INFORMATIVE BROCHURE
ON MOST COMMON ERRORS AND IRREGULARITIES FOR THE BENEFICIARIES OF THE ROMANIA-REPUBLIC OF SERBIA IPA CROSS-BORDER COOPERATION PROGRAMME
On the basis of its vast experience in monitoring and supervising cross-border and transnational cooperation programmes, the Serbian European Integration Office has gathered examples of most common errors beneficiaries make in the course of project implementation concerning public procurement procedures which are financed under projects, as well as contracting, payment and reporting. Statistical data and experience indicate that the largest number of errors and irregularities occur in public procurement procedures and this brochure mainly points out to them.

The scope and objective of this brochure are to provide beneficiaries from the Republic of Serbia with practical information on how they can avoid these and similar errors in the future. The brochure is to be considered as a brief guide for beneficiaries and it does not include all cases that might occur in the course of project implementation. It contains practical advice that can help beneficiaries avoid most common errors, while responsibility for implementation of projects, procedures and documents remains with the beneficiary.
Why errors occur
- Insufficient knowledge of rules
- Insufficient attention to details
- Application of rules of other donors and programmes to the contract being implemented
- Application of old/outdated rules

II-1 Examples of most common errors occurred during preparation of tender documents:

For tender procedures up to a maximum amount for competitive negotiated procedure (including single tender procedure)
1. Insufficiently researched market in a relevant field before preparing tender documents and sending invitations to tender, which resulted in invitations to legal or natural persons which were not eligible for the type and scope of the procurement. For example: Setting criteria that are met only by one invited company.
2. Errors in defining a deadline for submission of tenders:
   - Tender documents specify a deadline for tender submission that is shorter than the minimum prescribed deadline for the procedure concerned. This error usually occurs by accident, but sometimes it happens because of delay in project implementation schedule, and forced attempts to compensate already lost time by shortening the deadline for submission of tenders in public procurement procedure. The only exception for shortening the procedure of submitting tenders is that an invitation was sent to at least three tenderers and, before the prescribed deadline, the beneficiary receives all of the tender offers or notifications from invited entities that they will not take part into tender procedure, and that only if the tender was not announced publicly.
   - Discrepancies occur in different documents within the same tender documentation package regarding deadlines: duration, starting date of deadline and deadline for submission of tenders.
3. When sending an invitation to tender, beneficiaries often do not submit a List of invited entities to potential tenderers, which is strongly recommended in order to duly recognise and avoid any possible conflict of interest among the invited entities and their legal or financial relation.
4. When repeating a public procurement procedure (if the previous procedure has been declared unsuccessful), sometimes beneficiaries invite only tenderers from the previous tender procedure or some of them and that might produce negative effect on basic fair competition rules.
II-2 Examples of most common errors occurred during opening and evaluation of tenders, contracting, payment and reporting:

1. In the evaluation report for single tender procedures or in the evaluation grid for a competitive negotiated procedure, a number of ponders that potential tenderers may get during evaluation does not exist. This is a violation of the transparency principle which prescribes that tenderers should know in advance the evaluation criteria for their tenders and the manner of weighting distribution of ponders in order to know to what to pay special attention.

2. Various types of errors have occurred concerning the reception of tenders by the beneficiary acting as the contracting authority and failure to clearly make note of the date and time of receipt: date and time of receipt are not stated on the outer envelope; date and time of receipt are not stated in the reception book or register; different date and time of receipt are stated in these documents.

3. Opening of tender offers for procurement of goods and works attended by tenderers takes place on the day other than the one stated in tender documents, without adequate and timely notification to tenderers about the change, or on the same day but at different time than initially indicated in the tender documents.

4. During the opening of tenders there are no initials in prescribed places of chairman or secretary or any member of Evaluation committee who can take a vote in case of simplified procedure with one tenderer, or the tenders are not numbered according to their sequence of reception.

5. In case of equipment procurement tender, arithmetic correctness of an offer is not checked. Arithmetically correct offer has to be the value of the signed contract.

6. Beneficiary fails to send official letters of notification to the winner and to the tenderers whose tenders have not been accepted or informs them only orally thereon.

7. Decision on establishing the Evaluation committee does not exist or the decision is dated incorrectly (after the tender evaluation procedure).

8. Members of the Evaluation committee do not possess specific knowledge for public procurement subject-matter, or members do not know the English language.

9. Failure to provide the Declaration of impartiality and confidentiality for all persons present at tender opening, including observers, to the First Level Controllers, or submission of Declaration of objectivity and confidentiality instead of Declaration of impartiality and confidentiality.

10. An annex to basic contract is not given when contractual obligations have been changed, including delayed payment, which are in certain circumstances justified and in accordance with general conditions of the contract.

11. A Certificate/Statement of origin for goods is not delivered to the First Level Controllers in accordance with Special Conditions of the contract.


13. When a contract is cancelled, contracting parties do not make a Cancellation note.

14. Acceptance of tenders that do not meet minimum requirements (economic, financial, professional and technical).

15. Tenders signed by persons who are not officially authorised signatories in the name and on behalf of a tenderer are accepted (persons who are not legal representatives).
III ON IRREGULARITIES

III-1 Reporting irregularities and report and investigation procedure

In accordance with Article 28 paragraph 4 of the Law on Confirmation of Framework Agreement Between the Government of the Republic of Serbia and the Commission of the European Communities on the Rules for Cooperation Concerning EC Financial Assistance to the Republic of Serbia within the Implementation of the Assistance Under the Instrument for Pre-Accession Assistance (IPA), the following definitions were given:

a) Irregularity shall mean any infringement of a provision of applicable rules and contracts resulting from an act or omission by an economic operator, which has or would have the effect of prejudicing the general budget of the European Union by changing an unjustified item of expenditure to the general budget.

b) Fraud shall mean any intentional act or omission relating to the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities; nondisclosure of information in violation of a specific obligation with the same effect; the misapplication of such funds for purposes other than those for which they are originally granted.

Any person has the right and obligation to indicate any possible irregularities and frauds concerning the implementation of projects and programmes financed from the funds of the European Union or in the period during which the project documentation shall be kept.

In accordance with Article 56 of the Law on the Anti-Corruption Agency (Official Gazette of RS, No 97/2008, 53/2010 and 66/2011) the person on the basis of whose report an action has been initiated, and/or other person giving statement during the action, cannot bear any adverse consequences. More information on this topic can be found on website of the Anti-Corruption Agency, www.acas.rs.

A report may be submitted in writing to the address of the National Authority for cross-border cooperation program with the EU Member States (European Integration Office of the Government of the Republic of Serbia, Nemanjina 34, 11000 Belgrade) stating particulars on the sender or anonymously. The report can also be given orally (personally or by telephone to +381 11 3061 185) or by e-mail to the address nepravilnosti.cbc@seio.gov.rs, stating particulars on the sender or anonymously.

Upon receipt of the above mentioned report, given in any form, competent authorities shall conduct an investigation within their competences.

III-2 Consequences of detected irregularities

In case of any proven irregularity, relevant authority shall make a decision thereon, with explanation and indication of the amount that will not be eligible for the beneficiary of the funds and in the event that the amount has already been paid, the beneficiary shall have to compensate, in accordance with the prescribed procedure.

In this decision, clear recommendations may be given to the beneficiary so that the same or similar irregularities could be prevented. For example, training persons involved in the project implementation in order to improve their knowledge about binding rules and procedures. The beneficiary shall inform the decision maker on the implemented recommendations.

In accordance with Article 29 of the Law on Confirmation of Framework Agreement Between the Government of the Republic of Serbia and the Commission of the European Communities on the Rules for Cooperation Concerning EC Financial Assistance to the Republic of Serbia within the Implementation of the Assistance Under the Instrument for Pre-Accession Assistance (IPA), the recovery of funds in case of proven irregularities or frauds shall be defined as follows:

1. Any proven case of irregularity or fraud discovered at any time during the implementation of assistance under IPA or as the result of an audit will lead to the recovery of the funds by the Commission from the beneficiary.

2. The National Authorising Officer shall recover the Community contribution paid to the beneficiary from those who committed the irregularity, fraud or corruption or benefited from it, in accordance with national recovery procedures. The fact that the national authorising officer does not succeed in recovering all or part of the funds shall not prevent the Commission from recovering the funds from the beneficiary.

The difference between irregularities and errors is in significance of omission (binding rules are not applied or are wrongly applied) and in motives of the one who made them. Unlike the case when errors occur, when there is doubt that an irregularity occurred, a procedure for determining the existence of irregularities is always conducted.

III-3 Practical examples of irregularities and recommendations

1. Beneficiaries invite companies/organisations whose registered line of business is not one required for the tender, thus violating the principle of competitiveness (at least three suitable tenderers are required so they could offer as favourable a tender as possible). In this case, a doubt could arise that the beneficiary intended to sign the contract with a company it chose in advance, and that the tender procedure had been conducted only formally.

2. Doubt could be caused by documentation delivered for the purpose of expense verification which contains envelopes of tenders that:

   a. are of such size that the submitted technical and financial offers could not be packed physically because of their size.

   b. have identical appearance of text in all competing tenderers (handwriting, contents, style and the same errors with all tenderers).

3. Amendment of requirements first set in tender documents during the contract phase (setting more favourable requirements and schedule of payments, execution of contract obligations concerning services and goods, changing the start and duration of contract implementation, higher advance payment without guarantee, and the like).

4. Inviting several companies owned by the same person or companies that are considered related.

III-4 Definition of conflict of interest in the public procurement procedure (PRAG, Law on Public Procurement of the Republic of Serbia)

In compliance with the definitions set out in PRAG (Practical Guide to Contract Procedures for EU External Actions), a conflict of interest may occur where an impartial and objective exercise of the functions of the contracting authority or respect of the competence principles, non-discrimination contrary to an equal treatment of candidates, tenderers, applicants or contractors is compromised for reasons involving family or emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary on the programmes financed from EU funds.

In case there is doubt that conflict of interest has occurred in the public procurement procedure, a competent person in the European Integration Office of the Government of the Republic of Serbia shall conduct a procedure for determining the existence of a conflict of interest using the procedure for irregularities.

Examples of conflict of interest:

1. If, contrary to the principle of prohibiting conflicts of interest, a person responsible for public procurement or a person that could influence the contract awarding decision in the public procurement procedure within the contracting authority invites a company whose founder, co-founder or financier is this person or a person related to it.

2. A conflict of interest may occur if members of Evaluation committee accept or agree to accept any kind of benefit by the tenderer – participant in the procedure.

3. An expert involved in project preparation (e.g. prepara- tion of terms of reference) shall, as a rule, be excluded from a tender for services being prepared, unless he demonstrates to the contracting authority that his original involvement does not lead to any unfair competition, discrimination and unequal treatment of candidates. Candidates, tenderers or applicants being in a conflict of interest with regard to a relevant contract shall be excluded from contract awarding.

Reasons for exclusion shall be determined on a case by case basis. The Court of Justice of the European Union has consequently decided that any exclusion shall be based on a real conflict of interest risk concerning specific circumstances of a specific case. Any automatic exclusion will deprive a candidate, tenderer or applicant from the right to submit accompanying evidence dispelling any doubts about a conflict of interest. If a conflict of interest occurs with regard to a current contract, measures preventing such conflict shall be adopted, including cancellation of the contract, if necessary.
Specific cases have shown that it is necessary to pay special attention to the following:

- All beneficiaries need to keep analytical accounting for costs incurred within the project. Direct budget beneficiaries of the Republic of Serbia can ensure an adequate audit trail for salaries of their employees in another prescribed manner;

- In service procurement tenders, tenders always have to be delivered in two closed envelopes as two separate offers – technical and financial. The Evaluation committee must not know the information included in a financial offer up until the evaluation of technical offers of all received tenders has finished. Therefore, a tender will be deemed incorrect if value of a financial offer is entered in a model contract or any other document contained in a technical offer;

- The beneficiary as a contracting authority should take notice of a common error where the financial offer can be seen within the technical offer in the draft contract or other documents. These offers are not acceptable;

- Exemption from VAT is possible only within project duration, including costs of revision, in case they are envisaged by the project. Revision has to be contracted and appropriate costs exempt from VAT before the end of the project duration, even though the activity will be finished and paid for after the end of the project.

Recommendations for municipalities which are beneficiaries of cross-border cooperation programmes on how to avoid conflict of interest:

- A municipality that invites a regional development agency to tender must not finance the operation of the regional development agency at an annual level, neither from the municipal budget nor through membership;

- Employees of a municipality that directly or indirectly work on implementation of a project from which the tender in question is financed should not be members of managing board or any other responsible body of the regional development agency;

- During evaluation of tenders in question, employees from the municipality who are at the same time members of a managing board or any other responsible body of a regional development agency must not be in hierarchical relationship with employees from the municipality who are members of evaluation committee;

- Benefit that a regional development agency gains with its operation and services must not be directed towards a municipality that conducts a tender procedure in question and participate in distribution of profit.
ADDITIONAL INFORMATION

http://www.romania-serbia.net/
http://www.evropa.gov.rs/CBC/PublicSite/Default.aspx
http://ec.europa.eu/anti_fraud/
http://admin.interact-eu.net/download/3069/
Presentation_irregularities_prevention_and_reporting_/Leif_Hansen_Commission.pdf

CONTACTS

Managing Authority for the Romania-Republic of Serbia IPA Cross-border Cooperation Programme Ministry of Regional Development and Public Administration
12 Libertatii Blvd., Bucharest, sector 5, ROMANIA
Tel.: + 40 372 111 309
Fax: + 40 372 111 456
Managing Authority e-mail: romania-serbia@mdrt.ro
Helpdesk service for the public:
ipacbc@brct-timisoara.ro
www.romania-serbia.net, www.mdrap.ro

National Authority Serbian EU Integration Office
Nemanjina 34, 11000 Belgrade
Tel. / Fax: +381 11 3061 100
Republic of Serbia

Joint Technical Secretariat
Regional Office for Cross-border Cooperation Timisoara
Proclamatia de la Timisoara Street, no 5, 1st floor,
300054, Timisoara
Romania
Tel.: +40 356 426 360
Fax: +40 356 426 361
Helpdesk service for the public:
ipacbc@brct-timisoara.ro
www.brct-timisoara.ro

Antenna of the Joint Technical Secretariat
Dimitrija Tucovića 17
26300 Vračar
Republic of Serbia
Tel. / Fax: +381 13 834 567
DISCLAIMER: This publication is financed from the European Union funds, through the Financing contract for the activities of National Authority regarding implementation of Romania-Republic of Serbia IPA Cross-border Cooperation Programme for 2013, for Measure 4.2 “Support for the publicity and information activities of the Programme”

Development and contents of this publication are the sole responsibility of the Serbian European Integration Office and it can in no way be taken to reflect the views of the European Union.

www.romania-serbia.net