

**European Third Party Logistics Support (TPLS) Platform
for Crisis Management Operations**

BUSINESS GUIDE FOR ECONOMIC OPERATORS

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Information contained in this document is of a general nature only.

1. Introduction

The TPLS platform provides a forum for interaction between contracting authorities and economic operators to support the identification of solutions for mission and operation-related logistic support. This business guide is to help economic operators identify and better respond to the new business opportunities TPLS will create.

In general, governments and international organizations procure goods and services to fulfil their internal needs and for the execution of projects of different nature around the world. These purchases offer important business opportunities for economic operators..

The market for public procurement in the member States amounted to some €1,800 billion in 2006, corresponding to 16% of the EU GDP¹. The overall defense expenditure for the 26 EU Member States (except Denmark) engaged in ESDP comes to €204 billion in 2007²: this amount represents 1,68% of their combined GDP. Member States spend around 85% of their equipment budget domestically³. [Placeholder for reference to figure spent on logistic support by 26 MSs]

Purchases of goods and services in the defence and security sectors are often of a sensitive nature and procedures respond to specific requirements. It is important to understand the processes, by which tender procedures are conceived, prepared and implemented, as well as the roles and responsibilities of key actors.

2. Approach to public procurement

2.1. Legal base

Public procurement is subject to international rules. Under these rules public sector procurement must follow transparent open procedures ensuring fair conditions of competition for suppliers. The main international legal bases are:

World Trade Organization: Government Procurement Agreement (GPA)

Currently, the GPA is the main WTO instrument providing a framework for the conduct of international trade in government procurement markets among the participating countries. Additionally, it can be considered to serve broader purposes relating to good governance and the attainment of value for money in national procurement systems.

This agreement was signed in 1994, at the same time as the agreement establishing the World Trade Organization. The GPA entered into force on January 1st 2006. The agreement establishes public procurement principles that have to be respected by any other national or international regulation.

Its main provisions are related to:

- Non discrimination for the suppliers, equal treatment.
- Ensuring transparency.
- Widest competition.
- Proportionality.

1 European Code of Best Practices facilitating the access by SMEs to public procurement Contracts. European Commission.

2 EDA Defence Data 2007 Brochure.

3 A Strategy for a stronger and more competitive European defence industry. Communication from the European Commission.

European Union: Directive 2004/18/EC

Public Procurement Directive 2004/18/EC on the coordination of procedures for the award of public works, supplies and service contracts and Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors form the base of the EU legislative package. They were approved in 2004 by the European Parliament and the EU Council of Ministers and constitute the European basic regulation to simplify and modernize procurement procedures.

These Directives define the principles, thresholds, rules of transparency, advertising and different procedures for public contracts to improve the functioning of the European internal market.

Defence procurement

Contracts relating to arms, munitions and war material awarded by contracting authorities operating in the field of Defence are excluded from the scope of the GPA. Public Procurement Directive 2004/18/EC sets up also specific situations for public contracts subject to Article 296 of the EC Treaty.

This article of the Treaty gives Member States the possibility to exempt contracts in the fields of both defence and security in order to keep secret information the disclosure of which they consider contrary to the essential interest of their security. This can, at one extreme be the case where contracts are so sensitive that their very existence must be kept secret.

In this framework, a proposal for a new procurement directive adapted to the specificities of defence was adopted in December 2007. The defence directive will apply to procurement for military and also for certain non-military security purposes providing flexibility and special provisions for sector-specific issues.

It is important to highlight that national security remains the sole responsibility of each Member State in the fields of Defence and security. At the same time, European Security and Defence Policy (ESDP) is designed to provide the EU with capacity for autonomous action in order to respond to international crises.

In order to be better informed about **public procurement legal aspects**, economic operators are encouraged to interact within the **TPLS platform Forum**.

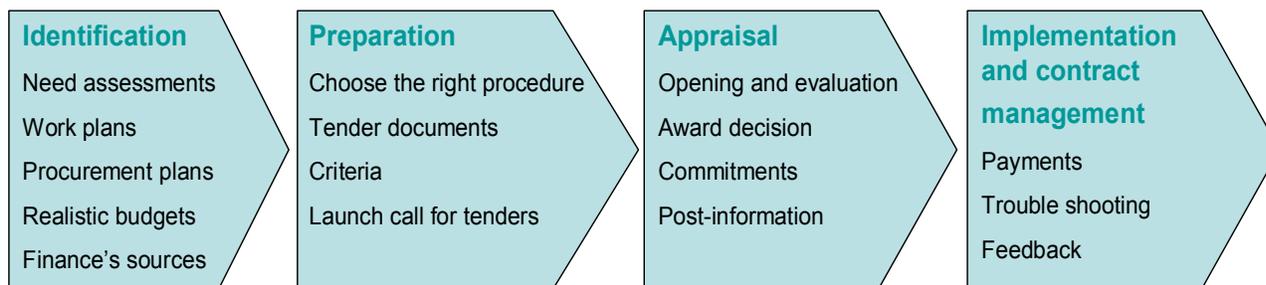
2.2. Decision making

It is important to get a full understanding of the procurement policies of each organization. They essentially constitute the rules of the game for bidding. It is also fundamental to understand the procurement lifecycle and how decisions are taken.

The procurement lifecycle defines how tender procedures are programmed, identified, prepared and approved. Procurement policies vary from institution to institution. Thus studying in deep the organization is a must in order to have enough information about their objectives, stakeholders or service/product end-users.

In brief, the procurement cycle can be described as follows:

Procurement Decision making:



Step 1. Identification

At this step, the public entities will identify future needs and priorities based on strategy and policy. It is important to produce some documents at this stage, like adequate need assessments, work plans, procurement plans, realistic budgets and finance sources. Some of these documents are available to the public, as they are published in the institutions websites. Others are only internal working documents.

Step 2. Preparation

In this stage, the procurement team will decide the procedure depending of the thresholds. The tender dossier (which include technical specifications, selection and award criteria) will be also developed. In some cases, in order to elaborate the technical specifications, the procurement team would be assisted by consultants or experts in specific fields. Once the tender dossier is ready, the call for tender will be launched.

Step 3. Appraisal

After the deadline to receive the bids, the contract authority will organize the opening session. This is a step open to the bidders for transparency reasons. The evaluation of the offers must respect the criteria established in the term of reference. These criteria normally relate to financial stability, experience, capacities and technical competence of the company.

Once the award decision is taken, the contract authority will inform all bidders about the results and will initiate the contract formalization. The award of the contract will also be published.

Step 4. Implementation and contract management

The awarded economic operator must implement the contract respecting the technical specifications and conditions (delivery schedule, quality, after-sales services, etc). Once the contract has been correctly implemented and following contract authority approval, payments will be prepared and bank guarantees will be released.

As part of the post-contract stage, a review of contract performance should be the carried out by the contract authority in order to identify lessons-learned and promote long-term business relationships.

2.3. Procurement procedures

The standard procurement procedures are divided into services, supplies and works. Depending on which procedure is used, the contracting authority can proceed with tendering and contracting (following the thresholds for the contract in question). The thresholds depend on each organization.

Open procedure

These are procedures where any economic operator may submit a tender. The contract is given maximum publicity through the appropriate media. The contract is awarded by conducting the corresponding selection and procurement procedure. No negotiation is allowed.

Restricted procedure

These are calls for tender where any economic operator may ask to take part in, but only candidates satisfying the selection criteria may submit a tender. They are previously invited by the contracting authority, once the selection has been made following the specifications in the procurement notice.

Negotiated procedure

This is an exceptional procedure used in justified cases. These justified cases could apply for example when open or restricted procedures have been used and produced no acceptable tenders, extreme urgency cases or lack of competition for technical or copyright reasons.

Framework contracts

A framework contract is an agreement between one or more contracting authorities and one or more economic operators the purpose of which is to establish the terms governing specific contracts which may be awarded during a given period, particularly as regards the duration, subject, price, implementation rules and the quantities envisaged. Contracting authorities may not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.

Competitive dialogue

In the case of particularly complex contracts, where the Contracting Authority considers that direct use of the open procedure or the existing arrangements governing the restricted procedure will not allow the contract to be awarded to the tender offering best value for money, it may make use of the competitive dialogue. A contract is considered to be “particularly complex” where the Contracting Authority is not objectively able to define the technical means capable of satisfying the needs or objectives or able to specify the legal or financial makeup of the project.

3. How to submit a bid: best practice.

3.1. Pre-bidding

It is very important for economic operators to develop the internal capacity to confirm that there exists a real possibility to obtain a contract. This assessment should evaluate the production capacity, human and financial resources, a working plan and the cost to obtain the objective. Having successfully carried out similar contracts in the field would be an advantage. In case of a lack of experience, the company may seek to offset this with a good alliance policy.

TPLS Database of Economic Operators is a practical tool which assures a company’s visibility and facilitates intra companies’ interaction. This instrument allows the creation of a qualified, security and defence services provider’s network. The database includes, amongst other things: information on the nature of the service to be provided, on the circumstances where the service can be delivered and information on partnerships preferences. In brief, this is a useful exploratory tool.

In addition to this, the company should develop its knowledge of the procurement policies and procedures used by governments and multilateral institutions. In order to make it easier, governments and international institutions have developed procurement guidelines and policies, which are normally to be found on their websites.

TPLS platform will provide the highest level of information in term of contractual processes, making available information about procurement policies, strategy papers and project cycle set up by governments and multilateral institutions.

3.2. Identify procurement opportunities

Due to the diversity of national and international organizations and the sources of information, identifying appropriate procurement opportunities represents effort and economic cost. In order to do this effectively the following advice should be taken into account:

- Start the search in countries where the firm has accumulated experience. This would assure knowledge of the country where the services or goods will be supplied. It will also be easier to find local partners in case needed.
- Look for groups of tenders with similar characteristics interesting for the company.
- Identify the responsible procurement contact details (usually, this information can be found in the forecast notice) and advance in the procurement strategy of the institution.
- Get the information as soon as possible in order to plan the procedure and estimate the work load. It is really useful to identify searching tools (newsletters, data bases, consultants and the **TPLS platform**) to have updated information on tender opportunities. Some institutions require companies to be registered in advance in their data base in order to determine the compliance of the firm's conditions.
- Find key information by checking carefully the tender dossier (timing, budget, etc), identify key contracts, consider if the tender is really interesting for the firm and if it can be developed in a successful way.
- Search secondary information (e.g. institution market research, country strategy papers, project documents, political decisions).

TPLS platform contains a Business Opportunities Database and an Alert system service. Economic operators are encouraged to use TPLS platform to obtain on time up-dated information, identifying procurement opportunities and key documents.

Once potential opportunities have been identified, they have to be analyzed and classified in the company schedule and carry out marketing strategies. The firm should know how in which framework the tender is placed (e.g. cooperation aid), the procedure, budget, tender dossier, timing, deadlines or guarantees.

It is useful to develop a marketing strategy and place the firm in this specific market. Some examples are as follows:

- Post firm's goods or services in specialized or thematic portals.
- Arrange meetings with the government or institutions departments to promote technical solutions, state of art, perspectives and good practices of the sector.
- Assist to conferences organized by government or institutions procurement departments.
- Participate in specialized networks to meet possible partners.

TPLS platform provides a Catalogue of Services along a list of qualified potential providers. This Catalogue will be used by contract authorities as shop window to present their product and services.

When the call for tender is launched, with the purpose of respecting procurement ethical clauses and assure equal treatment by contractual authorities, approaching activities should not be carried out.

In order to assist economic operators, the **TPLS platform** includes a **Model Clauses Database for contract arrangements** as well as a **Technical Specifications Database**. These documents are intended to provide guidance, examples or suggestions to improve contracting authorities' tender dossiers.

3.3. Bidding

To successfully participate on public procurement and obtain the contract, a high-quality bid is essential. The first step is to obtain the tender dossier where all the requirements will be detailed. It is advisable to obtain the tender dossier at early stage to have the time to properly plan the offer. Frequently, the tender dossier can be downloaded from the institution website. The firm can also contact the contract authority to obtain the dossier and express their interest in participating.

Economic operators are encouraged to obtain tender dossiers and related documents through **TPLS platform Business Opportunities Database** and to use the **platforms Alert system service**.

Tender documents define the tender objective, providing information about the services or goods to be provided, expected final results, general and special contract conditions, award and selection criteria, key experts, evaluation criteria, maximum budget and guarantees.

Firms are encouraged to realistically assess their own capabilities and their ability to satisfy the tender. Any bid should meet the evaluation criteria. Candidates must submit administrative documents to demonstrate that they are suitable for consideration.

The selection criteria will assess the company economic and financial capacity (supported by financial balances sheets or turn over declaration), professional capacity (supported by the expert's CVs) and technical expertise or experience (demonstrated by similar contract execution).

The technical offer is particularly important. The company should explain the service/product characteristics, timing and methodology to carry on the contract. Important issues to take into account are sub-contracting and partner policies allowed by the contract authority.

The tender dossier defines a maximum budget, thus the financial offer must be the same or lower. In order to offer a competitive price, the company must take into account and include the required quality, delivery terms (in case of goods), way of payment, whether price revision will be allowed, guarantees and other costs. Financial offers should be competitive and adjusted to the market, but excessively low bids could be rejected.

The contract award decision is decided according to the points received during the evaluation process. In addition, some procurement procedures are complex and companies who are not familiar with the guidelines or have a lack of bidding experience often make mistakes that result in less competitive proposals or even outright disqualification. It must nonetheless be kept in mind that if companies do not submit well drawn up expressions of interest and technically compliant proposals and bids, the contract will not be awarded to them.

3.4. Post-Bidding

On receiving tenders, the contracting authority must register them. The envelopes containing the tenders must remain sealed and be kept in a safe place until they would be opened in the opening session.

Upon completion of the administrative and technical evaluation, the envelopes containing the financial offers for tenders who were not eliminated will be evaluated. The contract will be awarded to the economic operator which complies with the formal requirements and the eligibility rules whose total budget is within the maximum budget available in the call for tender, which meets the minimum technical requirements specified in the tender dossier and represent the best value for money. If none of the received bids fulfil these criteria, the procedure will be cancelled.

Finally, the contracting authority notifies the successful company in writing that its tender has been accepted. Above thresholds, the **contract award notice will be published** including among others, the name of the awarded company and the value of the contract.

TPLS platform contains a **Database of Past Contracts** where useful historic information can be found.

Once the contract is awarded, the agreed tasks have to be implemented in line with the description of the action in the contract, assuring effectiveness and efficiency. A good communication policy facilitates the management of business relationships. A prompt identification of problems and its early resolution, build an atmosphere of mutual trust.

When the procurement process is completed, a feedback exercise should be undertaken internally by the company in order to learn from experience, summarize good practices and exploit them in new business opportunities.

4. Bibliography

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