



# Public Procurement under EAFRD: specificities

*TRAINING SESSION ON REASONABLENESS OF COSTS AND  
PUBLIC PROCUREMENT – 17 MARCH 2015*

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# Legislation - objectives

Internal market legislation, not AGRI law, not competition law,  
not financial management

1) Sector Directive" – Water, energy, transport and postal services:  
**Directive 2004/17/EC**

2) Classical Directive" – Contracts for public works, public supply and  
public service: **Directive 2004/18/EC**

Principal objectives: further free movement of goods and services  
(opening-up markets) and consequences:

- increased competition  $\Rightarrow$  (better) value for money
- more transparency: fight corruption

# Categories of contracting authorities I

- **Central Government Authorities:** Listed (exhaustively) in Annex IV of Directive 2004/18/EC
- **Bodies governed by public law:** Listed indicatively and not exhaustively in Annex III of 2004/18

Both annexes have been **updated** in **Commission Decision 2008/963**

# Categories of contracting authorities II

It is possible to make use of the **"in-house" exception** when the contracting authority uses its own administrative resources –without being obliged to call on outside entities- or by contracting an entity legally distinct provided that:

- The contracting authority must exercise a control over the "in-house" provider similar to that exercised over its own departments;
- The "in-house" entity must carry out the essential part of its activities with the contracting authority which controls it.

## Directive 2004/17/EC :

# Sectors covered/relevant activities

- **Energy** (electricity, gas, heat - Art. 3, exploration and extraction of oil, natural gas, coal etc. - Art. 7(a))
- **Drinking water** (Art. 4) (NB. Art. 4(2) sewage...)
- **Transports** (urban transports/bus, metro, tram, railways- Art.5)
- **Postal services** (Art. 6)
- **Transport terminals** (ports, airports - Art. 7(b))

**Entities** are listed indicatively, not exhaustively in Annexes I-X,  
**updated** Commission Decision 2008/963

# Which contracts?

- All **works** contracts;
- All **supplies** contracts (but thresholds);
- **Services** contracts:
  - in full to contracts part A services
  - very partially part B services (techn. spec., post-info) – but ... Treaty!
  - not applicable to certain specific types of services.

# Thresholds

<b>Applies to / amount in €</b>	<b>134 000</b>	<b>207 000</b>	<b>134 000</b>	<b>5 186 000</b>
<b>All works (incl. conces.)</b>				<b>X</b>
Supplies, services, design contests under 2004/17			<b>X</b>	
Supplies and services by sub-central; all part B services; certain A-services by central government authorities; design contest		<b>X</b>		
Almost all part-A services, all supplies* by central government authorities, design contests	<b>X</b>			

\* All supplies contracts awarded by Central Government authorities *not* operating in the field of defence; supplies contracts awarded by contracting authorities operating in the field of defence *and* concerning the products listed in Annex V of Directive 2004/18/EC (125 000 €);

Supplies *not* listed in Annex V of Directive 2004/18/EC and awarded by contracting authorities operating in the field of defence. (193 000 €)

# Overview of procedures I

## Open & Restricted

### Open procedure:

- Notice ⇒ tenders ⇒ evaluation (exclusion, selection, award criteria) ⇒ award decision ⇒ stand-still ⇒ award/signature ⇒ contract award notice;

### Restricted procedure:

- Notice ⇒ request for participation ⇒ selection (exclusion, selection criteria) [+ limitation of participants] ⇒ invitations to tender ⇒ tenders ⇒ award criteria ⇒ award decision ⇒ stand-still ⇒ award/signature ⇒ contract award notice;



# Overview of procedures II

## Negotiated procedures

### Negotiated with prior publication:

- Notice ⇒ request for participation ⇒ selection (exclusion, selection criteria) [+ limitation of participants] ⇒ invitations to negotiate ⇒ negotiations ⇒ tenders ⇒ award criteria ⇒ award decision ⇒ stand-still ⇒ award/signature ⇒ contract award notice;

### Negotiated without prior publication:

- [selection] ⇒ negotiations ⇒ award/signature ⇒ contract award notice;

# Overview of procedures III

## Competitive dialogue

### Competitive dialogue (2004/18 only):

- Notice ⇒ request for participation ⇒ selection (exclusion, selection criteria) [+ limitation of participants] ⇒ invitations to dialogue ⇒ dialogue ⇒ tenders [+ limitation of solutions] ⇒ closure of dialogue ⇒ tenders ("best and final") ⇒ award criteria ⇒ award decision ⇒ stand-still ⇒ award/signature ⇒ contract award notice.
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- **Individual contracts** or **framework agreement** with several contractors.

# DG AGRI findings 2007-13

- The management system is some MS weak. Weaknesses in the design of the **award criteria, inadequate assessment of bids, direct attributions, etc;**
- The control system at national level is weak. The Paying Agency **does not feel responsible** for the detailed verification of the public procurement procedure ("*No complaints means all is fine*");
- **Ex-ante conditionalities and Action Plans for 11 MS regarding PP during 2014-20 ;**

# Public Procurement Guidance

## Stages:

1. Preparation and planning
2. Invitation to bid
3. Submission and selection of bids
4. Evaluation of bids
5. Award
6. Contract implementation

# Tips to avoid frequent errors

## Examples of "DOs and DON'Ts"

### Planning stage

Don't launch a procurement process without adequate planning, approval and control systems

Don't start procurement without advertising

Do spend sufficient time planning

Publish a Contract Notice in the OJEU for contracts with total value above thresholds

### Award stage

Don't modify evaluation criteria after the opening of tenders

Don't allow anyone with a potential Conflict of Interest to be involved in preparing or evaluating a tender

Apply transparent procedures

Sign Conflict of Interest declarations

# Ex. - EAFRD's 2014-20 programming

- **Art. 15** regarding the advisory services, farm management and farm relief services;
- **Art. 17(1)(c)** regarding the infrastructure related to the development, modernisation or adaptation of agriculture and forestry;
- **Art. 18** for the restoration of agricultural potential damaged and preventive measures, when the beneficiary of support is a public entity, which outsources the task and can be qualified as a contracting authority
- **Art. 20** for the basic services and village renewal, including broadband infrastructure and renewable energy;

# Conclusions

- The award criteria shall adequately take into consideration **the interests** of the contracting authority as well as those of the EU;
- The contracting authority as well as the Member State shall ensure that the award criteria and their weight lead to the “**best offer**”;
- The award criteria shall not lead to **ineligible expenditure**;
- The Managing Authority should give and/or fix in advance **specific conditions** for the procurement and assist proactively weak implementing bodies not possessing related experience. **Technical Assistance** can be used. This also facilitates the checks later on.

# EU Guidance Dissemination

- **Translation** of a Guidance doc on PP and how to avoid errors in all EU member state languages
- **Web-based** documents by DG GROW and DG REGIO
- Classic Guidance Document by DG GROW available for printing
- Infographic poster





# Information

Further information:

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