDS (**C**ommunity **A**ssistance for Reconstruction, **D**evelopment and **S**tabilisation in the Western Balkans) countries
- Origin: All supplies and materials must have been produced in EU and CARDS countries

## Exclusion

- Grounds for exclusion for tender procedures: bankruptcy, criminal offence, professional misconduct, defaulting on tax / social security payments, breach of previous contract

## Penalties

- Administrative and financial penalties for false declarations and failing to meet contractual obligations

## Visibility

- Contractors must ensure visibility of EU financing



# PRAG: Basic Rules for Service, Supply & Works Contracts Eligibility Criteria and Other Essentials

## Other essential points

- Conflict of Interest: Participation in project preparation excludes participation in tenders
- Awarding principles: Contract awards must respect principles of transparency, proportionality, equal treatment and non-discrimination
- No retroactive awards: Activities can only start after contract has been signed
- Use of standard contracts and document formats
- Confidentiality of all tender and contract procedures for seven years after payment of balance



# PRAG: Basic Rules for Service, Supply & Works Contracts

## Procurement Procedures

### Principle and Purpose

- Basic principle governing the award of contracts is competitive tendering
- The purpose of competitive tendering is twofold:
  - ❑ To ensure the transparency of operations
  - ❑ To obtain the desired quality of services, supplies or works at the best possible price



# PRAG: Basic Rules for Service, Supply & Works Contracts

## Which procurement procedure to apply?

*Note: No contract may be split artificially to circumvent the procurement thresholds*

<b>SERVICES</b>	<b>≥ €200,000</b> International restricted tender procedure	<b>&lt; €200,000 but &gt; € 5,000</b> 1.Framework contracts 2.Competitive negotiated procedure		<b>≤ €5,000</b> Single tender
<b>SUPPLIES</b>	<b>≥ €150,000</b> International open tender procedure	<b>&lt; €150,000 but ≥ 30,000</b> Local open tender procedure	<b>&lt;€30,000 but &gt; €5,000</b> Competitive negotiated procedure	<b>≤ €5,000</b> Single tender
<b>WORKS</b>	<b>≥ €5,000,000</b> 1.International open tender procedure 2.International restricted tender procedure (exceptional cases).	<b>&lt; € 5,000,000 but ≥ €300,000</b> Local open tender procedure	<b>&lt; € 300,000 but &gt; € 5,000</b> Competitive negotiated procedure	<b>≤ €5,000</b> Single tender



## PRAG: Basic Rules for Service, Supply & Works Contracts Procurement Procedures

1. **Open procedure:** All interested candidates may submit a tender upon publication of a procurement notice
2. **Restricted procedure:** Only short-listed candidates are invited after publication of notice
3. **Competitive negotiated procedure:** Only candidates of choice are invited (no publicity)
4. **Framework contracts:** Contract for a series of specific contracts for a period of not more than four years
5. **Dynamic purchasing system:** electronic process for making commonly used purchases (not yet available)
6. **Competitive dialogue:** A dialogue with candidates precedes the submission of tenders
7. **Negotiated procedure:** Only applicable to service contracts in exceptional cases



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PRAG: Basic Rules for Service, Supply & Works Contracts  
Procurement Procedures  
Fair competition

- No contract may be split artificially to circumvent procurement thresholds
- Municipality to carry out checks when there is disparity between price and services or significant price disparity between tenders





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## PRAG: Basic Rules for Service, Supply & Works Contracts Procurement Procedures Selection Criteria

- Eligibility of tenderer (see slide 3 and 4)
- Criteria for assessing financial, economic, technical and professional capacity of the tenderer
- Evidence of above capacities to be provided by candidates (in case of supply contracts) or by successful tenderers (in case of service and works contracts)



**Verification of financial and economic  
capacities** of (candidate) tenderers, through:

- Statements from banks
- Balance sheets for at least the last two years
- Statement of turn-over for no more than three years

# PRAG: Basic Rules for Service, Supply & Works Contracts Procurement Procedures

**Verification of technical and professional capacities** of (candidate) tenderers and their managerial staff, through:

- Educational and professional qualifications
- A list of principal services and supplies delivered in the last 3 years
- A list of works carries out in the last 5 years
- A description of technical equipment, tools and plant (service and works contracts)
- A description of quality assurance
- A description of environmental management
- Average manpower over last 3 years
- Indication of the proportion of sub-contracting



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PRAG: Basic Rules for Service, Supply & Works Contracts  
Procurement Procedures  
Contract award criteria

Contracts are awarded in one of the following ways:

1. *Automatic Procurement Procedure:*

Satisfying the conditions and the lowest price

2. ***Best-value-for-money Procedure or Most economically advantageous tender, which is applicable to MIASP supported projects:***

The tender deemed to be best in terms of the specific criteria laid down for the contract and the price or lowest price. These criteria must be published in the procurement notice or stated in the tender dossier.



## PRAG: Basic Rules for Service, Supply & Works Contracts Procurement Procedures

- **“Suspension Clause”**: In exceptional cases a tender is launched before a financing agreement has been reached
- **Cancellation** of tender procedure (by Municipality), only when:
  - ❑ No worthwhile or no tenders at all
  - ❑ Fewer than 4 eligible candidates for international restricted tender
  - ❑ Fewer than 3 eligible candidates for the competitive negotiated procedure
  - ❑ Economical or technical project data have been altered
  - ❑ Force majeure render contract impossible
  - ❑ All technically compliant tenders exceed financial resources
  - ❑ Irregularities in the tender procedure

Cancellation Notice to be published



# PRAG: Basic Rules for Service, Supply & Works Contracts

## Procurement Procedures

### Ethics Clauses

- Obtaining confidential information by tenderer during tender procedures is not allowed
  - Tenderer must declare that there is no potential conflict of interest
  - Civil servants excluded from tendering
  - The contractor must
    - ❑ not supply other services, supplies or works to the same project
    - ❑ act impartially
    - ❑ respect human rights
    - ❑ not accept payment in addition to the contract
    - ❑ maintain professional secrecy
    - ❑ maintain its independence
    - ❑ refrain from corrupt practices
    - ❑ supply, on request, documents in support of contract's execution
- Failure to comply with ethics clauses may result in penalties and exclusion from contracts
- The Municipality must ensure that procurement procedures are transparent and objective and free of external influences



# PRAG: Basic Rules for Service, Supply & Works Contracts

## Procurement Procedures

### Appeals

When tenderers feel they have been harmed by error or irregularity during the award process, they may:

1. Petition the Municipality who must reply within 90 days; if petition fails:
2. The MIA, MIASP and EAR to facilitate an amicable solution; if this fails:
3. The tenderer may have recourse to procedures established under Serbian Law

When Municipalities fail to adhere to procurement procedures, the EAR may:

1. Refuse to finance the contract
2. Suspend, withhold or recover funding for the contracts



## PRAG: Basic Rules for Service, Supply & Works Contracts

### Contract Size

Care must be taken to:

- design projects to allow for maximum contract size and consequently to:
- avoid the unnecessary fragmentation of programmes into a series of small contracts.

The above is necessary in order to:

- achieve economies of scale
- ensure maximum co-ordination between related activities
- keep programme administration as simple as possible





# PRAG: Basic Rules for Service, Supply & Works Contracts

## Terms of Reference (Service Contracts) / Technical Specifications (Works Contracts)

### ■ **Purpose:**

1. Instructions and guidance to tenderers during tendering
2. Contractor's mandate during project implementation

### ■ **Preparation:**

1. To be done by Municipality
2. To be done thoroughly to save time and money in later stages
3. Consult stakeholders
4. If external technical specialists are needed, they must sign Declaration of Objectivity and Confidentiality

# PRAG: Basic Rules for Service, Supply & Works Contracts

## The Evaluation Committee Composition

1. Non-voting chairperson and secretary
2. Odd number of voting members
3. Minimum of 3 voting members for service and supply contracts
4. Minimum of 5 voting members for works contracts
5. The Municipality nominates the Evaluation Committee members on a personal basis
6. The Municipality always invites MIASP to attend Evaluation Committee meetings as observers



# PRAG: Basic Rules for Service, Supply & Works Contracts

## The Evaluation Committee

### Impartiality and Confidentiality

1. Each member of the Evaluation Committee to sign Declaration of Impartiality and Confidentiality
2. Any member or observer with potential conflict of interest must declare it and withdraw
3. Withdrawn members must be replaced
4. Proceedings of Evaluation Committee are confidential until after the contract has been signed (for supplies and works tenders the opening of tenders is not confidential)
5. Any attempt by a tenderer to influence proceedings of the Evaluation Committee results in immediate exclusion of its tender
6. Participation in Evaluation Committee meetings is strictly limited to members and authorised observers



# PRAG: Basic Rules for Service, Supply & Works Contracts

## The Evaluation Committee (EC)

### Responsibilities of the members

#### 1. **Chairperson:**

- ❑ coordination of evaluation process and ensuring impartiality and transparency

#### 2. **Voting members:**

- ❑ Collective responsibility for decisions taken by the Evaluation Committee
- ❑ Decide whether or not a tender should still be considered when it infringes formal requirement
- ❑ Ensure that tenders are not rejected if: submitted in fewer copies than required, wrong presentation but right templates, not signed or scanned signature as long as signature is still obtained (ask Trevor!!)

#### 3. **Secretary:**

- ❑ Obtain Declarations of Impartiality and Confidentiality of EC members
- ❑ Keep minutes, attendance registers and relevant records and documents
- ❑ Compile Evaluation Report with Annexes
- ❑ Ensure that any communication with tenderers during the evaluation process is in writing



# PRAG: Basic Rules for Service, Supply & Works Contracts

## The Evaluation Committee (EC)

### Timetable

1. The EC to be formed early enough to ensure timely availability of all members for preparing and conducting evaluation process
2. To complete tender evaluation as soon as possible to allow contract notification within tender validity period
3. Tender validity period allows for evaluation, approval of contract award proposal, contract notification and contract signing
4. Tender validity period is 90 days from the deadline for submission of tenders
5. The tender validity period may be extended by the Municipality for not longer than 40 days



# PRAG: Basic Rules for Service, Supply & Works Contracts

## Award of the Contract

### Notifying the successful tenderer

1. Prior to the submission of the contract notification letter to the successful tenderer, the MIASP sends “no objection” to the recommendation for contract award to EAR for approval
2. The validity of the successful tender is automatically extended for a period of 60 days from the date of notification
3. The Municipality must ask the successful tenderer to submit evidence (within 15 days of date of the notification letter) of the declarations made in the tender submission form
4. The Municipality must examine the evidence of tenderer’s declarations before submitting the contract to the tenderer for signing
5. The notification letter can only be sent when a financing agreement has been concluded



# PRAG: Basic Rules for Service, Supply & Works Contracts Award of the Contract

## Contract Preparation and Signature

The Municipality must prepare a Contract Dossier containing the following:

- a) Explanatory note (format in Annex A6 of PRAG)
- b) Copy of financing agreement
- c) Copy of tender announcements, shortlist report, tender opening report, evaluation report and other relevant information
- d) Three originals of the proposed contract, with standard contract annexes; the Special Conditions need to be completed by the Municipality

The Municipality sends the Contract Dossier to the MIASP for “no objection” who then forwards it to the EAR for approval



# PRAG: Basic Rules for Service, Supply & Works Contracts

## Award of the Contract

### Contract Preparation and Signature (cntnd)

- The Municipality signs all 3 originals of the contract and sends them to the successful tenderer
- The successful tenderer countersigns all 3 originals of the contract within 30 days of receipt and returns 2 originals to the Municipality
- The Municipality sends one of the fully signed contracts to MIASP
- If the successful tenderer is not able to sign the contract, the award procedure can be restarted, using the tenderer with the next highest score, provided technical and financial criteria were fulfilled





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PRAG: Basic Rules for Service, Supply & Works Contracts  
Award of the Contract  
Publishing the Award of the Contract

After signing of the contract:

- The Municipality prepares contract award notice (template in PRAG) and sends it to the successful tenderer with a copy to MIASP
- The Municipality sends the unsuccessful tenderers a standard letter (template in PRAG) within 15 days



# PRAG: Basic Rules for Service, Supply & Works Contracts

## Modifying Contracts

Contracts may need to be modified when circumstances change:

- Substantial changes must be made through an Addendum (template in PRAG) signed by contracting parties and approved by MIASP/EAR
- Small changes may be notified in writing by contractor to Municipality
- The Municipality must critically analyse requests for changes and reject the changes where justified
- Modifications must be within the agreed contract period
- Modifications must not alter the nature of the project, i.e. fundamental alterations of Terms of Reference/Technical Specifications are not allowed



# PRAG: Basic Rules for Service, Supply & Works Contracts

## Modifying Contracts

- For complementary services a new contract is required
- For additional services an addendum is required
- Details of addendum prepared by Municipality:
  1. Use standard addendum template (PRAG)
  2. Prepare dossier:
    - Explanatory Note (template)
    - Copies of contractor's request, financing agreement, original contract (with addenda), initial tender announcements, shortlist report, tender opening report, evaluation report, other relevant information
    - Three (3) originals of proposed addendum
- The Municipality sends Addendum Dossier to MIASP for “no objection” and to EAR for approval
- The Municipality sends all 3 signed copies of addendum to contractor to countersign, who must countersign within 30 days and return 2 copies to Municipality
- The Municipality sends one fully signed Addendum to MIASP



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End of Presentation on PRAG – Basic Rules

