

ANNEX 4

Procedure¹ for Romanian private beneficiaries regarding the assignment of supplies, services and works contracts financed within Interreg V-A Romania-Hungary Programme

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¹ The Managing Authority reserves the right to modify the procedure by means of instructions which will be notified to the beneficiaries and which will be part of the contracts as of the date of communication to the beneficiaries.

Chapter 1 - Field of application

The present procedure describes the principles and minimum phases that private beneficiaries must follow for purchasing supplies, services or works under the Interreg V-A Romania – Hungary Programme.

1.1. The present procedure describes the principles and minimum phases that must be followed by: the private beneficiaries that purchase supplies, services or works under the projects financed under Interreg V-A Romania – Hungary Programme.

1.2. The private beneficiaries that purchase services or works apply the provisions of Law no. 98/2016 on public procurement, hereinafter named law, if the conditions foreseen at article 6 of law are fulfilled cumulatively.

The cumulative conditions of art. 6 in conjunction with the art. 7 of Law no. 98/2016 on public procurement

- I. The private beneficiaries comply with the legislation on public procurement when awarding a **works contract** if it meets cumulatively the following conditions: a) the contract is financed/subsidized directly in proportion of more than 50% of its value by a contracting authority; b) estimated value excluding VAT of the contract is equal to or higher than the threshold of 24,977,096 lei²; c) the contract includes one of the following activities: 1. civil engineering; 2. building works for hospitals, facilities intended for sports, recreation and leisure, buildings of pre-university and university educational institutions and buildings used for administrative purposes. If at least one of the conditions of point I is not met, then the private beneficiary applies the provisions of the present procedure.*
- II. The private beneficiaries comply with the legislation on public procurement when awarding a **service contract** if they meet the following conditions: a) the contract is financed/ subsidized directly in a percent of more than 50% of its value by a contracting authority; b) the estimated value excluding VAT of the contract is equal to or higher than the threshold of 648,288³ lei; c) the contract is connected with a works contract subject to section. I. If at least one of the conditions in section. II is not met, then the /private beneficiary applies the provisions of this procedure. In situations referred to in sections I and II, the contracting authorities which finance/subsidize these contracts are required to follow the provisions of Law no. 98/2016 on Public Procurement and when the contract is awarded by an /private beneficiary or when the contracting authority*

² The provisions of art. 8 of Law no. 98/2016 on public procurement, on the revision of thresholds, apply accordingly.

³ The provisions of art. 8 of Law no. 98/2016 on public procurement, on the revision of thresholds, apply accordingly.

awarded the contract on behalf of and for the /private beneficiary. The provisions of art. 8 of Law no. 98/2016 on public procurement, on the revision of thresholds, apply accordingly.

*Attention! When awarding the **supply contracts**, the private beneficiary applies the provisions of this procedure, regardless of the estimated value.*

1.3. If the conditions established by article 6 paragraph (1) or paragraph (3) of law are met cumulatively, the private beneficiary will comply totally with the provisions of the legislation on public procurement.

1.4. It is forbidden the division in more contracts of lower value, and the use of some calculation methods leading to an understatement of the estimated value, in order to fall under the thresholds foreseen by law or in order to avoid the application of the present procedure.

1.5. In case the private beneficiaries are associated with an entity that is a contracting authority, within the meaning of article 4 paragraph (1) letter c) of law, they have the obligation to apply the provisions of the law.

Chapter 2 - General provisions

2.1. The private beneficiary will use only the terms and definitions regulated by this procedure, in order to avoid some confusions to the terms used by the legislation related to the field of public procurement.

2.2 First of all, it is mandatory for the private beneficiary to have a **Procurement Plan/ Programme for the procurements within the project.**

2.3. All procurement documents (including clarifications) will be edited, respectively published/ submitted by the private beneficiary into Romanian. If deemed necessary, the procurement documents can be translated into another language by the private beneficiary. In this case the private beneficiary will ensure that there are no inconsistencies between the Romanian version and the other version/versions. If there are translations into another language, in case of a conflict between the Romanian version and any version in another language, the Romanian language version shall prevail.

2.4. In competitive procedures developed within a project, private beneficiaries must correlate the procurement documents with the terms of subsidies/agreements signed.

2.5. In case of competitive procedures conducted under a project, the private beneficiaries must relate to the procurement documents with the clauses of the signed subsidies/agreements.

2.6. The authorities competent in the management of European funds carry out reviews of procurement conducted by the private beneficiaries in accordance with the Regulation (Eu, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the Financial Rules Applicable to the General Budget of the Union, Amending Regulations (Eu) No 1296/2013, (Eu) No 1301/2013, (Eu) No 1303/2013, (Eu) No 1304/2013, (Eu) No 1309/2013, (Eu) No 1316/2013, (Eu) No 223/2014, (Eu) No 283/2014, and Decision No 541/2014/Eu and Repealing Regulation (Eu, Euratom) No 966/2012, respectively the provisions of the subsidy, co-financing agreement, national and European legislation.

2.7. Where in the subsidies/multiannual agreements implemented for a period longer than one calendar year, the private beneficiary will choose the method of procurement taking into account the total value of goods, services, works that are considered similar or addressing to the economic operators constantly involved in activities in a relevant profile market estimated for the entire implementation period of the project, without having to conduct a single procedure/direct procurement. If multiple procedures/direct procurement will be organised, the private beneficiary shall ensure that these activities will not generate additional administrative costs under the project.

2.8. If a private beneficiary implements several financing subsidies/agreements in the same period for the election of the procurement procedure in a project, the estimated values of such subsidies/ agreements for the same type of supply/service/work is not cumulated. They will be estimated separately for each subsidy/agreement.

Chapter 3 - Definitions

3.1. Authorities competent in the management of the European funds – the Managing Authority for Interreg V-A Romania – Hungary Programme.

3.2. Competitive procedure - minimum phases to be followed by the private beneficiaries to award a procurement contract.

3.3. Private beneficiary – legal entity without role of contracting authority, according to art. 4 of Law 98/2016 that signed a subsidy/ agreement or partner in a subsidy/agreement.

3.4. Partner - legal entity participating in the activities of the project.

3.5. Economic operator - any natural person or legal entity, public or private, or group or association of such persons, which offer legally on the market the execution of works and / or a work, the supply of goods or services including any temporary association formed between two or more of these entities.

3.6. Estimated value - a value determination of the object of an acquisition which is determined by calculation and the sum of all amounts payable for achieving the proposed objective (including the amount for the percentage of contingency, if applicable), without VAT, taking into account any possible forms of options and extensions explicitly mentioned in the procurement documents.

3.7. Technical specifications - all requirements, including prescriptions or technical characteristics that allow each product, service or work to be described, objectively, in an appropriate manner to meet the need of the private beneficiary.

3.8. Offer - the legal act by which the economic operator manifests its willingness to engage in a public procurement contract from a legal point of view. The offer includes the financial proposal, the technical proposal, and other documents set out in the awarding documentation.

3.9. Procurement documents - all documents made for an acquisition, both those developed by the private beneficiary as well as those developed by the economic operators, including documents evidencing payments/reality of procurement.

3.10. Work / supply contract / service contract - the contract for pecuniary interest in writing between a private beneficiary and one or more economic operators which has as its object the execution of works (covering either the exclusive execution, or both the design and execution of works / construction), the supply of goods or the provision of services.

Chapter 4 - Direct procurement

4.1. If the estimated value of procurement, VAT excluded, is lower than the value thresholds foreseen by article 7 paragraph (5) of law, the private beneficiary purchases directly supplies, services or works.

DIRECT PROCUREMENT	
Supplies procurement	Estimated value is lower than 135,060 ⁴ lei, VAT excluded
Services procurement	Estimated value is lower than 135,060 ⁵ lei, VAT excluded
Works procurement	Estimated value is lower than 450,200 ⁶ lei, VAT excluded

⁴ The provisions of art. 8 of Law no. 98/2016 on public procurement, on the revision of thresholds, apply accordingly.

⁵ The provisions of art. 8 of Law no. 98/2016 on public procurement, on the revision of thresholds, apply accordingly.

⁶ Idem.

4.2. The procurement was made based on justifying documents (for example, contract, if applicable, order, receipt/invoice, payment order, bank statement, delivery receipt, account sheet, transport documents or others, as appropriate).

4.3. For the direct procurement it is not mandatory to sign a contract. If the private beneficiary believes that for the predictability of the commercial relations, it needs clear contract terms, it may sign a contract to that effect.

4.4. Applicable rules:

1. The principles of economy, efficiency and effectiveness must be respected regardless the estimated value of the procurement. The private beneficiary is bound to take all measures it considers necessary to comply with those principles, included in the principle of sound financial management, starting from the assumption that they act in a similar manner and organize own work.

In case of on-site visit, the existence, functioning and use of supplied products/executed works (other specific aspects) or proof of services supply (attendance sheets, minutes, deliverables, etc) are verified.

2. Direct procurement needs not to comply with a procedure and rules of advertising, respectively public notice should not be published on Programme page <http://www.interreg-rohu.eu> /other forms of advertising under this procedure.
3. The private beneficiary, before the direct procurement, will prepare a note on the estimated value, which will include information resulted from the research of market offers (bids required, products catalogue etc., history).
4. 5. The private beneficiary must prove the reality of the expenditure incurred, including by accounting records. The reality of the expenses must be proven also in the case of on-site visits carried out by the First Level Control / Joint Secretariat.

4.5. Procurement file (for the private beneficiary)

Documents that must be inserted in the file of direct procurement
Contract of Works/ supply/ services
Note on determining the estimated value
Justifying documents of procurement (for example: order, invoice, receipt, contract, transport documents, or others, if applicable)
Documents proving the procurement execution, respectively products providing/services providing/works execution (for example: payment orders, bank statements, delivery minutes, taking over minutes, minutes of putting into operation/acceptance, activity reports and others, if applicable)

4.6. Verifications made by the authorities competent to manage the European funds

No. crt.	Elements to verify	Instructions
1.	Estimated value of procurement is lower than the value thresholds foreseen by law?	<p>It is verified if the note on determining the estimated value includes information resulted from the research of the market offers. It is verified whether it was necessary to update the estimated value. The estimated value should be lower than the thresholds set out in art. 7 paragraph. (5) of the Law. The estimated value/updated estimated value, if applicable, must be correlated to the value provided in the subsidy/ agreement for procurement made by private beneficiaries.</p> <p>Sanction • If the procurement is divided in order to avoid the application of the competitive procedure, a correction of 25% of the procurement value will be applied, because in the case of the competitive procedure, the publicity requirements should have been followed for initiating the procedure.</p>
2.	The procurement documents are submitted to the file?	<p>The existence of the documents is verified.</p> <p>Sanction • If certain expenditure under a procurement cannot be proven with justifying documents, a correction / sanction will be applied according to part 3 point 3 of the Annex to the Government Decision no. 519/2014 on setting the rates on percentage reductions/ financial corrections applicable for the deviations in the Annex to Government Emergency Ordinance no. 66/2011 on preventing, finding and punishing the irregularities occurred in obtaining and using European funds and/or national public funds related to them, hereinafter G.D.no. 519/2014.</p>

Attention! If the achievement of the acquisition requires a number of approvals, permits, licenses or other formalities laid down by the applicable legal provisions, the private beneficiary must ensure that the expenditures shall comply with all legal provisions in force.

Chapter 5 - Competitive procedure

5.1. If the estimated value of the procurement, VAT excluded, is equal to or higher than the value thresholds provided by art. 7 paragraph. (5) of the Law, the private beneficiaries apply the competitive procedure provided in this chapter, namely:

- a) for the supply contracts, apply this competitive procedure without any upper value limit at which to apply the provisions of the law;
- b) for the works and services contracts, apply this competitive procedure if the conditions listed in Art. 6 paragraphs (1) or (3) of the Law, are not met.

5.2. The classification of the contracts which cover at least two types of procurements, consisting of works, services or supplies, is determined depending on the main object of the contract in question. The main object is determined depending on the highest of the estimated values of the respective supplies, services or works.

Attention! The contract that covers both the supply of products and services is considered a service contract if the estimated value of the services is higher than the estimated value of the products included in the respective contract. Therefore, if we have a contract where the value of the services exceeds the value of the products to be procured, the provisions of art. 6 paragraph (3) of the Law apply, if the legal conditions are cumulatively met. The contract which covers products and works is considered a works contract, if the estimated value of the works is higher than the estimated value of the products included in the respective contract. Therefore, if we have a contract where the value of the works exceeds the value of the products to be purchased, the provisions of art. 6 paragraphs (1) and (2) of the Law apply, as long as the legal conditions are cumulatively met.

Section 1

Principles applicable to this procedure

1.1. During the entire process of procurement by competitive procedure, when adopting any decisions, the following principles must be taken into consideration:

- a) the principle of transparency;
- b) the principle of economy;
- c) the principle of efficiency;
- d) the principle of effectiveness.

1.2. By transparency it means public disclosure of information relating to the competitive procedure, so that the economic operators operating in the market to participate in the competition, ensuring thereby the competition promotion. Given that the compliance with this

principle provides the prerequisites for compliance with the other three principles, sanctions are set out for non-compliance with the disclosure requirements.

Requirements

I. Transparency when initiating the procedure:

- a) the private beneficiaries must publish a notice in a national newspaper/newspaper/publication/ national or regional gazette, print form or online, or on a website dedicated to advertising services, the same day when transmitting the participation invitations;
- b) also the private beneficiaries must publish a notice accompanied by the technical specifications associated to the Program website <http://www.interreg-rohu.eu> uploading it to the dedicated section when initiating the procurement procedure, the same day when transmitting the participation invitations, if the case.

Failure to comply with the above obligations draws a financial correction in accordance with part 3 point 1 in the Annex to GD no. 519/2014.

II. Transparency when closing the procedure:

- a) the private beneficiaries must notify in writing all tenderers about the result of the competitive procedure, within 5 calendar days from awarding the purchase contract;
- b) the private beneficiaries must complete the information on the contract winner on the programme website <http://www.interreg-rohu.eu>, within 5 days after signing the contract (Via Joint Secretariat). Non-compliance of the above obligations draws a financial correction in accordance with the third part point 2 of Annex to GD no. 519/2014.

1.3. The principle of economy foresees minimizing the cost of the resources allocated in order to reach the estimated results of an activity, by maintaining the quality corresponding to these results.

1.4. The principle of efficiency supposes ensuring an optimal ratio between the used resources and the obtained results.

1.5. The principle of effectiveness aims at achieving the specific objectives established for each planned activity, in the sense of obtained the expected results.

Attention! The private beneficiary will take all measures they consider necessary in order to ensure a good financial management, in accordance with the principle of economy, efficiency and effectiveness, starting from the premises that they proceed in the same way when organising their own activity.

Section 2

Avoidance of conflict of interests

2.1. The private beneficiaries, natural persons/legal entities, when applying the competitive procedures of purchase, are obliged to take all measures needed to avoid the situations that determine the occurrence of a conflict of interests.

2.2. The provisions of art. 13 and 14 of the Government Emergency Ordinance no. 66/2011 are applied on preventing, finding out and sanctioning the irregularities occurred when obtaining and using the European funds and/or the national funds related to these, approved with the amendments and completions by Law no. 142/2012, as subsequently amended and completed, named hereinafter Government Emergency Ordinance no. 66/2011, in conjunction with the provisions of art. 8 in annex to the Government Decision no. 875/2011 for the approval of the Methodology of applying the provisions of the Government Emergency Ordinance no. 66/2011 on preventing, finding out and sanctioning the irregularities occurred when obtaining and using the European funds and/or the national funds related to these, as subsequently amended and completed, named hereinafter GD no. 875/2011.

2.3. If the private beneficiary finds out that it is in one of the situations mentioned in the Government Emergency Ordinance no. 66/2011, it will mention in the explanatory note of award the reasons for which it rejects the respective bid.

2.4. The private beneficiary must include in the procurement file a declaration on own responsibility from which results that it did not breach the provisions related to the conflict of interests, and the successful bidder declaration, according to the indicative model specified by Law 98/2016:

*Form no. APPLICANT/BENEFICIARY/BIDDER/ASSOCIATED BIDDER (name)
DECLARATION on not including in the situations foreseen at. of the Government Emergency Ordinance no. 66/2011 on preventing, finding out and sanctioning the irregularities ocured when obtaining and using the European funds and/or the national public funds related to these, as subsequently amended and completed*

The undersigned,, as....., related to the procedure, declare on my own responsibility, under the sanction of false declarations, as it is foreseen in art. 326 of Law no. 286/2009 on Penal Code, as subsequently amended and completed, that I am not included in the assumptions described in art. of the Government Emergency Ordinance no. 66/2011 on preventing, finding out and sanctioning the irregularities occurred when obtaining and using the European funds and/or the national public funds related to them, approved with the amendments and completions by Law no. 142/2012, as subsequently amended and completed. The undersigned,, declare that I will inform

immediately if modifications will occur in the present declaration. Also, I declare that the information provided is complete and accurate in detail and I understand that is entitled to request, for the verification and confirmation of the declaration, any additional information. I understand that in case this declaration is not according to the reality, I am liable for breaching the provisions of the penal legislation on false declarations. (name and position of the authorised person) (signature of the authorised person) To be completed/customized

2.5. The provisions of this section are completed according to the provisions of the national legislation and European legislation related to the conflict of interests.

Section 3 - Elaboration of the technical specifications and determining the estimated value

3.1. The elaboration of technical specifications

1. The private beneficiary elaborates the objective technical requirements that describe the procurement subject in order to ensure the achievement according to the project purpose.

In case the procurement involves the transfer of some intellectual property rights, the private beneficiary must ensure, through the procurement contract, that when finalising it, these rights will be transferred (for example, in IT field – source code etc.).

2. As an exception from the rule, the private beneficiary may award the contract to a certain economic operator in the following situations:
 - a) the purpose of procurement is creation or purchase of a work of art or an unique artistic representation;
 - b) competition is missing from technical reasons;
 - c) protection of some exclusive rights, including intellectual property rights;

Attention! The private beneficiary can apply the exceptions from letters a) -c) only if there is a reasonable alternative solution, such as the use of alternative distribution channels in Romania or outside it and acquisition of works, supplies or services comparable from functional point of view and the lack of competition or protection of the exclusive rights is not the result of an artificial restriction of the parameters of the procurement for the future competitive procedure. The technical reasons may be generated, also, by the specific requirements on interoperability that must be met to ensure

the functioning of works, supply or services to be purchased. The private beneficiary will describe in detail and in a motivated way the particular technical specifications.

- d) when the products which are subject to procurement are made solely for scientific research, experimental, study or development purpose, and the procurement contract does not provide for series production of certain quantities of product in order to establish the commercial viability thereof or cost recovery of research and development;
 - e) when it is necessary to purchase from the initial contractor appointed following the performance of competitive award of a supply/services/works contract of some additional quantities of products destined for partial replacement or extension of the products or existing facilities and only if change of the initial contractor would put the private beneficiary in a position to purchase products with different technical characteristics of the existing ones that would result in incompatibility or disproportionated technical difficulties in operation and maintenance;
 - f) for the procurement of goods or services (which meet the necessary technical requirements) under the advantageous special conditions from an economic operator that ceases completely the business activities or is in bankruptcy, an arrangement with creditors or in a similar procedure.
3. The technical specifications must include all the requirements for the bid elaboration. The beneficiary must elaborate these specifications in an objective/clear/precise manner to ensure the proper performance of the project purpose.
 4. Defining some requirements indicating a certain origin, source, manufacture, a special procedure, a trade mark, a patent, a manufacturing license, which can have the effect of favoring or eliminating certain economic operators or certain products, is not a good practice. Such an indication is admitted where the specifications cannot be described objectively and only accompanied by the mention "or equivalent".
 5. In the case of private beneficiaries, the technical specifications presented generically in the application form must be detailed in the procurement documents.
 6. If it is found out that the technical specifications mentioned in the application form / application are no longer current, the private beneficiary must communicate these aspects to the competent authority in the management of the European funds before launching the competitive procedure, in order to assess in time together with the representatives of these institutions, a possible impact on the terms of the subsidy/agreement and take appropriate measures.
 7. In the document "Technical specifications" will be presented, in order of priority, elements of delimitation of bids, if necessary.

8. The private beneficiary must request by the document "Technical specifications" a declaration on own responsibility from the bidders for which results that they are not in a conflict of interest, according to art. 15 of G.E.O. no. 66/2011. At the end of the procedure, the successful bidder will renew this declaration, if necessary.

Remember:

- The present procedure does not regulate the notion of „criteria of qualification/selection". Their establishment is not compulsory and is not a rule. If the beneficiary considers that the fulfilment of the obligations in the contract to be implemented requires a certain financial capacity, the previous similar experience, a certain type of staff or other requirements, it may include such requirements, but must justify them in a separate document. In this case, the private beneficiary will not be able to give up to the written requirements in the analysis phase of the bids. The beneficiary must not hamper the bidder's right to prove the achievement of the mentioned requirements by any type of verifiable means.

Attention! It is not recommended the use of standard models for award documentation, specific to procurement. Using these models can lead to errors because they may contain requirements that are not justified in the case of private beneficiaries.

- This procedure does not regulate the notions “participation guarantee/execution guarantee/deposits”. It is not necessary to request guarantees of the kind mentioned above, in case of private procurement, since the establishment of such guarantees means additional costs that may hinder the participation in the competitive procedure and these will be reflected in the price offered by the economic operators. In order to ensure the proper execution of the contractual obligations, the applicant/private beneficiary may include in the contract clauses to guarantee the optimal implementation of the contract (for example, penalties, verifications at certain pre-established intervals etc.).
- This procedure does not regulate the notion “award criteria”. In order to observe the principles of economy, efficiency and effectiveness, the private beneficiary will choose the bid with the most benefits for reaching the project purpose/future project. Also, in the explanatory note of award, the technical and financial advantages will be explained for its choice, compared to the requested requirements. The technical and financial advantages for choosing are exclusively related to the information presented in the bid/answers to the requested clarifications.

3.2. Determining the estimated value

1. The estimated value of procurement is determined before initiating the competitive procedure and must be valid at the time of initiating the procedure.
2. The estimated value of the procurement is determined based on the market price offers (received/ requested/obtained through the market research, etc.) or based on information from recent previous contracts/procurement, to ensure the reasonableness of the estimated costs, and will prepare the explanatory note for determining the estimated value.
3. When determining the estimated value, the private beneficiary is obliged to refer to the cumulated estimated value of the supplies, services or works which are considered similar, respectively have the same subject, or are intended for the same or similar use or addresses to the operators carrying out constantly activities in a relevant profile market.
4. Notwithstanding point 3, the procurement made prior to the approval of the subsidy contract, is not cumulated with those made during the course of the subsidy contract.
5. For procurement made within a project, the private beneficiary determines the estimated value for each procurement separately since the time of submitting the application form. If there is a significant time interval between submitting the application form or approval of the subsidy/agreement and the procurement, there may be changes (increase/decrease) on the market price. For this reason, the timeliness of the estimated value of procurement will be verified, and, if appropriate, this value will be updated. The verification of the timeliness of the estimated value will be achieved before publication, because, otherwise, there is a risk of submitting inadequate bids.

Attention! If after elaborating the technical specifications, it is found out that the estimated value at the time of starting the procurement exceeds the amount provided in the subsidy/agreement, the private beneficiary can supplement this value either from the project budget, or from its own budget, namely:

- the private beneficiary can supplement this value from the project budget, in compliance with the terms of the subsidy/agreement only if supplementation of the estimated value does not lead to circumventing the provisions regarding levels of the state aid/thresholds established by law or when breaching the provisions of this chapter.

- If the supplementation of the estimated value is made from the budget of the private beneficiary, without the reallocation within the subsidy/ agreement, it can make the budget amendment without the approval of the Managing Authority, whether the supplementation of the estimated value does not lead to circumventing the provisions regarding the specific levels of the state aid/thresholds established by law or the failure to comply with this procedure. The private beneficiary may award the procurement contract with a value higher than the estimated value by increasing its own partner budget, as described above, if it justifies the decision in the explanatory note of award or the beneficiary will cover the difference from its own sources. When launching the competitive procedure,

it is always verified if the estimated value is still above the thresholds laid down in art. 7 paragraph. (5) of the law, but below the thresholds provided in art. 7 paragraph. (1) of the law.

Section 4

Developing the competitive procedure

4.1. Market research

I. Publication of notice in case of private beneficiaries

1. The private beneficiaries must publish a notice in a national newspaper/newspaper/publication/ national or regional gazette, print form or online, or on a website dedicated to advertising services, the same day when transmitting the participation invitations.
2. The publication of the notice on the Programme website <http://www.interreg-rohu.eu> is ensured freely by the Joint Secretariat of Interreg V-A Romania-Hungary Programme.

The notice will contain, compulsory, at least the following elements:

- general information on the beneficiary (beneficiary name, address, contact data, means of communication etc.);
 - name/object and delivery place of products/execution of works/services providing, if applicable; contract type and duration;
 - estimated value (it is mentioned if the contract price can be adjusted);
 - date, place and deadlines time of submitting the bids;
 - potential formalities that must be achieved by the economic operators related to the participation in the procedure.
3. The publication of the notice and the technical specifications is not mandatory in the exception situations described in section 3 point 3.1 sub-point 2.

Attention! Motivating these exceptions must be carefully elaborated.

4. Failure to publish the notice on the website <http://www.interreg-rohu.eu> accompanied by the technical specifications, except as expressly covered by this procedure cause a correction of 25% of the value of the procurement contract.

Attention! It is not enough to mention the address where you can get the specifications. Free access to this information must be ensured.

5. In order to provide additional advertising, the private beneficiary can send the participation invitations to the competitive procedure in the same day as the notice publication. In this case, the information disclosed must be identical to those contained in the participation invitations. Sending invitations is not mandatory. The private beneficiary may send invitations to the potential bidders by the media: fax, email, mail, etc.

Attention! The transmission of the participation invitations does not exclude the obligation of notice publication on the website.

6. In the notice/invitation, a deadline is provided for elaborating and submitting the bids, considering the complexity of the contracts. For the supply contracts will be awarded minimum 6 calendar days from the notice publication, and for service and works contracts will be given at least 10 calendar days from the notice publication. When determining the date of the bid submission, the day of publication/notice transmission/invitation is not taken into consideration and the day when the bids are submitted.
7. In case of clarifications/changes, in the notice the field will be ticked announcing the economic operators that have provided clarifications/changes to the initial information.
8. If requests for clarification occur, that may lead to changes/adjustments to the technical specifications, the private beneficiary may extend the deadline for bids submission, so as to provide the time needed for their elaboration, complying with the advertising conditions.
9. At the end of the procedure, within 5 calendar days after signing the procurement contract, the notice will be filled on the programme website <http://www.interreg-rohu.eu> with information on the successful bidder (via Joint Secretariat).
10. If the private beneficiary does not complete the information referred to point 9, unless expressly covered by this procedure, a correction of 5% of the procurement contract is applied. The term is expressed in calendar days and will be calculated from the immediate day following the signing of the contract. If the deadline expires in a non-working day, it ends on the expiry of the last hour of the following working day. The proof of compliance with these disclosure requirements may be in the form of print screen (screenshot recorded in the internal register of the company). The information can be viewed permanently on the Programme website <http://www.interreg-rohu.eu>.
11. If when publishing the notice relating to a procedure with several lots, the private beneficiary predicts that for certain lots, the procurement contracts will be signed at intervals longer than 5 calendar days (for example: urgency when executing a contract in relation to other contracts, compliance with an undertaken deadline related to the

project, etc.) in order to avoid the correction of 5% for not publishing the information on all winners of the contracts, the private beneficiary may publish a procurement notice for each lot, in which for each lot, the electronic system will see a separate procedure. Following this way, the notice will not be conditioned by signing the contracts associated with other lots.

12. If when publishing the notice related to a procedure with several lots, the private beneficiary has not planned to sign the contracts related to the lots at different times, but they are in the situation where contracts are signed at intervals longer than 5 calendar days, in order to avoid applying the correction of 5%, it will save and print a screen print (screenshot recorded in the internal register of the company) that will justify and prove that they published the notices on winner of the contract related to each lot, in time. It will also elaborate an explanatory note on the reasons that led to dates postponement of signing. The publication of miscellaneous for lots is not considered artificial division of the procedure, if a competitive procedure is applied for each lot.

4.2. The bids analysis and elaboration of the explanatory note of award

1. The private beneficiary compares the bids received by reporting them to the published requirements and chooses the bid that meets the technical requirements and has advantages over them at a competitive quality/price ratio.
2. When no bid is submitted, the competitive procedure can be resumed in compliance with all relevant procedures, after an analysis of the causes that led to the cancellation of the procedure.
3. If bids are submitted inconsistent with the subsection "Specifications", the procedure will be canceled. In this case, the procedure can resume (complying with all the proceedings related to the competitive procedure) after an analysis of the causes that led to this situation.
4. If only one bid is received, the beneficiary may analyze it and proceed with the award of the contract if the bid complies with the technical specifications elaborated.
5. This procedure does not establish the obligation of creating an evaluation committee. Therefore, it may appoint a specialised person who will prepare and sign the explanatory note of award.
6. The private beneficiary does not evaluate the bids that are submitted after the expiry date (date and time of notice). They will be returned unopened.
7. The private beneficiary is obliged to provide to the representatives of the competent authority in the management of the European funds/Joint Secretariat, during on site visits, documents justifying the competitive procedure, including those confirming the date and time the bids were received.
8. In order to provide an adequate justification for choosing the bid for contracting, the explanatory note of award is elaborated, starting from the requirements requested, detailing

the advantages and disadvantages of the bids received in relation to each specification/other bid. Also, considering that the purpose of the procedure is to achieve the best objectives of the financed project, it is recommended that the note details the manner in which the advantage in the bid contributes to the project achievement. The model of explanatory note of award (indicative).

EXPLANATORY NOTE OF AWARD				
Requirements requested	BID			JUSTIFICATION
	Compliance of the bid with the technical specifications	Advantages	Disadvantages	
.....

9. In analyzing the bids, all the requirements the private beneficiary mentioned in the procurement documents will be taken into account. If in the content of the document "Technical specifications" are mentioned also the requirements related to the verification of the technical/financial ability of the economic operators or other type of requirements, they will be subject to analysis.
10. In analyzing the bids, other requirements cannot be added and cannot give up the specifications that have been already mentioned in the notice/specifications/clarifications/modifications.
11. If the private beneficiary identifies errors in the procurement documents that were not resolved before the expiry date of the notice, the procedure will not end with the contract award. In this case the procedure is canceled, they will correct the errors identified and the procedure will resume.

4.3. Complaint

If an economic operator is unsatisfied with the way the competitive procedure was carried out, it may apply to the competent courts for solving the case.

Attention! The National Board of Complaints Solving has no competences regarding the complaints solving in the context of the competitive procedure developing, defined in the present procedure.

Section 5

Procurement contract

5.1. Signing the procurement contract

1. The contract will be signed only with the economic operator appointed by the explanatory note of award.
2. The contract must mention the identification data of the two signatory parties, the subject, value and contract duration. The conditions related to services providing, works execution, delivery, assembly, putting into operation, taking over, quality standards, service, guarantees, possibility to give an advance, etc, will be foreseen expressly, if applicable, according to the applicable legal provisions.
3. The technical specifications, clarifications and the bid chosen will be integral part of the contract, as annexes.
4. The technical specifications and the winning bid will not be modified under the contract, which were the basis of the contract award.
5. Any contract signed according to the conditions of the national legislation in force start to produce effects when both parties sign it. Before signing the contract, there shall not be products supplied/services provided/works executed and no payments will be made. The same principle applies to the addenda to these contracts.

5.2. Implementation of the procurement contract

1. The contract terms undertaken will be fully complied with.
2. Any contract amendment is recorded in an addendum.
3. The addendum purpose must be closely linked to the initial contract subject.
4. Amendments to the contract may be made only in the period of the contract execution.
5. The technical specifications/bid which was the basis for signing the subsidy/agreement, may change in the case of the products, if what was offered is not currently sold in the market (with the presentation of evidence in this regard) and whether the products are replaced with the product characteristics equal to or superior from technical point of view without problems of compatibility with no change in price, complying with the Applicant's Guide and the subsidy/agreement.
6. Any amendment that extends the duration of the contract shall be such way that the implementation will be carried out before the expiry of the subsidy/agreement in question and the payments will be made according to the rules of eligibility laid down by the subsidy/agreement.
7. If the execution period was a decisive advantage in choosing the winning bid, it is allowed to extend the execution duration if the winning bidder advantage is not affected compared to

- the following scored. If this advantage is affected, the beneficiary assumes the principle of proportionality from chapter 6.
8. Applying a clear, precise and unequivocal contract clause of review, which was mentioned by the private beneficiary in the procurement documents, do not constitute a contractual amendment.
 9. The private beneficiary is not entitled to perform one or several successive modifications to the procurement contract which cumulated have as effect:
 - Non-application of the present procedure (for example: more direct procurements with the same object that as value were leading to applying a competitive procedure);
 - Favoring the winning bidder (for example, provide an advance not foreseen by the private beneficiary in the procurement documents);
 - Failure to apply the provisions of public procurement (for example, changing/changes performed, the new situation satisfies the cumulative conditions of the law).
 10. It is forbidden to change the contract if this leads to substantial changes. Substantial changes are considered changes which:
 - Change the bid or purchase elements, including the needs and requirements set by notice or technical specifications;
 - Affect the competition existing following the application of the competitive procedure (amendment introduces conditions which, if they had been included in the initial procedure, they would have allowed the acceptance of another bid than originally agreed and would attract more participants to the procedure);
 - Change the nature of the contract (for example: change the contract subject by increasing the share of services in relation to the supplies, so the law provisions become applicable by cumulative accomplishment of the conditions).

5.3. Price adjustment

1. During the execution of the procurement contract, the price may be adjusted only in the following situations:
 - a) there were legislative changes, changes in the technical regulations or were issued by the local authorities, administrative documents which have as their object the establishment, modification or give up of certain taxes/local taxes, whose effect is reflected in the increase/decrease of the costs on which the procurement contract price was based;
 - b) certain conditions have occurred on the market, generating the increase/decrease in price indices for the constituent elements of the bid, and their effect is reflected in the increase/decrease of the costs on which the procurement contract price was based.
2. The possibility of adjusting the price must be indicated both in the notice and in the contract concluded, by special clauses in this respect.

3. The private beneficiary is required to specify also, both in the notice and in the contract, the concrete way of price adjustment, indexes that will be used and the source of information on their evolution, such as statistical bulletins or quotation of stock exchanges. Lack, amendment or completion of such information/clauses determines the inapplicability of the provisions concerning the possibility of adjusting the procurement contract price, the contract price supplementation may be ensured in this case from its own budget, without exceeding the thresholds provided by law.
4. In any case, the contract price can not be adjusted except for the strictly necessary situation when it covers the increasing costs on which the contract price was based.
5. The adjustment way of the procurement contract price should not result in any case to the exceed of the thresholds provided by law or the cancellation / reduction of competitive advantages set out in the explanatory note of award, except as provided in point 1 letter a).

Section 6

Procurement file

6.1. At the end of procedure, the procurement file will be elaborated and will contain the following documents:

Documents which must be inserted in the procurement file
Technical specifications
Note on determining estimated value
Proof of notice/invitations/clarifications/communications of result (if applicable)
Explanatory note of award
Explanatory note on changing the dates of contracts signing (if applicable) – for the lots
Declarations on own responsibility from which it results that the successful bidder and private beneficiary did not breach the provisions related to the conflict of interests
Original bids and clarifications (if applicable)
Procurement contract
Addenda (if applicable)
Other relevant documents, including documents that prove the procurement execution (for example: minutes of services and works delivery, deliverables, minutes of delivery etc.)
Complaints (if applicable)

Section 7

Checkup list

For the competitive procedure the competent authorities in the management of the European funds verify the following elements:

No. crt.	Elements to verify	Instructions
Elaboration of technical specifications and determining the estimated value		
1.	The exceptions from publication/transmission of specifications were motivated?	<p>If there are no reasons to justify the compliance with the exceptions provided, the specifications must be objective and ensure immediate and unhindered access to them. It is verified if the particular technical specifications were motivated in detail (if applicable) in order to comply with the exceptions provided for in the present procedure. The procurement purpose is verified.</p> <ul style="list-style-type: none"> - Failure to publish the notice in a national or regional newspaper/newspaper/publication/gazette, print form or online, or website advertising, while sending the participation invitations - correction of 25% of the value of the procurement contract - Technical specifications which have not an objective character/give up during the evaluation certain technical requirements communicated - correction proportionately to the damage.
		<ul style="list-style-type: none"> - Failure to publish the notice on Programme website: http://www.interreg-rohu.eu, accompanied by the technical specifications – correction of 25% of the value of the procurement contract (part 3 point in the annex to GD no. 519/2014) - Publication of some technical specifications that do not have objective character /Give up during the evaluation certain published technical specifications – correction proportional with the damage (part 3 point 3 in the annex to GD no. 519/2014)

	<p>a) Is the estimated value of contract lower than the value thresholds foreseen in the law?</p>	<p>1. It is verified if the value mentioned in the note regarding the estimated value is lower than the value thresholds foreseen at art. 7 paragraph (1) of law. 2. It is verified if the estimated value corresponds to the value in the subsidy/agreement, if applicable.</p>
	<p>b) Was the contract not divided into more distinct contracts of lower value aiming at avoiding the application of the provisions of art. 6 and art. 7 paragraph (1) of law/provisions of the present procedure?</p>	<p>It is verified if the contract was not divided, considering the purpose and/or subject of procurement, by comparing to the project procurement plan, if applicable.</p>
2.	<p>c) Did the private beneficiary chose correctly the applicable procedure?</p>	<p>It is verified if the procedure was chosen correctly starting from the estimated value. If the estimated value exceeds the value threshold foreseen by art. 7 paragraph (5) of law and is not included in the provisions of art. 6 of law, the private beneficiary must apply the competitive procedure.</p>
<p>Sanction for letters a), b) and c)</p> <p>1. If the private beneficiary had to apply the law provisions and applied the provisions of this procedure, the sanctions provided in Annex to GD no. 519/2014 will be applied (Part 1 - Procurement).</p> <p>2. If the private beneficiary should apply the competitive procedure and chose to purchase directly, without notice, a correction of 25% of the procurement contract will apply, due to the failure to publish the notice. The same will apply in case the motivation on including on exceptions from publication is not correct.</p>		
Market research		
1.	<p>Was the notice published?</p>	<p>In the case of the private beneficiaries, it is verified:</p> <ul style="list-style-type: none"> - if the notice was posted on the Programme website - http://www.interreg-rohu.eu. - if the notice was published in a national or regional newspaper/publication/gazette, print form or online, or on the publicity website;

		<p>- if the notice contains mandatory elements foreseen in the present procedure.</p> <p>Sanction – Correction of 25% of the value of the procurement contract (part 3 point 1 in the annex to GD no. 519/2014)</p>
2.	Was free access ensured to the technical specifications?	<p>There should not be obstacles to viewing/communicating the technical specifications. It is verified: if the notice accompanied by the technical specifications is posted on the website - https://www.interreg-rohu.eu.</p> <p>It is verified if for the supply contracts was granted a deadline for the elaboration and submission of the bid of minimum 6 calendar days and for the service and works contracts minimum 10 calendar days.</p>
3.	The explanatory note of award was elaborated correspondingly?	<p>The explanatory note of award was duly completed, meaning that the technical and financial advantages were presented that motivate this selection of the bid for contracting in relation with the other bids received/technical specifications. In exceptional cases when publication of the notice and technical specifications is not mandatory, the explanatory note must be justified by reference to the particular technical specifications/procurement purpose.</p> <p>Sanction – When offered technical specifications are identified that do not comply with the required technical specifications, a correction is applied according to Part 3 point 3 of Annex to GD. no. 519/2014 (proportionally).</p>
Signing the procurement contract		
1.	Was the contract signed with the bidder mentioned in the explanatory note of award?	<p>The two documents are compared.</p> <p>Sanction – if the appointed winner is changed, and thus the related successful bid, the sanction foreseen in part 3 point 3 in the annex to GD. no. 519/2014 will apply.</p>

2.	The winner was communicated?	<p>It is verified if the communications were sent.</p> <p>It is verified the publication of the notice on the website http://www.interreg-rohu.eu.</p> <p>Sanction - If within 5 calendar days from signing the procurement contract, the transparency of the procedure result was not ensured, a correction of 5% is applied of the procurement contract (part 3 point 2 of the Annex to GD no. 519/2014). Financial correction, in the case of justified typographical errors, does not apply.</p>
3.	Is the contract accompanied by the declaration on own responsibility from which it results that the provisions related to the conflict of interests were not breached?	It is verified the existence of declarations (private beneficiary and successful bidder's declaration).
Implementation of the procurement contract		
1.	Does the contract terms modifications comply with the provisions of the present procedure?	<p>It is verified the compliance with foreseen rules. It is verified, also the impact of the changes (the changes value will be determined based on the cumulative value of the successive modifications, if any).</p> <p>Sanction - A correction is applied according to part 3 point 3 of Annex of GD. no. 519/2014 (proportionally).</p>
2.	Was the price adjustment made complying with the provisions of the present procedure?	<p>It is verified the compliance with the rules on adjustment.</p> <p>Sanction - If you have not complied with the requirements, a correction is applied according to Part 3 pt. 3 of Annex of GD. no. 519/2014 (proportionally to the damage).</p>
<p>Attention! If the achievement of the procurement subject requires a number of approvals, permits, licenses or other formalities laid down by the applicable legal provisions, the private beneficiary must make sure that making the expenditure is achieved by complying with all legal provisions in force.</p>		

Chapter 6 - Application of the principle of proportionality

Section 1

The principle of proportionality in the applicable legislation

1.1. According to art. 2 paragraph (1) n) of G.E.O. no. 66/2011, the principle of proportionality requires that any administrative measure that is adopted must be appropriate, necessary and appropriate to the envisaged purpose, both in terms of resources used to find irregularities and in terms of establishing the budgetary debts resulted from irregularities, taking into account the nature and frequency of irregularities and their financial impact on the respective project/program.

1.2. Art. 17 of G.E.O. no. 66/2011 states that any action taken for the purposes of determining an irregularity and establishing budgetary debts resulted from irregularities is achieved by applying the principle of proportionality, taking into account the nature and seriousness of the irregularity and its extent and its financial implications.

1.3. According to Part 3, point 3 of Annex of GD. no. 519/2014, the principle of proportionality is achieved, considering the seriousness of the deviation, the damage caused or may have caused to the European funds and to the related national public funds.

1.4. For the application of the principle of proportionality two elements must be accomplished cumulatively: the first is determining the severity of deviation and the second relates to the damage caused or may have been caused. Depending on these two elements, there may be more situations:

1. Depending on the severity of the deviation, there are:
 - a) deviations with low level of impact;
 - b) deviations with medium level of impact;
 - c) deviations with high level of impact.

In this case, the incompliant norm and the description of the severity of the deviation are mentioned.

2. Regarding the damage, it can be:
 - a) damage caused - calculation of amount (effective value) resulted from the deviation from the provisions of the norms;
 - b) damage possible to be caused – value estimation that would have resulted following the deviation from the provisions of the norm;
 - c) impossibility to estimate the value of the damage caused following the deviation from the provisions of norm.

Section 2

Guidelines on unitary application of the principle of proportionality⁷

2.1. If the value can be determined by calculating the value of the damage or possible damage resulting from the deviation from the provisions of the norm, the resulting value is ineligible expenditure/ debit. In this situation of the actual quantification of the damage/possible damage, the severity of the deviation is not relevant.

Examples:

- the price difference between the bid that would have won and the bid declared winner (for example: bid 1 - 100 lei and bid 2 - 120 lei, it declared winner bid 2 – it results the value of damage 20 lei, that being also the amount of correction);
- signing some addenda, without justification, that increase the contract value [for example: contract price 100 lei increased (without occurring some situations included in the modification rules) to 115 lei by addendum – it results the damage value 15 lei, this being also the correction amount].

2.2. If it cannot be determined by calculating the amount of damage or possible damage resulted from the deviation from the norm, then the damage will be calculated by applying a correction / percentage reduction that will be determined, taking into account the seriousness of the deviation. The corrections amount/percentage reductions will be determined, depending on severity, as follows:

- a) between 1% and 5% of the contract value, when the deviation is with low level of impact;
- b) between 6% and 10% of the contract value, when the deviation is with medum level of impact;
- c) between 11% and 15% of the contract value, when the deviation is with high level of impact.

Examples:

- There are bids which meet all technical specifications that fall in the estimated value, but the private beneficiary privately chooses a bid with lower technical characteristics – we are in the situation of a deviation with high level of impact and a correction/percentage reduction is applied, of 15 % of the contract in question;

⁷ Except for the cases of finding out irregularities and/or fraud, when the provisions of the norms in the field of irregularities/frauds, are applied.

- there are bids which meet all technical specifications, only some of them exceed the estimated value, but the private beneficiary chooses a bid with adequate technical characteristics, but with a higher value than other bids with technical characteristics similar or superior to those required and included also in the estimated value - we are in the situation of a deviation with high level of impact and a correction/percentage reduction will apply of 15% of the value of the contract in question (if the difference is not paid from the own budget);
- there are bids which meet all technical specifications, exceeding the estimated value, but the private beneficiary/applicant chooses a bid with lower technical characteristics, not exceeding the estimated value - we are in the situation of a deviation with medium level of impact and there a correction/reduction percentage will apply, of 10% of the contract in question;
- there is no bid that meets all technical specifications, but these bids do not exceed the estimated value and the private beneficiary chooses the bid that complies with the most technical specifications - we are in a situation of a deviation with lower level of impact and a correction/ reduction percentage will apply, of 5% of the contract in question;
- there are bids which meet all technical specifications, but exceed the estimated value and the private beneficiary chose a bid that meets all technical requirements, but exceeds the estimated value - we are in a situation of a deviation with lower level of impact and a correction/ percentage reduction will apply, of 5% of the contract in question (if the difference is not paid from the own budget);
- unjustified adjustment of the prioritization of the elements of selecting the bids compared to that published by the private beneficiary in the procurement documents, which causes the choice of another winning bid than that which would result from applying the initial prioritization - we are in the situation of a deviation with high level of impact and a correction/ reduction percentage will apply, of 15% of the contract in question;
- justified adjustment of the prioritization of the elements of selecting the bids compared to that published by the private beneficiary in the procurement documents, which causes the choice of another winning bid than that which would result from applying the initial prioritization - we are in a situation of a deviation with medium level of impact and a correction/percentage reduction will apply, of 10% of the contract in question;
- adjusting the prioritisation of the elements of selecting the bids, that does not determine the choice of another winning bid than that which would result from applying the initial prioritization - we are in a situation of a deviation, with lower level of impact and a correction/percentage reduction will apply, of 5% of the contract in question.

2.3. In the situation of some particularly serious deviations, the authorities competent in managing the European funds can apply corrections/percentage reductions contained between 16% and 25%, justifying the inconsistency in the situations at point 2.2.

Example:

- in situations exempt from the competitive procedure (competition lacks from technical reasons) it is found out that the justification of the exception is not supported by an appropriate documentation (there are obviously alternative solutions) – we are in a situation of particularly serious deviation and a correction/percentage reduction will apply of up to 25% of the contract in question.