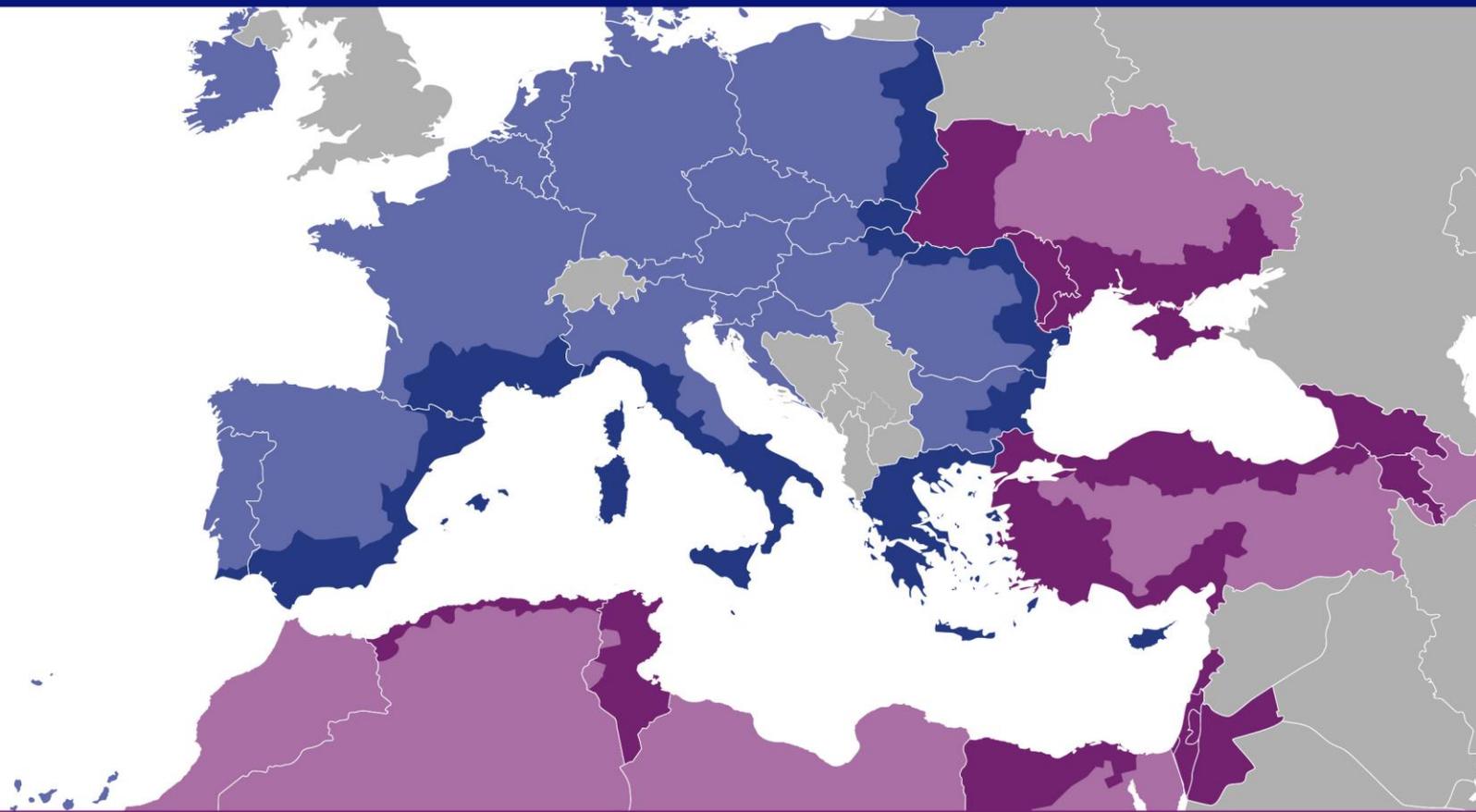


# Factsheet on procurement by Palestinian beneficiaries in Interreg NEXT

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**Interreg**  
**TESIM NEXT**



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## 1. Introduction

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

As a starting point, it is important to remark that Interreg NEXT rules differ from the ones in ENI CBC. The new regulatory framework would allow in principle the use of national legislation and procedures in Palestine, but only when compliant with the provisions of the Financing Agreement, and particularly its Annex II (hereinafter "Annex II"). As this is not the case for a significant number of provisions, it is worth mentioning that **Article 4 of the Palestinian Procurement Law authorises the use of the rules of the donor instead of the national legislation**.

The relevant legislation on procurement in Palestine is the following:

- Presidential Decree No. (8) of the year 2014 on public procurement, hereinafter referred to as **Palestinian Procurement Law**.
- Presidential Decree No. (25) of the year 2019 for the amendment of law No. (8) of the year 2014 on public procurement.
- Cabinet Decision No. (5) of 2014 on **Public Procurement Regulations**.
- Cabinet Decision No. (3) of 2016 to amend the Public Procurement Regulations.
- Cabinet Decision No. (7) of 2021 to amend the Public Procurement Regulations.

On the other hand, the provisions in Annex II do not tackle all the obligations stipulated in the above-mentioned national legislative package. Therefore, the public beneficiaries cannot apply exclusively Annex II, as they will still have to comply with some national-specific provisions.

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

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

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



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

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

**Private beneficiaries are obliged to comply with the public procurement rules from Annex II to the Financial Agreement.**



## 2. Key highlights

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

Section	Still compulsory according to Palestinian legislation	Different provisions between national legislation and Annex II	Not provided for by the Palestinian legislation
<b>General provisions</b>	<ul style="list-style-type: none"> <li>Duties of procuring entities, including procurement plan.</li> <li>Announce of public bidding, including the use of the Procurement Single-Portal Website.</li> </ul>	<ul style="list-style-type: none"> <li>Key principles, namely the explicit mention to the principle of proportionality.</li> <li>Use of lots</li> </ul>	<ul style="list-style-type: none"> <li>Use of Common Procurement Vocabulary (CPV).</li> <li>Declarations of honour.</li> </ul>
<b>Types of procedures</b>		<ul style="list-style-type: none"> <li>Different terminology of the procedures.</li> <li>Different thresholds and criteria for the choice of the types of procedures.</li> <li>Different criteria of the use of negotiated procedure.</li> <li>Requirements for the use of electronic auctions and electronic catalogues.</li> </ul>	<ul style="list-style-type: none"> <li>Joint procurement.</li> </ul>
<b>Preparation of procurement procedures</b>		<ul style="list-style-type: none"> <li>Content of the invitation for bids.</li> <li>Revision of prices in awarded contracts.</li> <li>Procurement methods for consulting services.</li> <li>Means of confirmation of technical capacity.</li> </ul>	<ul style="list-style-type: none"> <li>Authorisation of variants in tenders.</li> </ul>
<b>Exclusion, selection and award criteria</b>		<ul style="list-style-type: none"> <li>Environmental and social requirements.</li> </ul>	
<b>Submission, evaluation and award decision</b>	<ul style="list-style-type: none"> <li>Request for clarification by bidders.</li> <li>Formation of evaluation committee.</li> <li>Publication of award in the Procurement Single-Portal Website.</li> </ul>	<ul style="list-style-type: none"> <li>Access to procurement documents.</li> <li>Criteria for abnormally low tenders.</li> <li>Shorter standstill period.</li> <li>Deadlines for submission of tenders.</li> </ul>	
<b>Contract performance</b>		<ul style="list-style-type: none"> <li>Provisions on performance guarantee.</li> </ul>	

## 3. General provisions

### 3.1. Still compulsory according to Palestinian legislation

Article 17 of the Palestinian Procurement Law includes several provisions on the **duties of the procurement entities**. Some of them tackle aspects not included in Annex II and they are compulsory, while others, such as the need to address national bodies for thresholds exceeding the ones in the Law, should be considered as waived because they contradict the provisions in Annex II. The **still compulsory** ones are:

- **Planning** for its own procurement operations (art. 17.2(a)).
- Receiving, verifying and maintaining the performance security (art. 17.2(f)).
- Managing the execution of its procurement contracts (art. 17.2(g)).
- Preparing periodic reports on all procurement operations implemented by the procuring entity and submitting them to the council (art. 17.2(h)).
- Evaluating the quality of the supplies, works, consulting and non-consulting services that are procured and determining their conformity with the specifications and conditions of the contract (art. 17.2(i)).
- Keeping the files related to procurement operations as specified in the Public Procurement Regulations (art. 17.2(j)).

In regard to the provision on record and file keeping, the period for conservation requested by the applicable EU regulations shall prevail, that is, five years from 31 December of the year in which the last payment or request for recovery by the Managing Authority to the project's Lead Partner is made and, in any case, until any on-going audit, verification, appeal, litigation or pursuit of claim has been disposed of.

Palestinian public beneficiaries must follow the provisions of article 22 of the Palestinian Law, that is, "**announce the public bidding** in two widely circulated daily newspapers for at least two consecutive days, and on the [Procurement Single-Portal Website](#)". However, the thresholds for public bidding are the ones in Annex II and not those in the Palestinian Procurement Law.

Additionally, the Palestinian beneficiaries (public and private) shall comply with the requirements of Annex II concerning the publicity at EU level, that is, in case of public procurement procedures in which the value of the contract to be awarded is equal to or greater than the prescribed thresholds, the notice of participation will be sent in electronic form for publication in the OJEU also.

Type of procedure	Publication in the Official Journal of the European Union (OJEU)
Services and supplies	≥ EUR 300.000
Works	≥ EUR 5.000.000



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

In the case of public procurements in which the value of the contract to be awarded is equal to or greater than the prescribed thresholds, the notice of participation will be sent in electronic form for publication in the OJEU also.

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

### 3.2. Different provisions between national legislation and Annex II

All contracts financed by a grant contract shall respect the principles of **transparency, proportionality, equal treatment and non-discrimination**. Although the Palestinian legislation contains similar procurement principles, the principle of proportionality is not explicit as such in the Law. However, the request for proportionate actions is rooted in practice and mentioned in several provisions of the legislation, such as the ones for procurement methods, forms of contracts and qualification conditions. In any case, Annex II provides details in its points 1.2. and 1.3., which prevail over the Palestinian legislation.

Point 1 of Annex II indicates that the contracting authority “shall **divide the contract into lots**, whenever appropriate”. This obligation is allowed with safeguards in Articles 100 and 101 of Cabinet Decision No. (5) of 2014.

### 3.3. Not provided for in Palestinian legislation

Another compulsory missing element in the Palestinian legislation are the references to **nomenclatures in the procurement context**, which shall be made using the EU's [Common Procurement Vocabulary \(CPV\)](#), as indicated in Annex II.

In order to ensure the respect of the procurement principles and the exclusion criteria, Annex II requires the use of a compulsory **declaration on honour** for the preparation of a tender, as well as a **financial identification form** and a **legal entity form**. In order to meet this requirement, the Palestinian legislation does not provide a template for any of these three documents.

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



Template	Template ref. <sup>1</sup>
Declaration of objectivity, confidentiality and absence of conflict of interest. (for participation in the <u>preparation of a tender</u> )	G1
Financial identification form	G4
Legal entity forms	G5a, G5b & G5c

## 4. Types of procedures

### 4.1. Different provisions between national legislation and Annex II

Points 4 and 5 of Annex II establish similar procedures than the ones required by the Palestinian legislation but use a **different terminology**, as shown in the table below:

Procedure according to Annex II of the Financial Agreement	Equivalent procedure in the Palestinian Procurement Law
Open procedure	International bidding and local bidding
Restricted procedure	Restricted bidding
The procedures involving a call for expression of interest	Bidding of consulting services
The competitive procedure with negotiation	Two-stage bidding and solicitation of quotations
The negotiated procedure without prior publication	Direct procurement

The **thresholds and criteria for the choice of the procedure**, indicated in several articles of the Palestinian Procurement Law, are different from Annex II. They cannot be used, as the ones in point 5 of Annex II prevail.

The requirements and criteria specified in Article 28 of the Palestinian Procurement Law for direct procurement are different from the ones in point 6 of Annex II for **negotiated procedure without prior publication**. The latter prevails.

The requirements for the **use of electronic auctions** and **electronic catalogues** provided for in article 186, 187 and 190 of the Palestinian Public Procurement Regulations are different from those in Points 10 and 11 of Annex II. The latter prevails.

<sup>1</sup> Find the templates in the Zip files in annex.



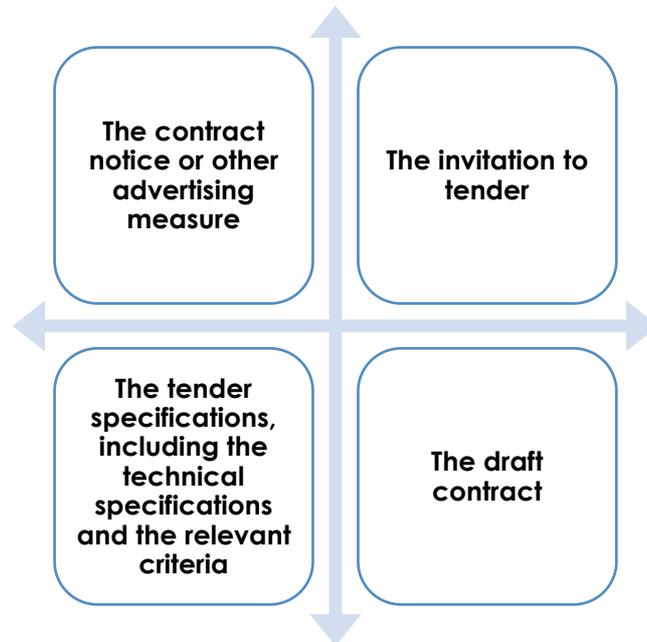
## 4.2. Not provided for in Palestinian legislation

Some provisions in Annex II are not provided for in the Palestinian Procurement Law but are applicable in the context of Interreg projects, in particular **joint procurement** (Point 13).

## 5. Preparation of the procurement procedure

The preparatory stage is critical for a successful procurement process. According to studies, most procurement violations occur due to the lack of thorough preparation for the tender<sup>2</sup>. Therefore, grant beneficiaries will need to pay sufficient attention to the preparation process and remember that **procurement for Interreg NEXT projects may be different and longer** compared to the usual procurement.

The **procurement documents** shall include the following:



Beneficiaries should pay attention to the fulfilment of all the required details. The project beneficiaries may use national or their own templates, but they should check that all the details required in point 14 of Annex II are fulfilled.

### 5.1. Recommended templates

We recommend the use of the following **templates** or the national/own ones after check:

Template	Type of procedure	Template ref. <sup>3</sup>
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<sup>2</sup> European Commission, Directorate-General for Regional and Urban Policy, Public procurement – Guidance for practitioners on the avoidance of the most common errors in projects funded by the European Structural and Investment Funds, Publications Office, 2018, <https://data.europa.eu/doi/10.2776/886010>

<sup>3</sup> Find the templates in the Zip files in annex.

<b>Prior information notice for international tenders</b>	Services, supplies and works	I1
<b>Contract notice for international tenders</b>	Services, supplies and works	I2
<b>Award notice for international tenders</b>	Services, supplies and works	I3
<b>Request to participate (restricted)</b>	Services	SV1
<b>Longlist (restricted)</b>	Services	SV2
<b>Shortlist report (restricted)</b>	Services	SV3
<b>Shortlist notice (restricted)</b>	Services	SV4
<b>Contract notice for simplified procedure</b>	Services, supplies and works	Use national, own template, SV5, SP1 or WK1
<b>Instructions to tenderers for open and restricted</b>	Services, supplies and works	Use national, own template, SV6, SP2 or WK2
<b>Instructions to tenderers for simplified procedure</b>	Services, supplies and works	Use national, own template, SV7, SP2 or WK2
<b>Request and information for tenderers (single tender)</b>	Services, supplies & works	ST1, ST2 or ST3
<b>Tender guarantee</b>	Supplies	Use national or own template
<b>Tender guarantee</b>	Works	Use national or own template
<b>Draft contract</b>	Services, supplies & works	Use national or own template, but check compliance with point 14 of Annex II
<b>Technical specifications</b>	Supplies & works	Use national or own template, but check compliance with point 16 of Annex II

## 5.2. Different provisions between national legislation and Annex II

The content of the **invitation for bids** in Article 33 of the Palestinian Procurement Law are not the same as in Point 14 of Annex II. The latter prevails.



Article 157 of Public Procurement Regulations allows for the **prices to be exceptionally revised** according to inflation and exchange rates fluctuations in works contracts. However, Point 14 of Annex II, which prevails, indicates that the draft contracts must stipulate that “*the price quoted in the tender is firm and non-revisable or lay down the conditions or formulas for revision of prices during the lifetime of the contract*”. Therefore, if the Palestinian beneficiaries decide to keep the possibility of exceptional price revision for works, this requirement must be fulfilled in the contract.

Article 43 of the Palestinian Procurement Law establishes the **procurement methods for consulting services**. These provisions are not applicable, as the ones in Annex II prevail.

Annex II provides additional **means of confirmation of technical capacity** compared with the ones in the Standard Pre-Qualification Document mentioned in Article 32 of the Law, in particular:

- For works and services, a statement of the average annual manpower and the number of managerial staff of the economic operator for the last three years.
- An indication of the supply chain management and tracking system that the economic operator will be able to apply when performing the contract.
- An indication of the environmental management measures that the economic operator will be able to apply when performing the contract.

Regarding the **draft contract**, the beneficiaries must ensure that all elements in point 14 of Annex II are included. The same should be done with the **technical specifications**. The Palestinian beneficiaries will need to check the full compliance with point 16.

### 5.3. Not provided for in Palestinian legislation

Several provisions in Annex II are not provided for in the Palestinian Procurement Law but are applicable in the context of Interreg projects, in particular, **authorisation of variants** (Point 14).

## 6. Exclusion, selection and award criteria

### 6.1. Different provisions between national legislation and Annex II

The Palestinian legislation establishes some **environmental and social requirements**, but these are not provided for specifically in the public procurement laws and regulations. The procurement documents must include the obligation of compliance with “*applicable environmental, social and labour law obligations established by Union law, national law, collective agreements or the applicable international social and environmental conventions listed in Annex X to [Directive 2014/24/EU](#)*”, as indicated in point 12 of Annex II.



## 7. Submission, evaluation and award decision

### 7.1. Still compulsory according to Palestinian legislation

Article 35 of the Palestinian Law is applicable in regard to the right of the bidder to "**request any clarifications concerning the bidding documents or the request for qualification**". Nevertheless, the bidding documents and their content should follow the rules in Point 14 of Annex II, not the ones in the Palestinian Law.

The provisions on the **formation of evaluation committees** stemming from Article 48 of the Palestinian Law are applicable, even though these committees are only compulsory for procedures over EUR 20.000, in accordance with Annex II.

The obligation to **announce the signing of a contract** in the Procurement Single-Portal Website established in Article 53 of the Palestinian Law is also compulsory.

### 7.2. Different provisions between national legislation and Annex II

The conditions for **access to procurement documents** in Article 65 of the Public Procurement Regulations are different to the ones in Point 15 of Annex II. The latter prevails.

The provisions for **abnormally low bids** in Article 40 of the Palestinian Procurement Law are not the same than in Point 23 of Annex II. The latter prevails.

Palestinian Procurement Law defines in Article 41 a **standstill period** of five working days. Nevertheless, the provisions in point 27 of Annex II shall be applied, that is, a duration of ten days when using electronic means of communication and 15 days when using other means.

The beneficiaries must follow the **requirements concerning the minimum time limits for submission of tenders** stated in Annex II<sup>4</sup>, which are indicated in Articles 33 to 35 of the Palestinian Procurement Law:

Procurement type	Time limit in the Annex II to Financial Agreement
Service contracts	The minimum time between the day following the date of dispatch of the letter of invitation to tender and the final date for receipt of tenders <b>shall be 50 days</b> .
Restricted procedures	The time limit for receipt of requests to participate shall be no less than <b>30 days</b> from the date following that on which the contract notice is published. The period between the date following that on which the letter of invitation is sent and the final date for the receipt of tenders shall be no less than <b>50 days</b> .
Open procedures	The time limits for receipt of tenders, running from the date following that in which the contract notice is published, shall be at least <b>90 days for works contracts</b> and <b>60 days for supply contracts</b> .
Local open procedures	The time limits for receipt of tenders, running from the date when the contract notice is published, shall be at least <b>60 days for works contracts</b> and <b>30 days for supply contracts</b> .
Simplified procedures	Candidates shall be allowed at least <b>30 days</b> from the date of dispatch of the letter of invitation to tender in which to submit their tenders.

<sup>4</sup> In urgent cases other time limits may be authorized.



## 7.3. Recommended templates

In absence of national templates, we recommend the use of the following templates for the **declaration on honour** for the exclusion situations stated in point 18 of Annex II<sup>5</sup>.

Template	Template ref. <sup>6</sup>
<b>Declaration of impartiality, confidentiality and absence of conflict of interest. (for participation in the <u>evaluation of a tender</u>)</b>	G2
<b>Declaration on honour on exclusion and selection criteria. (for tenderers)</b>	G3

Moreover, we recommend the following [templates for tender submission](#) or the national/own ones after check with Annex II:

Template	Type of procedure	Template ref. <sup>7</sup>
<b>Financial identification form</b>	Services, supplies and works	G4
<b>Legal entity form</b>	Services, supplies and works	G5
<b>Administrative and compliance grid</b>	Services, supplies & works	Use national, own template, SV8, SP3 or WK5
<b>Evaluation grid</b>	Services, supplies & works	Use national, own template, SV9, SV10, SP4 or WK6
<b>Tender submission form</b>	Services, supplies & works	Use national, own template, SV11, SV12, SP5 or WK3
<b>Tender submission form &amp; technical offer (single tender)</b>	Services, supplies & works	Use national, own template, ST4, ST5 or ST6
<b>Technical specifications</b>	Works	Use own templates
<b>Design documents, including drawings</b>	Works	Use own templates
<b>General information about the tenderer</b>	Works	Use own templates
<b>Financial statements of tenderer</b>	Works	Use own templates

<sup>5</sup> This requirement may be waived for very low-value contracts, that is, not exceeding EUR 15.000.

<sup>6</sup> Find the templates in the Zip files in annex.

<sup>7</sup> Find the templates in the Zip files in annex.



<b>Technical qualifications of tenderer</b>	Works	Use own templates
<b>Experience as contractor</b>	Works	Use own or PRAG template
<b>Staff to be employed</b>	Works	Use own or PRAG template
<b>Professional experience of key staff</b>	Works	Use own or PRAG template
<b>Equipment &amp; vehicles</b>	Works	Use own or PRAG template
<b>Work plan &amp; list of subcontractors</b>	Works	Use own or PRAG template

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

<b>Template</b>	<b>Type of procedure</b>	<b>Template ref.<sup>8</sup></b>
<b>Opening checklist</b>	Services, supplies & works	Use national, own template, EV1 or EV2
<b>Administrative compliance grid</b>	Services, supplies & works	Use national, own template, SV8, SP3 or WK5
<b>Interpretative note on financial offers</b>	Works	Use national, own template, WK10
<b>Evaluators grid</b>	Services, supplies & works	Use national, own template, EV3, EV4, SP4 & WK6
<b>Evaluation report</b>	Services, supplies & works	EV5, EV6 & EV7
<b>Report for negotiated procedure without publication</b>	Services, supplies & works	NP1
<b>Evaluation report (single tender)</b>	Services, supplies & works	ST7
<b>Award decision</b>	Services, supplies & works	Use national, own template, EV8
<b>Contract award notice</b>	Services, supplies & works	Use your own template
<b>Notification letters</b>	Services, supplies & works	Use own templates

<sup>8</sup> Find the templates in the Zip files in annex.



<b>Cancellation notice</b>	Services, supplies & works	Use your own template
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## 8. Contract performance

### 8.1. Different provisions between national legislation and Annex II

The provisions in point 31 of Annex II on **performance guarantees** prevail over the provisions in the Palestinian procurement national legislation.

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

Template	Type of procedure	Template ref. <sup>9</sup>
<b>Contractor's assessment form</b>	Services & supplies	Use national, own template, SV13 or SP8
<b>Performance guarantee</b>	Supplies & works	Use national, own template, SP7 or WK7
<b>Pre-financing guarantee</b>	Works	Use national, own template, WK8
<b>Retention guarantee</b>	Works	WK9

<sup>9</sup> Find the templates in the Zip files in annex.



## Annexes in Zip files

G\_General templates

I\_International tenders

SV\_Service tenders

SP\_Supply tenders

WK\_Works tenders

EV\_Evaluation templates

ST\_Single tender

NP\_Negotiated procedure

