



TESIM

Technical support to the implementation
and management of ENI CBC programmes

Questions and answers on procurement in ENI CBC programmes using PRAG

Update February 2023

DISCLAIMER

This **non-binding document** has been developed by the TESIM project. It does not necessarily reflect the views of the European Commission on the topic, and is presented to programme and project practitioners **for illustrative purposes only. It cannot be understood as a prior opinion** on the eligibility of the expenses incurred in the procurement procedures currently being prepared by the beneficiaries. **Neither TESIM experts nor the TESIM consortium members shall be held liable for its contents**, in particular as far as audit findings on the eligibility of expenditure are concerned.

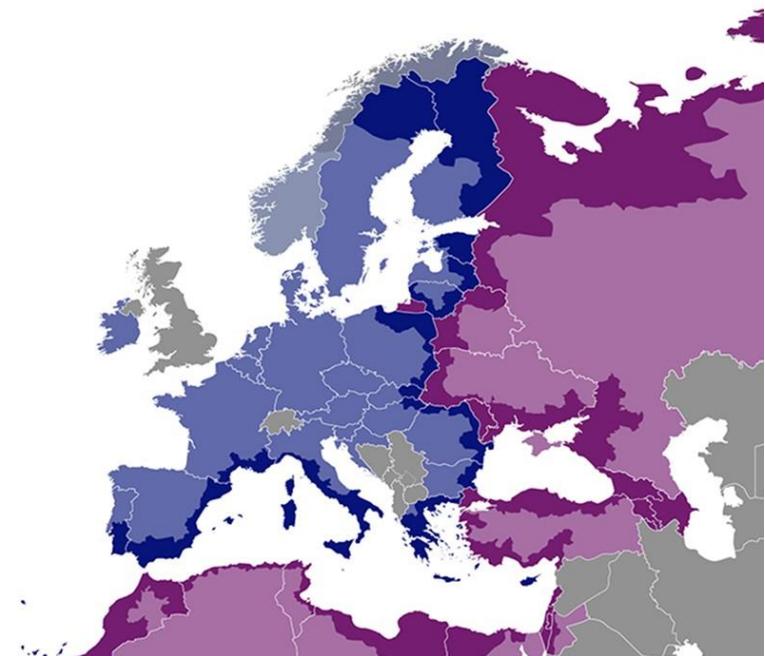


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Introduction

This document contains the questions received from ENI CBC beneficiaries participating in several programmes. Following the event held in January 2023 for the beneficiaries of the Romania-Republic of Moldova programme, you will find **new questions and answers** in this update, in particular **1.18, 3.22, 3.23** and **8.6 to 8.12**.

Even if some of the questions refer to a specific country, most answers are relevant regardless of the location and the programme. The document aims at supporting the beneficiaries using PRAG for their procurement. Most of them use TESIM guides on the use of PRAG adapted to ENI CBC.

Even though **the references to PRAG apply to the 2019 version**, please check which version is applicable in your case. The applicable version is usually the one in force at the moment of launching the call for proposal under which your project was approved. In other cases, the version in force at the moment of launching the procurement procedure is applicable.

Some of the questions received refer to the communication with the Delegations of the European Union, so an initial statement becomes necessary:

Any reference in PRAG to the Delegations of the European Union, the Publication Office, DG DEVCO or any EU/EC body or website have to be disregarded, except in the case of international open tenders. PRAG is designed for the use by the European Commission, so the internal procedures between EU/EC bodies and units are NOT APPLICABLE for project beneficiaries.

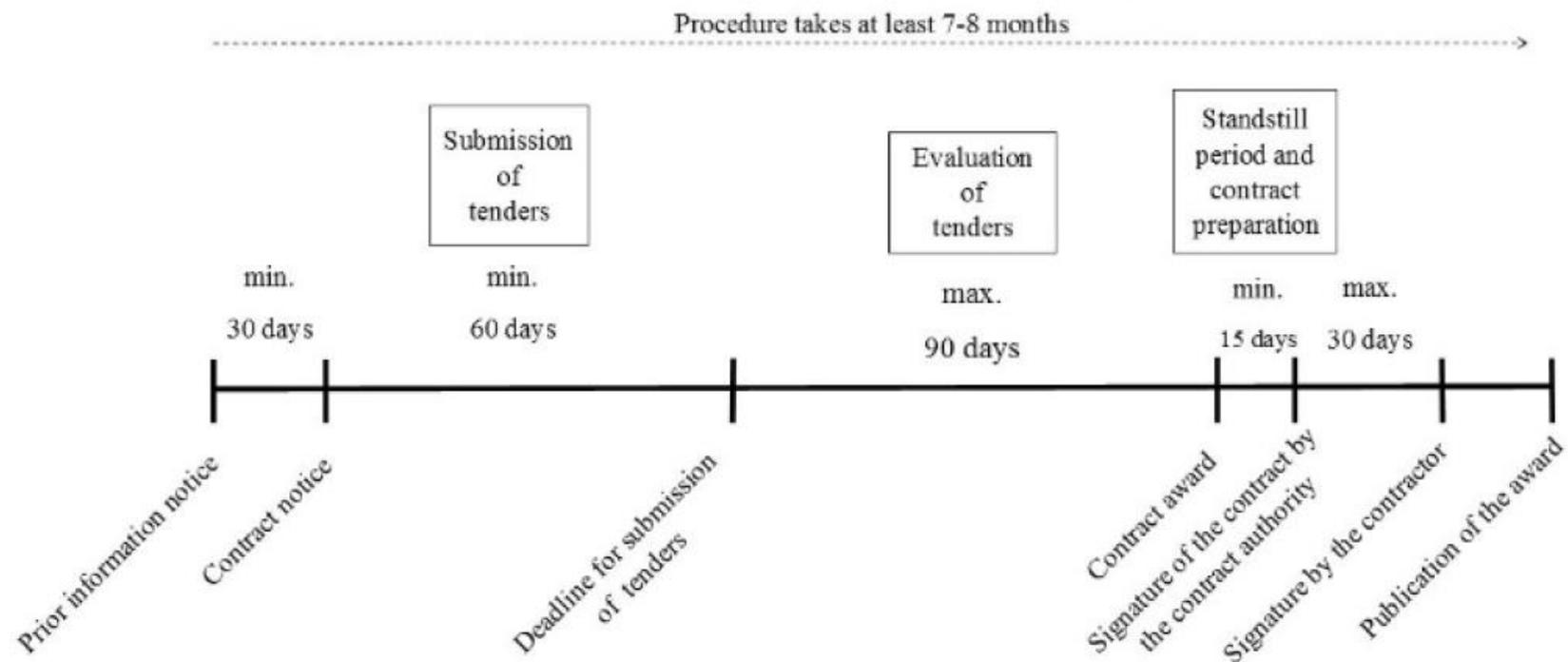
1. Which procedure to apply

#	Question	Answer
1.1	What procedure is applied to avoid splitting the acquisition object if the value of the work, goods and services within the acquisition object is 50/50?	<i>"For mixed contracts, covering a combination of works, supplies or services, the contracting authority determines the procurement thresholds and procedure to be used [...]. This determination is made on the basis of the main component (works, supplies or services) in terms of value."</i> (PRAG 2019 2.5.1). PRAG does not foresee that the value of different categories is split exactly 50/50; one of them must be the highest and prevail.
1.2	What is the type of procurement contract in case of infrastructure execution?	The main component of a tender procedure under the budget line for infrastructure is works. Nevertheless, a procedure organised in lots may be carried out or even a mixed procedure with works, supplies and/or services altogether. Please make sure to avoid artificial split when establishing the procurement procedure.
1.3	How to ensure publication in the programme area? Will the programme bodies publish the tender on the programme website?	When the procedure is an <i>"open tender in the programme area"</i> , you must ensure that the tender is publicized in the whole eligible area through <i>"appropriate media"</i> . The publication in the programme website is a complement to other media, but not necessarily the exclusive mean. You have to identify and justify the media used in accordance with the nature of the contract.
1.4	Which is the period from the publication of the contract notice and the submission of tender?	Regardless of the version of PRAG stipulated in your grant contract, we recommend to use the template a15 from PRAG

2019, even if it is not compulsory. An adaptation to ENI CBC is attached to this document.

See below a chart included in PRAG stipulating the timeline for international tenders for supplies. We may also check answer to question 3.18.

Timeline for an international open tender procedure for a supplies contract



1.5 Which are the deadlines for receiving offers in competitive negotiated procedures (known as

In the case of simplified procedure, for service contracts, "The chosen candidates must be allowed at least 30 days from the

	simplified procedure starting with the 2018 version of PRAG) and single tender?	<p><i>dispatch of the letter of invitation to tender to submit their tenders.</i>" (PRAG 3.5.2 for service contracts). The same deadline is stipulated for supplies (PRAG 4.5) and works (PRAG 5.6).</p> <p>In case of single tender procedure, the deadline is to be determined on a case-by-case basis (PRAG 2.6.8).</p>
1.6	When may we use the direct award procedure (payment against invoice)?	<p>For the amount of the procurement (service, supply, works) up to 2.500€¹, you can use the direct award, that is, the payment can be done against the invoice.</p> <p>Even though it is possible to accept payments up to 2.500€ against the invoice without prior formal acceptance of a tender, the beneficiary is highly recommended to have more than one offer (e.g., by e-mail or from internet). Otherwise, the beneficiary should provide an explanation of the reasons for the choice and how 'best value for money' or 'the lowest price' principles were observed.</p>
1.7	Regarding the single tender procedure, is it mandatory or recommended to have at least two offers to be evaluated?	<p>Even though the single procedure, as described in PRAG, allows inviting only one tenderer, some programmes have decided that at least two offers must be evaluated by the beneficiary in procurement procedures between 2,500 € and 20,000 €. Additionally, article 52.2(a) of the ENI CBC obliges that the contract is awarded to the tender offering best value for money, or as appropriate, to the tender offering the lowest price. Having</p>

¹ Applicable in all programmes, except for Latvia-Lithuania-Belarus, where the threshold for payment against invoice is 3.000€.

		<p>two offers will allow the beneficiary to justify more easily which award option was chosen and will also:</p> <ul style="list-style-type: none"> • increase openness of the procedure by increasing competition, • increase the possibility to get a better value for money. <p>If some invited tenderer is not able to submit an offer in time and you only have one tenderer, you may either award the contract to the received offer or extend the deadline and invite other tenderers, so you can evaluate two offers. We recommend the second option.</p>
1.8	<p>In terms of infrastructure, there are 3 separate budget lines with different amounts. Please tell us what procedure we must apply when launching separate tenders, if summarily to the infrastructure, we exceed the amount of 5,000,000 €, and separately for each objective, we can qualify for the procedure: Local AREA. We mention that one of the investment objectives is about 4,500,000 €.</p>	<p>The safest option would be an international tender with three lots, giving the option to the bidders to submit offer for one, two or the three lots. This way, you are sure that no later financial check or audit will question the type of procedure used.</p>
1.9	<p>What are the amounts of contracts (goods, services, works) for which a contract may be concluded on 3 offers</p>	<p>You may apply the competitive negotiated procedure (called simplified procedure in the later versions of PRAG) from 20.001€ to 299.999€ for services and works and from 20.001€ to 99.999€ for supplies.</p>
1.10	<p>May we apply national legislation concerning public procurement? Which is the legislation in force?</p>	<p>In accordance with the financing agreement signed between each partner county and the European Commission, the grant contracts may stipulate that PRAG is compulsory. In this case, the procedures and templates from PRAG must be used. The</p>

		<p>national legislation may apply for what is not regulated in PRAG, provided that there is no contradiction.</p> <p>You should also check the provisions of your grant contract.</p>
1.11	<p>Which are the conditions for changing the procurement rules in case of a single offer or repeated lack of offers?</p>	<p>There is no need to change the rules, as both scenarios are already foreseen.</p> <p>See Q&A 4.3 below for the case where only one offer is submitted. For the competitive negotiated procedure (simplified procedure) or single tender procedure, the contract may be awarded, but you can request more offers. In the case of open tender, if compliant, you must award it.</p> <p>You may apply the so-called “negotiated procedure”, as stipulated in section 2.6.8 in PRAG 2019, as this situation falls into the conditions stipulated in sections 3.3.5.1, 4.2.6.1 and 5.2.5.1.</p>
1.12	<p>Examples of division of procurement. If in the project budget I have separate budget lines for "Logistics services for Steering Committee meetings", "Logistics services for joint activities", "Event organization", and each of these lines are intended for room rent and coffee break organization, for the correct assessment of the procurement procedure to be applied, do I collect the amounts from all budget lines or not?</p>	<p>We recommend you to merge all the budget lines in one procurement procedure with different lots.</p>
1.13	<p>Is it enough for the direct procurement procedure (up to EUR 2500) to request only one offer?</p>	<p>You can request only one offer, even though we recommend to have more than one. We strongly recommend to justify in written the choice of the supplier.</p>
1.14	<p>The contracting authority should determine whether the subject matter of the contract constitutes a works, supply or service, in order to consider correct</p>	<p>The determination is made on the basis of which is the main component (works, supplies or services) in terms of value (PRAG 2.5.1). See Q&A 1.1.</p>

	thresholds in applying PRAG requirements. How is it possible in very specific cases of mixed contracts (supply + works, supplies+ services, works + services etc.) to determine the nature/type of the contract?	
1.15	Steps and procedures for conducting EU PRAG procurement for state / public institutions. Depending on the PRAG and the object of the purchase, please specify and nominate which set of EU documents is required and which are optional.	Please see TESIM's relevant documents, namely the Guide on procurement using PRAG and the Factsheet for public beneficiaries of your country (if it is applicable according to your programme rules).
1.16	If there is a repeated need for good / service in the same project, how do we proceed?	You must launch only one procurement procedure to avoid artificial splitting. You may organise it in lots, if it is more convenient.
1.17	If the project contains several budget lines in which, by detail, conference room rental services may be found (for example). How do we decide on the procedure to be applied for the purchase of these services? By adding up the amounts for the same type of services, or by taking into account only each budget line?	We strongly recommend that you organise the procurement procedure according to the nature of the services and not the budget lines, in order to avoid artificial splitting.
1.18	As a result of conducting a procurement procedure, regardless of its type, only one bid was submitted, however, better competition is desired in order to obtain more advantageous prices and the deadline for submitting bids is extended. If so, what is the extension period for submitting bids? Are there specific periods for each type of procedure?	It is not allowed to extend the date for submission after the deadline. If this one bid is compliant with the selection criteria, the contract must be awarded. If the bid is not compliant there are two options, either initiate a negotiated procedure or re-launch the tender.

2. Selection and award criteria

#	Question	Answer
2.1	<p>Where a general list of countries is indicated to comply with the rules of origin, please state if the countries identified below meet the PRAG requirements?</p> <p><i>"Countries from which the use of goods and materials is permitted are: EU members countries and ENI partner countries and territories (Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Republic of Moldova, Morocco, occupied Palestinian territory (oPt), Syria, Tunisia, Ukraine), Iceland, Lichtenstein, Norway."</i></p>	<p>Article 52.3 of the ENI CBC Implementing Rules (regulation 897/2014) stipulates that <i>"In all cases, the rules of nationality and origin set forth in articles 8 and 9 of Regulation 236/2014 shall apply."</i> This rule is also included in article 5 of the General Conditions of the Financing Agreements signed between the European Union and the CBC Partner Countries for the ENI CBC programmes.</p> <p>What does it mean in practice concerning origin?</p> <p>The above-mentioned articles mention that in the case of actions implemented under shared management with a Member State, as it is the case in the ENI CBC programmes, countries that are eligible under the rules of that Member State are also eligible, that is, there is no restriction in origin, as there is none in the legislation of the EU Member States hosting the ENI CBC Managing Authorities. However, some programmes stipulate some restrictions for procedures over 100.000€. Please check your grant contract and project implementation manual.</p>

3. Tender dossier and publicity of the procedure

#	Question	Answer
3.1	The works are divided in 11 lots: 10 similar work reconstruction and 1 construction. Should the tender be divided or should it be one?	If the works are of similar nature but, for example, they take place in different locations, we recommend to launch one single tender with 10 lots, in order to avoid artificial splitting. Adding the 11 th lot with the construction may simplify the procedure but, if the nature of the works is different from the other 10, it would not probably be considered as artificial splitting.
3.2	Is it possible to use the simplified tender dossier for works in an open tender in the programme area?	The simplified tender dossiers are foreseen for simplified procedure and single tender of a value between 2.501€ and 20.000€ . Do NOT use them for open tender procedure.
3.3	Could you consult us regarding the establishment of the type of contract (works) that would be better to apply: LUMP SUM contract or UNIT PRICE	PRAG foresees both types of contracts for works. The choice depends on the nature of the works to be carried out, so no general recommendation may be issued on this regard. The decision lies exclusively in the beneficiary.
3.4	Which currency to be used in the Contracts, Euro or national currency?	You can use both currencies, but we recommend to use Euro whenever possible. If the payment must be done in national currency, the currency of the contract is irrelevant as, in any case, the difference in the exchange rate will be the one between the day of payment and the date of the conversion to Euro for reporting purposes. We strongly recommend to keep the money in Euro until the day of payment to minimise the difference.

3.5	<p>It is not clear if the templates and forms are mandatory or not. As you know, the templates within the PRAG are recommended models and can be modified and adapted to the specific of the implemented procurement procedure. What is relevant and important in PRAG are the main principles, and not the templates themselves. This is why, we would like to ask you to let us know if, according to the Programme, the indicated templates within this Guide are mandatory as they are, or they are just recommended models and can be modified and adapted? The same question concerning to the templates attached to the TESIM's Guide.</p>	<p>Article 52.2 of the ENI CBC Implementing Rules (EC Regulation 897/2014) stipulates that tender documents must be drafted according to the best international practice. The practical guide on contract procedures for European Union external action (PRAG) is recognized as a best international practice in preparing and implementing procurement procedures.</p> <p>Annexes to the Guide on procurement using PRAG developed by the TESIM project establishes a balance between the necessary formal and legal requirements of the PRAG and the capabilities and interest of the project beneficiaries. The Guide is adapted to the concrete needs of the private non-profit organizations and it is structured by type of procedure. The templates in the Guide are a simplification of the PRAG ones and may be used as an alternative to PRAG templates, which are compulsory for more complex procedures. It is strongly advised to use the available mentioned documents.</p>
3.6	<p>TESIM Guide mentions: <i>“The recommended set of documents for evaluation is [...] We provide a set of recommended documents, but remember that the evaluation grid and the negotiation report for single tender are compulsory in any case”</i>. Which are the documents and reports to use for single tenders?</p>	<p>Please feel to use either the PRAG templates or the ones recommended in the Annex of the document.</p>
3.7	<p>When is the procurement notice for publication mandatory?</p>	<p>Contract notice (procurement notice) is compulsory for procurement procedures for contracts of:</p> <ul style="list-style-type: none"> • 100.000€ or more - for supplies

		<ul style="list-style-type: none"> • 300.000€ or more - for services and works. <p>Prior information notice is <i>mandatory / recommended</i> (depending on the applicable PRAG version) for procurement procedures for contracts of:</p> <ul style="list-style-type: none"> • 300.000€ or more - for services and supplies • 5.000.000€ or more - for works.
3.8	Is it compulsory to place a request for offers on the electronic platform of the national government? Should we register the contracts at the State Treasury?	You must use the national e-platform and the national registries when compulsory according to the national legislation. However, you must use PRAG procedures if compulsory according to the grant contract.
3.9	Which is the template for a standard contract?	There are different templates for services, supplies and works. You can find the templates for the contracts (Special Conditions, General Conditions and other annexes) in the PRAG web-site .
3.10	What guarantees must exist in a contract?	A performance guarantee is stipulated in the supply and work contracts. A financial guarantee is stipulated for pre-financing in service contracts. See the relevant provisions in the templates of the General Conditions and Special Conditions of the contracts, including regarding the exceptions.
3.11	Which is the meaning of the abbreviations used in PRAG, such as NEAR, FIDIC, CIR, EDF, IPA, INSC, EIDHR, OECD-DAC, ODA, ACP etc.?	<p>You can find the meaning of all of them, except FIDIC in the PRAG glossary (template 1a1_glossary_en.docx). The translation into Romanian of the ones relevant for ENI CBC is available in TESIM's glossary.</p> <p>FIDIC is the International Federation of Consulting Engineers, which sets international standards on construction.</p>

3.12	<p>How to ensure the publication of the tender procedure on the Europe Aid portal,</p> <p>NEIGHBOURPUB@ec.europa.eu, because according to Annex A 11e of 2020, local and international tenders must be published on the Funding&tender opportunities (Europe Aid) portal and the Official Journal of the EU.</p> <p>At the same time, to our address to publish on the europe aid website, we are directed to the EU Delegation in the Republic of Moldova, which in turn tells us that it is not responsible for our project.</p>	<p>Even though the grant contract stipulates that you must use chapters 2, 3, 4 & 5 of PRAG, you must skip any communication procedure with the EU Delegation. You must publish your international tender in TED, but you must do it directly, without any intermediation.</p>
3.13	<p>Explain how beneficiaries should ensure the simultaneous publication of notices of participation for some open procedures, while working hours, internal rules and / or publication rules are different in the Official Journal of the EU, the website of the EU, EuropeAid (EU Delegations in the Host Country), Program Website, Official Gazette, Public Procurement Bulletin, etc.?</p>	<p>You only need to ensure that the publication is made on the same day. Please indicate the relevant time zone.</p> <p>There is no need to publish in any of the EU web-sites, with the exception of the international tenders. See previous Q&A and box in the introduction.</p>
3.14	<p>Explain more clearly what the set of documents must be for each type of procedure and for each stage of the procedure: notice of participation / receipt of tenders / evaluation and award of contract / completion and payment of contract, in the light of the standard forms in Annexes A, B, C, D and E of PRAG</p>	<p>See in TESIM's guide the list of templates to be used for each type of procedure.</p>

3.15	For the direct procurement procedure (up to the value of 2500 euros) and for the procurement procedure with a single tender procedure (“Single tender procedure”), it is mandatory to publish an announcement, as specified in art. 9.3 of the grant contract for the programme <u>Romania-Republic of Moldova</u>?	No. The contract notice must be published only when required by PRAG procedure.
3.16	What documents (forms) are required for the completion of a “Single tender procedure” procurement file, according to the annexes of the PRAG Regulation?	You can find a “simplified tender dossier” in PRAG for service contracts (template b8o_simplified_en.zip). There is no such dossier for supplies and works. For those, you may use the ones provided in Annex 1 of TESIM's guide.
3.17	For the works contract, is it possible to have an amalgamation of all separate contracts (amount form different budget lines) where there is a functional and timing relationship between them?	We strongly recommend to merge the budget lines in one procurement procedure with lots in such situations.
3.18	Which is the “reasonable timing” for the publication of the tender invitation?	<p><i>“The deadline from the publication to the submission of tenders must be long enough to guarantee the quality of tenders and so permit truly competitive tendering.”</i> However in exceptional cases, the period stipulated in PRAG may be shortened. The timing indicated in PRAG 2019 is:</p> <p>50 days for services (section 3.4.6.)</p> <p>60 days (section 4.3.5. – international open tender) or 30 days (section 4.4. – local open tender) for supplies</p> <p>90 days (section 5.3.5. - international open tender) or 60 days (section 5.4.2. – restricted tender and section 5.5. - local open tender) for works</p>

		Please note that, in case of restricted tenders, the deadlines indicated above are from the invitation to tender, for the receipt of tenders (while the deadlines from the publication of the contract notice, for the receipt of applications, need to be checked separately in PRAG).
3.19	Is it mandatory to include the estimated budget (i.e., the estimated contract value) in the contract notice or in the technical specifications? In many cases, it gives the possibility to the bidders to offer a higher price than if the budget amount is not known.	It is not mandatory, but you can include it.
3.20	If we publish the tender dossier on the website, should we justify the choice of the tenderers, besides the evaluation report prepared by the evaluation committee?	In the case of open tenders, there is no choice, as any tenderer may apply. It is not compulsory to publish neither the tender dossier nor the evaluation report in the case of competitive negotiated procedure (simplified procedure) or single tender. In fact, the evaluation report is never published; not even in open tenders.
3.21	PRAG requires a simultaneous publication of the contract notice in all media. De facto, it is impossible to ensure the same date in various national and international media. In this case, what is the date from which the waiting period begins?	The period should start on the date of the latest publication.
3.22	To comply with the principles of efficient use of money, transparency, ensuring concurrence and equal treatment, can we use the national public procurement platform "achizitii.md" to publish the procurement procedures in full compliance with the rules, terms and forms of PRAG?	Yes, you can publish on achizitii.md, but make sure that the call is also published in appropriate media covering the whole programme area, not only the country where the beneficiary is located.

3.23	Which publication tool can be used for EU portal? it was difficult for the project.	For international open tenders (over the higher threshold), there is no other tool than TED . See TESIM Guide on procurement by project beneficiaries in Republic of Moldova p.4.2.
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4. Evaluation

#	Question	Answer
4.1	May the procurement team of an organization established by internal Order according to national legislation be included in the evaluation committee for a PRAG procedure?	The requirements for the composition of the evaluation committee are established in section 2.9 of PRAG 2019.
4.2	Do the members of the evaluation committee have to be paid from the project?	There is no obligation to consider the salaries of the member of the committee as eligible costs, especially if it is not foreseen in the budget.
4.3	How many offers need to be received for the competitive negotiated procedure (simplified procedure)?	<i>"If, having consulted the tenderers, the Contracting Authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met."</i> (PRAG 3.5.2. for contract services). The same provision is stipulated for supplies (PRAG 4.5) and works (PRAG 5.6). Nevertheless, we strongly recommend to perform a second round of invitations, so that at least two offers are received.
4.4	TESIM's Guide indicates that when delivered by post or courier, the tenders will be submitted in two separate envelopes: envelope one for the tenderer's information,	If we take as example the service contracts, section 3.4.10.3. of PRAG on evaluation of offers stipulates: <i>"The evaluation</i>

	<p>the tenderer's statement and the technical offer and envelop two for the financial information. How should this be managed in case of delivery by email?</p>	<p><i>committee then examines the technical offers, while the financial offers remaining sealed."</i></p> <p>In the case where the electronic submission is not possible via a procurement e-platform with the necessary functionalities, we recommend that the offers are sent via e-mail in different files, equivalent to the envelopes; that is, one with the technical offer, another one with the financial offer and a third file for the administrative documents. Each file with the offers should be protected with a password, which would be requested in due time. First the administrative documents, then the technical offer and, once assessed, the financial one.</p>
<p>4.5</p>	<p>When launching the international tender procedure for works, in ITT (INSTRUCTIONS TO TENDERERS) it is necessary to select one of the options proposed at the site organized visit: SITE VISIT AND CLARIFICATION MEETING, The tenderer is [strongly advised] [obliged] to visit and inspect the site of the works and its surroundings for the purpose of assessing, at its own responsibility, expense and risk, the factors necessary for preparing its tender and signing the contract for the works. (Date, time and place, see point 13 of the contract notice.) Which of these to opt for and how will this affect the evaluation of the offer, ie if we make it mandatory, then we should disqualify them if not present the certificate of participation, or could we examine the file reducing from</p>	<p>The visit may be compulsory or recommended, depending on the nature of your works. In the case when you make it compulsory, you must disqualify the tenderers not complying with this requirement.</p>



	the score accumulated following the evaluation of the offer?	
4.6	When we have savings on the auction of goods, how can we proceed?	You may envisage to submit a budget modification request to the programme bodies by allocating the saving to other budget lines.

5. Complaints

#	Question	Answer
5.1	How many days should be left between the notification of the award and the signature of the contract to allow unsuccessful tenderers to complain?	This rule has been clarified in PRAG 2019, which stipulates in section 2.10.1 that <i>"The contract with the successful tenderer can only be signed after the expiry of the standstill period. The duration of the standstill period is 10 calendar days when using electronic means or 15 days when using other means, starting from the day following the date on which the notification to tenderers was sent."</i> As section 2.10.1 of PRAG 2019 stipulates the successful tenderer must <i>"submit the evidence substantiating the statements made in the tender within 15 days"</i> of the notification, we recommend to keep this standstill period for complaints, even if not stipulated in PRAG. Please note that section 2.10.1 of PRAG 2019 also mentions the cases where the standstill period is not mandatory. However, we recommend to keep this period for any procedure with more than one offer, so that the non-awarded ones have enough time for a complaint.

5.2	Is it possible to use the national procedure for complaints and involve the related national agency for solving appeals?	The procedure for complaints is described in section 2.12.1 of PRAG 2019, but it only stipulates the procedure when the contracting authority is the European Commission. In this case, it indicates that EC will “endeavour to investigate the complaint and respond within 15 working days”. In absence of a specific rules for other contracting authorities, the national legislation and procedure may be used, as long as the deadlines are similar. The involvement of an independent body ensures the lack of conflict of interest and the impartiality of the complaint procedure.
5.3	Regarding the term for complaining for the Services - the amount of the contract 20,000€. According to the national legislation, the contestation term for such contracts is 7 days. At training, including questions, answers is recommended the term of 10 days, if electronic documents are used. In case of contracting the Audit Services, and considering that it is necessary to contract the audit to verify the expenses in a short time, can we consider the term for complainings 7 days, or is it still advisable 10 days?	As previously mentioned, the term for complaining in this case would be 10 calendar days.

6. Contracting

#	Question	Answer
6.1	PRAG stipulates that “the Contractor is reminded that there is a Head of Delegation of the European	Any reference to the Delegations of the European Union has to be disregarded. PRAG is designed for the use by the European

	<p>Commission in the state of the Contracting Authority. The Contractor is obliged to give the Head of Delegation free access to its sites, factories [...]</p> <p>Is it mandatory to comply with this requirement in the case of the Customs Service?</p>	<p>Commission, thus the internal procedures between EU/EC bodies and units are NOT APPLICABLE for project beneficiaries.</p>
6.2	<p>PRAG stipulates “Done in English in three originals, [For indirect management: one original for the Contracting Authority, one original for the European Commission,] and one original for the Contractor.”</p> <p>Is it necessary to send one original to EC and, if yes, do we have to include the data of the EC representatives?</p>	<p>As previously indicated, all references to the participation of EC and/or EU Delegation in the procedure have to be disregarded. No copy must be sent to EC.</p>
6.3	<p>According to the PRAG template for contract’s Special Conditions (art. 44), “If invoices are submitted to the Contracting Authority, the Contractor shall inform the European Commission thereof by sending a copy [...]</p> <p>Is this condition mandatory?</p>	<p>As previously indicated, all references to the participation of EC and/or EU Delegation in the procedure have to be disregarded. No copy must be sent to EC.</p>
6.4	<p>If the project implementation period is 36 months, starting with July 2019, for contracting the consulting services in November 2019, what period do we indicate in the contract and if the amount remains unchanged in case the contract period is reduced?</p>	<p>The eligible expenditure must respect the principles of sound financial management, in particular economy and efficiency. In this case, take special care of ensuring the principle of efficiency, that is, the amount paid out must correspond with the amount of work carried out by the consultant regardless of the duration. If the amount of work is the same, the amount may remain unchanged.</p>
6.5	<p>Are there time limits in PRAG procedures? (time between awarding the contract and signing it)</p>	<p>The standstill period for international tenders is 10 days when using electronic means or 15 days when using other means, from the</p>

		<p>day following the date on which the notification to tenderers was sent to contract signature.</p> <p>We recommend to keep this period for any procedure with more than one offer, so that the non-awarded ones have enough time for a complaint.</p>
6.6	<p>In case when a procurement was announced in lots and no tenders have been received for one of the lots, should the contracting authority re-launch the tender for all the lots or only for the one for which no offers were submitted?</p>	<p>You should re-launch only for the lot for which no compliant offers were submitted.</p>
6.7	<p>Is the Contracting Authority allowed to negotiate with the successful tenderer, when it is appointed and informed, but before the signature of the contract, some of the components of the contract? For instance: price, nature of the works/supplies/services, completion period, terms of payment or materials to be used.</p>	<p>No. Both the contracting authority and the tenderer are bound by the tender.</p>
6.8	<p>If at the level of the (state) institution there is already a contract concluded for a certain good / service, could we purchase from his account or do we have to organize and perfect a new contract? If so, how do we explain the existence of two contracts with the same object of purchase?</p>	<p>The grant contract obliges the use of PRAG procedures. If the previous contract was concluded according to national legislation, it will be necessary to organise a new procedure.</p>

7. Exchange rate

#	Question	Answer
7.1	<p>The estimated value of the procurement procedure is planned at the stage of the project preparation and fixed in the part of the Application Form “Procurement Plan”, what may be updated during the contracting phase. At the moment of the launching of the tender procedure by the Beneficiary the type of the procedure must be defined using “monthly accounting rate of the Commission”, which can be found in the Inforeuro website. The correctness of the tender procedure to be used is also the point for the verification done by the national control/audit, who will apply the exchange rate for the month when the report is sent to them for examination. How to avoid a risk of defining wrong procurement procedure because of using the exchange rates applicable in different period of project life?</p>	<p>Exchange rate fluctuations are expected during the project cycle, from the development of the budget during the submission of the project proposal, beginning of the project implementation period and preparation of the Procurement Plan, to the actual moment of the launching of the tender procedures.</p> <p>You need to ensure the use of the right procurement procedure, in accordance with the threshold in Euro. Please check the conversion to national currency when preparing your procurement plan and again before launching the procedure. We strongly recommend to indicate the conversion rate in the tender documents in order to facilitate the work of the national controllers/auditors carrying out the expenditure. In this case the exchange rate may be the “monthly accounting rate of the Commission”, which can be found in the Inforeuro website.</p> <p>Additional fluctuations may take place during the project implementation, once the procurement contracts are awarded. Please note that the rate used to check the compliance with the thresholds for the type of procedure will NOT be the same one than during the reporting of the expenditure.</p>

8. Contract performance

#	Question	Answer
8.1	Is it possible to apply guarantees for the execution of feasibility studies?	The standard template in PRAG for service contracts does not include any performance guarantee in its General Conditions. This mechanism is only foreseen in the case of supply and works contracts. Nevertheless, if deemed necessary, you may add such type of guarantee in the Special Conditions.
8.2	Is it possible to apply penalties to the economic agents in case of detecting the deficiencies in the realization of the infrastructure projects (e.g., insufficient technical file or technical drawings)?	Yes, it is. See article 70 of the General Conditions of the PRAG standard contract for works (template d4p.annexgc_pdf). We recommend that any potential penalty is described in the instructions to tenderers, as the contract is not indicating concrete detail.
8.3	What is the national authority to which economic operators can go to resolve disputes, given that procurement rules apply the rules of the Practical Guide to Public Procurement for External Actions of the European Union, not national law?	The procurement contracts are governed by the law of the country of the contracting authority (e.g., the Republic of Moldova) in what concerns the disputes. See the section on "Settlement of disputes and applicable law" in the PRAG standard contracts
8.4	In case if there are additional works, services or supplies (additional meaning, not included in the initial procurement) by the original contractor, which have become necessary what to do? Can the contract be modified and in which conditions?	"Contracts may need to be modified if the circumstances of project implementation have changed since the contract was signed. However, the subject matter of the contract cannot be altered. Contracts can only be modified during their execution period". See more details in section 2.11 of PRAG 2019.

8.5	Is it possible to change the price along the contract? This is provided for in the national legislation, but only for works	You can do it only if previously stipulated in the tender dossier and in the Special Conditions of the contract, in case of supplies and works.
8.6	We do not have a person in charge of the works contract, although we have infrastructure works. Do we need this position?	Such a position may be needed depending on the complexity of the works, but it is not required neither by PRAG rules nor by the grant contract. In case that you decide to create it, it may be financed from savings in the project budget. Otherwise, you can pay this person from the institution budget.
8.7	Following the signature of the works contract, the approved amount was exceeded, due to inflation, etc. Beneficiary B2 Făleşti City Hall is ready to cover part of the additional amount required for the execution of the works. The question is, are there any opportunities to apply for additional funding?	Please, inform the Managing Authority about the increase of budget, which might be financed if so decided by the Joint Monitoring Committee.
8.8	Can the value of the grant contract be updated considering that on the date of signing the grant contract there was a much different exchange rate than the current one?	The rules concerning the modification of the grant contract are not in the scope of procurement. Please, request an official answer from Managing Authority.
8.9	Hard project: the works contract was updated through additional Acts, the updated value of the contract exceeds the initial value by 27%. Question: if this excess of 27% will be an eligible expense?	By nature, the increase of price may be eligible if the procurement rules have been respected. Nevertheless, the possibility to have it financed by the grant depends on modifications to the grant contract, which need to be approved by the Joint Monitoring Committee. Please inform the Managing Authority about the increase of budget.

8.10	<p>Is it possible to revise the prices for similar and identical volumes of additional work that were not provided for in the initial specifications? There is a need for additional works.</p>	<p>Please, follow the rules described in article 37 of the standard General Conditions PRAG template for works.</p>
8.11	<p>Can the additional works be paid from the cost of the initial contract, and will the adjustment of the amount for the volumes of additional works executed be included as an increase of the initial contract by amendment, after the rectification of the state budget? No additional works are foreseen in this contract, the volumes of additional works appear along the way, but they are not in the initial contract, it must be added, the contractor does not want to offer these services. According to national legislation the rectification of state budget are done 3 times a year.</p>	<p>Please, follow the rules described in article 37 of the standard General Conditions PRAG template for works.</p>
8.12	<p>Please tell us how we could proceed to be correct, if the project for the execution of asphaltting works was developed in 2018-2019, according to GOST norms.</p> <p>The offer submitted in 2022 contains volumes of works calculated according to GOST norms. Along the way, the standards for the execution of road works have been modified and at the moment it is mandatory to execute them according to European standards. The estimated costs of this work executed according to European standards will increase the budget by about 17 million. lei. At the same time, the designer proposes the alternative method of executing the works by concreting. This fact would considerably reduce the cost</p>	<p>We recommend you to inform the Managing Authority of any changes to the contract. At the same time, this situation is stipulated by article 37 of the standard General Conditions PRAG template for works, specifically in point 37.2.</p>

of the work. Is this action legal, and what risks would it generate?	
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9. Country-specific questions

#	Question	Answer
9.1	<p>On public procurement in <u>Ukraine</u> and using CPV codes: Our partner - a public institutions in Ukraine - has to purchase medical equipment of 370.000 euro, following the Ukrainian legislation for public acquisition; in this particular case the procedure appeared to be “International open tender for contracts of EUR 300.000 or more”.</p> <p>As interpreted by the partner representatives in the acquisition domain, as there are 5 CPV codes involved, separate procedures should be implemented, meaning one procedure for each CPV code to be purchased; this means that each of the 5 procedures has an estimated value below the threshold of 132.000 euros, the mandatory threshold for the open tender procedure.</p> <p>Given the different interpretations on this case, please advise us on the appropriate procedure to follow and on the regulations that should prevail within the project.</p>	<p>Procurement procedures and thresholds shall follow the national legislation of the country in the case of Ukraine)</p> <p>Ukrainian beneficiaries, in accordance with the provisions of the Financing Agreement, also need to comply with the rules stipulated in the ENI CBC Implementing Rules (regulation 897/2014). Articles 53 to 55 define the type of procedure and thresholds for services, supplies and works. Moreover Article 9 of the Special Conditions of the Financing Agreements stipulate that: “...For the avoidance of doubt, lower thresholds than those set out in title VI Chapter 4 of Implementing Regulation (EU) no 897/2014 may be applied by beneficiaries or the CBC partner country”. This clause applies to the public bodies, as the thresholds in the national legislation are lower and the national legislation is mandatory for these bodies.</p> <p>The factsheet on procurement by project public beneficiaries in Ukraine prepared by the TESIM project describes the compliance of the national regulation requirements with the ENI CBC</p>



		<p>Implementing Rules for procurement above 60,000 €. Please read this document additionally.</p> <p>In the described case, the thresholds of the national legislation should be used. At the same time, we would like to draw your attention to the artificial splitting of large contracts into smaller units so that they fall below the thresholds. Such splitting must be avoided.</p>
9.2	<p>Do the <u>Bulgarian</u> private beneficiaries fall under the category of “contracting entities” and will they use the national legislation regarding the public procurement or shall they follow the PRAG rules, as mentioned in the grant contract for all other private beneficiaries?</p>	<p>Bulgarian private beneficiaries fall under the category of “contracting entities” and have to comply with the rules for procurement procedures stipulated in the national legislation. Particularly, they have to comply with Decree no. 160 of 1 July 2016 on the determination of the rules for the examination and evaluation of tenders and conclusion of contracts in the procedure for selecting with a public invitation to beneficiaries of granted financial assistance from European Union. The Decree defines the rules for the examination and evaluation of tenders and the conclusion of the contracts in the process of selecting a contractor with a public invitation. The PRAG rules are not applicable for the Bulgarian beneficiaries in the Black Sea Basin Joint Operational Programme 2014-2020.</p>
9.3	<p>Is it possible that the set of documents required under PRAG for the procurement of construction works will be published in English, except for Volume 3 - technical specification and Volume 5 - design documents, which will be published in <u>Romanian</u>?</p>	<p>PRAG does not impose the language of the tender dossier, the offers or the supporting documents provided by the bidders. Both the tender dossier, the offers and/or the supporting documents may be prepared/submitted using Romanian language. Mixed options are also possible. It is important to consider that the language should not be a barrier for participation.</p>

9.4	For works in Republic of <u>Moldova</u> is used COD CPV Catalogue. Can it be used for the tender?	PRAG is only mentioning CPV to allow its use for competitive negotiated procedure (simplified procedure) for legal services. In absence of specific rules, there should be no incompatibility in the use of Moldovan COD CPV Catalogue for works in PRAG procedures.
9.5	Is it applicable the Governmental Decision no. 1129/2018 of the Republic of <u>Moldova</u> regarding the adjustment of contracts, specially if the contract is concluded for a period of 365 days (1 year)	No. The provisions for the contract amendments are stipulated in a specific clause of the General Conditions of the standard PRAG contract.
9.6	Are the beneficiaries from the Republic of <u>Moldova</u> obliged to translate the standard contracts into Romanian in order to be presented to the State Treasury for registration?	No, they are not obliged to do so. However, take into account that PRAG does not impose the language of the documents. Therefore, you can translate them to Romanian, in order to remove barriers to the participation of tenderers, with the exception of international open tenders. See Q&A 9.3.
9.7	Can SOFT cross-border projects be found in Article 5, letter b) of Law 131/2015 of the Republic of <u>Moldova</u>? If YES, then what are the criteria for identifying these purchases and how to procure them?	You must use PRAG and not the national legislation. See Q&A 1.10
9.8	The procurement plan includes the procurement contracts, developed according to Law 131/2015 of the Republic of <u>Moldova</u>, subsequently the plan is approved and placed on the website of the contracted authority, but those that have as object of research and development how do we proceed with them?	As PRAG does not include any provisions concerning the publication of the procurement plan, you may apply the national legislation on this issue.

9.9	In accordance with the normative acts implementing Law 131/2015 of the Republic of <u>Moldova</u> (especially the electronic platform) when initiating and conducting public procurement procedures for goods and services are a number of standard and mandatory documents, identical to those of the EU, eg: DUAE and Appendix a14 Declaration of Honor, how do we proceed?	Please use the PRAG templates
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