

**PROCEDURAL ACT
OF THE ENERGY COMMUNITY SECRETARIAT**

2019/08/ECS-EnC: On the adoption of the Financial Management Rules of the Energy Community

The Energy Community Secretariat,-

Having regard to the Article 75 of the Treaty establishing the Energy Community and the *Procedures for the Establishment and Implementation of Budget, Auditing and Inspection of the Energy Community* adopted by the Ministerial Council on 17 November 2006 and amended on 23 September 2014 ("the Budgetary Procedures"), and in particular Articles 37, 56(4) and 78 thereof;

Aiming to put in place the organizational structure, internal management, control systems and procedures needed to implement certain aspects of the Budgetary Procedures, in particular Titles VI and VII thereto;

Taking into account the external auditor's recommendations,

ADOPTS THE FOLLOWING PROCEDURAL ACT:

Article 1

The Director of the Energy Community Secretariat adopts the amended Financial Management Rules as attached.

Article 2

This Procedural Act enters into force on the day of its adoption. It repeals Procedural Acts No 2012/02/ECS-EnC on the adoption of the Financial Management Rules of the Energy Community of 11 January 2012 and 2014/05/ECS-EnC on the adoption of the Financial Management Rules of the Energy Community of 17 April 2017, as well as Procedural Acts No 2014/01/ECS on Energy Community Property Inventories and No 2011/01/ECS/15-02-2011 on the Appointment of a Steering Committee for ECRB.

For the Energy Community

A handwritten signature in blue ink, appearing to read "Janez Kopač".

Janez Kopač
Director

Done in Vienna on 3 December 2019

Financial Management Rules of the Energy Community

Article 1 Scope and Objective

1. These Rules implement certain aspects of the Ministerial Council's Procedures for the Establishment and Implementation of Budget, Auditing and Inspection (hereinafter "Budgetary Procedures") by defining the workflow within the Secretariat. They govern the management of budget expenditure as well as the assets and funds administered by the Secretariat (hereinafter "financial management"). To the extent not covered by or in case of conflict with these Rules, the Budgetary Procedures shall prevail.
2. These Rules set out the principles applied in financial management, authority, procedures, workflow, operational tasks and obligations of the relevant officials of the Secretariat.
3. These Rules put in place controls, systems and processes designed to provide reasonable assurance that all transactions are made in accordance with the applicable Budgetary Procedures and these Rules, and that assets are safeguarded and well managed.

Article 2 Authority and Responsibility

1. The Director is ultimately responsible for the implementation of the budget of the Energy Community. Officials of the Secretariat in accordance with their contracts and job descriptions support him/her.
2. The Director performs the duties of the Authorizing Officer as per Article 31 of the Budgetary Procedures. As per Article 32 of the Budgetary Procedures, the Director may authorize in writing any other staff member to act as an Authorizing Officer by delegation for concrete cases or for certain areas by way of a Procedural Act. To the extent authority is delegated to specific functions by the present Rules, this Act and its Annex I shall be considered the act of delegation.
3. Whereas the authority of the Director as Authorizing Officer is without limitations, the authority of Authorizing Officers by delegation are limited by the respective act of delegation, including the present Rules.

Chapter I Expenditures

Article 3 Initiation of Expenditures

1. Any staff member of the Secretariat (with the exception of the Head of Administrative and Financial Unit in view of his/her duties related to verification) can initiate proposals for expenditures with the assistance of authorized staff members, as specified in Annex I.
2. Any proposal for expenditure shall be justified by the initiator in writing and submitted to the Head of Administrative and Financial Unit for initiation of the expenditures. The Head of Administrative and Financial Unit shall develop templates for initiation of expenditures.

3. Expenditures below EUR 600 do not need explicit justification.

Article 4

Verification and Budget Commitment

1. Before an expenditure is authorized, the Head of Administrative and Financial Unit shall verify the availability of budget and the impact of the expenditure in question.
2. Verification shall cover the items listed in Article 60 of the Budgetary Procedures as well as the existence of a legal commitment within the meaning of Article 57 of the Budgetary Procedures, or the need for a legal commitment, as the case may be. If no legal commitment exists yet, the Head of Administrative and Financial Unit shall make a reasoned proposal for the procurement procedure to be sent to the Head of Legal Unit for all commitments above 10.000 EUR.
3. Verification shall be in writing and be reasoned. It shall be made part of the respective financial dossier. The Head of Administrative and Financial Unit shall develop templates for verification of expenditures.
4. Following verification, the proposal for expenditure shall be approved by a budget commitment made by the Director or an Authorizing Officer by Delegation ("authorizing officers"). If verification has been denied by the Head of Administrative and Financial Unit, reasons for a budget commitment in spite of such denial shall be given by the Authorizing Officer and made part of the financial dossier.
5. These rules do not apply for procurement procedures under the EU4Energy Grant Contract.

Article 5

Legal Commitments underpinning Expenditures

1. Entering into legal commitments on behalf of the Energy Community shall follow the provisions of the Budgetary Procedures and the Federal Procurement Law of the Republic of Austria (Bundesvergabegesetz) in its most recent version. The Head of Administrative and Financial Unit is responsible for compliance and the integrity of the procurement processes. He/she shall prepare Procurement Guidelines. They shall be attached to these Rules (Annex II). Without prejudice to Article 10 of these Rules, the Director as well as official of the Secretariat involved in a procurement process (members of evaluation and opening committees) shall sign a declaration of absence of conflict of interests and of confidentiality (Annex III).
2. Legal commitments may be entered into by the Director or an Authorizing Officer by Delegation, in the scope covered by their authorization.
3. The Deputy Director shall represent the Energy Community in all cases of legal commitments to be entered into between the Energy Community and the Director.
4. The Head of Administrative and Finance Unit is responsible for contract management.

Article 6

Validation of Expenditures

1. The validation of an expenditure initiates a transaction in the amount corresponding to a legal commitment entered into by the Energy Community. It shall be performed in line with Articles 61 and 62 of the Budgetary Procedures by the Head of Administrative and Financial Unit. The Head of Administrative and Financial Unit is responsible for ensuring that the expenditure to

be validated corresponds to the Budgetary Procedures and the present Rules.

2. To the extent validation depends on an invoice, the invoice must contain the following minimum information: the date of issue, unique sequential number identifying the invoice, the supplier's full name and address, the recipient's (Energy Community) full name and address, quantity and type of goods or services rendered, the unit price of goods or services, date of delivery, payment date (if different from the invoice date), total amount due for payment and the amount of VAT, if applicable, the VAT rate applied, the VAT amount payable or breakdown of VAT amount payable by VAT rate or exemption, the foreign currency rate (if an alternative to EUR).
3. Issuing of internal vouchers may be permitted only if the original invoice was lost by the respective official. In such cases, the payment may be made out of the petty cash if the invoiced amount does not exceed EUR 300,00 or through a payroll account if the amount is higher than EUR 300,00.
4. Validation shall be in writing and be reasoned. It shall be made part of the respective financial dossier. The Head of Administrative and Financial Unit shall develop templates for validation of expenditures.

Article 7

Authorization and Payment of Expenditures

1. Validated expenditures shall be authorized by two signatures ("dual-control principle"), one of which is to be made by the Director, and the other signature is to be made by an Authorizing Officer, listed in Annex I. In case the Director is absent, his/her deputy shall replace him/her. An expenditure may be authorized by the signature of two Authorizing Officers, from Annex I, other than the Director or the Deputy Director only in duly justified cases of urgency.
2. Expenditures authorized in accordance with these Rules, without prejudice to Article 8, shall be booked by the accountant in line with Articles 64 and 65 of the Budgetary Procedures and paid by using electronic banking.

Article 8

Petty cash

1. Petty Cash shall be kept and managed by a staff member assigned by the Director (the "Petty Cash Custodian"). Petty cash must be locked securely in a safe. The Petty Cash Custodian is responsible for ensuring that petty cash is physically secured at all times. The key to the safe must also be kept by the Petty Cash Custodian to prevent theft of the cash. Access to the petty cash fund should be limited to the Petty Cash Custodian and one back-up person also assigned by the Director (when Petty Cash Custodian is absent).
2. Transactions from petty cash may not exceed EUR 700 at a time. Travel related expenses may not be reimbursed through petty cash.
3. Transactions from petty cash shall require two signatures on the voucher (including cash receipts or bills paid to vendors) for the goods or services paid for: a) by the official of the Secretariat requesting the cash payment, and b) by the Petty Cash Custodian.
4. The Petty Cash Custodian shall be responsible for the documentation of the expenditures made from petty cash.
5. All invoices shall be summarized at the last day of the month. This overview shall be presented by the Petty Cash Custodian to the Head of Administrative and Financial Unit on monthly basis,

at the latest within five [5] working days following the closure of the month.

6. The actual balance is to be recorded in the petty cash book, accompanied by the properly signed vouchers/invoices
7. Petty cash may never exceed EUR 1.500. Petty cash shall be replenished regularly in accordance with the rules related to expenditures.
8. These Rules do not apply to the management of petty cash in the regional offices of the Secretariat outside its headquarters in Vienna (currently in Kyiv and Tbilisi).

Article 9 Credit Cards

1. The Director or officials nominated by him/her in writing, can use credit card(s) for payments made on behalf of the Energy Community.
2. Credit cards shall be kept by the Director or a nominated person in a safe location. He/she shall be responsible for misuse.
3. The usage of credit cards is limited to ad hoc expenditure (travel, events-related expenses) or online purchases. Any use of the credit card shall be justified by a short explanatory note of a staff member requesting the payment with card to be collected by the Head of Administrative and Financial Unit.
4. The Head of Administrative and Financial Unit is responsible for usage of credit cards in line with these Rules. He/she shall prepare a detailed report of all charges, receipts, and applicable accounting codes by the end of each month. The accountant shall verify whether all receipts and other expenditure documents attached to the report are authentic.

Chapter II Conflicts of Interest and Liability

Article 10 Prevention and Management of Conflict of Interest

1. Before participating in any activity related to financial management within the meaning of these Rules, the Director, officials of the Secretariat as well as the external IT Expert shall assess whether their involvement would give rise to any actual or potential conflict of interest within the meaning of Article 33(2) of the Budgetary Procedures.
2. Should an actual or potential conflict of interest arise, officials of the Secretariat shall immediately disclose the nature of the conflict of interest in writing to their Head of Unit. The Deputy Director, Heads of Units (for their own conflicts of interest as well as officials' serving in their unit), officials not assigned to any unit as well as the external IT Expert shall disclose conflicts of interest to the Director. The Director shall disclose his/her conflicts of interest to the Chairperson of the Budget Committee.
3. The Director ensures that any official of the Secretariat or the external IT Expert having disclosed an actual or potential conflict of interest do not participate in financial management in question, in a particular case or on a permanent basis.

Article 11 Liability of the Director and Officials of the Secretariat involved in Financial Management

1. The Director, and in cases concerning the Director, the Deputy Director, shall take the necessary measures to recover Energy Community budget lost or claim compensation for damages in cases covered by Articles 42(2) and 45 of the Budgetary Procedures.
2. Personal liability established by Article 42(1) of the Budgetary Procedures is without prejudice to possible early termination of the employment agreement under Article 8a) of the Staff Regulations disciplinary action as well as legal action to be taken in case of any illegal activity, fraud or corruption under Articles 39 and 44 of the Budgetary Procedures.

Chapter III Asset Inventory

Article 12

Asset List and Identification

1. The accountant shall establish and maintain a list of the assets owed or possessed by the Energy Community. The list shall be kept in both a hardcopy and an electronic version.
2. The list shall distinguish between non-current and current assets in line with the IAS.
3. Each asset shall be properly described, specifying its location (room number), the date of acquisition, its cost per unit as well as any other specifics where necessary.
4. Assets with original costs amounting to less than EUR 400 are to be considered as expenses incurred in the year of acquisition.
5. An inventory of the Energy Community's assets shall be carried out once per financial year and not later than 31 January of the following year.
6. Inventories shall be performed in such a way as to ensure that each item physically exists, matches the relevant entry in the inventory list and shows the correct quantity and value of the assets. All assets with a value higher than EUR 400 have to be tracked physically (electronic equipment, cameras, beamer, office furniture etc.).

Article 13

Inventories

1. The inventory shall be carried out by the nominated Inventory Committee. The Inventory Committee and its Chair shall be nominated by Director. The Chair of Inventory Committee shall be in charge of leading the inventory procedure, reconciliation (aggregation) of results and submitting the Inventory Report to Director. The members of the Inventory Committee shall sign a protocol on the results of the inventory.
2. Such committee may be established on ad hoc basis to carry out inventories and spot test at discretion. It shall do so if requested by the Director or the Head of Administrative and Financial Unit or in case of actual or assumed irregularities.
3. Missing items shall remain on the inventory list for 3 months from the date at which they were declared missing by the Inventory Committee. In any event, they shall be written off the list before the commencement of the external audit of the Energy Community accounts.
4. The Inventory Committee obtains from the Accountant the recent (most up-to-date) inventory lists for physical counting. Those lists shall be used for counting, marking and note taking to reflect the observations of the Inventory Committee members. After completion of the count,

the marked lists shall be scanned and stored on accounting server as the basic supporting information.

5. The Inventory Committee shall prepare and submit to Accountant the following information for updating the assets register (AVZ):
 - Assets not found
 - Assets that changed their location
 - Low value assets to be removed from the assets register
 - Assets that need tagging
 - Outdated, old, unusable, damaged assets to be considered for disposal (write off)
6. Based on the information received, Accountant shall update records and establish a final inventory list.
7. Each item to be inventoried under this PA shall receive an inventory identification number.
8. Inventory identification numbers are based on the type of assets and shall have the following structure established in the accounting system of the Energy Community:

5xxxxxx	Office furniture and equipment
545xxxx	Computer hardware
65xxxx	Computer software
58xxxxx	Low value assets
9. The inventory identification numbers shall be assigned by the Accountant to each asset.
10. An inventory identification number shall be physically attached by the financial and administrative assistant to each asset item to be inventoried according to Article 3 upon its delivery (inventory tag). The tags are to be attached at the time of transfer of the records by Accountant from the “paid invoices” register into “assets register” (AVZ).
11. Where tagging is not feasible, the inventory number is marked on the property with permanent ink. For items that cannot be tagged or marked (i.e., art, software, etc.) the original tag is kept by the Accountant in a separate file established for this purpose. Such tags are to be accompanied by a copy of the corresponding invoice, license details etc. sufficient to identify the item in question.
12. No property shall be put in use prior to ensuring that it is tagged or marked with the assigned inventory number as referred to in this Article.

Article 14
Disposal of Assets

1. The Director can order disposal of assets not longer required, outdated, damaged, or obsolete in any other form by sale, scrapping or return to supplier/manufacturer. Such disposal may be proposed to him/her by the Head of Administrative and Financial Unit for justified reasons. Approval by the Director shall require the signature of an Asset Disposal Form.
2. Sale shall be made at a value not lower than the actual book value as recorded in the accounting system. Assets may be sold externally or internally in transparent and non-discriminatory procedures. Internal sale shall be announced to all staff members. If more than one staff member is interested in acquiring a given item, sale shall be made by way of an auction.
3. Items disposed of shall be written off the assets register (AVZ). The Accountant shall record

the details of the disposal in the books (accounting system/records).

Article 15

Responsibilities of Officials

1. Each official of the Secretariat is obliged to use Energy Community assets for official purposes only, and to take best possible care of them.
2. Each employee is responsible for assets assigned to him/her and for assets placed in his/her room, and lock the rooms during his/her absence. Assets in general use or in generally used locations shall be under the direct responsibility of the Head of Administrative and Financial Unit. He/she shall make sure the generally used locations are locked properly at all times.
3. Any loss or damage of Energy Community assets shall be immediately reported to the Head of Administrative and Financial Unit by the employee in whose possession or under whose responsibility the asset is.
4. Responsibility of damage or loss of assets sustained by the Energy Community shall be followed up by Article 11 of these Rules.

Chapter IV Documentation, Control and Reporting

Article 16

Financial Dossiers

1. Financial dossiers contain all information related to each transaction booked in the accounting system. They are integrated in the accounting software (Document Management System).
2. The Head of Administrative and Financial Unit is responsible for the keeping all financial dossiers in an accurate and complete manner.
3. Access to the financial dossiers is available to the Director, Deputy Director and to the Head of the Administrative and Financial Unit as well as officials dealing with financial management.
4. The financial dossiers shall be kept for five years from the date of the decision discharging the Director for implementation of the budget in a particular year.

Article 17

Responsibility of Head of Administrative and Financial Unit

1. Without prejudice to specific tasks and responsibilities assigned by these Rules and the job description, the Head of Administrative and Financial Unit shall ensure that all operations and transactions related to revenue and expenditure of the Energy Community are in accordance with principles of sound financial management, the Energy Community Budgetary Procedures and these Rules. He/she shall be responsible for verifying the availability of budget for any activity related to expenditures.
2. The Head of Administrative and Financial Unit shall also be responsible for safeguarding of assets, records and data, for the preparation of accurate and meaningful regular reports, and timely forecasting.
3. The Director may require information on budget implementation from the Head of Administrative and Financial Unit at any stage.

4. The Head of Administrative and Financial Unit shall define a risk management framework suitable for types of financial and organizational risks faced by the Energy Community and adapt it annually.
5. For cases of absence of the Head of Administrative and Financial Unit, the Director appoints in writing one or more officials replacing him/her in the performance of the tasks under these Rules. The rules applying to the Head of Administrative and Financial Unit shall apply also to the substitute(s).

Article 18

Internal audit

1. The Director may appoint an Internal Auditor with the latter's consent. The Internal Auditor reports directly to the Director in this function and shall not take any instructions from other officials of the Secretariat. The Internal Auditor may not be an Authorizing Officer.
2. The Internal Auditor shall have the authority to initiate, carry out and report to the Director on any matter related to financial management and budget implementation which he/she considers necessary, and shall have access to all records, dossiers, offices and data for that purpose.
3. In line with the International Standards for the Professional Practice of Internal Auditing of the Institute of Internal Auditors (IIA), the Internal Auditor shall provide the Director with an independent and objective recommendation on how to improve the Secretariat's processes, control and management of risks related to budget implementation.
4. The Internal Auditor shall prepare an annual report on the results of internal audit.

Article 19

Internal Reporting

1. The Head of the Administrative and Financial Unit shall present monthly reports to the Director with overall information on the status of the Energy Community budget utilization. He/she shall at least once a month present also reports with all relevant data for the purpose of budget implementation planning.
2. The Head of the Administrative and Financial Unit shall report in writing to the Director in cases where assets were lost or damaged.
3. The Head of the Administrative and Financial Unit shall prepare and present reports on any other matters related to the implementation of the budget upon request by the Director.

Article 20

Amendments and Annexes

1. Amendments to these Rules are done by way of a new Procedural Act. The Annexes to these Rules may be changed in writing at any time by the Director. They may not contradict these Rules..

Annex I: List of Authorizing Officers by Delegation

Mr. Janez Kopač, Director,

(Power of representation ex lege based on the power of representation in accordance with Procedural Act of the Ministerial Council of 29 November 2018)

1. Mrs. Violeta Kogalniceanu, Head of Energy Efficiency and Infrastructure Unit,
2. Mrs. Agata Muellner, Assistant to the Director,
3. Ms. Marta Bromboszcz, Administrative and Financial Officer

(power of authorization under Article 7(1) of the Rules)

1. Mrs. Agata Muellner, Assistant to the Director,
2. Mrs. Barbora Poyner, Communication Officer,
3. Mrs. Fania Chen, Event Officer,
4. Mrs. Heli Lesjak, Webmaster and Publications Officer,
5. Ms. Inga Prokofjeva, Assistant to the Director,
6. Ms. Marta Bromboszcz, Administrative and Financial Officer,
7. Mr. Vladimir Nikiforov, Senior Financial Officer,
8. Mr. Jon Dika, Procurement Officer

(power to initiate expenditures under Article 3 of these Rules)

Annex II: Procurement Guidelines

Procurement Guidelines 2021

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1. General Provisions

1.1. Purpose and applicable rules

As an international organization, the Energy Community is bound to follow public procurement rules when purchasing goods, services and works. It aims at ensuring that transparent procedures and fair conditions of competition for suppliers are provided at all stages of each procurement procedure.

The goal of procurement activities in the Energy Community is the timely and cost-effective acquisition of work, goods and services necessary for its functioning and for the implementation of the Energy Community tasks¹. In doing so, the guiding principles of procurement, defined in Article 2 below, must be observed.

The range of purchased goods and services varies from consultancy and legal services to purchase of IT equipment and office supplies for the Secretariat.

The Energy Community Procurement Guidelines (“the Guidelines”) are issued within the scope of the Financial Management Rules and provide comprehensive information necessary to undertake procurement procedures at the Energy Community, from the identification phase to the award, signature and implementation of contracts.

Based on Article 66 of the Energy Community Procedures for the Establishment, Implementation, Audit and Inspection (“Budgetary Procedures”)², procurement by the Energy Community is undertaken in accordance with the relevant provisions of the Austrian Public Procurement Law³.

The present document provides guidelines on concrete application of the Austrian Public Procurement Law (“BVerG”) at the Energy Community, taking into account Directive 2014/24/EU on public procurement⁴ as well as the Financial Management Rules of the Energy Community in their latest version. The thresholds and procedures applied take into account the latest version of the Schwellenwertverordnung⁵.

In case of discrepancy between the BVerG and the Guidelines, the BVerG prevails. Furthermore, the Guidelines should be interpreted in good faith and in a way, which is consistent with other rules of the Energy Community.

These Guidelines explain procurement award procedures applying to actions financed from the Energy Community budget (ordinary budget) and from extra-ordinary budget that includes EU-funded grant contracts, revenues from other International Financial Institutions as well as other sources of revenue to the Energy Community budget. In cases where the Energy Community is implementing a project financed from external sources (EU grants and other), the conditions of the donor may apply as well.

¹ <https://www.energy-community.org/legal/treaty.html>, Article 2 of the Treaty

² MC-PA/03/2006 dated 16 November 2006 as amended on 23 September 2014 (MC-PA/03/2014)

³ Applicable version of the law can be found under the following link:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010295> (in German).

⁴ The Directive 2014/24/EU is available here: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32014L0024>

⁵ The document is available here:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010289>

1.2. Documentation

The Energy Community Secretariat shall archive all documents related to the procurement procedures, making it possible to verify the conditions under which a contract was awarded, performed and supervised. The documentation shall be kept in a form that makes it readily accessible for consultation by both the Secretariat and by any auditors, as well as the general public (including competitors of the winning firm).

In line with the Financial Management Rules of the Energy Community⁶, Procedural Act on the Secretariat's Data Protection Policy⁷, Procedural Act on Rules on Public Access to Documents of the Secretariat⁸, written records of the procurement procedure must be kept confidential and kept by the Secretariat in accordance with established practice on data storage and archiving.

The relevant documents related to the financial transaction are filed in a document management system ("DMS") of the Energy Community Secretariat, being part of the accounting software.

The documents to be archived include the terms of reference/service specifications, invitation to tender (displaying clearly the names of the invited companies and natural persons), received offers, nomination of evaluation/opening committees, notification to bidders (successful and unsuccessful), signed evaluation report and any other relevant documents produced within the procurement procedure, including offers from unsuccessful bidders.

All documents produced and obtained in the procurement process are to be saved electronically by the procuring officer in a dedicated folder for the specific procurement action on shared X-drive.

The minimum period for the retention of documents related to the procurement procedure is 5 years. This period is determined in Article 36(5) of the Energy Community Budgetary Procedures.

1.3. Ethical standards and anti-corruption policy

Energy Community staff members must observe the highest standard of ethics throughout the procurement activities to protect the integrity, fairness and transparency of the procurement process. Vendors shall be chosen and contracts awarded in accordance with applicable procurement rules, guidelines and defined selection criteria.

Insofar applicable, all procurement procedures by the Energy Community shall be conducted in compliance with the guiding principles and target standards, listed in the Commission Anti-Fraud Strategy (COM(2019) 196 final)⁹.

Staff members involved in any way in corruption and/or knowing corruption takes place shall face disciplinary action. Failure to comply with ethical and anti-corruption standards may lead to the termination of the employment agreement of the staff member concerned for

⁶ Procedural Act on the adoption of the Financial Management Rules of the Energy Community of 03/12/2019

⁷ https://www.energy-community.org/dam/jcr:33588897-3268-4244-bc77-c9d78c15a7f2/PA_2019_01_ECS.pdf

⁸ https://www.energy-community.org/dam/jcr:618df0b6-beab-4d81-8627-3998211255d7/ESC_PA_2021_ECS.pdf

⁹ https://ec.europa.eu/anti-fraud/sites/antifraud/files/2019_commission_anti_fraud_strategy_en.pdf, p 12.

serious misconduct and may also involve the duty to reimburse financial losses.

Vendors shall declare if they have any affiliation with staff members of Energy Community, family or relatives employed by Energy Community. A vendor found to have an undisclosed conflict of interest with Energy Community, or with a competing bidder, shall be disqualified from participating in a tender. Likewise, vendors participating in tenders must declare to adhere to ethical behavior and anti-corruption principles and practices.

Cases where an expert or company attempts to obtain information leading to an unfair advantage in subsequent or related procedures or attempts to influence the decision making process of the Energy Community or enters into agreement with other economic operators with the aim of distorting competition are to be treated as grave professional misconduct and are a basis to reject/exclude the economic operator concerned.

Grave professional misconduct refers to all wrongful conduct that denotes a wrongful intent or gross negligence. It encompasses the violation of applicable laws or regulations or ethical standards of the profession to which the contractor belongs, and any wrongful conduct that has an impact on the professional credibility of the contractor:

- a) where the operator attempts to unduly influence the decision-making of the contracting authority during a procurement procedure;
- b) where the operator enters into agreement with other operators in order to distort competition;
- c) where the operator tries to obtain confidential information that may give it undue advantages in the procedure.

1.4. Eligibility

Eligibility is defined in accordance with the BVergG.

1.5. Definition of terms

Bidder	vendor who submits a bid
Contracting authorities	bodies governed by public law ¹⁰ meaning entity that are meeting needs in the general interest and have close ties to the government even if they are not integrated into the public administration; “classical” contracting authorities are federations, states, municipalities;
Economic operator	economic operator’ means any natural or legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings, which offers the execution of works and/or a work, the supply of products or the provision of services on the market;
Procurement Officer	staff member managing the procurement of services, supplies or works, includes the staff member with a dedicated position and/or

¹⁰ §4(1) of BVergG 2018

Proposal	the procuring officer at the project unit; also referred to as tender, bid, quotation submitted by a potential supplier,
Recurring services	translations or interpretation services; hotels and venues; office maintenance, design services; training; graphic design etc.
Services	consulting, professional and logistical services (not covered under supplies and works)
Supplies	office supplies, materials, equipment, appliances, furniture, hard- and software
Tenderer	means an economic operator that has submitted a tender;
Works	building of infrastructure, construction, refurbishment
Vendor/supplier	potential supplier, also referred to as tenderer

2. Guiding principles

Contracts at the Energy Community are awarded in accordance with the principles of the public procurement as listed in §20(1) of BVergG 2018 taking into account the principles of the European public procurement as listed below:

- equal treatment
- non-discrimination
- proportionality
- transparency as well as
- free and fair competition
- and economic efficiency.

These interrelated principles ensure competitive and fair procedures, and prevent fraud in managing funds. Further to the general principles, the issue of conflict of interest shall be observed and its occurrence avoided to the extent possible by the Energy Community.

2.1. Equal Treatment

All participants in the procurement procedures shall have exactly the same conditions for submission and evaluation of tenders and shall be treated in exactly the same way.

The contracting authority shall ensure that all candidates receive equal, timely and satisfactory information about the object of a contract. All clarification requests from bidders shall be answered without delay in order not to hinder the bidders' ability to submit an offer. Equal opportunity to compete shall be ensured for all participants, regardless of differences between the candidates as to their legal status, nationality or other characteristics.

In order to ensure equal treatment of all participants, the identity of the bidders is to be kept strictly confidential and under no circumstances be revealed to other bidders, unless otherwise prescribed by the type of the procurement procedure. The identity of the bidders/participants in a procedure shall not be revealed to anyone who is not entitled to have this information for the execution of his or her tasks. The persons authorized to have this information shall not reveal it to third parties.

In restricted procedures, the identity of the natural persons and legal entities to be invited to submit an offer can be shared only with persons in the line of responsibility of the person in charge. In both open and restricted procedures, the identity of the bidders is recorded by Procurement Officer and shared only with the members of the evaluation committee, until the evaluation report (see Annex IV) is finalized.

In order to avoid bid rigging, the identity of the participants invited to the procedure and of the interested bidders shall under no circumstances be revealed to other bidders and potential bidders. This also means that while answering a question from a bidder, the identity of the questioner shall not be disclosed. In relevant cases, this also means that the question should be reformulated in a way not to disclose the bidders identity.

2.2. Non-Discrimination

In line with the principle of non-discrimination, Energy Community Secretariat shall make sure that in all its procurement procedures there is no discrimination based on the nationality of the suppliers and producers, eg. local tenderers, at the expense of foreign ones.

In addition, no direct or indirect discrimination on grounds of gender, race, etc. shall be tolerated in any of the procurement procedures carried out by the Energy Community Secretariat.

2.3. Proportionality

All procurement related activities at the ECS shall respect the proportionality principle. The award criteria defined with relation to the service specifications must always be appropriate and proportional to the objective and scope of the procurement. All criteria related to the selection of contractors shall be reasonable and not go beyond what is necessary for the provision of the particular service or delivery of goods. The Secretariat shall not impose any unjustified burdens that would prevent bidders with sufficient technical and professional ability and/or economic and financial standing from participating in its procurement procedures.

Each selected measure must be appropriate to meet the objective pursued and shall not substantially exceed what is necessary to achieve that end.

Example: the annual turnover requested from bidders participating in a procurement procedure shall not exceed double the value of the contract; the professional experience requested shall not go clearly beyond what is necessary to achieve the objective of the project, for example by requesting unreasonable seniority for projects without proper justification.

2.4. Transparency

The principle of transparency means that all public procurement activities are carried out in a fully transparent manner, i.e. all bidders have equal access to the information needed to prepare an offer or to participate in a procurement procedure. Transparency is an important tool for preventing and monitoring discriminatory behaviour. It involves the following aspects:

- Publicity for contacts (ex-ante and ex post)
- Publicity for the rules of each procedure
- Rule-based decision making
- Opportunities for verifications and enforcement.

2.5. Free and fair competition

This principle means that all eligible potential tenderers are provided an equal opportunity to tender for the required goods and services (**free** competition). It applies to all stages of the tendering process: it does not involve only tenderers submitting a bid but requires equal treatment of all potential participants.

Example: obligation to provide same access to information to all participants;

Fair competition means having a process of equity and equivalence between potential tenderers. Equity means all the potential tenderers are informed at the same time with the same quality and quantity of information. Equivalence means the tenderers are potentially able to offer a similar type of services or goods.

Important disclaimer: For procurement carried out with EU funding, the rule of origin (supplies) and the rule of nationality (services) must be observed!

2.6. Avoidance of conflict of interest (§26 BVergG 2018)

The conflict of interest occurs when the impartial and objective exercise of the duties of a person involved in a procurement procedure is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a successful bidder. It may arise where a person involved in the evaluation committee, for instance, may receive or grant unjustified direct or indirect advantages by influencing the outcome.

All persons involved in the procedure, i.e. members of the opening and evaluation committees, external consultants, and any other staff with access to the non-public data produced or used during the procurement procedure, shall notify the person in charge with no delay should they find themselves in any of the situations of conflict of interest as described above. Before taking part in a procurement procedure, all staff members of the Secretariat and external experts involved (if any) shall sign a Declaration of Impartiality and Confidentiality (see Annex VIII) and a Declaration on absence of conflict of interest (see Annex XII).

In addition, where the contractor has a professional conflicting interest that negatively affects its capacity to perform a contract, it shall inform the Secretariat with no delay and measures shall be taken to resolve such a conflict, including by terminating the contract, if necessary.

Civil servants or other staff of the public administration of a partner country, or any other public organisations based in the country, can be involved only in exceptional cases. The justification must in this case include information on the added value that contracting the expert will bring, as well as proof that the expert is seconded or on leave on personal ground.

2.7. Economic efficiency

The principle of economic efficiency requires the ECS to conduct the procurement process in a manner optimizing the relation between the procurement efforts and the purchase of the goods or services in question pursued, and to use the funds of the Energy Community in the most cost-efficient way.

3. Procurement responsibilities

The distribution of responsibilities in the procurement process takes into account the organisation structure of the Energy Community Secretariat, the job descriptions of the respective staff members, as well as Financial Management Rules of the Energy Community.

The roles and responsibilities of staff members in procurement procedures are recalled in detail below:

a) Director

The Director approves the content (service specifications) of the proposed goods/ works/ services, appoints relevant committees, approves (or disapproves) the evaluation results and consequently signs the contract on behalf of the Energy Community. The Director can also ask for re-evaluation of submitted offers or cancel the launched procurement procedure under the conditions listed in the BVergG.

The Director may authorize in writing any other member of the staff to act as an Authorizing Officer for concrete cases or for certain areas.

b) Deputy Director

The Deputy Director replaces the Director during the latter's absence in assuming his/her tasks and functions, including the tasks related to procurement.

c) Head of Legal Unit

The Head of Legal Unit shall approve the choice of the type of procurement procedure upon proposal by the Head of Administrative and Financial Unit and based on the estimated contract value.

d) Head of Administrative and Financial Unit/substitute

The Head of Administrative and Financial Unit, or his/her substitute(s) bears overall responsibility for the compliance and the integrity of procurement procedures, including documentation requirements.

For the activities financed from other sources (projects, direct support and others) the Director may assign this role to a designated project manager.

e) Procurement Officer

The Procurement Officer shall manage procurement procedures under the supervision of the Head of Administrative and Financial Unit and the Head of Legal Unit.

f) Heads of Units and Project Managers

Heads of Units and Project Managers are involved in the procurement processes related to the activities undertaken by their unit. They approve the service specifications and the

estimate of budget, before submitting to the Director for final approval.

g) Experts/other staff members

Experts/ other staff members assigned by their Heads of Units act as coordinators and contact points in all matters related to the content of the procurement project. They engage actively with the stakeholders in order to define and formulate the needs and draft service specifications for the planned activity (action). Further to the formulation of the content of the action, in cooperation with their respective head of unit, experts/ other staff members carry out activities necessary to calculate an estimated contract value, including calculation of estimated effort in terms of man/days, market research and consultations¹¹. Once the terms of the procurement project is defined and approved by the head of unit, the expert/ other staff member in charge works on the finalization of the procurement dossier in close cooperation with the Procurement Officer. Experts/ other staff members are also responsible for nomination of service providers to be invited to participate in the tender procedure¹².

Once procurement is launched, the expert/ other staff member in charge proposes answers to content related questions to the Procurement Officer. As a rule, he/she should also take part in the selection of the successful tenderer as a member of the evaluation committee. In the implementation and finalization phase, the expert/ other staff member in charge verifies the quality of the deliverables and submits them for approval to the Head of Unit/Director.

¹¹ §13ff of BVergG2018

¹² Only under Direct Award procedure or other procurement procedures below 100,000 eur

4. Types of procurement procedures (§31 BVerG 2018)

Public Procurement Law of Austria provides number of choices in relation to the types of procurement procedure that may be used. The procedure selected depends on a number of factors including the type of good or service being procured as well as its value (estimated contract value).

The table below gives an overview of different procurement methods and related thresholds to be observed by the Energy Community for services and supplies, which is further visualized in the graph with the overview of procedure:

Table 1. Procurement methods and related thresholds

	Estimated value of a contract		Type of procedure
	Services or supplies	Ref to the Law	Possible procedures
1.	≤ EUR 500	<i>Internal rules</i>	Payment may be made against invoice
2.	≤ EUR 20,000		Consultation of at least two offers*
3.	≤ EUR 60,000		Consultation of at least three offers*
4.	< EUR 100,000 ¹³	§ 46 § 43 § 44	Consultation of at least five offers* Direct Award Restricted procedure without prior publication Negotiated procedure without prior publication
5.	< EUR 130,000	§ 47	Direct Award with prior publication
6.	< EUR 221,000 (EUR 214,000) ¹⁴ Procedure below threshold (Unterswellenbereich)	§ 33, 34	Open procedure Restricted procedure with prior publication Negotiated procedure with prior publication
7.	≥ EUR 221,000 (EUR 214,000) Procedure above threshold (Oberswellenbereich)	§ 33	Open procedure (EU wide notice) Restricted procedure (EU wide notice)

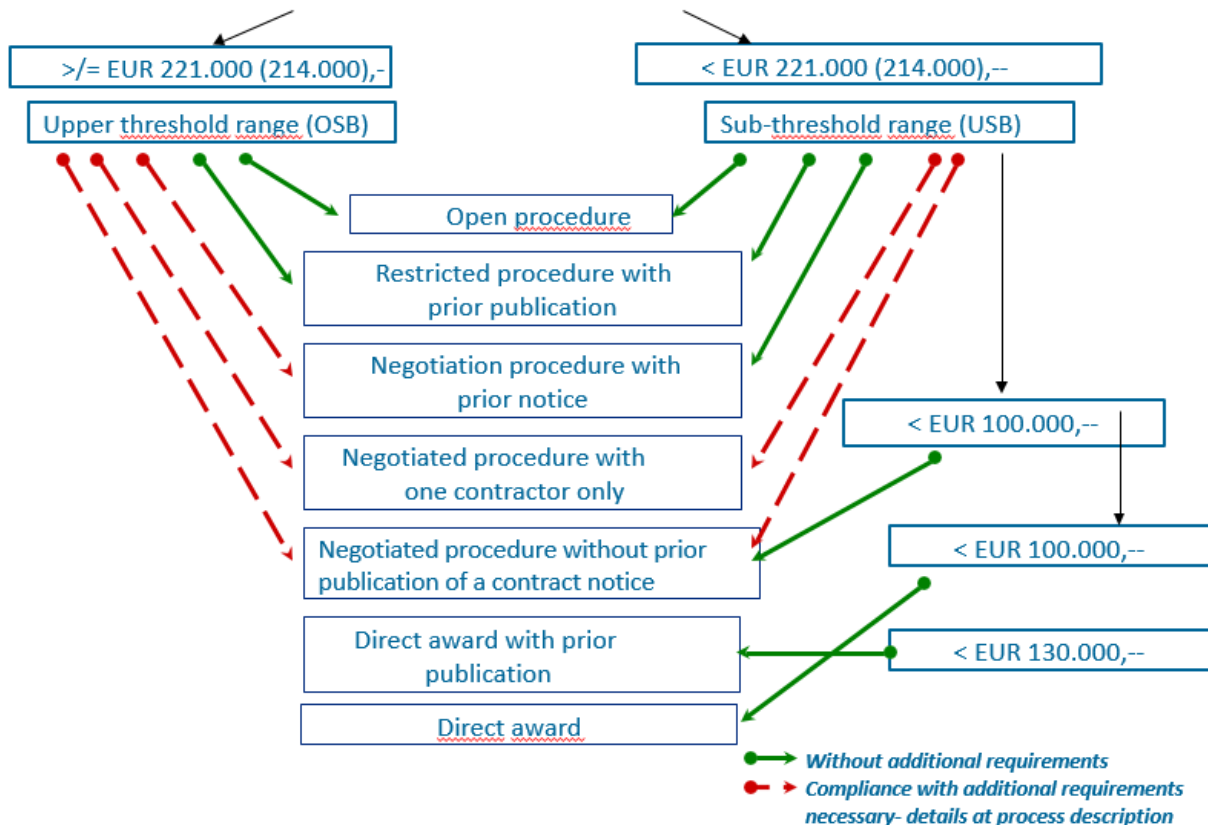
*Exception can be made in the following cases: urgency or crisis, de jure or de facto monopoly, actions with specific characteristics, which require a particular body. Explanatory note, signed by the responsible person and approved by the Director must be produced.

¹³ In line with BVerG 2018 and with Schwellenwerteverordnung 2018, BGBl. II Nr. 211/2018 from 21.8.2018 to 31.12.2022

¹⁴ EU Regulation 2365/17 of 18 December 2018, see: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2365&from=EN> and Bvergg 2018. From 01.01.2020, the threshold of 214,000 EUR.

Graph 1. Overview of the choice of procurement procedure

Choice of procedure



Below is a description of general characteristics of each of the possible procedures mentioned above. Additional information on key features of different types of procedures can be found in Annex I.

4.1. Open Procedure (§§31, 33, 112 BVerG 2018)

In 'open' calls for tender all economic operators may submit a tender. The contract is given maximum publicity by publishing a notice in national or international newspapers and in any other appropriate media, including the Energy Community website.

Any economic operator wishing to tender may ask to receive the tender documents, in accordance with the procedures specified in the contract notice. The tenders are examined, the eligibility and the financial, economic, technical and professional capacity of the tenderers are checked to arrive at a selection, the tenders are compared and the contract is awarded.

No negotiation is allowed.

The open procedure may be used at any time, is very formalized, with little flexibility as it has to follow the timelines and other formalities as stipulated in the Law. The template for the tender documents under Open Procedure is attached in Annex III.

Below indicative timeline for carrying out open procedure above (below) EU-threshold is presented:

Activity	Days	Reference BVergG
Launching of tenders	day x	
Deadline for receiving tenders*	at least 30 days** (at least 20 days)	§§70,71 (§§75,76)
Opening of tenders	on a defined day	
Evaluation of tenders	Asap	
Information to bidders on the decision	Once evaluation finalized and report approved	
Stand-still period	10 days (15 days)***	§144
Contract signature	Day following the expiry of the standstill period	§145

*the deadline can be reduced in certain cases, e.g. urgency (§§73,74)

**calendar days

***for mail submissions

4.2. Restricted procedure with prior publication (§§31(3),34,123 BVergG 2018)

The contracting authority publishes its intention to conclude a contract. All economic operators may submit a tender but only those who satisfy the selection criteria may be invited to do so. The selection criteria and the tasks to be undertaken are described in the published contract notice.

The procedure is complex (two steps), formalized (little flexibility), no negotiation is allowed and follows the deadlines stipulated under the Austrian Public Procurement Law.

4.3. Restricted procedure without prior publication (§§31(4),43,122 BVergG 2018)

A limited number of economic operators (minimum 3) is invited to submit an offer. Also this procedure is formalized, and follows the timelines and other relevant requirements of the Austrian Public Procurement Law. This procedure maybe used only below the EU-thresholds according to specific sub-thresholds. It provides less transparency and less competition, and requires a knowledge of the market.

4.4. Negotiated procedure with prior publication (competitive procedure with negotiation) (§§31(5),36-37, 44,114 BVergG 2018)

The contracting authority publishes its intention to conclude a contract. Any economic operator may request to participate, whereby only those invited by the contracting authority may submit an initial tender as basis of negotiations. This procedure may be used only in prescribed and limited grounds, (in principle) exemption to the norm.

After submission of an offer, negotiations can take place about the content of the offer. A negotiated procedure, in principle, is flexible and allows tenderers to present innovative solutions. Still, the contracting authority is responsible to guarantee equal treatment of all tenderers. This type of procedure might be sensitive to errors.

4.5. Negotiated procedure without prior publication (§§31(6),34, 44,114 BVergG 2018)

Selected suitable economic operators or only one economic operator are invited to submit an offer. Afterwards, negotiations can take place about the content of the offers. The procedure can be used only in specific cases and circumstances (§34), strictly necessary for reasons of urgency and due to circumstances not attributable to contacting authority. It may be used below the EU-threshold and within specific sub thresholds, i.e.: supply and services: < 100.000,-¹⁵.

4.6. Direct award without prior publication (§§31(11), 46 BVergG 2018)

This type of procedure allows to directly award contracts to suitable bidders without following a formal procurement procedure possibly (not necessarily) after receiving offers or tentative price information (from one or more undertakings, incl. individuals). Negotiations and short-listing are possible, yet not required. The template for invitation to submit an offer under direct award procedure without prior publication can be seen in Annex II.

4.7. Direct award with prior publication (§47 BVergG 2018)

The contracting authority publishes its intention to conclude a contract at its website and in its eProcurement system. The requirements of publication are minimum (contracting authority, subject-matter, time and place of performance, address for obtaining further information/procurement documents).

Interested potential service providers express their interest to participate. Without any formalized procedure, the contracting authority invites one or more potential service providers to submit an offer.

This procurement procedure is of particular relevance if cross-border-interest requires *ex ante*-transparency. It can be operated as a one- or two-phase-procedure. Negotiations and short-listing are possible, yet not required.

Below an indicative and recommended timeline for direct award with prior publication §47

Launching of tenders	day x	Note
Deadline for receiving tenders	At least 10 working days	Depending on the complexity of the task
Evaluation of tenders	Asap	At least 5 working days
Information to bidders on the decision	Once evaluation report approved	
Contract signature	ASAP following approval of the evaluation report	

4.8. Competitive dialogue (§31(9) BVergG 2018)

In the case of particularly complex contracts, where the contracting authority considers that neither direct use of the open procedure nor the arrangements governing the restricted procedure will result in the best value for money, it may use the competitive dialogue. A contract may be considered as 'particularly complex' if the contracting authority is objectively unable either to specify the technical means of satisfying its needs or objectives or to specify the legal or financial makeup of the project. No specific threshold applies.

¹⁵ Schwellenwertverordnung 2018, BGBl. II Nr. 211/2018 from 21.8.2018 to 31.12.2022
https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2018_II_211/BGBLA_2018_II_211.pdfsig

Contracting authorities must publish a contract notice setting out or attaching their needs and requirements. They must open a dialogue with the candidates satisfying the selection criteria in the contract notice. The dialogue may cover all aspects of the tender; however, it is conducted separately with each candidate on the basis of their proposed solutions and ideas. The contracting authority must ensure equal treatment of tenderers and keep the tenders confidential. It is therefore not allowed to pick the best solutions from different tenderers.

The minimum number of candidates invited to tender is three.

NOTE: A competitive dialogue has not yet been performed within the scope of the Energy Community Secretariat's activities.

4.9. Innovation partnership (§31(10) BVergG 2018)

The contracting authority publishes a relevant notice; all economic operators are invited to express their interest to participate. The contracting authority chooses suitable economic operators to submit their proposal for innovation partnership. Afterwards, the content is negotiated.

NOTE: An innovation partnership has not yet been performed within the scope of the Energy Community Secretariat's activities.

4.10. Framework agreement (§31(7) BVergG 2018)

A framework agreement is an agreement between the contracting authority and one or more (min. 3) economic operators, the purpose of which is to establish the terms governing future contracts to be awarded during a given period (3 to max. 4 years), particularly as regards the price and the quantities envisaged.

Framework agreements with several economic operators are called 'multiple' framework agreements; they take the form of separate agreements but they are all concluded in identical terms. On the basis of a framework agreement, a specific contract can be concluded with or without additional competition.

Specific contracts based on framework agreements are awarded after carrying out an open procedure, a restricted procedure with prior publication, a negotiated procedure. Contracts based on framework agreements are awarded either directly or after an invitation to submit bids.

4.11. Dynamic purchasing system (§31(8) BVergG 2018)

A dynamic purchasing system is a completely electronic process for making commonly used purchases, for a limited period, which is open to any economic operator who meets the selection criteria and has submitted a technically compliant indicative tender. It is open throughout the period of validity of the purchasing system to any economic operator that satisfies the selection criteria. No specific threshold applies.

Before awarding contracts under dynamic purchasing system, contracting authorities shall publish a call for competition making clear that a dynamic purchasing system is involved.

NOTE: a dynamic purchasing system is not applied within the scope of the Energy Community Secretariat's activities.

5. Stages in the public procurement procedure

5.1. Preparation and planning

In the preparation and planning of the public procurement the following aspects are considered:

- a) Identification of future needs

Planning shall follow the work programs of the Energy Community that are established on biannual basis and verified annually. In case of grant contracts, implemented by the Energy Community, such work programs are prepared on multiannual basis, which allows long-term planning of procurement activities.

In defining the timetable for the activity, it is necessary to take into account all variables and also assess possible risks.

Important Note: It is necessary to count at least 5 months for a project to be carried out in an open procedure. For direct awards, the absolute minimum should be 14 days, but for a more complex tasks, up to 2 months should be estimated.

Considering the commitment of the Energy Community Secretariat to different initiatives such as the Eco Management and Audit Scheme (EMAS) and gender equality, prior to launching any procurement procedure, a likely impact of the procurement on the environment/gender should be considered. Depending on the contract matter, specific environmental or gender related requirements should be included in tender documents in line with elaborated guidelines¹⁶.

EMAS and gender equality related criteria may be included in the tender documents defining the required characteristics of goods/services in the service specifications, as selection or award criteria (see section 5.4.2 for further information).

- b) Consultations of stakeholders and future beneficiaries

Before defining the characteristics of goods and scope of services, the expert/other staff member in charge shall define the details of the needs together with the stakeholders and if applicable, also involve future beneficiaries of the project. If established, the needs to carry out the activity shall be discussed with the working groups and/or its partners in relation to the subject matter.

Stakeholders may be any entities directly or indirectly involved in a project or affected by its outcome. Such entities may be, *inter alia*, ministries, academia, NGO's or local authorities. The consultation may take form of an online stakeholder consultation (open to all) or of regular contacts with the responsible representatives of the ministries or private entities involved, including possibly the beneficiaries.

If the required expertise is not available at the Energy Community, the Secretariat may

¹⁶ See Sustainable Procurement Procedure under \\ENC-FS1\ecs_x\Secretariat\Legal Framework EnC\EMAS\ECS EMS documentation\5 EMS support\5.5 EMS documentation\approved EPs, EIs

engage paid or unpaid external experts to support the definition of the service specifications. This applies particularly to the new fields of expertise, (not yet employed experts), but also in highly technical areas of the Secretariat's daily work (IT hardware and software, conference technique and similar).

If an external expert is involved in the preparation of service specifications, the issue of conflict of interest shall always be considered. An expert involved in drafting service specifications shall not bid in the respective procurement procedure or any future similar procurement procedures. The expert shall also not disclose any internal information that might give a comparative advantage to any of the future bidders. A Declaration of Impartiality and Confidentiality must be signed (see Annex VIII).

c) Analysis of the market

Before drafting the service specifications, the expert/other staff member in charge shall make analysis of the market for the respective services or goods. The analysis shall help to identify possible ways how to achieve the desired result, in terms of possible and available solutions, to investigate if there are other subjects involved in the same activities and eventually avoid duplication. It should serve as a basis for definition of the estimated contract value and consequently the selection of the procurement procedure.

The analysis is to be carried out by the person in charge, taking into account the time gap between the adoption of the work programme and the actual launch of the procurement activity. The result of the analysis shall be presented orally or in a written form by the expert / other staff member in charge to his/her HoU.

The analysis of the market has a particular importance in cases where the contract is awarded directly to a certain legal entity or natural person. In this case, it is necessary to justify that it was in the best interest of the organization and that this approach provides for the best value for money. The reasons might be for example, that the economic operator to provide the services or deliver the goods is in a unique position to do so, which can be explained by a de jure or de facto monopoly. In limited value contracts, it may also be the case that conducting a proper procedure would be more costly than what could be possibly saved if the contract is awarded directly. In all cases, where a contract is awarded directly to an economic operator without conducting a competitive procedure, a note must be produced by the expert/other staff member in charge and approved by the Director of the Secretariat.

d) Specifications (subject matter of the contract) (§§103-106 BVergG 2018)

Based on the market analysis and stakeholders consultations, subject matter of the future contract (i.e. its subject, duration and value) shall be defined. This is followed by calculation of a value estimate needed to carry out the action and the timeline for delivery of results (see below, point e)).

e) Calculation of the estimated value of the contract (§13 BVergG 2018)

The basis for the calculation of the estimated value of the contract is based on the total value of the services, supplies or works (without VAT) to be purchased for the full duration of the contract. This value has to include all possible options or extensions of the contract as indicated in the procurement notice. Specific provisions for the calculations of the estimated

values of the contracts for supplies (incl. recurring services) and services are defined respectively in §§15 and 16 of BVergG.

The estimated value shall not be determined with a view to circumventing the applicable rules and thresholds, nor shall a procurement project be split up for that purpose.

Contracts covering variety of supplies or services, where the purpose is similar, and where one supplier would theoretically be able to provide them all can be divided into lots (§28 BVergG). This should enable the interested bidders to submit an offer for one or more lots and open the competition also to smaller bidders. Whenever appropriate the project shall be divided into lots, with due regard to fair competition. If the project is divided into lots the estimated value shall equal the sum of the combined value of all lots.

The procurement documents must indicate, whether offers may be submitted for all of the lots, for certain lots or for only one lot. The number of lots that may be awarded to one tenderer may be limited. This needs to be made clear in the contract notice as well.

Contracts can be awarded by combining several or all lots. If this is the case, it needs to be clearly specified in the procurement documents, with a clear specification which combinations are allowed.

In relation to a planned contracts for consultancy, studies or research, all relevant expenses shall be considered, including: number of man-days of the consultant, daily rates for consultancy, travel costs, accommodation, and any further expense of relevance, like for example related to the organisation of the events.

If the contracts together relate to the same subject matter, the values must be aggregated. The procedure used must always be appropriate for the aggregated values of the works/services/supplies.

f) Selection of the public procurement procedure

Based on the above, an appropriate procurement procedure is identified and proposed for approval to the Head of Legal Unit.

See Annex XI for additional information regarding the stages in public procurement procedure and Annex XIa with a checklist for preparation and planning phase of procurement.

5.2. Publication and transparency

5.2.1. Contract Notice/Publication under the national Law (§§50 BVergG 2018)

The Contract Notice is the document that formally and publicly launches the procurement procedure. The Energy Community uses templates from the e-procurement system (*Lieferanzeiger*).

Depending on the procedure used, the Contract Notice is distributed either to a limited number of pre-selected procedure participants or it is published in the official media (Wiener Zeitung for national publication below threshold and EU Official Journal for international publications above threshold).

The Contract Notice provides essential information about the contract, including the title, type of contract and location of the services, a short description of the contract including the value, as well as any administrative information related to the submission of offers or requests to participate in a procurement procedure.

The publication of a Contract Notice shall be organized by the Procurement Officer.

See Annex XIa with a checklist for launching a procurement procedure.

5.2.2. Service Specifications (§§104, 105, 106 BVergG 2018)

The service specifications are the subject matter of the contract, that provide precise specification or functional description of the services/goods required.

Service specifications are drafted by the expert/other staff member in charge. Approved document is submitted to the procuring officer who prepares the procurement dossier.

In planning of the procurement procedures, the financial year, ending on December 31 of the year in question must always be observed. The approved version of the Service Specifications for a procurement to be carried out in an open procedure in a given year must be delivered to the Procurement Officer no later than October 15 of the year in question. This deadline is to be considered an absolute latest possible date in a year to provide request for procurement to the administrative unit.

Deadlines for delivery of the approved Service Specifications for other types of procedure shall always be reasonable, taking into account the complexity of the particular procedure and expected number of the received offers.

5.2.3. Instructions to bidders

The instructions consist of guidelines and formal rules regulating the procurement procedure. The document aims to support economic operators in preparing and submitting their offers or requests to participate. They provide practical indications on the way the proposals should be structured, the language in which they should be drawn up, the method for submission or the formal presentation requirements, the deadline for submission, the contact details for clarification requests, and other relevant data as appropriate.

The Instructions to bidders shall be based on the templates provided in Annexes II (for Direct Award) and III (for Open Procedure). The document is drafted by the Procurement Officer, with an input provided by the expert or team in charge, mainly on the selection and award criteria.

General terms and conditions shall be included in the procurement documents to provide clear information to economic operators on the required contractual arrangements. It is a detailed legal document, which indicates legal provisions including liability, data protection, dispute resolution, revision clauses, intellectual property rights, confidentiality obligations, protection of parties, representations, warranties, indemnifications, terms and all applicable laws and regulations.

5.2.4. Publicity and clarifications to bidders

In line with the principle of transparency, the procurement procedures at the Energy Community shall receive wide publicity in order to reach the highest possible number of bidders and the best price/quality ratio.

The publication of the procurement documents is done in line with the Austrian Procurement law in the official Journal (Wiener Zeitung) and for procedures above threshold also in the Official Journal of the European Union. In addition, open procedures as well as other procedures with prior publication are published on the website of the Energy Community¹⁷ and notice about the publication is sent to its users of the website.

The Call for Expression of Interest for the Roster of Experts, for services such as consultancy and legal services, is published on the website of the Energy Community and the Secretariat shall make sure it receives wide and regular publicity.

For open procedures and other procedures with prior publication, a *Question and Answers* section shall be available in the procurement section on the website of the Energy Community and answers shall also be published via the e-procurement portal.

If a clarification request leads to an adjustment of the tender documentation with significant impact, it might be necessary to prolong the deadline for submission of the offer/expression of interest.

5.3. Receipt of offers and opening

On receiving bids/offers, an assistant must register them ("list of registered bids") and provide such a list to the nominated committees (opening and/or evaluation).

For open procedures or procedures with prior publication, the opening and check of tenders must be undertaken by an opening committee consisting of three members of the Administrative Unit. The opening of tenders takes place in a paperless form in the e-procurement system. The committee prepares an opening protocol (template available in the Lieferanzeiger or alternatively see Annex V) that must be signed by all opening committee members and saved in the project folder. Following the provisions of the BVergG, the bidders do not have to be invited to the opening if this is done in an e-procurement system. The Secretariat might decide to invite the bidders on a voluntary basis.

The opening committee shall be chaired by the Head of Administrative and Financial Unit/ substitute.

The committee checks the formal compliance of the received offers, regarding the general information and eligibility evidence and technical and financial proposal elements. As the offers are submitted via an electronic system, it is not possible to submit an offer after the set deadline.

If any of the requested information is missing or is incorrect, the bid/application may be rejected on that sole basis and the bid/application will not be evaluated further. However, if due to an obvious clerical error on the part of the tenderer/applicant, they fail to submit evidence, the opening committee may ask the tenderer/applicant to provide, within a set deadline, the missing information or clarify supporting documents. It signs a protocol at the end of the process. Following the opening session and the administrative checks, the evaluation committee proceeds with the evaluation of the bids/offers.

¹⁷ <https://www.energy-community.org/aboutus/procurement.html>

5.4. Evaluation of offers and award of contract

5.4.1. Evaluation committee

The evaluation of eligible offers is done by the evaluation committee, appointed by the Director of the Secretariat. A template of a protocol for nomination of an evaluation committee can be found in Annex IX. The role of the evaluation committee is to propose to the Director the award of the contract.

The evaluation committee must be fully independent in the selection of the winning bid. It has to make the selection on the basis of the offers, presented anonymously and only on the basis of the evaluation criteria. The evaluation committee members shall not reveal the identity of the bidders. They shall also not receive any instructions regarding their evaluation from a third party.

The evaluation committee shall consist of a minimum of three voting members including a chair, and can be assisted by a non-voting secretary with a public procurement expertise. The evaluators shall be recruited from the members of staff and can be supported by external experts. These external experts can, but do not have to have voting rights. In case voting rights are granted, the external experts shall have the same position in the committee as the staff of the Secretariat.

The proposal on the composition of the evaluation committee shall come from the expert/other staff member in charge and besides the expertise, it shall also take into account the availability of the nominated persons.

All members of the evaluation committee shall sign a Declaration of Impartiality and Confidentiality as annexed to this document (see Annex VIII).

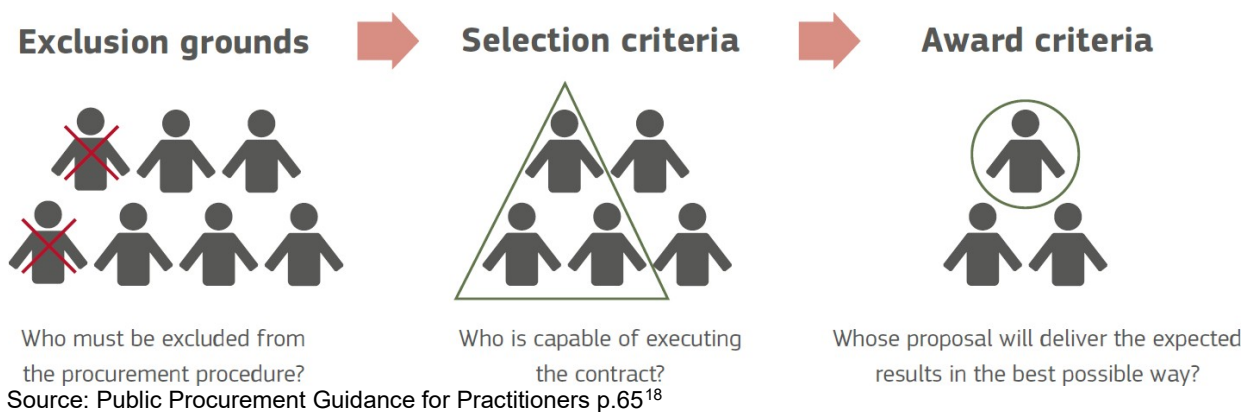
The evaluation shall be based on the selection and award criteria as published in the procurement documents explained below. The template for the evaluation report and evaluation sheet can be found in Annex IV and Annex IVa.

5.4.2. Evaluation criteria

The selection of the best offer must follow the criteria decided in the definition phase and made available to the bidders in the procurement documents. Then the winning offer is selected based on the three types of criteria listed below. All three types of criteria must respect the guiding principles of proportionality and equal treatment.

The types of criteria are:

- Exclusion grounds
- Selection criteria and
- Award criteria



5.4.2.1. Exclusion criteria (professional honesty and solvency and reliability, §78 BVergG 2018)

The exclusion criteria define the circumstances under which the bidder must be excluded from the procurement procedure. This relates for example to situations, where the bidder is in a conflict of interest in relation to the action, has been convicted of an offence concerning its professional conduct or is bankrupt.

The exclusion grounds shall be clearly listed in the service specifications. The bidder confirms its acquaintance and compliance with these criteria either by submitting an offer, or by signing a declaration on honour (see Annex X), where requested. For procedures above the threshold (Oberschwellenbereich), it is mandatory that bidders submit the signed declaration on honour in a form of the European Single Procurement Document (ESPD) (see Annex X).

Mean of proof: Relevant register, such as juridical record or certificate issued by the competent authority.

5.4.2.2. Qualification criteria (§80 BVergG 2018)

Qualification criteria are the minimum standards and conditions for participation of economic operators. They also have to be related to and be appropriate to the subject matter of the contract.

Qualification criteria relate to the qualifications of the candidate or tenderer regarding the following aspects:

- a) suitability to pursue the professional activity,
- b) economic and financial standing,
- c) professional honesty and reliability and
- d) technical and professional ability.

5.4.2.3. Suitability to pursue the professional activity (§82 BVergG)

Candidates or tenderers may have to be enrolled in one of the professional or trade registers kept in their Member State of establishment public services: particular authorization or membership of a particular organization.

¹⁸

https://ec.europa.eu/regional_policy/sources/docgener/guides/public_procurement/2018/guidance_public_procurement_2018_en.pdf

Means of proof: Annex XI (“Registers”) of Directive 2014/24/EU. In Austria the proof is called the ‘Firmenbuch’, the ‘Gewerberegister’ and the ‘Mitgliederverzeichnisse der Landeskammern’.

5.4.2.4. Economic and financial standing (§84 BVerG)

In order to ensure that the economic operators possess the necessary economic and financial capacity to perform the contract (in time), contracting authorities may require that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract (shall not exceed two times the estimated contract value, except in duly justified cases) an appropriate level of professional risk indemnity insurance certain ratio, for instance, between assets and liabilities.

Means of proof: appropriate statements from banks, bank guarantee or letter of comfort, evidence of relevant professional risk indemnity insurance, (extracts from the) financial statements, information on their annual accounts showing the ratios (for instance, between assets and liabilities), a statement of the undertaking’s overall turnover and of turnover in the area covered by the contract.

5.4.2.5. Technical and professional ability (§§83-87 BVerG 2018)

The aim is to ensure that the economic operators possess the necessary human and technical resources and experience to perform the contract (to an appropriate quality standard)

- economic operators should have a sufficient level of experience demonstrated by suitable references from contracts performed in the past
- the professional ability of economic operators to provide the service or to execute the installation or the work may be evaluated with regard to their skills, efficiency, experience and reliability.

Means of proof: a list of the works carried out (past five years), accompanied by certificates of satisfactory execution and outcome, a list of the principal deliveries effected or the main services provided (past three years), with the sums, dates and recipients involved an indication of the technicians or technical bodies involved, a description of the technical facilities, measures used for ensuring quality, study and research facilities, an indication of environmental management measures, the educational and professional qualifications of the services provider or contractor or those of the undertaking’s managerial staff (provided that they are not evaluated as an award criterion), a statement of the average manpower of the service provider or contract and number of managerial staff etc).

List of recommended selection criteria

Objective	Requirement for economic operators
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<p>Assess suitability to pursue the professional activity (§82 BVerG)</p>	<p>As the case may be, be enrolled in one of the official professional or trade registers kept in the country of residence or country where the legal entity has its seat</p> <p>Official authorisation to perform a certain type of service (e.g. civil engineers, architects)</p> <p>Valid professional insurance certificate (this can also be requested at the time of signing the contract)</p>
<p>Assess economic and financial capacity (§84 BVerG)</p>	<p>Minimum yearly turnover, which must not exceed twice the estimated contract value (e.g. EUR 2 million where the contract value is EUR 1 million per year), including a particular minimum turnover in the area covered by the contract</p> <p>Information on annual accounts showing the ratio between assets and liabilities (e.g. a minimum solvency level of 25 % or more)</p> <p>Appropriate level of professional risk indemnity insurance</p>
<p>Assess technical and professional ability (§§83-87 BVerG 2018)</p>	<p>Appropriate human resources (e.g. relevant qualifications for key staff) and technical resources (e.g. specific equipment) to carry out the contract to the required quality standard.</p> <p>Experience of the contractor itself — not of individual staff members — to carry out the contract to an appropriate quality standard (e.g. references from previous contracts within the last three years, including at least two from similar contracts).</p> <p>The necessary skills, efficiency, experience and reliability to provide the service or to execute the installation or the work.</p>

5.4.2.6. Award criteria

The award criteria are used to select the winning bid out of those that comply with the exclusion grounds and the selection criteria. The award criteria must be made available to all bidders and potential bidders in the procurement documents and shall not be changed once the procurement documents have been published. The contract shall be awarded to the most economically advantageous bid.

The award of the contract can be based on two different approaches listed below, both of them containing the price element. For each procurement procedure, the Secretariat will choose an appropriate approach and will make it public in the procurement documents.

5.4.2.7. Lowest price

In the **lowest price** method, a concrete product or service is requested and the contract is awarded to the bidder who offers to deliver the goods or perform the services for the lowest price.

This method can be used in situations, where a concrete product or a well defined service is requested, like purchase of stationery or works with pre-existing design. The Secretariat shall limit the use of this option only to cases (=exception), where the definition of the services, goods or works is so detailed and exact that there is no risk of lower quality or lower standard and therefore of not getting the best value for money.

It is also possible to give a fixed price for the contract and make the bidders compete only on the quality criteria. This approach is mainly used in cases where there is a limited budget with regard to the services/goods to be purchased.

5.4.2.8. Most economically advantageous tender (MEAT) or best price-quality ratio

The purpose of this method is to identify the offer providing the best value for money. The award criteria besides price are qualitative, i.e. environmental, social aspects linked to subject matter.

This method is to be used in cases, where there are more possibilities that might lead to the successful implementation of the contract. The concrete works are designed by the bidders. It is the preferred option for consultancy services - the most common types of public procurement at the Energy Community.

In order to select the winner based on the price-quality ratio, the different criteria should be scored using a system that assigns weightings to the different criteria. The procurement documents shall clearly indicate the values or percentages assigned to the different criteria.

Award criteria reflecting the best price-quality ratio that might be used in the procurement at the Energy Community.

Criteria	Sub-criteria
Price	Fixed price Rates (e.g. daily fees, unit costs)

Technical quality	Technical solutions offered Methodology Quality and relevance of previous similar projects
Organisation	Project management (timetable, staff schedule, organization of work) Risk analysis Quality control
Staff assigned to carry out the contract	Where the quality of the staff assigned has a significant impact on the way the contract will be carried out: <ul style="list-style-type: none"> • qualification of staff; • experience of staff.
Service	Delivery conditions such as delivery date, delivery process and delivery period or period of completion Maintenance, technical assistance

The award criteria shall not be changed once the procurement has been launched. This should also be observed when providing clarifications to bidders. In case changes to the award criteria, including changes resulting from the clarifications need to be done, the deadline for submission of offers shall be postponed.

EXAMPLES OF AWARD CRITERIA TO BE AVOIDED:

- award criteria not clearly linked to the subject matter of the contract.
- award criteria too vague, e.g. quality is evaluated based on the product’s durability and robustness, but there is no clear definition of durability or robustness in the procurement documents.
- minimum requirements used to award the contract (e.g. warranty period of 5 years, blue colour, time of delivery of 7 days) when they should be used as selection criteria (i.e. yes/no response).
- mathematical errors when adding up scores and ranking tenders.
- mixing selection criteria and award criteria, where selection criteria are used as award criteria or criteria that were already used at selection stage are used again at award stage. For example, previous experience with a similar contract should not be used as an award criterion, as it relates to the capacity of the tenderer to carry out the contract. This should be assessed at the selection stage, not at the award stage. However, experience of the staff assigned to the contract, where the quality of the staff can have a significant impact on the delivery of the contract can be used as an award criterion.
- use of the duration of the contract as an award criterion – the duration of the contract should be set out in the procurement documents and should be the same for all potential contractors.
- use of contract ‘extras’ as an award criterion, for example giving additional points to tenderers who offer free items in addition to those requested.

Once the award criteria are published in the procurement documents they shall not be altered. The definition of the criteria and methodology for chosen for the application of the criteria shall be based on the complexity of the procurement procedure.

In principle, three types of methodologies may be used:

- a) A comply or fail question
- b) A weighing system for the criteria

- c) An assessment methodology (for more complicated contracts).

The assessment might also feature a combination of the methodologies above.

For the criteria, where the scoring method is used, the awarded score must always be followed by comments. The comments shall be presented to the unsuccessful bidders in the notification letter and will also serve to justify the given score in the future and for potential audit or review purposes.

The criteria as well as the methodology must be made available to the bidders and potential bidders in the procurement documents.

Except for the cases, where the price-only criterion is applied, a **specific criteria and their relative weighting has to be applied**. The method must be indicated in the procurement documents and must remain unchanged during the entire procedure.

An evaluation matrix may be used to carry out the evaluation of tenders. The matrix would serve as record keeping document and support the process of evaluation. The weightings between the criteria of quality and prices can vary from 50:50 up to 80:20, where delivering high quality is of particular importance. The concrete ratio is to be decided on a case by case basis and approved with the service specifications.

The tender with the highest mark must be awarded the contract. If the Director of the Secretariat has objective reasons not to award the contract to the bidder who received the highest mark, he/she can ask for a re-evaluation of the offers received and/or cancel the procedure when requirements of the law provisions apply (see below).

5.4.3. Notification of the award (§143 BVergG 2018)

Following the approval of the Evaluation Report (see Annex IV) by the Director, the Procurement Officer shall notify the participants to the procedure about its results.

Both successful and unsuccessful bidders shall receive the notification. Unsuccessful bidders shall be informed about the reasons why their offer was not accepted, the overall price of the winning bid and the characteristics and advantages of the winning bid, as well as the duration of the standstill period as required by the Law¹⁹.

The winning bidder receives the award information on the selection of its offer and about the duration of the standstill period.

A template for Notification to the bidder can be found in Annex XIII. The Notification to the bidder is completed by the Procurement Officer or the person in charge of procurements at the project unit in consultation with the expert/other staff member in charge. The Notification is checked and signed by the Director.

5.4.4. Award decision (§142 BVergG 2018)

Based on the results of the evaluation of the offers, an award decision is made by the

¹⁹ In principle, standstill period is mandatory for all procedures, apart from Direct Award (with or without publication) or procedures with one bidder only.

Director of the Energy Community Secretariat or person nominated by him (authorizing officer).

Following the expiry of the stand still period, a contract shall be signed by the Director of the Energy Community Secretariat or person nominated by him (authorizing officer).

5.4.5. Cancellation (§§148-150 BVergG 2018)

Each procurement procedure may be cancelled, when based on objective reasons before and after deadline for submission of tenders possible. In certain cases, the cancellation is **mandatory**:

- no tender submitted, no tender or only one tender left in procedure
- circumstances become apparent, which would have excluded tendering or would have led to another tendering

The contracting authority shall inform about the cancellation decision in accordance with §150, grant the stand-still-period and inform about the reasons to cancel the procurement procedure.

6. Contracting and implementation

Once the evaluation committee identifies a supplier that meets the prescribed requirements and whose tender has been determined to be substantially responsive to the technical specifications, and to offer the best value for money, subject to approval of the evaluation results by the Director, a contract shall be signed with the successful bidder.

A contract is an agreement between Energy Community and a supplier providing goods, works and/or services, which demonstrates:

- the parties' intent to contract,
- a clear offer and a clear acceptance of the offer,
- the parties are legally capable of contracting,
- a price has been set that Energy Community agrees to pay the supplier,
- a clear agreement between contracting parties about the terms and conditions of the contract.

The Energy Community General Terms and Conditions (see Annexes VI and VII) prepared by Legal Unit are to be used, respectively the contracts must be concluded on the basis of the terms and conditions as specified in the tender documents. For recurring services, a signed offer may also become a contract, especially for procurements under direct award.

6.1. General Contract Provisions

Contracts shall be awarded within the designated period of the offer's validity and clearly define the following elements:

- - a) name and address of the supplier
 - b) the nature or characteristics of the services/supplies/works being procured,
 - c) the quantity being procured,
 - d) contract or unit price,
 - e) duration of the contract,
 - f) conditions to be fulfilled, including applicable general terms and conditions,
 - g) terms of delivery and payment,
 - h) the rights and obligations of Energy Community and of the supplier,
 - i) applicable data protection clauses,
 - j) termination and arbitration clauses.

6.2. Negotiations

To the extent allowed by the type of procurement procedure in question, negotiations may be carried out with the selected supplier regarding payment terms, supplementary terms and conditions, delivery etc. In case of doubt, the Procurement Officer shall request the approval by the Head of Legal Unit.

6.3. Contract Award Notice

Whenever required by the law, the Energy Community shall publish the contract award notice in the Wiener Zeitung and/or the EU Official Journal. Information on contracts awarded by the Energy Community with a value exceeding EUR 50 000 are also published

on the Open Data Oesterreich portal (www.data.gv.at²⁰).

Names of all contractors that were awarded a contract with a value exceeding 10 000 EUR shall be published on the ECS website for the last calendar year at the latest by 31 March of the following year. For each awarded contract (above 10 000 EUR), the list shall indicate the title of the action (technical assistance, purchase of goods, purchase of other services, ...), the name of the contractor and the amount awarded.

Information on contracts below EUR 10 000 awarded by the Energy Community shall be provided upon request, in line with the Secretariat's Rules on Public Access to Documents²¹ and the BVergG.

6.4. Contract Management and monitoring of the execution

The Head of Administrative and Financial Unit shall be in charge of management of a given contract, including compliance with any milestones/submission of deliverables in the timeframe defined by the contract. He/she shall consult the expert/ other staff member in charge for this purpose.

The expert/other staff member in charge shall inform the Head of Administrative and Financial Unit about any delays or changes in the implementation of a project. Any changes in a project that may put into question the selection of a service provider (change of expert, change of scope of work,...) shall be communicated to the Procurement Officer.

See Annex XIa with a checklist for contract implementation.

6.5. Payments

Payments are made against verified invoices and approved deliverables based on the indicative schedule as listed in the contract between the Energy Community and the service provider, in line with the Financial Management Rules. All deliverables must be approved by the Director or a person nominated by him in writing.

In order to proceed with the payment, an invoice and supporting documents (like duly signed contract, copies of deliverables (as listed in the service specifications), the confirmation on the approval of deliverables etc.) related to the payment must be provided to the accounting (at accounting@energy-community.org).

6.6. Modifications /termination of the contract

Contract modifications might be necessary in cases, where the circumstances of project implementation have changed since the contract signature.

Any modifications to the contract must be made in writing and duly signed by both parties to the contract. Minor modifications to the contract, like change of an address or a contact person, may simply be notified to the Energy Community.

Modifications of a contract during its term could require a new procurement procedure.

²⁰ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010591>

²¹ https://www.energy-community.org/dam/jcr:618df0b6-beab-4d81-8627-3998211255d7/ESC_PA_2021_ECS.pdf

Few exceptions under Article 72 of the Directive 2014/24²² are listed below:

- review clauses and options (irrespective of value, clear and precise, included in the initial procurements documents)
- replacement of contractor (universal or partial succession into the position of the initial contractor (corporate restructuring), no other substantial modifications, not aimed at circumventing public procurement law)
- additional works, services or supplies (because of a change of a contractor, i.e. cannot be made for economic or technical reasons, up to 50% of the value)
- “small changes” (10% of the initial contract for services/supply contracts; below the threshold, successive modifications)
- “non substantial modifications” (modification is substantial if it, *for example*, extends the scope of the contract or framework agreement considerably).

Termination of a contract before its expiry or delivery of the services or goods shall follow the provisions as listed in the General Terms and Conditions for the particular contract (see template). A termination document shall always be made in written and signed by both parties to the contract.

6.7. Contract closure

The contract can be closed, once all the deliverables have been submitted and accepted by the Director of the Secretariat or a person nominated by him in writing in matters related to the contract in question.

²² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&from=EN>

7. Complaints

Where a tenderer believes she/he has been adversely affected by an error or irregularity allegedly committed as part of a procurement procedure conducted by the Energy Community, she/he may file a complaint.

The information on how to lodge a complaint shall always be included in the procurement documents, regardless of the procedure or template used.

In line with the relevant EU Directive, an appeal is possible against unlawful contract award decisions, discriminatory technical, economic or financial specifications in the invitation to tender, contract documents or any other documents related to the contract award procedure²³.

Requests for review of the call for tenders may be submitted no later than 7 days before the expiry of the deadline for the submission of applications, if such deadline is longer than 17 days. Where the deadline is shorter, the requests can be submitted no later than 2 days before the expiry of the deadline.

Following the decision on the award and notification sent to the bidders, the period during which an enquiry/appeal can be sent is of 10 calendar days (the standstill period). A reasoned request for review of the decision on the award submitted within this period shall result in an immediate suspension of the possibility to conclude the contract, until the issue is solved/until a decision on the request for review is rendered.

In the case of a direct award, the period shall be 10 days from the date on which the applicant became aware of or could have learned of the contestable decision.

Each request for review must contain details about the procurement procedure and details about the decision/element of the procurement procedure it contests. It shall also describe in detail how it affects the bidder submitting the request, and what are potential damages that can occur in case the decision on the award is not amended.

The request for review shall be addressed to the Procurement Officer and forwarded to the Head of Legal Unit.

The Head of Legal Unit shall investigate the complaint involving relevant Energy Community staff and reply to the complainant within 15 working days. If the tenderer/applicant is not satisfied with the answer received he/she may address himself to the Director.

In case the bidder is not satisfied with the reply and the action taken by the Secretariat, the Director shall establish a complaints committee and relevant procedures, taking on board, if so warranted, external experts (e.g. heads of procurement/senior procurement officers of other international organisations, arbitrators and/or other personalities having the required competencies and personal integrity for serving on a complaints committee).

If the bidder does not agree with the opinion and recommendation of the complaints

²³ Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33).

committee, he/she may initiate a dispute at the Permanent Court of Arbitration in line with the Headquarters Agreement.

8. Roster of Experts

The Energy Community Roster of Experts is a database of consultants (natural persons and legal entities) established through an open Call for Expression of Interest: "Creation of a roster of experts to support the activities of the Energy Community and its Secretariat"²⁴.

The use of the Roster of Experts at the Energy Community follows the rules as described in this document and in the Contract notice for the establishment of the Roster of Experts, available on the Energy Community website.

The Roster applies for the purpose of contracting services such as consultancy and legal services. Rules relating to the functioning and application of the Roster of Experts are further described in the Contract Notice: *Roster of Experts to support the activities of the Energy Community and its Secretariat*²⁵.

²⁴ <https://www.energy-community.org/aboutus/procurement/roster.html>

²⁵ https://www.energy-community.org/dam/jcr:2671714f-11ee-43e8-9355-c87c622b8d4f/Contract_notice_roster_042018.pdf

9. e-Procurement system

9.1. Scope of use

For public procurements launched under the Secretariat budget, and budgets of the grant contracts (currently EU4Energy) as well as all follow-up projects and new projects if relevant.

All procurements launched by the Secretariat following open procedure (above and below threshold) as well as procedures with and without prior notice, where more competing entities are invited, should be launched in the e-procurement system, called *Lieferanzeiger*.

This might be changed, in duly justified cases, with a written confirmation by the Director. No change is possible for open procedures above threshold, where the obligation to use an e-procurement tool is given in the law²⁶. The e-procurement tool does not have to be used where only one bidder is invited for a direct award procedure²⁷ or for recurring services within direct award such as translations or interpretation services; hotels and venues; office maintenance, design services; training; graphic design etc. In these cases, the procedure may take place via email with observation of the requirement on comparable offers.

9.2. The way of use

Each time a new procurement is to be launched, the Procurement Officer will encode the data in the system under the relevant sub-entity. A step by step guide how to encode the procurement in the system is to be found here: <X:\Secretariat\Procurement\Guidelines and templates\Annexes to the Procurement Guideline>

For procedures without prior publication, only the procurement data are encoded and no documents are uploaded at this stage – the service specifications are therefore to be approved separately by email as well as the list of legal entities and natural persons to be invited to take part in the procedure. Once approved, the procedure can be released. The release will trigger the e-tendering option in the system.

In the e-tendering module, the Procurement Officer has to upload the service specifications and send the invitation to participate in the procedure to the selected bidders. Next steps, including communication with the bidders and reception of offers is done in the e-tendering module.

For open procedures, the document data are uploaded in *Lieferanzeiger*, including the procedure documents. At this stage, service specifications, invitation document, instructions for bidders and bidder forms are uploaded.

Once approved and sent for release in the system, the tender is published in *Wiener Zeitung* for open procedures below threshold and in the *EU Official Journal* for all procedures above threshold. To ensure additional publicity, the tender is also published in a dedicated section on the website of the Energy Community Secretariat.

²⁶ As from 2018, all procurements above threshold launched under the Austrian Procurement law must take place in an electronic tool – e-procurement. See here: <https://www.pep-online.at/BC/InformationDetail.aspx?content=SEARCH&name=INFORMATION&id=66>.

²⁷ Once a project management tool is in place, also these procedures should be recorded there.

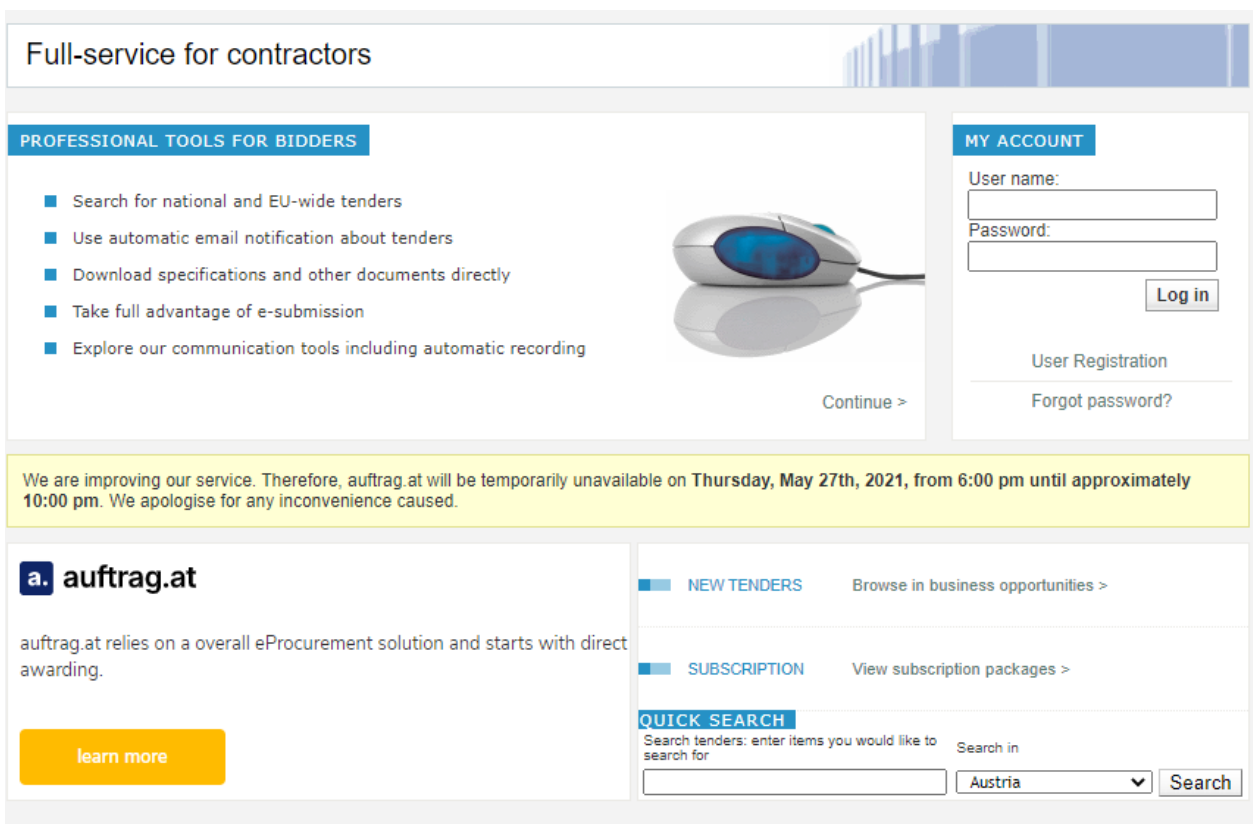
All communication with the bidders throughout the tender procedure shall take place via the e-procurement portal. The bidders must also submit their bid in the e-procurement system, ensuring they have enough time to submit in case of technical issues or system disruptions.

9.3. Bidders

A step by step guide for bidders on how to submit a tender can be found here: <X:\Secretariat\Procurement\Guidelines and templates\Annexes to the Procurement Guideline>

To submit a tender, the bidders need to be registered on www.auftrag.at (free subscription or paid subscription) and for procedures above threshold, they also need a qualified electronic signature. Bidders can test their signature on the *Lieferanzeiger* website to find out, if they have the right certificate.

The system offers a free of charge subscription for the bidders. The functionalities enabled within this type of subscription are sufficient for the bidders to submit an offer, however lacks some additional functionalities like searching for tender opportunities.



The screenshot shows the 'Full-service for contractors' page on the auftrag.at website. The page is divided into several sections:

- PROFESSIONAL TOOLS FOR BIDDERS:** A list of five bullet points:
 - Search for national and EU-wide tenders
 - Use automatic email notification about tenders
 - Download specifications and other documents directly
 - Take full advantage of e-submission
 - Explore our communication tools including automatic recording
- MY ACCOUNT:** A login section with fields for 'User name:' and 'Password:', a 'Log in' button, and links for 'User Registration' and 'Forgot password?'.
- Service Notice:** A yellow banner stating: 'We are improving our service. Therefore, auftrag.at will be temporarily unavailable on Thursday, May 27th, 2021, from 6:00 pm until approximately 10:00 pm. We apologise for any inconvenience caused.'
- Navigation and Search:**
 - 'NEW TENDERS' link with text 'Browse in business opportunities >'
 - 'SUBSCRIPTION' link with text 'View subscription packages >'
 - 'QUICK SEARCH' section with a search input field, a dropdown menu set to 'Austria', and a 'Search' button.
- Footer/Intro:** The 'a. auftrag.at' logo and a 'learn more' button.

9.4. Electronic signature

For all open procedures above threshold, the bidders have to use an electronic signature. Use of electronic signature for open procedures below threshold is recommended. Bidders do not have to use electronic signature for all procurements taking place under Unterschwellenbereich.

A list of supported electronic signatures and more information on this tool can be found here: <X:\Secretariat\Procurement\Guidelines and templates\Annexes to the Procurement Guideline>

9.5. Supported formats for upload of documents

The system supports all of the commonly used formats as well as many professional and less commonly used tools. The bidders can therefore submit their offers, supporting documents and all other relevant data in all the formats listed below.

The supported formats include:

**.pdf, *.doc, *.xls, *.txt, *.zip, *.rar, *.ace, *.cab, *.jpg, *.jpeg, *.gif, *.png, *.bmp, *.psd, *.tif, *.tiff, *.pcx, *.psp, *.cdr, *.eps, *.pcd, *.pict, *.qxd, *.docx, *.rtf, *.xlsx, *.xml, *.cad, *.dxf, *.dxb, *.dwf, *.dgn, *.3ds, *.iges, *.sat, *.step, *.stl, *.swf, *.yda, *.ifc, *.svg, *.c4d, *.rhino, *.yml, *.u3d, *.plt, *.hpgl, *.obi, *.atf, *.epx, *.fact, *.ifcxml, *.sgi, *.wrl, *.dtn, *.dta, *.iso, *.bin, *.cue, *.cdd, *.avi, *.mpg, *.divx, *.dat, *.mov, *.asf, *.mp3, *.ogg, *.ygf, *.wav, *.mid, *.ppts, *.ppt, *.csv, *.only, *.pptx, *.xslt, *.001-010 (ZIP Archive).*

Bidders can upload documents of up to 500 MB. Limitations might however occur in case the users have slow internet connection.

10. List of Annexes:

X:\Secretariat\Procurement\Guidelines and templates\Annexes to the Procurement Guideline

Annex I.	Procedures step-by-step - key features
Annex II.	Template for Direct Award Procedure
Annex III.	Template for Open Procedure
Annex IV.	Template for Evaluation Report
Annex IV.a	Template for Evaluation sheet (xls)
Annex V.	Template for Bid Opening Protocol
Annex VI.	General Terms and Conditions – Service Contract
Annex VII.	General Terms and Conditions – Framework Agreement
Annex VIII.	Declaration of Impartiality and Confidentiality
Annex IX.	Template for nomination of evaluation and opening committee
Annex X.	Declaration on Honour
Annex XI:	Overview of the stages in public procurement procedure
Annex XI.a	Checklist for procurement procedure
Annex XII.	Declaration of absence of conflict of interest
Annex XIII.	Notification to the bidders

Annex III: Declaration of absence of conflict of interests and of confidentiality

Subject:

Reference (if applicable):

I, the undersigned, having been [appointed to the opening committee] [appointed to the evaluation committee] [given the responsibility of assessing [exclusion] [and] [selection] criteria] for the abovementioned public contract, declare that I am aware of Article 33 of *the Energy Community Procedures for the Establishment and Implementation of Budget, Auditing and Inspection*, which states that:

- “1. All financial actors within the meaning of Chapter 2 [...] shall be prohibited from taking any measures of budget implementation which may bring their own interests into conflict with those of the Energy Community. Should such a case arise, the actor in question must refrain from such measures and refer the matter to the competent authority.
2. There is a conflict of interests where the impartial and objective exercise of the functions of an actor in the implementation of the budget or an internal auditor is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary or contractor.
3. The competent authority referred to in paragraph 1 shall be the immediate superior of the member of staff concerned. If the member of staff is the Director, the competent authority shall be the Chairperson of the Budget Committee.”

I hereby declare that, to my knowledge, I have no conflict of interests with the operators who have [requested to participate in the procurement procedure] [submitted a tender] for this procurement, including persons or members of a consortium, or the subcontractors proposed.

I confirm that if I discover during the [opening] [evaluation] that such a conflict exists, I will declare it immediately as indicated above. If a conflict of interests is found to exist, I shall cease all activities related to the [committee].

I also confirm that I will keep all matters entrusted to me confidential. I will not communicate outside the [committee] any confidential information that is revealed to me

or that I have discovered [or any information relating to the views expressed during the evaluation]. I will not make any adverse use of information given to me.

Xxx xxx, [dd mm yyyy]

Signed: