

# **BEREC Office Instructions on public procurement procedures for contracts of a value below or equal to EUR 25 000 (NP3)**

## **Table of Contents**

<b>1</b>	<b>LEGAL BASIS: ARTICLE 129 OF THE IMPLEMENTING RULES .....</b>	<b>2</b>
<b>2</b>	<b>CHOICE OF THE CANDIDATES.....</b>	<b>3</b>
<b>3</b>	<b>IMPLEMENTATION OF THE PROCEDURE .....</b>	<b>3</b>
3.1	PREPARATION OF THE INVITATIONS TO NEGOTIATE .....	3
3.1.1	<i>Minimum time limit for receiving the tenders .....</i>	3
3.1.2	<i>Exclusion Criteria .....</i>	3
3.1.3	<i>Selection Criteria.....</i>	4
3.1.4	<i>Award Mechanism .....</i>	4
3.2	APPROVAL OF THE INVITATION TO NEGOTIATE BY THE AUTHORISING OFFICER.....	4
3.3	DISPATCH OF THE INVITATION TO NEGOTIATE TO THE CANDIDATES .....	4
3.4	RECEIPT OF THE TENDER.....	4
3.5	NEGOTIATION WITH CANDIDATES.....	5
3.6	EVALUATION OF THE TENDER.....	5
3.7	AWARD DECISION .....	5
3.8	BUDGETARY COMMITMENT.....	5
3.9	INFORMATION LETTERS .....	6
3.10	SIGNATURE OF THE PURCHASE ORDER BY THE CONTRACTOR.....	6
3.11	PAYMENT .....	6
3.12	ARCHIVING REQUIREMENTS .....	7
	<b>ANNEX 1 – CONDITIONS FOR VAT EXEMPTION .....</b>	<b>8</b>

## 1. Legal Basis: Article 129 of the Implementing Rules

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

[...]

2. For contracts with a value less than or equal to EUR 25 000, the procedure referred to in paragraph 1 with consultation of at least three candidates may be used.

Maximum value of contract	Type of procedure
Services or supplies	Minimum procedure applicable
≤ €25 000	Negotiated procedure with at least three candidates  Article 91 of the Financial Regulation and Article 129(2) of the Implementing Rules

## 2. Choice of the candidates

- Candidates must be chosen 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.

## 3. Implementation of the procedure

### 3.1 Preparation of the invitations to negotiate

- **Simplified tendering document** to be downloaded from the Manual of Procedures, filled in and sent with the annexes (compulsory: Annex I – Exclusion Criteria Form; Annex II: **Blank purchase order** with general conditions)
- Possibility to use the purchase order for contracts  $\leq$  EUR 25 000 if:
  - Tasks can be easily described
  - Only one final payment (NO pre-financing; NO interim payment)
  - A control on the proper execution of the contract can be done easily and without delay
- It is **strongly advised to use the purchase order and foresee only one single final payment for contracts < EUR 25 000**. 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.

#### 3.1.1 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.

#### 3.1.2 Exclusion Criteria

For contracts with a value  $>$  EUR 5 000 and  $\leq$  EUR 25 000, the Exclusion Criteria form (annex I to the simplified tendering document) must be filled in, dated, signed and sent by each candidate together with the tender.

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.

### 3.1.3 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 simplified tendering document). 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 simplified tendering document). In that case, the contracting authority may also pay a pre-financing if a service or supply contract is used. However, it is **not advised to pay a pre-financing for contracts < EUR 25 000**.

### 3.1.4 Award Mechanism

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

## 3.2 Approval of the invitation to negotiate by the Authorising Officer

- A request to launch a negotiated procedure with at least three candidates for a procurement contract > EUR 5 000 and ≤ EUR 25 000 must be signed by the responsible AO:
  - [Template request to launch a call for tenders](#)
  - Indicative [routing sheet](#)

## 3.3 Dispatch of the invitation to negotiate to the candidates

- 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. A functional mailbox should be used.
- As a good administrative practice, a **confirmation of receipt of the invitation to negotiate** must always be asked to each candidate and annexed to the file.

## 3.4 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 three candidates must be invited. However, 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.

### 3.5 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 to negotiate.

### 3.6 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.

### 3.7 Award Decision

- The award decision is **COMPULSORY**. 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.
- [\*\*Template Award Decision for Contracts < EUR 25 000\*\*](#)

### 3.8 Budgetary commitment

- An individual commitment must be entered in ABAC with **WFR11** to commit the resources necessary to cover the price offered in the successful tender.
- Upon receipt of the commitment file, the Authorising Officer will:
  - 1) Sign and date the Award Decision

- 2) Validate the commitment in ABAC
  - 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](#) will be available on the Manual of Procedures.
  - Indicative [Routing Sheet](#)

### 3.9 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.

### 3.10 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.

### 3.11 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 contract.
- 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**<sup>1</sup> {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

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<sup>1</sup> 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](http://www.cc.cec/budg/its/si2/its-020-060_doc_en.html)

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 → AO). The 'passed for payment' / 'bon a payer' endorsement will be given by the AO 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.

### **3.12 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](#).

## **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.

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 BEREC Office 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, but some Member States (notably Belgium and Luxembourg) have delegated the power to sign to the Commission.