

Public procurement within research projects

Short guide

**National Research and Development Institute for Industrial
Ecology – ECOIND**

NATIONAL RESEARCH AND DEVELOPMENT INSTITUTE
FOR INDUSTRIAL ECOLOGY

ECOIND

EXCELLENCE IN RESEARCH AND ENVIRONMENTAL SERVICES

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Introduction

The public procurement process represents the sequence of all activities organized to achieve defined objectives. The activities within the public procurement process are logically structured, in the sense that each activity included in the process adds value to the result of the previous activity, in order to obtain reasonable assurance that, upon completion of the process, the defined objectives are met. At the same time, the activities included in this process involve the use of resources available at the level of the contracting authority, but also from outside the authority, where these resources are limited or non-existent, in order to fill these gaps.

National legislation

- Law No. 98/2016 on public procurement, with subsequent amendments and supplements (including the amendments introduced by GEO No. 52/2024);
- Decision no. 395/2016 for the approval of the Methodological Norms for the application of the provisions relating to the award of the public procurement contract/framework agreement in Law no. 98/2016, with subsequent amendments and supplements;
- NAPP (National Agency for Public Procurement) Order No. 281/2016 on establishing standard forms for PAAP (Annual Public Procurement Program) and PAAS (Annual Sectorial Procurement Program)
- Regulation (EC) No. 2195/2002 on the Common Procurement Vocabulary (CPV), as amended;
- Legislation and guidelines in force regarding green public procurement and sustainability criteria (NAPP, applicable national legislation);
- Any other normative acts applicable to the public procurement process, in the updated form at the time of the procedures;
- Law no. 101/19.05.2016 on remedies and appeals in the matter of awarding public procurement contracts, sectoral contracts and works concession contracts and service concession contracts, as well as the organization and functioning of the National Council for the Resolution of Complaints;
- Law no. 184/2016 on the establishment of a mechanism for preventing conflict of interest in the procedure for awarding public procurement contracts;
- GEO no. 13/2015 on the establishment, organization and functioning of the National Agency for Public Procurement;
- Government Ordinance no. 2/2001 on the legal regime of contraventions;
- Law 180/2002 for the approval of Government Ordinance no. 2/2001 regarding the legal regime of contraventions.

Definitions

Public procurement/acquisition - the acquisition of works, products or services through a public procurement contract, regardless of whether the works, products or services are intended to achieve a public interest or not;

Framework agreement - the agreement concluded in written form between INCD-ECOIND and one or more economic operators whose object is to establish the terms and conditions governing the public procurement contracts to be awarded in a certain period, in particular with regard to the price and, where applicable, the quantities envisaged;

Public procurement contract - a contract for pecuniary interest, assimilated, according to the law, to an administrative act, concluded in writing between one or more economic operators and one or more contracting authorities, which has as its object the execution of works, the supply of products or the provision of services;

Public procurement contract for products - the public procurement contract whose object is the acquisition of products by purchase, including payment in instalments, rental, leasing with or without purchase option or through any other contractual arrangements under which the contracting authority benefits from these products, regardless of whether or not it acquires ownership of them; the public procurement contract for products may include, as an accessory, works or operations of location and installation;

Public procurement contract for services - the public procurement contract whose object is the provision of services, other than those that are the subject of a public works procurement contract;

Contractor - any economic operator who is a party to a public procurement contract;

Candidate - any economic operator who has submitted a request to participate in a restricted tender procedure, competitive negotiation, competitive dialogue or innovation partnership or who has been invited to participate in a negotiated procedure without prior publication;

Labelling requirements - the requirements that must be met by works, products, services, processes or procedures in order to obtain a certain label;

Supplier - the entity that makes products available to a contractor, including their installation or placement services, if applicable, or that provides services to the latter, which does not have the status of subcontractor;

Procurement service provider - a person governed by public or private law that offers ancillary procurement activities on the market;

Procurement document - the participation notice, the award documentation, as well as any additional document issued by the contracting authority or to which it refers to describe or establish elements of the procurement or the award procedure;

Electronic auction - the repetitive process carried out by electronic means after a complete initial evaluation of the offers, in which the bidders have the opportunity to reduce the prices presented and/or to improve other values of some elements of the offer, which allows the classification of the offers through automatic evaluation methods;

Official lists - lists administered by competent bodies, containing information on the economic operators registered on the lists and which represent a means of proof of meeting the qualification and selection requirements provided for in the lists;

Lot - each part of the subject matter of the public procurement contract, the subject matter of which is divided in order to adapt the size of the subject matter of the resulting individual contracts so as to better meet the needs of the contracting authority, as well as the capacity of small and medium-sized enterprises, or on qualitative grounds, according to the different trades and specializations involved, in order to adapt the content of the individual contracts more closely to the specialized sectors of SMEs or according to the different subsequent phases of the project

The income and expenditure budget – represents the aggregated statement of income and expenditure within INCD-ECOIND, reflecting:

- annual estimates of decision-makers regarding the resources needed to carry out current activities and the benefits resulting from the allocation of resources (planned annual revenue and expenditure budget);
- monthly achievements obtained in terms of allocated resources and resulting benefits (realized monthly revenue and expenditure budget);
- quarterly achievements obtained in terms of allocated resources and resulting benefits (realized quarterly revenue and expenditure budget);
- annual achievements obtained in terms of allocated resources and resulting benefits (realized annual revenue and expenditure budget);
- semi-annual rectifications necessary to be made in order to include the resources needed to carry out current activities and the benefits resulting from the allocation of resources in the annual estimates of decision-makers, as a result of the occurrence of circumstances that could not be anticipated at the time of preparing the planned annual revenue and expenditure budget (rectified annual revenue and expenditure budget).

CPV - the reference nomenclature in the field of public procurement, adopted by Regulation (EC) No. 2.195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV);

Investments – the acquisition of goods, of a tangible or intangible nature, whose value excluding VAT exceeds the threshold of 2,500 lei and whose useful life is greater than 1 year.

Specifications - the document that necessarily contains technical specifications that represent requirements, prescriptions, technical characteristics that allow each product, service or work to be described objectively, so as to meet the needs of the contracting authority.

ESPD - European single procurement document provided in electronic format using the standard format established by the European Commission, consisting of the economic operator's self-declaration on the fulfilment of the qualification and selection criteria;

SICAP - is the current platform, launched in 2018, which modernized and replaced SEAP to implement new regulations and improve functionalities, is the official online platform for public procurement in Romania and represents the official portal for accessing announcements, submitting bids and communicating with authorities.

Dynamic purchasing system - the procurement process organized entirely by electronic means and open, throughout its entire validity period, to any economic operator that meets the qualification and selection

criteria, for current purchases, whose characteristics generally available on the market meet the needs of the contracting authority;

Request for participation - the request submitted by the economic operator together with the necessary documents in order to meet the qualification requirements in the first stage within a restricted tender procedure, competitive negotiation, competitive dialogue or innovation partnership;

Award documentation - the procurement document containing the requirements, criteria, rules and other information necessary to provide economic operators with complete, correct and explicit information regarding the requirements or elements of the procurement, the subject matter of the contract and the manner of conducting the award procedure, including the technical specifications or descriptive document, the proposed contractual conditions, the formats for presenting documents by candidates/tenderers, information regarding the applicable general obligations;

Tenderer - any economic operator who has submitted a tender in an award procedure

Tender - the legal act by which the economic operator expresses its will to legally engage in a public procurement contract. The tender includes the financial proposal, the technical proposal, as well as other documents established by the award documentation;

Technical Proposal - part of the offer developed based on the requirements of the specifications

Financial Proposal - part of the offer that includes information regarding price, tariff, other financial and commercial conditions corresponding to meeting the requirements requested by the award documentation.

Economic operator - any natural or legal person, under public or private law, or group or association of such persons, who lawfully offers on the market the execution of works and/or a construction, the supply of products or the provision of services, including any temporary association formed between two or more of these entities

Award procedure - the procedure regarding the award of public procurement contracts, public works concession contracts and service concession contracts, an administrative procedure involving a set of rules and formalities that must be fulfilled by the organizer of the procedure, having as its object the award of a public procurement contract, of products, services and public works, under the sanction of the cancellation of the procedure organized for such purpose.

Preventive Financial Control - the activity that verifies the legality and regularity of operations carried out on behalf of public funds or public assets, before their approval

Stages of public procurement process

According to GD no. 395/ 2016, activities within the public procurement process are grouped in stages (Art. 8, paragraph (2))¹:

¹ <https://achizitiipublice.gov.ro/workflows/view/169>

- *Planning/preparation stage.* It begins by identifying needs and developing requirements reports and ends with the approval by the head of the contracting authority/centralized procurement unit of the award documentation, including supporting documents, as well as the contracting strategy for the respective procedure.
- *The stage of organizing the procedure and awarding the contract/framework agreement.* The contracting authority may use the following procedures in this stage, in relation to the market:
 - Open tender;
 - Restricted tender;
 - Competitive negotiation;
 - Competitive dialogue;
 - Innovation partnership;
 - Negotiation without prior publication;
 - Solutions competition;
 - Award procedure applicable to social services and other specific services;
 - Simplified procedure;
 - Direct procurement

The stage of organizing the procedure and awarding the contract/framework agreement begins with the submission of the award documentation to SICAP and is completed with the conclusion of the public procurement contract/framework agreement.

- *Post-award stage of the contract/framework agreement,* namely the execution and monitoring of the implementation of the contract/framework agreement. The post-award stage of each procurement process begins at the time of conclusion of the contract/framework agreement and is completed by carrying out an analysis at the level of the Contracting Authority of the contractor's performance, in which the conclusions resulting from the procurement process carried out are presented, if applicable, including the analysis of obtaining benefits for the Contracting Authorities, as identified in the planning/preparation stage of the procedure within the framework of the contracting strategy.
- *The performance analysis and evaluation stage* necessary for the continuous improvement of procurement processes at the contracting authority level, as a result of the managerial control of performance. Identifying positive or negative deviations from the objectives established for a procurement process, the expected and achieved results, the performance indicators and associated costs, identifying improvement measures.

Preparation of the annual public procurement/investment program

The Public Procurement - Purchase Compartment receives from all organizational structures existing at the institute level, the need for products (laboratory equipment and apparatus, laboratory glassware, reagents, etc.), services and works. The head of the structure is responsible for drawing up the requirement report in the form of a table that must contain the name of the products, services or works,

the CPV code and their estimated value. The requirement reports are approved by top management. The staff within the Public Procurement - Purchase Compartment identifies the necessary funds by funding sources (including budgets related to research projects) and chooses the award procedure or whether it falls within the framework of direct procurement. The staff within the Public Procurement - Purchase Compartment centralizes the data from the requirement reports, finalizes the annual program of public procurement/investments for the following year and submits it to top management for approval.

The annual public procurement program must include: the type and subject of the contract/framework agreement, CPV code, estimated value of the contract/framework agreement, source of financing/research project, established procedure, estimated date for initiating the procedure and for awarding the contract/framework agreement, method of conducting the procedure and person responsible for applying the procedure. The contracting authority, through the Public Procurement - Purchase Compartment, is obliged to keep records of direct purchases of products, services and works, as an annex to the annual public procurement program (according to art. 14 paragraph 1 of GD 395/2016 for the approval of the methodological norms for the application of the provisions relating to the award of the public procurement contract/framework agreement of Law no. 98/2016 on public procurement).

The annex regarding direct procurement must include: object of direct procurement, CPV code, and estimated value, source of financing, estimated date for initiation and completion of the procurement.

The investment plan must include: name of the product/work, quantity, unit price, deliveries for each quarter, source of financing and user.

Preparation of award documentation

Based on the report of necessity prepared by the project manager/director, endorsed by the head of the structure and approved by top management, the staff of the Public Procurement - Purchase Compartment and the Legal Advisor proceed to prepare the Contracting Strategy to establish the estimated value, to choose the procedure to be used and to establish the criteria for awarding and selecting the offers - according to Law 98/2016). The contracting strategy is approved by top management.

The staff of the Public Procurement - Purchase Compartment, together with representatives from the department/laboratory/project team, which requested the purchase of products, services or works through a report of necessity, prepares the specifications (establishing the technical specifications and the manner of fulfilling the contract/framework agreement), and the top management approves it.

Contract/framework agreement forms and models are established, award documentation is finalized and approved by top management.

The "Award Documentation" is then completed in SICAP and will be verified by NAPP, if selected or if ex-ante control is requested ex officio. The procurement data sheet is automatically completed in SICAP with the data from the "Award Documentation".

After the "Award Documentation" has been accepted, the tender notice is published in SICAP, respectively the tender documentation is made available (through SICAP to all economic operators interested in participating in the procedure). Subsequently, requests for clarification may be received from economic

operators interested in participating in the procedure until a certain date set in the tender announcement and these are responded to within the deadline, if applicable.

The chairman and members of the evaluation committees are appointed by decision of the top management for each procurement procedure. The chairman and each member of the evaluation committee draw up and sign confidentiality and impartiality declarations on the day of opening/viewing the submitted bids.

For award procedures that are carried out offline, namely "Negotiation without prior publication of a contract notice, according to art. 104, paragraph 1, of Law no. 98/2016", "Own procedures, for the services included in Annex 2 of Law 98/2016" and not only, the Contracting Strategy and the Award Documentation (Specifications, Forms and models of contract/framework agreement, instructions for bidders, Data Sheet) are not published in SICAP. This offline public procurement procedure is carried out by sending invitations to participate to economic operators, who are invited to submit the offer at the headquarters of the contracting authority, if they are interested.

Following the completion of an offline award procedure, an award notice must be published in SICAP, with the exception of own procedures, for the services in Annex 2 of Law 98/2016.

Conducting the award procedure

Award procedure implies the following steps:

- Submission/reception of offers by the established deadline;
- Viewing/opening of offers;
- Drawing up the minutes of the meeting for viewing/opening of offers and the declaration of participation, which includes all economic operators participating in the procedure and, within 24 hours at the latest from the date of viewing/opening of offers (except for procedures that are carried out offline, these are sent only to those participating in the procedure by fax/email or a copy is submitted)
- Examination and evaluation of the offer - technical and financial proposals;
- Requesting clarifications from the bidders regarding the technical and financial proposals, if applicable;
- Preparation of minutes of evaluation of the offers - technical, financial proposals and for the fulfilment of the information in the ESPD;
- Preparation of the procedure report, approval by top management, and subsequent publication in SICAP on the same day as the transmission of communications regarding the outcome of the award procedure;
- Preparation of the communication regarding the outcome of the procedure for the award of the public procurement contract/framework agreement and its transmission to each participant in the procedure (the communication will also be accompanied by the procedure report for procedures conducted offline);
- Cancellation of the procedure for various reasons, according to art. 212 and art.213 of Law 98/2016, if applicable.

Award of the public procurement contract/framework agreement

The deadlines for contesting are respected, according to the provisions of art. 8 of Law no. 101/2016, contestations are received and resolved if applicable.

The public procurement framework contract/agreement is signed within the deadline provided by law. The award notice is published on SICAP. After signing the framework contract/agreement and providing the performance guarantee, the participation guarantee is issued, in accordance with the legal provisions in force.

The public procurement file is finalized.

Finalization of the public procurement contract / framework agreement

The final quantitative and qualitative reception takes place (handover and receipt report, installation, commissioning and personnel training report, where applicable, declaration of conformity and warranty certificate, where applicable, etc.)

The final document is drawn up, according to art. 66 of GD 395/2016 and a copy is sent to the tenderer/contractor. This is published in SICAP. If the contract/framework agreement has been carried out properly and there were no problems in its implementation/finalization, the performance guarantee is issued, in accordance with the legal provisions in force