

INTERREG NEXT Romania - Ukraine PROGRAMME FICHE

PROCUREMENT

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1. Introduction

In brief, 2 separate legal frameworks

- **National law**
 - **Romania** - contracting authorities / entities as defined by the European Union law

TAKE NOTE!

Partners from Romania are advised to check with their National Authority whether or not their organizations fall under the definition of contracting authorities / contracting entities as provided by the EU law.

- **Financial Regulation¹**
 - **Ukraine** - all Partners (public or private)
 - **Romania** - Partners that are not contracting authorities / entities as defined by the European Union law
 - Annex II of Financing Agreement, which is a structured compilation of the rules laid down in the Financial Regulation

TAKE NOTE!

The legal provisions mentioned in the present Fiche are not exhaustive. The Partners are still required to thoroughly check the legal provisions of the Financial Regulation / Annex II of the Financing Agreement before carrying out procurement procedures, in order to avoid errors and ineligible expenditure.

¹ REGULATION (EU, Euratom) 2024/2509 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast) REGULATION (EU, Euratom) 2018/1046 is repealed.

TAKE NOTE!

Annex II of the Financing Agreement reflects the main procurement provisions of the Financial Regulation applicable for external actions and it is structured in the following procedural logic:

- A. General provisions
- B. Types of procedures
- C. Preparation of the procedure
- D. Technical specifications and criteria for assessment
- E. Submission, evaluation and award decision
- F. Contract performance

2. Common aspects for all Partners

2.1. Artificial split

Contract splitting is the practice of artificially breaking up purchases of goods/services/works to bring total expenditure below the legal thresholds in order to avoid the procurement rules.

The Partner shall not artificially split the contract into several distinct, lower-value contracts for the purpose of reducing the total value so that it falls underneath the legal threshold and thereby becomes exempt from the application of a more complex procedure.

Please see also the concept of division of a contract into lots, which should be used whenever appropriate.

2.2. Division into lots

The Partner shall divide a contract into lots whenever possible, with due regard to broad competition. Only if there is a plausible reason not to do so, the Partner shall tender a single contract for the entirety of the object of the procurement.

TAKE NOTE!

In case the Partner does not divide a contract into lots, a justification for not subdividing contract into lots should be recorded in the procurement file.

For Partners who are contracting authorities / entities in Member States, this requirement may depend on the threshold/type of the procurement procedure. Please check your national legislation.

2.3. Conflict of interests

The Partners shall avoid any situation in which any of their staff may be in conflict of interests, including by making sure that:

- There is no (sub)contracting services/supplies/works to the staff of the Partner

- There is no (sub)contracting services/supplies/works to the other Partners' staff
- There is no other suspicion, for example the ones listed below:
 - (sub)contracting services to member(s) of the family
 - (sub)contracting services to a service provider (e.g. company, legal authorized person, etc.) in which any representative of the (Lead) Partner, its' staff or (a) project staff is owner or partner

In case such situations appear, the affected expenditure shall be ineligible.

2.4. Jems

2.4.1. Audit trail

REQUIREMENTS	REGULAR PROJECTS	SMALL SCALE PROJECTS
<p>1. Supporting documents in Jems</p> <p>All supporting documents related to procurements shall be uploaded in section <i>Public Procurements</i> of Jems².</p>	Applicable	Applicable
<p>2. Information on contractors and contracts</p> <p>The information on contractors and contracts shall be filled in in the relevant <u>fields</u> of the section <i>Public Procurements</i> of Jems, irrespective of the value of the procurement.</p>	Applicable	Applicable
<p>3. Information on beneficial owners</p> <p><i>Where public procurement procedures above the Union thresholds are concerned:</i></p> <p>Information on beneficial owners of the contractor, as defined in Article 3(6) of Directive (EU) 2015/849³, namely first name(s) and last names(s), dates(s) of birth and VAT registration number(s) or tax identification number(s) of these beneficial owners, is filled in in the relevant fields in Jems.</p>	Applicable	Applicable
<p>4. Information on sub-contractors</p> <p><i>Where public procurement procedures above the Union thresholds are concerned and only for sub-contracts above EUR 50 000 total value:</i></p> <p>Information on whether the contractor uses sub-contractors and if so, once the corresponding</p>	Applicable	Applicable

² Jems user manual is available on the Interact website: <https://jems.interact.eu/manual/>

³ Please check the definition of beneficial owner under art. 3(6) of Directive (EU) 2015/849.

<p>sub-contracts are signed, information on all sub-contractors listed in the procurement documents (of the contractor), namely name and VAT registration or tax identification number and information on sub-contracts (date of the contract, name, reference and contract amount) is filled in in the relevant fields in Jems.</p>		
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* Currently, the Union thresholds set in art. 4 of Directive 2014/24/EU are: EUR 5 538 000 for public works contracts, EUR 143 000 for public supply and service contracts awarded by central government authorities and design contests organised by such authorities, EUR 221 000 for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities, EUR 750 000 for public service contracts for social and other specific services listed in Annex XIV of Directive 2014/24/EU.

2.4.2. Link expenditure - procurement

REQUIREMENT	REGULAR PROJECTS	SMALL SCALE PROJECTS
<p>All procurements have to be uploaded within Jems.</p> <p>Partners which must apply the Financial Regulation, will link an expenditure item with a procurement only for procurements equal or over 10.000 euro (without VAT).</p> <p>Romanian partners which are Contracting Authorities and must apply the national law, will link only procurements that impose a procurement procedure according to national legislation.</p> <p>For cost items related to a procurement below 10.000 euro (without VAT), the Partners will create a procurement in Partner Report - Procurements section and not link the expenditure item from the List of Expenditure to the created procurement.</p>	<p>Applicable</p>	<p>Applicable</p>

2.5. Advanced payments (pre-financing) in procurement contracts

For all partners (public or private) from Ukraine, as well as for partners that are not contracting authorities / entities, as defined by the EU law, from Romania, the advanced payments (pre-financing) to contractors are eligible provided that evidence of the legal, regulatory, financial, economic, technical and professional capacity stated in the declaration on honor (selection criteria) have been requested to the successful tenderer, in compliance with the provisions of Article 18, paragraphs 1 - 5 of the Annex II of Financing Agreement. Please see also the textbox on page 9 related to evidences.

Advanced payments (pre-financing) to contractors, by partners who are contracting authorities/entities as defined by the EU law from Romania are eligible provided that **they are in line with Romanian law**, they are incurred and paid by partners within the eligibility period, in application of contractual obligations and duly justified through invoices or documents with equivalent probative value. Please check your national legislation (GD nr. 264 / 13.03.2003).

3. Specific aspects for Partners applying FR/Annex II FA

3.1 Introduction

The Financial Regulation lays down a set of procurement procedures to be used depending on the scope and value of the contract. The present Fiche addresses the most common procedures carried out in Interreg NEXT ROUA Programme, which are **single tender procedure** and **simplified procedure**.

Legal framework

- **Financial Regulation** (FR), Annex II of Financing Agreement (FA)
 - Thresholds of the estimated value of the contract

<i>Single tender procedure</i>	> 2 500 EUR ⁴ (without VAT) ≤ 20 000 EUR (without VAT)
<i>Simplified procedure</i>	> 20 000 EUR (without VAT) < 100 000 EUR (without VAT) (supplies) > 20 000 EUR (without VAT) < 300 000 EUR (without VAT) (services / works)
<i>Local open procedure</i>	Not applicable for Services ≥ 100.000€ < 300.000€ for Supplies ≥ 300.000€ < 5.000.000 € for Works
<i>Open or restricted procedure</i>	≥ 300.000€ for Services ≥ 300.000€ for Supplies

3.2 MAIN STEPS

A. Preparation of procedure

- Avoid artificial split, explore division into lots
- In case of mixed contracts:

⁴ Payments of amounts less than or equal to EUR 2 500 (without VAT) in respect of items of expenditure may be carried out simply as payment against invoices, without prior acceptance of a tender.

- A mixed contract covering two or more types of procurement (works, supplies or services), shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject matter of the contract in question.
 - In the case of mixed contracts consisting of supplies and services, the main subject matter shall be determined by a comparison of the values of the respective supplies or services.
- Market consultation - recommended
- Before launching a procurement procedure, the Partner may conduct a preliminary market consultation with a view to preparing the procedure.
- The Partner shall identify the subject matter of the procurement
 - description of its needs and the characteristics required of the works, supplies or services to be bought
 - applicable exclusion, selection and award criteria
 - minimum requirements to be met by all tenders

B. Procurement documents

- Invitation to tender
- Tender specifications
 - exclusion and selection criteria
 - award criteria
 - technical specifications, etc.
- Draft contract

☞ Annex I FR - point 16.1
(Annex II FA - point 14.1)

Invitation to tender

- Check what information needs to be included
- For simplified procedure - sent to minimum 3 tenderers
- For single tender procedure - recommended to be sent to more than 1 tenderer

☞ Annex I FR - points 16.2, 39.5
(Annex II FA - points 14.2, 5.5)

Publication

- For procedures with a value equal to or greater than EUR 300 000 for service and supply contracts, the partner shall publish in the Official Journal of the European Union:
 - a contract notice to launch a procedure, except in the case of negotiated procedure;
 - a contract award notice on the results of the procedure.

☞ FR - art.166
(Annex II FA - point 3)

- In the restricted procedure the contract notice shall state the number of candidates who will be invited to submit tenders. For service contracts at least four candidates shall be invited. The list of selected candidates shall be published on the partners' website.
- Under the local open procedure, the contract notice shall be published at least in the official gazette of the recipient State or in any equivalent publication for local invitations to tender.

☞ Annex I FR - point 39.3-39.4
(Annex II FA - points 5.3-5.4)

Exclusion and selection criteria

- They refer to the tenderers (not the tender)
- Exclusion criteria - tenderers must not fall in the situations of art. 138(1) and 143(1) of FR
Required from tenderers (> 15 000 EUR):
European Single Procurement
Document (ESPD)⁵ or a declaration on honour + evidence (optional)
- Selection criteria - capacity to pursue the professional activity, economic and financial capacity, technical and professional capacity
Required from tenderers (> 15 000 EUR):
declaration on honour + evidence (optional, conditions applicable - see below)
Required from tenderers: declaration of professional conflicting interests + evidence (optional)

☞ Annex I FR - point 18.1
(Annex II FA - point 18.1)

☞ Annex I FR - points 18.2 - 20
(Annex II FA - points 18.2 - 20)

⁵ Art. 18 of Annex I to REGULATION (EU, Euratom) 2024/2509 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast)

TAKE NOTE!

DECLARATION ON HONOUR

A declaration on honour shall be requested by Partners to be provided by tenderers, in order to prove the fulfilment of the exclusion and selection criteria.

The declaration on honour may not be requested for estimated value contracts up to 15 000 EUR.

DECLARATION OF PROFESSIONAL CONFLICTING INTERESTS

A declaration of professional conflicting interests shall be requested by Partners to be provided by tenderers, confirming the absence of professional conflicting interests which may negatively affect the performance of the contract.

The declaration of professional conflicting interests shall be requested for all types of procedures.

TAKE NOTE!

EVIDENCE

Evidence (supporting documents) to be requested by Partners (in case of estimated value contracts > 15 000 EUR)

- for the exclusion criteria - optional
- for the selection criteria - optional, depending on the Partner's risks assessment; if not requested, then pre-financing can be made to the contractor only in duly justified cases

In case it is required in the procurement documents, evidence for selection

- may be requested from any tenderer at any moment during the procedure where this is necessary to ensure the proper conduct of the procedure
- must be requested to the successful tenderer

If required to be submitted together with the tender, the Partner has to initially accept the declaration on honour stating that the tenderer fulfils the selection criteria.

For the selection criteria related to professional conflicting interests, the request of evidence is optional.

Award criteria

- They refer to the tenders (not the tenderers)
- Award methods: lowest price, lowest cost or best price-quality ratio
- Check legal provisions for details

☞ Art. 170 FR, Annex I FR - point 21
(Annex II FA - points 17, 21)

Technical specifications

- Check legal provisions for details

☞ Annex I FR - points 17.1-17.3, 17.9
(Annex II FA - point 16)

Draft contract

- Check what information needs to be included

☞ Annex I FR - point 16.4
(Annex II FA - point 14.4)

TAKE NOTE!

The draft contract needs to be communicated as well, together with the invitation to tender.

C. Submission, evaluation and award decision

- **Submission**

- Time limits for submission of tender

<i>Single tender procedure</i>	No specific number of days in FR However, it must be considered the complexity of the purchase, leaving an adequate period for economic operators to prepare their tenders
<i>Simplified procedure</i>	Min. 30 days
<i>Open procedures</i>	Min 60 days for supply contracts
<i>Local open procedures</i>	Min 60 days for works contracts Min 30 days for supply contracts

- Contacts during the procurement procedure - conditions

☞ Art. 172 FR
(Annex II FA - point 23)

- Tender guarantee - optional

☞ Art. 171.2 FR
(Annex II FA - point 24.2)

○ **Evaluation**

- Evaluation committee

<i>Single tender procedure</i>	not mandatory
<i>Simplified, local open, open, restrictive procedure procedure</i>	min. 3 members

TAKE NOTE!

The evaluation committee members must sign declarations of impartiality and confidentiality prior to carrying out any task related to the evaluation.

- Check legal provisions for details

- unsuitable tenders
- irregular tenders
- unacceptable tenders
- admissible tenders
- abnormally low tenders

☞ Annex I FR - points 11.2, 12.2, 12.3, 29.3
(Annex II FA - points 6.2, 24.4-24.6)

☞ Annex I FR - point 23
(Annex II FA - point 25)

○ **Results of the evaluation and award**

- Evaluation report - check details and what information needs to be included
- Award decision

☞ Annex I FR - points 30.1, 30.2
(Annex II FA - points 26.1, 26.2)

☞ Art. 173.1 FR, Annex I FR - points 30.3-30.5
(Annex II FA - points 26.3-26.6)

○ Information to tenderers

☞ Art. 173.2, 173.3 FR, Annex I FR - point 31
(Annex II FA - point 27)

○ Standstill period before signature of the contract

- 10 days when using electronic means of communication
- 15 days when using other means
- exceptions - only one tender submitted, etc.
- If contract cannot be signed with the successful envisaged tenderer → contracting authority may award it to the following best tenderer

☞ Art. 181.1 FR, Annex I FR - point 36
(Annex II FA - points 27.1, 29)

D. Contract performance

- Implementation of procurement contract - not before it is signed
- Modifications without a new procurement procedure - check conditions
- Performance and retention guarantees

☞ Art. 175 FR
(Annex II FA - point 30)

3.3 Templates - examples

- Indicative
 - The **templates** were developed by the TESIM project and are presented for illustrative purposes only.
 - Most of the templates were adapted from PRAG⁶ and therefore they may have some different terminology. Also, they may contain references to other PRAG templates, which are not included in this Procurement Templates pack.
 - Any template should be adapted by the Partners to their specific needs.

⁶ Practical guide on contract procedures for European Union external action
<https://wikis.ec.europa.eu/display/ExactExternalWiki/ePRAG>

TAKE NOTE!

The Partners must take into consideration that the legal provisions set in the Financial Regulation prevail. The Partners shall use the templates on their own responsibility, in particular as far as the eligibility of expenditure is concerned, and with the requisite care as regards the compliance with the legal provisions.

- *General templates*
 - *Publication international procedure⁷*
 - *Services / Supplies / Works tenders*
 - *Evaluation templates*
 - *Single tender*
 - *Negotiated procedure⁸*
- **Templates for single tender procedure and for simplified procedure**

TAKE NOTE!

Even though these templates are in English, the Partners may use the national language.

Single tender procedure

- *G1_declaration objectivity confidentiality tender preparation*
- *G2_declaration impartiality confidentiality tender evaluation*
- *G3_Declaration on honour*
- *G5a_legal entity form individuals*
- *G5b_legal entity form companies*
- *G5c_legal entity form public*
- *ST1_Invitation to tender_services*
- *ST2_Invitation to tender_supplies*
- *ST3_Invitation to tender_works*
- *ST4_Tender Form_services*
- *ST5_Tender Form_supplies*
- *ST6_Tender Form_works*
- *ST7_Evaluation report*
- *EV8_award decision*

⁷ For procedures with a value equal to or greater than EUR 300 000 for service and supply contracts the templates are only for information, as they have to be filled-in online to be published in the Official Journal of the European Union

⁸ Other templates for negotiated procedures, [local open procedures](#) and [open or restricted procedures](#) may be adapted from the templates for simplified procedure.

Simplified procedure

- *General templates for services, supplies, works*
 - *G1_declaration objectivity confidentiality tender preparation*
 - *G2_declaration impartiality confidentiality tender evaluation*
 - *G3_Declaration on honour*
 - *G4_Financial identification form*
 - *G5a_legal entity form individuals*
 - *G5b_legal entity form companies*
 - *G5c_legal entity form public*
- *Services*
 - *SV5a_invitation to tender simplified*
 - *SV5b_contract notice simplified*
 - *SV7_instructions tenderers simplified*
 - *SV8_admingrid services*
 - *SV9_evalgrid fees*
 - *SV10_evalgrid global price*
 - *SV12_tender form open - simplified*
 - *EV1_open checklist*
 - *EV2_open report*
 - *EV3_evaluators grid services fee-based*
 - *EV4_evaluators grid services global price*
 - *EV5_evaluation report services*
 - *EV8_award decision*
 - *SV13_contractors assessment*
- *Supplies*
 - *SP1a_invitation to tender simplified*
 - *SP1b_contract notice simplified*
 - *SP2_instructions tenderers*
 - *SP3_admingrid*
 - *SP4_evaluation grid*
 - *SP5_tender form*
 - *SP6_tender guarantee*
 - *EV6_evaluation report supplies*
 - *EV8_award decision*
 - *SP7_performance guarantee*
 - *SP8_contractor assessment*
- *Works*
 - *WK1a_invitation to tender simplified*
 - *WK1b_contract notice simplified*
 - *WK2_instructions tenderers*
 - *WK3_tender form*
 - *WK4_tender guarantee*
 - *WK5_admingrid*



- *WK6_evaluation grid*
- *EV7_evaluation report works*
- *EV8_award decision*
- *WK7_perfguarantee*
- *WK8_prefinance guarantee*
- *WK9_retention guarantee*
- *WK10_interpretative note financial offer*