

Public Procurement – INNO Case Study

The Lead Partner of the project INNO is a French Chamber of Commerce (body governed by public law).

In its first progress report (period 19/09/2008-31/12/2008), the LP reports:

- **2 laptops** (EUR 2,300 each), under “Equipment” (1 for the lead partner project manager, 1 for the communication officer, in compliance with what was planned in the application form)
- The first payment to the **INNO project coordinator**, Mr Jean-Marc Dupont for EUR 10,000 under “External expertise and services”

The public procurement rules applicable to the LP organisation are the following:

- European Directive 2004/18 EC : Above 206,000 EUR, publication in the EU Official Journal (EUOJ) and European public procurement procedures
- National rules: below EUR 206 000, the organisation has to apply “adequate procedures”.
- Internal rules of the Chamber of Commerce : the LP has sent the following table to their FLC to describe their internal rules in terms of public procurement

	Threshold	Procedure
Adequate procedures	EUR 0 - EUR 20 000	3 offers minimum are requested.
	EUR 20,000 - EUR 50,000	Publication of a contract notice on the internet site of the Chamber of Commerce , time between publication and deadline for submission of offers : 15 calendar days
	EUR 50, 000 - EUR 206 000	Publication of a contract notice on the BOAMP (French Official Journal for public procurement notices) or in a newspaper , time between publication and deadline for submission of offers: 20 calendar days.
European Tender	> EUR 206 000	Publications of a contract notice in the EU Official Journal + European tender procedures apply.

QUESTIONS:

- 1) Regarding the equipment costs reported,
 - a) has the relevant procedure been applied? See Public procurement request form “Laptops” (Annex 1). If not, what could be the consequence?
 - b) are the supporting documents sufficient? If not, which additional documents the FLC should ask for?

- 2) Considering that the INNO project coordinator is contracted for 3 years, and is entitled according to the contract to a payment of EUR 10,000 for each 6 months period (including the first period),
 - a) has the relevant procedure been applied? See public procurement request form “INNO project coordinator” (Annex 2)? If not, what could be the consequence?
 - b) Are the supporting documents sufficient? If not, which additional documents the FLC should ask for and what would particularly needs to be checked?

SOLUTIONS¹:

Question 1

- a) It seems that the relevant procedure has been applied as the expected cost for 2 laptops (5,000) was between EUR 0 and EUR 20,000 and 3 offers were requested which is in compliance with the partner’s internal rules. The fact that only 2 offers were received is not a problem as the internal procedure of the organisation is to request 3 offers, not to receive 3 offers. However a proof that 3 offers were requested has to be kept (eg. fax protocol, email delivery notice, registered letter)
However, as the organisation probably bought more than 2 laptops during the year 2008, the total costs of all the laptops bought in 2008 should be considered to check that the appropriate procedure has been applied. Our advice is therefore the following: any time that a partner needs to buy equipment or contract a service for the project, they should check with their internal procurement/legal department (and also if necessary crosscheck with their first level controller) which procurement procedure they need to apply.

- b) The following supporting documents are usually necessary for the FLC to check the public procurement procedure (non exhaustive list-other documents may be requested) :
 - Emails sent to the 3 companies to request the offers
 - Terms of reference, including deadline for submission of the offer and selection criteria
 - Offers received
 - Selection report (describing how the selection criteria were applied to compare the offers and select the best one)
 - Communication with the tenderers

¹ The information provided here gives some practical advice on recurring issues in the financial management of projects. It does not of course substitute the INTERREG IVC Programme Manual or any EC or national regulation or the advice of the first level controller.

- Order form or contract
- Invoice

NB: although the less expensive company was selected, the FLC would have to check that this was made in compliance with the selection criteria included in the terms of reference which could include, besides the price, other criteria such as the technical quality of the equipment, environmental criteria...

Question 2

- a) The procedure applied (publication in a regional newsletter) complies with the requirements stated in the internal rules of the organisation. However, as the contract for the project coordination of a European project could be of interest to companies in several EU member states, the principle of adequate advertising (derived from the EU treaty transparency principle) does not seem to be respected as a publication in a regional newspaper is not sufficient to allow companies in other Member States to be made aware of the tender procedure (see Commission interpretative communication on the Community law applicable to contract awards not fully subject to the provisions of the Public Procurement Directives-24/07/2006²).

The advertising should have been done at least in the French Official Journal for public procurement notice- BOAMP or in the EU Official Journal.

NB: the publication of a notice in the EU Official Journal through the official website SIMAP³ is free of charge and can allow partners to receive appropriate offers. It is therefore an option which can be considered even below the European Directive thresholds.

- The selection procedure may also seem doubtful as according to the supporting document, another company (France-Europe) seems to have the same level of experience (10 years) and is less expensive than the selected company (Jean-Marc Dupont). Moreover, it is indicated that Jean-Marc Dupont was also selected because the LP has already worked with this company in the past for a similar project. This is not an acceptable selection criterion as it is contrary to the principle of equal treatment of the tenderers.

Regarding the consequences of non compliance with public procurement rules, in the case of the INNO project coordinator, according to the EU “Guidelines for determining financial corrections to be made to expenditure co-financed by the Structural Funds or the Cohesion Fund for non compliance with the rules on public procurement”⁴, a 25 % correction for “non compliance with the requirement of an adequate degree of advertising and transparency” could be applied to the total amount of the contract.

In addition, if it is confirmed that the project coordinator, Jean-Marc Dupont, was mainly selected because the LP has already worked with him in the past rather than on the basis of objective criteria as set in the terms of reference, a further 10 % correction could be applied for “breach of the principle of equal treatment”.

NB: it is also not possible to select a company on the basis of its nationality or to request the company to be located in a particular country, as this would be discriminatory. Language requirements and availability for meetings at the contracting authority office

² http://ec.europa.eu/internal_market/publicprocurement/key-docs_en.htm

³ http://simap.europa.eu/index_en.html

⁴ http://www.interact-eu.net/ec_guidance_financial_management/199

should however not be considered as discriminatory as long as they are applied in a fair and transparent way.

- b) The following supporting documents are usually necessary for the FLC to check the public procurement procedure (non exhaustive list-other documents may be requested) :
- Notice published in the “Voix du Nord” to advertise the tender procedure
 - Terms of reference, including deadline for submission of the offer and selection criteria
 - Offers received
 - Selection report (describing how the selection criteria were applied to compare the offers and select the best one)
 - Communication with the tenderers
 - Contract
 - Invoice

The FLC would need to check carefully the selection criteria (in the terms of reference) and how they were applied (in the selection report) to determine whether the selection was made in a fair and transparent way and in accordance with public procurement rules. This could be the case for example if Jean-Marc Dupont’s experience is objectively more relevant than “France Europe” and the relevance of the experience was more weighted in the terms of reference than the price criterion.