

ANNEX VIII

Procurement Procedures for the Projects Financed within the Phare Programme 2004 subprogramme Economic and Social Cohesion - Human Resources Development

The Ministry of Labour, Social Solidarity and Family (MoLLSF), as a Contracting Authority, is carrying on grant scheme **“Promoting Human Capital”**(Phare/ 2004/ 016-772.04.02) financed according to the Financing Memorandum between the Romanian Government and the European Commission concerning the Phare National Programme 2004 – subprogramme Economic and Social Cohesion - Human Resources Development.

In this view, Contracting Authority (CA) should implement this grant scheme *in accordance with* Practical Guide to contract procedures for EC external actions 2006, **Section 6.8. Procurement by grant beneficiaries - 6.8.1.General principles and 6.8.2.International organisations and in accordance with Romanian legislation.**

The secondary procurement which is to be made within these projects will be accomplished according to the procurement rules set out in Annex IV to the standard grant contract and in accordance with the relevant Romanian legislation (Governmental Emergency Ordinance no. 34/2006 regarding the awarding of public procurement contracts, public works granting contracts, services granting contracts).

By the Financing Memorandum, the Government has undertaken a series of legal obligations about respecting the rules of the foreign financier, which must be respected also within the grant contracts as follows:

1. Eligibility rule concerning nationality and origin

According to art. 14 of the Governmental Emergency Ordinance 34/2006, “This emergency ordinance is not to be applied when the public procurement contract is awarded further to:

- a) an international agreement, concluded in accordance with the provisions of the Treaty, with one or more states which are not EU Member States, concerning the products supply or works needed by the implementation or exploitation of a project, shared with the respective states and only if there has been mentioned a specific procedure for the respective contract awarding;
- b) an international agreement referring to stationary troops and only if there has been mentioned a specific procedure for the respective contract awarding;
- c) the application of a procedure specific to an international organization.

As a consequence of these presented above, the eligibility rule concerning the nationality and origin for procurement accomplished within circumstances of

administration /use of the Phare funds will be stipulated by the Practical Guide for Phare, ISPA and SAPARD (PRAG), in no contradiction with the provisions of the present Romanian Legislation.

According to “PRAG” provisions, clause 2.3.1 “Rule of nationality and origin”, the Contracting Authority guarantees fair competition and equal treatment at a procurement for any natural person and legal entity, if nationality is explicitly stipulated in this document. The rule regarding nationality is applied:

- to natural persons /legal entities and to experts proposed in the offer with a view to signing service contracts financed by the European Community;
- to candidate natural persons /legal entities, to the acquired goods and to the experts proposed to carry out certain jobs within goods acquisition contracts;
- to candidate natural persons /legal entities and to the goods acquired within work contracts which will belong to the beneficiaries at the end of the contract

All supplies and materials purchased under a contract financed under a Community instrument must originate from the Community or from an eligible country

2. Publicity /notice

According to the provision of art. no. 55 (1) from GEO no. 34/2006 “The Procurement Notice has to be published in the ESPP (Electronic System for Public Procurement - SEAP) and in the Romanian Official Gazette, part VI – “Public procurements” and, when it is the case, in the Official Journal of the European Union”.

If the total estimated value of the contract which are to be awarded in the following 12 months is equal or higher then the equivalent in RON of Euro 750,000 in complying with the provision of art. 51(1) from the above-mentioned ordinance, the Contracting Authority must publish a Contract Forecast “in the Official Journal of the European Union, ESPP and in the Romanian Official Gazette, part VI – “Public procurements”. In all other cases, the publication of the contract forecast is optional, but in no case does it exonerate the Contracting Authority from the obligation of publishing the Procurement Notice.

Consequently, the beneficiary of the grant contract will respect the provisions of the GEO 34/2006, and through the mediation of the Ministry of Labour, Social Solidarity and Family will publish a Procurement Notice in the **Romanian Official Gazette, part VI – “Public procurement”**, and two days after its publication, in complying with the PRAG provisions, the beneficiaries of the grant contract will publish the Procurement Notice in a widespread publication, respecting the same information forwarded by means of the Official Gazette (no further information will be offered in this way).

The publication in the Romanian **Official Gazette part VI– “Public procurement” will be performed** through the mediation of the Ministry of Labour, Social Solidarity and Family, which will take over the notices of grant contracts’ beneficiaries. Before being forwarded to the MoLSSF, the notice will be checked by the Implementing Authority.

For the publication in the **Official Gazette**, the limits stipulated by the GEO no. 34/2006, will be respected.

In the case of local open tender, the procurement notice is published in the beneficiary country (See PRAG, section 4.4). It is also possible to publish the full procurement notice and tender dossier on the website. This publication is under the responsibility of the beneficiary country.

3. Thresholds in applying procedures for awarding contracts

The basic principle of applying procurement procedures is represented by the use of the competition system with a view to providing full transparency and obtaining the desired quality of services, supplies and works at the best price.

The Contracting Authority must guarantee fair competition and equal treatment in carrying on procurement procedures and in the contracts financed by the European Commission. The rules applicable to the procedures of public procurement for services, supplies and works are mentioned in the tables below.

SERVICES

$X \leq \text{€}5,000$

Invitation (direct negotiations)

SUPPLIES

$X < \text{€}150,000$ but $\geq \text{€}30,000$ Local open tender procedure

$X < \text{€}30,000$ but $> \text{€}5,000$ Competitive negotiated procedure

$\text{€}5,000 < X < \text{€}30,000$ Request for offer (at least 5 offers)

$X \leq \text{€}5,000$ Invitation (direct negotiation)

WORKS

$\text{€}5,000 < X < \text{€}100,000$ Request for offer (at least 5 offers)

$X \leq \text{€}5,000$ Invitation (direct negotiation)

The introduction of additional thresholds to the Annex 4 from the grant contract was necessary as a consequence of provisions in the present Romanian Legislation. Also, by applying these thresholds, transparency and fair competition will be secured.

According to art. 124 of the ordinance, the contracting authority has the right **to apply the procedure of request for offers only when the estimated value, without VAT, of the public procurement contract is lower than the equivalent in lei of the following thresholds:**

- for contract of supply procurement : € 40,000.00;
- for services contract: € 40,000.00;
- for works contract: € 250,000.00.

According to art. no. 19 from G E O no. 34/2006, the Contracting Authority is entitled to use direct procurement procedure for services, supplies, and works in the case of the value of the public procurement contract for each service, supply, and work is lower than the equivalent in RON of 5,000 Euro.

In case it is necessary to procure supplies such as consumable materials, a contract will be concluded for the total value **within the respective budgetary line**, complying with the value threshold and considering the possibility of some contractual clauses such as staggered delivery of products or order-based delivery.