

The Minister of Infrastructure and Development Guidelines to orders under the EEA Financial Mechanism 2009-2014 and the Norwegian Financial Mechanism 2009-2014, to which the Act of 29 January 2004 – Public Procurement Law is not applicable

- 1) The Guidelines shall be applicable to:
 - a) all contracts awarded by the Programme Operators, beneficiaries¹ and project partners (excluding entities from donors states) **who are not obliged** to comply with the Act of 29 January 2004 – Public Procurement Law (PPL Act);
 - b) contracts of a value not exceeding the equivalent of amount expressed in PLN, referred to in Article 4 point 8² of the PPL Act, awarded by Programme Operators / beneficiaries / project partners obliged to comply with the said Act,
subject to point 2.
- 2) The Guidelines shall not be applicable to:
 - a) to contracts, to which the PPL Act is not applicable, except for contracts to which PPL Act is not applicable pursuant to Article 4 points 8 the said Act;
 - b) recruitment of experts for the evaluation of projects, if said recruitment is particularly regulated by the generally applicable law or is run in accordance with the principles of fair competition and transparency (e.g. open call);
 - c) expenditures incurred under lump-sum amount referred to in the generally applicable law e.g. allowance, travel costs, accommodation costs;
 - d) expenditures incurred under Measure I: Mobility Projects in Higher Education and Measure II: Preparatory Visits;
 - e) contracts where the subject of order is dissemination the results of scientific research and development work in the form of scientific publications, in particular in scientific magazines or scientific books.
- 3) The Programme Operator / beneficiary / project partner shall make all expenditures under the project, regardless of the value of the project, purposely, cost-effective, subject to the rules for obtaining the best results with the outlays and in the manner that permits timely performance of tasks, as well as according to the principles of competitiveness, equal treatment of contractors and transparency.
- 4) Services, supplies and building works under a given project implemented by the Programme Operator / beneficiary / project partner shall be aggregate. The Programme Operator / beneficiary / project partner shall decide whether in the case of contracting services, supplies and building works there is a single purchase order or separate orders, considering that the following criteria are jointly met:
 - a) the identity of the object of order (services, supplies and building works are of the same type and for the same purpose);
 - b) the identity of the time of order (the award of the contract at the same time is possible);
 - c) the identity of the subject of order (the execution of the order by a single contractor is

¹ Beneficiary shall be understand as entity, which received grant for the implementation of the project, as well as beneficiary of the technical assistance and beneficiary, which received grant within Fund for Bilateral Relations at national level and Fund for Bilateral Relations at programme level.

² The Euro exchange rate is set out in the provisions issued on the basis of Article 35 paragraph 3 of the PPL Act.

possible).

- 5) In case of the contracts of a value exceeding the amount of PLN 3,500 net / gross³ and also do not exceeding the equivalent of amount expressed in PLN, referred to in Article 4 point 8 of the PPL Act, Programme Operator / beneficiary / partner undertakes to make inquiry on its website or to send the inquiry to at least three prospective contractors, if there are three prospective contractors on the market for that particular order.

The inquiry should contain, in particular, the description of the subject of order, the criteria of offer evaluation⁴ and the deadline for submission of offers, where the deadline for submission of offers should allow for a time necessary for the preparation and submission of the offer.

It is allowed to send the inquiry in writing, by electronic means or by fax, and in the case where the subject of order are generally available supplies or services of fixed quality standards, where the only criteria is price it is possible to obtain information about the contractor's offer by phone, through its website including commercial information or by direct contact with contractor.

- 6) In case of the contracts of a value exceeding the equivalent of amount expressed in PLN, referred to in Article 4 point 8 of the PPL Act, Programme Operator / beneficiary / project partner undertakes to make inquiry on its website, if it has such a website. Otherwise Programme Operator / beneficiary / project partner undertakes to make inquiry on website designed to place ads or in the national or local press announcement depending on the meaning of the contract for national or local market.

The inquiry should contain, in particular, the description of the subject of order, the criteria of offer evaluation and the deadline for submission of offers, where the deadline for submission of offer should allow for a time necessary for the preparation and submission of the offer and should not be shorter than 7 calendar days of the date of the notice of inquiry. Minimum term of 7 calendar days shall not apply to non-priority orders referred to in provisions of Article 2a of the PPL Act.

In case where the subject of order are generally available supplies or services of fixed quality standards, where the only criteria is price it is possible to sending inquiry in writing, by electronic means or by fax to at least three prospective contractors without necessity of making inquiry public on the website or press announcement.

The Programme Operator / beneficiary / project partner shall send the notice of the result of procedure to each contractor who submitted the offer or shall announce the notice on the website, on which the inquiry was placed.

- 7) If the Programme Operator / beneficiary / project partner, despite announcing the inquiry on its website, press announcement or sending the inquiry to at least three prospective contractors has not received two valid offers, the procedure referred to in respectively point 5 or 6 shall be repeated. If as a result of repeated procedure the Programme Operator / beneficiary / project partner has not received two valid offers, an agreement can be concluded e.g. with the only one contractor who submitted a offer, or after negotiations with one contractor.
- 8) The Programme Operator / beneficiary / project partner may award an entity in case of occurrence circumstances referred to in Article 17 paragraph 1 of the PPL Act, if the inquiry was placed on its website, website designed to place ads or in the press announcement.
- 9) The Programme Operator / beneficiary / project partner is obliged to document the procedure for award of the contract value exceeding PLN 3,500 net / gross³ by drawing a note. In the case of order below PLN 3,500 net / gross³ there is no obligation to document the procedure for award. The note should include at least:
- a) the information about the manner in which the inquiry has been announced by the Programme Operator / beneficiary / project partner, or the information about at least three prospective contractors to which the Programme Operator / beneficiary / project partner has sent the inquiry or the information about occurrence of the circumstances referred to in point 10, along with explanations;

³ If contractors are VAT payers, the amount of PLN 3,500 net is applicable; if contractors are not VAT payers, the amount of PLN 3,500 gross is applicable.

⁴ Offer evaluation criteria shall be price or price and other criteria linked to the object of the contract or characteristic of the operator.

- b) the list of offers submitted to the Programme Operator / beneficiary / project partner in reply to the inquiry;
 - c) indication of the winning offer with the justification of its selection; if the offer with lowest price was not selected the Programme Operator / beneficiary / project partner is obliged to indicate all circumstances, which affected the choice of the offer;
 - d) the date of drawing up the note and the signature of the Programme Operator / beneficiary / project partner or of a person authorized by the Programme Operator / beneficiary / project partner to act on its behalf;
 - e) the following attachments:
 - the proof that the inquiry has been published on the website (e.g. screenshot printout) or press announcement, if the inquiry was published on the website or press announcement,
 - offers submitted or printout from the contractor's website, unless the offers were obtained by phone or directly,
 - declaration/s, in accordance with the template set out in annex 1 hereto, by individuals who perform actions connected with the preparation or carrying out the procedure of selecting the contractor on behalf of the Programme Operator / beneficiary / project partner, on the lack of the grounds for exclusion referred to in Article 17 paragraph 1 of the PPL Act, with a reservation of the provisions of point 8. In this case the information should concern the occurrence of the circumstances referred to in Article 17 paragraph 1 of the said Act along with an indication of concerned persons.
- 10) Point 5 and 6 shall not apply:
- a) to individual forms of upgrading qualifications (individual training, studies etc.). Group training (i.e. training entirely commissioned by the Programme Operator / beneficiary / project partner) shall be covered by the procedure referred to in point 5 or 6;
 - b) to catering services amounting to up to PLN 5,000 net, which are justified by the need to properly host a high level delegation;
 - c) to contracts for lots, in which in the two previously procedures conducted in accordance with the PPL Act (in open tendering or restricted tendering), no tender has been submitted in one part and it is necessary to repeat proceedings in one of the parts, however because of the contract value said Act does not apply;
 - d) in the case of premises referred to in PPL Act justifying using single-source procurement.
- 11) During the contract implementation an increase in the contractual amount shall be acceptable, up to the amount of 50% of the contract value as set forth in the agreement with the contractor, if it was provided in the inquiry. In this case the application of the procedure of selecting the contractor is not necessary. The value of the contract is the value of the basic contract and supplemental contract.
- 12) Should specific provisions of internal regulations of the Programme Operator / beneficiary / project partner, concerning the awarding of contracts be more strict than the provisions of the Guidelines, internal regulations of the Programme Operator / beneficiary / project partner should apply. In other cases the Programme Operator / beneficiary is obliged to comply with the Guidelines.
- 13) In the case of non-compliance with the Guidelines by the Programme Operator / beneficiary / project partner, an entity being a party to the contract or another authorized inspection body has the right to apply respectively "Guidelines for determining financial corrections to be made to expenditure cofinanced by the Structural Funds or the Cohesion Fund for non-compliance with the rules on public procurement" (COCOF/07/0037/03), constituting annex no 2 hereto, exclusively as regards the determination of the amount of correction.

Annexes:

- 1) template of declaration mentioned in point 9 letter e) third tiret;
- 2) "Guidelines for determining financial corrections to be made to expenditure cofinanced by the Structural Funds or the Cohesion Fund for non-compliance with the rules on public procurement"