

## Public procurement

### ➔ Background Information

The European Community has set up a number of directives with the aim of opening public procurement within the internal market to increase cross-border competition, improve prices paid by public authorities and thus to enable the EU to reap the full benefits from an enlarged internal market.

According to the structural funds regulations the programme bodies have to ensure that the programme and the projects are implemented in compliance with the applicable EU and national rules, which include public procurement law. Thus, any purchase of goods, services or public works for the implementation of the programme or a project has to be carried out in line with the respective procurement rules. To ease the task for the project participants some basic information about public procurement shall be provided in the following.

### ➔ Guidance

#### 1 Who has to apply public procurement law in the Alpine Space Programme?

In general, it is the state, regional or local authorities or bodies governed by public law who have to follow the procurement rules when purchasing goods, services and public works.

Since the projects are co-funded with public funds and as these shall be used in compliance with the principles of efficiency, economy and expediency the Alpine Space Programme foresees that also private project participants which normally would not be subject to procurement law shall follow the procurement rules of the country in which they are located.

To this end all project participants, i.e. the Lead Partner (LP) and its Project Partners (PP) shall commit themselves to obey the public procurement rules whenever they purchase goods, services or

public works for the project. They do this by signing the Application Form (AF) respectively the Partnership Agreement (PA) and the Subsidy Contract (SC) (see also factsheets 5.1 *Partnership Agreement* and 5.2 *Subsidy Contract*).

## **2) Who controls if public procurement has been obeyed and what are the consequences of violation of these rules?**

The First Level Control (FLC) body of each project participant (see also factsheet 6.2 on *Financial Control System of the Programme*) checks, inter alia, if the public procurement rules have been followed. Therefore, project participants have to ensure that any procurement procedure is orderly carried out and documented. It is recommended to get in touch with the responsible FLC body due time before the FLC check is carried out to enquire what kind of documents and information the FLC body expects to be provided with. If the FLC body comes to the result that public procurement rules were not obeyed the respective costs are not eligible for co-funding by the programme.

In addition to the First Level Control audits are carried out by auditing bodies of the programme, the EU or of the state the respective project participant is situated in. Several projects will be subject to these audits and the latter may include the control if public procurement rules have been obeyed. Any irregularity detected might lead to the obligation of the respective project participant to repay ERDF-funds already received.

## **3) Public Procurement rules on EU and national level**

The EU-directives on public procurement rules shall ensure that public procurement follows transparent open procedures and that fair conditions of competition for suppliers are given. The directives only apply for purchases above certain thresholds, namely:

- + 193.000, -- Euro exclusive of value added tax (VAT) for public supply and service contracts,
- + 387.000, -- Euro exclusive of VAT for supply and service contracts in the fields of water, energy, transport and postal services and
- + 4.845.000, -- Euro exclusive of VAT for public works contracts

Member States are obliged to transfer these directives into their national law. For purchases below the above-mentioned thresholds Member States have more flexibility in regulating their procurement law.

In this respect the national rules for public procurement may vary between Member States. However, also when regulating these purchases Member States have to obey certain fundamental principles as laid down in the Treaty as well as the jurisdiction of the European Court of Justice that constantly further develops the procurement law.

The public procurement rules foresee different kinds of procurement procedures. In general it can be stated that the higher the value of a contract to be awarded the stricter the procurement rules that have to be followed (e. g. regarding the prior publication of a call for tenders or the possibility to negotiate with the bidders).

In case of small contract values national laws foresee the possibility of direct contracting, i.e. to commission a company without any need for a formalised procurement procedure (however it has to be ensured that the selection procedure is laid down transparently and that the principles of economic and efficient use of funds is obeyed).

Some purchase can even be exempted from public procurement rules if certain, rather restrictive conditions are fulfilled. One of these exemptions is the so-called "in-house"-procurement (more information on that exemption and the respective conditions can be found in factsheet 2.5 *Affiliated Institutions*).

#### 4) **Where to get more information?**

In the following it is set out where the applicable public procurement rules can be found. For more information about the applicable rules in the respective countries the Alpine Contact Points (ACP) can be contacted.

EU-directives on procurement law and more information can be found on the website of the Internal Market and Services Directorate General:

[http://ec.europa.eu/internal\\_market/publicprocurement/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/index_en.htm)

AUSTRIA: Austrian project participants shall respect the rules set out in the Bundesvergabegesetz 2006, BGBl I Nr 17/2006, (<http://www.ris.bka.gv.at>). Please note that for all procurement procedures initialised between April 30<sup>th</sup> 2009 and December 31<sup>st</sup> 2010 the amounts up to which certain procurement procedures can be applied have been raised. For instance direct contracting is possible

up to an amount of 100.000,-- Euro (exclusive of VAT) – for more details see "Schwellenwerteverordnung 2009", BGBl Nr. 129/2009.

FRANCE: the threshold under which direct contracting is possible amounts to 20.000,-- Euro net. French project participants shall consult *Décret n° 2008-1356 du 19 décembre 2008 code des marchés publics*.

GERMANY: German project participants must act in respect of the *Verordnung über die Vergabe öffentlicher Aufträge (Vergabeverordnung –VgV)*. Further details about the application of the VgV are set out in the *Verdingungsordnung für Leistungen (VOL)* and in the *Verdingungsordnung für freiberufliche Leistungen (VOF)*. All documents can be found on the following website:

<http://www.bmwi.de/BMWi/Navigation/Wirtschaft/Wirtschaftspolitik/oeffentliche-auftraege.html>

ITALY: Italian project participants must act in respect of the Italian Public Procurement Code, Law n. 163 dated April 12<sup>th</sup> 2006.

SLOVENIA: Slovenian project participants must act in respect of the Slovenian Public procurement Law, *Zakon o javnem naročanju ZJN -2 (Uradni list RS, 128/2006)*. Direct contracting is possible for procurements below the threshold of 10.000,-- Euro (exclusive of VAT) for goods and services respectively of 20.000 Euro (exclusive of VAT) for constructions.

## Reference Documents

- + Article 9 (5) and Article 60 lit a) of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999
- + Fact Sheet 2.5
- + Fact Sheet 5.1
- + Fact Sheet 5.2
- + Fact Sheet 6.2

## ➔ Annexes

- + Model Application Form (AF) with guidance
- + Partnership Agreement
- + Subsidy Contract