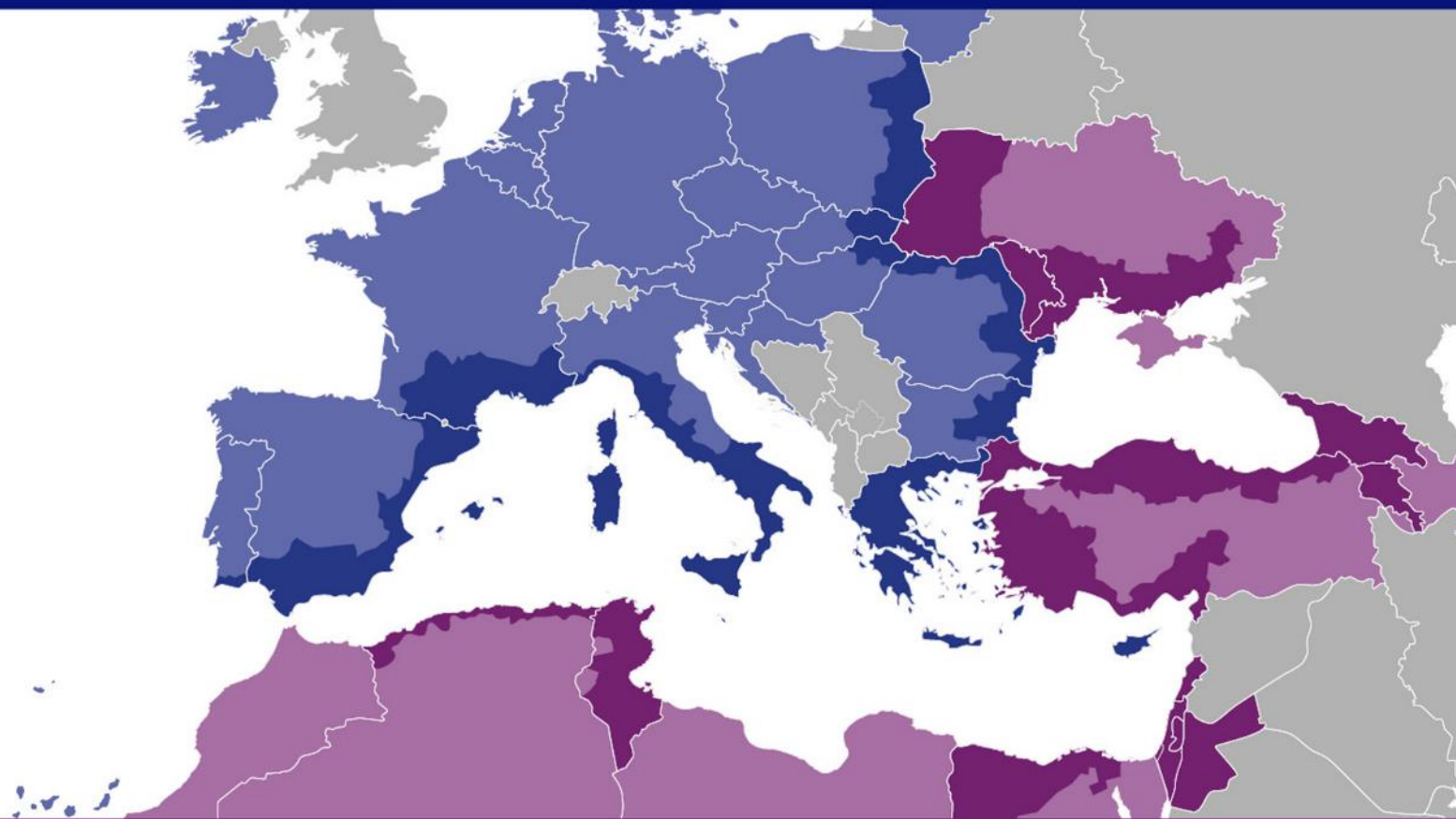


Factsheet on procurement by Ukrainian beneficiaries in Interreg NEXT

April 2024



Interreg
TESIM NEXT



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1. Introduction

This document is addressed at Interreg NEXT programme bodies and national authorities. It aims at supporting them in setting out the **instructions to Ukrainian public beneficiaries for the full compliance with the procurement rules applicable during the implementation of Interreg NEXT projects 2021-2027**. The document may also support the development of adapted checklists on procurement for controllers carrying out the verification of project expenditure.

As starting point, it is important to remark that Interreg NEXT rules differ from the ones in ENI CBC. The new regulatory framework would allow in principle the use of national legislation and procedures in Ukraine, but only when compliant with the provisions of the Financing Agreement, and particularly its Annex II (hereinafter "Annex II"). This is not the case for a significant number of provisions.

On the other side, the provisions in Annex II do not tackle all the obligations stipulated in the national legislation for public procurement (Law of Ukraine on public procurement of 25 December 2015 N° 922-VIII). Therefore, the public beneficiaries cannot apply exclusively Annex II, as they will still have to comply with national-specific provisions.

Following a thorough analysis, this factsheet provides information about the three relevant aspects for a compliant public procurement by Ukrainian public beneficiaries:

- Main differences between the Ukrainian law and Annex II and the gaps in the Ukrainian legislation.
- Provisions of the Ukrainian law to be still complied with.
- The templates which need to be used for the different procurement procedures.

The factsheet takes into consideration the potential extensive administrative burden and time-consuming procurement procedures, as well as the risk of ineligibility of the expenditure due to mismanagement or low understanding of the rules. Therefore, the programme bodies should strive to foster the capacities of the beneficiaries in the shift from their usual procedures to the applicable rules in Interreg.

The document is structured following the content of Annex II but does not replicate its content. This document includes Zip files in annex with the templates mentioned for each procedure.

Even though the document mainly focuses on the differences between the national legislation applicable to public bodies and provides indication on templates available in Prozorro, it also includes alternatives for the private beneficiaries.

Private beneficiaries are obliged to comply with the public procurement rules from Annex II to the Financial Agreement. The private beneficiaries may also use Prozorro if they wish.



2. Key highlights

The main highlights of each section in this document are the following:

| Section | Still compulsory according to Ukrainian legislation | Different provisions between national legislation and Annex II | Not provided for by the Ukrainian legislation |
|--|---|---|---|
| General provisions | <ul style="list-style-type: none"> Use of e-platform Prozorro and most of its templates. Obligation of annual procurement plan. | <ul style="list-style-type: none"> Requirements for the publication of the tender announcements. | <ul style="list-style-type: none"> Compulsory declaration on honour for preparation of tenders. Use of EU's Common Procurement Vocabulary (CPV). |
| Types of procedures | | <ul style="list-style-type: none"> Competitive procedure with negotiation. Negotiated procedure without prior publication. Thresholds and provisions on all procedures. Abnormally low criteria for tenders in electronic auctions. | <ul style="list-style-type: none"> Procedures calling for expression of interest. |
| Preparation of procurement procedures | | <ul style="list-style-type: none"> The draft contract must include all elements of point 14 of Annex II. The technical specifications must include all elements of point 16 of Annex II. | <ul style="list-style-type: none"> Joint procurement. |
| Exclusion, selection and award criteria | | <ul style="list-style-type: none"> Award criteria. | <ul style="list-style-type: none"> Requirements for economic, social and technical capacity. Requirements for environmental certificates. |
| Submission, evaluation and award decision | | <ul style="list-style-type: none"> Time-limits for submission. Provisions for abnormally low tenders. Compliance with environmental, social and labour law, irregular tenders. | <ul style="list-style-type: none"> Compulsory declaration on honour, both for evaluators and tenderers. Compulsory evaluation committee. Irregular tender. Standstill period. |
| Contract performance | | <ul style="list-style-type: none"> Provisions for performance guarantee. | <ul style="list-style-type: none"> Retention guarantee. |



3. General provisions

3.1. Still compulsory according to Ukrainian legislation

Ukrainian public beneficiaries must use the **e-platform Prozorro** for the publicity of the procurement procedures while complying with the requirements of Annex II concerning the publicity (see the table below). All the provisions in the Ukrainian law on the use of Prozorro are applicable, including the thresholds for the use of the platform stated therein¹.

For high value contracts, the following thresholds² of Annex II and Ukrainian law shall apply:

| Type of procedure | Publication in the Official Journal of the European Union (OJEU) | Publication in English in Prozorro |
|-----------------------|--|------------------------------------|
| Services and supplies | EUR 300.000 | EUR 133.000 |
| Works | EUR 5.000.000 | EUR 5.150.000 |

For the **publication in the Official Journal of the European Union (OJEU)** the beneficiaries may use the EU's [Tenders Electronic Daily Platform \(TED\)](#) and its [standard forms](#) and/or the templates in Prozorro. The publication in Prozorro shall refer to the notice published in the OJEU.

An **award notice** shall be sent when the contract is signed except where, if still necessary, the contract was declared secret, or where the performance of the contract must be accompanied by special security measures, or when the protection of the essential interests of the Union or the country so requires, and where the publication of the award notice is deemed not to be appropriate. The beneficiary shall provide a due justification of any of these circumstances, as stated in point 3.2. of Annex II.

The Ukrainian Law also prevails in the obligation to prepare an **annual procurement plan**³. The annual plan and amendments to it shall be published by the procuring entity free of charge in the e-platform Prozorro within five business days from the date of approval of the annual plan or amendments to it.

3.2. Different provisions between national legislation and Annex II

All contracts financed by a grant contract shall respect the principles of **transparency, proportionality, equal treatment and non-discrimination**. Although the Ukrainian legislation

¹ Article 3, paragraph 3 and Article 7, paragraph 3 of Ukrainian Law on Procurement.

² The amounts do not include VAT.

³ Article 4, paragraph 1 of Ukrainian Law on Procurement.



contains similar procurement principles, Annex II provides details in its points 1.2. and 1.3., which prevail over Ukrainian law.

3.3. Not provided for in Ukrainian legislation

In order to ensure the respect of the above-mentioned principles, Annex II requires the use of a compulsory **declaration on honour** for the preparation of a tender.

We recommend the use of the following [template](#), which does not exist in the Ukrainian law:

| Template | Template ref. ⁴ |
|--|----------------------------|
| Declaration of objectivity, confidentiality and absence of conflict of interest. (for participation in the preparation of a tender) | G1 |

Another missing element are the references to **nomenclatures in the procurement context**, which shall be made using the EU's [Common Procurement Vocabulary \(CPV\)](#) instead of the Ukrainian equivalent.

4. Types of procedures

Points 4 and 5 of Annex II establish more procedures than the ones required by the Ukrainian law, as shown in the table below:

| Procedure according to Annex II of the Financial Agreement | Equivalent procedure in the Law of Ukraine "On public procurement" |
|---|---|
| Open or restricted procedure | Open tender (chapter four of the Law of Ukraine "On public procurement"). Restricted tender (chapter six of the Law of Ukraine "On public procurement"). |
| The procedures involving a call for expression of interest | Not provided by the Law of Ukraine "On public procurement". |
| The competitive procedure with negotiation | The competitive dialogue is described in chapter five of the Law of Ukraine "On public procurement" but it is not an equivalent of the competitive procedure with negotiation of Annex II. |
| The negotiated procedure without prior publication | Negotiated procurement procedure (chapter seven of the Law of Ukraine "On public procurement"). Attention! <i>This chapter partially complies with the requirements of Annex II.</i> |

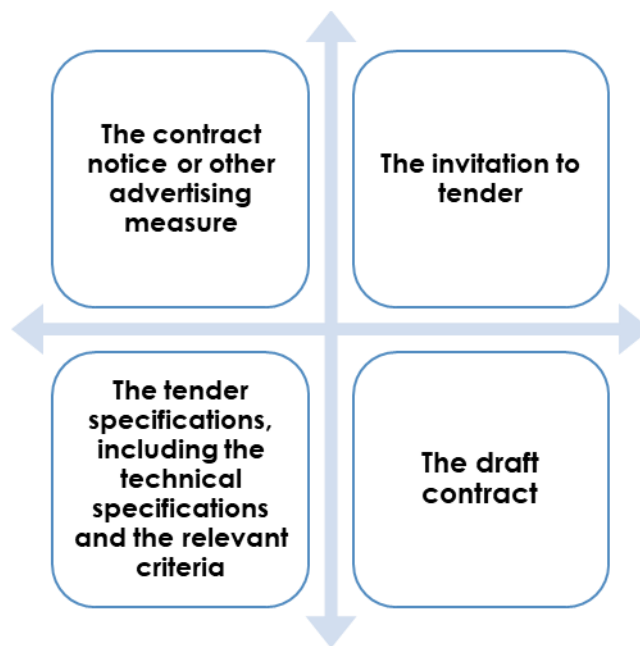
⁴ Find the templates in the Zip files in annex.

The thresholds in point 5 of Annex II prevail over the ones in the Ukrainian Law, including the ones for single tender and payment against invoice. The provisions in point 6 to 9 on the use of these procedures prevail also over the provisions in the Ukrainian law.

For the **electronic auctions** described in point 10 of Annex II, the Ukrainian beneficiaries may use the inbuilt functionality in the Prozorro platform if they comply with the provisions of Annex II in regard to **abnormally low criteria**, as they are different from Prozorro. In regard to **electronic catalogues**, the Ukrainian beneficiaries may use [Prozorro Market](#) or [Prozorro+](#)⁵.

5. Preparation of the procurement procedure

The preparatory stage is critical for a successful procurement process. According to studies, most procurement violations occur due to the lack of thorough preparation for the tender⁶. Therefore, grant beneficiaries will need to pay sufficient attention to the preparation process and remember that **procurement for Interreg NEXT projects may be different and longer** compared to the usual procurement. The **procurement documents** shall include the following:



Some of these documents are integrated into the ProZorro system. Beneficiaries should pay attention to the fulfilment of all the required details. The project beneficiaries may use their own templates, but they should check that all the details required in point 14 of Annex II are fulfilled.

⁵ To meet the urgent needs of the state in times of war.

⁶ European Commission, Directorate-General for Regional and Urban Policy, Public procurement – Guidance for practitioners on the avoidance of the most common errors in projects funded by the European Structural and Investment Funds, Publications Office, 2018, <https://data.europa.eu/doi/10.2776/886010>

5.1. Recommended templates

We recommend the use of the following [templates](#):

| Template | Type of procedure | Template ref. ⁷ |
|---|------------------------------|---|
| Prior information notice for international tenders | Services, supplies and works | I1 |
| Contract notice for international tenders | Services, supplies and works | I2 |
| Award notice for international tenders | Services, supplies and works | I3 |
| Request to participate (restricted) | Services | SV1 |
| Longlist (restricted) | Services | SV2 |
| Shortlist report (restricted) | Services | SV3 |
| Shortlist notice (restricted) | Services | SV4 |
| Contract notice for simplified procedure | Services, supplies and works | Use the template in Prozorro, SV5, SP1 or WK1 |
| Instructions to tenderers for open and restricted | Services, supplies and works | Use the template in Prozorro, SV6, SP2 or WK2 |
| Instructions to tenderers for simplified procedure | Services, supplies and works | Use the template in Prozorro, SV7, SP2 or WK2 |
| Request and information for tenderers (single tender) | Services, supplies & works | Use own templates, ST1, ST2 or ST3 |
| Tender guarantee | Supplies | SP6 |
| Tender guarantee | Works | Use the template in Prozorro or WK4 |
| Draft contract | Services, supplies & works | Use the template in Prozorro or your own template, but check compliance with point 14 of Annex II |
| Technical specifications | Supplies & works | Use the template in Prozorro or your own template, but check compliance with point 16 of Annex II |


⁷ Find the templates in the Zip files in annex.



5.2. Different provisions between national legislation and Annex II

Regarding the **draft contract**, the beneficiaries must ensure that all elements in point 14 of Annex II are included. The same should be done with the **technical specifications**, some of the compulsory information required by the Annex II is listed in the Ukrainian law as "optional". As Annex II prevails, the Ukrainian beneficiaries will need to check the full compliance with point 16.

5.3. Not provided for in Ukrainian legislation

| | |
|---|---|
|  | <p>Point 13 of Annex II establishes that two or more grant beneficiaries may carry out joint procurement procedures. Even though this possibility is not foreseen by the Ukrainian law, it may be used by Ukrainian public beneficiaries in the framework of Interreg NEXT projects.</p> |
|---|---|

6. Exclusion, selection and award criteria

6.1. Different provisions between national legislation and Annex II

In the Ukrainian law, the **award criteria** are price and life-cycle cost, while according to point 17 of Annex II, the grant beneficiary shall base the award of contracts on the most economically advantageous tender, which shall consist of one of three award methods: lowest price, lowest cost (in the life-cycle) or best price-quality ratio. Therefore, the Ukrainian beneficiaries may also use the **best price-quality ratio** as award criterion where relevant for the nature of the services, supplies or works to be acquired.

6.2. Not provided for in Ukrainian legislation

Points 19 and 20 of Annex II determine the requirements and the list of documents to be provided by the bidders to prove the **economic, financial and technical capacity**. The Ukrainian law does not include any list. Moreover, point 19 requires that the economic operators provide an appropriate level of professional risk indemnity insurance, which is not required by the Ukrainian law neither. The list of documents and requirements of Annex II must be used.

Finally, where the grant beneficiary requires the provision of certificates drawn up by independent bodies attesting that the economic operator complies with certain **environmental management systems or standards**, it shall refer to the European Union Eco-Management and Audit Scheme or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council or other environmental management standards based on the relevant European or international standards by accredited bodies. This requirement is not stipulated in the Ukrainian law.

7. Submission, evaluation and award decision

7.1. Different provisions between national legislation and Annex II

The beneficiaries must follow the **requirements concerning the minimum time limits for submission of tenders** stated in Annex II⁸, which are longer than the ones in the Ukrainian law:

| Procurement type | Time limit in the Annex II to Financial Agreement | Time limit in the Law of Ukraine "On public procurement" |
|------------------------------|---|---|
| Service contracts | The minimum time between the day following the date of dispatch of the letter of invitation to tender and the final date for receipt of tenders shall be 50 days. | 15 days , and 30 days if the tender exceeds EUR 133.000 for service and supply contracts or than EUR 5.150.000 for works contracts. |
| Restricted procedures | The time limit for receipt of requests to participate shall be no less than 30 days from the date following that on which the contract notice is published. The period between the date following that on which the letter of invitation is sent and the final date for the receipt of tenders shall be no less than 50 days. | 30 days. |
| Open procedures | The time limits for receipt of tenders, running from the date following that in which the contract notice is published, shall be at least 90 days for works contracts and 60 days for supply contracts. | 15 days , and 30 days if the tender exceeds EUR 133.000 for service and supply contracts or than EUR 5.150.000 for works contracts. |
| Local open procedures | The time limits for receipt of tenders, running from the date when the contract notice is published, shall be at least 60 days for works contracts and 30 days for supply contracts. | 15 days , and 30 days if the tender exceeds EUR 133.000 for service and supply contracts or than EUR 5 150 000 for works contracts. |
| Simplified procedures | Candidates shall be allowed at least 30 days from the date of dispatch of the letter of invitation to tender in which to submit their tenders. | 6 days. |

Another significant difference relates to the provisions on **abnormally low tenders** and the **compliance with applicable obligations in the fields of environmental, social and labour law** in the Ukrainian law. For example, abnormally low tenders are automatically identified by Prozorro during auctions, but it is not provided for other procedures to other procedures. The provisions in point 25 of Annex II prevail on these two issues.

7.2. Not provided for in Ukrainian legislation


A missing element is the obligation to submit a **declaration on honour** for the exclusion situations stated in point 18 of Annex II⁹, which is not directly required by the Ukrainian law.

⁸ In urgent cases other time limits may be authorized.

⁹ This requirement may be waived for very low-value contracts, that is, not exceeding EUR 15.000.

We recommend using TESIM's developed adaptation of the PRAG template, available in annex G, as indicated below.

| Template | Template ref. ¹⁰ |
|--|-----------------------------|
| Declaration of impartiality, confidentiality and absence of conflict of interest. (for participation in the evaluation of a tender) | G2 |
| Declaration on honour on exclusion and selection criteria. (for tenderers) | G3 |

| | |
|---|--|
|  | <p>For procurements above EUR 20.000, Annex II establishes that an evaluation committee is compulsory, while Ukrainian Law requires to conduct procurement through a responsible person. Paragraph 12 of Article 11 of the Law of Ukraine "On Public Procurement" states that, if necessary, the contracting authority may create a working group consisting of the contracting authority's employees to review tender proposals. Therefore, the set-up of an evaluation committee is also compliant with this law.</p> |
|---|--|

The Ukrainian beneficiaries may appoint, for example, "*the responsible person*" as a head of the evaluation committee, but the obligations of the evaluation committee stated in Annex II must be complied with.

The Ukrainian law does not include the concept of "**irregular tender**", as described in points 4, 7 and 9 of Annex II. The Ukrainian beneficiaries will be able to reject tenders based on the conditions set out in these points for non-compliant tenders.

Finally, the Ukrainian beneficiaries will need to pay attention to the **standstill period** defined in point 29 of Annex II, as it does not exist in the Ukrainian law.

7.3. Recommended templates

We recommend the following **templates for tender submission**:

| Template | Type of procedure | Template ref. ¹¹ |
|---|------------------------------|------------------------------|
| Financial identification form | Services, supplies and works | Use your own template or G4 |
| Legal entity form | Services, supplies and works | Use your own templates or G5 |
| Administrative and compliance grid | Services, supplies & works | SV8, SP3 or WK5 |

¹⁰ Find the templates in the Zip files in annex.

¹¹ Find the templates in the Zip files in annex.

| | | |
|---|----------------------------|--|
| Evaluation grid | Services, supplies & works | SV9, SV10, SP4 or WK6 |
| Tender submission form | Services, supplies & works | Use the template in Prozorro, SV11, SV12, SP5 OR WK3 |
| Tender submission form & technical offer (single tender) | Services, supplies & works | ST4, ST5 or ST6 |
| Technical specifications | Works | Use own templates |
| Design documents, including drawings | Works | Use own templates |
| General information about the tenderer | Works | Use own templates |
| Financial statements of tenderer | Works | Use own templates |
| Technical qualifications of tenderer | Works | Use own templates |
| Experience as contractor | Works | Use own or PRAG template |
| Staff to be employed | Works | Use own or PRAG template |
| Professional experience of key staff | Works | Use own or PRAG template |
| Equipment & vehicles | Works | Use own or PRAG template |
| Work plan & list of subcontractors | Works | Use own or PRAG template |

We recommend the following [templates for evaluation](#):

| Template | Type of procedure | Template ref.¹² |
|--|----------------------------|-----------------------------------|
| Opening checklist | Services, supplies & works | EV1 or EV2 |
| Administrative compliance grid | Services, supplies & works | SV8, SP3 or WK5 |
| Interpretative note on financial offers | Works | WK10 |
| Evaluators grid | Services, supplies & works | EV3, EV4, SP4 & WK6 |
| Evaluation report | Services, supplies & works | EV5, EV6 & EV7 |
| Report for negotiated procedure without publication | Services, supplies & works | NP1 |
| Evaluation report (single tender) | Services, supplies & works | ST7 |

¹² Find the templates in the Zip files in annex.



| | | |
|------------------------------|----------------------------|-------------------------------------|
| Award decision | Services, supplies & works | Use the template in Prozorro or EV8 |
| Contract award notice | Services, supplies & works | Use the template in Prozorro |
| Notification letters | Services, supplies & works | Use own templates |
| Cancellation notice | Services, supplies & works | Use the template in Prozorro |

8. Contract performance

The Ukrainian beneficiaries must pay attention to the requirements of Annex II regarding the **performance and retention guarantees**.

The provisions for the **performance guarantee** are different in Ukrainian law and, as a result, those of Annex II prevail. On the other hand, the **retention guarantee** is not covered by the Ukrainian legislation.

We recommend the following **templates for contract performance**:

| Template | Type of procedure | Template ref.¹³ |
|-------------------------------------|--------------------------|---------------------------------------|
| Contractor's assessment form | Services & supplies | SV13 or SP8 |
| Performance guarantee | Supplies & works | Use own or PRAG templates, SP7 or WK7 |
| Pre-financing guarantee | Works | WK8 |
| Retention guarantee | Works | WK9 |

¹³ Find the templates in the Zip files in annex.



Annexes in Zip files

G_General templates

I_International tenders

SV_Service tenders

SP_Supply tenders

WK_Works tenders

EV_Evaluation templates

ST_Single tender

NP_Negotiated procedure

