



INTERACT ENPI

Guide on secondary procurement in ENPI CBC programmes



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This Guide is for information only. It is not designed to replace the regulations and other relevant legislation (which remain the only binding legal texts) and has to be used as complementary information to those documents.

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GLOSSARY

Contracting Authority	In the context of secondary procurement, the Contracting Authority is the Grant Beneficiary.
Contract	In the context of secondary procurement, the contract is a legal document regulating relations between the Grant Beneficiary and its external providers.
Contractor	In the context of secondary procurement, the contractor is the provider of external services, supplies or works to the grant beneficiary.
Fee based service contract	Contract where price depends on engagement of experts (input based). The maximum contract size is calculated by multiplying number of expert days and experts' daily fees (with eventual incidental and account verification expenditures added).
Global price service contract	Contract where the price is calculated on the basis of outputs required by the Contracting Authority. Only total sum for the services provided is indicated, without break-down per experts' engagement.
Grant Beneficiary	Recipient of a grant contract.
PRAG	Practical Guide to Contract procedures for EU external actions.
Service contract	Contract between a service provider and the Contracting Authority for the provision of services such as studies, etc.
Special conditions of contract	In addition to the main text of the contract additional clarifications of contractual conditions should be provided. These details would be provided either in document "Special conditions", which refers to any specific provisions of the contract, or other appropriate form. In case of service contracts the special conditions could form the main text of the contract.
Successful tenderer	Tenderer who has been successful / has won a contract in tender procedure.
Supply contract	Contract between a supplier and the Contracting Authority for the purchase, lease, hire or hire-purchase (with or without the option to buy) of goods. It may also cover such tasks as installation, servicing, repairs, training and after-sales service.

Technical Specifications	Document describing technical conditions in case of supply and works contracts.
Tenderer	A natural or legal person who is taking part in a procurement procedure by submitting an offer.
Tender documentation	Documents describing conditions of tendering procedure, specifics of services/supply/works required and procedures for selection.
Terms of Reference	Document describing conditions of services required in the case of service contracts.
Works contract	Contract between a construction firm and the Contracting Authority for the execution of works of building of the infrastructure.

INTRODUCTION

The secondary procurement in the framework of ENPI CBC programmes is a complex process with different sets of rules implied. The importance of understanding these rules is underlined by the specificity of the design of the ENPI CBC Programmes, which allows the funding of projects of a relatively large size under grant contracts. Important infrastructure components of so-called 'standard projects' (i.e. selected through calls for proposals) are also possible. A significant amount of works, supplies and services of the project could therefore have to be procured from external suppliers.

The possibility of funding Large Scale Projects having an investment/infrastructure character further emphasises the importance of a clear understanding of the secondary procurement process.

Thus, the aim of the present Guide is to develop a universal secondary procurement approach, taking into account all the applicable rules and providing Guidance on unclear or missing points.

The Guide aims at contributing to a harmonised approach on secondary procurement by all ENPI CBC programmes. It is particularly important due to the fact that many countries are involved in several ENPI CBC programmes.

The Guide has been more specifically developed for ENPI CBC Joint Managing Authorities/Joint Technical Secretariats, which should take the decision on how to inform the Grant Beneficiaries.

INTERACT ENPI hopes this tool will contribute to a smooth implementation of ENPI CBC programmes. We would also encourage and would be grateful for any further feedback and advice on the present Guide.

METHODOLOGY APPLIED AND STRUCTURE OF THE GUIDE

Section 1

The Guide starts with some general advice in **SECTION 1** related to procurement procedures, which were the results of the discussions in 4 meetings of the INTERACT ENPI Laboratory Group on Procurement Procedures and Large Scale Projects which took place in 2009 and in 2010.

Sections 2, 3, 4 and 5

The selection and implementation of projects in the framework of ENPI CBC is regulated by the Practical Guide to Contract procedures for EU external actions (PRAG). This document contains several chapters, which describe the main principles as well as rules for different types of contracts concluded in implementing EU external actions - services, supplies, works and grants. Chapter 6 “Grants” and the relevant grant Annexes Practical Guide apply to all grant contracts concluded within the Programmes.

Often, the implementation of a grant requires further procurement by the grant Beneficiary from external Contractors, which are not partners in the project. The main and first reference for the grant Beneficiaries and partners in this respect is Annex IV to the Standard Grant Contract “Procurement by grant Beneficiaries in the context of European Union external actions”.

Annex IV contains the set of main principles to be applied. One of these main principles is the Rule of nationality and origin. This rule is not described in detail and Annex IV makes reference to some other EU documents for more information. Therefore, a summary of the detailed applicable rules on the Rule of nationality and origin is provided in **SECTION 2** of the Guide.

When it comes to more details on the other procedures described in Annex IV, as well as on the rest of the procedures to be applied and the tender documents to be used, there are two possibilities for the Beneficiary:

1. The Beneficiary can use the PRAG provisions

Depending on the type of secondary procurement, the Beneficiary refers to the corresponding Chapter and Annexes of PRAG - Chapter 3 and Service Annexes for service contracts, Chapter 4 and Supply Annexes for supply contracts, Chapter 5 and Works Annexes for works contracts. They should also refer to Chapter 2 on General provisions concerning all the contracts.

***NOTE:** The provisions of Chapters 3, 4 and 5 of PRAG have to be adjusted in their application in the context of Grant contracts to the specific provisions provided in Annex IV - all the adjustments to be made are presented in **SECTION 3** of this Guide.*

2. The Beneficiary can use his own rules, or the national procurement rules of the Beneficiary's country

EU Member States

The rules of EU Member States can in this case be directly applied. For the Member State public entities Annex IV to the Grant contains a provision in Article 8.2, which allows them not to take into account Articles 3-7 of Annex IV.

NOTE: One important adjustment still has to be made if EU Member States procurement rules are applied: the ENPI CBC rule of nationality and origin has to be applied in all cases (see the details in the Section 2 of this Guide).

Partner Countries

The rules of Partner Countries have to be in line with best international practices. This can be checked by comparing them to the PRAG rules for procurement of services, supplies and works mentioned in point 1, i.e. the rules used by the European Commission and the JMAs and described in the relevant Chapters of PRAG.

This check will be performed at 2 different stages of the procurement process: A. Procurement procedures and B. Tender and contract documents used for procurement.

Different methodologies have been applied by INTERACT ENPI for those 2 parts of the procedures.

A. Procurement procedures

INTERACT ENPI examined the procurement legislations of Belarus, Ukraine and Moldova and presents in **SECTION 4** the Matrix containing the comparative analysis of national procurement rules of these countries with PRAG rules - the rules of Chapters 3, 4 and 5 with necessary adjustments to Annex IV. Conclusions are made for each point of the procedure on whether:

- ✚ National procurement rules are **fully in line** with the EC External Aid rules. They are either identical or stricter, no action is needed and the national rules can be applied as such.
- ✚ National rules are **in line** with the EC External Aid rules. Minor revisions and adjustments are necessary in this case to the national rules, they are presented in the study.
- ✚ National rules follow the **general spirit** of the EC External Aid rules. Revisions or adaptations to the national rules are necessary and are presented in the study.

- ✚ National rules are **different** from the EC External Aid rules. Application of PRAG rules is recommended in these cases by amending the national rules.

It is recommended that the JMAs of ENPI CBC programmes contact the national authorities in the Partner Countries to discuss possible ways of tackling the discrepancies identified for each country mentioned in the last point - the cases when the national rules are contradictory to the EU External Aid rules.

NOTE: As a consequence, Section 4 is the only Section of the Guide, which does not apply to all the programmes and countries, but only for Belarus, Ukraine and Moldova.

B. Tender and contract documents used for procurement

The legislation and documentation of Partner Countries have not been examined in detail in this respect, but general advice has been provided in **SECTION 5** on what are the most important good practices to be followed by grant Beneficiaries to be in line with the EU External Aid rules.

This part of the study focuses on the following points:

- ✓ Preparation of tender documentation: minimum documents and provisions to be provided in the tender procedure and tender documentation
- ✓ Preparation of contracts: the provisions not to be missed when preparing the contracts

Some additional advice has also been given on selection procedures.

SECTION 1 - General advises from the INTERACT ENPI Laboratory group

Subcontracting: definition and limit

It is recommended to develop a clear approach on the following important issues related to procurement procedures:

- To define the exact approach used in the programme in relation to the limitation of Article 1.3 of Annex II to the Grant Contract, General Conditions applicable to European Community-financed grant contracts for external actions, which states that “if the Beneficiary or, where applicable its partners, have to conclude contracts in order to carry out the Action, these may only cover a limited portion of the Action”. An exact percentage or some other approach could be used. Clear guidelines should also be given to Applicants in this respect.
- Procurement does not automatically mean subcontracting in relation to Article 1.3, it is therefore recommended to decide on the exact approach used in the programme to define the criteria of subcontracted expenditures to be counted in relation to the above-mentioned Article of General Conditions. Clear guidelines should also be given to Applicants in this respect.

NOTE: A specific approach to investment projects has been allowed by the EC Note Ares(2009)196495 from 4 August 2009, which provides the possibility to amend the respective Article of General Conditions by introducing in the Article 7.1 of Special Conditions the following provision: “In duly justified cases the subcontracting limit does not apply to Actions focused on investment activities, notably to Large Scale Projects”.

Supervision, assistance and verification

It could be useful to understand what services, supplies and works are to be procured in each project. The programme can therefore decide to request at Application or Contracting stage a **Procurement plan** of the project. It would facilitate the monitoring of procurement. It would also help in identifying possible artificial splitting of the contracts at an early stage.

Supervision

Two kinds of supervision have to be distinguished:

- The supervision of procurement procedures.
- The supervision of the actual implementation of works and complex supplies.

The supervision tasks have to be performed, when needed, in both Large Scale and normal projects.

In addition to the Beneficiary's internal supervision on both procurement procedures and actual works and supplies the Beneficiary could also contract an external supervisor. Additional supervision tasks could alternatively be performed by JMA/JTS (possibly with assistance of external experts). Finally, both solutions can also be combined.

The ENPI CBC programmes could also examine the possibility of cross-programme supervision, when the efforts of several programmes would be joined to perform some supervision tasks.

Assistance

The experience shows that the majority of errors are not done willingly but because the Beneficiaries did not know how to deal with the complex issue of procurement. Supervision would partially solve this, but some additional constant assistance would also be needed.

Trainings for Beneficiaries and other mechanisms for on-going advice are key for ensuring smooth secondary procurement and implementation. A help desk could also be established. Some issues can be better dealt with in bilateral meetings.

Verification

PRAG only foresees the ex-post check by the Contracting authority of the secondary procurement carried out by Beneficiaries in grants. However, there are different options for making the ex-post verification:

- It can be carried out after the tender completion and after the signature of the contract with the selected contractor with no correction possible
- Or after the tender completion but before the signature of the contract with the selected contractor. Option B almost completely eliminates the risk of ineligible costs.

It is therefore recommended to programmes to analyse the risks and to decide whether in addition to the assistance and supervision mechanisms such a check is needed and on which tenders (set thresholds or other criteria).

The programmes also have to define the exact tasks, which should be performed by the Expenditure verification mission members on the verification of procurement procedures. If the standard procedures of Annex VII the Grant contract are followed, the Auditor would focus on Annex IV provisions and some specific procurement risks.

If the JMA would like the Auditor to focus on specific rules, including checking the national rules and whether they correspond to the EU rules and the best international practices presented in this Guide, some additional information (e.g. this Guide on Procurement) should be provided to the Auditor. Some specific training could also be organised for the Auditors if the decision is taken to follow this approach.

It is advised to JMA/JTS to develop a clear strategy on how the tasks of verification and supervision would be split between the JMA/JTS, the auditors and the external supervisors.

Secondary procurement tender before contract signature

The Beneficiary or partners have the possibility to initiate the tender procedures for the secondary procurement before the Grant contract for the project is signed (Article 14 of the General Conditions). However, the contract with the selected tenderer of such a tender may be signed only when the Grant contract is concluded. Alternatively, the Beneficiary or partners may conclude a contract with a suspensive clause with the selected tenderer, mentioning that it will start only after the Grant contract for the project is signed.

NOTE: All secondary procurement rules applicable within the framework of the Grant contract have to be respected. The same principle applies to the procurement, which is performed for costs before contract signature for Large Scale Projects. Thus, special attention should be put on informing all those Beneficiaries at the earliest possible stage.

SECTION 2 - Rule of Nationality and origin

The nationality rule

In Annex IV to the Grant Contract it is stated that participation in tender procedures administered by the Beneficiary is open on equal terms to all natural and legal persons of the Member States and the countries foreseen in art 21 of the ENPI regulation, which includes ENPI, IPA and EEA countries. The exact list of eligible countries can be found in Annex A2 to PRAG. It is also open for International organisations.

The nationality rule applies to the contractor. It does not, however, apply to the experts proposed by service providers taking part in tender procedures or service contracts financed by the grant. This means that when an expert is proposed by a contractor, the nationality rule does not apply to the expert but to the company but if the expert is contracted individually, then this person has to be from a MS or an ENPI, IPA or EEA country.

The rule of origin

The rule applies to ALL supplies and materials purchased, incl. the materials to be used for construction, but does not apply to the Contractor's equipment to be used during the construction.

Goods originating from a country shall be those wholly obtained or produced in that country. Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture. More detailed information on the meaning of this can be found in the Customs Code, Council Regulation 2913/1992 Art. 23-24.

The contractor must present a certificate of origin to the Beneficiary for all equipment and vehicles of a unit cost > € 5000. The certificate should be issued by the competent authorities of the country of origin.

The programme has to decide on whether the cost of the whole supply would be considered as unit cost, or the cost of each unit of the supply (e.g. the unit cost is 4800 Euro and there are 10 items for a total of 48.000€).

Exemptions from the Nationality rule and rule of origin: can be granted by derogation only. It can never be justified for the reason that a product would be cheaper than the Community or local product. It can only be justified if the products are unavailable in the markets of the countries concerned, for reasons of extreme urgency or if the realisation of a

project/programme/action would become impossible or exceedingly difficult due to the eligibility rule.

An application for a block derogation is possible if there is some equipment which constantly poses a problem of origin. The JMA may proceed with market research to identify such equipment and submit a justified (including a market research) and grounded request for a block derogation. This derogation would apply to all the projects, but for a limited time. It does not prevent the JMA from requesting some individual derogations, also for the equipment that has not been identified in the block derogation.

SECTION 3 - Summary of differences between PRAG and Annex IV

The differences are reflected below between the procedures described in Chapters 3 (Services), 4 (Supplies) and 5 (Works) and specific provisions of Annex IV, where Annex IV provisions are taken as reference as they prevail for Grants secondary procurement. The provisions of Chapters 3, 4 and 5 of PRAG have to be adjusted in their application in the context of Grant contracts to those specific provisions.

- Publication of the individual contract forecast: not required by Annex IV
- Tender publication requirements are different:
 - To be published in all appropriate media, in particular on the Beneficiary's web site, in the international press, national press or in other specialist periodicals (Annex IV)
- Deadline for submission: long enough, allowing reasonable and appropriate period in Annex IV. (PRAG: 60 days for Supplies and 90 days for Works in international tenders, 30 for Supplies and 60 for Works in local tenders)
- Most economically advantageous tender to be selected according to Annex IV, i.e. the tender offering the best price-quality ratio, best value for money (whereas price is the only criterion for supplies and works in PRAG)
- Number of Evaluation Committee members - odd number of voting members, at least 3 according to Annex IV (PRAG - at least 5 for International open tender for Works)
- Framework contract procedure for services not foreseen in Annex IV (PRAG - possible for services of < € 200,000 but > € 10,000)
- International restricted tender procedure for Works not foreseen in Annex IV (PRAG - possible for Works of > 5,000,000)
- Negotiated procedure in Annex IV (Competitive negotiated procedure in PRAG): Beneficiary consults at least 3 suppliers of its choice and negotiate the terms of contract with one or more of them
- Use of negotiated procedure for higher amounts, than allowed by standard ceilings - listed in Art.7 of Annex IV (combination of all correspondent Articles of PRAG)

SECTION 4 - Procurement procedures in Belarus, Ukraine and Moldova

National rules compulsory in accordance with national laws for:

Belarus

- Services, Supplies, Works: for all contracts partially or fully financed from public funds
- Construction Works: financed from public funds or by any other funds





Ukraine

- For all contracts partially or fully financed from public funds
- Or concluded by Public (or similar) authorities

Moldova

- For all Public procurement contracts, i.e. concluded by Public authorities

How to read the Matrix:

	-	National procurement rules fully in line with EC External Aid rules
	-	National rules in line with EC External Aid rules. Minor revisions necessary
	-	National rules in general spirit of EC External Aid rules. Revisions or adaptations necessary.
	-	National rules different from EC External Aid rules. Application of EC rules recommended by amending the national rules

4.1 – Procurement Matrix: Belarus

NOTE: The specificity of procurement rules in Belarus is that a different set of rules are set by different legal acts for Service, Supplies and Works contracts and for Construction works contracts. The Matrix below takes into account this fact.

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
			Rules on Construction, services (eg technical documentation) and supplies related to Constructions		
General issues	Fair and transparent competition	Transparent and fair competition for potential contractors. Avoiding conflict of interest.	The same as for SSW	Transparent and fair competition for potential contractors. Avoiding conflict of interest.	National procurement rules in coherence with the EU External Aid rules and principles. <u>Conclusion:</u> In case of use of national rules the EU External Aid rules will be respected
	Grounds for exclusion	Bankrupted or administered by court, entering arrangements with creditors, suspended business activities. Convicted of offence concerning their professional conduct. Have been guilty of grave professional misconduct. Have not fulfilled obligations	No provisions	Different list of limitations, giving more possibilities to exclude: - The same organisation which conducts the tender cannot participate - Bankrupted or being	National procurement rules seem to be somewhat narrower than the EU External Aid. <u>Conclusion:</u> In case of use of national rules the EU External Aid rules will be respected in principle. The formulation of “lack of info supplied” should be applied in a

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
		related to payment of social security contributions and taxes. Have been subject of a judgement for fraud, corruption, involvement with criminal organisations, or any other illegal activity, detrimental to Community's interest.		liquidated - Organisations not supplying enough info about itself - Organisations not fitting to the tender requirements	sense that if no documentary proof is provided other provisions cannot be checked.
	Administrative and financial penalties	Tenderers who have made false declarations, have made substantial errors, committed irregularities and fraud, breaching contractual obligations, may be excluded from all contracts financed by Community budget or EDF for maximum 5 years. This could be extended to 10 years in case of repeated offence. May also be subject to financial penalties between 2% and 10% of contract value. This could be increased to 4% to 20% in case of repeated offence.	No provisions	Not found in the national legislation.	National procurement rules don't regulate administrative and financial penalties. <u>Conclusion:</u> Use of EU External Aid provisions would not create a conflict as the area is not regulated in national procedures. Recommended to apply EU External Aid provisions.
	Visibility	Communication and Visibility Manual for EC External actions.	No provisions	There are special requirements for publicizing the tender announcement.	It seems that using of EU visibility guidelines will not be in conflict with national legislation. <u>Conclusion:</u> Use of EU External Aid provisions and EU visibility guidelines recommended.
Conflict of interest and ethic clauses	Connections with the tenderers	No person involved in the procurement procedure (preparation of documents and procedures, evaluation, implementation) should have any	No provisions	There are no clear provisions in the relevant legislation.	National procurement rules don't regulate this area. <u>Conclusion:</u> Using EU External Aid provisions should not mean conflict with

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
		connection whatsoever with any of tenderers.			national procurement procedure.
	Contacts during the procedure	Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders and applications will lead to the rejection of its candidacy, proposal or tender.	No provisions	There are no clear provisions in the relevant legislation.	National procurement rules don't regulate this area. <u>Conclusion:</u> Using EU External Aid provisions should not mean conflict with national procurement procedure.
	Declaration of tenderers	When putting forward a candidacy or tender, the tenderer must declare that it is affected by no potential conflict of interest and that it has no equivalent relation in that respect with other tenderers or parties involved in the project.	No provisions	There are no clear provisions in the relevant legislation.	National procurement rules don't regulate this area. <u>Conclusion:</u> Using EU External Aid provisions should not mean conflict with national procurement procedure.
	Civil servants	Civil servants or other officials of the public administration of the beneficiary country, regardless of their administrative situation, must not be engaged as experts by tenderers unless the prior approval of the European Commission has been obtained.	No provisions	There are no clear provisions in the relevant legislation.	National procurement rules don't regulate this area. <u>Conclusion:</u> Using EU External Aid provisions should not mean conflict with national procurement procedure.
	Corruptive practice	If corrupt practices of any kind are discovered at any stage of the award process and if the Contracting Authority fails to take all appropriate measures to remedy	No provisions	It is regulated by Criminal legislation.	National rules follow Criminal legislation in that segment. <u>Conclusion:</u> It can be assumed that using the national legislation sufficiently

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
		the situation, project financing will be suspended.			respects EU External Aid rules.
Fair and transparent competition	Value of contract	Value of contract has to be in line with accepted market prices (in the target country) for particular type of services /supplies/works.	The indicative value of contract is determined using special indexes from regulation! And published in the tender announcement! The final value of the contract is determined applying the same indexes on the moment of contract signature. The same rule is applied for defining the price of further subcontracts by Contractor and to the payments in the contract. If the tender is design-built – the price might be corrected after developing the detailed technical documentation	Value of contract has to be in line with accepted market prices in Belarus for particular type of services /supplies/works.	The provisions of national legislation is not in conflict with EU External Aid provisions. <u>Conclusion:</u> Using EU External Aid provisions is in line with national legislation. In case of use of specific indexes, the relation to the final price and conditions (similarly to PRAG principles when applying discounts) should be clearly presented.
	Splitting of tenders	No contract may be split simply to evade compliance with the EC External aid procurement rules.	No provisions	There are no clear provisions in the relevant legislation.	National procurement rules don't regulate this area. <u>Conclusion:</u>

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
		Services/supplies of similar nature should be awarded under one tender/lot.			Using EU External Aid provisions should not mean conflict with national procurement procedure.
	Tender prices	If there are significant differences in prices proposed by different tenderers the Contracting Authority should carry out checks and request any additional information necessary.	No provisions	There are no clear provisions in the relevant legislation.	National procurement rules don't regulate this area. <u>Conclusion:</u> Using EU External Aid provisions should not mean conflict with national procurement procedure.
	Restrictive conditions	The Contracting Authority should thoroughly check the tender documents for any restrictive conditions potentially limiting the competition (such as naming the brand or requesting narrow and specific technical conditions).	No provisions	There are similar provisions in Belarus.	National procurement rules don't regulate this area. <u>Conclusion:</u> Using EU External Aid provisions should not mean conflict with national procurement procedure.
Rules of origin / Nationality	Nationality rule	EU Member States, ENPI, EPA, EEA countries, international organisations No limitations for experts on the level of secondary contracts, financed from grant.	Not limited	No limitations For some products only BY origin is accepted	National procurement rules set no limitations, except for specific cases. <u>Conclusion:</u> EU External Aid is open as regards the nationality of experts, therefore no conflict with national legislation (except in those limited specific cases). The EU rules are restrictive in relation to the nationality of contractors. The EU rules should apply, following Framework Agreement.
	Rules of origin	EU Member States, ENPI, EPA, EEA countries. Certificate of origin to be	Not limited.	No limitations. For some products only BY origin is accepted.	National procurement rules set no limitations, except for specific cases.

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
		provided. (Does not apply for secondary supply contracts financed under grant, where unit cost is lower than 5.000 €) No preferences for any provider.		There are specific limitations in different specific areas.	Conclusion: EU External Aid provisions are stricter as regards the origin of supplies. Possible conflict with national legislation. EU External Aid rules should be applied, by following Framework Agreement.
Publication / Invitation	Single procedure (or similar)	One tenderer directly invited to submit offer.	No such a procedure	One tenderer directly invited to submit offer.	The EU External Aid provisions correspond to national legislation. Conclusion: Using EU External Aid procedures should not mean conflict with national procurement procedures.
	Competitive negotiated procedure (or similar)	At least three tenderers directly invited to submit offers.	No requirement of 3 tenders submitting	At least 2 offers	According to the national legislation at least 2 offers are required. Conclusion: Inviting three tenderers automatically increases competition. Therefore using of EU External Aid provisions, should not cause conflict with national procedures.
	Open procedure	To be published in all appropriate media, in particular on the Beneficiary's web site, in the international press, national press or in other specialist periodicals (Annex IV provision differs from Chapters 3-5)	Publication+ the possibility of sending the individual invitation to some identified potential tenderers without publishing in some specific cases: -When closed tender for "objects of	Publication+ sending the individual invitation to some identified potential tenderer without publishing (Closed tenders)! No international tender publication provisions for Services and Supplies.	Potential conflict with EU External Aid rules in case of closed tenders. Conclusion: In addition to publication according to the national legislation, it would be advisable to publish internationally in case of international tenders (open procedure). In case of closed

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
			special nature” -For materials purchase needed for the constructions -for any further subcontracting by the Contractor		tenders (state secret or similar) the provisions of Annex IV for Negotiated procedure need to be observed. If fulfilled the tenderers can be invited directly.
<p>Financial thresholds – Services</p>	<p>Single tender procedure (or similar)</p>	<p>For contracts ≤ 10.000 € (below or equal to 10.000 EUR) +Cases for negotiated procedure (Art, 7 of Annex IV)</p>		<p>General: <i>(The same procedures apply for services, supplies and works, except for construction works.)</i> <i>Rules are obligatory for all contracts partially or fully financed by state.</i></p> <p>< 50 base rates Beneficiary concludes the contract with a supplier without tendering procedures But also for > 50 base rates, in cases mentioned in the Council of ministers decision, some of which are not in line with cases for negotiated procedure in Annex IV. Beneficiary concludes the contract with a supplier without tendering procedures.</p>	<p>Threshold in the national legislation much lower than in EU External Aid rules. Some of the provisions on negotiated procedure as per national legislation “Council of ministers decision”, are not in line with EU External Aid rules. There is no detailed definition of “urgency” and when tender is unsuccessful, possibility to conclude a single tender with anyone, not only tenders submitted. <u>Conclusion:</u> Use of national threshold recommended. No conflict with EU External Aid rules, since the national rules are stricter. For cases of exception the EU External Aid rules should prevail. This should not mean a conflict with national legislation, since EU rules are stricter.</p>

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
	Negotiated procedure (or similar)	For contracts > 10.000 € but < 200.000 € (above 10.000 EUR but below 200.000 EUR)		Competitive list procedure: < 1000 but ≥ 50 base rates (app. 8700-440 Euro)	Threshold in the national legislation lower than in EU External Aid rules. <u>Conclusion:</u> Use of national threshold recommended. No conflict with EU External Aid rules, since the national rules are stricter.
	International Restricted Tender Procedures	For contracts ≥ 200.000 € (above or equal to 200.000 EUR)		No international tender. Tender: ≥ 8000 base rates (app. 70000 Euro) Open: publication in the specialized official web-resources, mass-media and mailing to potential suppliers. +Open restricted and Open restricted with auction or Closed: only for secret state procurements. Can be conducted in 2 steps: 1) preliminary request for offers, 2) second request for selected applicants. Procedure of request of price offers < 8000 but ≥ 1000 base rates (app. 70000-8700)	Threshold in the national legislation much lower than in EU External Aid rules. The national legislation does not recognise international tender. <u>Conclusion:</u> Use of national threshold recommended. No conflict with EU External Aid rules, since the national rules are stricter. Publication on international level would only increase openness and competition. HOWEVER the use of restricted procedure with auction is not in line with EC External aid rules and should be avoided. Closed – only in cases corresponding to Annex IV exceptional cases. Procedure of request of price offers – to include the elements

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
				Euro)	allowing price/quality assessment, requesting minimum from 3 suppliers.
Financial thresholds – Supplies	Single tender procedure (or similar)	For contracts ≤ 10.000 € (below or equal to 10.000 EUR) +Cases for negotiated procedure (Art, 7 of Annex IV)		The same as for services	Same as with services.
	Negotiated procedure (or similar)	For contracts > 10.000 € but < 60.000 € (above 10.000 EUR but below 60.000 EUR)		The same as for services	Same as with services.
	Local open tender procedure	For contracts ≥ 60.000 € but < 150.000 € (above or equal to 60.000 EUR but below 150.000 EUR)		The same as for services. The national threshold for open procedure is approximately 70.000€ which is higher than EU External Aid. Possibility of use of Open restricted and Open restricted procedures with auction (see bellow at ‘‘Procedures for services’’	The national threshold for open procedure is approximately 70.000€, higher than EU External aid. <u>Conclusion:</u> The EU External Aid rules (threshold of 60.000€) should be applied in this case. The use of restricted procedure with auction is not in line with EC External aid rules and should be avoided. The restricted tender is not foreseen for supplies, so should be avoided.
	International open tender procedure	For contracts ≥ 150.000 € (above or equal to 150.000 EUR)		The same as for services	Same as with services. International publications rules should be used for tenders as from 150.000 €
Financial thresholds -	Single tender procedure (or	For contracts ≤ 10.000 € (below or equal to 10.000 EUR)	For contracts below 3000 base rates	The same as for services	Same as with services.

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
Works	similar)	+Cases for negotiated procedure (Art, 7 of Annex IV)	(26.250 €) if funded from state budget, and below 50,000 base rates (437,500 €) if funded by any other funds as regulated only from those amounts.		
	Negotiated procedure (or similar)	For contracts > 10.000 € but < 300.000 € (above 10.000 EUR but below 300.000 EUR)	<p>Rules for Construction works General:</p> <p><i>obligatory for: from 3000 base rates (Eur 26.250) if funded from state budget, from 50,000 base rates (Eur 437,500) if funded by any other funds – which means that by the difference to the rules for SSW should be applied also to Programme co-financing, even if not the state budget.</i></p> <p><i>The possibility to procure without tender if:</i></p> <p><i>-the construction is included in the national or regional (or Minsk)</i></p>	The same as for services, except for Construction.	<p>The procedures for Construction works apply not only to the state budget, but also to other sources of funding, although with a higher threshold (437,500 Euro)</p> <p><u>Conclusion:</u></p> <p>The negotiated procedure should not be used above 300.000€ (Annex IV threshold). The national legislation would not be violated by this, since stricter rules only increase competition.</p>

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
			<p><i>investment programme</i> <i>-if 2 consecutive tenders failed as no tenders submitted (the difference from PRAG here again as in SSW – procurement from any possible contractor and not from those who submitted)</i></p>		
	Local open tender procedure	For contracts ≥ 300.000 € but $< 5.000.000$ € (above or equal to 300.000 EUR but below 5.000.000 EUR).	<p>from 3000 base rates (Eur 26.250) if funded from state budget, from 50,000 base rates (Eur 437,500) if funded by any other funds, with possibility to publish internationally</p> <p>Possibility of closed tender if some “special objects” with individual invitations to submit the offers</p> <p>Possibility of</p>	Possibility of use of Open restricted and Open restricted procedures with auction (see below at “Procedures for services”)	<p>According to the local legislation, the bottom threshold for the open procedure could be 437,500€, higher than in the EU External Aid.</p> <p><u>Conclusion:</u> The EU External Aid provisions should apply (open procedure from 300.000€). This should not be in conflict with the national procedures, as the thresholds are stricter, providing more openness and competition.</p> <p>In case of restricted tenders, “special objects”, auction procedures etc. according to national legislation, the provisions</p>

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
			conducting the restricted tender with pre-selection of tenderers		should correspond to conditions for Negotiated procedure in Annex IV. Generally such tenders should be avoided.
	International open tender procedure	For contracts $\geq 5.000.000$ € (above or equal to 5.000.000 EUR)	from 3000 base rates (Eur 26.250) if funded from state budget, from 50,000 base rates (Eur 437,500) if funded by any other funds, with possibility to publish internationally	The same as in the open local procedures.	It seems that the national legislation does not differ between local and international open procedures. However publication on international level is an option for Construction works <u>Conclusion:</u> Use of national legislation, with international publication recommended. Restricted, auction procedures should be generally avoided.
Procedures – Services	Single tender procedure (or similar)	No exact deadline fixed (long enough, allowing reasonable and appropriate period - Annex IV). Offer submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier. The one received offer estimated for compliance with requirements. Simplified evaluation report prepared, according to free format.		General: <i>(The same procedures apply for services, supplies and works, except for construction works.)</i> <i>Rules are obligatory for all contracts partially or fully financed by state.</i> Beneficiary concludes the contract with a supplier without tendering procedures	In national legislation the contract is concluded directly. <u>Conclusion:</u> The provisions (practical recommendations), based on EU External Aid could be followed. Namely examination of the received offer, on the basis of standard format, with report prepared.
	Negotiated procedure (or similar)	Deadline for submission recommended in the PRAG manual – 30 days.		The procedure differs slightly (e.g. requesting the info from 2 suppliers only)	The conditions of national legislation differ slightly from EU External Aid.

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
		<p>Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The received offers are evaluated on the basis of pre-set evaluation criteria (see below).</p> <p>Evaluation report prepared on the basis of standard PRAG format.</p>		<p>instead of 3 in PRAG, However in any case the procedure is foreseen for maximum 8.700€ what is still single procedure under EU External Aid.</p>	<p><u>Conclusion:</u> In any case application of national procedures would fulfil the EU requirement for that particular threshold.</p>
	<p>International Restricted Tender Procedures</p>	<p>2 step procedure.</p> <p>Publication of a Contract Forecast Notice followed by the publication of a Procurement notice at least 30 days later (recommended by PRAG, but not obligatory according to Annex IV).</p> <p>Deadline for submission of express of interest (standard document): at least 30 days. (recommended by PRAG, but not obligatory according to Annex IV).</p> <p>Short-list of 4-8 tenderers formed.</p> <p>Deadline for submission of offer (based on full tender dossier): 50 days recommended in PRAG manual but not enforced in the Annex IV.</p> <p>Offers submitted by short-listed tenderers, on the basis of standard documents (financial and technical offer), provided in the tender dossier.</p> <p>The received offers are evaluated</p>		<p>Possibility of changes in the tender published- not later than 15 days before the deadline.</p> <p>Request of clarifications possible (10 days before deadline) - answers 3 days before the deadline.</p> <p><u>1. Open tender:</u> Deadline 30 days, 15 days for the repeated tender: - Can be prolonged if some changes in the tender or if requested by tenderers.</p> <p>All the tenderers may participate in the opening session.</p> <p>The clarifications may be asked from the tenderers.</p> <p>The tender can be cancelled, if:</p>	<p>The national procedure differs from EU External Aid rules in certain elements. The publication procedure and replies to enquiries have different deadline as recommended in PRAG manual, but it's not directly a problem as the deadlines are not required by Annex IV.</p> <p>The EU External Aid does not recognise ‘‘Closed tender’’, ‘‘Restricted tender’’ or ‘‘Auction’’ as defined in the national legislation. Those procedures have similarities with ‘‘Negotiated procedure’’ as defined in the Annex IV. However the negotiated procedure is only to be applied in exceptional cases, listed in Annex IV.</p> <p><u>Conclusion:</u></p>

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
		<p>on the basis of pre-set evaluation criteria (see below). Evaluation report prepared on the basis of standard PRAG format.</p>		<ul style="list-style-type: none"> - There is no anymore need for those services, supplies, works, - If all the offers are “unfavourable” <p>At least 2 offers should be evaluated for the tender to be valid.</p> <p>Possible negotiations with selected tenderer on the price. If several tenderer in 1st place – negotiations with each of them.</p> <p>The evaluation report is not public.</p> <p>If the winner refuses either 2nd place tenderer is contracted or new tender</p> <p><u>2. Closed tender:</u> If state secret (no clear definition) No publication, individual invitations</p> <p><u>3. Restricted tender</u> (2 stages) – no question of thresholds – the same as for the open, but some criteria:</p>	<p>As long as the open procedure is applied the provisions of national legislation will be more or less in line with EU External Aid rules. Even if the two step procedure as suggested in PRAG is not applicable, it can be considered that open procedure is in line with Annex IV.</p> <p>The restricted tenders and closed procedures should be generally avoided, unless there is direct link to the provisions in the Annex IV, describing the conditions when Negotiated procedure applies.</p> <p>The national provision of at least 2 offers should be extended to at least 4, to be in line with the recommendation in PRAG.</p> <p>The Tenders with Auction should be avoided since they are not in line with the EU External Aid provisions.</p> <p>Price negotiations should be normally avoided. If applied, clear conditions and transparency should be guaranteed.</p> <p>If procedure for price offer is applied, the Contracting Authority</p>

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
				<p>-it’s impossible to define the exact characteristics of the services (supplies, works) -to investigate on the capacities of the potential tenderers -scientific researches -it has simply been decided to preliminarily evaluate the tendereers</p> <p>All the rest is the same as for open tender</p> <p><u>4.Open restricted with auction</u> – for the same thresholds as open!!</p> <p>The auction is conducted at the end of tender among tenderers to lower the price. The criteria for using this procedure are the same as for restricted: - it’s impossible to define the exact characteristics of the services (supplies, works) - to investigate on the capacities of the potential tenderers - scientific researches</p>	<p>should in addition to the prices ask for documentation that will allow evaluation and comparison of tenders (for instance description of tasks, submission form). Minimum of documents requested is described in the ‘Best Practice’ review, prepared by INTERACT ENPI in the SECTION 5 of this Guide..</p>

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
				<p>- it has simply been decided to preliminarily evaluate the tendereers) + for services, supplies, works, for which exists the market and there are at least 5 potential tenderers</p> <p>Can also be an electronic auction.</p> <p>Is conducted as restricted (2 stages) with some specificities:</p> <ul style="list-style-type: none"> - After the second stage the selected tenderers provide a closed envelope with their minimal price, below which they won't be able to go in auction. The envelopes are open after the end of auction - The tenderer proposing the minimum price (but not lower than mentioned in his envelope) is selected. <p>Procedure of request of price offers (8.700-70.000 euro):</p>	

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
				Very similar to the open tender, but the number of submitted documents is limited, basically only price is provided,	
Procedures - Supplies	Single tender procedure (or similar)	No exact deadline fixed (long enough, allowing reasonable and appropriate period - Annex IV). Offer submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier. The one received offer estimated for compliance with requirements. Simplified evaluation report prepared, according to free format.		Same as for Services.	Same as with Services.
	Negotiated procedure (or similar)	Deadline for submission of offers: 30 days recommended in PRAG manual. Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier. The received offers are evaluated on the basis of pre-set evaluation criteria (see below). Evaluation report prepared on the basis of standard PRAG format.		Same as for Services.	Same as with Services.
	Local open tender procedure	Publication of the procurement notice recommended in PRAG manual – only in the Official Journal/equivalent media of the		The same as for Services. However the fact of the thresholds needs to be taken into account – for	Same as for services. However the threshold as stipulated by the EU External Aid rules should be taken into account

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
		<p>beneficiary country.</p> <p>Deadline for submission of offers: 30 days recommended in PRAG manual.</p> <p>Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The received offers are evaluated on the basis of pre-set evaluation criteria (see below).</p> <p>Evaluation report prepared on the basis of standard PRAG format.</p> <p>The Contracting Authority may request a tender guarantee</p>		<p>supply according to BY legislation 70.000€ is threshold for open procedure.</p> <p>Procedure of request of price offers (8.700-70.000 euro):</p> <p>Very similar to the open tender, but the number of submitted documents is limited, basically only price is provided.</p>	<p>(60.000€).</p> <p>Procedure for request of price should not be used above 60.000€.</p>
	International open tender procedure	<p>Deadline for submission of offers: 60 days recommended in PRAG manual, but not requested in Annex IV.</p> <p>Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The received offers are evaluated on the basis of pre-set evaluation criteria (see below).</p> <p>Evaluation report prepared on the basis of standard PRAG format.</p>		The national legislation does not differ between international and national open.	<p>General rules the same as for “Open local” with services.</p> <p>However additional international publication should be done above 150.000€ to keep the rules in line with the EU External Aid rules and to increase openness and competitiveness.</p>
Procedures - Works	Single tender procedure (or similar)	<p>No exact deadline fixed (long enough, allowing reasonable and appropriate period - Annex IV).</p> <p>Offer submitted on the basis of</p>		The same as for Services.	Same as with Services.

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
		standardised documents (financial and technical offer), provided in the tender dossier. The one received offer estimated for compliance with requirements. Simplified evaluation report prepared, according to free format.			
	Negotiated procedure (or similar)	Deadline for submission of offers: 30 days recommended in PRAG manual, but not required by Annex IV Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier. The received offers are evaluated on the basis of pre-set evaluation criteria (see below). Evaluation report prepared on the basis of standard PRAG format.		The same as for Services.	Same as with Services.
	Local open tender procedure	The publication of the Procurement notice it is mandatory to ensure widest participation, assuring competitive tendering and transparency but is published only in the Official Journal of the beneficiary country. Deadline for submission of offers: minimum 60 days after the publication of the procurement notice, proposed in PRAG manual. Offers submitted on the basis of standardised documents (financial	To start the tender procedures the following documents are needed: -land ownership, -building permit -technical documentation (if no technical documentation – sufficient data to determine the works and the price)		There are certain discrepancies between the national legislation and EU External Aid. <u>Conclusion:</u> Application of national procedures, including additional requirements such as land ownership, building permits etc., will sufficiently cover the requirements of EU External Aid rules. The possibility of amending the

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
		<p>and technical offer), provided in the tender dossier. The received offers are evaluated on the basis of pre-set evaluation criteria (see below). Evaluation report prepared on the basis of standard PRAG format.</p>	<p>If one tender submitted only the tender is considered as unsuccessful.</p> <p>Possibility of amending at the signature stage of the draft contract published with tender announcement.</p> <p>The possibility for tenderers to amend their submitted tenders before the deadline for submission.</p> <p>Tender announcement in Russian or Belarussian. Tenders possibly submitted in other languages but with certified translation.</p>		<p>submitted tender before deadline should be avoided.</p> <p>The possibility to change the model of contract published, before signature of the contract should be avoided.</p> <p>The Contracting Authority should clearly indicate language of the procedure. The procedure could be done in Russian and Belarussian as defined in the national legislation, or other language (English) if defined in conditions. This goes for tender documentation and offers.</p>
	International open tender procedure	<p>The publication of the Contract forecast and the Procurement notice is recommended by PRAG manual to ensure widest participation, assuring competitive tendering and transparency. Deadline for submission of offers:</p>		<p>The national legislation does not recognise international procedure.</p>	<p>The same provisions as for the open local procedure. However, in case of EU External Aid thresholds for international open, the EU rules should apply. International publication would only increase openness and</p>

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
		<p>by the time and date indicated in the tender dossier. Every offer must be placed in a single sealed envelope placed in a package or outer envelope. Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier. The received offers are evaluated on the basis of pre-set evaluation criteria (see below). Evaluation report prepared on the basis of standard PRAG format.</p>			<p>competitiveness.</p>
<p>Selection procedure / criteria</p>	<p>Services</p>	<p>Most economically advantageous tender, i.e. the tender offering the best price-quality ratio, best value for money.</p>		<p>Price+ quality, % is attribute for different criteria.</p> <p>PREFERENTIAL DISCOUNT For tenderers from RU and BY 10-15-25% depending on the purchase. It's mentioned in the regulation that it functions until 31.12.2010, however it's not clear whether it will then stop or the new regulation will be issued. If after the discount the 2 offers in the first place – the one which has the discount is selected.</p>	<p>The combination of price and quality ratio is in accordance with the EU External Aid rules. However the preferential discount is not in line with the EU practice or spirit. <u>Conclusion:</u> The application of national selection criteria is in line with the EU External Aid principles.</p> <p>HOWEVER the preferential discount for RU and BY tenderers is not in line with the EU External Air rules and should be avoided.</p> <p>Splitting the tender in several contracts with several Contractors should be avoided.</p>

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
				If 2 with discount on the first place – the tender is split in 2 if possible. If not possible – the tenderer who submitted earlier than the other one is selected	
	Supply	Most economically advantageous tender, i.e. the tender offering the best price-quality ratio, best value for money.		There are no differences between services, supply and works	
	Works	Most economically advantageous tender, i.e. the tender offering the best price-quality ratio, best value for money.	No difference from services and supply on general level. However the issue of preference discounts and splitting tenders does not exist in works contracts.	There are no differences between services, supply and works	
Evaluation committee	Composition	Services – minimum 3 voting members + chairperson + secretary. Supply – minimum 3 voting members + chairperson + secretary. Works – minimum 3 voting members + chairperson + secretary.	No provisions	Tender commission of at least 5 people (all together), The Commission can decide if there is at least 2/3 of its members (which would make less than 3 voting if 5 is voting+Chair and Secretary)	The composition according to the national legislation does not correspond to PRAG recommendations when not all the members are attending. Conclusion: As a principle the Contracting Authority should make sure that the presence of all voting members is guaranteed.

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
					Presence of at least 3 voting members should be assured.
	Nomination	The composition of the evaluation committee to be submitted for approval to responsible MA.	The composition of the evaluation committee should be approved by Contracting authority	The composition of the evaluation committee should be approved by Contracting authority	The national legislation does not differ from EU External Aid provisions. <u>Conclusion:</u> The Contracting Authority should ensure that formal nomination of the evaluation committee is implemented, in line with general provisions for EC members.
	Membership	Independent experts without conflict of interest. Reasonable command of English. Technical and administrative capacities to give an informed opinion on tenders.	Independent expert can be invited. Representatives of control entities can attend. If the evaluation committee has some doubts in the validity of the data supplied it can check with the help of other (no participating in the Committee) specialists or order an expertise.	Independent expert can be invited. Representatives of control entities can attend.	National procurement rules are in principle in line with the EU External Aid rules. <u>Conclusion:</u> The Contracting Authority should ensure that for every observer official nomination is implemented. In addition all observers should sign statement of impartiality.
	Impartiality and confidentiality	All members and observers are requested to sign the ‘‘Impartiality and confidentiality statement’’. Any member who has potential conflict of interest with any	No provision	No similar provisions in Belarus	National procurement rules don’t regulate this area. <u>Conclusion:</u> Using EU External Aid provisions should not mean conflict with

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
		tenderers should declare it and immediately withdraw from the evaluation committee. Participation strictly allowed only to nominated members.			national procurement procedure.
	Decisions	Majority of votes of voting members. Any discrepancies and extraordinary situations need to be registered in the evaluation reports.	No provision	Majority of Commission's members, but if equal – the Chair decides	National procurement rules are in principle in line with the national legislation, except for the part of the Chairperson deciding. <u>Conclusion:</u> Using of EU External Aid should not mean conflict with national legislation. The Contracting Authority should make sure that there are odd number of voting members, minimum 3. The rule of chair deciding should not apply - Chair and Secretary don't vote!
Documents	Services	Full tender documentation based on PRAG format documents. Key document = terms of reference (PRAG format). Standard documents for publication (forecast and procurement notice) and communication (letters to tenderers). Standard format evaluation report. Standard format contract (see below).		Full tender documentation based on Procurement Regulation № 1987 improved by the Council of Ministers of Belarus on 20 December 2008: Contracting authority name requirements to potential tenderers Terms of Reference, terms and place of destination, cost of tender proposal, currency name for deliveries, language of tender proposal and contract, request of	The required documents are defined in the national legislation. The basic outline seems to correspond to the EU External Aid provisions and requirements of the EC External Aid Rules. <u>Conclusion:</u> The national legislation should offer sufficient basis for EC External Aid rules to be respected The INTERACT ENPI prepared a set of guidance on content of tender documents. (best practice) based on the EC External Aid rules. Section 5 of this Guide) The

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
				bank guarantee, draft contract, list of criteria and their weights, preferential correction application conditions, tender proposal submissions terms, the way of explanation of tender documents by contracting authority, location, date and time of opening session, statement of the evaluation committee right to reject all tender proposal before the contractor selection, contract signature terms, contracting authority contract person, guidelines for the tender participants	CA should consider using the recommendations in their secondary procurement process.
	Supply	Full tender documentation based on PRAG format documents. Key document = technical specifications (PRAG format). Standard documents for publication (forecast and procurement notice) and communication (letters to tenderers). Standard format evaluation report. Standard format contract (see below).		Full tender documentation based on Procurement Regulation № 1987 improved by the Council of Ministers of Belarus on 20 December 2008: Contracting authority name requirements to potential tenderers Terms of Reference, terms and place of destination, cost of tender proposal, currency name for deliveries, language of tender proposal and contract, request of bank guarantee, draft	

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
				contract, list of criteria and their weights, preferential conditions, tender proposal submissions terms, the way of explanation of tender documents by contracting authority, location, date and time of opening session, statement of the evaluation committee right to reject all tender proposal before the contractor selection, contract signature terms, contracting authority contract person, guidelines for the tender participants	
	Works	Full tender documentation based on PRAG format documents. Key document = bill of quantities, design drawings. Standard documents for publication (forecast and procurement notice) and communication (letters to tenderers). Standard format evaluation report. Standard format contract (see below).		Full tender documentation based on Procurement Regulation № 1987 approved by the Council of Ministers of Belarus on 20 December 2008: Contracting authority name requirements to potential tenderers Terms of Reference, terms and place of destination, cost of tender proposal, currency name for deliveries, language of tender proposal and contract, request of bank guarantee, draft contract, list of criteria and	

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
				their weights, preferential correction application conditions, tender proposal submissions terms, the way of explanation of tender documents by contracting authority, location, date and time of opening session, statement of the evaluation committee right to reject all tender proposal before the contractor selection, contract signature terms, contracting authority contract person, guidelines for the tender participants	
Contract	Format	Contracts for services, supply and works based on standardised PRAG format.		There is no detailed description of the contract form	The provisions regulating structure and content of contract are set up in National Procurement Regulation. <u>Conclusion:</u> INTERACT ENPI prepared a set of guidance on content of contractual documents (best practice) based on the EC External Aid rules (SEE SECTION 5 of the Guide). The Contracting authority should consider using the recommendations in their secondary procurement process.
	Annexes – Services	General conditions. Terms of Reference. Organisation and methodology (description of the action). Key experts. Budget. Forms and other relevant documents Report of factual findings and terms of reference for an expenditure verification		From the content point it should correspond to Procurement Regulation № 1987 approved by the Council of Ministers of Belarus on 20 December 2008	
	Annexes – Supply	Special conditions. General conditions. Technical specification.		From the content point it should correspond to Procurement Regulation №	

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
		Technical offer. Budget breakdown.		1987 approved by the Council of Ministers of Belarus on 20 December 2008	
	Annexes – Works	Special conditions. General conditions. Technical specifications. Design documentation (drawings). Bill of quantities. The tender.		From the content point it should correspond to Procurement Regulation № 1987 approved by the Council of Ministers of Belarus on 20 December 2008	
	Legislation	The law of the country of the contracting authority governs the contract.		From the content point it should correspond to Procurement Regulation № 1987 approved by the Council of Ministers of Belarus on 20 December 2008	
	Payments – Services	Pre-financing, subject to financial guarantees. Balance payments in fixed time periods.		From the content point it should correspond to Procurement Regulation № 1987 approved by the Council of Ministers of Belarus on 20 December 2008	
	Payments – Supply	Pre-financing, subject to financial or performance guarantee. Balance in agreed time.		From the content point it should correspond to Procurement Regulation № 1987 approved by the Council of Ministers of Belarus on 20 December 2008	
	Payments – Works	Pre-financing, subject to financial or performance guarantee.		From the content point it should correspond to	

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
		Interim payments, depending on dynamics of the contract. Retention monies kept.		Procurement Regulation № 1987 approved by the Council of Ministers of Belarus on 20 December 2008	
	Taxes	Contracts are exempt from all duties and taxes, including VAT (depending on agreement between beneficiary country and EU).		From the content point it should correspond to Procurement Regulation № 1987 approved by the Council of Ministers of Belarus on 20 December 2008	
	Amendments of the contract	No modification may alter award conditions. The contracting authority must examine reasons for modification and reject those who have little or no substantiation. Addendum based on standardised PRAG format.		From the content point it should correspond to Procurement Regulation № 1987 approved by the Council of Ministers of Belarus on 20 December 2008	
Appeals and complaints		Tenderers believing that they have been harmed by an error or irregularity during the award process may petition the Contracting Authority directly. The Contracting Authority must reply within 90 days of receipt of the complaint.	No provisions	Tenderers believing that they have been harmed by an error or irregularity during the award process may petition the Contracting Authority directly or to Court. The Contracting Authority must reply within 10 days of receipt of the complaint. The appeal suspends the tender procedure. The appeal is considered by	The national legislation defines appeals and complaints procedure. Provisions are basically in line with EU External Aid provisions. Conclusion: Use of national legislation should satisfy EC External Aid rules and EU External Aid provisions. The difference in the response time from the CA does not represent an issue, since the national provisions are even stricter. PRAG provides recommendation

Overall issue	Specific issue	EU PRAG – Procedures	BY - Construction Works	BELARUS Procedures	Conclusion – coherence with procedures
				<p>the organization publishing the tender or Among the decisions on the appeal could be:</p> <ul style="list-style-type: none"> - Cancel the tender - Change the decision - Reimburse the losses of the tenderer, etc 	<p>on when the procedure can be cancelled (Point 2.4.13). If, following national legislation, the procedure is cancelled, the reasons should be in line with PRAG. PRAG specifically mentions that the tenderers will not be reimbursed for potential losses, therefore such possibility should be avoided.</p>

Additional provisions defined in the national legislation and influencing the procedures on horizontal level:

- **Tenders by consortium.** The national legislation does not foresee application by consortia. This could be in conflict with EU rules, where consortia are allowed. In addition absence of consortium could cause large proportions of sub-contracting (in some cases well above 30% normally allowed by PRAG).
Conclusion: Possibility of application of consortia should be checked with National authorities, if it's estimated that for some projects it would be indispensable. The other solutions could be: 1) not to apply the limit of subcontracting, 2) tenderers creating a new Legal entity when needed, 3) dividing the tender in lots where appropriate, thus allowing single Applicants to apply to different lots.
- **Central buying office.** The national legislation allows forming of central buying office but does not define sufficiently the conditions and procedures. Use of central buying office is also option in the Annex IV, however conditions are clearly defined (and might not always be fulfilled by applying national legislation).
Conclusion: If Central Buying office is used, it should be selected following the procedures of Annex IV.

4.2 – Procurement Matrix: Ukraine

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
<p>General issues</p>	<p>Fair and transparent competition</p>	<p>Transparent and fair competition for potential contractors. Avoiding conflict of interest.</p>	<p>Procuring goods, works and services shall follow these principles: maximum saving and efficiency; good-faith competition amongst participants; openness and transparency at all procurement stages; non-discrimination of participants; objective and unbiased evaluation of tender bids; preventing corruption and abuse. Customers and the authorized body shall ensure free access by all participants to information about procurement in accordance with Regulation. The customer may not establish discriminatory requirements to participants. All the steps and all the decisions are announced on the Ministry of economy web site and internationally in some cases, all the reports (opening, evaluation) are published, including the report on the grounds for the use of single tender procedure. Journalists can be present in opening sessions .</p>	<p>National procurement rules in coherence with the PRAG rules and principles. <u>Conclusion:</u> National rules are generally in line with the spirit of EU External Aid rules. However publication of information and participation of third persons in opening would be in conflict with the EU external Aid rules and should be avoided.</p>
	<p>Grounds for exclusion</p>	<p>Bankrupted or administered by court, entering arrangements with creditors, suspended business activities. Convicted of offence concerning their professional conduct. Have been guilty of grave professional</p>	<p>The customer shall reject a tender or qualification bid in case: 1) it has solid proof that: the tenderer offers, gives or agrees to give any officer of the customer, other state body a compensation in any form (an offer of</p>	<p>National procurement rules in relative coherence with PRAG rules and principles. All points from PRAG covered. Fines are also covered.</p>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
		<p>misconduct. Have not fulfilled obligations related to payment of social security contributions and taxes. Have been subject of a judgement for fraud, corruption, involvement with criminal organisations, or any other illegal activity, detrimental to Community’s interest.</p>	<p>employment, a valuable article, a service, etc.) with a view to impacting the decision on determining the winner of the procurement procedure or the customer’s use of a certain procurement procedure; an individual that is a tenderer has been convicted of a crime committed in the course of a procurement procedure or other crime committed on lucrative impulse, which conviction is outstanding or has not been lifted in accordance with the established procedure; tenderer’s officer who was appointed responsible for conducting the procurement procedure has been convicted of a crime related to violating the procurement procedure or other crime committed on lucrative impulse, which conviction is outstanding or has not been lifted in accordance with the established procedure; 2) bids have been submitted by procurement procedure participants that are related persons; 3) a tenderer submitted unfair information about its meeting the established qualification requirements; 4) a tenderer does not meet the established qualification requirements. 5) the tenderer is bankrupt The contracting authority may reject the bid if: - The bidder have some unpaAid taxes - The bidder do not proceed with activities mentioned in its statute. The fines and penalties are regulated by special Law on administrative delicts and by Criminal law.</p>	<p>Conclusion: Application of the national rules would practically cover all the issues touched upon by EU External Aid rules.</p>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
	Administrative and financial penalties	<p>Tenderers who have made false declarations, have made substantial errors, committed irregularities and fraud, breaching contractual obligations, may be excluded from all contracts financed by Community budget or EDF for maximum 5 years. This could be extended to 10 years in case of repeated offence.</p> <p>May also be subject to financial penalties between 2% and 10% of contract value. This could be increased to 4% to 20% in case of repeated offence.</p>	<p>The customer shall decide to refuse tenderer’s participation in the procurement procedure, if:</p> <p>1) the tenderer has been recognized bankrupt in accordance with the established procedure or a bankruptcy case has been brought against it;</p> <p>2) the customer received information that: an individual who is a tenderer has been convicted of a crime committed in the course of a procurement procedure or other crime committed on lucrative impulse, which conviction is outstanding or has not been lifted in accordance with the established procedure; tenderer’s officer who was appointed responsible for conducting the procurement procedure has been convicted of a crime related to violating the procurement procedure or other crime committed on lucrative impulse, which conviction is outstanding or has not been lifted in accordance with the established procedure.</p> <p>Grounds for refusing tenderer’s participation in the procurement procedure in accordance with this paragraph shall be specified in the report on results of the procurement procedure and notified to such tenderer during seven calendar days from the day of approving the relevant decision.</p> <p>Responsibility for violating procurement legislation</p> <p>For violating the requirements established by Regulation and other normative acts developed to implement it, customers and tenderers shall</p>	<p>National rules do not specify size and type of penalties. However the spirit of rules is in accordance with PRAG.</p> <p><u>Conclusion:</u></p> <p>The principle of the national rules is in line with the EU External Aid rules. The CA might decide to specify timing of penalties (5 or 10 year exclusion) and size (2-20% of contract value)</p>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
			<p>bear administrative or criminal responsibility in accordance with laws.</p> <p>UA comment: The fines and penalties are regulated by special Law on administrative delicts and by Criminal law.</p>	
	Visibility	Communication and Visibility Manual for EC External actions.	Customers and the authorized body shall ensure free access by all participants to information about procurement in accordance with this Regulation.	<p>The national procurement rules do not specifically advice visibility guidelines.</p> <p><u>Conclusion:</u> The CA should, to stay in the frame of the EU External Aid rules and to achieve positive visibility for the EU actions, recommend application of EU Visibility rules. The provision will not be in conflict with the national legislation, but should rather be seen as value added.</p>
Conflict of interest and ethic clauses	Connections with the tenderers	No person involved in the procurement procedure (preparation of documents and procedures, evaluation, implementation) should have any connection whatsoever with any of tenderers.	Similar provisions concerns only the members of the Evaluation committee	<p>The national legislation covers the members of the evaluation committee.</p> <p><u>Conclusion:</u> The provisions of national legislation could be used for evaluation committee members. However for other involved persons (preparation of tender documents etc.) the EU External Aid rules and PRAG manual could offer guidance.</p>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
	Contacts during the procedure	Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders and applications will lead to the rejection of its candidacy, proposal or tender.	No provisions	The national legislation does not cover the topic <u>Conclusion:</u> The EU External Aid rules and PRAG manual should provide guidance in this matter. Use of EU rules will not conflict the national legislation.
	Declaration of tenderers	When putting forward a candidacy or tender, the tenderer must declare that it is affected by no potential conflict of interest and that it has no equivalent relation in that respect with other tenderers or parties involved in the project.	No provisions in the national legislation.	The national legislation does not cover the topic <u>Conclusion:</u> The EU External Aid rules and PRAG manual should provide guidance in this matter. Use of EU rules will not conflict the national legislation.
	Civil servants	Civil servants or other officials of the public administration of the beneficiary country, regardless of their administrative situation, must not be engaged as experts by tenderers unless the prior approval of the European Commission has been obtained.	No provisions in the national legislation.	The national legislation does not cover the topic <u>Conclusion:</u> The EU External Aid rules and PRAG manual should provide guidance in this matter.
	Corruptive practice	If corrupt practices of any kind are discovered at any stage of the award process and if the Contracting Authority fails to take all appropriate measures to remedy the situation, project financing will be suspended.	The agreements between tenderers are prohibited.	The national legislation is generally in line with EU External Aid rules. <u>Conclusion:</u> National rules can be used for agreements between tenderers. For other matters of corruptive practice the EU External Aid and PRAG should be used as guidance.

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
Fair and transparent competition	Value of contract	Value of contract has to be in line with accepted market prices (in the target country) for particular type of services /supplies/works.	No similar provisions.	The national legislation does not cover the topic <u>Conclusion:</u> The EU External Aid rules and PRAG manual should provide guidance in this matter. Use of EU rules will not conflict the national legislation.
	Splitting of tenders	No contract may be split simply to evade compliance with the EC External Aid procurement rules. Services/supplies of similar nature should be awarded under one tender/lot.	Splitting of tenders to avoid the tender procedures is prohibited.	National procedures are in line with the EU External Aid rules. <u>Conclusion:</u> Application of national legislation will cover sufficiently the EU rules.
	Tender prices	If there are significant differences in prices proposed by different tenderers the Contracting Authority should carry out checks and request any additional information necessary.	No provisions	The national legislation does not cover the topic <u>Conclusion:</u> The EU External Aid rules and PRAG manual should provide guidance in this matter. Use of EU rules will not conflict the national legislation.
	Restrictive conditions	The Contracting Authority should thoroughly check the tender documents for any restrictive conditions potentially limiting the competition (such as naming the brand or requesting narrow and specific technical conditions).	The technical characteristics shall make no reference to a certain trade mark, brand or company, patent, drawing or type of the goods, works and services; no specific place of origin, manufacturer or supplier shall be indicated. Should it be impossible to detail the procurement requirements with sufficient exactness without such references, the wording of the characteristics shall include the words “or their equivalent”.	National procedures are in line with the EU External Aid rules. <u>Conclusion:</u> Application of national legislation will cover sufficiently the EU rules.

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
Rules of origin / Nationality	Nationality rule	EU Member States, ENPI, EPA, EEA countries, international organisations. No limitations for experts on the level of secondary contracts, financed from grant.	No similar provision	National procurement rules set no limitations. <u>Conclusion:</u> EU External Aid is open as regards the nationality of experts, therefore no conflict with national legislation (except in those limited specific cases). The EU rules are restrictive in relation to the nationality of contractors. The EU rules should apply, following Framework Agreement.
	Rules of origin	EU Member States, ENPI, EPA, EEA countries. Certificate of origin to be provided. (Does not apply for secondary supply contracts financed under grant, where unit cost is lower than 5.000 €). No preferences for any provider.	No similar provision	National legislation does not regulate or prioritise origin of supplies. <u>Conclusion:</u> Clear conflict with the EU External Aid Rules. It is recommended that Ukraine applies EU rules on nationality. The reference to the framework agreement between EU and Ukraine should represent sufficient legal justification for deviation from national rules.
Publication / Invitation	Single procedure (or similar)	One tenderer directly invited to submit offer.	One tenderer directly invited to submit offer	National legislation in line with PRAG. <u>Conclusion:</u> By applying national legislation the EU External Aid rules will be accordingly respected.
	Negotiated procedure (or	At least three tenderers directly invited to submit offers.	At least two tenderers directly invited to submit offers	National legislation requires less invitations than PRAG.

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
	similar)			<p><u>Conclusion:</u> The CA should apply the condition that at least 3 tenderers have to be invited. The national rules will not be violated, moreover the condition can be seen as value added.</p>
	Open procedure	To be published in all appropriate media, in particular on the Beneficiary's web site, in the international press, national press or in other specialist periodicals (Annex IV provision differs from Chapters 3-5)	<p>Invitation to submit offer is published in relevant web page, national media. Documents: forecast and procurement notice.</p>	<p>National legislation in line with the EU External Aid rules. <u>Conclusion:</u> By applying the national legislation the EU External Aid rules will be respected. However the CA might consider applying a rule where for larger contracts (international open procedure and restricted procedure for services) also publication in EuropeAid web site is done.</p>
Financial thresholds – Services	Single tender procedure (or similar)	<p>For contracts ≤ 10.000 € (below or equal to 10.000 EUR) +Cases for negotiated procedure (Art, 7 of Annex IV)</p>	<p>The UA law does not fix any procedure for contracts ≤ 100.000 UAH (below or equal to approx. 9.500 EUR)</p> <p>HOWEVER single tender procedure in exceptional cases (for any threshold), some of which are not in line with PRAG: -no competition on the market -if the tender was twice unsuccessful – procuring from anyone, not just negotiating with tenderers</p> <p>The specificity of UA is that the single tender procedure has to be authorised by the Ministry of Economy.</p>	<p>The financial threshold for single services in normal conditions is in line with EU External Aid rules and PRAG. However there is the difference in exceptional cases. <u>Conclusion:</u> The application of national legislation under normal conditions will be in line with PRAG. When applying exceptional cases the Contracting Authority should make sure that the provisions are</p>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
				in line with the conditions in the 7 of the Annex IV.
	Negotiated procedure (or similar)	For contracts > 10.000 € but < 200.000 € (above 10.000 EUR but below 200.000 EUR)	No similar procedure.	National legislation does not recognise similar provisions. <u>Conclusion:</u> The issue is not a problem since the national legislation enforces open procedure above 9,500 €.
	International Restricted Tender Procedures	For contracts ≥ 200.000 € (above or equal to 200.000 EUR)	<p>Local for contracts ≥ 100.000 UAH (above or equal to 9,500 EUR) International for contracts ≥ 300,000 EUR)</p> <p>+ 2 steps procedure + Procedure with preliminary qualifications</p> <p>If there is a need to determine the technical and financial capacities of tenderers 30+15 days</p> <p>+Procedure of framework contract</p> <p>+Procedure of request of price offers (services and supplies only, up to 200.000 UAH = EUR 19.000) Deadline is 10 days Criteria for selection – price only</p>	<p>The national threshold for international tender is higher than in EU External Aid rules. <u>Conclusion:</u> In case of international restricted tenders the EU External Aid threshold should be used. This should not be in conflict with the national legislation as the threshold is even stricter.</p> <p>2 steps procedure – should be avoided, differs from what is understood by restricted tender procedure in PRAG</p> <p>Procedure of preliminary qualifications is in line with EU rules, as restricted tender is foreseen for services.</p> <p>Procedure of request of price offers – to include the elements allowing price/quality</p>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
				assessment, requesting minimum from 3 suppliers between 10.000€ and 19.000€ Procedure of framework contract should be avoided as not foreseen for grants by EU rules.
Financial thresholds – Supplies	Single tender procedure (or similar)	For contracts ≤ 10.000 € (below or equal to 10.000 EUR) +Cases for negotiated procedure (Art, 7 of Annex IV)	The UA law does not fix any procedure for contracts ≤ 100.000 UAH (below or equal to approx. 9.500 EUR) HOWEVER single tender procedure in exceptional cases (for any threshold), some of which are not in line with PRAG: -no competition on the market -if the tender was twice unsuccessful – procuring from anyone, not just negotiating with tenderers The specificity of UA is that the single tender procedure has to be authorised by the Ministry of Economy.	The national threshold for single tender is in line with the EU External Aid rules. In addition some exceptional cases are possible. <u>Conclusion:</u> When applying normal single tender procedure the national legislation is in line with EU External Aid rules. When applying exceptional cases for single procedure, the matter should be checked against point 7 of the Annex IV.
	Negotiated procedure (or similar)	For contracts > 10.000 € but < 60.000 € (above 10.000 EUR but below 60.000 EUR)	No similar procedure.	National legislation does not recognise similar provisions. <u>Conclusion:</u> The issue is not a problem since the national legislation enforces open procedure above 9,500€.
	Local open tender procedure	For contracts ≥ 60.000 € but < 150.000 € (above or equal to 60.000 EUR but below 150.000 EUR)	For contracts ≥ 100.000 UAH (above or equal to 9,500 EUR) 2, Procedure with preliminary qualifications If there is a need to determine the technical and	National threshold is stricter than EU External Aid rules. However, some procedures are not in line with EU rules <u>Conclusion:</u> Application of national

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
			financial capacities of tenderers 30+15 days +Procedure of request of price offers (services and supplies only, up to 200.000 UAH = EUR 19.000) Deadline is 10 days Criteria for selection – price only +Procedure of framework contract	legislation will respect EU External Air rules. Procedure of preliminary qualifications not in line with EU rules and should be avoided as open tender only is foreseen for supplies. Procedure of request of price offers – to include the elements allowing price/quality assessment, requesting minimum from 3 suppliers between 10.000€ and 19.000€ Procedure of framework contract should be avoided as not foreseen for grants by EU rules.
	International open tender procedure	For contracts ≥ 150.000 € (above or equal to 150.000 EUR)	For contracts $\geq 200,000$ EUR +Procedure with preliminary qualifications If there is a need to determine the technical and financial capacities of tenderers 30+15 days +Procedure of framework contract	National threshold is higher than the EU External Aid rules. Some procedures not in line with EU rules <u>Conclusion:</u> The EU External Aid threshold should be applied. The use should not be in conflict with the national legislation since more stricter procedure only increases transparency. Procedure of preliminary qualifications not in line with EU rules and should be avoided as

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
				<p>open tender only is foreseen for supplies.</p> <p>Procedure of framework contract should be avoided as not foreseen for grants by EU rules.</p>
Financial thresholds - Works	Single tender procedure (or similar)	<p>For contracts ≤ 10.000 € (below or equal to 10.000 EUR)</p> <p>+Cases for negotiated procedure (Art, 7 of Annex IV)</p>	<p>The UA law does not fix any procedure for contracts ≤ 300.000 UAH (below or equal to approx. 28.500 EUR)</p> <p>+Single tender procedure in exceptional cases (for any threshold), some of which are not in line with PRAG:</p> <ul style="list-style-type: none"> -no competition on the market -if the tender was twice unsuccessful – procuring from anyone, not just negotiating with tenderers <p>The specificity of UA is that the single tender procedure has to be authorised by the Ministry of Economy.</p>	<p>The national threshold for single tender procedure is higher than EU External Aid. Additionally, similarly to services and supplies, exceptional cases are foreseen.</p> <p><u>Conclusion:</u></p> <p>The EU External Aid threshold should be used, since it is stricter. This should not cause conflict with national legislation since stricter rules means better transparency.</p> <p>When using exceptional cases, the provisions should be checked against the point 7 of the Annex IV.</p>
	Negotiated procedure (or similar)	<p>For contracts > 10.000 € but < 300.000 € (above 10.000 EUR but below 300.000 EUR)</p>	No similar procedure.	<p>National legislation does not recognise the specific procedure.</p> <p><u>Conclusion:</u></p> <p>Since there is a gap in the threshold for single tender in the national legislation and EU External Aid rules, the procedures should be open from 10.000€ onwards. Alternatively EC negotiated procedure could</p>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
	Local open tender procedure	For contracts ≥ 300.000 € but $< 5.000.000$ € (above or equal to 300.000 EUR but below 5.000.000 EUR.	<p>For contracts ≥ 300.000 UAH (above or equal to 28,500 EUR)</p> <p>+Procedure with preliminary qualifications</p> <p>If there is a need to determine the technical and financial capacities of tenderers 30+15 days</p> <p>+Procedure of framework contract</p>	<p>be used for contracts between 10.000€ and 28,500€</p> <p>Difference between national legislation and EU External Aid rules. <u>Conclusion:</u> Since there is a gap in the threshold for single tender in the national legislation and EU External Aid rules, the tender procedures should be open from 10.000€ onwards. Alternatively EC negotiated procedure could be used for contracts between 10.000€ and 28,500€</p> <p>Procedure of preliminary qualifications not in line with EU rules and should be avoided as open tender only is foreseen for works. Procedure of framework contract should be avoided as not foreseen for grants by EU rules.</p>
	International open tender procedure	For contracts $\geq 5.000.000$ € (above or equal to 5.000.000 EUR)	<p>For contracts $\geq 500,000$ EUR</p> <p>+Procedure with preliminary qualifications</p> <p>If there is a need to determine the technical and financial capacities of tenderers 30+15 days</p> <p>+Procedure of framework contract</p>	<p>The national threshold is lower than EU External Air. <u>Conclusion:</u> The application of the national threshold will be in line with the EU External Aid rules.</p> <p>Procedure of preliminary qualifications not in line with EU rules and should be avoided as</p>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
				open tender only is foreseen for works. Procedure of framework contract should be avoided as not foreseen for grants by EU rules.
Procedures – Services	Single tender procedure (or similar)	<p>Deadline for submission of offers not defined (long enough, allowing reasonable and appropriate period - Annex IV). Offer submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier. The one received offer estimated for compliance with requirements. Simplified evaluation report prepared, according to free format.</p>	<p><u>NOTE: The procedures are the same for services, supplies and works.</u></p> <p>The procedure for procuring from single tenderer shall be used by the customer after obtaining an approval of the executive authority (Ministry of economy) In the draft new Procurement law it is proposed that the single tender procedure would be used without agreement by the Ministry of Economy.</p> <p>NB: The language is UA, but possible in other languages too. International tender in UA and EN.</p> <p>+ The procedure of “Coordinated procurement” for some supplies determined by the Cabinet of ministers or Local administrations and Local councils. The “General procurer” is appointed and would then proceed with procurement of those goods for several public entities..</p>	<p>It seems that in that segment the national procedures are even more restrictive than the PRAG. <u>Conclusion:</u> If applying national procedures (approval of executive authority) the general spirit of EC External Aid rules will be respected. However for practical reasons, taking into account a large number of procedures, it should be considered that single procedure automatically applies for all contract below certain threshold.</p> <p>For coordinated procurement see the note at the end of the Matrix for Ukraine.</p>
	Negotiated procedure (or similar)	<p>Deadline for submission of offers: at least 30 days (recommended by PRAG). Beneficiary consults at least three service</p>	No similar provision	<p>No similar provisions in national legislation. <u>Conclusion:</u></p>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
		<p>providers of its choice and negotiates the terms of the contract with one or more of them.</p> <p>Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The received offers are evaluated on the basis of pre-set evaluation criteria (see below).</p> <p>Evaluation report prepared on the basis of standard PRAG format.</p>		<p>The absence of negotiation procedure does not pose a problem for services, as open tender is foreseen from quite a low threshold.</p> <p>When applying the negotiated procedure in exceptional cases (see above) the specific cases should be checked against the point 7 of the Annex IV.</p>
	<p>International Restricted Tender Procedures</p>	<p>2 step procedure.</p> <p>Publication of a Contract Forecast Notice followed by the publication of a Procurement notice at least 30 days later (recommended by PRAG, but not obligatory according to Annex IV).</p> <p>Deadline for submission of express of interest (standard document): at least 30 days. (recommended by PRAG, but not obligatory according to Annex IV).</p> <p>Short-list of 4-8 tenderers formed.</p> <p>Deadline for submission of offer (based on full tender dossier): 50 days recommended in PRAG manual but not enforced in the Annex IV.</p> <p>Offers submitted by short-listed tenderers, on the basis of standard documents (financial and technical offer), provided in the tender dossier.</p> <p>The received offers are evaluated on the basis of pre-set evaluation criteria (see below).</p>	<p>30 days for publication, but also possible “shortened procedure” if needed to be established by contracting authority for food, medicaments and other medical supplies .</p> <p>During the open bidding procedure all interested persons have the right to submit bid proposals</p> <p>NB: A meeting for clarifications on the tender documentation is possible. Clarifications and minutes of the meeting to be published</p> <p>Changes in the tender documentation are possible, but the deadline has to be extended than for at least 7 days. (not possible for shortened procedure).</p> <p>5% maximum tender guarantee for services.</p>	<p>The national procedure are in principle in line with the EU External Aid rules, with several exceptions. The EU rules don’t recommend tender guarantee for services. Changes in tender documentation or contractors’ offers are not allowed.</p> <p><u>Conclusion:</u> General principles of the national legislation could be followed, including deadline for submission, though PRAG deadline would be recommended.</p> <p>There are however three exceptions. Changes in tender documentation and tenderers’ offers should not be allowed. Any negotiations with Tenderers during the evaluation process are also</p>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
		<p>Evaluation report prepared on the basis of standard PRAG format.</p>	<p>Contract guarantee – 5 % max</p> <p>Max 1 tender submitted per tenderer.</p> <p>Changes in the tender submitted possible by tenderer before the deadline.</p> <p>Prices of offers are announced in the Opening session.</p> <p>Negotiations on the changes after deadline are not possible</p> <p>The CA may contact other public entities to confirm the information submitted in the tenders.</p> <p>The contract to be signed not earlier than 14 days after publication of results of the tender.</p> <p>+ Procedure of 2 steps tender (SSW) – at the first step the price is not indicated. A two-stage bidding procedure can be applied under the following conditions: the procuring entity cannot draw up a specific list of goods (work) or indicate the kind of the services as well as in the event that to make the best decision on the procurement it is necessary to hold preliminary negotiations with the bidders; the subject of the procurement is carrying out scientific research, experiments or development, research and engineering work,</p>	<p>prohibited. It is also not necessary to require tender guarantee. Financial offers should be kept closed until the end of the technical evaluation.</p> <p>2 steps procedure – should be avoided, differs from what is understood by restricted tender procedure in PRAG</p> <p>Procedure of framework contract should be avoided as not foreseen for grants by EU rules.</p> <p>Procedure of request of price offers – to include the elements allowing price/quality assessment, requesting minimum from 3 suppliers between 10.000€ and 19.000€</p>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
			<p>provision of consulting and other specific services.</p> <p>At the first step the price is not indicated. CA may "negotiate with tenderers to clarify the advantages and disadvantages of different proposals" The discriminatory regime to different tenderers is prohibited.</p> <p>CA may introduce changes in the tendering documentation published after the first step concerning the technical requirements, criteria, etc...</p> <p>Deadlines for 2 steps tenders are 30+15</p> <p>+ Framework contract procedure</p> <p>+Procedure of request of price offers</p> <p>+Procedure of preliminary qualifications</p>	
Procedures - Supplies	Single tender procedure (or similar)	<p>Deadline for submission of offers. Not defined (long enough, allowing reasonable and appropriate period - Annex IV).</p> <p>Offer submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The one received offer estimated for compliance with requirements.</p> <p>Simplified evaluation report prepared, according to free format.</p>	Same as with services	Same as with services
	Negotiated procedure (or similar)	<p>Deadline for submission of offers: 30 days recommended in PRAG manual.</p> <p>Offers submitted on the basis of standardised documents (financial and</p>	Same as with services	Same as with services

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
		<p>technical offer), provided in the tender dossier. The received offers are evaluated on the basis of pre-set evaluation criteria (see below). Evaluation report prepared on the basis of standard PRAG format.</p>		
	<p>Local open tender procedure</p>	<p>Publication of the procurement notice recommended in PRAG manual – only in the Official Journal/equivalent media of the beneficiary country. EC publishes on the Europeaid website only the reference of the tender procedure Deadline for submission of offers: 30 days recommended in PRAG manual. Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier. The received offers are evaluated on the basis of pre-set evaluation criteria (see below). Evaluation report prepared on the basis of standard PRAG format. The Contracting Authority may request a tender guarantee</p>	<p>Same as with services (international restricted), thresholds for local / international publication mentioned above. Tender guarantee (5%)</p>	<p>Same as with services. However the tender guarantee is also recommended by PRAG in case of supplies. The recommended percentage might differ, but also national (5%) can be applied. Also, by the difference to services, the procedure of preliminary qualifications should be avoided as no restricted tender is foreseen for supplies in EU rules. Procedure of request of price offers could be used as such, as it is used for tenders of up to 19.000€, which corresponds to negotiated procedure threshold in EU rules, but should include the elements allowing price/quality assessment, requesting minimum from 3 suppliers between 10.000€ and 19.000€</p>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
	International open tender procedure	<p>Deadline for submission of offers: 60 days recommended in PRAG manual, but not requested in Annex IV.</p> <p>Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The received offers are evaluated on the basis of pre-set evaluation criteria (see below).</p> <p>Evaluation report prepared on the basis of standard PRAG format.</p>	Same as with services (international restricted), thresholds for local / international publication mentioned above.	<p>Same as with services. However the tender guarantee is also recommended by PRAG in case of supplies. The recommended percentage might differ, but also national (5%) can be applied.</p> <p>Also, by the difference to services, the procedure of preliminary qualifications should be avoided as no restricted tender is foreseen for supplies in EU rules.</p>
Procedures - Works	Single tender procedure (or similar)	<p>Deadline for submission of offers. Not defined (long enough, allowing reasonable and appropriate period - Annex IV). Offer submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The one received offer estimated for compliance with requirements.</p> <p>Simplified evaluation report prepared, according to free format.</p>	Same as with services	Same as with services
	Negotiated procedure (or similar)	<p>Deadline for submission of offers: 30 days recommended in PRAG manual, but not required by Annex IV</p> <p>Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The received offers are evaluated on the basis of pre-set evaluation criteria (see below).</p>	Same as with services	Same as with services

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
		Evaluation report prepared on the basis of standard PRAG format.		
	Local open tender procedure	<p>The publication of the Procurement notice it is mandatory to ensure widest participation, assuring competitive tendering and transparency but is published only in the Official Journal of the beneficiary country.</p> <p>Deadline for submission of offers: minimum 60 days after the publication of the procurement notice, proposed in PRAG manual.</p> <p>Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The received offers are evaluated on the basis of pre-set evaluation criteria (see below).</p> <p>Evaluation report prepared on the basis of standard PRAG format.</p>	<p>Same as with services (international restricted), thresholds for local / international publication mentioned above.</p> <p>1% maximum tender guarantee for works.</p>	<p>Same as with services. However the tender guarantee is also recommended by PRAG in case of works. The percentage as in the national legislation (1%) can be applied.</p> <p>Also, by the difference to services, the procedure of preliminary qualifications not in line with EU rules and should be avoided as open tender only is foreseen for works.</p>
	International open tender procedure	<p>The publication of the Contract forecast and the Procurement notice is recommended by PRAG manual to ensure widest participation, assuring competitive tendering and transparency.</p> <p>Deadline for submission of offers: by the time and date indicated in the tender dossier.</p> <p>Every offer must be placed in a single sealed envelope placed in a package or outer envelope.</p> <p>Offers submitted on the basis of</p>	<p>Same as with services (international restricted), thresholds for local / international publication mentioned above.</p> <p>1% maximum tender guarantee for works.</p>	<p>Same as with services. However the tender guarantee is also recommended by PRAG in case of works. The percentage as in the national legislation (1%) can be applied.</p> <p>Also, by the difference to services, the procedure of preliminary qualifications not in line with EU rules and should be avoided as open tender only is</p>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
		<p>standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The received offers are evaluated on the basis of pre-set evaluation criteria (see below).</p> <p>Evaluation report prepared on the basis of standard PRAG format.</p>		foreseen for works.
Selection procedure / criteria	Services	Most economically advantageous tender, i.e. the tender offering the best price-quality ratio, best value for money.	<p>The price is the only criteria for the SSW which are procured not on the basis of technical specifications and the permanent market of which exists.</p> <p>The rest – price + other criteria.</p> <p>The customer shall determine the tender winner out of the tenderers, whose tender bids have not been rejected, based on the criteria and the tender bid evaluation methodology set out in the tender documents.</p> <p>The evaluation criteria may be, in particular:</p> <ul style="list-style-type: none"> the price; the term of supplying goods, performing works, and providing services; quality and functional characteristics, environmental friendliness; post-sale maintenance; settlement terms; operating costs; technology transfer and training administrative, science and production personnel including the use of local resources such as means of production, labor and materials to manufacture goods, perform works and provide services offered by the 	<p>The selection criteria in the national legislation are in accordance with the EU External Aid rules, except for the specific cases where technical specifications are not the basis for procurement.</p> <p>The selection procedure according to the national legislation is in line with the EU External Aid rules.</p> <p><u>Conclusion:</u></p> <p>The selection criteria should always be a combination of price and technical quality. Meaning that the exceptions, using only price should be avoided.</p> <p>Applying the national procedure should be sufficiently in line with the EU External Aid rules.</p>
	Supply	Most economically advantageous tender, i.e. the tender offering the best price-quality ratio, best value for money.		
	Works	Most economically advantageous tender, i.e. the tender offering the best price-quality ratio, best value for money.		

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
			tenderer. If other criteria than price are used to determine the most economically viable tender bid, the tender documents shall specify (if possible) their value equivalent or specific weight of these criteria in the overall assessment of tender bids. The specific weight of the price criterion may not be lower than 50 per cent.	
Evaluation committee	Composition	Services – minimum 3 voting members + chairperson + secretary. Supply – minimum 3 voting members + chairperson + secretary. Works – minimum 3 voting members + chairperson + secretary.	At least 5 members (the whole Committee, not just voting members!) + if the personnel of Contracting authority is less than 3 persons – the number of personnel of Contracting authority. No provision on whether all the members should be present, it’s even mentioned that “the protocol is signed by all the members of the Committee present in the meeting” A limitation that representatives of tenderers (civil servants, family members, etc.) cannot be in the Evaluation committee.	The number of voting members according to the national legislation could be lower than in EU External Aid rules. It could also be an even number. <u>Conclusion:</u> The grant beneficiaries should make sure that the number of voting members in evaluation committee is always odd, also respecting the minimum number as suggested by PRAG. The presence of all the members should be ensured in all the meetings.
	Nomination	The composition of the evaluation committee to be submitted for approval to responsible MA.	The composition of the evaluation committee should be approved by Contracting authority	The national legislation is in line with the EU External Aid rules. <u>Conclusion:</u> Applying the national legislation would be in line with the EU External Aid rules.
	Membership	Independent experts without conflict of interest. Reasonable command of English. Technical and administrative capacities to	No exact criteria, just the requirement to have some trainings in the Ministry of economy.	Not defined in the national legislation. <u>Conclusion:</u> General recommendations from

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
		give an informed opinion on tenders.		PRAG manual should be taken as guidance.
	Impartiality and confidentiality	All members and observers are requested to sign the ‘‘Impartiality and confidentiality statement’’. Any member who has potential conflict of interest with any tenderers should declare it and immediately withdraw from the evaluation committee. Participation strictly allowed only to nominated members.	No conflict of interests (but no declaration foreseen). No personnel or family members of the tenderers, no Deputies of the Parliament or local councils.	General provisions of the national legislation are in line with the EU External Aid rules. However no declaration is required. <u>Conclusion:</u> Applying general national rules would be in line with EU External Aid rules. However the CA should enforce signing of statements or declarations on impartiality and confidentiality.
	Decisions	Majority of votes of voting members. Any discrepancies and extraordinary situations need to be registered in the evaluation reports. Evaluation should be performed in camera, no documents out of room, etc.	Majority of Commission’s members, if equal vote – Chairman decides.	The national legislation is in line with the EU External Aid rules. <u>Conclusion:</u> Applying the national legislation would be in line with the EU External Aid rules. It should be ensured that the evaluation is performed in camera. The rule of chair deciding should not apply - Chair and Secretary don’t vote!
Documents	Services	Full tender documentation based on PRAG format documents. Key document = terms of reference (PRAG format). Standard documents for publication (forecast and procurement notice) and communication (letters to tenderers). Standard format evaluation report.	All the documents are archived for 3 years only Tender documents shall contain: 1) instructions to prepare tender bids; 2) a list of criteria put forward by the tender committee to evaluate tenderers’ meeting the established qualification requirements;	The provisions of the national legislation are largely in line with the PRAG. All key points from the standard PRAG documentation are covered, though the format of documents is undoubtedly different. <u>Conclusion:</u>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
		Standard format contract (see below).		<p>By applying national legislation the provisions of EU External Aid rules will be respected. The CA should decided on the language of procedures. Local language can be applied if within the CA the capacities exist for checking the documents and procedures in local language.</p> <p>In addition it would be recommended to keep the documents for 7 years.</p>
	Supply	Full tender documentation based on PRAG format documents. Key document = technical specifications (PRAG format). Standard documents for publication (forecast and procurement notice) and communication (letters to tenderers). Standard format evaluation report. Standard format contract (see below).	3) information about the need to provide documentary proof of tenderers’ meeting the established qualification requirements; 4) information about the nature and required technical and quality characteristics of the procurement object including: relevant technical specifications, plans, drawings, pictures, and descriptions of the procurement object. Technical specifications, plans, drawings, pictures, and descriptions of the procurement object required by the customer shall contain: a detailed description of goods, works or services being procured setting out objective technical and quality characteristics;	
	Works	Full tender documentation based on PRAG format documents. Key document = bill of quantities, design drawings. Standard documents for publication (forecast and procurement notice) and communication (letters to tenderers). Standard format evaluation report. Standard format contract (see below).	requirements to technical characteristics of the functioning of the procurement object, if it is impossible to prepare a description or if providing such characteristics is more advisable; references to standard characteristics, requirements, reference designations and terminology of the goods, works or services being procured using current international or national standards, norms and rules. Technical specifications shall not reference a specific trade mark or firm, patent, structure or type of the procurement object, its origin or manufacturer. If such reference is necessary, the specifications shall contain the words “or equivalent”; quantity of goods; the location where works must be performed or services provided; additional services that must be provided;	

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
			<p>terms for supplying goods, performing works, and providing services;</p> <p>5) a list of criteria and a methodology for their evaluation to determine the most economically viable tender bid;</p> <p>6) determining the principal terms that shall be included in the procurement contract or a draft procurement contract;</p> <p>7) a description of a separate part or parts of the procurement object on which tender bids may be submitted in cases where the tenderer allows submitting tender bids only on parts of goods, works or services being procured;</p> <p>8) the method for evaluating and comparing alternative tender bids;</p> <p>9) the methodology for calculating the price of a tender bid indicating whether or not it should include other elements along with the value of goods, works or services themselves, for example, costs of transportation, insurance, loading and unloading, paying taxes and duties (obligatory payments), etc.;</p> <p>10) information about the currency (currencies), in which the tender bid price must be calculated and denominated;</p> <p>11) information about the language (languages) that must be used in tender bids;</p> <p>12) customer’s requirements to providing tender security and securing the performance of the procurement contract;</p> <p>13) conditions of returning or not returning tender security;</p> <p>14) indicating the method, location and deadline for submitting tender bids;</p>	

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
			15) the procedure for providing clarifications regarding tender documents as well as a notification of the customer’s intention to hold a meeting of the tenderers; 16) the term of validity of tender bids, it should not be shorter than 120 days; 17) the location, date and time of opening tender bids; 18) the surname, title and address of one or several officers or other employees of the customer authorized to maintain communication with the tenderers; 19) information about additional conditions required for accepting a tender bid.	
<p>Contract</p>	<p>Format</p>	<p>Contracts for services, supply and works based on standardised PRAG format.</p>	<p>The procurement contract shall be entered into in writing pursuant to the provisions of the Civil Code of Ukraine and the Economic Code of Ukraine.</p>	<p>Though no details on the provisions of the Civil Code of Ukraine are given it is assumed that the contract covers basic PRAG provisions. <u>Conclusion:</u> The INTERACT ENPI prepared a summary of contractual provisions (best practice) as interpreted in the EU External Aid rules. The CA should consider using the recommendations in their secondary procurement process.</p>
	<p>Annexes – Services</p>	<p>General conditions. Terms of Reference. Organisation and methodology (description of the action).</p>	<p>No similar provision</p>	<p><u>Conclusion:</u> The INTERACT ENPI prepared a summary of contractual provisions (best practice) as</p>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
		Key experts. Budget. Forms and other relevant documents Report of factual findings and terms of reference for an expenditure verification		interpreted in the EU External Aid rules. The CA should consider using the recommendations in their secondary procurement process.
	Annexes – Supply	Special conditions. General conditions. Technical specification. Technical offer. Budget breakdown.	No similar provision	<u>Conclusion:</u> The INTERACT ENPI prepared a summary of contractual provisions (best practice) as interpreted in the EU External Aid rules. The CA should consider using the recommendations in their secondary procurement process.
	Annexes – Works	Special conditions. General conditions. Technical specifications. Design documentation (drawings). Bill of quantities. The tender.	No similar provision	<u>Conclusion:</u> The INTERACT ENPI prepared a summary of contractual provisions (best practice) as interpreted in the EU External Aid rules. The CA should consider using the recommendations in their secondary procurement process.
	Legislation	The law of the country of the contracting authority governs the contract.	The procurement contract shall be entered into in writing pursuant to the provisions of the Civil Code of Ukraine and the Economic Code of Ukraine.	National procedures in line with PRAG. <u>Conclusion:</u> If national rules applied the provisions of EC External Aid rules will be fully respected.

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
	Payments – Services	Pre-financing, subject to financial guarantees. Balance payments in fixed time periods.	The procurement contract shall be paid according to Budget Code of Ukraine. Pre-financing is not allowed.	National legislation contrary to PRAG provisions where pre-financing is allowed. <u>Conclusion:</u> The contracting authority should consider applying pre-financing. Reference to the Framework agreement between EU and Ukraine could be used as justification. Pre-financing is important because of practical reasons – secondary contractors might lose interest if their supplies, services or works would not be (partially) pre-financed.
	Payments – Supply	Pre-financing, subject to financial or performance guarantee. Balance in agreed time.	The procurement contract shall be paid according to Budget Code of Ukraine. Pre-financing is not allowed.	
	Payments – Works	Pre-financing, subject to financial or performance guarantee. Interim payments, depending on dynamics of the contract. Retention monies kept.	The procurement contract shall be paid according to Budget Code of Ukraine. Pre-financing is not allowed.	
	Taxes	Contracts are exempt from all duties and taxes, including VAT (depending on agreement between beneficiary country and EU).	Contracts include all duties and taxes, including VAT	National legislation on contrary to EU External Aid provisions. <u>Conclusion:</u> The CA should make sure that taxes are excluded from secondary contracts. It needs to be checked whether tax exemption is in place for contracts being financed by the EU. In any case reference to Framework Agreement between EU and Ukraine should be used, when justifying deviations from the national legislation
	Amendments of the contract	No modification may alter award conditions.	The terms of the procurement contract shall not differ from the terms of the tender bid	The provisions of national legislation are in line with the

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
		<p>The contracting authority must examine reasons for modification and reject those who have little or no substantiation. Addendum based on standardised PRAG format.</p>	<p>(price proposal) of the tenderer who is the winner of the procurement procedure. Material terms of the procurement contract shall not be changed after signing the contract, except for the cases stipulated by the procedure for changing procurement contract terms to be approved by the executive authority. The procurement contract may be extended for a term sufficient to conduct the procurement procedure at the beginning of the following year for the amount not exceeding 15 per cent of the value stipulated in the contract concluded in the prior year, if the expenditures for this purpose have been approved in accordance with the established procedure. A copy of the concluded procurement contract shall be submitted to the executive authority upon its demand. A procurement contract entered into during the period when the procurement procedure was suspended due to a lodged complaint shall be recognized null and void in accordance with law.</p>	<p>EU External Aid rules. <u>Conclusion:</u> For specific recommendations related to the contracts, including amendments, the INTERACT ENPI prepared a guidance on good practice, based on EU External Aid contracts (See Section 5 of this Guide)</p>
<p>Appeals and complaints</p>		<p>Tenderers believing that they have been harmed by an error or irregularity during the award process may petition the Contracting Authority directly. The Contracting Authority must reply within 90 days of receipt of the complaint.</p>	<p>Any tenderer, who believes that it has sustained or may sustain losses as a result of customer's violating the procurement procedures established by Regulation, may challenge customer's actions, decisions or failures to act. The following may not be challenged: customer's choice of the procurement procedure; customer's decision to reject all tender bids. A complaint for customer's breach of the</p>	<p>The provisions of national legislation are in line with the EU External Aid rules. <u>Conclusion:</u> For specific recommendations related to the contracts, including amendments, the INTERACT ENPI prepared a guidance on good practice, based on EU External Aid contracts (See Section 5 of this Guide).</p>

Overall issue	Specific issue	EU PRAG – Procedures	UKRAINE Procedures	Conclusion – coherence with procedures
			<p>procurement procedure or its decisions, actions or failures to act shall be submitted by the participating tenderer to the customer or the executive authority before entering into a procurement contract.</p> <p>Within five working days of receiving a complaint, the customer or the executive authority shall notify its content, time and place of consideration to the tenderer, the tenderer who is the winner of the procurement procedure and the customer. The sAid persons shall be entitled to take part in considering the complaint. Within 20 working days of receiving the complaint, the customer or the executive authority shall approve a justified decision specifying:</p> <ul style="list-style-type: none"> if the complaint has not been granted, - reasons for approving such decision; if the complaint has been granted in full or in part, - the measures to be taken to settle the conflict. <p>If the complaint is considered by the customer, the decision on the complaint shall be provided to the executive authority within three working days of approving it.</p> <p>The appeals are submitted to the Antimonopoly Committee, but the bidder may also contact the CA and ask to solve the problem before he appeals.</p> <p>Appeal doesn't suspend the procedures.</p>	

Additional provisions defined in the national legislation and influencing the procedures on horizontal level:

- **Tenders by consortium.** The national legislation does not foresee application by consortia. This could be in conflict with EU rules, where consortia are allowed. In addition absence of consortium could cause large proportions of sub-contracting (in some cases well above 30% normally allowed by PRAG).
Conclusion: Possibility of application of consortia should be checked with National authorities, if it's estimated that for some projects it would be indispensable. The other solutions could be: 1) not to apply the limit of subcontracting, 2) tenderers creating a new Legal entity when needed, 3) dividing the tender in lots where appropriate, thus allowing single Applicants to apply to different lots.
- **Central buying office.** The national legislation allows forming of central buying office but does not define sufficiently the conditions and procedures. Use of central buying office is also option in the Annex IV, however conditions are clearly defined (and might not always be fulfilled by applying national legislation).
Conclusion: If Central Buying office is used, it should be selected following the procedures of Annex IV.

4.3 - Procurement Matrix: Moldova

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
General issues	Fair and transparent competition	Transparent and fair competition for potential contractors. Avoiding conflict of interest.	The relations arising in connection with the public procurements shall be regulated on the basis of the following principles: a) the efficient use of public funds and minimization of the risks for the Contracting Authorities; b) transparency of the public procurements; c) ensuring of the competition and prevention of unfair competition in the sphere of public procurements;	National procurement rules in coherence with the EU External Aid rules and principles. <u>Conclusion:</u> In case of use of national rules the EU External Aid rules will be respected
	Grounds for exclusion	Bankrupted or administered by court, entering arrangements with creditors, suspended business activities. Convicted of offence concerning their professional conduct. Have been guilty of grave professional misconduct. Have not fulfilled obligations related to payment of social security contributions and taxes. Have been subject of a judgement for fraud, corruption, involvement with criminal organisations, or any other illegal activity, detrimental to Community's interest.	To confirm the supplier's qualifications for the purposes of the public procurement procedures, the supplier must submit the documents issued by the competent authorities indicated by the Contracting Authority for the purposes of the public procurement procedures and evidencing: a) the Supplier's managerial competencies, experience, good repute, availability of the skilled staff and equipment, financial capacity and other capacities necessary for adequate execution of the public procurements contract throughout the lifetime of such contract; b) authority to conclude the public procurements contract; c) good standing, implying the availability of certificates confirming that the supplier is not in the process of liquidation or	National procurement rules in coherence with the EU External Aid rules. <u>Conclusion:</u> In case of use of national rules the EU External Aid rules will be respected.

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
			<p>bankruptcy, its assets are not under sequestration and its business operations are not suspended;</p> <p>d) payment of taxes and other statutory charges in compliance with the laws of the supplier's home country;</p> <p>e) non-application during the last 3 years of any disciplinary, administrative or penal sanctions to the supplier's managers in connection with their professional activities or submission of erroneous data for the purposes of concluding a public procurements contract;</p> <p>f) the list of founders/shareholders and affiliates (affiliated persons).</p>	
	Administrative and financial penalties	<p>Tenderers who have made false declarations, have made substantial errors, committed irregularities and fraud, breaching contractual obligations, may be excluded from all contracts financed by Community budget or EDF for maximum 5 years. This could be extended to 10 years in case of repeated offence.</p> <p>May also be subject to financial penalties between 2% and 10% of contract value. This could be increased to 4% to 20% in case of repeated offence.</p>	<p>The list of prohibited suppliers is a formal list developed and maintained by the Agency for the purpose to restrict for 3 years the participation of prohibited suppliers in the public procurement procedures covered by the law.</p>	<p>National rules are in line with EU External Aid rules. They however don't specify size of penalties.</p> <p><u>Conclusion:</u> The principle of the national rules is in line with the EU External Aid rules. The CA might decide to specify size of penalties (2-20% of contract value)</p>
	Visibility	<p>Communication and Visibility Manual for EC External actions.</p>	<p>No similar provisions.</p>	<p>The national procurement rules do not specifically advice visibility guidelines.</p> <p><u>Conclusion:</u></p>

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
				<p>The CA should, to stay in the frame of the EU External Aid rules and to achieve positive visibility for the EU actions, recommend application of EU Visibility rules.</p> <p>The provision will not be in conflict with the national legislation, but should rather be seen as value added.</p>
<p>Conflict of interest and ethic clauses</p>	<p>Connections with the tenderers</p>	<p>No person involved in the procurement procedure (preparation of documents and procedures, evaluation, implementation) should have any connection whatsoever with any of tenderers.</p>	<p>A member of the work group must sign (at his/her personal responsibility) a declaration in writing regarding the confidentiality and impartiality, in which he/she undertakes to observe unconditionally the provisions of this law and presents furthermore that he/she:</p> <ul style="list-style-type: none"> a) is not a spouse, relative or in-law (to the third degree inclusive) of any of the bidders; b) has not been within the last 3 years a party to an employment contract or a cooperation contract concluded with any of the bidders, as shown in the labor record book, or has not been a member of the bidder’s administrative board or any other of the bidder’s governance or management bodies; c) does not hold a stake or shares in the authorized and subscribed capital of any of the bidders. 	<p>National procurement rules in coherence with the EU External Aid rules.</p> <p><u>Conclusion:</u></p> <p>In case of use of national rules the EU External Aid rules will be respected.</p>
	<p>Contacts during the procedure</p>	<p>Any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with</p>	<p>The Contracting Authority shall reject the bid in the case the supplier submitting it offers or agrees to offer, directly or indirectly, a favor in</p>	<p>National procurement rules in coherence with the EU External Aid rules.</p>

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
		competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders and applications will lead to the rejection of its candidacy, proposal or tender.	any form or to extend an employment offer, or to provide any other service to any of the Contracting Authority’s former or current officers or employees as remuneration for certain actions, decisions or use of certain procurement procedures to his advantage.	<u>Conclusion:</u> In case of use of national rules the EU External Aid rules will be respected.
	Declaration of tenderers	When putting forward a candidacy or tender, the tenderer must declare that it is affected by no potential conflict of interest and that it has no equivalent relation in that respect with other tenderers or parties involved in the project.	No similar provisions.	The national legislation does not recognise declarations of tenderers as regards potential conflict of interest. <u>Conclusion:</u> The CA should consider applying such statement to be fully in line with EU External Aid principles. The PRAG format can be taken as a basis.
	Civil servants	Civil servants or other officials of the public administration of the beneficiary country, regardless of their administrative situation, must not be engaged as experts by tenderers unless the prior approval of the European Commission has been obtained.	No similar provisions.	No limitation to engagement of civil servants in local legislation. <u>Conclusion:</u> The CA should consider introducing limitation to participation of civil servants, to be in line with EU External Aid principles. Framework agreement between Moldova and EU could be used to justify this limitation.
	Corruptive practice	If corrupt practices of any kind are discovered at any stage of the award process and if the Contracting Authority fails to take all appropriate	The Contracting Authority shall reject the bid in the case the supplier submitting it offers or agrees to offer, directly or indirectly, a favor in any form or to extend an employment offer, or	National procurement rules in coherence with EU External Aid rules. <u>Conclusion:</u>

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
		measures to remedy the situation, project financing will be suspended.	to provide any other service to any of the Contracting Authority's former or current officers or employees as remuneration for certain actions, decisions or use of certain procurement procedures to his advantage.	In case of use of national rules the EU External Aid rules will be respected.
Fair and transparent competition	Value of contract	Value of contract has to be in line with accepted market prices (in the target country) for particular type of services /supplies/works.	Government Decision on approval of Regulation regarding the calculation procedure of the value of public procurement contracts and their planning	National procurement rules in coherence with the EU External Aid rules. <u>Conclusion:</u> In case of use of national rules the EU External Aid rules will be respected.
	Splitting of tenders	No contract may be split simply to evade compliance with the EC External aid procurement rules. Services/supplies of similar nature should be awarded under one tender/lot.	Where the procurements are not fragmented initially, the Contracting Authority may not fragment the procurement by concluding separate contracts enabling it to apply a procedure different from the procurements procedure, which must be used in conformity with this law. The exception is the seasonal procurements of goods and services, which involve the conclusion of separate contracts for different periods of time. In the case of the procurements of goods, works and services with the implementation period above one year, the contract may be concluded for the total procurements, although its implementation should be ensured within the limits of annual allocations scheduled for the purpose and specified annually in the contract.	National procurement rules in coherence with the EU External Aid rules. <u>Conclusion:</u> In case of use of national rules the EU External Aid rules will be respected.
	Tender prices	If there are significant differences in prices proposed by different tenderers the Contracting Authority	The working group may cancel the procurement procedure, before signing the contract of public procurement, in following	National procurement rules in coherence with the EU External Aid rules.

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
		should carry out checks and request any additional information necessary.	<p>cases:</p> <ul style="list-style-type: none"> - Financial proposal contains, prices which are obviously, not the result of free competition and are not proper justified; <p>During the evaluation the working group may request explanations and additional documents from suppliers, with the scope of confirmation of dates initially presented.</p>	<p><u>Conclusion:</u> In case of use of national rules the EU External Aid rules will be respected</p>
	Restrictive conditions	The Contracting Authority should thoroughly check the tender documents for any restrictive conditions potentially limiting the competition (such as naming the brand or requesting narrow and specific technical conditions).	The technical characteristics shall make no reference to a certain trade mark, brand or company, patent, drawing or type of the goods, works and services; no specific place of origin, manufacturer or supplier shall be indicated. Should it be impossible to detail the procurement requirements with sufficient exactness without such references, the wording of the characteristics shall include the words “or their equivalent”.	<p>National procurement rules in coherence with the EU External Aid rules. <u>Conclusion:</u> In case of use of national rules the EU External Aid rules will be respected. HOWEVER there is a difference in approach for the origin of goods. See below.</p>
Rules of origin / Nationality	Nationality rule	<p>EU Member States, ENPI, EPA, EEA countries, international organisations No limitations for experts on the level of secondary contracts, financed from grant.</p>	Any Supplier with the status of a resident or non-resident business company (including individuals as well as legal entities) may participate according to this law in the procedures of awarding the public procurement contract	<p>National procurement rules set no limitations, except for specific cases. <u>Conclusion:</u> EU External Aid is open as regards the nationality of experts, therefore no conflict with national legislation (except in those limited specific cases). The EU rules are restrictive in relation to the nationality of</p>

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
				contractors. The EU rules should apply, following Framework Agreement.
	Rules of origin	EU Member States, ENPI, EPA, EEA countries. Certificate of origin to be provided. (Does not apply for secondary supply contracts financed under grant, where unit cost is lower than 5.000 €). No preferences for any provider.	Any Supplier with the status of a resident or non-resident business company (including individuals as well as legal entities) may participate according to this law in the procedures of awarding the public procurement contract	National legislation does not regulate or prioritise origin of supplies. <u>Conclusion:</u> Clear conflict with the EU External Aid Rules. It is recommended that Moldova applies EU rules on nationality. The reference to the framework agreement between EU and Moldova should represent sufficient legal justification for deviation from national rules.
Publication / Invitation	Single procedure (or similar)	One tenderer directly invited to submit offer.	Single source. One tenderer directly invited to submit offer.	National legislation in line with EU External Aid rules. <u>Conclusion:</u> By applying national legislation the EU External Aid rules will be accordingly respected.
	Competitive negotiated procedure (or similar)	At least three tenderers directly invited to submit offers.	The request for price quotations Each supplier may submit a single price quotation without the right to change it subsequently. The Contracting Authority may not negotiate any such quotations with the bidder. The winning quotation shall be the quotation, which satisfies all requirements at the lowest price.	National legislation does not specify how many tenderers need to be invited to submit their offer. <u>Conclusion:</u> The CA should apply the condition that at least 3 tenderers have to be invited. The national rules will not be violated, moreover the condition can be seen as value added.

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
	Open procedure	To be published in all appropriate media, in particular on the Beneficiary’s web site, in the international press, national press or in other specialist periodicals (Annex IV provision differs from Chapters 3-5)	The Contracting Authority must publish a request for proposals in the Public Procurement Bulletin and on the Agency’s web page in all cases provided for by the law in accordance with the applied procurement procedures. In the case of the international public procurements covered by Article 2 Paragraph (3), the RFP shall be published also in “The Official Journal of the European Community”.	National legislation in line with the EU External Aid rules. Larger contracts are also published in the Official Journal of the EU. <u>Conclusion:</u> By applying the national legislation the EU External Aid rules will be respected. However the CA might consider publishing larger contracts also on EuropeAid web site.
Financial thresholds – Services	Single tender procedure (or similar)	For contracts ≤ 10.000 € (below or equal to 10.000 EUR) +Cases for negotiated procedure (Art, 7 of Annex IV)	Up to 25 thousand lei (approx. 1.470€). + (1) In the case of the public procurement contracts for works, goods and services, the Contracting Authority may procure from a single source where: a) no adequate bids or candidates are identified during the open tender or negotiations; b) to the extent strictly necessary - where the terms for an open tender or negotiations with the RFP publication cannot be observed for reasons of the utmost urgency; c) for technical or creative reasons, for reasons connected with the protection of exclusivity rights or any other objective reasons the required goods, works and services are available only from a single supplier, or a single supplier holds the priority rights to them; (3) In the case of the public procurement contracts for services, the Contracting	The threshold according to national legislation is considerably lower than in EU External Aid rules. <u>Conclusion:</u> The CA is recommended to apply the national threshold. By applying it the principles of EU External Aid will also be sufficiently respected, as the national rules are even stricter. In case of procurement from single source, the specific cases should be checked against and synchronised with the Annex IV, Point 7.

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
			<p>Authority may procure from a single source where the respective contract results from competition and must be awarded according to the applicable rules to the winner or one of the winners in such competition. In the latter case all winners in the competition should be invited to participate in the negotiations.</p> <p>(4) In the case of the public procurements contracts for works and services, the Contracting Authority may procure from a single source:</p> <ul style="list-style-type: none"> a) supplementary works or services which are not covered by the initial cost estimate or the initial contract and which have become necessary as result of an unexpected situation to make possible the provision of the above works or services covered thereby; b) new works or services, which consist in the repetition of similar works or services; c) if during the procurement procedure the Contracting Authority receives a single bid in response to the RFP, and it is not feasible to hold a new tender. 	
	Negotiated procedure (or similar)	For contracts > 10.000 € but < 200.000 € (above 10.000 EUR but below 200.000 EUR)	<p>From 25 thousand to 200 thousand lei (from 1.470 – 11.760€).</p> <p>+Price quotation procedure possible for contracts of up to 200 thousand lei (11.760€)</p> <p>+ Other procedures possible, such as framework agreement, dynamic procurement system, electronic auction.</p>	<p>The threshold according to national legislation is considerably lower than in EU External Aid rules.</p> <p><u>Conclusion:</u> The CA is recommended to apply the national threshold. By applying it the principles of EU External Aid will also be sufficiently respected, as the</p>

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
				<p>national rules are even stricter.</p> <p>Price quotation procedure is in line with EU rules, as the threshold corresponds to negotiated procedure. 3 providers at least should be contacted.</p> <p>Framework agreement, dynamic procurement system, electronic auction should be avoided as such procedures are not foreseen by EU rules.</p>
	International Restricted Tender Procedures	For contracts $\geq 200.000 \text{ €}$ (above or equal to 200.000 EUR)	<p>From 200 thousand lei and more (approx. 11.760€).</p> <p>+ Other procedures possible, such as framework agreement, dynamic procurement system, electronic auction.</p>	<p>The threshold according to national legislation is considerably lower than in EU External Aid rules.</p> <p><u>Conclusion:</u> The CA is recommended to apply the national threshold. By applying it the principles of EU External Aid will also be sufficiently respected, as the national rules are even stricter.</p> <p>Framework agreement, dynamic procurement system, electronic auction should be avoided as such procedures are not foreseen by EU rules.</p>
Financial thresholds – Supplies	Single tender procedure (or similar)	For contracts $\leq 10.000 \text{ €}$ (below or equal to 10.000 EUR) +Cases for negotiated procedure	<p>Up to 20 thousand lei (approx. 1.170€).</p> <p>Award to single tenderer as described above</p>	<p>The threshold according to national legislation is considerably lower than in EU</p>

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
		(Art, 7 of Annex IV)	<p>under services.</p> <p>+ (2) In the case of the public procurement contracts for goods, the Contracting Authority may procure from a single source where:</p> <p>a) the respective goods are produced solely for the purposes of the R&D or trials;</p> <p>b) the public procurements contract involves supplementary deliveries performed by the initial supplier with the aim either to replace partially the goods or installations currently in use, or to extend the existent goods or installations;</p> <p>c) the goods to be procured are subject to quotas and acquired at the raw materials exchange;</p> <p>d) the public procurements contract involves the acquisition of the goods on particularly advantageous terms and conditions – either from a supplier who winds up his business, or from the curators or liquidators.</p>	<p>External Aid rules.</p> <p><u>Conclusion:</u></p> <p>The CA is recommended to apply the national threshold. By applying it the principles of EU External Aid will also be sufficiently respected, as the national rules are even stricter.</p> <p>In case of procurement from single source, the specific cases should be checked against and synchronised with the Annex IV, Point 7.</p>
	Negotiated procedure (or similar)	For contracts > 10.000 € but < 60.000 € (above 10.000 EUR but below 60.000 EUR)	<p>From 20 thousand to 200 thousand lei (from 1.170 – 11.760€).</p> <p>+Price quotation procedure possible for contracts of up to 200 thousand lei (11.760€)</p> <p>+ Other procedures possible, such as framework agreement, dynamic procurement system, electronic auction.</p>	<p>The threshold according to national legislation is considerably lower than in EU External Aid rules.</p> <p><u>Conclusion:</u></p> <p>The CA is recommended to apply the national threshold. By applying it the principles of EU External Aid will also be sufficiently respected, as the national rules are even stricter.</p> <p>Price quotation procedure is in line with EU rules, as the</p>

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
				<p>threshold corresponds to negotiated procedure. 3 providers at least should be contacted.</p> <p>Framework agreement, dynamic procurement system, electronic auction should be avoided as such procedures are not foreseen by EU rules.</p>
	Local open tender procedure	For contracts ≥ 60.000 € but < 150.000 € (above or equal to 60.000 EUR but below 150.000 EUR)	<p>From 200 thousand lei and more (approx. 11.760€).</p> <p>+ Other procedures possible, such as framework agreement, dynamic procurement system, electronic auction.</p>	<p>The threshold according to national legislation is considerably lower than in PRAG.</p> <p><u>Conclusion:</u> The CA is recommended to apply the national threshold. By applying it the principles of EU External Aid will also be sufficiently respected, as the national rules are even stricter.</p> <p>Framework agreement, dynamic procurement system, electronic auction should be avoided as such procedures are not foreseen by EU rules.</p>
	International open tender procedure	For contracts ≥ 150.000 € (above or equal to 150.000 EUR)	<p>From 2.500.000 lei and more (approx. 147.060€).</p> <p>+ Other procedures possible, such as framework agreement, dynamic procurement system, electronic auction.</p>	<p>The threshold according to national legislation is lower than in EU External Aid rules.</p> <p><u>Conclusion:</u> The CA is recommended to apply the national threshold. By</p>

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
				<p>applying it the principles of EU External Aid will also be sufficiently respected, as the national rules are even stricter.</p> <p>Framework agreement, dynamic procurement system, electronic auction should be avoided as such procedures are not foreseen by EU rules.</p>
Financial thresholds - Works	Single tender procedure (or similar)	For contracts ≤ 10.000 € (below or equal to 10.000 EUR) +Cases for negotiated procedure (Art, 7 of Annex IV)	<p>Up to 25 thousand lei (approx. 1.470€). Award to single tenderer as described above under services.</p> <p>+ (1) A special contract awards procedure may be used in the case of the public procurement contracts connected with the design and construction of social housing ensembles where the scope, complexity and the estimated duration of the works require that planning be based from the very beginning on very close collaboration in the workgroup comprised of the persons representing the Contracting Authorities, experts and contractors performing the works and responsible for the execution of the works; such procedure should ensure the selection of the contractor to perform the works, who is best able to integrate in the workgroup.</p>	<p>The threshold according to national legislation is considerably lower than in EU External Aid rules. <u>Conclusion:</u> The CA is recommended to apply the national threshold. By applying it the principles of EU External Aid will also be sufficiently respected, as the national rules are even stricter.</p> <p>In case of procurement from single source, the specific cases should be checked against and synchronised with the Annex IV, Point 7.</p>
	Negotiated procedure (or similar)	For contracts > 10.000 € but < 300.000 € (above 10.000 EUR but below 300.000 EUR)	From 25 thousand up to 1.000.000 lei (from 1.470 – 58.800€).	The threshold according to national legislation is considerably lower than in EU

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
			<p>+Price quotation procedure possible for contracts of up to 1.000.000 lei (58.800€).</p> <p>+ Other procedures possible, such as framework agreement, dynamic procurement system, electronic auction.</p>	<p>External Aid rules. <u>Conclusion:</u> The CA is recommended to apply the national threshold. By applying it the principles of EU External Aid will also be sufficiently respected, as the national rules are even stricter.</p> <p>Price quotation procedure is in line with EU rules, as the threshold corresponds to negotiated procedure. 3 providers at least should be contacted.</p> <p>Framework agreement, dynamic procurement system, electronic auction should be avoided as such procedures are not foreseen by EU rules.</p>
	Local open tender procedure	For contracts \geq 300.000 € but $<$ 5.000.000 € (above or equal to 300.000 EUR but below 5.000.000 EUR).	<p>From 1.000.000 lei and more (approx. 58.800€).</p> <p>+ Other procedures possible, such as framework agreement, dynamic procurement system, electronic auction.</p>	<p>The threshold according to national legislation is considerably lower than in EU External Aid rules. <u>Conclusion:</u> The CA is recommended to apply the national threshold. By applying it the principles of EU External Aid will also be sufficiently respected, as the national rules are even stricter.</p> <p>Framework agreement, dynamic</p>

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
	International open tender procedure	For contracts $\geq 5.000.000$ € (above or equal to 5.000.000 EUR)	From 99.000.000 lei and more (approx 5.800.000€). + Other procedures possible, such as framework agreement, dynamic procurement system, electronic auction.	procurement system, electronic auction should be avoided as such procedures are not foreseen by EU rules. The threshold according to national legislation is slightly higher than in EU External Aid rules. <u>Conclusion:</u> The CA is recommended to apply the EU External Aid threshold. By applying it this principle, the national legislation will also be respected, as the EU rules are even stricter – better transparency. Framework agreement, dynamic procurement system, electronic auction should be avoided as such procedures are not foreseen by EU rules.
Procedures – Services	Single tender procedure (or similar)	No exact deadline fixed (long enough, allowing reasonable and appropriate period - Annex IV). Offer submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier. The one received offer estimated for compliance with requirements. Simplified evaluation report	In the case of the public procurement contracts for works, goods and services, the Contracting Authority may procure from a single source where: a) no adequate bids or candidates are identified during the open tender or negotiations unless the initial contract terms and conditions are amended substantially; b) to the extent strictly necessary - where the terms for an open tender or negotiations with	The national legislation provides list of conditions for single tender and lower threshold as EU External Aid rules. <u>Conclusion:</u> When applying the national legislation on the basis of financial threshold the EU External Aid rules will be respected.

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
		<p>prepared, according to free format.</p>	<p>the RFP publication cannot be observed for reasons of the utmost urgency as result of the events, which could not be foreseen reasonably by the relevant Contracting Authority. The situations referred to in order to justify the utmost urgency may in no case be imputable to the Contracting Authorities;</p> <p>c) for technical or creative reasons, for reasons connected with the protection of exclusivity rights or any other objective reasons the required goods, works and services are available only from a single supplier, or a single supplier holds the priority rights to them and there exists no alternative, or the supplier is established by the law.</p>	<p>When applying the national legislation for specific cases these cases should be checked against an be synchronised with the Annex IV, point 7.</p>
	<p>Negotiated procedure (or similar)</p>	<p>Deadline for submission recommended in the PRAG manual – 30 days.</p> <p>Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The received offers are evaluated on the basis of pre-set evaluation criteria (see below).</p> <p>Evaluation report prepared on the basis of standard PRAG format.</p>	<p>In the case of the procedures implying the request to submit price quotations, the time for the submission and receipt of the bids may be no less than 3 calendar days for the goods and 10 calendar days for the works and services after the RFP is circulated.</p> <p>The Contracting Authority shall publish an announcement of intent in the Public Procurement Bulletin and on the public procurement web page Prior to the procurements of goods and services with the estimated value in excess of MDL 100,000 (approximately 5.800€).</p> <p>Price quotation procedure possible.</p>	<p>The deadlines for submission are shorter in the national legislation as they are in PRAG. The national legislation requires public invitation for contracts above 5.800€.</p> <p><u>Conclusion:</u> The CA could increase deadline for submission to be in line with EU External Aid rules nd PRAG (30 days). Eventual public announcement above 5.800€ is not in conflict with EU External Aid rules as it only opens competition.</p> <p>Price quotation procedure is in line with EU rules, as the</p>

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
				threshold corresponds to negotiated procedure. 3 providers at least should be contacted.
	International Restricted Tender Procedures	<p>2 step procedure. Publication of a Contract Forecast Notice followed by the publication of a Procurement notice at least 30 days later (recommended by PRAG, but not obligatory according to Annex IV). Deadline for submission of express of interest (standard document): at least 30 days. (recommended by PRAG, but not obligatory according to Annex IV). Short-list of 4-8 tenderers formed. Deadline for submission of offer (based on full tender dossier): 50 days recommended in PRAG manual but not enforced in the Annex IV. Offers submitted by short-listed tenderers, on the basis of standard documents (financial and technical offer), provided in the tender dossier. The received offers are evaluated on the basis of pre-set evaluation criteria (see below). Evaluation report prepared on the basis of standard PRAG format.</p>	<p>The Contracting Authority must publish an announcement of intent in the Public Procurements Bulletin regarding the scheduled public procurements. In the case of the public procurements covered by Article 2 Paragraph (3), the announcement of intent shall be published also in “The Official Journal of the European Community”. (2) The announcement of intent shall be published separately for the goods, works and services within 30 days upon approval of the respective Contracting Authority’s budget. In the case of an open or closed tenders, the term for the submission and receipt of the applications for participation and bids may be no less than 15 calendar days after the day on which the RFP is published, and in the case of the International open procedure – no less than 40 calendar days.</p> <p>The competitive dialogue is an open tender procedure held in 2 stages, which should be applied in the case of extremely complex procurement contracts; any supplier may apply to participate and the Contracting Authority conducts a dialogue with the candidates admitted to such tender with the aim to produce one or more alternative solutions satisfying the requirements; the selected candidates are invited to submit their bids</p>	<p>The national legislation recognises the contract forecast and procurement notice (announcement). Deadline for submission is shorter than in PRAG. Possibility of negotiations and close tenders to be checked with EU External Aid. Possibility of alternative bids not in line with EU rules. <u>Conclusion:</u> The CA could apply 50 days deadline for submission of proposals to stay in line with the EU External Aid rules and PRAG recommendations.</p> <p>When applying competitive dialogue, direct negotiations or closed tender, the provisions of the Annex IV, point 7 should be respected.</p> <p>Possibility of alternative bids should be avoided.</p> <p>Framework agreement, dynamic procurement system, electronic auction should be avoided as such procedures are not foreseen</p>

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
			<p>based on the results of the dialogue.</p> <p><u>Closed tender:</u></p> <p>The Contracting Authority may hold a closed tender where the goods, works and services are of complex nature or unavailable to a large number of suppliers operating at the market.</p> <p>(2) The closed tender shall be held according to the rules similar to those for an open tender, subject to the application of pre-selection (short-listing) procedures preceded by the publication of a request for proposals (invitation to the participation in pre-selection).</p> <p><u>Alternative bids:</u></p> <p>(1) The bidder may submit additionally other bids termed as “alternative bids” – solely provided the bid assessment criterion is “<i>the most advantageous bid in technical and economic terms</i>”. Only alternative bids may deviate to a certain extent from the requirements specified in the documentation regarding the development and submission of bids.</p> <p>+ Other procedures possible, such as framework agreement, dynamic procurement system, electronic auction.</p>	by EU rules.
Procedures - Supplies	Single tender procedure (or similar)	No exact deadline fixed (long enough, allowing reasonable and appropriate period - Annex IV).	Same as with services	Same as with services

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
		<p>Offer submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The one received offer estimated for compliance with requirements.</p> <p>Simplified evaluation report prepared, according to free format.</p>		
	Negotiated procedure (or similar)	<p>Deadline for submission of offers: 30 days recommended in PRAG manual.</p> <p>Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The received offers are evaluated on the basis of pre-set evaluation criteria (see below).</p> <p>Evaluation report prepared on the basis of standard PRAG format.</p>	Same as with services	Same as with services
	Local open tender procedure	<p>Publication of the procurement notice recommended in PRAG manual – only in the Official Journal/equivalent media of the beneficiary country.</p> <p>EC publishes on the Europeaid website only the reference of the tender procedure</p> <p>Deadline for submission of offers: 30 days recommended in PRAG manual.</p> <p>Offers submitted on the basis of standardised documents (financial and technical offer), provided in the</p>	Same as with services (restricted)	Same as with services (restricted)

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
		<p>tender dossier. The received offers are evaluated on the basis of pre-set evaluation criteria (see below). Evaluation report prepared on the basis of standard PRAG format. The Contracting Authority may request a tender guarantee</p>		
	International open tender procedure	<p>Deadline for submission of offers: 60 days recommended in PRAG manual, but not requested in Annex IV. Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier. The received offers are evaluated on the basis of pre-set evaluation criteria (see below). Evaluation report prepared on the basis of standard PRAG format.</p>	Same as with services (restricted)	<p>Procedure follows the same principles as in services (restricted) <u>Conclusion:</u> The national legislation is in coherence with the EU External Aid rules, except for the shorter deadline. The 60 days deadline could be respected to be in complete coherence with EU External Aid rules.</p>
Procedures - Works	Single tender procedure (or similar)	<p>No exact deadline fixed (long enough, allowing reasonable and appropriate period - Annex IV). Offer submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier. The one received offer estimated for compliance with requirements. Simplified evaluation report prepared, according to free format.</p>	Same as with services	Same as with services

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
	Negotiated procedure (or similar)	<p>Deadline for submission of offers: 30 days recommended in PRAG manual, but not required by Annex IV</p> <p>Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The received offers are evaluated on the basis of pre-set evaluation criteria (see below).</p> <p>Evaluation report prepared on the basis of standard PRAG format.</p>	Same as with services	Same as with services
	Local open tender procedure	<p>The publication of the Procurement notice it is mandatory to ensure widest participation, assuring competitive tendering and transparency but is published only in the Official Journal of the beneficiary country.</p> <p>Deadline for submission of offers: minimum 60 days after the publication of the procurement notice, proposed in PRAG manual.</p> <p>Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The received offers are evaluated on the basis of pre-set evaluation criteria (see below).</p> <p>Evaluation report prepared on the basis of standard PRAG format.</p>	Same as with services (restricted)	Same as with services

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
	International open tender procedure	<p>The publication of the Contract forecast and the Procurement notice is recommended by PRAG manual to ensure widest participation, assuring competitive tendering and transparency.</p> <p>Deadline for submission of offers: by the time and date indicated in the tender dossier.</p> <p>Every offer must be placed in a single sealed envelope placed in a package or outer envelope.</p> <p>Offers submitted on the basis of standardised documents (financial and technical offer), provided in the tender dossier.</p> <p>The received offers are evaluated on the basis of pre-set evaluation criteria (see below).</p> <p>Evaluation report prepared on the basis of standard PRAG format.</p>	Same as with services (restricted)	Same as with supplies. The 90 days deadline for submission of offer could be respected.
Selection procedure / criteria	Services	Most economically advantageous tender, i.e. the tender offering the best price-quality ratio, best value for money.	The bid most advantageous in the economic terms shall be the bid identified as the winning bid based, in the case of public procurement contracts for the services: the proposed quality, price per unit of bidder's products, total price, the bidder's experience, etc. The significance of the price in the total bid evaluation shall be no less than 40%.	<p>The national legislation is in line with the EU External Aid rules as regards the general criteria – combination of price and quality. However preferential discounts are not in line with the EU External Aid.</p> <p><u>Conclusion:</u> Use of general criteria according to the national legislation will comply with the EU External Aid rules. The preferential discounts or treatment of any tenderer</p>
	Supply	Most economically advantageous tender, i.e. the tender offering the best price-quality ratio, best value for money.	The bid most advantageous in the economic terms shall be the bid identified as the winning bid based, in the case of public procurement contracts for the goods: price, delivery terms,	

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
			<p>payment terms, profitability, quality, aesthetic and functional characteristics, technical characteristics, availability and costs of service maintenance, technical assistance;</p> <p>During the evaluation and comparison of the bids the Contracting Authority shall apply the preferential margin in favor of the bids proposing the domestic goods and the bids proposing the works performed by operators resident in Moldova, which preferential margin may not exceed 15% of the bid price found to be the best. The bids offering the products of the enterprises owned by the Association of the Blind, the Association of the Handicapped, the Association of the Deaf, the production facility of the National Psychiatric Hospital or the penitentiary system institutions and bids offering agricultural products and foodstuffs, which are ecological or in the period of transition to the ecological production processes, shall enjoy the preferential margin of 20% of the bid price found to be the best.</p> <p>For the purposes of awarding public procurement contracts preference shall be given to the suppliers who have a direct or indirect objective to encourage professional training on the job, creation of jobs for the unemployed, young people and persons with integration problems, reduction of the unemployment rates, professional training for the unemployed and the young people, environment protection, improvement of labor</p>	<p>should however be avoided.</p> <p>Cancelling the tender in case of overextended prices is in principle in line with the EU External Aid procedures.</p>

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
			<p>conditions and labor safety, rural development and professional training in agriculture, protection and support of small and medium-sized enterprises (SME businesses), including during the contract execution period and their involvement as sub-contractors. Such available preferences must be specified in the invitation for participation (RFP).</p>	
	Works	<p>Most economically advantageous tender, i.e. the tender offering the best price-quality ratio, best value for money.</p>	<p>The bid most advantageous in the economic terms shall be the bid identified as the winning bid based, in the case of public procurement contracts for the works: the proposed quality, price per unit of bidder's products upon completion of the works, total price, the bidder's experience, etc. The significance of the price in the total bid evaluation shall be no less than 80%;</p> <p>The preferential discount and treatment as in supplies.</p> <p>The procedure can be cancelled in the case of the public procurements of works, if the bid price is more than 20% higher than the estimated value of the works calculated by the Contracting Authority according to the established procedures;</p>	
Evaluation committee	Composition	<p>Services – minimum 3 voting members + chairperson + secretary. Supply – minimum 3 voting members + chairperson + secretary. Works – minimum 3 voting members + chairperson + secretary.</p>	<p>The working group is created through special decision (order) or disposition, of minimum 5 members, including chairperson of working group – the person which has the right for first signature or a person nominated by the latter. The Contracting Authority may create more</p>	<p>National legislation is largely in line with the EU External Aid rules. <u>Conclusion:</u> If national legislation is respected the EU External Aid rules will be</p>

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
			than one group for procurement, based on the field for which the acquisition is performed.	sufficiently followed.
	Nomination	The composition of the evaluation committee to be submitted for approval to responsible MA.	The working group is created through special decision (order) or disposition	National legislation is largely in line with the EU External Aid rules. <u>Conclusion:</u> If national legislation is respected the EU External Aid rules will be sufficiently followed.
	Membership	Independent experts without conflict of interest. Reasonable command of English. Technical and administrative capacities to give an informed opinion on tenders.	The Contracting Authority may invite, if necessary, professionals and experts in the sphere of particular procurements to act as advisors in the procurements work group. In special cases provided for in the law, such professionals and experts may be granted a voting right in the work group.	National legislation is largely in line with the EU External Aid rules. <u>Conclusion:</u> If national legislation is respected the EU External Aid rules will be sufficiently followed.
	Impartiality and confidentiality	All members and observers are requested to sign the ‘‘Impartiality and confidentiality statement’’. Any member who has potential conflict of interest with any tenderers should declare it and immediately withdraw from the evaluation committee. Participation strictly allowed only to nominated members.	A member of the work group must sign (at his/her personal responsibility) a declaration in writing regarding the confidentiality and impartiality, in which he/she undertakes to observe unconditionally the provisions of this law and presents furthermore that he/she: <ul style="list-style-type: none"> a) is not a spouse, relative or in-law (to the third degree inclusive) of any of the bidders; b) has not been within the last 3 years a party to an employment contract or a cooperation contract concluded with any of the bidders, as shown in the labor record book, or has not been a member of the bidder’s administrative board or any other of the bidder’s governance or management bodies; 	National legislation is largely in line with the EU External Aid rules. <u>Conclusion:</u> If national legislation is respected the EU External Aid rules will be sufficiently followed.

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
			c) does not hold a stake or shares in the authorized and subscribed capital of any of the bidders.	
	Decisions	Majority of votes of voting members. Any discrepancies and extraordinary situations need to be registered in the evaluation reports.	Each member of working group is obliged to sign the minutes of opening session and the minutes of evaluation session. In case the member of working group do not agree with the decision taken, this member is obliged to express his opinion separately in the minute, with indication of clear reasons regarding his disagreement. Decisions of the working group are adopted by majority of votes.	National legislation is largely in line with the EU External Aid rules. <u>Conclusion:</u> If national legislation is respected the EU External Aid rules will be sufficiently followed.
Documents	Services	Full tender documentation based on PRAG format documents. Key document = terms of reference (PRAG format). Standard documents for publication (forecast and procurement notice) and communication (letters to tenderers). Standard format evaluation report. Standard format contract (see below).	The structure and contents of the tender documents shall be established in the standardized documents approved by the Government.	The required documents are not defined in the national legislation. Presumably they are based on standard formats (as described below – general conditions, terms of reference). <u>Conclusion:</u> The national legislation should offer sufficient basis for EU External Aid rules to be respected The INTERACT ENPI prepared a set of guidance on content of tender documents.
	Supply	Full tender documentation based on PRAG format documents. Key document = technical specifications (PRAG format). Standard documents for publication (forecast and procurement notice) and communication (letters to tenderers). Standard format evaluation report.	The structure and contents of the tender documents shall be established in the standardized documents approved by the Government.	(best practice) based on the EU External Aid rules (See Section 5 of this Guide). The CA should consider using the recommendations in their secondary procurement process.

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
		Standard format contract (see below).		
	Works	Full tender documentation based on PRAG format documents. Key document = bill of quantities, design drawings. Standard documents for publication (forecast and procurement notice) and communication (letters to tenderers). Standard format evaluation report. Standard format contract (see below).	The structure and contents of the tender documents shall be established in the standardized documents approved by the Government.	
Contract	Format	Contracts for services, supply and works based on standardised PRAG format.	No similar provisions.	It is not specified whether a format contract exists in national legislation. It is assumed that it exists and that it provides basic framework which is in line with EU rules. <u>Conclusion:</u> The INTERACT ENPI prepared a set of guidance on content of contractual documents. (best practice) based on the EU External Aid rules (See Section 5 of this Guide). The CA should consider using the recommendations in their secondary procurement process.
	Annexes – Services	General conditions. Terms of Reference. Organisation and methodology (description of the action). Key experts.	General conditions. Terms of Reference. Organisation and methodology (description of the action).	The annexes seem to be in line with the EU rules. <u>Conclusion:</u> The INTERACT ENPI prepare a set of guidance on content of

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
		Budget. Forms and other relevant documents Report of factual findings and terms of reference for an expenditure verification		contractual documents. (best practice) based on the EU External Aid rules (See Section 5 of this Guide). The CA should consider using the recommendations in their secondary procurement process.
	Annexes – Supply	Special conditions. General conditions. Technical specification. Technical offer. Budget breakdown.	Special conditions. General conditions. Technical specification.	The annexes seem to be in line with the EU rules. <u>Conclusion:</u> The INTERACT ENPI prepared a set of guidance on content of contractual documents. (best practice) based on the EU External Aid rules (See Section 5 of this Guide). The CA should consider using the recommendations in their secondary procurement process.
	Annexes – Works	Special conditions. General conditions. Technical specifications. Design documentation (drawings). Bill of quantities. The tender.	Special conditions. General conditions. Technical specifications. Design documentation (drawings). Bill of quantities.	The annexes seem to be in line with the EU rules. <u>Conclusion:</u> The INTERACT ENPI prepared a set of guidance on content of contractual documents. (best practice) based on the EU External Aid rules (See Section 5 of this Guide). The CA should consider using the recommendations in their secondary procurement process.
	Legislation	The law of the country of the contracting authority governs the contract.	Law on public procurement (no. 96-XVI of 13.04.2007)	National procedures in line with EU External Aid rules. <u>Conclusion:</u>

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
			<i>Official Gazette “Monitorul Oficial” no. 107-111/470 of 27.07.2007</i>	If national rules applied the provisions of EU External Aid rules will be fully respected.
	Payments – Services	Pre-financing, subject to financial guarantees. Balance payments in fixed time periods.	Pre-financing , guarantee for the offer, guarantee proper performance of public procurement contract	National legislation allows pre-financing. In all types of contracts pre-financing should be covered by guarantees.
	Payments – Supply	Pre-financing, subject to financial or performance guarantee. Balance in agreed time.	Pre-financing , guarantee for the offer, guarantee proper performance of public procurement contract	<u>Conclusion:</u> The national rules are in principles in line with the EU External Aid rules. The percentage of co-financing is not defined in the local legislation.
	Payments – Works	Pre-financing, subject to financial or performance guarantee. Interim payments, depending on dynamics of the contract. Retention monies kept.	Appropriate pre-financing, guarantee for the offer, guarantee proper performance of public procurement contract.	Proposed PRAG provisions could be taken as orientation.
	Taxes	Contracts are exempt from all duties and taxes, including VAT (depending on agreement between beneficiary country and EU).	VAT is levied if the international agreement to which Moldova is a party provides otherwise.	National legislation allows exemption of VAT in case of international agreements. <u>Conclusion:</u> It seems that the grant beneficiaries will be able to get tax exemption for their secondary contracts. The provisions are in line with the EU External Aid principles.
	Amendments of the contract	No modification may alter award conditions. The contracting authority must examine reasons for modification and reject those who have little or no substantiation. Addendum based on standardised PRAG format.	No such provision.	The national legislation does not specify modifications and alternation of contracts. <u>Conclusion:</u> The INTERACT ENPI provided a set of recommendations related to the contractual documents, based on EU External Aid rules (see Section 5 of this Guide). The

Overall issue	Specific issue	EU PRAG – Procedures	MOLDOVA Procedures	Conclusion – coherence with procedures
				provisions for amendments of contracts will be included. The CA will be recommended to follow the provisions.
<p>Appeals and complaints</p>		<p>Tenderers believing that they have been harmed by an error or irregularity during the award process may petition the Contracting Authority directly. The Contracting Authority must reply within 90 days of receipt of the complaint.</p>	<p>Any supplier who believes that the Contracting Authority has injured the supplier’s lawful rights during the procurements procedure because of the decision made or the procurements procedure applied with infringements of the law and resulting in the actual or threatening damage for the supplier, may challenge in due course provided for in this law the relevant decision made or the procedure applied by the Contracting Authority.</p> <p>The Supplier may submit a substantiated claim to the Agency regarding the Contracting Authority’s actions, decisions or applied procedures within 10 calendar days after it becomes aware of the circumstances which are the grounds for the appeal.</p> <p>The Agency shall examine the claim and issue a decision regarding it within 20 working days after its submission, based on the submitted documents or their examination in an open meeting, with invitations given in writing to and the presence of at least the Agency’s representative, the claimant, the Contracting Authority and, if applicable, the winning bidder.</p>	<p>The provisions of national legislation are in line with the EU External Aid rules.</p> <p><u>Conclusion:</u> If national legislation is applied the EU External Aid rules will be sufficiently respected.</p>

Additional provisions defined in the national legislation and influencing the procedures on horizontal level:

- **Tenders by consortium.** The national legislation does not foresee application by consortia. This could be in conflict with EU rules, where consortia are allowed. In addition absence of consortium could cause large proportions of sub-contracting (in some cases well above 30% normally allowed by PRAG).
Conclusion: Possibility of application of consortia should be checked with National authorities, if it's estimated that for some projects it would be indispensable. The other solutions could be: 1) not to apply the limit of subcontracting, 2) tenderers creating a new Legal entity when needed, 3) dividing the tender in lots where appropriate, thus allowing single Applicants to apply to different lots.
- **Procurements via the Universal Commodity Exchange.** The procurements of certain categories of strategic importance goods with the exact pre-determined specifications may be performed via Universal Commodity Exchange according to the Regulations approved by the Government.
Conclusion: When using the system the provision of goods should be in line with the Annex IV, Point 7, which regulates in details conditions for negotiated procedure (for all thresholds).

SECTION 5 - Tender and contract documents: important provisions

General advices are provided below on what are the most important good practices to be followed while preparing tender documents and contract templates by grant Beneficiaries in Partner countries applying national procurement rules to be in line with the EU External Aid rules. Some additional advices have also been given on selection procedures.

TYPE OF CONTRACT	ELEMENT OF PROCEDURE	PRACTICAL IMPLICATIONS
TENDERING DOCUMENTATION		
<p>General provisions</p>	<p>Transparent and open competition</p>	<p>The Contracting Authority needs to make sure that a wide publicity is guaranteed for a tender procedure. In order to efficiently acquire services, supplies or works, it would be recommended to open competition to as many tenderers as possible. Following the EU Rules for External Aid, the approach would be the following.</p> <p>Open procedures:</p> <ul style="list-style-type: none"> • Publish publication of a tender procedure in media with wide coverage, possibility newspaper with national coverage, web site of the Contracting Authority. Depending whether procedure is local or international, publications should be done in local or/and international media respectively. • The tendering documents need to be made available for inspection at the seat of the Contracting Authority and either be available on web site or sent to any interested potential tenderer. • The potential tenderers should be enabled to ask questions and require additional information if necessary. The Contracting Authority needs to establish transparent system of answering enquiries, where all the tenderers will be provided with equal level of information. • Publication of tender procedure in English language as well as language of Contracting Authority will increase openness. • Making English the language of the procedure and contract would even further encourage openness. • NOTE: In case of service contracts the Annex IV Procurement by grant beneficiaries, refers to the open procedure as ‘restricted procedure’, but in fact the procedure has all the elements of the open procedure. The procedure is implemented in two steps, firstly allowing participation to all and forming short list of 4-8 candidates to be invited in the second step. <p>Negotiated procedures:</p> <ul style="list-style-type: none"> • A limited number of tenderers is invited to participate in the

		<p>tendering procedure. The number of invited tenderers should be larger than minimum recommended by the EU or national procurement procedure.</p> <ul style="list-style-type: none"> • The invited tenderers need to be selected on the basis of their references and competences. Analysis of potential tenderers can be implemented prior to the launch of the tendering procedure. All of the invited tenderers should in principle be able to deliver services, supplies or works required as defined by the tendering procedure and documents. • The tendering documents need to be sent to all invited tenderers in electronic, and if necessary, hardcopy versions. • The invited tenderers should be enabled to ask questions or require additional information if necessary. The Contracting Authority needs to establish transparent system of answering the enquiries, where all invited tenderers will be provided with the same level of information. • EXCEPTIONAL CASES. The provisions described in the previous bullet-points are applicable to any procedure between pre-defined financial thresholds. There is however another option for use of negotiated procedures for any type of contract and threshold. This approach should be applied in exceptional cases only which include: <ul style="list-style-type: none"> - Reasons of extreme urgency, without influence by the Contracting Authority, - Where services are entrusted to public or non-profit institutions with special status providing social services, - Extend of services, additional purchases and works in exceptional circumstances, - Where exclusive rights allow award only to specific service provider, - For contracts declared secret on the level of EU or participating countries, - In case of repeated failure of tendering procedure, where negotiations can be implemented with one or more tenderers. <p>Procedures on the basis of single offer:</p> <ul style="list-style-type: none"> • Though normally not required by the procedure it would be advisable to establish competitive procedure also in the case of procedures based on single offer. • This would in practice mean that even with such tenders more than one potential tenderer is consulted in the process. <p>Note: <i>The financial thresholds for the above procedures should minimum take into account the thresholds provided in the Annex IV to the standard grant contract.</i></p>
	Equal treatment of all tenderers	All tenderers participating in a tendering procedure, regardless of the type of procedure that applies, should be given the same treatment and chances for success. This should be in practice guaranteed by applying the following measures:

		<ul style="list-style-type: none"> • Transparent information flow. As described in the previous section, all potential tenderers should have the same level of information. This can be achieved either by publishing answers to tenderers' enquiries on web site of the Contracting Authority, or informing all (invited) tenderers in a separate note. • Absence of restrictive conditions. The Contracting Authority needs to make sure that the conditions of the tender (Terms of Reference in the case of service tenders, Technical Specifications in case of supplies and works) are not restrictive. This practically means that references to a very specific and limited knowledge or expertise, or reference to specific and not widely available technical elements is not acceptable. The Contracting Authority should always make sure that in principle experts, equipment or construction services are defined in a way that a broader circle of tenderers could in principle satisfy these conditions. • Predefined selection and award criteria. The criteria for selection of the successful tenderer need to be defined prior to start of the tendering procedure and should not be in any way altered in the process. All the potential tenderers need to be made aware about the selection criteria and should comply with them throughout the tendering procedure • Participation by tenderers in one tender only. It would be recommendable to limit the participation by tenderers to one tender only in order to enable transparency and equal treatment of all candidates. • Equal conditions in financial offers. Any preferential discounts and other applications of different conditions to tenderers in the segment of financial offers should be strictly avoided.
	Avoiding conflict of interest	<p>The Contracting Authority should at any point during the preparation and implementation of the tendering procedure avoid potential conflict of interest, which would give unfair advantage to one or more tenderers. The avoidance of the conflict of interest should be in practice guaranteed by applying the following measures:</p> <ul style="list-style-type: none"> • Independent preparation of tendering documents and conditions. No person involved in preparation of tender procedures, in particularly in preparation of Terms of References or Technical Specifications, should have any contact or relation to tenderers. The definition of "contact or relation" include personal connections (relatives, intimate connections etc.), professional connections (joint business interests or activities, previous employment with tenderer etc.) or any contact with one or more tenderers during the tendering procedure (except for the regular procedure of answering enquiries). • Independent evaluation of tenders. No person involved in the evaluation of tenders should have any contract or relation to tenderers, as defined in the previous point. • Signing of statements of impartiality. The impartiality of individuals involved in the preparation or implementation of tendering procedure can be guaranteed by signing statements,

		<p>where these individuals are confirming absence of any relation or connection to potential tenderers. The Contracting Authority could draft own statements or use EU standard statements. The individuals signing the statements should legally be held responsible for the statement.</p>
	<p>General compliance with the EU External Aid provisions</p>	<p>The Contracting Authority should ensure general compliance with EU External Aid provisions in line with the Annex IV to the EU financed Grant contracts and PRAG Manual. The general guidance is as follows:</p> <ul style="list-style-type: none"> • Avoiding splitting of tender. The tenders in the process of secondary procurement should not be split to avoid application of higher level procurement procedure. Similar types of supplies, services and works should be joined and tendered under one procedure. Exceptions should be generally avoided but are possible in some cases, depending on type of contract: are possible only in the following cases: <ul style="list-style-type: none"> - Timing. When services/supplies/works are required at different stages of the project the contract could be split. - Type. When there is clear difference in nature and type of the contract – services, works, supplies. - Nature. Splitting could be done even within one type of contract when completely different type of services, supplies or works is under question (could not be supplied from one contractor). Alternatively tendering procedure could be split by lots, allowing different companies bidding and winning in different lots. • Application of EU visibility guidelines. Having in mind the fact that the grant contracts are financed from EU funds and that general guidance for visibility are given on the grant contract level, the Contracting Authority in secondary contracts should make sure that the EU visibility guidelines continue to be respected in secondary contract. This can be applied by introducing specific provision into the tender documentation and contracts on secondary procurement level (possibly by annexing EU visibility guidelines). • Rule of nationality and origin. The EU rules for implementation of External Aid are stipulating rules for nationality of experts and origin of good purchased. The nationality rule defines legal and natural persons who can take place in procedures. Participation is open to persons from member-states and states specifically covered and/or allowed by financial regulation. The rule of origin defines where the supplies purchased or installed should origin – in the concrete case from EU countries or other eligible countries as defined by the programme.
	<p>Document track</p>	<p>The Contracting Authority should ensure that clear document track is available to confirm implementation of their tendering procedures. Upon eventual inspections or control from the Management Authority it should be clearly visible how procedure was implemented, on the basis of supporting documents. The Contracting Authority should file minimum the following:</p>

		<ul style="list-style-type: none"> • Tender documentation or applicable. Tender documentation on the basis of which the procedure was implemented should be kept on file. If not available (in single offer procedures), specifications, enquiry from the Contracting Authority or similar should be kept on file. • Proofs of publication. Copies of publications in media or other proof should be kept on file in case of open procedures. In case of competitive or single offer procedures, proofs of communication (on sending the enquiry) should be kept. • Any correspondence with the tenderers. In case of enquiries from the tenderers, those and answers provided by the Contracting Authority should be kept on file. • Evaluation reports, including offers. Any reports or notes on evaluation and selection of offers should be kept on file. A copy of each offer as provided by the tenderers should also be kept. • Contracts with the successful tenderers. All contracts within the secondary procurement procedures should be kept on file. If not available (in case of single procedures), other proofs should be filed (confirmation of tenderer on accepting tender conditions). <p>Following the provisions for EU External Aid financing, all documentation should be kept in archives 7 years after the implementation of respected procedure.</p>
Service Contracts	Minimum required documents	<p>The Contracting Authority needs to provide within each procedure Tender Documentation which will clearly present:</p> <ul style="list-style-type: none"> • Type, number and specifics of services required in the tendering procedure; • Specifics and conditions of each tendering procedure, including conditions for participation; • Procedures for selection of successful tenderer; • Conditions for implementing the services tendered. • Format of offer to be submitted by each tenderer, including description of any supporting documentation if needed. The conditions and formats should strictly prevent any change in documents at later stage (after the deadline for submission) of the tenderers' offers.
	Description of services (Terms of Reference)	<p>Description of services required represents the basis for tendering procedure. The Contracting Authority needs to present in details type, scope and specifics of services it requires in order to:</p> <ul style="list-style-type: none"> - Enable the tenderers to provide quality offers; - Implement transparent procedure, offering all tenderers equal chances for success; - Avoid any misunderstanding in the implementation phase and fully meet the objectives of the secondary procurement procedure. <p>The Description of services required by the Contracting Authority will include minimum the following information:</p> <ul style="list-style-type: none"> • Publication of maximum budget available for the services. In

		<p>order to avoid the prices exceeding normal market standards, the Contracting Authority should implement an initial analysis and estimation of the market prices. The maximum size of the contract would be published openly as reference to the tenderers.</p> <ul style="list-style-type: none"> • Background information or context of the project. The background information will enable tenderers to better understand what is required from them. For instance in case of training services the overall context and purpose of training would give tenderers additional explanations and idea, in addition to description of activities to be implemented and results to be delivered. • Description of results to be delivered by the Contractor. The Contracting Authority needs clearly and exhaustively present the results expected within a service contract. The results defined in the description of services will represent a benchmark for checking the quality and scope of services in the implementation phase. Whenever possible the results need also to be presented by quantity indicators. • Description of activities to be implemented by the Contract. The Contracting Authority needs to present in details the activities it expects in delivery of results as described in previous points. The description of activities could include specific methodology or any requirements to be used by the Contractor. The activities need to be described in logical and transparent way with clear connection to results and other elements of the Description of services. • Logistical details. The Contracting Authority needs to provide description of any logistical details important in delivery of services. Such logistical details include: duration of services, location of services, commencement date etc. • Inputs required. In addition to the description of results expected, the tenderers need to be presented with the requirements as regards the expected inputs. The Contracting Authority needs clearly to describe any inputs it expects on the way of delivery of services. The inputs provided by the Contractor could also represent a benchmark in measuring the level of success of a Contract. <p>NOTE: Clear and transparent description of inputs required is particularly important in service contracts which are based on the number of experts and their working days ('fee-based' contracts, contrary to 'global price' contracts which are based only on final result required). In this case the Contracting Authority needs to describe number of experts required, number of working days per expert and profile of experts. The Contracting Authority needs to make sure that the number, type of experts and their inputs correspond to the results and activities required. In addition to this the Contracting Authority needs to ensure that the description of profile of experts does not represent limiting or restrictive factors, preventing fair competition.</p>
	Conditions of tender	The conditions of tender define who can participate in the tendering procedure, in what way the tenders need to be prepared, conditions for selection and any other important information.

		<ul style="list-style-type: none"> • Conditions for participation. The Contracting Authority needs to define under which conditions tenderers can participate in the procedure. The conditions could describe: legal form of tenderers, technical and financial capacity of tenderer, nationality of tenderer, eventual restrictive status, such as blocked accounts, bankruptcy, history of non payment of taxes or legal previous or current proceedings against the tenderer. In case of competitive procedure it needs to be specifically stated if participation is “open to invited entities only”. • Procedures for application. Procedures for application describe in what way the tenderer needs to apply. The Contracting Authority is expected to prepare a format of offer to be filled in by the tenderer. Any additional documentation, such as: proofs on references or legal status, statements or description of experts, proofs on fulfilling the conditions of tender, can be required. The Contracting Authority needs to describe in what way and to which address the tenders need to be submitted, as well as deadlines for submission. • Additional information from Contracting Authority. The Contracting Authority should enable the tenderers to ask for additional clarifications before the deadline for submission of their tenderers. The Contracting Authority needs to describe in the tendering documentation, where and in what way such additional information can be obtained. In this process the transparency and free flow of information need to be respected, meaning that all potential tenderers need to be provided with the same level of information. • Selection procedure. The Contracting Authority needs to present to the tenderers in what way the tenders will be evaluated and what will be the evaluation criteria. The criteria need to be transparent and will in no way be altered during the procedure.
	Conditions for implementing services – draft contract	<p>The Contracting Authority needs to present the tenderers with conditions under which their tasks will be implemented.</p> <p>The conditions for implementation are presented in the service contracts and in its annexes. The provisions of the contract are presented in details in the specific section “Contracts” below.</p>
	Format of offer to be submitted by each tenderer	<p>The offers from the tenderers should be received in standardised form, allowing the Contracting Authority to transparently compare them.</p> <p>The offers from the tenderer are describing in what way the services will be implemented. The document will form an integrative part of the service contract and will serve as benchmark for measuring success of the contract. The Contracting Authority should present the tenderers with a standard format of offer to be submitted, which will include minimum the following elements:</p> <ul style="list-style-type: none"> • Identification of tenderer. The standard submission form should include details on the tenderer, including address, contact telephones, e-mail and name of responsible person. • Acceptance of conditions of procedure. The tenderers should clearly state and confirm with their signatures that they agree with

		<p>conditions of the tendering procedure and will not have any complaints in that respect at later stage.</p> <ul style="list-style-type: none"> • Statement on delivery of services, unconditionally and in scope described. The tenderers should state that they confirm unconditionally delivery of services as described in description of services. • Statement on the status of tenderer. In particular when supporting documents and proofs (on non-bankruptcy, payments of taxes or similar) are not required, the tenderers should be provided with format statement, stating that they are not in any of the situations preventing them to participate in the procedure. • Description of services to be provided. Tenderers should be provided by a format for description of services to be provided. The tenderers should describe their methodology as response to the Description of services required. If nomination of experts is required the tenderers should provide description of experts, either as part of overall description or separate annexes (CVs). • Statements of Availability and Exclusivity of Key Experts should be provided. To make sure that engagement of the experts will be as defined in the Contractor's offer, the Contracting Authority should provide standard formats of statements of availability and exclusivity of key experts. The requirements would normally be participation of experts in only one tender and commitment for the duration of the contract.
	Financial offer	The tenderer should clearly state the price for services to be delivered. Following Annex IV the financial offer should be provided as a separate document (to be sent in a closed envelope) since the award decision depends on combination of price and technical score.
Supply contracts	Minimum required documents	<p>The Contracting Authority needs to provide within each procedure Tender Documentation which will clearly present:</p> <ul style="list-style-type: none"> • Type, number and specifics of supplies required in the tendering procedure; • Specifics and conditions of each tendering procedure, including conditions for participation in the tendering procedure; • Procedures for selection of successful tenderer; • Conditions for implementing the supplies tendered. • Format of offer to be submitted by each tenderer, including description of any supporting documentation if needed. The conditions and formats should strictly prevent any change in documents at later stage (after the deadline for submission) of the tenderers' offers.
	Description of supplies (Technical specifications)	<p>Description of supplies required represents the basis for tendering procedure. The Contracting Authority needs to present in details type, number and specifics of supplies it requires in order to:</p> <ul style="list-style-type: none"> - Enable the tenderers to provide quality offers; - Implement transparent procedure, offering all tenderers equal chances for success;

		<ul style="list-style-type: none"> - Avoid any misunderstanding in the implementation phase and fully meet the objectives of the secondary procurement procedure. <p>The description of supplies required by the Contracting Authority will include minimum the following information:</p> <ul style="list-style-type: none"> • Technical specifications of supplies required. Technical specifications are the key element in a supply tendering procedure. In the technical specification the Contracting Authority needs to present exactly what type of equipment it needs. Technical specifications could be particularly demanding in complex supply tenders. The Contracting Authority needs to be aware that the technical specifications represent a point where possible restrictive conditions can appear in a tender. Therefore the technical specifications should be broad enough to allow access to a number of potential tenderers. Narrow specifications or naming brand names is not allowed. <p>NOTE: In case of supplies the maximum price is not published in advance (difference from service contracts).</p> <ul style="list-style-type: none"> • Number of supplies required per each item. Description of supplies required should include detailed indication of number of supplies per each specific item. The Contracting Authority could allow, within the contract conditions, to increase or decrease the number of units before signature of the contract or during the project implementation. • Place and timing of delivery of supply. Description of supplies should include indication where and when the supplies need to be delivered. Specific requirements for the delivers could be indicated (INCOTERMS etc.). • Additional services required. Within supply contract the Contracting Authority to acquire additional services such as installation of supplies or training for use of supplies. The type and scope of these additional services need to be clearly presented as a part of description of supplies needed, allowing the tenderer to submit their technical offer. • Spare parts or other materials required. The Contracting Authority has also possibility to ask for spare parts and other materials if needed. They also need to be clearly indicated, in type and amount, in description of supplies needed. • Details of warranties and after sales service. The description of supplies should include warranty conditions and requirements for after sales services.
	Conditions of tender	<p>The Contracting Authority needs to define basic conditions under which tenderers can participate in tendering procedure. Failure to fulfil or accept the tendering conditions should result in exclusion of concerned tenderer from further competition.</p> <ul style="list-style-type: none"> • Conditions for participation. The Contracting Authority needs to define criteria under which the tenderers can participate in the procedure. The criteria could describe: legal form of tenderers, technical and financial capacity of tenderer, nationality of tenderer,

		<p>eventual restrictive status, such as blocked accounts or bankruptcy, history of non payment of taxes or legal previous or current proceedings against the tenderer.</p> <ul style="list-style-type: none"> • Procedures for application. Procedures for application describe in what way the tenderer needs to apply. The Contracting Authority is expected to prepare a format of offer to be filled in by the tenderer. <p>Any additional documentation, such as: proofs on references or legal status, proof or description of technical capacity, proofs on fulfilling the conditions of tender, can be required.</p> <p>The Contracting Authority needs to describe in what way and to which address the tenders need to be submitted, as well as deadlines for submission.</p> <ul style="list-style-type: none"> • Additional information from Contracting Authority. The Contracting Authority should enable the tenderers to ask for additional clarifications before the deadline for submission of their tenders. The Contracting Authority needs to describe in the tendering documentation, where and in what way such additional information can be obtained. In this process the transparency and free flow of information need to be respected, meaning that all potential tenderers need to be provided with the same level of information. <p>Particularly in case of complex supply tenders, the Contracting Authority might decide to organise a clarification meeting or/and site-visit. In this case the information about the venue and time of such event needs to be widely published.</p> <ul style="list-style-type: none"> • Selection procedure. The Contracting Authority needs to present to the tenderers in what way the tenders will be evaluated and what will be the evaluation criteria. The criteria need to be transparent and will in no way be altered during the procedure.
	<p>Conditions for delivery of supplies – draft contract</p>	<p>The Contracting Authority needs to present to the tenderers under what condition their tasks will be implemented.</p> <p>The conditions for delivery are presented in the supply contracts and in its annexes. The provisions of the contract are presented in details in the specific section ‘Contracts’ below.</p>
	<p>Format of offer to be submitted by each tenderer</p>	<p>The offers from the tenderers should be received in standardised form, allowing the Contracting Authority to transparently compare them.</p> <p>The offers from the tenderer are describing in what way the supplies will be implemented. The document will form an integrative part of the supply contract and will serve as benchmark for measuring success of the contract. The Contracting Authority should present the tenderers with a standard format of offer to be submitted, which will include minimum the following elements:</p> <ul style="list-style-type: none"> • Identification of tenderer. The standard submission form should include details on the tenderer, including address, contact telephones, e-mail and name of responsible person. • Acceptance of conditions of procedure. The tenderers should clearly state and confirm with their signatures that they agree with conditions of the tendering procedure and will not have any

		<p>complaints in that respect at later stage.</p> <ul style="list-style-type: none"> • Statement on delivery of supplies, unconditionally and in scope described. The tenderers should state that they confirm unconditionally delivery of supplies as described in their description of supplies. • Statement on the status of tenderer. In particular when supporting documents and proofs (on non-bankruptcy, payments of taxes or similar) are not required, the tenderers should be provided with format statement, stating that they are not in any of the situations preventing them to participate in the procedure. • Description of supplies to be provided. Tenderers should be provided by a format for description of supplies to be provided. The tenderers should be able to present the specifics of the supplies they are offering as response to the Description of supplies. • Requirement to provide a tender bank guarantee. In larger and more complex tenders the tenderers could be asked to provide a tender guarantee in the amount between 1 and 2 % of the budget for supply. The Contracting Authority should in this case provide example or indication on the format of the guarantee. The guarantee could be integral part of the tenderers offer.
	Financial Offer	<p>The tenderer should be given opportunity to transparently and clearly present the financial offer for supplies required by the Contracting Authority. The easiest way to enable this is to provide a format of financial offer. Following Annex IV the financial offer should be provided as a separate document (to be sent in a closed envelope) since the award criterion is a combination of price and technical score.</p>
Works contracts	Minimum required documents	<p>The Contracting Authority needs to provide within each procedure Tender Documentation which will clearly present:</p> <ul style="list-style-type: none"> • Type, number and specifics of works required in the tendering procedure; • Specifics and conditions of each tendering procedure, including conditions for participation in the tendering procedure; • Procedures for selection of successful tenderer; • Conditions for implementing the works tendered. • Format of offer to be submitted by each tenderer, including description of any supporting documentation if needed. The conditions and formats should strictly prevent any change in documents at later stage (after the deadline for submission) of the tenderers' offers.
	Description of works (Technical specifications)	<p>Being the most complex procedure of the three, the Contracting Authority needs to put special attention in presenting conditions of the works tender. It needs not only to present in details type and scope of works to be implemented, but to have in mind also potential unexpected situations or events. The description of works needs to be presented in a way to:</p> <ul style="list-style-type: none"> - Enable the tenderers to provide quality offers; - Implement transparent procedure, offering all tenderers equal

		<p>chances for success;</p> <ul style="list-style-type: none"> - Avoid any misunderstanding in the implementation phase and fully meet the objectives of the secondary procurement procedure. <p>The description of works required by the Contracting Authority will include minimum the following information:</p> <ul style="list-style-type: none"> • Technical specifications of works required. Technical specifications are the key element in a works tendering procedure. They define the characteristics required of a product, service or material or work which the Contracting Authority is requiring. They can also define characteristics like: environmental performance, accessibility for disabled, quality level, safety or dimensions and similar. <p>As with the supplies the Contracting Authority should make sure that the technical specification of works required would not result in limiting competition within the tendering procedure.</p> <p>NOTE: In case of works the maximum price is not published in advance (difference from service contracts).</p> <ul style="list-style-type: none"> • Scope of works required. The description of works should include clear indication as for what scope of works are required. The scope of the works should make it clear what the physical boundary of the works is (e.g. exact points of connections to utility supplies, or exact boundary between works and supplies) In addition to that the description could include exact indication what type of materials and products is expected to be used/installed in the implementation of works. The scope of works could normally increase in case of unpredicted situations. • Work design and building permit. The description of works should indicate whether work design and building permit would eventually be required from the Contractor (or is provided by the Contracting Authority). • Type of the contract. The description of works should indicate whether the contract will be fixed price lump-sum or unit price remeasured. • Delivery conditions, after-sales services, installation. The description of works could include requirement for additional services or conditions of delivery. • Drawings or other information. The Contracting Authority should provide tenderers with any additional information describing type or scope of works. Such additional information could include status of land ownership, status of design, design approvals, construction permits, survey reports, drawings, brochures and references. • Details of Defects Liability Period required. The description of works should indicate details on the defects liability period and related requirements from the Contractor.
	<p>Conditions of tender</p>	<p>The Contracting Authority needs to define basic conditions under which tenderers can participate in tendering procedure. Failure to fulfil or</p>

		<p>accept the tendering conditions should result in exclusion of concerned tenderer from further competition.</p> <ul style="list-style-type: none"> • Conditions for participation. The Contracting Authority needs to define criteria under which the tenderers can participate in the procedure. The criteria could describe: legal form of tenderers, technical and financial capacity of tenderer, nationality of tenderer, eventual restrictive status, such as blocked accounts or bankruptcy, history of non payment of taxes or legal previous or current proceedings against the tenderer. • Procedures for application. Procedures for application describe in what way the tenderer needs to apply. The Contracting Authority is expected to prepare a format of offer to be filled in by the tenderer. <p>Any additional documentation, such as: proofs on references or legal status, proof or description of technical capacities, proofs on fulfilling the conditions of tender, can be required.</p> <p>The Contracting Authority needs to describe in what way and to which address the tenders need to be submitted, as well as deadlines for submission.</p> <ul style="list-style-type: none"> • Additional information from Contracting Authority. The Contracting Authority should enable the tenderers to ask for additional clarifications before the deadline for submission of their tenderers. The Contracting Authority needs to describe in the tendering documentation, where and in what way such additional information can be obtained. In this process the transparency and free flow of information need to be respected, meaning that all potential tenderers need to be provided with the same level of information. <p>Particularly in case of complex works tenders, the Contracting Authority might decide to organise a clarification meeting or/and site-visit. In this case the information about the venue and time of such event needs to be widely published.</p> <ul style="list-style-type: none"> • Selection procedure. The Contracting Authority needs to present to the tenderers in what way the tenders will be evaluated and what will be the evaluation criteria. The criteria need to be transparent and will in no way be altered during the procedure.
	<p>Conditions for implementing works – draft contract</p>	<p>The Contracting Authority needs to present to the tenderers under what condition their tasks will be implemented.</p> <p>The conditions for delivery are presented in the works contracts and in its annexes. The provisions of the contract are presented in details in the specific section ‘‘Contracts’’ below.</p>
	<p>Format of offer to be submitted by each tenderer</p>	<p>The offers from the tenderers should be received in standardised form, allowing the Contracting Authority to transparently compare them.</p> <p>The offers from the tenderer are describing in what way the works will be implemented. The document will form an integrative part of the works contract and will serve as benchmark for measuring success of the contract. The Contracting Authority should present the tenderers with a standard format of offer to be submitted, which will include minimum the following elements:</p>

		<ul style="list-style-type: none"> • Identification of tenderer. The standard submission form should include details on the tenderer, including address, contact telephones, e-mail and name of responsible person. • Acceptance of conditions of procedure. The tenderers should clearly state and confirm with their signatures that they agree with conditions of the tendering procedure and will not have any complaints in that respect at later stage. • Statement on delivery of works, unconditionally and in scope described. The tenderers should state that they confirm unconditionally delivery of works as described in their description of works to be implemented. • Statement on the status of tenderer. In particular when supporting documents and proofs (on non-bankruptcy, payments of taxes or similar) are not required, the tenderers should be provided with format statement, stating that they are not in any of the situations preventing them to participate in the procedure. • Description of works to be implemented. Tenderers should be provided by a format for description of works to be provided. The tenderers should be able to present the specifics of the works they are offering as response to the Description of works. Depending on complexity of works Contract the standard format for submission of offer could include: <ul style="list-style-type: none"> - Information on capacities of tenderer and its technical equipment, - Suggested methodology for implementation of works, - Any comments to the presented requirements, - Detailed bill of quantities (document in which materials, parts and labour are itemized) with list and specifications of all materials to be used and any other inputs required, - Any other documentation, like drawings, certificates, brochures. • Requirement to provide a tender bank guarantee. In larger and more complex tenders the tenderers could be asked to provide a tender guarantee in the amount between 1 and 2 % of the budget for the works. The Contracting Authority should in this case provide example or indication on the format of the guarantee. The guarantee could be integral part of the tenderers offer.
	Financial Offer	The tenderer should be given opportunity to transparently and clearly present the financial offer for works required by the Contracting Authority. The easiest way to enable this is to provide a format of financial offer. Following Annex IV the financial offer should be provided as a separate document (to be sent in a closed envelope) since the award criterion is a combination of price and technical score.
SELECTION PROCEDURE		
General issues	Procedure	Following the submission of the offers by the tenderers the Contracting Authority should organise evaluation to select the best offer to be awarded the contract.

		<p>The procedure of selection of the successful tenderer must be implemented in transparent way, with main steps in procedure presented to the applicants in the tendering documentation.</p> <p>Since following the Annex IV the selection criteria is always combination of technical quality and price (keeping financial offers closed until financial part of the evaluation) it does not make sense to organise public opening sessions.</p> <p>Details on the selection procedure are in any case mentioned in a specific document provided by INTERACT ENPI – Procurement matrices for Belarus, Ukraine and Moldova in the Section 4 of this Guide.</p>
	Evaluation committee	The Contracting Authority formally nominates the evaluation committee which implements selection procedure. Normally an odd number of evaluation committee members would be nominated (minimum 3). The evaluation committee members should poses solid level of competencies in the matters concerned and should be absolutely impartial and independent from any tenderer.
	Evaluation criteria	<p>The evaluation criteria, based on which the selection of the successful tenderer will be implemented, must be based on transparent criteria, which will by no meaning restrict or limit possibilities of one or more tenderers.</p> <p>The evaluation criteria would normally be presented to the tenderers in advance in the tendering documentation and should not be changed during the procedure.</p>
	Transparency, impartiality and confidentiality	<p>The Contracting Authority should ensure complete transparency of the selection procedure. This will be achieved by defining procedure and criteria in advance and respecting them throughout the selection procedure. Equal treatment and approach needs to be taken towards all tenderers, without favouring or restricting one or more tenderers. Decisions within the selection committee should be taken, if possible, by consensus or by majority of votes.</p> <p>The Contracting Authority should make sure that the evaluation is implemented by competent professionals, without any relation or attachment to the tenderers. This include personal ties and business interest.</p> <p>Impartiality of the evaluators should be demonstrated by signature of dedicated statements, stating that the evaluators are not in any conflict of interest before, during or after the selection procedure. The statements should also enforce confidentiality of the process – information about the selection procedure should not be disclosed outside of procedural frame.</p> <p>To ensure confidentiality and impartiality the evaluation sessions should be organised in camera. The documents should in principle be locked in safe place and should not be taken from the location of the evaluation.</p>
	Document track	To enable future insight into selection, the whole procedure needs to be registered. The Contracting Authority will make sure that the reports are

		<p>prepared registering all on-goings in the selection procedure. The reports will be prepared in a form allowing insight to potential audits from the Managing Authority or EU.</p> <p>Copies of offers received in the tendering process, correspondence with tenderers and declarations of impartiality by the evaluators should also be kept on file.</p>
Services		<p>The selection procedure for services would normally be implemented in three steps:</p> <ul style="list-style-type: none"> • Formal check. The formal check would include opening, registration of the received tenders and checking of administrative requirements (number of copies, presence of required documents etc.). Only the tenderers successfully passing the first step should qualify for further evaluation. • Technical evaluation. Technical evaluation would review the technical aspects of tenderer's offer against the terms of reference. Implemented on the basis of pre-defined criteria, the technical evaluation would review: organisation and methodology, time aspects and quality of experts engaged. Technical score is given to each tender in the technical evaluation. • Financial evaluation. In case of service contracts the final score would normally be a combination of price and technical score. Financial evaluation will therefore follow the technical evaluation. Financial offers (delivered in separate envelopes) will be opened and checked. Financial scores would be given to each tender. Any offer exceeding maximum budget presented in the tender documentation will be automatically excluded. • Final decision. The final decision will be result of technical and financial evaluation. The final score will be a combination of price and technical score. The final score is calculated on the basis of pre-defined ratio. • Communications. Upon completion of the evaluation process, the decisions are communicated to the successful and unsuccessful tenderers.
Supply		<p>The selection procedure for supplies would normally be implemented in three steps:</p> <ul style="list-style-type: none"> • Formal check. The formal check would include opening, registration of the received tenders and checking of administrative requirements (number of copies, presence of required documents etc.). Only the tenderers successfully passing the first step should qualify for further evaluation. • Technical evaluation. Technical evaluation would review the technical aspects of tenderer's offer against the technical specifications, resulting in technical scores for each tender. The Contracting Authority has option to publish technical scores prior to opening financial offers. • Financial evaluation. The financial evaluation will be implemented following the technical evaluation. The financial offers (delivered in separate envelopes) would be opened, checked. A financial score would be given to each tender.

		<ul style="list-style-type: none"> • Final decision. The selection is based on a combination of price and technical score. The final score is calculated based on pre-defined ratio. • Communications. Upon completion of the evaluation process, the decisions are communicated to the successful and unsuccessful tenderers. If the procedure required tender guarantees, they are returned to unsuccessful tenderers.
Works		<p>The selection procedure for works would normally be implemented in three steps:</p> <ul style="list-style-type: none"> • Formal check. The formal check would include opening, registration of the received tenders and checking of administrative requirements (number of copies, presence of required documents etc.). Only the tenderers successfully passing the first step should qualify for further evaluation. • Technical evaluation. Technical evaluation would review the technical aspects of tenderer's offer against the technical specifications, resulting in technical scores for each tender. The Contracting Authority has option to publish technical scores prior to opening financial offers. • Financial evaluation. The financial evaluation will be implemented following the technical evaluation. The financial offers (delivered in separate envelopes) would be opened, checked. A financial score would be given to each tender. • Final decision. The selection is based on a combination of price and technical score. The final score is calculated based on pre-defined ratio. • Communications. Upon completion of the evaluation process, the decisions are communicated to the successful and unsuccessful tenderers. If the procedure required tender guarantees, they are returned to unsuccessful tenderers
CONTRACTS		
General provisions applicable to all types of contracts	Structure of the contract	<p>The contract could consist of a standard form of General Conditions of Contract amended by a relatively short Contract (Special Conditions of Contract) and of annexes which provide further details on the subject of the contract.</p> <p>The annexes will provide detailed description of the services/supplies/works and will also further clarify procedural matters. The annexes should directly follow the tender documentation used in the tendering procedure. The offer provided by the tenderers should serve as a basis for some of the Annexes – description of services/supplies/works. Procedural details and conditions described in the tendering process should not be altered and should be without changes transferred to the contract.</p>
	Full delivery	<p>The most critical point in the contract is to ensure that the roles and responsibilities of the parties are defined. The main Contracting Authority obligation is to pay the Contractor (and in the case of works to provide the Site). The main Contractor's obligation is to ensure the</p>

		<p>services, supplies or works will be fully delivered as expected by the Contracting Authority.</p> <p>To achieve that a detailed, transparent and clear description of the subject of the contract should be provided.</p> <p>It would be advisable to indicate a briefly the subject in the main text of the contract and provide detailed description in annexes. The annexes to the contract could include the Client's ToR/Technical Specification and the tenderer's technical and financial offers provided in the tendering process.</p>
	Dispute settlement	<p>Each contract should include provision for resolving any disagreements resulting from the contractual relation between the Contractor and the Contracting Authority.</p> <p>It would be advisable to use formulation that <i>'any disagreements resulting from the contract, which cannot be settled, will fall under jurisdiction of the national/district court (choose applicable as per country)'</i></p> <p>The provisions for dispute settlement should be provided in the main text of the contract.</p>
	Annexes to the contract	<p>Annexes to the contract (or Special Conditions) should provide further clarification of the contract subject.</p> <p>The main text of the contract could be relatively short, with details provided in the annexes.</p> <p>The annexes include the following:</p> <ul style="list-style-type: none"> • Any further clarifications of contractual conditions (either in form of special conditions or other appropriate form). In addition to the main text of the contract, the Contracting Authority could include further details of the contract. Such conditions would complement the basic text of the contract and would be provided as a separate annex. They would include: detailed provisions and conditions on implementation of the contract, detailed conditions of payment, detailed conditions for reporting, conditions for amendment or termination of the contract, provisions for guarantees. • Conditions of the tender. The original terms of reference (in service contracts) or technical specifications (in supply and works contracts), design documentation and bill of quantities (in works contracts) describing requirements of the contract could be annexed to the contract. • Detailed description of the subject of the contract. In order to avoid failure of delivery the subject of the contract has to be described transparently and in sufficient details. In addition to the Terms of Reference / Technical specifications as described in the previous point, the Contractor's offer should be attached as an annex to the contract. • Detailed indication of financial conditions. The contract has to clearly indicate amount and breakdown of costs. The Contracting authority could use as annex to the contract the financial offer provided by the Contractor. • Samples and formats. Contract could include additional annexes if necessary. If reporting or guarantees are planned by the contract,

		the Contracting Authority should provide the Contractors with appropriate formats.
Service contracts	Finances – schedule of payment	<p>Depending on the type of the services required the Contracting Authority could opt for partial prepayment of the services. In case of significant amount (the Contracting Authority to decide the threshold) the prepayment should be secured by a financial guarantee. The Contractor should receive additional payments following the dynamics of the project. Nevertheless a proportion of funds should be kept as final payment after the conclusion of the contract. The payment requests (except for the initial pre-payment) should be supported by documents proving reality and justification of costs.</p> <p>The basic indication of the payment schedule should be provided in the main text of the contract, with details (conditions for payments, eventual guarantees) provided in contract annexes.</p>
	Finances – Maximum size of the contract	<p>The contract should include a formulation that the price provided by the Contractor in the financial offer or agreed in the negotiation process will be the maximum amount to be received by the Contractor.</p> <p>The contract price should not include taxes (excluded following Programme provisions in ENPI CBC).</p>
	Obligations of the Contractor	<p>The contract should describe obligations of the Contractor. The following elements should not be missed:</p> <ul style="list-style-type: none"> • Full delivery of services. The contract should clearly state that the full delivery of described services will be required. Eventual conditions or provisions for exceptions should be described. The basis for delivery of services is full implementation of described results and activities (in global price contracts) or full engagement of required resources (in fee-based contracts). • Fair and transparent conduct. The contract should clearly state that the Contractor will respect all legal conditions and obligations applicable for the type of the contract implemented. The Contractor should not violate standards of professional conduct or rights of employees and eventual third parties involved in the implementation of the contract. The services should be implemented in line with market standard expenses, with all incurring costs being transparent and provable. <p>The contract should include provision that the Contracting Authority cannot be held responsible for any damage incurred to the Contractor in the implementation of the contract or any damage made to the third bodies.</p> <ul style="list-style-type: none"> • Conflict of interest, secrecy, data protection. The Contractor should throughout the contract avoid conflict of interest and, in line with the type of services, be in line with standard and legally binding provisions for professional secrecy and data protection. • Records by the Contractor. The contractor should be required to keep any records related to the implementation of the contract at least 7 years after the conclusion of the contract. The records will above all include: financial documents, time-sheets proving engagement of experts, any products produced within the project and visibility materials.

		<p>The document records by the Contractor should be available for inspection by the Contracting Authority or its representatives (in the context of EU projects including EU institutions, Financial or Managing Authority).</p> <ul style="list-style-type: none"> • Reporting obligations. The contract should describe reporting obligations by the Contractor. Minimum final report should be asked in each contract, providing information about implemented tasks. In case of longer projects or interim financial payments, also periodical/interim reports should be provided. The reports should provide details on the narrative and financial part of the project. Required formats should be described or even provided in draft format as an annex to the contract.
	Obligations by the Contracting Authority	The Contracting Authority is on the other hand obliged to supply the Contractor with any documents and information necessary, assist them with the local regulations and issue payment as defined in the contract.
	Nature of services	<p>Nature of services should be described in sufficient details to allow unquestionable and transparent implementation of task.</p> <p>A brief indication of the services should be provided in the main text of the contract. Further details should be described in an annex to the contract. The most straightforward way is to include as the annex the description of services as provided by the contractor in its offer.</p>
	Performance of the contract	<p>The provisions for performance of the contract should be described. They should include minimum the following:</p> <ul style="list-style-type: none"> • Provisions for monitoring and control. The contract should include provision regulating monitoring and control over the project. In principle the project has to be at any time available for inspection by the Contracting Authority or its representatives. The Contracting Authority should have access and insight into financial documents and records of the Contractor. An independent audit of project accounts (covered by the Contractor, implemented by external independent auditor) could be enforced in larger contracts. • Amendments of the contract. Amendments of the contract should be allowed only in exceptional cases. Such cases should be defined in the contract and they include: objective situations outside of influence of the Contractor, force majeure or additional requirement by the Contracting Authority. The following options for the amendments of the contract could be considered: <ul style="list-style-type: none"> - Extension of the contract. In justified cases of delays (for instance in case of seasonal nature of activities) the contract could be prolonged. However the duration of the secondary contract cannot exceed the duration of the grant contract. - Amendment in results in activities. In exceptional cases (for instance change of conditions outside of the influence of the Contractor or Contracting Authority) the activities and/or results of the contract could be altered. - Replacement of personnel. In duly justified cases, where the originally proposed expert is no longer capable of implementing the tasks, an appropriate replacement could be provided. The replacement expert should have minimum the same knowledge, experience and expertise as the original

		<p>expert.</p> <p>The amendments of the contract should not result: in significant changes of the results or activities, increase of contract amount or changing the conditions that led to the award of the contract.</p> <ul style="list-style-type: none"> • Recovery of funds. The contract should include an option for recovery of funds from the Contractor in the following cases: if the services were not fully implemented, if records are not complete or accurate, in case of serious breach of contract conditions from the side of the Contractor. • Conditions for guarantees, if applicable. In case of service contracts the guarantees are limited to pre-financing guarantee – financial guarantee to secure payments from the Contracting Authority. Conditions of the guarantees should be described in the contract. • Ownership of the results. The results of the contract, including copyright of intellectual property rights will be the ownership of the Contracting Authority. <p>* - if local legislation on intellectual property rights states differently, than this provisions could be amended.</p>
	Annexes	<p>A typical service contract would include the following annexes:</p> <ul style="list-style-type: none"> • Conditions of the tender. The original terms of reference, describing requirements of the contract could be annexed to the contract. • Description of services. In addition to the terms of reference, the Contractor’s description of services to be provided (organisation and methodology) as provided in the offer should be annexed to the contract. • Financial offer. The contractor’s financial offer in the tendering phase would normally become an annex to the contract. Depending on the type of the contract, the annex would provide total price for services requested (global price) or detailed breakdown of inputs required/provided (fee based contracts). • Detailed contractual conditions. The contracting conditions as described above under sections Obligations of the Contractor, Nature of services and Performance of the contractor, would be provided either as ‘special conditions to the contract’ or separate annex in appropriate form and content. • Other formats and forms. Any other forms or samples (for instance format reports) would be provided as annexes to the contract.
Supply contracts	Finances – schedule of payment	<p>In supply contracts the Contracting Authority would normally provide the Contractor with a pre-payment to be paid soon after signature of the contract. The remaining payment would be provided after execution of contract / delivery of supplies. The pre-payment, particularly when amounts are larger, should be covered by a financial guarantee.</p> <p>The basic indication of the payment schedule should be provided in the main text of the contract, with details (conditions for payments, eventual guarantees) provided in contract annexes.</p>
	Finances – Maximum size of	<p>In case of supply tenders the Contracting Authority could opt for possibility to increase or decrease of quantities and value of the supplies</p>

	the contract	<p>tendered. The option should normally be used only in duly justified cases.</p> <p>Following this a provision could be included in the contract (annexes) that the Contracting Authority reserves right to vary the quantities and value of the contract up-to certain percentage (normally 20-25%). Conditions and methods for implementation of such variations should be added.</p> <p>The contract price should not include taxes (excluded following Programme provisions in ENPI CBC).</p>
	Obligations of the Contractor	<p>The contract should describe obligations of the Contractor. The following elements should not be missed:</p> <ul style="list-style-type: none"> • Full delivery of supplies. The contract should clearly state that the Contractor will be required to fully deliver the supplies as indicated in its technical proposal. In addition the contract should state that the Contractor will provide necessary equipment, supervision, labour and facilities required for implementation of tasks. <p>The typology of supply contract might require installation, training, warranties or post-sales services. The contract should clearly state the conditions for these services. The same goes for delivery of spare parts and/or materials.</p> <ul style="list-style-type: none"> • Quality of supplies. The contract should clearly state that the contractor will be require to implement the contract with due care and diligence at all phases. <p>The quality of supplies and materials needs to be in line with the technical specifications as indicated in the technical offer of the Contractor. The contract should include provisions for inspection by the Contracting Authority.</p> <ul style="list-style-type: none"> • Origin of supply. The supplies financed from the EU contracts must, except when derogations are approve, origin from the EU or eligible countries. The origin is to be documentary proved. The contract should clearly state the requirements of origin. • Fair and transparent conduct. The contract should clearly state that the Contractor will respect all legal conditions and obligations applicable for the type of the contract implemented. The Contractor should not violate standards of professional conduct or rights of employees and eventual third parties involved in the implementation of the contract. The supplies should be provided in line with market standard expenses, with all incurring costs being transparent and provable. <p>The contract should include provision that the Contracting Authority cannot be held responsible for any damage incurred to the Contractor in the implementation of the contract or any damage made to the third bodies.</p> <ul style="list-style-type: none"> • Conflict of interest, secrecy, data protection. The Contractor should throughout the contract avoid conflict of interest and respect provisions for secrecy and data protection. • Records by the Contractor. The contractor should be required to keep any records related to the implementation of the contract at least 7 years after the final payment in the contract. The records will include financial documentation and copies of certificate of

		origin for the equipment supplied. The document records by the Contractor should be available for inspection by the Contracting Authority it its representatives (in the context of EU projects including EU institutions, Financial or Managing Authority).
	Obligations by the Contracting Authority	The Contracting Authority is on the other hand obliged to supply the Contractor with any documents and information necessary, assist them with the local regulations and issue payment as defined in the contract.
	Nature of supplies	The contract should list the supplies to be delivered, with their quantity and technical specifications. General description of supplies to be provided should be described in the main text of the contract, with additional details (technical specifications, description of any additional services required) available in annexes. The technical offer, as submitted by the beneficiary in the tendering phase, can be directly used as an annex to the contract.
	Performance of the contract	<p>The provisions for performance of the contract should be described. They should include minimum the following:</p> <ul style="list-style-type: none"> • Provisions for inspection and testing. The Contracting Authority should be allowed to inspect, examine, measure and test the components or materials of supplies being delivered. The Contractor should allow the testing at any time, during usual business hours. • Acceptance. The contract should define in what way the Contracting Authority will confirm that the supplies have been delivered as stipulated in the contract. There are normally two steps in this process: <ul style="list-style-type: none"> - Provisional acceptance. Provisional acceptance is done when the supplies are delivered by the Contractor and have successfully passed the required tests. The Contracting Authority issues a certificate of provisional acceptance. - Final acceptance. Final acceptance is done after the expiry of a warranty period, when eventual defects or damages are rectified. The Contracting Authority issues the certificate of final acceptance. <p>Only when the final acceptance is done, the contract is considered completed.</p> <ul style="list-style-type: none"> • Amendments of the contract. Amendments of the contract should be allowed only in exceptional cases. Such cases should be defined in the contract and they include: objective situations outside of influence of the Contract, force majeure or additional requirement by the Contracting Authority. The following options for the amendments of the contract could be considered: <ul style="list-style-type: none"> - Extension of the contract. Contract could be extended in cases: where additional supplies are ordered by the Contracting Authority, where weather conditions are not allowing installation, where the Contracting Authority failed to fulfil its obligations, in case of force majeure. If the reason for delays is sole responsibility of the Contractor a contractual fine could be introduced in the contract. The extension of the secondary contract cannot exceed duration of the cover grant contract. - Amendment in supplies delivered. The Contracting Authority

		<p>could reserve right to vary (increase or decrease) the amount of supplies delivered and contract price for certain percentage. In case of utilisation of such option, the Contractor should be informed in well time.</p> <ul style="list-style-type: none"> - Suspension. The Contracting Authority could reserve right to suspend the supplies. The suspension should be opted only in exceptional and well justified cases. The procedure should be well defined including compensation to the Contractor. - Termination of the contract. In case of serious breach of the contractual conditions by the Contractor, the Contracting Authority could terminate the contract, without financial consequences. The Contractor could on the other hand terminate the contract if the Contracting Authority fails to fulfil its obligations. <ul style="list-style-type: none"> • Conditions for guarantees. In case of supply contracts the following guarantees could be stipulated: <ul style="list-style-type: none"> - Pre-financing guarantee. In case of higher amounts/percentages of pre-payment, a guarantee could be asked to cover this pre-payment (pre-financing guarantee could cover entire amount of pre-financing). - Performance guarantee. A guarantee should be asked to cover full and proper execution of the contract. In case of smaller supplies (depending on the risk assessment) such guarantee could be waived. Performance guarantee would normally be between 5 and 10 % of the contract value.
	Annexes	<p>A typical supply contract would include the following annexes:</p> <ul style="list-style-type: none"> • Conditions of the tender. The original tender documentation, describing requirements of the contract could be annexed to the contract. • Description of supply – technical specification. The description of supplies needs to be provided in details to guarantee full delivery. Normally the Contractor’s technical offer in the tendering phase could be directly taken as the annex. • Financial offer. The contractor’s financial offer in the tendering phase would normally become an annex to the contract. The annex would provide the breakdown of costs per supply items and costs of any other services asked (training, installation, post-sales services). • Detailed or special contractual conditions. The contracting conditions as described above under sections Obligations of the Contractor, Nature of services and Performance of the contractor, would be provided as separate annex to the contract. • Other formats and forms. Any other forms or samples (for instance format guarantees) would be provided as annexes to the contract. •
Works contracts	Finances – schedule of payment	<p>The contract would normally allow certain percentage of pre-financing. Other financial instalments (interim payments) would be allocated in line with the type and dynamics of the project. Interim payments would normally be subject to retention (usually 10%) with the retained sum</p>

		<p>only being returned at Final Acceptance following satisfactory completion of a defects liability period.</p> <p>Basic indication of the payment schedule would be provided in the main text of the contract, with further details (conditions for payments, accompanying documentation, guarantees etc.) provided in annexes.</p>
	Finances – Maximum size of the contract	<p>The price of the contract, as indicated in the Contractor's offer in the tendering phase, will be:</p> <ul style="list-style-type: none"> - the final price (in the case of lump sum contracts). - the total of the multiple of the estimated quantities and the final unit rates (in the case of unit price contracts) <p>It is assumed that the Contractor has familiarised himself with the conditions on site and will therefore not be entitled to price changes.</p> <p>In any case the contract price could include contingency reserve (provisional sum) which would be used for variations or modifications issued by the supervisor in the case of unforeseen or exceptional events or additional works or changes required by the Contracting Authority. The conditions for application of contingency reserve are to be defined in the tender documentation and in conditions of the contract.</p> <p>The contract price should not include taxes (excluded following Programme provisions in ENPI CBC).</p>
	Obligations of the Contractor	<p>The contract should describe obligations of the Contractor. The following elements should not be missed:</p> <ul style="list-style-type: none"> • Full implementation of works. The contract should clearly state that the Contractor will be required to fully implement the works as indicated in its technical proposal. In addition the contract should state that the Contractor will provide all personnel, equipment and materials necessary for implementation of works. • Superintendence of works. The contract should indicate that the Contractor will superintend the works to guarantee that the works are implemented in satisfactory manner. • Quality of works. The works components and materials will correspond to the descriptions provided in the technical offer of the Contractor. The contract should include provisions for acceptance, testing and inspection by the Contracting Authority. • Origin. All goods purchased from the contract must have EU or eligible countries' origin. The origin is to be documentary proved. • Fair and transparent conduct. The contract should clearly state that the Contractor will respect all legal conditions and obligations applicable for the type of the contract implemented. The Contractor should not violate standards of professional conduct or rights of employees and eventual third parties involved in the implementation of the contract. The works should be implemented in line with market standard expenses, with all incurring costs being transparent and provable. <p>The contract should include provision that the Contracting Authority cannot be held responsible for any damage incurred to the Contractor in the implementation of the contract or any damage made to the third bodies.</p> <p>The contract should include provisions related to the Contractor's staff. The contractor should be obliged to regularly pay its staff salaries and all</p>

		<p>related costs.</p> <ul style="list-style-type: none"> • Conflict of interest, secrecy, data protection. The Contractor should throughout the contract avoid conflict of interest and respect provisions for secrecy and data protection. • Records by the Contractor. The contractor should be required to keep any records related to the implementation of the contract at least 7 years after the final payment in the contract. The records will include financial documentation and copies of certificate of origin. The document records by the Contractor should be available for inspection by the Contracting Authority its representatives (in the context of EU projects including EU institutions, Financial or Managing Authority). • * The contractor could also be asked to provide design of works prior to implementation (design and works contracts)
	Obligations by the Contracting Authority	The Contracting Authority is on the other hand obliged to supply the Contractor with any documents and information necessary, assist them with the local regulations including Permission for Construction and issue payment as defined in the contract. In addition, being owner of the building site, the Contracting Authority should arrange access to the Contractor through the duration of the contract.
	Nature of works	<p>The contract should clearly describe the subject. In case of works this will include engagement of staff, equipment, materials and supplies to be installed etc.</p> <p>The subject of the contract should be briefly indicated in the main text of the contract, with detailed description provided in annexes.</p>
	Performance of the contract	<p>The provisions for performance of the contract should be described. They should include minimum the following:</p> <ul style="list-style-type: none"> • Supervision. The contract should defined conditions for engagement of a supervisor from the side of the Contracting Authority. The supervisor's responsibilities will be control and monitoring of works, maintaining work register where proceedings and extraordinary situations are registered, reporting to the Contracting Authority and authorisation of payments. The works progress reports by the supervisor will be the basis for monitoring of the project by the Contracting Authority. • Provisions for inspection and testing. The supervisor shall be entitled to inspect, examine, test and measure materials, components and workmanship and check the progress. The supervisor should establish if the mentioned is in line with the requisite quality and quantity. <p>Supervisor will made acceptance of materials and components delivered to the site. A possibility to reject materials and components of inadequate quality or quantity should be indicated in the contract.</p> <ul style="list-style-type: none"> • Acceptance. The contract should define in what way the Contracting Authority will confirm that the works have been concluded. This is normally done by the following steps: <ul style="list-style-type: none"> - Provisional acceptance. Provisional acceptance will be done when the works have successfully passed test on completion. The certificate on the provisional acceptance is issued by the Supervisor. Usually some minor defects that do not impede the

		<p>Contracting Authority's use of the infrastructure remain at this stage.</p> <ul style="list-style-type: none"> - Final acceptance. Upon expiry of defects liability period, when all defects or damages have been rectified, the final acceptance is made. The certificate on the final acceptance is issued by the Supervisor. • Amendments of the contract. Amendments of the contract should be allowed only in exceptional cases. Such cases should be defined in the contract and they include: objective situations outside of influence of the Contract, force majeure or additional requirement by the Contracting Authority. The following options for the amendments of the contract could be considered: <ul style="list-style-type: none"> - Extension of the contract. Contract could be extended in the following cases: exceptional weather conditions, obstructions of physical conditions, failure of the Contracting Authority to fulfil obligations or in case of force majeure. In case of delays which are sole responsibility of the Contractor, a contractual fine (liquidated damages) could be enforced in the contract. Usually the total value of these fines would not exceed 10% of the total contract value. Duration of the secondary contract cannot exceed duration of the cover grant contract. - Amendment in works implemented. The Contracting Authority and Contractor could agree on amendments of works implemented. The amendments should be justified. In case of additional requirements by the Contracting Authority, the price of works could be increased accordingly (if this option is allowed in the contract). Amendment of the contract would normally be formalised only by the supervisor. - Suspension. The Contracting Authority could reserve right to suspend the works in case some of the conditions are not met. The suspension could lead to termination of the contract if it lasts longer periods. In case of suspension due to Contractors performance or fraud, the Contract should not be entitled to compensation. - Termination of the contract. The Contracting Authority might terminate the contract if the Contractor: fails to carry out works or comply with notifications, becomes bankrupted or incapable of implementing tasks, fails to provide guarantees or is in any other serious breach of contract. On the other hand the Contractor may terminate the contract in case when the Contracting Authority fails to fulfil its obligations. • Conditions for guarantees. In case of works contracts the following guarantees could be stipulated: <ul style="list-style-type: none"> - Pre-financing guarantee. The prepayments within the contract would be normally secured by a correspondent guarantee. - Performance guarantee. The contractor should be enforced to provide a performance guarantee to secure sound and timely implementation of works. - Retention guarantees. A certain percentage of the contract price should be secured by retaining a portion from each interim payments (usually 10%). A retention guarantee can be
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		submitted by the Contractor in place of actually retaining sums of money. This guarantee would be issued for the cases where the Contractor fails to correct defects within the defects liability period.
	Annexes	<p>A typical works contract would include the following annexes:</p> <ul style="list-style-type: none"> • Conditions of tender. The original tender documentation, describing requirements of the contract could be annexed to the contract. • Description of works – technical specification. The description of the works needs to be provided in details to guarantee full delivery. Normally the Contractor’s technical offer in the tendering phase could be directly taken as the annex. • Financial offer. The contractor’s financial offer (based on bill of quantities in the case of unit price contracts and a price schedule in the case of fixed price lump sum contracts) in the tendering phase would normally become an annex to the contract. The annex would provide the breakdown of costs per items: labour, materials and equipment. • Design documentation (drawings). Any other documentation providing details on the assignment should be attached to the contract. Design documentation will either be taken from original tender documentation or from the Contractor’s offer. • Detailed or special contractual conditions. The contracting conditions as described above under sections Obligations of the Contractor, Nature of services and Performance of the contractor, would be provided as separate annex to the contract. • Other formats and forms. Any other forms or samples (for instance format guarantees) would be provided as annexes to the contract.

CONCLUDING REMARK

The Guide on procurement will be periodically updated also taking into account the changes in the regulatory framework and the feedback from the users of the Guide.

USEFUL LINKS

PRAG:

http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/index_en.htm

EU Customs web site (more details on rule of nationality and origin):

http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/index_en.htm



INTERact

Sharing Expertise ENPI CBC

<http://www.interact-eu.net/enpi>

