

Annex M – List of lessons learned in procurement (to be updated yearly)

1. Introduction

Any (big) project is always exposed to certain risks. In other words, there are many things that could go wrong. The detailed project planning, choosing the procedure and preparing the tender specifications stage is the right time to consider potential risks.

There are two basic risk management methods to be used at the stage of preparing the technical specifications:

- critical analysis of the project (tender) documentation, possibly by a person not involved in the earlier stages of preparation of the project; and
- feedback from implementation of previous projects (“lessons learned”).

2. Planning procurement procedures

(a) Regular updates on any changes related to the procurement planning

Planning of a project starts already at the time of establishing the detailed procurement plan. Since there are several actors involved in the process (from the project manager, his/her hierarchical supervisor, and procurement, legal and to the authorising officer) it is of utmost importance to provide regular updates on any changes related to the procurement planning (e.g. delays, postponement, obsolete needs, new needs identified, etc.) since this has an effect on the work processes and its timing.

(b) Respecting deadlines set in the detailed procurement plan

The deadline(s) for submitting the tender specifications to the procurement cell set in the detailed procurement plan need to be strictly followed. Any delays in submitting the tender specifications have a ‘domino’ effect on other procedures as well due to tight schedule

(c) No need for a new FWC if the same subject matter is already covered by another existing FWC

Note that as a matter of principle, to ensure transparency and sound financial management, a framework contract should not be envisaged if the same subject matter is already covered by another existing framework contract (inter institutional or not) to which the contracting authority has access.

3. Establishing the contract value

(a) Note to the file establishing the contract value

Prior to the launch of the procedure the project manager shall establish the contract value and justify/explain this in a note to the file (Art. 169 RAP).

(b) How to establish the contract value

The estimated value is based on the total volume of the services / supplies /works to be purchase for the full duration of the intended contract including all options, phases or possible renewals. It must be calculated without VAT. It includes the total estimated remuneration of the contractor, including all types of expenses (for instance, travel and subsistence expenses). Please bear in mind that the value is the basis for the choice of procedure.

(c) How not to establish the contract value

The estimated value of a contract may not be established in such a way as to avoid the competitive tendering procedure or to circumvent the rules which apply to certain procurement procedures or above a certain threshold. Nor may a contract be split for that purpose.

4. Drafting tender specifications

(a) Key principles to be followed when drafting tender specifications

- Be open and transparent – allow tenderers to understand what you are going to do and how you are going to do it.
- Be objective and ensure equal treatment of tenderers – allow all tenderers a fair and equal chance of winning the contract.
- Be consistent – do what you said you were going to do.
- Further, for departments considering launching a procurement procedure, the first step is to determine the characteristics of the contract, i.e. its subject, duration and value.

(b) Time needed for drafting tender specifications

The tender specifications describe what the contracting authority is going to buy. The quality of the description determines not only the quality it will get, but also the price that it will pay. Therefore, it is essential that sufficient time is spent on drafting the technical specifications.

Project managers should envisage sufficient time for the revision and the approval of the tender specifications by his/her hierarchical supervisor; this step comes before the draft tender specifications are submitted for revision and approval prior to launching the procedure.

From the day the draft tender specifications are submitted for revision and approval prior to the launch (revisions are done by procurement, legal and the authorising officer) it takes min. 47 calendar days (based on previous experience with procedures).

(c) Setting objectives and define services in the tender specifications

The tender specifications must be comprehensive, clear and precise. They define, lot by lot where appropriate, the characteristics required of supplies, services or works, taking into account the purpose for which they are intended by the contracting authority.

In cases where objectives and description of services and/or tasks (just to name a few) are not sufficiently defined and clear, this leads to several revisions of tender specifications (in

principle there should be only two rounds of revisions; after the 2nd round the tender specifications are rejected and need to be rewritten by the project manager).

All comments and adjustments proposed by the procurement and/or legal need to be taken into account and properly addressed (either the text is modified, added etc. or the project manager provides a justification as to why a comment is not addressed).

(d) Distinction between selection and award criteria

Confusing selection and award criteria constitutes a procedural defect which is likely to result in the procedure being annulled in the event of a dispute. As a matter of fact, the confusion could favour certain economic operators at the detriment of others regardless of the quality of their technical offer. This has been confirmed by the case-law of the Court (C-31/87 Beentjes, § 15-16; C-315/01 GAT §65-67; C-532/06 Lianakis, §30-32; T-39/08 European Dynamics, § 21-24 and 40-42).

Qualification and experience of staff assigned to performing the contract should be used as a selection criterion only and not as an award criterion. This applies also to CVs, profiles, qualifications (education, background), skills (language, IT, other), experience, expertise, knowledge (of the subject, of languages...), familiarity (with the subject), resources (human, technical), technical ability, references (list of previous contracts), examples of previous deliverables, etc. All these represent the capacity of the tenderer to provide the services/supplies. Further, during contract performance, a change in the staff assigned to performing the contract, even if justified (by e.g. sickness or change of position), would call into question the conditions of award of the contract, thereby creating legal uncertainty.

(e) Setting technical and professional capacity

Article 148(2) RAP provides an exhaustive list of possible documents, several of which relate to supplies or works contracts, but it is not obligatory to request them all. Only the documents necessary to check the criteria (and minimum levels) indicated in the tender specifications should be requested. Generally, it is recommended to have the following:

- Criteria and minimum levels on services (or supplies) provided in the last three years, and request the list of these projects;
- Criteria and minimum levels of qualifications and professional experience of the person(s) directly involved in delivering the service (usually not applicable for supplies), and request the corresponding CVs.

5. Launching the procurement procedure

- (a) Once the procurement procedure was launched the project manager shall be available, on short notice, to provide additional information for the purpose of clarifying the nature of the tender specifications. The Procurement Cell shall forward the questions to the relevant project manager, and the project manager shall provide replies to the Procurement Cell in the shortest possible time (i.e. in max 3 calendar days).
- (b) In case of request for the tender specifications to be provided in another official language, the translation must be provided within 6 working days. A request for translation is not as such a ground for extending the deadline for receipt of tenders but the receipt date should be postponed by at least the number of days of delay if the translation is not provided within the 6 working days.

6. Evaluation of tenders

- (a) Evaluators should read and understand fully the procurement documents (including possible corrigenda, additional information and all questions and answers) before the evaluation starts.
- (b) Evaluators should respect an evaluation schedule (meetings, deadlines).
- (c) Evaluators should know the difference between selection and award criteria.
- (d) Evaluators should know that criteria cannot be modified and that tenders must be assessed against the tender specifications but not compared with each other, etc.
- (e) Evaluators may evaluate the technical offer without having access to the financial offer, in order not to be influenced by the price in the technical award criteria.
- (f) When tenders are evaluated by a committee, there is no specific role of the members of the evaluation committee since this is not foreseen in the legislation.
- (g) Individual assessment sheets are provided to ease and frame the work of the evaluators. These should be considered as working documents only. They are not part of the evaluation report and are not attached to it.
- (h) Evaluation should start with agreeing comments on each criterion of each tender, and marks will follow. It is always easier to accept a modification of initial comments than initial marks.
- (i) The discussion between evaluators should enable to reach a consensus opinion on each criterion of each tender (no voting, no average!).
- (j) The evaluation report should be drafted during the evaluation meetings to ensure consensus on the comments. The text should also be checked to ensure the use of neutral language and the full coherence of the comments and marks for each tender and between the tenders.

7. Contract management and amendments to contracts

- (a) Delay in the implementation of a contract may lead to a delay in launching a new procedure for a new contract, especially when the results of the delayed contract implementation are needed for launching a new procedure. Such cases have also an implication on the budget consumption and might lead to losing the funds planned for the project.

8. Others

- (a) The project manager shall, prior to launching a new procedure, when performing a risk assessment, also envisage a possibility that no eligible or no tenders are received and therefore plan the procedure early enough to have sufficient time to launch a new procedure.