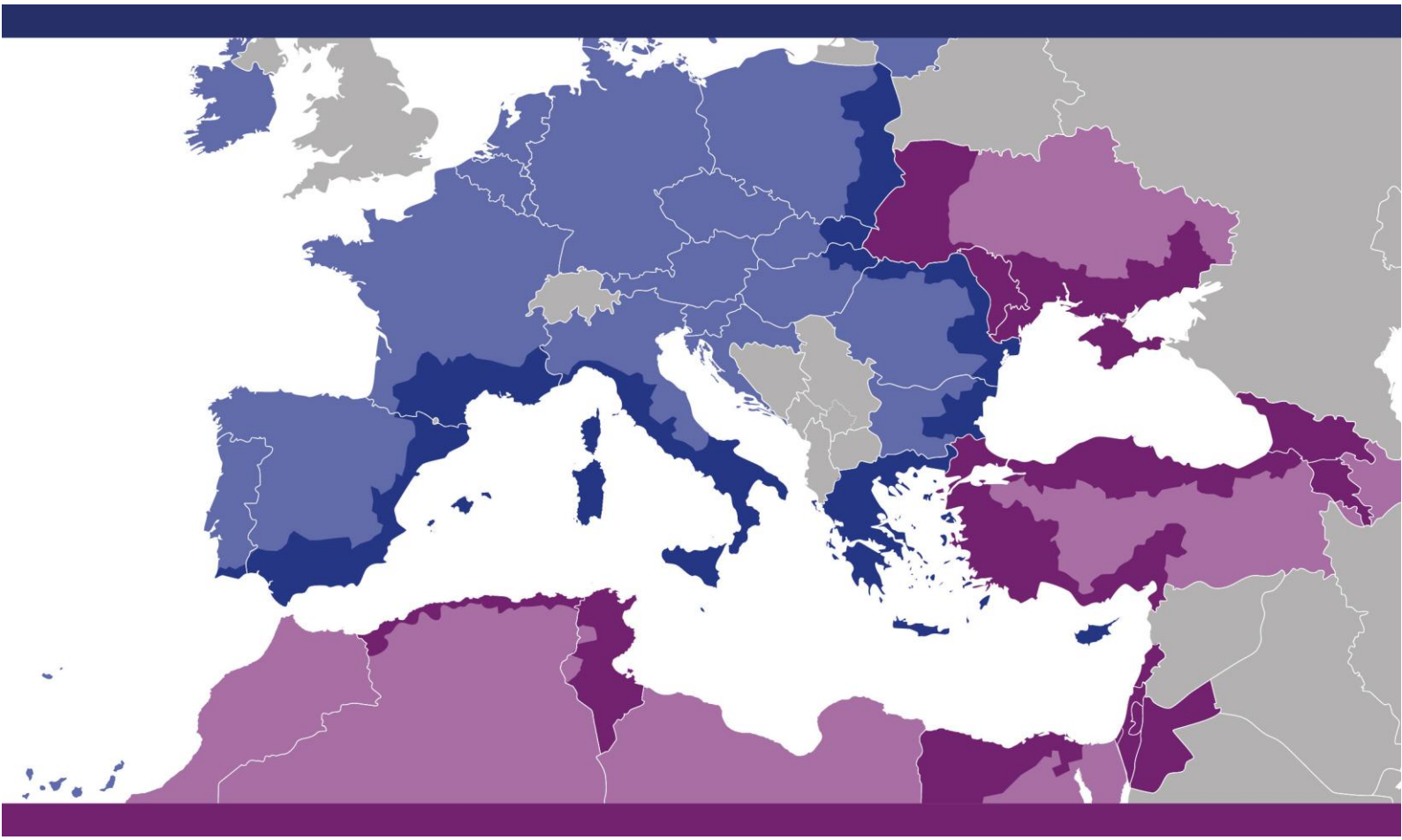
Factsheet on procurement by Turkish beneficiaries in Interreg NEXT

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Interreg
TESIM NEXT

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1. Introduction

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

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

On the other side, the provisions in Annex II do not tackle all the obligations stipulated in the national legislation for public procurement (Law of Türkiye on Public Procurement Law, January 22nd, 2002, Law № 4734). Therefore, the public beneficiaries cannot apply exclusively Annex II, as they will still have to comply with some national-specific provisions without affecting the primacy of Annex II. The still compulsory provisions are enumerated in section 3.1 of this document.

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

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

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

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

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

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

2. Key highlights

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

Section	Still compulsory according to Turkish legislation	Different provisions between national legislation and Annex II	Not provided for by the Turkish legislation
General provisions	• Estimated cost. • Publication of tender notice. • Submission of bids. • Notification of the awarding decision. • Electronic public procurement platform.	• Provisions for the key principles of transparency, proportionality, equal treatment and non-discrimination. • Requirements and thresholds for the publication of the tender announcements.	• Compulsory declaration on honour for preparation of tenders. • Use of EU's Common Procurement Vocabulary (CPV).
Types of procedures		• Thresholds and provisions on all procedures.	• Procedures calling for expression of interest. • Electronic catalogues.
Preparation of procurement procedures		• Information for electronic auctions. • The draft contract must include all elements of point 14 of Annex II. • The technical specifications must include all elements of point 16 of Annex II.	• Joint procurement. • Electronic catalogues. • Minimum level of quality.
Exclusion, selection and award criteria		• Minimum requirements on compliance with EU and national law on environmental, social and labour law obligations.	• Life-cycle costing. • Requirements for environmental certificates. • Request for risk indemnity insurance.
Submission, evaluation and award decision		• Time-limits for submission. • Abnormally low tenders. • Threshold for compulsory evaluation committee. • Standstill period.	• Compulsory declarations on honour. • Irregular tender. • Proportion of subcontracting.
Contract performance		• Amount of performance guarantee	• The requirements to the notice of modification of contract. • Retention guarantee.

3. General provisions

3.1. Still compulsory according to Turkish legislation

There are five elements of the Turkish law on public procurement (Law N° 4734) that the public beneficiaries must keep:

- Estimated costs (Article 9)
- Tender notice (Article 13)
- Submission of bids (Article 31)
- Notification of the awarding decision (Articles 41, 42 & 47)
- Electronic public procurement platform (Additional Article 1 Law n° 4735)

3.1.1. Estimated cost

Point 12.1 of Annex II indicates that the contracting body **may conduct** a preliminary market consultation, while Article 9 of the Turkish Law on **estimated cost** stipulates that:

> "*Prior to the procurement proceedings of goods, services or works, the contracting authority **shall conduct** all necessary price research and shall determine an estimated cost excluding the value added tax and shall be indicated on a priced bill of quantities with its justifications. **Estimated cost shall not be stated in tender or prequalification advertisements** and shall not be explained to tenderers or to the others who do not have any formal relationship with the tender proceeding*."

The **obligation to conduct the research** is more restrictive than Annex II and prevails. However, the obligation not to state the estimated cost in tender or prequalification cannot contradict point 24(5)(a) of Annex II, which determines that "*a tender shall be considered unacceptable […] when the price of the tender exceeds the grant beneficiary's maximum budget as determined and documented prior to the launching of the procurement procedure*". Therefore, the **maximum price must be published**, so it is known by the potential bidders.

3.1.2. Tender notice

Point 3 of Annex II stipulates the publicity in the Official Journal of the European Union over certain thresholds (see table in section 3.2.). For procedures below that threshold, point 3.3. of Annex II only stipulates that the contracting body shall use **appropriate means**. Point 3 does not stipulate any time for this publication.

On its side, Article 13 of the Turkish law gives concrete indications on the means and the time span for the publicity, so that the tenderers have sufficient time to prepare their tenders. The compulsory means of publicity must be followed, as this provision is compatible with Annex II. However, the number of days for the publicity must follow the time limits indicated in Annex II (see more details in section 7.1.).

3.1.3. Submission of bids

Point 24 of Annex II provides no details on how the tenders have to be submitted, in particular when submitted on paper and not electronically. Section III of the Turkish law (Article 30 & 31) provides details on how this submission on paper must be performed.

Additionally, Articles 33 and 34 provide details on the tender guarantees. However, the **range of value** of these guarantees of **1% to 2% stipulated in Point 24.2 of Annex II prevail** over the minimum 3% stipulated in Article 33.

3.1.4. Notification of awarding decision

Point 29 of Annex II states that "*The grant beneficiary shall notify all candidates or tenderers, whose requests to participate or tenders are rejected, of the grounds on which the decision was taken, as well as the duration of the standstill period*", but does not indicate any deadline for these notifications.

The steps for **notification of the tender results** defined in the Turkish law are:

- Tender result notified to all tenderers in maximum 3 days following the day of the approval by the contracting officer (Article 41);
- In case of pre-fiscal control, the successful tenderer shall be notified to sign the contract and, if required, provide a guarantee, in maximum 10 days following the completion of the control (Article 42);
- Except those sent according to Article 42, the results are notified to the Turkish Procurement Authority in 15 days at most and published in the Public Procurement Bulletin.

The **standstill periods mentioned in Point 29 of Annex II prevail** over the ones indicated in the above-mentioned articles of the Turkish law.

3.1.5. Electronic procurement platform

Turkish public beneficiaries must use the **e-platform EKAP** for the publicity of the procurement procedures while complying with the requirements of Annex II concerning the publicity. All the provisions in the Turkish law on the use of EKAP are applicable. EKAP is also available for private partners, if they wish so.

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 Turkish legislation contains similar procurement principles, Annex II provides details in its points 1.2. and 1.3., which prevail over Article 5 of Turkish law.

For high value contracts, the following thresholds[1] of Annex II shall apply:

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 EKAP shall refer to the notice published in the OJEU.

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

3.3. Not provided for in Turkish legislation

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

We recommend the use of the following **template**, which does not exist in the Turkish law:

Template	Template ref.[2]
Declaration of objectivity, confidentiality and absence of conflict of interest. (for participation in the preparation of a tender)	G1

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

4. Types of procedures

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

[1] The amounts do not include VAT.

[2] Find the templates in the Zip files in annex.

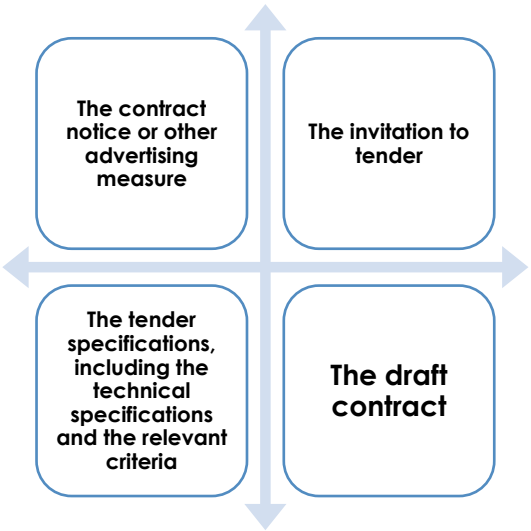
Procedure according to Annex II of the Financial Agreement	Equivalent procedure in the Turkish Law "On public procurement"
Open procedure	Article 19 of the Turkish law.
Restricted procedure	Article 20 of the Turkish law.
The procedures involving a call for expression of interest	**Not provided** by the Turkish law.
The competitive procedure with negotiation (simplified procedure)	Article 21 of the Turkish law.
The negotiated procedure without prior publication	Articles 20 & 21 of the Turkish law.
Electronic auctions	Article 5 of the Turkish law

The thresholds in point 5 of Annex II prevail over the ones in the Turkish Law and the provisions in point 6 to 9 on the use of these procedures also prevail.

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[3]. 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:



[3] 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

The project beneficiaries may use their own templates, but they should check that all the details required in point 14 of Annex II are fulfilled.

5.1. Recommended templates

We recommend the use of the following **templates**:

Template	Type of procedure	Template ref.[4]
Prior information notice for international tenders	Services, supplies and works	I1
Contract notice for international tenders	Services, supplies and works	I2
Award notice for international tenders	Services, supplies and works	I3
Request to participate (restricted)	Services	Use the national template or SV1
Longlist (restricted)	Services	Use the national template or SV2
Shortlist report (restricted)	Services	Use the national template or SV3
Shortlist notice (restricted)	Services	Use the national template or SV4
Contract notice for simplified procedure	Services, supplies and works	SV5, SP1or WK1
Instructions to tenderers for open and restricted	Services, supplies and works	Use the national template, SV6, SP2 or WK2
Instructions to tenderers for simplified procedure	Services, supplies and works	Use the national template, SV7, SP2 or WK2
Request and information for tenderers (single tender)	Services, supplies & works	Use the national template, ST1, ST2 or ST3
Tender guarantee	Supplies	Use the national template or SP6
Tender guarantee	Works	Use the national template or WK4

[4] Find the templates in the Zip files in annex.



Draft contract	Services, supplies & works	Use the national or own template, but check compliance with point 14 of Annex II
Technical specifications	Supplies & works	Use the national template or own template, but check compliance with point 16 of Annex II

5.2. Different provisions between national legislation and Annex II

According to additional article 5 of the Turkish law, **electronic auctions** can be made in tenders for the purchase of goods made through open tender or tender procedures among certain bidders provided that it is stated in the tender notice and tender document, with some limitations stated in Article 5. On this type of procedures, the provisions in Point 10 of Annex II prevail.

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**. As Annex II prevails, the Turkish beneficiaries will need to check the full compliance with point 16.

5.3. Not provided for in Turkish legislation



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

Additionally, point 16 of Annex II states that the technical specifications of the terms of reference will include, as appropriate, a reference to the **minimum quality levels**, which is not provided for in the Turkish legislation.

6. Exclusion, selection and award criteria

6.1. Different provisions between national legislation and Annex II

The requirements about **compliance with applicable environmental, social and labour law obligations** established by Union law, environmental obligations established by national law

and environmental conventions listed in Annex X to Directive 2014/24/EU are different from the ones in the Turkish law. The requirements in point 12 of Annex II must be fulfilled when preparing the procurement documents.

6.2. Not provided for in Turkish legislation

Point 17 of Annex II on **award criteria** indicates that the grant beneficiary may use a cost-effectiveness approach, including **life-cycle costing**. This method is not included in the Turkish law, but may be used by public beneficiaries, as Annex II prevails.

Points 19 and 20 of Annex II determine the requirements and the list of documents to be provided by the bidders to prove the **economic, financial and technical capacity**. Some of these documents are not requested by the Turkish law:

- where the grant beneficiary requires the provision of certificates drawn up by independent bodies attesting that the economic operator complies with certain **environmental management systems or standards**, it shall refer to the European Union Eco-Management and Audit Scheme or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council or other environmental management standards based on the relevant European or international standards by accredited bodies
- the economic operators must provide, where appropriate, relevant **professional risk indemnity insurance**.

The list of documents and requirements of Annex II must be used.

7. Submission, evaluation and award decision

7.1. Different provisions between national legislation and Annex II

The beneficiaries must follow the **requirements concerning the minimum time limits for submission of tenders** stated in Annex II[5], which are longer than the ones in the Turkish law.

For procedures equal to or exceeding the threshold values stated in Article 8 of the Turkish law, the **notices shall be published in the Public Procurement Bulletin with the following days before the deadline for submission of tenders**:

Type of procedure	Time limit in Annex II	Time limit in the Turkish law
Services	50 days	No indication
Open procedure	60 days for supplies and 90 days for works	40 days

[5] In urgent cases other time limits may be authorized.



Local open procedures	30 days for supplies and 60 days for works	
Pre-qualification notices for restricted procedures	30 days	14 days
Invitation for qualified tenderers in restricted procedures	50 days	40 days
Invitation to candidates in negotiated procedures	No indication	25 days
Invitation in simplified procedures	30 days	No indication

For procedures below the threshold values stated in Article 8 of the Turkish law, the notices shall be published in accordance with the provisions in the **official gazette**, which are updated regularly.

Even though Article 8 of the Turkish law indicates the number of days, the ones of Annex II mentioned in the previous table prevail.

The provisions on **abnormally low tenders** in Article 38 of the Turkish law are similar to the ones in point 25 of Annex II, with the exception of the observation on "*the possibility of the tenderer obtaining State aid in compliance with applicable rules*". This case must be also taken into account in accordance with EU rules on State aid.

Point 24(9) of Annex II indicates that "*the grant beneficiary may waive the appointment of an evaluation committee for procedures having a value of less than or equal to EUR 20 000*", while Article 22(d) of the Turkish law has different thresholds. The **threshold for compulsory evaluation committee** in Annex II prevails.

The last discrepancy relates to the **standstill period**, that is, the time between the communication of the results of the tender and the signature of the contract. The number of days Article 41(3) of the Turkish law do not apply. The grant beneficiaries must respect the requirements in Point 27 of Annex II, that is: "*the standstill period shall have a duration of 10 days when using electronic means of communication and 15 days when using other means*".

7.2. Not provided for in Turkish legislation

A missing element is the obligation to submit a **declaration on honour** for the exclusion situations stated in point 18 of Annex II[6], which is not directly required by the Turkish law. We recommend using TESIM's developed adaptation of the PRAG template, available in annex G, as indicated below.

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

Template	Template ref.[7]
Declaration of impartiality, confidentiality and absence of conflict of interest. (for participation in the evaluation of a tender)	G2
Declaration on honour on exclusion and selection criteria. (for tenderers)	G3

The Turkish law does not include the concept of "**irregular tender**", as described in points 4, 7 and 9 of Annex II, even though Articles 37 and 38 of the Turkish law establish the conditions for rejection in case of incompliance with the tender requirements. The Turkish beneficiaries must reject tenders based on the conditions set out in Annex II for non-compliant tenders, on top of those in the Turkish law.

Point 26(2)(g) of Annex II indicates that, "*if known, the **proportion** of the contract […] which the proposed contractor intends to **subcontract** to third parties*" shall be included in the evaluation report. Such obligation is not provided for in the Turkish law but must be taken into consideration for Turkish beneficiaries.

7.3. Recommended templates

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

Template	Type of procedure	Template ref.[8]
Financial identification form	Services, supplies and works	Use the national or own template or G4
Legal entity form	Services, supplies and works	Use the national or own template or G5
Administrative and compliance grid	Services, supplies & works	Use the national template, SV8, SP3 or WK5
Evaluation grid	Services, supplies & works	Use the national template, SV9, SV10, SP4 or WK6
Tender submission form	Services, supplies & works	SV11, SV12, SP5 OR WK3
Tender submission form & technical offer (single tender)	Services, supplies & works	ST4, ST5 or ST6

[7] Find the templates in the Zip files in annex.

[8] Find the templates in the Zip files in annex.



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Technical specifications	Works	Use own templates
Design documents, including drawings	Works	Use own templates
General information about the tenderer	Works	Use own templates
Financial statements of tenderer	Works	Use own templates
Technical qualifications of tenderer	Works	Use own templates
Experience as contractor	Works	Use own or PRAG template
Staff to be employed	Works	Use own or PRAG template
Professional experience of key staff	Works	Use own or PRAG template
Equipment & vehicles	Works	Use own or PRAG template
Work plan & list of subcontractors	Works	Use own or PRAG template

We recommend the following **templates for evaluation**:

Template	Type of procedure	Template ref.[9]
Opening checklist	Services, supplies & works	Use the national template, EV1 or EV2
Administrative compliance grid	Services, supplies & works	Use the national template, SV8, SP3 or WK5
Interpretative note on financial offers	Works	Use the national template, WK10
Evaluators grid	Services, supplies & works	Use the national template, EV3, EV4, SP4 or WK6
Evaluation report	Services, supplies & works	Use the national template, EV5, EV6 or EV7
Report for negotiated procedure without publication	Services, supplies & works	Use the national template or NP1

[9] Find the templates in the Zip files in annex.



Evaluation report (single tender)	Services, supplies & works	Use the national template or ST7
Award decision	Services, supplies & works	Use the national template or EV8
Contract award notice	Services, supplies & works	Use own template
Notification letters	Services, supplies & works	Use own templates
Cancellation notice	Services, supplies & works	Use own template

8. Contract performance

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

The amount for the **performance guarantee** is different in Turkish law (6%) and, as a result, that of Annex II (10%) prevails. On the other hand, the **retention guarantee** is not covered by the Turkish legislation.

Additionally, point 30 of Annex II requires the publication of a **notice in case of contract modification**. This requirement is not provided for in the Turkish law.

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

Template	Type of procedure	Template ref.[10]
Contractor's assessment form	Services & supplies	Use the national template, SV13 or SP8
Performance guarantee	Supplies & works	Use the national template, SP7 or WK7
Pre-financing guarantee	Works	WK8
Retention guarantee	Works	WK9

[10] 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