

Technical support to the implementation
and management of ENI CBC programmes

Factsheet on procurement by project beneficiaries in Turkey

Applicable rules

July 2018

DISCLAIMER

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It does not necessarily reflect the views of the European
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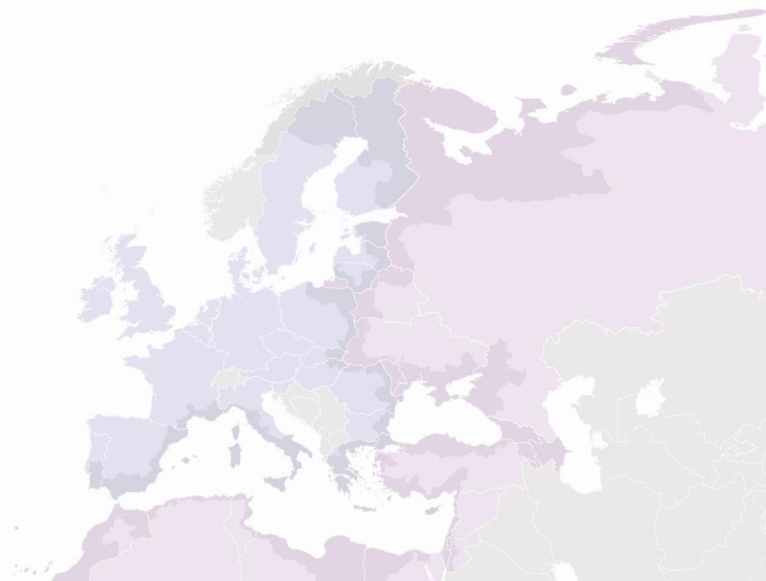


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1. Introduction

The implementation of projects in the framework of ENI CBC requires the procurement of works, supplies and/or services by the beneficiaries in nearly all of them.

During the programming period 2007-2013 ENPI CBC projects the applicable EU Regulation obliged to use the procedures of the “*Practical Guide to Contract Procedures for EC External Actions (PRAG)*”. This obligation has not been included in the current ENI CBC Implementing Rules (EC Regulation 897/2014), hereinafter ENI CBC IR. However, relevant legislation applicable for Turkey (FWA, Financing Agreement) requires using procedures and standard documents laid down and published by the Commission for the implementation of external actions for all service, supplies and work contracts and grant agreements.

On top of some regulatory provisions in articles 52.2 and 53 to 56 of the ENI CBC IR, the new regulatory framework allows for the use of programme-specific rules and country-specific provisions.

Each CBC partner country in the Black Sea Basin programme decided its own approach on the applicable rules for public bodies in accordance with the provisions of the Financing Agreement and the national legislation. This decision has been agreed with the Managing Authority.



2. Applicable legal provisions

2.1. Provisions in Framework Agreement between the EU and Turkey

The participation of Turkey in the ENI CBC Black Sea programme is financed by pooling IPA II funds to the ERDF and ENI funds. The contribution of the three instruments allows for the participation of Turkey, EU Member States and countries financed under ENI Regulation. Therefore, the provisions for the use of IPA II funds in the Framework Agreement apply.

Article 18 of the Agreement stipulates:

- (1) Assistance under all IPA II policy areas shall be managed in accordance with the rules for external action contained in title IV of Part Two of the Financial Regulation and its rules of Application.
- (2) All service, supplies, and work contracts and grant agreements shall be awarded and implemented **in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external actions**, in force at the time of the launch of the procedure in question, unless otherwise provided for in Sectoral or Financing Agreements.
- (3) Results of tender procedures as well as grant and prize awards shall be published in accordance with the rules referred to in paragraph 1 and as further specified in Article 23.
- (4) [...]
- (5) As regards procurement, the national law of the IPA II beneficiary transposing Directive 2014/24/EU shall be considered equivalent to the rules applied by the Commission in accordance with the Financial Regulation. The Commission may accept such national law to be applied for the implementation of IPA II assistance subject to the terms of the relevant position in the Financing Agreement.

2.2. Provisions in the Financing Agreement between EC and Turkey on ENI CBC Black Sea Basin

Article 4.1 of General Conditions stipulates that "The procedures for procurement contracts and financial support to third parties by a beneficiary established in the CBC Partner Country necessary for the implementation of a project shall be those referred to Title VII Chapter 4 of Implementing Regulation (EU) No 897/2014 with the exception of Article 52(1)."

Article 9.2 of Special Conditions stipulates that *“It shall be understood that the provisions of Article 28 the Framework Agreement signed between the Commission and the Government of Turkey signed in Ankara on 11 February 2015 are applicable to this Financing Agreement.”*

2.3. Provisions in the Commission Implementing Regulation (EU) No 897/2014

The applicable rules for procurement of goods, works or services have been laid down under the Title VII Chapter 4 of the Commission Implementing Regulation (EU) No 897/2014 of 18 August 2014.

Article 52 (2) of the Implementing Regulation stipulates:

2. *In all other cases the following obligations shall be complied with:*

- (a) the contract is awarded to the tender offering best value for money, or as appropriate, to the tender offering the lowest price, while avoiding any conflict of interests;*
- (b) for contracts with a value of more than EUR 60 000, the following rules shall also apply:*
 - (i) an evaluation committee shall be set up to evaluate applications and/or tenders on the basis of the exclusion, selection and award criteria published by the beneficiary in advance in the tender documents. The committee must have an odd number of members with all the technical and administrative capacities necessary to give an informed opinion on the tenders/applications;*
 - (ii) sufficient transparency, fair competition and adequate ex-ante publicity must be ensured; 19.8.2014 EN Official Journal of the European Union L 244/39*
 - (iii) equal treatment, proportionality and non-discrimination shall be ensured; (iv) tender documents must be drafted according to best international practice;*
 - (v) deadlines for submitting applications or tenders must be long enough to give interested parties a reasonable period to prepare their tenders;*
 - (vi) candidates or tenderers shall be excluded from participating in a procurement procedure if they fall within one of the situations described in Article 106(1) of Regulation (EU, Euratom) No 966/2012. Candidates or tenderers must certify that they are not in one of these situations. In addition, contracts may not be*



awarded to candidates or tenderers which, during the procurement procedure fall within one of the situations referred to in Article 107 of Regulation (EU, Euratom) No 966/2012;

(vii) procurement procedures set out in Articles 53 to 56 shall be followed.”

2.4. Provisions in the Turkish Law on procurement (law n° 4724)

Article 3(c) stipulates that “*procurements of goods, services or works, which are to be realized with foreign financing pursuant to international agreements, and in the financing agreement of which it is stated that different tender procedures and principles will be applied.*”

3. *Applicable rules in ENI CBC Black Sea*

Taking into account the above-mentioned legal provisions, the Turkish public beneficiaries shall use, *mutatis mutandis*, the procurement rules stipulated in the “*Guide on procurement by private project beneficiaries in the ENI CBC Black Sea Basin programme*”.

This guide is based on the rules of the “*Practical Guide to Contract Procedures for EC External Actions (PRAG)*”, with some additional programme-specific requirements. Turkish Public Bodies will be responsible for any eventual additional national requirements.

Please refer to the “**Guide on procurement by private beneficiaries in the ENI CBC Black Sea Basin programmes**”, which are fully applicable *mutatis mutandis* to Turkish public bodies.

