

Seminar

"Water in EU External Action Instruments"

PRAG 2016 and upcoming changes

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CONTEXT OF THE REVISION

Revision 2016:

Objectives:

- Alignment with revised FR-RAP, which are adjusted to Dir. 2014/24/EU on public procurement.
- Adaptation to the Early Detection and Exclusion System, EDES.

Scope:

- PRAG 2016 extended to mixed interest contracts

EDES (Early Detection and Exclusion System):

- Replaces EWS + CED
- Early detection of risks for EU financial interests
- Facilitates exclusion and financial penalty
- No contract can be concluded with entities recorded in EDES *at exclusion level*
- When entities are recorded *at early detection level* monitoring will be strengthened during the execution of the contract
- Entities are notified prior to be recorded and can request what data are contained in the database

2 CHANGES

Exclusion and sanctions (I):

- *exclusion* max 5 years (*financial penalty* 2 % to 10 % of the total value – unchanged)
- *new grounds*: terrorism, child labour, human trafficking, irregularity
- *definitions*: professional misconduct, criminal activities, serious breach of contract, irregularity, distortion of competition
- exclusion and penalties published on Commission website
- *remedial measures* avoid rejecting a candidate in case of potential distortion of competition

Exclusion and sanctions (II):

- NEW centralised *panel* in adversarial procedure + *EDES*
- When a situation of exclusion is not established by a final judgement or administrative decision the recommendation of an independent panel is needed.
- The evaluation is not suspended. If the contract is to be awarded to the entity/person concerned, the award of the contract will be suspended until the panel has issued its decision.

Selection criteria:

- *Technical/Professional capacity:* reference period
 - Services/Supply 5 years (3y for rapid evolution)
 - Works 8 years (5y for rapid evolution)
- *Economic/Financial capacity:*
 - Annual turnover = max. twice estimated annual budget of the contract
 - Current ratio: calculation for non-profit entities
- Specific criteria may be defined when a tendered is awarded several *lots*

Evidence:

- New *declaration of honour* on exclusion and selection criteria
- ESPD (European Single Procurement Document) as of mid-2016 (dir. 2014/24/EU)
- When no evidence of capacity is provided, no pre-financing can be granted

Subcontractors

- subcontractor: *an economic operator who is proposed by a candidate or tenderer or contractor to perform part of a contract. It has no direct legal commitment with the contracting authority*
- Third entities which implement part of the project are subcontractors
- Experts in service contracts may be subcontractors

Crucial tasks may not be subcontracted

Negotiated procedures:

- revised list and new cases: *legal/financial services, loans, ICT services, IOs*
- extension only covers repetition of existing activities
- no more limitation to 100% initial amount/duration
- possible waiver of evaluation committee for urgency, extensions, supplies on commodity market, legal services

Modify contracts by simple addendum:

- complementary activities up to 50% amount
- unforeseen circumstances up to 50% amount
- increases in the amount by 10% of the initial contract for services and supplies, and by 15% for works
- non-substantial changes when enforcing contractual clauses (eg. price revision)

✓ *New notice published on EUOJ for major addenda*

Extension of contracts at a glance

	2015	2016
Repetition of same activities as in the original contract	Negotiated procedure <100% initial amount&duration (additional activities)	(i) Addendum <50% initial amount (unforeseen circumstances) (ii) Negotiated procedure >50% initial amount (existing activities)
Activities other than those already included in the contract	Negotiated procedure <50% initial amount (complementary activities and unforeseen circumstances)	Addendum <50% initial amount (complementary activities)

Evaluation (service contracts):

- *Wider range for scoring from 60% to 100%*
- *Flexible allocation of points*
O&M/key-experts: 60/40 > 40/60
- *Technical evaluation pass mark: 75*

Award:

- *Revised award criteria for supply and works:*
 - Emphasis on maintenance costs or other components of the price
 - Exceptional use of best price-quality ratio
- *New template of award decision*

Electronic means:

- Increase the use of electronic means:
 - publication of notices
 - tender dossier
 - outcome of the procedure

Verifications:

- Supporting documents can be kept for verification purposes both in original and copy

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CHANGES IN GRANT CONTRACTS

Changes in GRANT contracts:

- Possibility to include a portion of costs related to shared field offices under certain conditions.
- Depreciation, leasing or rental of equipment and supplies introduced as eligible costs.
- Adaption of contract to new EDES system.

Changes in GRANT contracts:

- Cases of termination of contract and administrative sanctions adapted to revised FR/RAP.
- Amount accepted in the contract as Simplified Cost Options cannot be challenged during implementation (message reinforced)

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UPCOMING CHANGES

2018: NEW FINANCIAL REGULATION

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- RAP to disappear, new structure
- Reduction of the mandatory content of Financing Decisions
- Abolishment of the D+3 !!
- Delegation Agreements implementing a FA would also benefit from D+3 abolishment
- Extension of administrative sanctions to other entities, such as subcontractors and capacity-providing persons
- Introduction of results-based financing for grant and CAs, financing on the basis of achievement of results measured through performance indicators

2018: NEW FINANCIAL REGULATION



- The no-profit rule in grants to be abandoned
- More flexibility in the use of simplified cost options above EUR 60.000 (no more College decision needed)
- "Indirect implementation" to replace indirect management, will be solely linked to the entity and not to the budget implementation tasks
- Possibility to rely on additional pillars, in particular of the organisation's cost structure
- Possible full scale Partner Country involvement in an action

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Q&A