

ANNEX 4 to the Subsidy contract

Rules¹ regarding the assignment of works, supplies and services contracts² for Romanian beneficiaries who do not have the status of contracting authorities, that do not fall under art. 9, letter c) and c1) under the provisions of GEO 34/2006, as amended and supplemented

SECTION I – General Information

The present procedure describes the principals and minimum mandatory steps to be observed by private beneficiaries of the INTERREG V-A Romania-Bulgaria Programme when they assign supplies, services or works contracts.

Private beneficiaries that assign supplies, services or works contracts apply the provisions of GEO 34/2006, as amended and supplemented, in case all conditions of art. 9, c) and c1) are simultaneously met.

In case the estimated purchase value without VAT is over the thresholds foreseen in art. 19 of GEO 34/2006, the private beneficiaries apply the simplified procurement procedure foreseen in chapter VII, namely:

- a) in case of supplies contracts, private beneficiaries apply the simplified procedure without there being a maximum value limit starting with which provisions of GEO 34/2006 apply;
- b) in case of services and works contracts, private beneficiaries apply the simplified procedure in case all conditions of art. 9, c) and c1) of GEO 34/2006 are **not** simultaneously met.

It is strictly forbidden to split a procurement contract into more contracts with lower value and with the same object, with the purpose of avoiding the thresholds foreseen by GEO 34/2006.

The contract having as object both the delivery of supplies and services is considered a service contract in case the estimated value of the services is higher than the estimated value of the supplies foreseen in the respective contract. Thus, in case of contracts where services value is

¹ The Managing Authority reserves the right to modify the procedure by means of instructions which will be notified to the beneficiaries and which will be part of the contracts as of the date of communication to the beneficiaries.

² The definition of the terms service/supply/ works contracts is similar to the one as foreseen in the art. 1, par. 2, letters b, c, and d from the Directive 2004/18 /EC of European Parliament and Council and art. 3-7 from the GEO No. 34/2006 as amended and supplemented

higher than the value of supplies that will be purchased, provisions of art. 9, c1) of GEO 34/2006 applies if both legislative conditions are simultaneously met.

The contract having as object both the delivery of supplies and works is considered a works contract in case the estimated value of the works is higher than the estimated value of the supplies foreseen in the respective contract. Thus, in case of contracts where works value is higher than the value of supplies that will be purchased, provisions of art. 9, c) of GEO 34/2006 applies if both legislative conditions are simultaneously met.

In all cases, the identification of the type of procurement contract is done based on the higher estimated value.

The provisions of the present procedure are supplemented by the legal provisions of specific normative acts, according to the object of the purchase (e.g.: sale-purchase of land, other buildings aso.).

SECTION II - Direct award

In case the estimated purchase value without VAT is not over the thresholds foreseen in art. 19 of GEO 34/2006 for each purchase, the private beneficiaries directly purchase the supplies, services or works.

The purchase is performed based on supporting documents (e.g.: order, receipt, invoice, contract aso.).

In this case, the procurement file will comprise a justification note regarding the estimated value (the value can be updated at the moment of the purchase, if necessary) and supporting documents of the procurement, including documents for proving the accomplishment of the contractual obligations (e.g.: Reception note for works, supplies, deliverables aso.). The signing of a contract is not mandatory.

SECTION III – Legal terms

The present procedure is based on the provisions of art. 60 of Regulation (EC) No. 1083/2006 of the Council, as amended and supplemented.

SECTIUNEA IV - Definitions

In the present procedure, the terms below will be defined as follows:

- Private beneficiary ó legal body with the role of contracting authority, according to the provisions of art.8 of GEO 34/2006;
- Economic operator ó any operator, body or firm, whether public or private, or groupings of such entities with activity in a certain field entitled to legally deliver supplies, services or works on the market;
- Estimated value ó indication of the value of the procurement contract object, established based on the calculation and addition of all amounts that are to be paid for the accomplishment of the contract, without VAT, and taking into consideration any possible options and needed upgrades or supplementations, in the measure they can be initially estimated
- Simplified procedure ó minimum mandatory steps that a private beneficiary has to follow for the assignment and signing of a procurement contract
- Technical specifications ó objective technical requirements describing the object of the procurement
- Offer ó document requested by the private beneficiary during the process of market study, which contains information about the supplies/services/works from the market
- Supplies contract ó the legal written document concluded between a private beneficiary and one or more economic operators for the delivery of supplies, according to provisions of the financing contract.
- Works contract - the legal written document concluded between a private beneficiary and one or more economic operators for the design and execution, as well as design and/or execution of works or the delivery by any means of a construction, according to provisions of the financing contract.
- Service contract - the legal written document concluded between a private beneficiary and one or more economic operators for the delivery of services, according to provisions of the financing contract.

SECTION V.

Principles to be applied to the procedure

During the procurement process, when adopting any decision, the following principles shall be followed:

- transparency;
- cost efficiency principle;
- Efficiency principle;
- Effectiveness principle.

Transparency principle ó provides for the notification to the public as to the application of the simplified procedure

Cost efficiency principle ó provides for the minimization of the cost of the allocated resources for reaching the estimated results of an activity, maintaining the quality of these results.

Efficiency principle – provides for ensuring the best proportion between the result (quality) and allocated financial resources.

Effectiveness principle ó provides for the degree of reaching the specific objectives as set for each planned activity in order to obtain the expected results.

SECTION VI

Avoidance of conflict of interests

The private beneficiaries are obliged to take all the necessary measures in order to avoid the situations which could lead to occurrence of conflict of interests.

In case of private beneficiaries, the provisions of Government Emergency Ordinance No. 66/2011 on preventing, finding and correcting the irregularities incurred in obtaining and use of European funds and/or the corresponding national public funds, articles 14 and 15 are applicable, as amended and supplemented by Law No. 142/2012, as amended and supplemented (GEO No. 66/2011), corroborated with the provisions of article 8 from Methodological norms for the application of provisions of GEO No. 66/2011 on preventing, finding and correcting the irregularities incurred in obtaining and use of European funds and/or the corresponding national

public funds, approved by Government Ordinance No. 875/2011, with subsequent modifications and completions.

SECTION VII

Simplified procedure

Phase 1 – Elaboration of technical specifications and verification of the estimated value

a) Elaboration of technical specifications

The private beneficiary elaborates the technical specifications which describe the procurement object according to the provisions of subsidy contract.

In exceptional cases when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the procurement contract may be awarded only to a particular economic operator, the particular technical specifications will be described with the necessary details and reasons.

Also, when the products to be procured are manufactured purely for the purpose of research, experimentation, study or development, excepting the commercial viability tests and the large scale production in order to recover the research and development costs, then the private beneficiary shall highlight and detail the technical particularities and the procurement objective.

b) Verification of the estimated value

It shall be verified if the estimated value of the procurement is still actual and it shall be corrected, if the case.

If following the elaboration of technical specifications it is found that the value as it has been estimated at the beginning of procurement procedure is higher than the value as provided for in the financing contract, the private beneficiary may increase this value from her/his own budget or from the budget of the financing contract only after obtaining the approval of the managing authority/Program operators.

It shall be verified if the estimated value at the timing of launching the simplified procedure is still above the thresholds as provided for by the GEO No. 34/2006, article 19, but under the threshold as provided for by GEO No. 34/2006, article 9, letter c) and c1).

Phase 2 – Market prospect

a) Publication of contract notice

The private beneficiary shall publish a contract notice together with the technical specifications on the official Program site ((www.cbcrromaniabulgaria.eu), by submitting a simple request to BRCT Calarasi.

The responsibility of the contract notice content incumbent only to the beneficiary; BRCT Calarasi has not the obligation for its ex-ante verification.

Excepting the already mentioned communication mean, the beneficiary has also the right to choose other publicity means for his/her contract, using one of the following: national publications ó daily publications with national or regional coverage or his/her own website (if any).

Publication of contract notice and technical specifications is not obligatory in the following cases:

- when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the procurement contract may be awarded only to a particular economic operator;
- when the products to be procured are manufactured purely for the purpose of research, experimentation, study or development, excepting the commercial viability tests and the large scale production in order to recover the research and development costs.

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The justification of these situations must be carefully elaborated.

In case the contract notice is not published according to the provisions of the present procedure, a financial correction of 25% of the eligible procurement contract value shall be applied.

In order to ensure more publicity, the private beneficiary may send participation letters for the participation to the simplified procedures in the same day as the contract notice has been published.

In this case, the information as provided for on the websites must be identical with the ones provided in the participation letters. Sending participation letters is not obligatory.

In the contract notice/participation letters, a deadline is set for the elaboration and submission of the bids, taking into consideration the contracts complexity.

In this respect, for the supply contracts, a minimum period of 6 calendar days shall be provided; as for service and works contracts, a minimum of 10 calendar days shall be provided.

When establishing the date for the bids submission, the day of contract notice publication/participation letters and the day when the bids are submitted will not be taken into consideration.

In case clarifications/amendments have been brought to the initial information the private beneficiary shall check the corresponding box in the contract notice.

After the finalization of the procurement procedure, within 5 calendar days as of signing the procurement contract, the private beneficiary shall fill in the award notice on the official site of the Programme (www.cbcromaniabulgaria.eu).

If the award notice is not filled in by the private beneficiary, a financial correction of 5% of the eligible procurement contract value shall be applied, excepting special cases as regulated by the present procedure.

b) Bids evaluation

The private beneficiary evaluates the bids received.

In case only one bid is received, the beneficiary may evaluate it and can proceed with the procurement contract award, in case the received bid observes the technical specifications elaborated according to phase 1 of the present procedure.

c) Elaboration of award notice

In the award notice, the beneficiary shall justify the winning bid (presenting the technical and financial advantages over the other bids/technical specifications).

In exceptional cases, when the publication of the award notice and technical specifications is not obligatory, the choice of one bid over the others shall be justified in the award justification document, on basis of the technical specifications/procurement object.

Phase 3 – Signing the procurement contract

The contract will be signed only with the economic operator as mentioned in the award justification document.

Rules applicable to the procurement contract:

- The contract shall include the identification information for both parties signing the contract, the contract object, its value and duration. The contract shall provide clear reference/clauses for the service provision, execution of works, delivery, assembly, functioning, reception, quality standards, service, guaranties, possibility of the advance payment a.s.o., according to the applicable legal provisions;
- The winning bid and the technical specifications will be annexed to the contract and make part of it;
- The technical specifications and the winning bid on basis of which the contract was awarded shall not be modified by addendum to the contract;
- Any contract signed under the applicable national legislation shall produce effects as of the date of its signature by both parties. Goods/services/works could not be supplied/provided/executed and payments could not be made prior to contract signature. The same principles apply to the contracts addenda.

Price adjustment

- During the execution phase of the procurement contract, the price may be adjusted only in the following situations:
 - legislative modifications, technical norms modifications have occurred or the central or local public bodies have issued administrative acts having as object the introduction, modification or elimination of some taxes/local taxes, having as consequence the increase/decrease the costs on basis of the procurement contract price has been established;
 - certain conditions in the market following which increase/decrease the price references for the constitutive elements of the bid have occurred; their consequence is the increase/decrease of the costs laying at the basis of the procurement contract price.

The possibility for the price adjustment must be specified in the contract notice as well as in the signed contract, having special clauses in this regard. The beneficiary has the obligation to also mention the specific modality for the price adjustment, the price references to be used as well as the information source considering their evolution, such as statistical bulletins or quotations of commodities exchange markets.

The lack of or the modification of the information/clauses on price adjustment clauses leads to impossibility of applying the provisions related to the adjustment of the price for the procurement contract price.

- In case of lack of specific clauses, the price adjustment is possible in the following situations:
 - In case of unforeseen circumstances and beyond the control of the parties, other than those as mentioned above or
 - In the unforeseen event when the duration of the procurement procedure is longer than initially foreseen, from reasons excluding any fault of the beneficiary/economic operator.

In any situation, the contract price may be adjusted in so far as strictly necessary for covering the costs increase on basis of which the contract price has been established.

The price adjustment method of the procurement contract price shall not, in any case, lead to exceeding the thresholds as foreseen in the GEO No. 34/2006 or to reducing the advantages as mentioned in the award justification document.

Phase 4 – The implementation of the procurement contract

The assumed contract clauses shall be strictly observed.

Rules for the procurement contract modification:

- The modification of the procurement contract shall be made by addenda to the contract.
- The procurement contract shall be modified only during the execution period of the contract.
- Any modification which extends the contract execution period shall be made so as to finalize the contract implementation before the time limits of the financing contract, and the payments shall be made according to the eligibility rules as established in the financing contract.

Any contract modification shall not lead to reducing the advantages as mentioned in the award justification document.

Example:

It is not allowed to modify the delivery date in case this was a condition in the technical specifications and also an advantage mentioned in the award justification document.

- The object of the contract addendum shall be strictly linked to the object of the initial contract;
- The private beneficiary could increase the contract price in case the financing is ensured from his/her own budget. In case of service and works contracts, the modification of the contract value could be made so as not to exceed the value of the financing contract/addenda and/or the thresholds as foreseen in the GEO No. 34/2006, article 9 letter c) and c1). In any situation of contract price modification (including the decrease of the contract price) for the supply, service or works contracts, the private operator

shall ask and obtain for the approval of the managing authority/Program operator before the modification as such;

- In case of supply contracts, the winning bid could be modified only with the prior approval of the managing authority/Program operator in case the object of the bid is not currently on the market (with justifying documentation in this respect) and in case the replacing objects have technical characteristics of equal or higher value, not raising compatibility issues and without price modification.

SECTION VIII

The procurement file

At the end of the procurement procedure, for all the simplified procurement procedures conducted by the private beneficiary having an estimated value exceeding the threshold as foreseen in the GEO No. 34/2006, article 19, the procurement file shall be compiled/prepared.

The procurement file shall be compiled/prepared shall have the following documents:

1. Technical specifications
2. The document for determining the current estimated value
3. Evidence of contract notice
4. Award justification document
5. Self-declaration of not breaching the provisions of the conflict of interests
6. Original bids
7. Procurement contract
8. Addenda (if the case)
9. Other relevant documents

SECTION IX

Supporting documents for the reimbursement claim

For the administrative verification of the expenditure made within the financing contract, the private beneficiary shall submit the following documents (only one hard copy for the documents on paper format):

1. Document for determining the current estimated value;
2. Evidence of contract notice;

3. Award justification document;
4. Procurement contract, having annexed the winning bid;
5. Addenda (if the case);
6. Self-declaration of not breaching the provisions of the conflict of interests;
7. CDs with scanned documents (PDF format) included in the procurement file, including the documents proving the fulfilling of the contract duties (exemple: works and services reception documents etc.).