

<p>BEREC Office</p> <p>Instructions on public procurement procedures for contracts of a value <u>below or equal to EUR 5 000 (NP1)</u></p>
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1. Legal Basis: Article 129 of the Implementing Rules

[Article 129](#)
Low-value contracts
(Article 91 of the Financial Regulation)

[...]

3. Contracts with a value **less than or equal to EUR 5 000** may be awarded on the basis of a single tender.

4. Payments in respect of items of expenditure for an amount **less than or equal to EUR 500** may consist simply in payment against invoices, without prior acceptance of a tender.

Maximum value of contract	Type of procedure
Services or supplies	Minimum procedure applicable
≤ €500 Payments for all types of expenditure of amounts of less than or equal to €500	Simple payment of costs against invoices Article 91 of the Financial Regulation and Article 129(4) of the Implementing Rules
≤ €5 000	Negotiated procedure with a single tender Article 91 of the Financial Regulation and Article 129(3) of the Implementing Rules

2. Payment of costs against invoices for purchases ≤ €500

- Items of expenditure for an amount up to EUR 500 can be reimbursed against the invoice. Invoices should be established in the name of the BEREC Office. If duly justified, invoices in the name of a member of the staff could be accepted (Art. 100(e) IR).
- For purchases **up to EUR 124 (excl. VAT) in Belgium and EUR 240 (excl. VAT) in Luxembourg**, the BEREC Office must pay VAT. The supplies or services can therefore be purchased with no formalities for a value up to those amounts and the invoice reimbursed.
- For purchases **above EUR 124 (excl. VAT) in Belgium and EUR 240 (excl. VAT) in Luxembourg, but below or equal to EUR 500**, a purchase order will have to be signed by the Authorising Officer for the purpose of granting VAT exemption, and sent to the supplier or service provider after the AO signature. Please refer to Annex 1 for a brief overview of the conditions for VAT exemption. The supplier or service provider will deliver on the basis of the Purchase Order signed by the AO.
- Upon receipt of the invoice, the payment will be executed on a provisional commitment (only for representation expenses), or an individual commitment previously entered in ABAC with **WFR2**.

3. Negotiated procedure with one candidate for procurement contracts > EUR 500 and ≤ EUR 5000

3.1 Choice of the candidate

- Compliance with the principles of **transparency, proportionality, equal treatment and non-discrimination** must be ensured. In practice, the candidate will be identified on the basis of its previous experience and proven reliability in providing similar supplies or services.
- The use of a relevant and valid list resulting from a Call for Expressions of Interest (**CEI list**) can be useful (but it is NOT compulsory). Using a CEI (AMI) list can be a way of ensuring that, as far as the choice of the candidate is concerned, the principles of transparency, proportionality, equal treatment, and non-discrimination are properly respected.

3.1.1 Services and supplies traded on the internet

- A negotiated procedure ≤ EUR 5000 with one candidate can be **simplified** if the following conditions are satisfied:
 1. the service or supply is **publicly traded on the internet** (e.g. subscription services to magazines and/or specialised publications, studies, information material, pictures)
 2. the price is ≤ EUR 5000 **net of VAT**, and it is **firm and fixed for all the economic operators** interested in procuring the service or supply, and deemed **acceptable by the Authorising Officer according to the principles of best value for money and sound financial management**
 3. **no proof of compliance with the selection criteria** is asked and **only one final payment** is made
 4. the contracting authority requires **no Exclusion Criteria declaration**
 5. the **LE and BA are already in ABAC**
 6. the purchase is **not recurrent but punctual**
- If all the conditions above are verified, then **no formal invitation** to the candidate has to be sent. The price offer published on the internet can be considered as a price quote, and an **individual commitment** for an equivalent amount must be **entered in ABAC**, either with **WFR11** or with **WFR2** (no CVA by Unit R2). The price must be included in two original purchase orders to be sent to the candidate in view of concluding the contract (see section 3.2.7 to 3.2.11 below).

3.2 Implementation of the procedure

- In case of services or supplies not traded on the internet and/or not complying with the conditions listed in section 3.1.1, the procedure will be implemented as follows.

3.2.1 Preparation of the invitation to negotiate

- [Email template invitation](#) to negotiate to be downloaded from the Manual of Procedures and filled in with relevant data.
- Annex I (compulsory): [Blank purchase order with general conditions](#)
- Possibility to use the purchase order for contracts \leq EUR 5 000 if:
 1. Tasks can be easily described
 2. Only one final payment (NO pre-financing; NO interim payment)
 3. A control on the proper execution of the contract can be done easily and without delay
- In case of representation expenses, the request to launch the call can be included in the authorisation file.
- It is **strongly advised to use the purchase order and foresee only one single final payment for contracts < EUR 5 000**. In case the contracting authority wishes instead to make several payments (interim), a [service contract](#) must be used and attached as an annex to the simplified tendering document instead of the purchase order.

3.2.1.1 Minimum time limit for receiving a tender

- No compulsory minimum time limit for receiving a tender. The actual time limit must be long enough to allow the candidate a reasonable and appropriate time to submit a tender of adequate quality.

3.2.1.2 Exclusion Criteria

For contracts \leq EUR 5 000, the contracting authority could, on the basis of its risk assessment, avoid asking candidates to fill in and sign the Exclusion Criteria form: "Depending on its risk assessment, the contracting authority may refrain from requiring the declaration referred to in the first subparagraph for contracts with a value less than or equal to EUR 5 000" ([Article 134\(1\) IR](#)).

Where the contracting authority has doubts as to whether the candidate to whom the contract is to be awarded is in one of the situations of exclusion, it may require him to provide the necessary evidence.

3.2.1.3 Selection Criteria

- The contracting authority may, depending on its analysis of risks, choose not to ask the candidate to provide documentary proof of his financial and economic, technical and professional capacity. In that case **no pre-financing shall be made**, unless a service

contract is used and a financial guarantee equal to at least the pre-financing is required (**not recommended for contracts < EUR 5 000**).

3.2.1.4 Award Mechanism

The award of the contract will be based on best value for money under the condition that all the requirements laid down in the invitation to negotiate are fully met and that the price is acceptable by the contracting authority in respect to the principle of sound financial management.

3.2.2 Approval of the invitation to negotiate by the Authorising Officer

- Depending on the organisational arrangements in each Unit, a request to launch a negotiated procedure \leq EUR 5 000 may be circulated:
 1. [Template request to launch a call for tenders](#)
 2. Indicative [routing sheet](#)

3.2.3 Dispatch of the invitation to negotiate to the candidate

- The invitation to negotiate is sent to the candidate by email.
- As a good administrative practice, a **confirmation of receipt of the invitation to negotiate** must always be asked and annexed to the file.

3.2.4 Receipt of the tender

- E-mail, mail, private courier services or hand delivery.
- Any tender from a candidate who has not been invited must be rejected.

3.2.5 Negotiation with the single candidate

- Where the value of the contract is **less than or equal to EUR 5 000 and one single candidate has been invited**, the contracting authority must make sure that the **best technical and financial terms, on the basis of the specifications**, are granted to the BEREK Office.
- The contracting authority may negotiate with the single candidate the tender that has been submitted, in order to adapt it to the requirements set out in the invitation to negotiate. All the steps of the negotiation must be documented in written form.

3.2.6 Evaluation of the tender

- The evaluation can be carried out by one official. A note to the attention of the AO drafted by the initiating agent should document and provide reasonable assurance that

the price and quality of the tender is acceptable in respect to market prices and the principle of best value for money.

3.2.7 Budgetary commitment

- A provisional commitment may be used for representation and library expenses. In all other cases, an individual commitment must be entered in ABAC, either with **WFR11** or with **WFR2** , to commit the resources necessary to cover the price offered in the successful tender.
- Upon receipt of the budgetary commitment file, the Authorising Officer will:
 - 1) Validate the commitment in ABAC (if an individual commitment is used)
 - 2) Sign two copies of the purchase order filled in with all the relevant info according to the invitation and the tender (parts in between square brackets to be filled in accordingly) Please refer to Annex 1 for a brief overview of the conditions for VAT exemption.
 - 3) Sign and date the information letter
- The [list of documents to be included in the commitment file](#) will be soon available on the Manual of Procedures.
- Indicative [routing sheet](#)

3.2.8 Information letter

- A **personalised notification** must be sent to the candidate by email specifying the reasons for award or rejection.
- The information letter for the successful candidate should state that no amendments can be made to the purchase order and that one signed original of the purchase order should be returned to the BEREC Office by a given date, beyond which the BEREC Office will no longer be bound to conclude the contract.
- The purchase order signed by the Authorising Officer can be attached to the information letter if this is sent by mail or private courier services. Otherwise it must be separately sent by mail or private courier services or hand delivered.

3.2.9 Signature of the purchase order by the contractor

- The contractor signs the two originals and sends one to the BEREC Office, which then files the original returned.

3.2.10 Payment

- After the execution of the tasks or delivery of the supplies, the contractor invoices the value of the services or supplies provided, up to the maximum price agreed in the contract¹.
- Upon receipt of the **invoice**, the data are entered in ABAC by the FIA (Financial Initiating Agent) using the "commercial invoice" tab.
- The most important parts of the **Payment Request**² (the general information, the link with a legal entity and a bank account file and the supporting documents (if applicable)) are automatically created when it is generated from ABAC Invoices. The 'certified correct' / 'conforme aux faits' endorsement by the OIA (Operational Initiating Agent) must be recorded in ABAC by the FIA. This endorsement shall certify that the services or supplies provided for in the contract have been properly delivered. The Payment Request passes through a short workflow (WFR3: validation by the FIA only). Only when attached to a Payment Order, the full validation process begins.
- Where one **Payment Order** is made per Payment Request, the Payment Order can be created automatically by right-clicking the option "Generate Payment Order" in the floating menu. If you do not create the Payment Order automatically, you will have to do so manually (Payment Order → New).
- The Payment Order will follow WFR4 in ABAC (FIA → FVA → AOSD). The 'passed for payment' / 'bon a payer' endorsement will be given by the AOSD with the "PP" validation code in ABAC. For payments linked to procurement contracts (Art. 98 IR), the endorsement 'bon a payer' / 'passed for payment' shall certify that:
 - a) The Institution has received and formally registered an invoice drawn up by the contractor;
 - b) All aspects of the invoice have been checked by the AOSD responsible or on his responsibility with a view to determining in particular the amount to be paid and the validity of the payment as discharge of the debt.

3.2.11 Archiving requirements

- After the execution of the contract and the final payment, the file will have to be archived in accordance with [archiving requirements for procurement files](#).

¹ For general information and guidance on payment time limits, consult BudgWeb (http://www.cc.cec/budg/imp/payments/imp-130-060_paytime_en.html) and the circular on late payment interest (http://www.cc.cec/budg/leg/frandir/doc/doc/11522_12_2007_interets_retard.doc)

² For detailed info and guidance on the use of ABAC for payment operations, consult DG BUDG's handbook on payments: http://www.cc.cec/budg/its/si2/its-020-060_doc_en.html

4. Negotiated procedure with more than one candidate for procurement contracts > EUR 500 and ≤ EUR 5 000

4.1 Choice of the candidates

- In case the contracting authority wishes to invite more than one candidate, this must be done in compliance with the principles of **transparency, proportionality, equal treatment and non-discrimination**. In practice, the candidates will be identified on the basis of their previous experience and proven reliability in providing similar supplies or services.
- The use of a relevant and valid list resulting from a Call for Expressions of Interest (**CEI list**) can be useful (but it is NOT compulsory). Using a CEI (AMI) list can be a way of ensuring that, as far as the choice of the candidates is concerned, the principles of transparency, proportionality, equal treatment, and non-discrimination are properly respected.

4.2 Implementation of the procedure

4.2.1 Preparation of the invitations to negotiate

- [Email template invitation](#) to be downloaded from the Manual of Procedures and filled in with relevant data.
- Annex I (compulsory): [Blank purchase order](#) with [general conditions](#)
- Possibility to use the purchase order for contracts ≤ EUR 5 000 if:
 1. Tasks can be easily described
 2. Only one final payment (NO pre-financing; NO interim payment)
 3. A control on the proper execution of the contract can be done easily and without delay
- In case of representation expenses, the request to launch the call can be included in the authorisation file.
- It is **strongly advised to use the purchase order and foresee only one single final payment for contracts < EUR 5 000**. In case the contracting authority wishes instead to make several payments (pre-financing and/or interim), a [service contract](#) must be used and attached as an annex to the simplified tendering document instead of the purchase order.

4.2.1.1 Minimum time limit for receiving the tenders

- No compulsory minimum time limit for receiving the tenders. The actual time limit must be long enough to allow the candidates a reasonable and appropriate time to submit tenders of adequate quality.

4.2.1.2 Exclusion Criteria

For contracts \leq EUR 5000, the contracting authority could, on the basis of its risk assessment, avoid asking candidates to fill in and sign the Exclusion Criteria form: "Depending on its risk assessment, the contracting authority may refrain from requiring the declaration referred to in the first subparagraph for contracts with a value less than or equal to EUR 5 000" ([Article 134\(1\) IR](#)).

Where the contracting authority has doubts as to whether the candidate to whom the contract is to be awarded is in one of the situations of exclusion, it may require him to provide the necessary evidence.

4.2.1.3 Selection Criteria

- The contracting authority may, depending on its analysis of risks, choose not to ask the candidates to provide documentary proof of their financial and economic, technical and professional capacity (OPTION 1 in the template email invitation). In that case **no pre-financing can be made**, unless a service or supply contract is used and a financial guarantee equal to at least the pre-financing is required.
- Alternatively, the contracting authority may specify the evidence required to prove the financial, economic, technical and professional capacity of the candidates (OPTION 2 in the template email invitation). In that case, the contracting authority may also pay a pre-financing if a service or supply contract is used. However, it is **not recommended to pay a pre-financing for contracts < EUR 5000**.

4.2.1.4 Award Mechanism

- The invitation must indicate whether the award of the contract will be based on the lowest bid mechanism (OPTION 1 in the template email invitation) or on the best value for money (quality/price ratio, OPTION 2 in the template email invitation).
- If no award criteria and no award mechanism are indicated in the invitation to negotiate, the lowest bid mechanism will be applied by default.

4.2.2 Approval of the invitation to negotiate by the Authorising Officer

- A request to launch a negotiated procedure \leq EUR 5 000 with several candidates should be circulated and signed by the competent AO:
 - [Template request to launch a call for tenders](#)
 - Indicative [routing sheet](#)
- In case of representation expenses, the request to launch the call can be included in the authorisation file.

4.2.3 Dispatch of the invitation to negotiate to the candidate

- The invitation to negotiate is sent to the candidates by email.
- Each candidate must not be aware of the identity of the other candidates. If sent by email, invitations must include the recipients in the "bcc" (blind copy) line.
- As a good administrative practice, a **confirmation of receipt of the invitation to negotiate** shall always be asked to each candidate and annexed to the file.

4.2.4 Receipt of the tender

- E-mail (if confidentiality can be preserved, e.g. through the use of a functional mailbox), mail, private courier services or hand delivery.
- Any tender from a candidate who has not been invited must be rejected.
- At least one tender must be received to proceed with the evaluation. In case no tenders are received, the procedure should be abandoned and re-started if need be.

4.2.5 Negotiation with candidates

- In practice, the procedure can be conducted in a formal manner up to the receipt of tenders and then, where appropriate (in particular if the contracting authority considers that the tenders can be improved), a real negotiation will take place at a second stage.
- The negotiation must be conducted in accordance with the principles of transparency, proportionality, equal treatment and non-discrimination. All the steps in the negotiation must be **documented in written form**.
- In case of award to the **lowest bid**, if all the tenders comply with the requirements set in the invitation but the contracting authority wishes to have a lower price, all the candidates should be **simultaneously invited** to submit a new price offer.
- In case of award to the tender offering the **best quality/price ratio**, if all the tenders comply with the requirements set in the invitation but the contracting authority wishes to have a better quality/price ratio, all the candidates should be **simultaneously invited** to submit a revised tender, specifying what aspects should be improved in accordance with the invitation.

4.2.6 Evaluation of the tender

- The evaluation can be carried out by one official (OIA – Operational Initiating Agent). The OIA should make sure that the evaluation is carried out on the basis of the award criteria and/or award mechanism specified in the invitation.
- A note to the attention of the AO drafted by the OIA and attached to the draft (not signed) Award Decision should document and provide reasonable assurance that the candidates have been treated fairly and impartially and the evaluation has been conducted in accordance with the award criteria and/or mechanism set in the invitation to negotiate.

- The evaluation note must clearly identify the successful tender and justify the award with respect to the award criteria and/or award mechanism set in the invitation.

4.2.7 Award Decision

- The award decision is **COMPULSORY for all procurement procedures involving more than one candidate**. The evaluation note by the initiating agent mentioned above must be included as an Annex to the Award Decision.
- The (draft) Award Decision must be included in the file and finalised (signed by the AO) before sending the information letter with the purchase order.
- See: [Template Award Decision for Contracts < EUR 5 000 with more than one candidate](#)

4.2.8 Budgetary commitment

- A provisional commitment may be used for representation or library expenses. In all other cases, an individual commitment must be entered in ABAC, either with **WFR11** (unit R2 must be included in the routing sheet as CVA) or with **WFR2** (no CVA by Unit R2), to commit the resources necessary to cover the price offered in the successful tender.
- Upon receipt of the commitment file, the AO will:
 - 1) Sign and date the Award Decision
 - 2) Validate the commitment in ABAC (if an individual commitment is used)
 - 3) Sign two copies of the purchase order filled in with all the relevant info according to the invitation and the tender (parts in between square brackets to be filled in accordingly) Please refer to Annex 1 for a brief overview of the conditions for VAT exemption.
 - 4) Sign and date the information letter
- The [list of documents to be included in the commitment file](#) is available on the Manual of Procedures.
- Indicative [routing sheet](#)

4.2.9 Information letters

- A **personalised notification** must be sent to each candidate by email **as soon as possible after the award decision has been signed**, specifying the reasons for award or rejection.
- The information letter for the successful candidate should state that no amendments can be made to the purchase order and that one signed copy of the purchase order should be returned to the BEREC Office by a given date, beyond which the BEREC Office will no longer be bound to conclude the contract.
- The purchase order signed by the Authorising Officer can be attached to the information letter if this is sent by mail or private courier services. Otherwise it must be separately sent by mail or private courier services or hand delivered.

4.2.10 Signature of the purchase order by the contractor

- The contractor signs the two originals and sends one to the BEREK Office, which then files the original returned.

4.2.11 Payment

- After the execution of the tasks or delivery of the supplies, the contractor invoices the value of the services or supplies provided, up to the maximum price agreed in the contract³.
- Upon receipt of the **invoice**, the data are entered in ABAC by the FIA (Financial Initiating Agent) using the "commercial invoice" tab.
- The most important parts of the **Payment Request**⁴ {(the general information, the link with a legal entity and a bank account file and the supporting documents (if applicable))} are automatically created when it is generated from ABAC Invoices. The 'certified correct' / 'conforme aux faits' endorsement by the OIA (Operational Initiating Agent) must be recorded in ABAC by the FIA. This endorsement shall certify that the services or supplies provided for in the contract have been properly delivered. The Payment Request passes through a short workflow (WFR3: validation by the FIA only). Only when attached to a Payment Order, the full validation process begins.
- Where one **Payment Order** is made per Payment Request, the Payment Order can be created automatically by right-clicking the option "Generate Payment Order" in the floating menu. If you do not create the Payment Order automatically, you will have to do so manually (Payment Order → New).
- The Payment Order will follow WFR4 in ABAC (FIA → FVA → AOSD). The 'passed for payment' / 'bon a payer' endorsement will be given by the AOSD with the "PP" validation code in ABAC. For payments linked to procurement contracts (Art. 98 IR), the endorsement 'bon a payer' / 'passed for payment' shall certify that:
 - a) The Institution has received and formally registered an invoice drawn up by the contractor;
 - b) All aspects of the invoice have been checked by the AO responsible or on his responsibility with a view to determining in particular the amount to be paid and the validity of the payment as discharge of the debt.

4.2.12 Archiving requirements

- After the execution of the contract and the final payment, the file will have to be archived in accordance with [archiving requirements for procurement files](#).

³ For general information and guidance on payment time limits, consult BudgWeb (http://www.cc.cec/budg/imp/payments/imp-130-060_paytime_en.html) and the circular on late payment interest (http://www.cc.cec/budg/leg/frandir/doc/doc/11522_12_2007_interets_retard.doc)

⁴ For detailed info and guidance on the use of ABAC for payment operations, consult DG BUDG's handbook on payments: http://www.cc.cec/budg/its/si2/its-020-060_doc_en.html

ANNEX 1 – Conditions for VAT exemption

Pursuant to the provisions of Articles 3 and 4 of the Protocol ([No 7](#)) on the Privileges and Immunities of the European Union, the BEREC Office is exempt from all taxes and dues, including value added tax. This exemption is however not automatic, and the method of exemption (Direct or through reimbursement as per separate agreement with each Member State) as well as the rules that apply (different depending *inter alia* on whether goods or services are procured, location and the consequent place of taxation) are described in detail in the [VAT Manual](#). A brief overview of the main conditions and their practical consequences is provided here below.

- The exemption only applies if the purchase is considered *substantial*, i.e. above a certain threshold amount fixed by each Member State. The applicable threshold is always that of the Member State hosting the institution.

In the case of so called "**Intra-community purchases**" - where a good is shipped from another Member State or a service is provided by a contractor established (and thus taxable) in another Member State - **will only be exempt from VAT if the Commission issues a 15.10 form** in the supplier's language and sends it to the contractor when an order is placed ([pending new legislation](#), the [old 15.10 forms in Annex 6 to the VAT manual are still valid](#)). The form should normally be signed by the tax authorities of the host Member State, i.e. the State in which the purchaser is established.