



**European Union**

European Regional

Development Fund

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## **PEACE III Programme**

### **Guidance Note on Procurement and Tendering G4/PIII**

#### **1.0 Introduction**

- 1.1 This guidance note sets out the procurement processes and thresholds in relation to projects funded in the PEACE III Programme 2007-2013. It also applies to activities funded from the Technical Assistance priority.
- 1.2 This note is in accordance with those issued by Department of Finance and Personnel (Northern Ireland) and Department of Finance (Ireland). Should you require further clarification regarding procurement issues you must contact the relevant Controller. Further information is also available at:  
<http://www.cpdni.gov.uk/index/guidance-for-purchasers/guidance-notes.htm> and  
<http://www.etenders.gov.ie/default.aspx>
- 1.3 Procurement is the process of acquisition, usually by means of a contractual arrangement after public competition, of goods, services, works and other supplies. It ranges from the purchase of routine supplies or services to formal tendering for large infrastructure projects by a wide range of contracting authorities.
- 1.4 Value for money should be the key consideration in purchasing goods and services – obtaining the most advantageous price available consistent with quality and fitness for purpose. A competitive process carried out in an open, objective and transparent manner can achieve best value for money in public procurement.

1.5 The EU Commission places a high priority on compliance with procurement procedures so it is essential that not only are correct procedures followed but that back up documentation to this effect is retained to verify this.

1.6 Failure to adhere to this Guidance Note may result in financial penalties as outlined in COCOF 07/0037/03-EN. (Attached in Annex 2 of this Guidance Note). Projects should note that in the event of proper procurement not being followed, subsequent expenditure may be declared ineligible, and any monies paid to the organisation in respect of that procurement will be recovered.

## **2.0 Background**

2.1 During the implementation of a PEACE III project it is assumed that almost every project partner will be required to buy goods and/or services e.g. setting up websites, purchase of equipment, using external auditors etc. Whenever purchases are made, contracts awarded and external suppliers are involved in a project; public tendering rules **must be observed**, including both National and EU Public Procurement thresholds (as detailed in Section 12 and Annex 1). These rules are intended to ensure a transparent and fair competition within the single market and aim to achieve value for money.

2.2 The Lead Partner is responsible for compliance with the public procurement procedures for the entire partnership and must ensure both EU and national rules on procurement are strictly adhered to.

2.3 Procurement is complex and constantly evolving. The penalties for breaches of procurement guidance are severe. If in doubt, please seek written guidance or clarification from a suitably competent organisation (Central Procurement Directorate – DFP). You may wish to contact the SEUPB / JTS in the first instance for guidance and how to source additional professional guidance, if required.

2.4 In some cases, depending on the scale of the project, it will be a requirement within the Letter of Offer that a Centre of Procurement Expertise (CoPE) is used for procurement. The SEUPB / JTS will advise the Lead Partners accordingly.

2.5 This guidance note is intended to offer guidance to projects. It should not be considered a definite statement of the legality of any particular procurement action. Procurement is subject to law. If in doubt seek advice from the SEUPB or a professional procurement body.

### **3.0 EU Thresholds (excluding VAT)**

3.1 The Lead Partner must adhere to the EU thresholds and when applicable and in addition to the regional advertisements a contract Notice (advertisement) must also be placed in the Official Journal of EU (OJEU).

3.2 The EU thresholds set out in Annex 1 are stated in Euro. For UK based Partners, the exchange rate prevalent at the date on which the tender is advertised should be used to calculate the correct Euro equivalent ([www.x-rates.com](http://www.x-rates.com)). Where the value of the contract is close to the threshold it would be appropriate to use the OJEU tendering procedure.

3.3 SEUPB can provide further guidance to Lead Partners on contracts which exceed the EU thresholds if required.

3.4 Partners should be aware that the OJEU process will take at least 12 weeks and can take up to 6 months. This should be taken into consideration at the project planning stage.

### **4.0 National Thresholds (excluding VAT)**

4.1 For all purchases below the EU threshold the national thresholds in Annex 1 must be applied. All figures quoted are exclusive of VAT. There is no exchange rate impact; the figures in Sterling and Euro are set. If the estimated tender value is very close to the next threshold level above, it would always be prudent to apply that procurement procedure as costs may rise.

### **5.0 Procurement Principles**

5.1 The procurement process should satisfy the 12 guiding principles which govern the administration of public procurement:

1. **Accountability:** Effective mechanisms must be in place in order to enable Departmental Accounting Officers and their equivalents in other public bodies to discharge their personal responsibility on issues of procurement risk and expenditure;
2. **Competitive Supply:** Procurement should be carried out by competition unless there are convincing reasons to the contrary;
3. **Consistency:** Suppliers should, all things being equal, be able to expect the same general procurement policy across the public sector;
4. **Effectiveness:** Public bodies/Lead Partners should meet the commercial, regulatory and socio-economic goals of government in a balanced manner appropriate to the procurement requirement;
5. **Efficiency:** Procurement processes should be carried out as cost effectively as possible;
6. **Fair-dealing:** Suppliers should be treated fairly and without unfair discrimination, including protection of commercial confidentiality where required. Public bodies/Lead Partners should not impose unnecessary burdens or constraints on suppliers or potential suppliers;
7. **Integration:** In line with the general policy of joined-up government, procurement policy should pay due regard to other economic and social policies, rather than cut across them;
8. **Integrity:** There should be no corruption or collusion with suppliers or others;
9. **Informed decision-making:** Public bodies/Lead Partners need to base decisions on accurate information and to monitor requirements to ensure that they are being met;
10. **Legality:** Public bodies/Lead Partners must conform to European Union and other legal requirements;
11. **Responsiveness:** Public bodies/Lead Partners should endeavour to meet the aspirations, expectations and needs of the community served by the procurement;
12. **Transparency:** Public bodies/Lead Partners should ensure that there is openness and clarity on procurement policy and its delivery.

5.2 In order to demonstrate compliance with these principles the full purchasing procedure should be documented and retained, including;

- the brief/specification of goods/services required;

- the selection and award criteria;
- evidence of the required quotations / tenders being requested;
- the quotes/tenders submitted;
- full documented appraisal of tenders including the rationale for selection of the provider;
- full documentation of notification of successful and unsuccessful tenders;
- recording of any conflicts of interest.

All documentation must be appropriately signed and dated. Any retrospective creation of documentation will automatically result in the tender competition being declared null and void, and the expenditure will be declared ineligible.

## **6.0 Tendering Principles**

6.1 The Lead Partner must include realistic budget reservations in the budget plan at application stage should goods and/or services be required.

6.2 When tendering for items or services at the project implementation stage it is important that:

- You start on time with the tendering procedure;
- You decide on the specification of generic items or services you require. This specification should not be unduly restrictive as to prevent potential suppliers from competing in the competition. Specifications which are considered unduly restrictive or favouring one supplier over another will render the procurement process invalid and subsequent expenditure ineligible
- Selection and award criteria should be stated in the specification and made available to potential suppliers;
- The same list of items and/or services is presented to all companies;
- Tenders are opened at the same time and no advance knowledge of bids is made available to anyone prior to this opening or during the tendering process. A suitably qualified and experienced individual must supervise the tendering process;
- Any conflict of interest or potential conflict of interest at any stage of the process must be fully recorded and managed in a manner consistent with the 12 principles above;
- The selection and award criteria must be specified in the invitation to tender

- and must not be changed after invitations to tender have been issued;
- If a selection and award assessment process (as outlined in section 10.1) is to be used, i.e. where tenderers are assessed by the panel on a pass/fail basis for experience (selection process) before moving to the award assessment (scoring) of cost and methodology, this should be clearly set out in the invitation to tender. Note that if a tender fails the first stage (selection), they do not proceed to the award stage. Invitations to tender must be clear about the number of years of experience required for stage one of the assessment;
  - Evidence of the above is maintained on file, including the unsuccessful tender documents;
  - Documentation including notes of decisions and assessment of tenders must be retained. Where scores are awarded against criteria, the reasons for awarding the scores must be recorded. The award of a score for cost must be computed on an objective mathematical basis, with the lowest price receiving 100% of the available score and all other tenders receiving scores proportionately;
  - The evaluation panel must be careful to preserve equality of treatment of tenderers and to fully understand and document the reasons for all their decisions that lead to the selection and rejection of tenders and/or the award of a contract;
  - Where tenders are subject to the EU Procurement Directives, a 10-day minimum mandatory standstill period must be introduced between the communication of the award decision, to both the successful and unsuccessful tenders, and the contract conclusion. In addition, notification letters to unsuccessful tenderers must include the reasons for rejection in line with the requirements of Article 2(a) of Commission Directive 2007/66/EC. This constitutes the absolute minimum requirement to comply effectively with recent case law;
  - Receipts, invoices and copies of all bids are retained for inspection.

## **7. Confidentiality**

- 7.1 The contents of each tender must not be disclosed to any party outside of the formal evaluation process. Each tender should be viewed as restricted-commercial until

after the award decision.

## **8.0 Single Tender Action**

- 8.1 Regulation 14 of The Public Contracts Regulations 2006 stipulates the **exceptional** circumstances under which a contracting authority may use the negotiated procedure without the prior publication of a contract notice. Where there is only one economic operator with whom negotiations are to take place then this would, in effect, be single action tender.

Competitive tendering is recommended for all procurement exercises to ensure value for money and transparency. If it is decided to use the single tender action route then a full rationale must be forwarded for approval to the relevant Controller

## **9.0 Advertising**

- 9.1 The Lead Partner must ensure that tenders are advertised proportionate to their value. Ordinarily tenders must be advertised in either the regional press, i.e. those newspapers which are available across Northern Ireland and the Border Region in which the project operates or national public procurement websites such as e-tenders in Ireland or eSourcing NI in Northern Ireland. In Ireland, Lead Partners must use the e-tenders website ([www.etenders.gov.ie](http://www.etenders.gov.ie)), for supply and services contracts above €25,000 and for works contracts above €50,000. For guidance on the procurement requirements by threshold, please refer to the table at the end of this guidance note.
- 9.2 Where projects include partners based in Ireland and Northern Ireland they must be advertised in both jurisdictions. Where a project is based in a single jurisdiction the project may be advertised in that region alone unless it is above the EU Threshold. However, since the programme is cross border and where this situation occurs; a justification for the decision to advertise in one region only should be retained on file.
- 9.3 It is not a legal requirement to advertise in the local press but should it be necessary, advertisements should be placed in both jurisdictions.
- 9.4 All advertisements should appropriately acknowledge the EU funding being provided in line with the Programme's Information and Publicity Guidance Note (G5/PIII).

## 10.0 Criteria for Selection and Award Criteria

10.1 The criteria for assessment (i.e. the selection and award criteria) should be clearly set out in the tender documentation which should be made available to all potential suppliers. The weighting given to the various criteria should be stated. Selection criteria must not be scored. Selection criteria must result in a pass or fail answer. Only those tenders that have met the selection criteria will then proceed to the award criteria. Appropriately specified experience or other criteria may be used as selection criteria. There is no requirement to use selection criteria, and for the majority of smaller tenders selection criteria will not be used.

10.2 The award criteria should be relevant to the goods/service being procured but could include:

- understanding of the requirements/brief;
- the specification of goods being provided;
- aftercare provision;
- proposed methodology and resources;

In addition cost should always be included in the award criteria.

Please note that for legal reasons experience may not be used as an award criterion for scoring tenders.

The tenders received should be scored according to the award criteria included in the tender documentation. When scores are awarded against criteria, the reasons for awarding the score must be recorded. The award of a score for cost must be computed on an objective mathematical basis, with the lowest price receiving 100% of the available score and all other tenders receiving scores proportionately. All score sheets must be signed and dated by tender panel members. The names of panel members must be recorded.

10.3 A clarification meeting, including a presentation by and interview of, the providers may be arranged if desired. Again, this step should be clearly outlined in the Terms of Reference. Arrangements for such interviews must be consistent with the principles of procurement outlined in 5.1 above.

10.4 For construction projects where the process of providing a price is a lengthy one, a shortlist of those invited to submit a full tender submission can be developed. Such a shortlist must be developed in a manner consistent with current procurement law. Projects should seek professional advice from the SEUPB or competent procurement body before proceeding with this action. For construction projects in Ireland, the new forms of Government public works contracts and standard conditions of engagement for construction consultants must be used. These documents are available at [www.constructionprocurement.gov.ie](http://www.constructionprocurement.gov.ie)

### **11.0 Procurement Report**

Following a procurement exercise, the contracting body should complete a short report as outlined in Article 43 of Commission Directive 2007/66/EC. The report which should be placed at the front of the procurement file should include the following information:

1. Name and address of contracting body
2. Nature of Contract (title);
3. Procurement procedure (e.g. open, advertised / Framework Agreement etc)
4. Participants on selection panel
5. Final value of contract (cost of successful tender)
6. Name of successful tenderer & outline reasons for selection
7. Name(s) of unsuccessful tenderers & outline reasons for rejection

It is anticipated that the procurement report should be 1 page in length and provide a brief overview of the procedures followed.

### **12.0 Procurement Thresholds**

The thresholds for the PEACE III Programme, which are set out below, have been based on the guidelines applied by the European Commission and the Member States. Procurement rules are complex; if there are any doubts about the application of procurement rules, Lead Partners should seek advice. The Lead Partner must obtain quotations for goods and services as detailed below ( Annex 1) and should note that non-adherence to procurement thresholds will attract financial penalties (up to and including 100%) as set out in the attached European Commission document.

A checklist is included in Annex 3 to assist projects in relation to proper procurement procedures to be followed for each threshold. It is not mandatory to complete a checklist for each procurement exercise, however, the use of it is recommended.

This guidance note is approved by the Department of Finance in Ireland and the Department of Finance and Personnel in Northern Ireland.

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1<sup>st</sup> Re-issue: November 2009

2<sup>nd</sup> Re-issue: January 2010

3<sup>rd</sup> Re-issue: April 2011

**Annex 1 – Table of Procedures for Procurement thresholds**

<u>ESTIMATED VALUE OF ORDER</u> (excluding VAT) (Lead Partners based in the sterling area should use the sterling values quoted.)	<u>QUOTATIONS/ TENDERS REQUIRED</u>	<u>MINIMUM DOCUMENTATION TO RETAIN</u>
<b><u>BELOW EU THRESHOLDS</u></b>		
UP TO €200 (£200)	<p>For contracts of goods and services of less than £200 / €200, 3 oral quotations are not required providing the costs incurred for the goods and services can be considered reasonable. Therefore, for example, miscellaneous items of stationery can be purchased without obtaining quotes. Depending on the goods / services under question, the project promoter may still wish to obtain oral quotes to satisfy itself that value for public money is being obtained, and it would be considered good practice to do this occasionally. Care should be taken to ensure that contracts for goods and services are not being deliberately disaggregated to bring them under the £200/€200 limit, if this is seen to be happening, the resulting expenditure will be deemed ineligible.</p>	
€200 TO €2,175 (£200 to £1,500)	3 oral quotations from competent suppliers who ordinarily supply the relevant service.	<ol style="list-style-type: none"> <li>1. Evidence that 3 quotations were sought.</li> <li>2. A written record of the quotations sought, including the supplier details, date obtained, name of individual spoken to and the price, should be retained. Where possible this should comprise fax/email confirmation of the quote.</li> </ol>
€2,175.01 to €14,500 (£1,500.01 to £10,000)	4 written quotations from competent suppliers who ordinarily supply the relevant service.	<ol style="list-style-type: none"> <li>1. Evidence that appropriate number of quotations were sought from prospective bidders/suppliers.</li> <li>2. Documentation and/or Terms of Reference sent to all potential bidders/suppliers.</li> <li>3. All tenders/quotes received and evidence they were received within the specified timeframe (date stamped).</li> <li>4. Documented evidence of assessment of quotes or where tenders were sought include; signed scoring matrix, minutes of discussion and names of assessment panel members.</li> </ol>

		<p>5. Correspondence with the successful and unsuccessful bidders/suppliers.</p> <p>6. Contract or equivalent awarded to winning tender.</p> <p>7. Documented changes or addendums to contract.</p>
€14,500.01 to €43,500 (£10,000.01 to £30,000)	5 written quotations from competent suppliers who ordinarily supply the relevant service	As 1 – 7 above.
€43,500.01 to € EU threshold (£30,001 to £EU threshold)	<p>Full Tender Action</p> <p>1. Advertisement as detailed at section 8 above.</p> <p>2. In Ireland the tender greater than €25,000 for supply and services contracts and greater than €50,000 for works contracts must be placed on e-tenders website.</p>	<p>As 1 – 7 above and in addition:</p> <p>8. Copy of advertisements in newspapers or national procurement websites..</p>

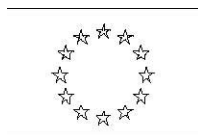
**EU THRESHOLDS AND ABOVE (excluding VAT) from 1 January 2010 (Euro values applicable to both Euro and Sterling areas)**

	<b>Supplies/ Services</b>	<b>Works</b>		
<b>Entities listed in Schedule 1</b> <small>1</small>	€125,000	€4,845,000	<p>Full Tender Action</p> <p>1. Invitation to tender placed in Official Journal of EU.</p> <p>2. Advertisement as detailed at section 8 above.</p>	<p>As 1 – 8 above and in addition:</p> <p>9. Copy of invitation to tender placed in Official Journal of EU.</p>
<b>Public Sector outside the Civil Service (e.g. Local Authorities)</b>	€193,000	€4,845,000		
<b>Utility Sector</b>	€387,000	€4,845,000		

Notes<sup>1</sup>: Schedule 1 of the public contracts regulations 2006 lists central government departments

subject to the WTO GPA and can be downloaded from

<http://www.opsi.gov.uk/si/si2006/20060005.htm#sch1>



## EUROPEAN COMMISSION

### **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**

This document sets out guidelines for the financial corrections to be applied for irregularities in the application of the Community regulations on public procurement to contracts co-financed by the Structural Funds or the Cohesion Fund during the programming periods 2000-2006 and 2007/2013.

When the Commission services detect such irregularities during audits, they must determine the amount of the financial correction applicable. If, when the Commission proposes a correction, the Member State does not agree to make the correction itself in accordance with Article 39(1) of Regulation (EC) No 1260/1999 or the Article 98 of Regulation (EC) No 1083/2006, the correction is made by Commission decision under Article 39 paragraph 3 of Regulation (EC) No 1260/1999 or the Article 99 of Regulation (EC) No 1083/2006. These guidelines are intended to help the Commission services to maintain a common approach in dealing with these cases of irregularities.

The control authorities of the Member States may also detect irregularities of the same type during their controls. In this case, they are required to make the necessary corrections in accordance with Article 39 paragraph 1 of Regulation (EC) No 1260/1999 or the Article 98 of Regulation (EC) No 1083/2006.

The competent authorities in the Member States are recommended to apply the same criteria and rates when correcting irregularities detected by their own services during the checks and audits under Articles 4 and 10 of Regulation (EC) 438/2001 and Articles 60 (b) and 62(1)(a) and (b) of Regulation (EC) No 1083/2006 and other checks, unless they apply yet stricter standards.

The cases described in the table in the Annex are the types of situations found most frequently. Other cases not shown in the table should be dealt with in accordance with the same principles. The amounts and rates take account of the relevant Community regulations and the guidance documents on financial corrections, in particular:

Community Directives relating to the coordination of procedures for the award of public contracts:

92/50/EEC – Public service contracts,

93/36/EEC – Public supply contracts, 93/37/EEC – Public works contracts,

93/38/EEC – Public contracts in the water, energy, transport and communications sectors, 98/4/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors,

97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC,

92/13/EEC - remedies relating to the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors,

89/665/EEC - review procedures to the award of public supply and public works contracts

2004/17/EEC – Public contracts in the water, energy, transport and postal services sectors,

2004/18/EEC – Public works contracts, public supply contracts and public service contracts,

2005/51/EC – amending Annex XX of Directive 2004/17/EC and Annex VIII of Directive 2004/18/EC,

Commission Directive 2001/78/CE of 13 September 2001 on the use of standard forms in the publication of public contract notices,

and

Regulation (EC) No 1564/2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC,

Decision 2005/15/EC on the detailed rules for the application of the procedure provided for in Article 30 of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (7.1.2005), the rules and the principles of the Treaty, concerning mainly the free circulation of merchandises (Article 28 of the EC Treaty), the right of establishment (Article 43), the free provision of services (Article 49), the non-discrimination and the equality of treatment, the transparency, the proportionality and the mutual recognition.

Under Article 12 of Regulation (EC) No 1260/1999, operations financed by the Funds must be in conformity with the provisions of the Treaty, with instruments adopted under it and with Community policies, including on the award of public contracts. The same obligations have been provided for the programming period 2007-2013 under Article 9, paragraphs 2 and 5 of the Regulation (EC) No 1083/2006.

Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests states: “*Irregularity*’ shall mean

It should be noted that a definition of 'irregularity' taken from Article 1(2) of Regulation (EC, Euratom) No 2988/95, but adapted, for reasons of legal clarity, to the structural policies field, was introduced by Commission Regulation (EC) No 2035/2005 of 12 December 2005 amending Regulation (EC) No 1681/94 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organisation of an information system in this field.

*any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure."*

Article 39(1) of Regulation (EC) No 1260/99 provides that *"The Member State shall make the financial corrections required in connection with the individual or systemic irregularity. The corrections made shall consist in cancelling all or part of the Community contribution."* The same obligations have been provided for the programming period 2007-2013 under Article 98, paragraph 2, of the Regulation (EC) No 1083/2006. Pursuant to Article 39, paragraphs 2 and 3, if the Member State does not make the necessary financial corrections, the Commission may itself decide to make the financial corrections required by cancelling all or part of the contribution of the Funds to the assistance concerned. To determine the amount of a correction, the Commission takes account, in compliance with the principle of proportionality, of the type of irregularity or change and the extent and financial implications of the shortcomings found in the management or control systems of the Member States. The same obligations have been provided for the programming period 2007-2013 under Article 99 of the Regulation (EC) No 1083/2006.

Under Article 4 of Regulation (EC) No 448/2001,

*"1. The amount of financial corrections made by the Commission under Article 39(3) of Regulation (EC) No 1260/1999 for individual or systemic irregularities shall be assessed wherever possible and practicable on the basis of individual files and be equal to the amount of expenditure wrongly charged to the Funds, having regard to the principle of proportionality.*

*2. When it is not possible or practicable to quantify the amount of irregular expenditure precisely, or when it would be disproportionate to cancel the expenditure in question entirely, and the Commission therefore bases its financial corrections on extrapolation or a flat rate, it shall proceed as follows:*

*(a) in the case of extrapolation, it shall use a representative sample of transactions with like characteristics;*

*(b) in the case of a flat rate, it shall assess the importance of the infringement of rules and the extent and financial implications of the irregularity established."*

Identical provisions were adopted for the Cohesion Fund for the programming period 2000-2006 (see Article H (2) of Annex II to Regulation (EC) No 1164/94 and Regulation (EC) No 1386/2002) as well as by Article 99 of the Regulation (EC) No 1083/2006 for the programming period 2007-2013.

Guidelines on the principles, criteria and indicative scales to be applied by the Commission departments in determining financial corrections under Article 39(3) of Regulation (EC) No

1260/1999 were adopted by Commission Decision C/2001/476.

The same principles were adopted for the Cohesion Fund by Commission Decision C/2002/2871.

In accordance with these principles,

*"The purpose of financial corrections is to restore a situation where 100% of the expenditure declared for cofinancing from the Structural Funds is in line with the applicable national and EU rules and regulations."*

*"The amount of the financial correction will be assessed wherever possible on the basis of individual files and be equal to the amount of expenditure wrongly charged to the Funds in the cases concerned. Specifically quantified corrections on each individual operation concerned are not always possible or practicable, however, or it may be disproportionate to cancel the entire expenditure in question. In such cases, the Commission has to determine corrections on the basis of extrapolation or at flat rates."*

In addition, in accordance with the guidelines:

*Where the financial correction "is not quantifiable because it is subject to too many variables or is diffuse in its effects, flat rates should be applied."*

*"Flat rate corrections are determined in accordance with the seriousness of the individual breach and the financial implications of the irregularity".*

The amounts and rates of financial corrections set out in the table in the Annex are applied to individual cases of irregularities due to non-compliance with the rules on public procurement. Where systemic or repeated irregularities are detected in the application of the rules on public procurement, financial corrections at flat rates or by extrapolation (within the meaning of Article 4 of Regulation No 448/2001 or Article 99 of Regulation (EC) No 1083/2006) can be made to all the operations and/or programmes affected by the irregularities.

The amounts and rates of financial corrections set out in the table in the Annex may be increased where irregular applications for payment are presented to the Commission after the date on which the latter has explicitly informed the Member State, by reasoned opinion based on Article 226 of the Treaty, of an infringement of the public procurement regulations.

## 1. CONTRACTS SUBJECT TO THE EC PUBLIC PROCUREMENT DIRECTIVES

No	Irregularity		Recommended correction (Note n° 1)
1	<b>Non-compliance with the advertising procedures</b>	The contract was awarded without complying with the advertising requirements laid down in the EC Public Procurement Directives, except in the cases referred to in point 2 below. This is a flagrant disregard of one of the conditions for Community co-financing.	<b>100% of the value of the contract involved</b>
2	<b>Non-compliance with the advertising procedures</b>	The contract was awarded without complying with the advertising requirements laid down in the EC Public Procurement Directives, but was advertised to some extent allowing economic operators located in another Member State access to the contract.	<b>25% of the value of the contract involved</b>
3	<b>Attribution of contracts without competition in the absence of extreme urgency brought about by unforeseeable events or the absence of an unforeseen circumstance for complementary works</b>	The main contract was awarded in accordance with the EC Public Procurement Directives, but was followed by one or more supplementary contracts (whether or not formalised in writing) awarded <b>without complying with the provisions of the Public Procurement Directives</b> namely the ones related to the negotiated procedures without publication for reasons of extreme urgency brought about by unforeseeable events or for attribution of complementary supplies, works and services.	<b>100% of the value of the contract involved In the cases where the total of supplementary contracts (whether or not formalised in writing) awarded without complying with the provisions of the Public Procurement Directives</b>

	<p><b>and services or for supplies. (Note No 2)</b></p>		<p><b>do not exceed the thresholds of the Directives and the 50% of the value of the original contract the correction may be reduced to 25%.</b></p>
<p><b>4</b></p>	<p><b>Additional works or services exceeding the limit laid down by the Directives provided in unforeseen circumstances (Note No 2)</b></p>	<p>The main contract was awarded in accordance with the provisions of the EC Directives, but was followed by one or more supplementary contracts exceeding the value of the original contract by more than 50%. The additional works themselves do not constitute a separate work within the meaning of Article 1(c) of Directive 93/37 or Article 1(2) (a) and 2(b) of Directive 2004/18 or a separate service within the meaning of Article 1(a) of Directive 92/50 or Article 1(2) (a) and 2(d) of Directive 2004/18. In cases where the additional works or services exceed the thresholds of the Directives and constitute a separate work or service, it is necessary to take account of the aggregate value of all the additional works or services for the purposes of the application of the Public Procurement Directives. Where the additional works or services constitute a separate work or service and exceed the thresholds laid down by the Directives, the above mentioned point 1 applies. Where the additional works or services constitute a separate work or service but do not exceed the thresholds laid down by the Directives, point 21 below applies.</p>	<p><b>100% of the amount exceeding 50% of the value of the original contract</b></p>

5	<b>Failure to state all the selection and contract award criteria in the tender documents or tender notice</b>	The contract was awarded in compliance with the advertising rules of the Public Procurement Directives, but the tender documents or tender notice failed to state all the selection and/or award criteria or to describe them sufficiently.	<b>25% of the value of the contract. This amount may be reduced to 10% or 5% depending on seriousness.</b>
6	<b>Application of unlawful contract award criteria</b>	The contract was awarded applying unlawful contract award criteria (for example, use of a selection criterion for the award of the contract, non-compliance with the criteria stated by the contracting authority in the tender notice or tender documents or incorrect and/or discriminatory application of contract award criteria).	<b>25% of the value of the contract. This amount may be reduced to 10% or 5% depending on seriousness.</b>
7	<b>Unlawful selection and/or contract award criteria laid down in the tender procedure</b>	Cases in which certain operators have been deterred from bidding on account of unlawful restrictions laid down in the tender notice or tender documents (for example, the obligation to already have an establishment or representative in the country or region, or setting technical standards that are too specific and favour a single operator or the possession of experience in the region, etc.).	<b>25% of the value of the contract. (A financial correction of 100% of the value of the contract may be applied in the most serious cases when there is a deliberate intention to exclude certain bidders.)</b>
8	<b>Insufficient or discriminatory definition of the subject-matter of the contract</b>	The description in the tender documents or tender notice is discriminatory or insufficient for bidders to determine the subject-matter of the contract or for the contracting authorities to award the contract.	<b>25% of the value of the contract. This amount may be reduced to 10% or 5% depending on seriousness.</b>

9	<b>Negotiation during the award procedure</b>	The contract was awarded by open or restricted procedure but the contracting authorities negotiated with the bidders during the award procedure, except where the discussions were solely intended to clarify or supplement the content of their bids or specify the obligations of the contracting authorities.	<b>25% of the value of the contract. This amount may be reduced to 10% or 5% depending on seriousness.</b>
10	<b>Reduction in the scope of the contract (Note No 2)</b>	The contract was awarded in compliance with the Public Procurement Directives, but was followed by a reduction in the scope of the contract without making a proportional reduction in the value of the contract. (This correction applies even in cases where the amount of the reduction is used to carry out other works).	<b>Value of the reduction in the scope Plus 25% of the value of the final scope</b>
11	<b>Reduction in the scope of the contract (Note No 2)</b>	The contract was awarded in compliance with the Public Procurement Directives, but was followed by a reduction in the scope of the contract with a proportional reduction in the value of the contract already carried out. (This correction applies even in cases where the amount of the reduction is used to carry out irregular supplementary contracts).	<b>25% of the value of the final scope</b>
12	<b>Incorrect application of certain ancillary elements</b>	The contract was awarded in compliance with the provisions of the Public Procurement Directives, but without complying with certain ancillary elements, such as publication of the notice of award of the contract. Note: If this type of irregularity is only of a formal nature without potential financial impact, no correction will be made.	<b>2%, 5% or 10% of the value of the contract, according to the seriousness of the irregularity and whether a repeat occurrence</b>

**2. CONTRACTS NOT OR NOT FULLY SUBJECT TO THE PUBLIC PROCUREMENT DIRECTIVES (PUBLIC CONTRACTS BELOW THE THRESHOLDS FOR APPLICATION OF THE COMMUNITY DIRECTIVES AND PUBLIC CONTRACTS FOR SERVICES LISTED IN ANNEX I B TO DIRECTIVE 92/50/EEC, ANNEX XVI B TO DIRECTIVE 93/38/EEC, ANNEX II B TO DIRECTIVE 2004/18/EC AND ANNEX XVII B TO DIRECTIVE 2004/17/EC)**

The European Court of Justice (ECJ) has confirmed in its case-law that the rules and the principles of the EC Treaty apply also to contracts outside the scope of the Public Procurement Directives.

Contracting entities from Member States have to comply with the rules and principles of the EC Treaty whenever they conclude public contracts falling into the scope of that Treaty. These principles include the free movement of goods (Article 28 of the EC Treaty), the right of establishment (Article 43), the freedom to provide services (Article 49), non-discrimination and equal treatment, transparency, proportionality and mutual recognition (*Commission interpretative communication n° 2006/C 179/02 on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives*).

The principles of equal treatment and non-discrimination on grounds of nationality imply an obligation of transparency which, according to the ECJ case-law, "consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of the procedures to be reviewed" (*Commission interpretative communication n° 2006/C 179/02 on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives*).

The lack of conformity with these rules and principles represents risks for the Community funds. Consequently, financial corrections should be applied to the irregularities detected in the contracts that do not conform or conform partially to the Community Directives. The rates to be applied depending on the type of irregularity are the following:

No	Irregularity		Recommended correction
21	<b>Non-compliance with the requirement of an adequate degree of advertising and transparency (Note No 3)</b>	Contract awarded without adequate competitive tendering, involving noncompliance with the principle of transparency	<b>25% of the value of the contract</b>
22	<b>Attribution of contracts without competition in the absence of extreme urgency brought about by unforeseeable events or for complementary works and services brought about unforeseen circumstance. (Note No 2)</b>	The main contract was awarded after adequate competitive tendering, but was followed by one or more supplementary contracts (whether or not formalised in writing) awarded without adequate competition in the absence of reasons of extreme urgency brought about by unforeseeable events or (for contracts of works and services) in the absence of unforeseen circumstances justifying them.	<b>25% of the value of the contract(s) attributed without adequate competition.</b>
23	<b>Application of unlawful selection and/or contract award criteria</b>	Application of unlawful criteria which deter certain bidders on account of unlawful restrictions laid down in the tender procedure (for example, the obligation to have an establishment or representative in the country or region or the setting of technical standards that are too specific and favour a single operator).	<b>10% of the value of the contract. This amount may be reduced to 5% depending on seriousness.</b>

24	<b>Breach of the principle of equal treatment</b>	Contracts awarded in accordance with the rules on advertising but where the contract award procedure breaches the principle of equal treatment of operators (for example, when the contracting authorities have made an arbitrary choice of candidates with whom they negotiate or if they give preferential treatment to one of the candidates invited to negotiate).	<b>10% of the value of the contract. This amount may be reduced to 5% depending on seriousness.</b>
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Note n° 1. The amount of the financial correction is calculated according to the amount declared to the Commission related to the contract affected by the irregularity. The percentage of the suitable scale applies to the amount of the expenditure declared to the Commission for the contract in question. Practical example: The amount of the expenditure declared to the Commission for a work contract concluded after the application of illegal criteria is 10,000,000€. The applicable correction rate is 25% in agreement with the scale n° 6. The amount to be deducted from the expenditure statement to the Commission is 2,500,000€. Accordingly the Community cofinancing is reduced according to the cofinancing rate of the measure under which the contract in question was financed.

Note n° 2) In the application of these guidelines for the financial correction for non conformity with the rules relating to the public procurement, one limited degree of flexibility can be applied to the modifications of a contract after its attribution provided that (1) the contracting authority does not alter the general economy of the invitation to tender or the terms of reference by modifying an essential element of the attributed contract, (2) modifications, if they had been included in the invitation to tender or in the terms of reference, would not have had any substantial impact on the received offers. The essential elements of the attribution of the contract concern mainly the value of the contract, the nature of the works, the completion period, the terms of payment, and the materials used. It is always necessary to make an analysis on a case by case basis.

Note n° 3. The concept of “sufficient degree of advertising” must be interpreted in the light of Commission interpretative communication No 2006/C 179/02 on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives, and in particular:

a) The principles of equal treatment and non-discrimination imply an **obligation of transparency** which consists in ensuring, for the benefit of any potential bidder, **a degree of advertising sufficient to enable the contract to be subject to competition**. The obligation of transparency requires that an **undertaking located in another Member State can have access to appropriate information regarding the contract before it is awarded**, so that, if it so wishes, it would be **in a position to express its interest** in obtaining the contract.

b) For individual cases where, because of particular circumstances such as a very modest economic interest at stake, a contract award would be of no interest to economic operators located in other Member States. In such a case the effects on the fundamental freedoms are to be regarded as too uncertain and indirect to warrant the application of standards derived from primary Community law and consequently there is no ground for application of financial corrections.

It is the responsibility of the individual contracting entities to decide whether an intended contract award might potentially be of interest to economic operators located in other Member States. In the view of the Commission, this decision has to be based on an evaluation of the individual circumstances of the case, such as the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.) and the geographic location of the place of performance

### Annex 3

#### Procurement checklist

(issued by the Managing Authority to **assist** with the procurement of goods/services)

**Contracting Body** \_\_\_\_\_

**Goods/services procured** \_\_\_\_\_

**Value of goods/services procured** \_\_\_\_\_

#### Complete the appropriate box

Procurement of goods/services: **€1 - €200 / £1 - £200**

There is generally no requirement to obtain 3 quotations for goods/services with a value less than €200 / £200. Projects, however, may still wish to satisfy themselves that value for money has been obtained. The box below should be completed if a value for money exercise has been carried out.

	Yes	No
Have 3 quotations been sought?	<input type="checkbox"/>	<input type="checkbox"/>

Procurement of goods/services: **€200 - €2,175 / £200 - £1,500**

	Yes	No
Have 3 quotations been sought?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a written record of 3 quotations?	<input type="checkbox"/>	<input type="checkbox"/>
Provide rationale/explanation to questions answered with <b>No</b>		
_____		
_____		

Procurement of goods/services: **€2,175 - €14,500 / £1,500 - £10,000**  
**€14,500 - €43,500 / £10,000 - £30,000**

	Yes	No
Were 4/5 written quotes were sought and received?	<input type="checkbox"/>	<input type="checkbox"/>
Has a Terms of Reference/Specification been produced?	<input type="checkbox"/>	<input type="checkbox"/>
Are all tenders/quotes received within specified timeframe? (Date stamped)	<input type="checkbox"/>	<input type="checkbox"/>
Was an assessment panel arranged?	<input type="checkbox"/>	<input type="checkbox"/>
Was there a scoring matrix prepared and signed?	<input type="checkbox"/>	<input type="checkbox"/>
Are there adequate reasons for rejection/acceptance of Tenderers?	<input type="checkbox"/>	<input type="checkbox"/>
Have the decisions been communicated to all bidders by post?	<input type="checkbox"/>	<input type="checkbox"/>
Were the reasons for rejection included in correspondence to unsuccessful bidders?	<input type="checkbox"/>	<input type="checkbox"/>
Was a contract awarded to the successful bidder?	<input type="checkbox"/>	<input type="checkbox"/>
Were there any changes/addendums to contract?	<input type="checkbox"/>	<input type="checkbox"/>
Is there documentation to support changes?	<input type="checkbox"/>	<input type="checkbox"/>

Procurement of goods/services: **€43,500 – EU Threshold / £30,000 – EU  
Threshold**

**(complete checklist in box above and below)**

	Yes	No
Are there copies of advertisements in newspapers Or national procurement websites included?	<input type="checkbox"/>	<input type="checkbox"/>

Procurement of goods/services: **EU Thresholds & above (see table in Guidance Note G4 )**

**Complete checklist boxes for threshold €14,500 - €43,500 / £10,000 - £30,000 & €43,500 – EU Threshold / £30,000 – Threshold & Checklist box below**

	Yes	No
Has a copy of the invitation to tender been placed in the Official Journal of EU?		
If answered no, please explain:		
_____		
_____		

**Checklist completed by** \_\_\_\_\_

**Date** \_\_\_\_\_