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ALEXIS TRUCHET

Public Procurement

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Who has to apply procurement law?



- state, regional or local authorities or
- bodies governed by public law, i.e. bodies that
 - are established for the specific purpose of meeting needs of general interest, not having an industrial or commercial character AND
 - have legal personality AND
 - are financed, for the most part (>50%), by the state, regional or local authorities, or by other bodies governed by public law OR are subject to management supervision by those authorities or bodies OR have 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.

EU-Thresholds



- EU law sets harmonised rules for tenders whose monetary value exceeds a certain amount and which are presumed to be of cross-border interest
- The European rules ensure that the award of such contracts is fair, equitable, transparent and non-discriminatory
- For tenders of lower value national rules apply, which nevertheless have to respect general principles of EU law.
- The current EU-thresholds as of 1.1.2024 are:

Nature of procurement	Type of contractor	Estimated value, excluding VAT
Public contracts for services and supply	Central Government authorities (e.g. ministries)	EUR 143,000
	Sub-central contracting authorities (e.g. regions, municipalities)	EUR 221,000
Public contracts for works	Both central and sub-central authorities	EUR 5,538,000

Procurement rules of the programme



Public body according to procurement law		Private project partners not subject to procurement law
national procurement law	< 10.000 net value	According to the programme's eligibility rules the principles of efficiency, effectiveness and economy have to be observed. Consequently, compliance with these principles has to be proved. This can be done by e.g. providing empirical values, an internet price comparison or comparison with data from previous purchases.
regional procurement law	> 10.000 net value	Proof of adequate market search (e.g. by collecting offers from at least two different market operators)
internal rules of PP	Proper documentation of procurement to be ensured	
even if direct award allowed PP shall provide evidence of market research to ensure economic use of funds		

Procurement and Simplified Costs



If costs for external expertise and services and equipment are co-financed on a **real cost basis**, controllers will carefully check the procurement procedure.

Any mistake detected might lead to

- a reduced amount that will be reimbursed and to
- a reduction of reimbursement of project costs that are calculated as a flat rate on costs for external expertise and services



If 40% **flat rate** for eligible costs other than direct staff costs is applied, beneficiaries will not have to document and prove their procurement procedures against programme bodies, controllers or auditors.

Most common procurement errors



Identification of thresholds and applicable law

- Unlawful splitting of contracts
- Unlawful application of exemption rules

Purchase analysis

- Imprecise definition of the subject-matter of the contract to be awarded
- Modification of a tender or criteria during evaluation
- Unlawful substantial contract modification or purchase of additional works, services or supplies.

Management of the procedure

- Use of wrong procurement procedure
- Insufficient publication of procurement procedure (e.g. direct award without any prior obligatory notification, notification only on national or regional instead of EU-level)
- Excessively short deadlines for the submission of tenders
- Mix-up of selection and award criteria
- Use of discriminatory or dissuasive selection or award criteria
- Unlawful negotiation during award procedure

Procurement is also...



➤ a tool to reinforce the **social and environmental responsibility** of your organization

➤ a possibility to **centralize purchasing** across borders

➤ drawing the line between **PP** and **external service provider**.

Thank you for your attention!

