

BEREC OFFICE PROCEDURES

CALLS FOR TENDER

I. LEGAL BACKGROUND

The legal basis for BEREC Office's tendering procedure is constituted by:

- **Directive 2004/18/EC** of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts
- Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the **Financial Regulation applicable to the general budget of the European Communities**, as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 in particular Part One, Title V for Procurement (Articles 88 to 107);
- Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed **rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities**, as amended by Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005 and by Commission Regulation (EC, Euratom) No 1248/2006 of 7 August 2006 and by Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 in particular Part One, Title V on Procurement (Articles 116 to 159);
- Case law of the European Courts;
- Management Committee Decision (44)2010 on the Financial regulation applicable to the BEREC Office in conformity with the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Union ;
- **Vademecum on Public Procurement Procedures in the Commission** (last updated in March 2011) is also available and provides support in the interpretation of the Commission Regulation defined above.

II. OBJECTIVES

II.1. Overall Objectives

The overall objective of the tendering process is to ensure, whilst managing the risks associated with procurement, that BEREC Office purchases goods or services in due time, in appropriate quality and quantity, at the best price.

II.2. Specific Objectives

The overall objectives are linked to and integrated with the following specific objectives:

II.2.1. Operational objectives

Economy

- ✚ To purchase goods/ services at the optimum price for the required quality and within the established timescales
- ✚ To optimise tendering costs and the related administrative burden

Effectiveness

- ✚ To acquire goods and/ or services needed to meet BEREC Office's objectives and that are supported by a financing decision contained within the approved Annual Work Programme
- ✚ To ensure that future contractors are reliable, financially stable and able to perform

Efficiency

- ✚ To establish forward plan on business needs and timescales for tenders
- ✚ To define in a clear and accurate manner the scope of the tender
- ✚ To acquire services and/ or goods within the established timescales
- ✚ To ensure that all steps of the procurement process are conducted in a cost effective and efficient and timely manner
- ✚ To maximise and promote competition increasing suppliers' participation

II.2.2. Compliance objectives

- ✚ To comply with the applicable legislation and regulatory framework and that all call for tenders are valid, justified, authorised and within the prescribed budgets
- ✚ To comply with the principle of equal treatment and non discrimination in particular ensuring that:
 - ⇒ All economic operators are treated in the same manner, using objective and non-discriminatory selection criteria
 - ⇒ All economic operators are treated in the same manner when launching the process and when replying to clarifications
 - ⇒ All cases where a contractor has been selected without the launch of a competitive procedure are deviations and reserved for specific and clearly defined situations
 - ⇒ Conflicts of interest are prevented
 - ⇒ Time limits of the call for tender process are long enough to allow all interested bidders a reasonable and appropriate period to prepare and submit their tenders
- ✚ To comply with the principle of transparency ensuring that:
 - ⇒ All procurement activities are supported by authorised and documented policies and procedures
 - ⇒ All details related to scope, duration, standard terms and conditions of the future contract, as well as, in relation to the tendering process, exclusion, selection, award criteria are defined and notified to all potential bidders within the tender specification
 - ⇒ A transparent tender process that allows structured and informed decision making is conducted
 - ⇒ The tenderers are informed of the process outcome
- ✚ To comply with the principle of proportionality in order to tailor the tendering procedure in relation to the specific requirements, the estimated future contract value (indicated by the Administrative Manager) and the risks involved
- ✚ To ensure that staff dealing with the process is kept informed and trained on the regulatory framework and the BEREC Office's Call for Tender process.

II.2.3. Reporting Objectives

- ✚ To provide and maintain accurate and complete reports required by the regulatory framework
- ✚ To ensure that tendering activities are thoroughly documented
- ✚ To maintain a central archive for tenders
- ✚ To ensure that all the offers received are kept in a safe that can be accessed only by authorised personnel in order to ensure confidentiality during the tendering process

III. RISKS

III.1. OPERATIONAL RISKS

III.1.1. Lack of Economy

- ✚ The purchase of goods and services at a higher price than the average market price, resulting also in misuse of the allocated budget and consequent reduction of the budget for other resources
- ✚ The purchase of inappropriate goods and services, resulting in costly repurchasing or contract variations

III.1.2. Lack of Effectiveness

- ✚ Unclear definition of BEREC Office needs, leading to longer timescales or failure of process
- ✚ Procurement process is not justified from an economic and an operational point of view, resulting in the purchase of inappropriate or unnecessary goods and services
- ✚ Budgetary resources not available, insufficient or untimely, leading to a mismatch between needs and budget or to longer timescales resulting in failure of process

- ✦ Future contractors are not reliable, financially unstable and not able to perform satisfactorily, resulting in a failure of the process to select the best offer

III.1.3. Lack of Efficiency

- ✦ Failure to keep to the defined specification and to the notified selection/ award criteria leading to a mismatch between the needs and the results of the tendering process
- ✦ Inappropriate choice of applicable procurement procedure, resulting in failure to award the contract
- ✦ Lack of offers or non compliant offers, resulting in failure to award the contract

III.2. COMPLIANCE RISKS

- ✦ Breach of the regulatory framework and principles leading to the risk of legal action or disputes with suppliers, negative auditing reports, withdrawal of funding
- ✦ Breach of principles on equal treatment and non-discrimination leading to an unjustified decision to opt for a non competitive process or to staff subject to undue influence and conflicts of interest
- ✦ Breach of transparency principles resulting in the inability to keep to the defined specification and to the notified selection and award criteria
- ✦ Breach of proportionality principle leading to the selection of a procedure which is not adequate to the specific case, considering risks and costs involved
- ✦ Poorly defined award criteria leading to difficult or non transparent evaluation and comparison between tenders
- ✦ Unavailable or insufficient documentation of decisions taken during the tendering process leading to the risk of disputes with suppliers or to negative audit reports
- ✦ Limited knowledge of staff on tendering issues and of the different steps of the process, in particular also with regards to the obligations related to being

a member of the opening and/ or evaluation committee, resulting in unjustified decisions

III.3. REPORTING RISK

- ✚ Lack or loss of tendering documentation leading to a possible weakness in sustaining BEREC Office's positions within the procurement team
- ✚ Access by unauthorised personnel leading to breach of confidentiality principle

IV. ACTORS AND RESPONSIBILITIES

ACTORS	RESPONSIBILITIES
Head of Finance and Administration	<ul style="list-style-type: none"> <li data-bbox="563 409 1386 499">✚ Responsible for the compliancy with procurement regulatory framework <li data-bbox="563 517 1386 562">✚ Responsible to monitor process application <li data-bbox="563 573 1386 663">✚ Responsible to capture and implement needed improvements <li data-bbox="563 680 1386 725">✚ Data controller
Authorising Officer (AO)	<ul style="list-style-type: none"> <li data-bbox="563 745 1386 790">✚ Acts as Operational Verifying Agent <li data-bbox="563 801 1386 936">✚ Is responsible for the specific call for tender and all the related phases from launching until evaluation and contract award <li data-bbox="563 954 1386 1043">✚ Nominates the Project Manager for the specific call for tender <li data-bbox="563 1061 1386 1151">✚ Verifies and approves BEREK Office's needs, both content and budget related <li data-bbox="563 1169 1386 1370">✚ Takes decisions in all tendering phases, such as signature of the tender dossier, approval of the OJ Notice, appointment of the opening and evaluation committee, etc., <li data-bbox="563 1388 1386 1478">✚ Takes the award decision and signs the contract with the winning tenderer
Project Manager (PM)	<ul style="list-style-type: none"> <li data-bbox="563 1518 1386 1563">✚ Acts as Operational Initiating Agent <li data-bbox="563 1574 1386 1664">✚ Evaluates and defines the business needs and budget allocation <li data-bbox="563 1682 1386 1727">✚ Carries out market research <li data-bbox="563 1738 1386 1783">✚ Prepares the tender specifications <li data-bbox="563 1794 1386 1883">✚ Draws up shortlist of candidates for negotiated procedures <li data-bbox="563 1901 1386 1946">✚ Takes part in the opening and evaluation sessions
Procurement Officer (PO)	<ul style="list-style-type: none"> <li data-bbox="563 1966 1386 2011">✚ Prepares the final tender dossier <li data-bbox="563 2022 1386 2067">✚ Prepares the draft and final contract

	<ul style="list-style-type: none"> ✚ Provides advice to the Authorising Officer ✚ Proposes the composition of the opening and evaluation committee ✚ Is responsible for the dispatch of the tender dossier to all the tenderers within the set deadline ✚ Is responsible for the reception and storage of offers ✚ Is responsible for archiving the tender documents ✚ Provides advice in general on the Call for Tender process to the Head of Finance and Administration by flagging issues and suggesting improvements
Opening and Evaluation Committee	<ul style="list-style-type: none"> ✚ Is composed of two members for the negotiated procedures and 3 members (one of which from different department to AO) for open procedures ✚ Is responsible for the opening and evaluation of the offers ✚ Gives recommendation to the Authorising Officer on the award of the contract
Security Service	<ul style="list-style-type: none"> ✚ Registers incoming offers

V. TYPES OF PROCEDURES USED BY BEREC OFFICE

ESTIMATED CONTRACT VALUE	TYPE OF PROCEDURE AND APPLICABLE RULES
≤ € 500	Simple payment against invoice (<i>Article 91 of the Financial Regulation and Article 129(4) of the Implementing Rules</i>)
≤ € 5 000	NP1: <u>Negotiated procedure with a single tender</u> (<i>Article 91</i>)

	<i>of the Financial Regulation and Article 129(3) of the Implementing Rules)</i>
≤ € 25 000	NP3: <u>Negotiated procedure with at least three candidates</u> without publication of a contract notice (<i>Article 91 of the Financial Regulation and Article 129(2) of the Implementing Rules</i>)
≤ € 60 000	NP5: <u>Negotiated procedure with at least five candidates</u> without publication of a contract notice (<i>Article 91 of the Financial Regulation and Article 129(2) of the Implementing Rules</i>)
> € 60 000	OT: <u>Open tender</u> with publication of a contract notice in the Official Journal (<i>Article 91 of the Financial Regulation and Article 158 of the Implementing Rules</i>)

VI. DETAILED WORKFLOW

VI.1. PLANNING




ACTORS	RESPONSIBILITIES
Head of Finance and Administration	<ul style="list-style-type: none"> ✚ Collects information from departments regarding procurement needs and drafts the first draft of annual procurement plan ✚ Defines the types of procedures together with the PO and estimated launch dates and choice of PMs for each procedure ✚ Provides AO with comments before approval of final annual procurement plan
AO	✚ Approves the annual procurement plan

VI.2. DEFINITION OF PROCUREMENT NEEDS

ACTORS	RESPONSIBILITIES
PM	<ul style="list-style-type: none"> ✚ Identifies BEREK Office's needs and links them to the budget allocation ✚ Drafts the tender specifications ✚ For NP3 and NP5 prepares the shortlist of candidates invited to tender
PO	<ul style="list-style-type: none"> ✚ Supports in the preparation of the Tender Dossier and checks the TS from the perspective of the future management of the contract ensuring that the scope of work described is clear and understandable









VI.3. PREPARATION AND DISPATCH OF THE TENDER DOSSIER

ACTORS	RESPONSIBILITIES
PO	<ul style="list-style-type: none"> ✚ For OT only, drafts the Contract Notice in SIMAP and sends it for approval to the AO
AO	<ul style="list-style-type: none"> ✚ For OT only, approves the Contract Notice
PO	<ul style="list-style-type: none"> ✚ For OT only, submits the Contract Notice for publication in the Official Journal via SIMAP. The Notice will be published in the OJ in twelve calendar days from submission ✚ Finalises the tender dossier and submits it for approval and signature to the AO
AO	<ul style="list-style-type: none"> ✚ Approves tender dossier and, for NPs also the shortlist ✚ Signs the invitation/cover letter(s)

PO	<ul style="list-style-type: none">  For OT: following publication of OJ notice, publishes the tender specification on BEREC Office's website to allow suppliers to access it  For NPs: dispatches the tender dossier by email to the shortlisted tenderers  Archives the tender documentation in the procurement file
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VI.4. REQUESTS FOR CLARIFICATIONS PRIOR TO THE SUBMISSION OF OFFERS

Contacts with the tenderers can only be in written format and related to the tender. A deadline for clarification submission is pre-established within the timetable of the tender dossier. Any clarifications received after this date are not processed, a courtesy e-mail is sent to the tenderer reminding about the timescales.

ACTORS	RESPONSIBILITIES
PO	<ul style="list-style-type: none">  Receives the requests for clarification  If necessary, requests to the PM to reply the technical requests for clarification
PM	<ul style="list-style-type: none">  Drafts replies to the technical requests for clarification
PO	<ul style="list-style-type: none">  Submits the clarification letter(s) to AO for approval and signature
AO	<ul style="list-style-type: none">  Signs the clarification letter(s)
PO	<ul style="list-style-type: none">  E-mails the replies to the requester and, at the same time, to all the tenderers on the shortlist  For OT the clarifications are published on the BEREC Office website  Archives the documentation in the procurement file

VI.5. RECEIPT OF OFFERS

ACTORS	RESPONSIBILITIES
Security	<ul style="list-style-type: none"> + Receives the offers, checks that the envelopes are sealed and registers the hour and date of the receipt + Informs PO
PO	<ul style="list-style-type: none"> + Collects the offers from the security service and stores them in a locked cupboard

VI.6. OPENING AND EVALUATION

ACTORS	RESPONSIBILITIES
AO	<ul style="list-style-type: none"> + Appoints the opening and evaluation committee
PM	<ul style="list-style-type: none"> + Takes part in the opening and evaluation sessions
Opening and Evaluation Committee	<ul style="list-style-type: none"> + Opens the offers and checks the eligibility criteria: <ul style="list-style-type: none"> o envelope sealed o deadline met + Checks also if the offers were sent in the number of copies required and if the offers are signed + Checks the selection criteria and decides which are the offers will be further evaluated + Evaluates each offer against the specific award criteria + Recommends to AO a tenderer for the award of the contract OR proposes not to proceed with the contract signature + Drafts the report of the opening and evaluation session(s)
PO	<ul style="list-style-type: none"> + If further clarifications regarding the offers are requested by the Opening and Evaluation Committee, drafts a request for clarifications to be asked to the tenderers
AO	<ul style="list-style-type: none"> + Signs the clarification letter
PO	<ul style="list-style-type: none"> + E-mails the clarification letter(s) to tenderer(s) + Collects the responses from the tenderer(s) and forwards them to the Opening and Evaluation Committee for assessment

	<ul style="list-style-type: none"> ✚ Archives all the documentation in the procurement file
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VI.7. AWARD OF THE CONTRACT

AO	<ul style="list-style-type: none"> ✚ Reads the recommendation of the Evaluation Committee and nominates the winning tender OR decides not to proceed with the contract signature
PO	<ul style="list-style-type: none"> ✚ Drafts the award notification letters
AO	<ul style="list-style-type: none"> ✚ Signs the award notification letters
PO	<ul style="list-style-type: none"> ✚ Sends out the award notification letters to all the tenderers at the same time ✚ For OT only, drafts a Contract Award Notice in SIMAP and sends it for approval to the AO
AO	<ul style="list-style-type: none"> ✚ For OT only, approves the Contract Award Notice
PO	<ul style="list-style-type: none"> ✚ For OT only, submits the Contract Award Notice for publication in the Official Journal via SIMAP ✚ Archives the original offers together with all the tender documentation

VI.8. CONTRACT SIGNATURE

ACTORS	RESPONSIBILITIES
PO	<ul style="list-style-type: none"> ✚ Prepares 3 copies of the contract and initialises all the pages ✚ Sends the 3 copies of the contract to the winning tenderer for signature (asking the Contractor to sign and send back all the copies)
AO	<ul style="list-style-type: none"> ✚ Signs the contract after the signature of the Contractor

PO	<ul style="list-style-type: none"> ✚ Keeps one copy of the contract for his files and sends one copy to the Contractor and one copy to the PM
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VI.9. REQUESTS FOR CLARIFICATIONS AFTER THE AWARD OF THE CONTRACT

ACTORS	RESPONSIBILITIES
PO	<ul style="list-style-type: none"> ✚ Receives the requests for clarification after award ✚ Drafts the replies to the requests (by providing the requested tenderer only with the information related to the evaluation of offers that can be made public)
AO	<ul style="list-style-type: none"> ✚ Signs the clarification letter
PO	<ul style="list-style-type: none"> ✚ E-mails the replies to the requester and, at the same time, to all the tenderers on the shortlist ✚ Archives the documentation in the procurement file

VI.10. EXCEPTIONS

All exception from the above mentioned procedure shall be approved by the Authorising Officer and shall be registered in the BEREC Office register of exceptions.

VII. REPORTING

The following reports are required by the regulatory framework:

- **Ex-ante publication** (on BEREC Office's website) of the OTs and NP5s to be launched for a given year
- **Ex-post publication** (on BEREC Office's website) of all contracts awarded following OTs or NP5s for a given year

VIII. INFORMATION SYSTEM SUPPORTING THE PROCESS

SIMAP for the publication of open tenders and contract award notices (simap.europa.eu)

IX. GLOSSARY

AO	Authorising Officer
IR	Implementing Rules
NP	Negotiated Procedure
OT	Open Tender
PM	Project Manager
PO	Procurement Officer
SIMAP	Systeme d'Information sur les Marches Publics
ToRs	Terms Specifications

