

**Practical Guide**  
to  
**Contract procedures for EU external actions**  
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# 1. Introduction

This Practical Guide explains the contracting procedures applying to all EU external aid contracts financed from the EU general budget (Budget) and the 10<sup>th</sup> European Development Fund (EDF). The financing of external action contracts is governed by the applicable EU and EDF Financial Regulations and by the relevant basic acts, i.e. the program regulation such as DCI, ENPI, IPA, EIHRD, etc for actions financed by the Budget<sup>1</sup>, as well as the Cotonou Agreement for actions financed by the EDF.

As from the adoption of the revision of the Annex IV of the Cotonou Agreement in 2008, procurement contracts and grants financed under 10<sup>th</sup> EDF shall be awarded and implemented in accordance with the EU rules and, except in the cases foreseen by the same rules, in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of cooperation operations with third countries, in force at the time of the launch of the procedure in question. Eligibility rules applicable to EDF have also been revised to align them as much as possible with those of the EU budget and will be applicable after the entry into force of the amended Cotonou Agreement in November 2010.

For procedures financed under the 9th EDF, please refer to the 2007 version of the present Practical Guide, except where the relevant Financing Agreements have been amended to apply the revised version of Annex IV of the Cotonou Agreement in December 2008.

Since it incorporates the relevant provisions of the legal texts respectively ruling the Budget and the EDF, the purpose of this instrument is to provide all users, in an encompassing manner, with all the information necessary to undertake procurement or a grant procedure from the very first steps to the award of contracts. The annexes cover both the procurement phase and the execution of contracts. The Guide provides the procedures to be used in centralised systems (centralised and indirect centralised<sup>2</sup>) and decentralised systems with ex-ante approval or with ex-post controls by the European Commission. The Guide only applies to the contracting part of the implementation of projects. Following the terminology of Financial Regulations, the different degrees of decentralisation can also apply to other aspects, which are not covered by the Guide.

Notwithstanding the fact that the procurement procedures applicable to the Budget and to the EDF are quite similar, certain specificities will be flagged throughout this Guide. Chapter 7 lists the legal texts and chapter 8 lists all the annexes to the Guide. Annex A1 contains a glossary of the terms used in the Guide.

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<sup>1</sup> Regulation (EC) No 1638/2006, of the European Parliament and of the Council, of 24 October 2006, laying down general provisions establishing the European Neighbourhood and Partnership Instrument; Regulation (EC) No. 1905/2006, of the European Parliament and of the Council, of 18 December 2006, establishing a financing instrument for development cooperation; Regulation (EC) No. 1889/2006, of the European Parliament and of the Council, of 20 December 2006, on establishing a financing instrument for the promotion of democracy and human rights worldwide; Council Regulation (EURATOM) No. 300/2007, of 19 February 2007, establishing an Instrument for Nuclear Safety Cooperation; Council Regulation (EC) No. 1085/2006, of 17 July 2006, establishing an Instrument for Pre-Accession Assistance; Regulation (EC) No. 1337/2008, of the European Parliament and of the Council, of 16 December 2008, establishing a facility for rapid response to soaring food prices in developing countries.

<sup>2</sup> Centralised indirect approach refers to cases, in which the Commission delegates its prerogatives to entities such as Member States executive agencies.

***What does the Practical Guide not cover?***

It does not apply to contracts for which the Commission acts as Contracting Authority on its own account. These come under Title V, Chapters 1 and 2, of the Financial Regulation and Commission services should use in-house public procurement procedures and models (Vademecum on Public Procurement) to deal with them.

This Guide does not apply to operations implemented in the context of Humanitarian aid or emergency operations carried out by ECHO.

Nor does it apply to the Contracting Authorities, such as beneficiary countries, international organisations or national bodies, where the Commission has authorised them to use their own procurement procedures or procurement procedures agreed among donors according to the relevant regulation.

Direct labour operations are programmes executed by public or public-private agencies or services of the beneficiary country, where that country's administration possesses qualified managers. The programme estimate is a document laying down the human and material resources required, the budget and the detailed technical and administrative implementing arrangements for execution of a project over a specified period by direct labour and, possibly, by means of public procurement and the award of specific grants. The procedures for direct labour contracts and programme estimates are set out in a separate guide (Practical guide to procedures for programme estimates – project approach).

## 2. Basic rules

### 2.1. Overview

There are strict rules governing the way in which contracts are awarded. These help to ensure that suitably qualified contractors are chosen without bias and that the best value for money is obtained, with the full transparency appropriate to the use of public funds.

Procedures established by the European Commission for procurement under the relevant EU external aid programmes are consolidated in this Practical Guide.

Before initiating any tender procedure, the service, supply or works to be contracted must have been approved first by a Financing Decision and, where appropriate, by a subsequent Financing Agreement and the funds must be available, except in the case of procedures with "suspension clause".

### 2.2. Management modes

There are several possible approaches to managing the procurement procedures for projects financed under the external aid programmes of the EU (referred to as "management modes" or "methods of implementation"):

- **Direct Centralised**: The European Commission is the Contracting Authority and takes decisions for the beneficiary country. In this case, actions to be performed by the Contracting Authority throughout this Practical Guide should be interpreted as being carried out by the European Commission, acting for the beneficiary country.
- **Indirect Centralised**: In this case, certain implementation tasks shall be delegated by the European Commission to a national body, which thus becomes Contracting Authority. Such national body would be, in most cases, the development agency (or equivalent) of an EU Member State. In most cases, the rules and procedures of the national body are used and therefore the present Practical Guide would not be applicable (except for cases where the delegatee body awards grants financed by the EU General Budget, where the Practical Guide will be applicable).
- **Decentralised**:

- *Ex-ante*: decisions concerning the procurement and award of contracts are taken by the Beneficiary country, which acts as Contracting Authority, and referred for approval to the European Commission.

- *Ex-post*: decisions foreseen in the Financing Agreement are taken by the Beneficiary country, which acts as Contracting Authority without prior reference to the European Commission (apart from exceptions to the standard procedures given in this Practical Guide).

Details of the ex-ante and ex-post approval procedures are specified throughout the Guide.

The Beneficiary country will use or not its own procedures depending on the degree of decentralisation (i.e. partial or substantial decentralisation). As a rule, the EU contractual procedures defined in the present Guide and the financial procedures (i.e. payments) of the Practical Guide on Programme Estimates are used by the Beneficiary Country.

- **Joint management**: In this management mode certain implementation tasks are delegated by the European Commission to an international organisation such as the United Nations and the World Bank, which thus becomes Contracting Authority. In most cases, the rules and procedures of the international organisation are used and therefore the present Practical Guide would not be applicable

- **Shared management:** Where the European Commission implements the budget by shared management, implementation tasks shall be delegated to Member States in accordance with article 53b of the Financial Regulation. That method shall apply, in principle, for joint operational programmes for cross-border cooperation implemented by a joint managing authority under the regulation establishing a European Neighbourhood and Partnership Instrument<sup>3</sup>. In such a case, the procurement rules to be applied shall be those contemplated in the implementing rules laying down specific provisions for the implementation of the cross-border cooperation. Similarly, the Instrument for Pre-accession Assistance (IPA)<sup>4</sup> provides for this option under the conditions as defined in the regulatory framework of IPA. This management mode is not applicable for other instruments used by the EU.

The choice of the management mode shall be reflected in the corresponding financing decision (e.g. action fiche of the relevant financing decision/(Annual) Action Programme). The method of implementation is an essential element of the financing decision.

***Some clarifications with regard to decentralised management:***

In most cases, the present Practical Guide will be applicable in cases of i) centralised and ii) decentralised management. Note however that the European Commission could in some specific cases authorise Beneficiary countries to use procedures different to those contained in the present Practical Guide subject to a prior positive assessment of such procedures.

The implication of the Commission for the decentralised contracts consists on its authorisation to the financing of the contracts and verifying that the procedures, contracts and expenditure are correctly carried out. In case of non-respect of the procedures established in the present Guide (or whatever procedure is used following the decision of the Commission in relation to the procedures used), the expenditure related to the operations involved are ineligible in terms of EU financing.

The intervention of the Commissions' representatives within the decentralised procedures for the conclusion or implementation of the contracts financed in the context of external actions are limited to verifying whether or not the conditions for the EU financing are met.

This intervention will not, in any case, have as an objective nor as a possible effect, to compromise the principle by which the decentralised contracts become national contracts that are only prepared, elaborated and concluded by the decentralised Contracting Authority. The tenderers, candidates and applicants for these contracts cannot be considered as beneficiaries of the acts carried out by the Commissions' representatives for the implementation and conclusion of the contracts. They must only hold a legal bound with the decentralised Contracting Authority and the Commissions' representatives acts may not cause the substitution of a Contracting Authority's decision by a decision taken by the EU. In all cases, the Contracting Authority assumes full responsibility for its actions and will be accountable for these in any subsequent audit or other investigation.

This guide includes the control procedures to be observed for each management mode.

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<sup>3</sup> Regulation n° 1638/2006 of 24.10.2006.

<sup>4</sup> Regulation n° 1085/2006 of 17.07.2006.

**DIRECT CENTRALISED**

Procedures to be followed under a direct centralised programme: Contracts are concluded directly by the European Commission acting for the beneficiary country. It will draw up shortlists (restricted procedures) and is responsible for issuing invitations to tender, receiving tenders, chairing tender Evaluation Committees, deciding on the results of tender procedures and signing the contracts.

**DECENTRALISED: EX-ANTE**

Procedures to be followed under a decentralised programme with ex-ante controls: Contracts are concluded by the Contracting Authority designated in a financing agreement, i.e. the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the financing agreement.

restricted procedures). Before the procedure is launched, the Contracting Authority must submit tender dossiers to the European Commission for approval. On the basis of decisions thus approved, the Contracting Authority is responsible for issuing invitations to tender, receiving tenders, chairing tender Evaluation Committees and deciding on the results of tender procedures. The Contracting Authority then submits the result of the evaluation for approval and at a second step, after having notified the contractor, received and analysed the proofs regarding exclusion and selection criteria (optional for contracts below international thresholds, see points 2.3.3. and 2.4.11.1.1.) the contract award proposal to the European Commission for endorsement. No endorsement by the European Commission is however required in certain cases contemplated in the Practical Guide for Programme Estimates. Once it has received this endorsement, it signs and awards the contracts. As a general rule, the European Commission will be represented when tenders are opened and evaluated and must always be invited. The Contracting Authority must submit procurement notices and award notices to the European Commission for publication. Under the Instrument for Pre-accession Assistance (IPA), a phased waiver of different types of ex-ante control may apply.

**DECENTRALISED: EX-POST**

Procedures to be followed under a decentralised programme with ex-post controls: Contracts are concluded directly by the Contracting Authority designated in a financing agreement, i.e. the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the financing agreement. The Contracting Authority will draw up shortlists (restricted procedures) and is responsible for issuing invitations to tender, receiving tenders, chairing tender Evaluation Committees, deciding on the results of tender procedures and signing the contracts without the prior approval of the European Commission. The Contracting Authority must submit procurement notices and award notices to the European Commission for publication.

**OTHER MANAGEMENT MODES**

Under other management modes, the delegatee entity (e.g. national agency, international organisation) concludes contracts with third parties. The procedures of the delegatee entity are often used. The control is carried out by the European Commission ex post in accordance with the applicable documents (e.g. templates of the delegation or contribution agreements), without prejudice to the previous "pillar review", of the entity itself carried out by the European Commission.

## 2.3. Eligibility criteria and other essentials

### 2.3.1. The rule on nationality and origin

#### Nationality

Access to EU external assistance (including EDF) is defined in the basic acts regulating such assistance.

**The corresponding rules on nationality and origin are listed in Annex A2 to this Practical Guide per basic act.**

Without prejudice to the specificity of each basic act which contains the eligibility provisions applicable to each instrument<sup>5</sup>, participation in the procurement and grant procedures is normally open on equal terms to all natural persons who are nationals of and legal persons established in:

- a) a Member State of the European Union;
- b) a Member State of the European Economic Area;
- c) an official candidate country or potential candidate that is a beneficiary of the Instrument for Pre-Accession Assistance, depending on the basic act;
- d) a country that is directly beneficiary of the aid implemented through the corresponding basic act;
- e) in the case of procurement and grants financed by the EU Budget under a thematic programme, a developing country as specified by the OECD Development Assistance Committee annexed to the instrument; in the case of EDF, all least developed countries as defined by the UN;
- f) as the case may be, another third country (see point 2.3.2.);
- g) those countries that are beneficiaries of a decision establishing reciprocal access to external aid. Reciprocal access in the least developed countries shall be automatically granted to the OECD/DAC members (see list of members in Annex A2). For regional programs which include at least one least developed country, the automatic reciprocal access may be applied to the whole regional program.

These procedures are also open to an international organisation. For aid channel through an international organisation or in case of co-financing with third countries, the rules of nationality and origin can be applied provided that these do not exclude any eligible country according to the applicable EDF/EU basic act.

For the purposes of verifying compliance with the nationality rule, the tender dossier requires tenderers to state the country of which they are nationals or they are established by presenting the documents required under that country's law. Article 54 of the Treaty of the Functioning of the European Union links the notion of establishment and that of nationality within the EU, stating that "*companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall [...] be treated in the same way as natural persons who are nationals of Member States*".

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<sup>5</sup> These instruments may contain additional ad-hoc rules (e.g. IPA Regulation No 1085/2006 of 17 July 2006 considers eligible nationals/goods from countries that are beneficiaries of the European Neighbourhood and Partnership Instrument; Annex IV of the Cotonou Agreement refers to "regional initiatives" under its article 20).

If the Contracting Authority (or Evaluation Committee) suspects that a candidate/tenderer is not actually established in an eligible country or state and that the nationality of the candidate/tenderer is ineligible, it shall request the candidate/tenderer to provide evidence demonstrating *actual* compliance with the above-mentioned nationality requirement. This is to avoid awarding contracts to firms whose nationalities are ineligible but which have set up 'letter box' companies in an eligible country to circumvent the rules on nationality. The decision on the eligibility (or not) of candidates/tenderers is taken by the Contracting Authority (usually on the basis of the elements and evidence provided during the evaluation).

**Experts:** Unless otherwise foreseen in the basic act and/or the Financing Agreements, experts engaged by eligible tenderers may be of any nationality.

## Origin of goods

All goods (supplies and materials) purchased under a contract financed under an EU instrument, including EDF, must originate from the EU or from an eligible country (see above 'nationality' and below 'exceptions to the rule on nationality and origin').

Goods are subject to the rule of origin to the extent that they are purchased: this implies that the property of what is purchased, at the end of the contract, is transferred from the contractor to the Contracting Authority (in the case of procurement contracts) or to the designated local partners of the beneficiary and/or final recipients of the action (in the case of grant agreements). Consequently, the goods to be delivered under a supply contract, as a rule, fall under the rules of origin, as well as the materials, goods and components under a works contract to be incorporated or to form part of the permanent works.

However, for example, machinery used by a supply contractor for testing and installing the supplied goods, or equipment used by a works contractor for building a road, do not fall under the rule of origin, unless if the contract would explicitly stipulate that this machinery or equipment also become the full property of the Contracting Authority at the end of the contract. Likewise, the computer used by a consultant to draft the study will only have to respect the rule of origin if the service contract would stipulate that this computer is to be handed over to the contracting authority at the end of the service contract.

The possibility which exists under article 43 of the General Conditions of works contracts to have equipment vested in the Contracting Authority, is limited to the duration of the execution of works, and does therefore not coincide with a full transfer of property.

The term origin is defined in the relevant international agreements (notably WTO agreements), which is reflected in EU legislation on rules of origin for customs purposes (i.e. Council Regulation (EEC) No 2913/92 – "the EU Customs Code" and its implementing provisions, Commission Regulation (EEC) No. 2454/93.

The goods can not originate in a country in which no production process has taken place. On the other hand, the country of production is not necessarily the country of origin but only when the relevant conditions of the aforementioned rules are complied with.

Furthermore, the country of origin is not necessarily the country from which the goods have been shipped and supplied. Where there is only one country of production, the origin of the finished product is easily established. However, in cases where more than one country is involved in the production of goods it is necessary to determine which of those countries confers origin on the finished goods. The country of origin is deemed to be the country in which the goods have undergone their last, economically justified, substantial transformation and the provisions of Article 24 of the EU Customs Code must therefore be applied on a case by case basis to those goods. If the last substantial transformation has not taken place in a Member State of the

European Union or one of the eligible recipient countries, the goods cannot be tendered for the project.

The supplier must certify that the goods tendered comply with the origin requirement specifying the country or countries of origin. When tendering for systems comprising more than one item, the origin of each item in the system must be specified. If requested to do so, the supplier must provide any additional information and/or a certificate of origin in support of the origin claimed in the tender.

The rule of origin applies to all items tendered and supplied. Therefore, it is insufficient that only a certain percentage of the goods tendered and supplied or a certain percentage of the total tender and contract value comply with this requirement.

Where the provision of a Certificate of Origin is not possible (in many countries these are only issued against presentation to the Chamber of Commerce of commercial invoices), the tenderer can in these cases submit its own declaration.

The official Certificates of Origin must then be submitted before provisional acceptance. Failing this, the Contracting Authority cannot release any funds to the contractor.

Certificates of origin must be made out by the competent authorities of the goods' or supplier's country of origin and comply with the international agreements to which that country is a signatory.

It is up to the Contracting Authority to check that there is a certificate of origin. Where there are serious doubts about the authenticity of a certificate of origin (e.g. because of incoherence in the document, spelling errors etc), the Contracting Authority should contact the emitting Chamber of Commerce and request confirmation of the authenticity of the submitted documents. Where the Contracting Authority has identified a high level of risk, such ad hoc verifications should be complemented by a verification of certificates on a sample basis.

For EDF, supplies originating in the EU include supplies originating in the Overseas Countries and Territories.

### **2.3.2. Exceptions to the rule on nationality and origin**

Exceptions to the rule on nationality and origin may be made in some cases. The award of such derogation is decided on a case-by-case basis by the Commission before the procedure is launched.

If the award of contract is preceded by a tender procedure, the derogation must be mentioned in the procurement notice; in such cases, except where justified, such derogation would concern not only one country but would be open to any nationality/origin.

## BUDGET

Without prejudice to the specificity of each basic act which foresees, as the case may be, exceptions to the rule on nationality and origin, the European Commission may, in duly substantiated cases:

- extend eligibility to natural and legal persons from a country not eligible.
- allow the purchase of goods and materials originating from a non-eligible country.

Derogations may be justified on the basis of the unavailability of products and services in the markets of the countries concerned, for reasons of extreme urgency, or if the eligibility rules would make the realisation of a project, a programme or an action impossible or exceedingly difficult. Note, however, that the argument that a product of ineligible origin is cheaper than the EU or local product would not alone constitute grounds for awarding derogation.

Where EU is party in an applied agreement on widening the market for procurement of supply, works or services the contracts are also open to third-country nationals other than those referred to in the previous two paragraphs, under the conditions laid down in this agreement.

### EDF (For ACP States only)

In exceptional duly substantiated circumstances, natural or legal persons from third countries not eligible in accordance with the rules of nationality and origin may be authorised to participate in procedures for the awarding of procurement contracts financed by the EU at the justified request of the ACP States/regional/intra-ACP bodies concerned. The ACP States/regional/intra-ACP bodies concerned shall, on each occasion, provide the European Commission with the information needed to decide on such derogation, with particular attention being given to:

- (a) the geographical location of the ACP State or region concerned;
- (b) the competitiveness of contractors, suppliers and consultants from the Member States and the ACP States;
- (c) the need to avoid excessive increases in the cost of performance of the contract;
- (d) transport difficulties or delays due to delivery times or other similar problems;
- (e) technology that is the most appropriate and best suited to local conditions;
- (f) cases of extreme urgency;
- (g) the availability of products and services in the relevant markets.

Moreover, during the execution of operations and subject to the requirement to inform the Head of Delegation, the ACP State/regional/intra-ACP body concerned may decide on purchases of goods, irrespective of their origin, on the local market up to the superior threshold of the competitive negotiated procedure, i.e. 60.000 €.

### 2.3.3. Grounds for exclusion

Candidates, tenderers or applicants will be excluded from participation in procurement procedures if:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*; (i.e. against which no appeal is possible);

- c) they have been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
- d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Contracting Authority or those of the country where the contract is to be performed;
- e) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the EU's financial interests;
- f) they are currently subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation (BUDGET)/ Article 99 of the Financial Regulation (10<sup>th</sup> EDF).

Points (a) to (d) shall not apply in the case of purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

The cases referred to in point (e) applicable are the following:

- 1) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995;<sup>6</sup>
- 2) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997;<sup>7</sup>
- 3) cases of participation in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council;<sup>8</sup>
- 4) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC.<sup>9</sup>

The Contracting Authority will accept, as satisfactory evidence that the candidate, tenderer or applicant is not in one of the situations described in (a), (b) or (e) production of a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The Contracting Authority shall accept, as satisfactory evidence that the candidate, tenderer or applicant is not in the situation described in (d), a recent certificate issued by the competent authority of the State concerned. Where no such document or certificate is issued in the country concerned<sup>10</sup> and for the other cases of exclusion listed above, it may be replaced by a sworn/solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in its country of origin or provenance.

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<sup>6</sup> OJ C 316, 27.11.1995, p.48.

<sup>7</sup> OJ C 195, 25.6.1997, p.1.

<sup>8</sup> OJ L 351, 29.12.1998, p.1. Joint Action of 21 December 1998 making it a criminal offence to participate in a criminal organisation in the Member States of the European Union.

<sup>9</sup> OJ L 166, 28.6.1991, p. 77. Directive of 10 June 1991, as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 (OJ L 344, 28.12.2001, p.76).

<sup>10</sup>Information on the certificates that the 27 Member States, some Candidate Countries and EEA countries have reported, regarding which types of proof documents are issued/acceptable in each of the countries, is available via the eCERTIS tool which is managed by DG Internal Market: - [http://ec.europa.eu/internal\\_market/publicprocurement/e-procurement/e-certis/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/e-procurement/e-certis/index_en.htm).

The Contracting Authority should take into account that, as a rule, the exclusion criteria are related to the legal entity/ natural person who acts as a candidate, tenderer or applicant and not to its representatives in case of legal entities. However, depending on the national legislation of the country in which the tenderer, candidate or applicant is established and where considered necessary by the Contracting Authority or where the Contracting Authority has doubts concerning the personal situation, the above documents may also relate to the natural persons including company directors or any person with powers of representation, decision-making or control in relation to the candidate, tenderer or applicant. Whenever one candidate, tenderer or applicant, due to its nature (for instance, national public administrations and international organisations), cannot fall into some of the categories above and/or cannot provide the documents indicated above, a simple declaration explaining their situation will suffice.

Candidates, tenderers and applicant, except those in a second step of a restricted service tender or competitive dialogue, must sign their applications including the declaration that they do not fall into any of the categories cited above.

If the supporting documents are not written in one of the official languages of the European Union, a translation into the language of the procedure must be attached. Where the documents are in an official language of the European Union other than the one of the procedure they have to be accepted. It is however strongly recommended to provide a translation into the language of the procedure, in order to facilitate the evaluation of the documents.

Depending on its risks assessment, the Contracting Authority may refrain from requiring the above-mentioned declaration that the candidates or tenderers are not in one of the situations of exclusions for contracts with a value equal to or less than € 10,000.

Depending on its risks assessment, the Contracting Authority may refrain from requiring the abovementioned declaration that a grant applicant is not in one of the situations of exclusions for contracts with a value equal to or less than € 5,000.

Tenderers or applicants who have been notified the award of a contract following an open procedure must supply the proof usual under the law of the country in which they are established that they do not fall into the categories listed above.

In procurement restricted procedures, the supporting documents must be sent together with the tender. The date on the evidence or documents provided must be no earlier than 1 year before the date of submission of the tender. Tenderers must, in addition, provide a statement that their situation has not altered in the period that has elapsed since the evidence in question was drawn up.

The required proof documents shall be submitted by the tenderer and their consortium members. The documents may be originals or copies. The original documents shall be available upon request by the Contracting Authority.

If sub-contractors are used, they may not be in any of the exclusion situations either.

Whenever requested by the Contracting Authority, the successful tenderer/contractor shall submit a declaration from the intended subcontractor that it is not in one of the exclusion situations. In case of doubt on this declaration of honour, the Contracting Authority shall request the documentary evidence as mentioned above.

For the shortlisted candidates in a restricted procedure and for the competitive dialogue the evidence documents for the exclusion criteria are submitted by all the tenderers at the tender phase.

For contracts with a value less than the international thresholds (service ≤ €200.000, supply < €150.000, works < €5.000.000.) the Contracting Authority may waive this obligation, depending on its risk

assessment. When this obligation has been waived, the Contracting Authority may nevertheless, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require him/her to provide the evidence.

The Contracting Authority may also waive the obligation of any candidate or tenderer to submit the documentary evidence referred to above if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the issuing date of the documents does not exceed one year and that they are still valid. In such a case, the candidate or tenderer shall declare on his/her honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes in his/her situation have occurred.

The decentralised Contracting Authorities can, if necessary, consult the relevant services of the European Commission in order to appreciate the situation of the candidates or tenders.

Contracts may not be awarded to candidates, applicants or tenderers who, during the procurement procedure:

- a) are subject to a conflict of interest;
- b) are guilty of misrepresentation in supplying the information required by the Contracting Authority as a condition of participation in the contract procedure or fail to supply this information;
- c) find themselves in one of the situations of exclusion for this procurement procedure.

At the latest before taking the award or grant decision, the Contracting Authority shall ensure that there is not a detection of the third party (i.e. an applicant, candidate or tenderer, including partners) concerned in the Early Warning System (EWS). The Contracting Authority cannot conclude a contract with entities which are registered at the level W5 in the EWS<sup>11</sup>. Where the Contracting Authority limits the number of candidates invited to submit a tender or full proposal, e.g. in a restricted procedure, such checks shall be conducted before the selection of candidates has been completed.

It is reminded that, before proposing (the Evaluation Committee) and deciding (the Contracting Authority) to exclude one candidate/tenderer/applicant, principles such as the right of defence and proportionality should be taken into consideration. To that end, unless the evidence is such that no further query is necessary (e.g. explicit recognition by the candidate/tenderer/applicant of the facts leading to exclusion), the exclusion shall be based on a contradictory procedure with the concerned candidate/tenderer/applicant.

### **2.3.4. Administrative and financial penalties**

Without prejudice to the application of penalties laid down in the contract, candidates, tenderers, applicants and contractors who have made false declarations, have made substantial errors or committed irregularities and fraud, or have been found in serious breach of their contractual obligations may be excluded from all contracts and grants financed by the EU for a maximum of five years from the date on which the infringement is established, as confirmed following an adversarial procedure with the contractor. That period may be extended to 10 years in the event of a repeated offence within five years of the above-mentioned date. Such decision is adopted by the Commission (College) following a contradictory procedure.

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<sup>11</sup> Commission Decision of 16 December 2008 on the Early Warning System for the use of authorising officers of the Commission and the executive agencies (2008/969/CE, Euratom) OJ 2008 L 344 of 20 December, p.125 ([http://www.cc.cec/budg/i/earlywarn/imp-110-060\\_decision\\_en.html](http://www.cc.cec/budg/i/earlywarn/imp-110-060_decision_en.html))

Tenderers, candidates or applicants who have made false declarations, have committed substantial errors or irregularities and fraud, may also be subject to financial penalties representing 2% to 10% of the total estimated value of the contract being awarded. Contractors who have been found in serious breach of their contractual obligations may be subject to financial penalties representing 2% to 10% of the total value of the contract in question. That rate may be increased to 4% to 20% in the event of a repeat infringement within five years of the above-mentioned. Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the Contracting Authority shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure. Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the Contracting Authority may, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract or, where appropriate, terminate the contract. Where such errors, irregularities or fraud are attributable to the contractor, the Commission may in addition refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with this contractor, in proportion to the seriousness of the errors, irregularities or fraud.

The purpose of suspending the contract is to verify whether presumed substantial errors and irregularities or fraud have actually occurred. If they are not confirmed, performance of the contract will resume as soon as possible. A substantial error or irregularity is any infringement of a provision of a contract or regulation resulting from an act or an omission which causes or might cause a loss to the EU budget/EDF.

### **2.3.5. Visibility**

Unless otherwise requested or agreed by the European Commission, contractors for services, supplies, works or grant beneficiaries, as well as entities managing funds on behalf of the European Commission (delegated cooperation), must take the necessary measures to ensure the visibility of the EU financing or co-financing. Such measures must be in accordance with the applicable rules on the visibility of external action laid down and published by the Commission. These rules are set out in the Communication and Visibility Manual for EU External Actions available from the EuropeAid website at: [http://ec.europa.eu/europeaid/work/visibility/index\\_en.htm](http://ec.europa.eu/europeaid/work/visibility/index_en.htm).

They concern the written and visual identity of the EU (e.g. flag, key message, definitions), the requirements and guidelines on communication activities and tools (e.g. press releases, websites, publications, films) and the obligation to submit a communication plan for the approval of the Contracting Authority. Guidance is given in the Communication and Visibility Manual on how to develop a dynamic communication strategy (e.g. template of communication plan, visibility matrix, objectives, target groups) and how to implement a plan and do the reporting.

### **2.3.6. Other essential points**

Conflict of interest: Conflict of interest occurs when the impartial and objective exercise of the functions of the Contracting Authority, or the respect to the principles of competition, non-discrimination or equality of treatment of candidates/tenderers/applicants/contractors with regards to the award procedure or contract, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary of EU funded programmes. A conflict of interest may therefore arise where, for instance, an individual participating in the procedure (Evaluation Committee, Contracting Authority, etc.) may grant him/herself or others unjustified direct or indirect advantages by

influencing the outcome of such procedures; or the possibility for an expert/company to obtain privileged information leading to unfair competition in subsequent or related procedures.

For instance, any firm or expert participating in the preparation of a project (e.g. drafting of the Terms of Reference) must be, as a rule, excluded from participating in tenders based on this preparatory work, unless they can prove to the Contracting Authority that the involvement in previous stages of the project does not constitute unfair competition.

Candidates/tenderers/applicants in a position of conflict of interests in relation with the contract award procedure must be excluded from the concerned procedure. The reasons for the exclusion have to be analysed on a case by case basis. Pursuant to constant case-law by the ECJ, the exclusion should be based on an actual risk of conflict based on the specific circumstances of the case in question. An automatic exclusion deprives the candidate/ tenderer/applicant of the right to present supporting evidence which might remove all suspicion of a conflict of interest.

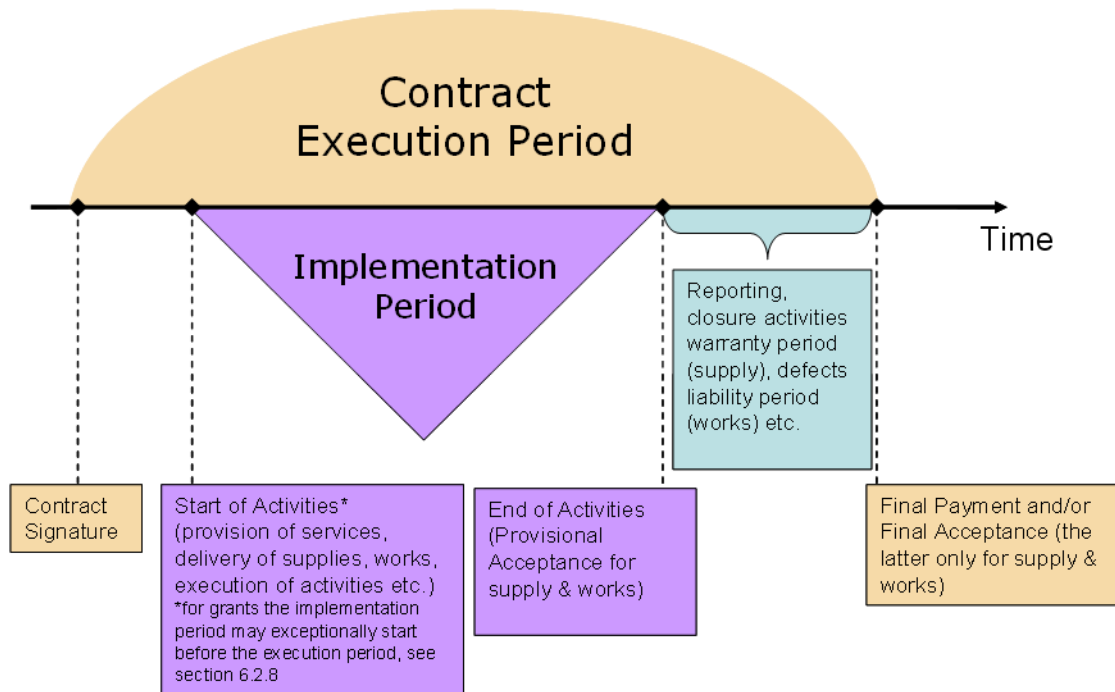
Likewise, where the potential conflict of interest may occur with regards to on-going contracts, measures should be adopted to prevent such conflict, including the cancellation of the contract if so required.

Awarding principles: All contract awards, partially or totally financed by the EU Budget and EDF, must respect the principles of transparency, proportionality, equal treatment and non-discrimination.

Non-retroactivity after expiration of the Contract execution period: Contracts are considered to take effect from the date of signature of the last signatory. Contracts cannot be modified after their expiration. Note that the execution period of the Contract is longer than the implementation period. For definition of the execution period of the Contract and implementation period, see Annex A1.

A Contract can be amended through an administrative order or addendum pursuant to the conditions provided for in the Contract itself. In exceptional circumstances, such amendment can have a retroactive effect provided that the execution period of the contract has not expired. If such a request is received, the Contractor, Consultant or Grant beneficiary will only have confirmation that its request is agreed by the Contracting Authority when the addendum has been duly signed or an administrative order has been issued. Costs incurred and goods and services provided prior to the entry into force of such addendum or administrative order are at the financial risk of the Contractor, Consultant or grant beneficiary, as the Contracting Authority has the right to refuse the signature of the addendum or the issuance of the administrative order. Only from the moment such addendum or administrative order enters into force may the Contractor, Consultant or grant beneficiary claim financial compensation for the activities effectively carried out/costs actually incurred.

Examples: a) a Consultant informs of the urgent replacement of a key expert in March which is accepted through an addendum in April. The amendment enters into force in April, acknowledging the change as from March. The Consultant is only entitled to ask for payment of work carried out in March *after* the entry into force of the amendment. b) In a grant, the implementation period expired in May and the grant beneficiary requests a 1 month extension in June. The Contracting Authority accepts the justification, including for the late request, and issues an addendum in July, extending the implementation period by 1 month from May to June. Costs incurred from May to June would only become eligible after the entry into force of the addendum in July.



All contracts must show the true dates of signature of the contracting parties. Use of standard documents: Standard contracts and document formats must be used.

Record keeping: Subject to the Contracting Authority's legislation on access to documents, written records of the entire tender/call for proposals procedure must be kept confidential and retained by the Contracting Authority in accordance with the adopted policy on archiving. In cases where the Contracting Authority's law contradicts the confidentiality required, the latter shall ask for prior authorisation from the European Commission before disclosing any information.

Unsuccessful proposals have to be kept for three years from the submission deadline of the call, while unsuccessful tenders have to be kept for five years from the submission deadline of the tender. The contractual and financial documents have to be kept for a minimum period of seven years from payment of the balance and up to the date of the prescription of any dispute action in regard to the law which governed the contract<sup>12</sup>. During and after this period, the Contracting Authority will treat the personal data in conformity with its privacy policy. The documents to be conserved must include all the preparatory documents as well as the corresponding financing agreement, the originals of all applications/tenders/proposals submitted and any related correspondence.

Financial guarantees (originals) must be kept in a safe place where they are protected against risks of loss or theft up to the end of their validity period.

Availability of funds: before initiating any procedure, the funds must be available. Calls may exceptionally be launched with a suspensive clause after prior approval of the relevant services. The call is then launched before the financing decision or before the signature of the financing agreement between the European Commission and the beneficiary country. The call shall be

<sup>12</sup> For EuropeAid , please see Section 8.4.1 of the DEVCO Companion for further details.

cancelled if the Commission decision is not taken or if the financing agreement is not signed. The signature of the contract is not possible until the funds are available (see point 2.4.12.).

Any deviation from the procedures set out in this Guide requires the prior approval of the relevant services in accordance with internal rules, and deviations need to be announced, where applicable and relevant, in the procurement notice and tender documents (for procurement) and guidelines (for grants).

Environmental aspects: without prejudice to the principles governing the award of contracts and grants, environmental matters should where possible be duly considered. This could e.g. include more environmental-friendly terms of reference/guidelines/specifications, increased use of electronic means, reduction in paper consumption (recto/verso prints) etc.

Joint procurement with a EU Member State (BUDGET only): Where a public contract or framework contract is necessary for the implementation of a joint action between one institution and a contracting authority from a Member State, the procurement procedure may be carried out jointly by the institution and this Contracting Authority. In this case, the procedural provisions applicable to the European Commission shall apply<sup>13</sup>. Nevertheless, in some specific cases, it may be decided that the procedural rules applicable to the contracting authority from a Member State shall apply provided that they can be considered as equivalent to those of the institution.

Ex post publication of beneficiaries: In addition to the publicity rules applicable to each type of procedure, the Commission makes available information on the beneficiary of EU funds (both grants beneficiaries and procurement contractors) on an annual basis, regardless of the management mode used. Such information is available at the following site:

[http://ec.europa.eu/europeaid/work/funding/beneficiaries\\_en.htm](http://ec.europa.eu/europeaid/work/funding/beneficiaries_en.htm).

## **2.4. Procurement procedures**

The basic principle governing the award of contracts is competitive tendering. The purpose is twofold:

- to ensure the transparency of operations; and
- to obtain the desired quality of services, supplies or works at the best possible price.

There are several different procurement procedures, each allowing for a different degree of competition.

### **2.4.1. Which procurement procedure to apply?**

The rules for applying the standard procurement procedures explained later in this point are summarised in the table below. They are divided between those for services (e.g., technical assistance, studies, provision of know-how and training), supplies (i.e., equipment and materials) and works (i.e. infrastructure and other engineering works). Once approval for an activity has been granted by the European Commission with the adoption of a financing decision and, where appropriate, with the relevant a financing agreement, the Contracting Authority can proceed with tendering and contracting following these standard procedures. The thresholds given in the table are based on the maximum budget for the contract in question (including any co-financing). Where contracts are subdivided in lots, the value of each lot shall be taken into account when calculating the overall threshold.

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<sup>13</sup> See article 91 of the EC Financial Regulation.

Regardless of which procedure used, the Contracting Authority must ensure that all the basic principles are respected (including eligibility, exclusion and selection criteria).

Note that projects must not be split artificially to circumvent the procurement thresholds.

**Other procedures can be applied regardless the thresholds, for instance, negotiated procedures on the basis of a single offer as long as the relevant conditions are met (see points 2.4.6., 2.4.7. and 2.4.8.).**

<b>SERVICES</b>	<ul style="list-style-type: none"> <li>• € 200,000</li> </ul> International restricted tender procedure	< € 200,000 but > € 10,000 - Framework contracts - Competitive negotiated procedure		<ul style="list-style-type: none"> <li>• €10,000</li> </ul> Single tender
<b>SUPPLIES</b>	<ul style="list-style-type: none"> <li>• € 150,000</li> </ul> International open tender procedure	< €150,000 but • € 60,000 Local open tender procedure	< €60,000 but > € 10,000 Competitive negotiated procedure	
<b>WORKS</b>	<ul style="list-style-type: none"> <li>• €5,000,000</li> </ul> - International open tender procedure - International restricted tender procedure	< € 5,000,000 but • € 300,000 Local open tender procedure	< € 300,000 but > € 10,000 Competitive negotiated procedure	

### 2.4.2. Open procedure

Calls for tender are open where all interested economic operators may submit a tender. The contract is given maximum publicity through the publication of a notice in the Official Journal (S-series) of the European Union, the official journals of all the ACP States (EDF) on the EuropeAid website and in any other appropriate media.

Under the open procedure, any natural or legal person wishing to tender receives upon request the tender dossier (which may have to be paid for), in accordance with the procedures laid down in the procurement notice. When the tenders received are examined, the contract is awarded by conducting the selection procedure (i.e., verification of the eligibility and of the financial, economic, technical and professional capacity of tenderers) and the procurement procedure (i.e., comparison of tenders), in accordance with point 2.4.11. No negotiation is allowed.

### 2.4.3. Restricted procedure

Calls for tender are restricted where all economic operators may ask to take part but only candidates satisfying the selection criteria may submit a tender.

Under the restricted procedure, the Contracting Authority invites a limited number of candidates to tender. Before launching a tender procedure, it will draw up a shortlist of candidates selected as a result of their qualifications. The selection procedure, by which the long list (all candidates responding to the published notice) is cut down to a shortlist, involves examining responses to a procurement notice, in which the selection criteria and a general description of the tasks to be undertaken are set out. At the stage of the short-listing and before the shortlist is approved by the evaluation committee, the Contracting Authority shall also ensure that there is not a detection of the third party (i.e. the candidate including partners) concerned in the Early Warning System (W5).

In the second stage of the procedure, the Contracting Authority invites the shortlisted candidates and sends them the tender dossier. In order to ensure fair competition, tenders must be submitted by the same service provider or consortium which has submitted the application form on the basis of which it was short-listed and to which the letter of the invitation to tender is addressed.

The general rule is that the tender should be submitted by the same shortlisted candidate and modifications of the identity or composition of the tenderer are not permitted, unless duly justified and where the Contracting Authority has given its prior approval in writing, after having consulted the Evaluation Committee. Examples of situations where such approval could be given, based on an assessment of the specificities of the case and provided that the conditions of competition of the call are not altered are:

- where a merger has taken place between a shortlisted candidate/member of a consortium with another company and where the new company is found to meet the eligibility and exclusion criteria and does not give rise to any conflict of interest;
- swapping of positions within the consortium;
- a partner leaves the consortium but this does not alter the shortlisting conditions prevailing at the time the shortlist was established, i.e. the rest of the consortium fulfils the selection criteria independently.

The successful tenderer is chosen by the procurement procedure once the tenders have been analysed (see point 2.4.11.). No negotiation is allowed.

#### **2.4.4. Competitive negotiated procedure**

Under the competitive negotiated procedure, the Contracting Authority invites candidates of its choice to submit tenders. At the end of the procedure, it selects the technically compliant tender which offers the best value for money in case of service tenders and the cheapest compliant offer in case of supplies or works tenders.

The procedure for evaluating the submitted tenders (including the use of an evaluation committee) and awarding the contract is the same as under the restricted procedure.

See points 3.4.2., 4.5. and 5.6. for further details.

#### **2.4.5. Framework contracts**

A framework contract is an agreement between one or more contracting authorities and one or more economic operators the purpose of which is to establish the terms governing specific contracts which may be awarded during a given period, particularly as regards the duration, subject, price, implementation rules and the quantities envisaged.

The framework contracts established with several economic operators are called multiple framework contracts, which take the form of separate contracts but concluded in identical terms. The minimum as well as the maximum number of operators which the Contracting Authority intends to conclude contracts with must be indicated in the specification. The minimum number of economic operators may not be inferior to three.

The duration of such contracts may not exceed four years, save in exceptional cases justified in particular by the subject of the framework contract. Contracting Authorities may not make undue use of framework contracts or use them in such a way that the purpose or effect is to prevent, restrict or distort competition.

Specific contracts based on framework contracts shall be awarded in accordance with the terms of the framework contract and shall respect the principles of transparency, proportionality, equal treatment, non-discrimination and of sound competition.

#### **2.4.6. Dynamic purchasing system**

A dynamic purchasing system is a completely electronic process for making commonly used purchases which is limited in duration and open throughout its validity to any economic operator who satisfies the selection criteria and has submitted an indicative tender that is found compliant. No specific threshold applies.

For each individual contract, the Contracting Authority publishes a contract notice and invites all of the contractors admitted to the system in accordance with the above paragraph. The contract shall be awarded to the technically compliant tender being most economically advantageous (i.e. the sole award criterion is the best value for money).

See point 4.2.4.2. for further details. The legal framework of this procedure is defined for future use, but the IT tools (confidentiality, security) to make it possible are **not yet available** in the Commission.

### **2.4.7. Competitive dialogue**

In the case of particularly complex contracts, where the Contracting Authority considers that direct use of the open procedure or the existing arrangements governing the restricted procedure will not allow the contract to be awarded to the tender offering best value for money, it may make use of the competitive dialogue referred to in Article 29 of Directive 2004/18/EC. A contract is considered to be “particularly complex” where the Contracting Authority is not objectively able to define the technical means capable of satisfying the needs or objectives or able to specify the legal or financial makeup of the project. No specific threshold applies. The procedure should however be used with precaution, in view of its exceptional nature.

Contracting authorities shall publish a contract notice setting out their needs and requirements, which they shall define in that notice and/or in a descriptive document. Contracting authorities shall open a dialogue with the candidates satisfying the selection criteria announced in the Procurement Notice. During the dialogue, all aspects of the tender can be discussed; however, the dialogue is conducted individually with each candidate on the basis of their proposed solutions and ideas. The Contracting Authority has to ensure the equal treatment of tenderers as well as the confidentiality of tenders, which means that “cherry-picking” is not allowed.

The minimum number of candidates invited to tender may not be less than 3, provided that a sufficient number of candidates satisfy the selection criteria. Where the number of candidates meeting the selection criteria is less than 3, the Contracting Authority may continue the procedure only with these. The Contracting Authority may not include other economic operators who did not take part in the procedure or candidates who do not have the required capacities since they do not meet the selection criteria.

During the dialogue, contracting authorities shall ensure the equality of treatment among all tenderers and confidentiality of the solutions proposed or other information communicated by a candidate participating in the dialogue unless it agrees to its disclosure. Contracting authorities may provide for the procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria in the contract notice or the descriptive document if provision is made for this possibility in the contract notice or the descriptive document. The Contracting Authority must prepare a report justifying the manner in which the dialogues were conducted.

After informing the participants that the dialogue is concluded, contracting authorities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. These tenders shall contain all the elements required and necessary for the performance of the project. At the request of the Contracting Authority, these tenders may be clarified, specified and fine-tuned provided this does not have the effect of changing basic aspects of the tender or of the invitation to tender, variations in which could distort competition or have a discriminatory effect. At the request of the Contracting Authority, the tenderer

identified as having submitted the tender offering best value for money may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender or of the call for tenders and does not risk distorting competition or causing discrimination.

The Contracting Authorities may specify prices or payments to the participants in the dialogue.

The contract shall be awarded to the technically compliant tender being most economically advantageous (i.e. the sole award criterion is the best value for money).

The standard templates should be used and modified as required.

**DIRECT CENTRALISED, DECENTRALISED: EX ANTE**

The prior approval of the relevant services of the European Commission must be sought for the use of the competitive dialogue.

**DECENTRALISED: EX-POST**

No prior approval from the European Commission is required for the use of the competitive dialogue.

## 2.4.8. Negotiated procedure/single tender procedure

A contract can be awarded directly in the following circumstances:

- when the contract to be concluded does not exceed 10 000 EUR ("Single tender procedure");
- in exceptional and duly justified cases, where the factual or legal circumstances defined in articles 242, 244 and 246 of the Implementing Rules of the Financial Regulation are met (see points 3.2.3.1., 4.2.4.1. and 5.2.4.1.). No specific threshold applies in such cases ("Negotiated procedure").

Since the cases where the use of a negotiated procedure can be justified are established by the applicable EU legislation, no prior approval can be granted to use additional cases of negotiated procedures which are not specifically foreseen in the present Guide.

In all cases, the Contracting Authority must prepare a report explaining the manner in which the participant(s) in the negotiations were identified and the price was established, and the grounds for the award decision (see Annex A10a for negotiated procedures and Annex A10b for single tender procedures). The Contracting Authority must follow the negotiation steps shown in the negotiation report template (Annex A10a for negotiated procedures and Annex A10b for single tender procedures) and ensure that basic principles relating to procurement procedures such as checking compliance with eligibility rules (nationality rules), capacity to carry out the contract and exclusion criteria are duly applied.

**DIRECT CENTRALISED, DECENTRALISED: EX ANTE**

The prior approval of the relevant services of the European Commission must be sought for the use of the negotiated procedure.

The prior approval of the relevant services of the European Commission must be sought for the negotiation report.

**DECENTRALISED: EX-POST**

No prior approval from the European Commission is required for the use of the negotiated procedure or for approval of the negotiation report.

## 2.4.9. Fair and transparent competition

The arrangements for competitive tendering and publicising contracts for works, supplies and services depend on the contract value. They are set out in point 2.4.1.

In the case of mixed contracts covering a combination of works, supplies or services, the Contracting Authority determines the procurement procedure to be used (with the agreement of the European Commission, in the case of decentralised ex-ante management). This will depend on which of the components (works, supplies or services) prevails, an assessment which must be made on the basis of the value and strategic importance of each component relative to the contract as a whole.

No contract may be split simply to evade compliance with the rules set out in this Guide. If there is any doubt about how to estimate the value of the contract, the Contracting Authority must consult the European Commission on the matter before embarking on the procurement procedure.

Whatever the procedure used, the Contracting Authority must ensure that conditions are such as to allow fair competition. Wherever there is an obvious and significant disparity between the prices proposed and the services offered by a tenderer, or a significant disparity in the prices proposed by the various tenderers (especially in cases in which publicly-owned companies, non-profit associations or non-governmental organisations are taking part in a tender procedure alongside private companies), the Contracting Authority must carry out checks and request any additional information necessary. The Contracting Authority must keep such additional information confidential.

#### **2.4.10. Preferences (EDF only)**

##### **EDF**

Measures must be taken to encourage the widest participation of the natural and legal persons of ACP States in the performance of contracts financed by the EDF in order to permit the optimisation of the physical and human resources of those States. To this end:

- 1 - (a) for works contracts of a value of less than €5 000 000, tenderers from the ACP States, provided that at least one quarter of the capital stock and management staff originates from one or more ACP States, shall be accorded a 10% price preference where tenders of an equivalent economic, technical and administrative quality are compared;
- (b) for supply contracts, irrespective of the value of the supplies, tenderers from the ACP States who offer supplies of at least 50% in contract value of ACP origin, shall be accorded a 15% price preference where tenders of equivalent economic, technical and administrative quality are compared;
- (c) in respect of service contracts, where tenders of equivalent economic and technical quality are compared, preference shall be given to:
  - (i) experts, institutions or consultancy companies or firms from ACP States with the required competence;
  - (ii) offers submitted by ACP firms, either individually or in a consortium with European partners; and
  - (iii) offers presented by European tenderers with ACP sub-contractors or experts;
- (d) where subcontracting is envisaged, preference shall be given by the successful tenderer to natural persons, companies and firms of ACP States capable of performing the contract required on similar terms; and
- (e) the ACP State may, in the invitation to tender, offer prospective tenderers assistance from

other ACP States' companies or firms or national experts or consultants selected by mutual agreement. This cooperation may take the form either of a joint venture, or of a subcontract or of on-the-job training of trainees.

2 - Where two tenders are acknowledged to be equivalent on the basis of the criteria stated above, preference shall be given:

- (a) to the tenderer of an ACP State; or
- (b) if no such tender is forthcoming, to the tenderer who:
  - (i) allows for the best possible use of the physical and human resources of the ACP States;
  - (ii) offers the greatest subcontracting possibilities for ACP companies, firms or natural persons; or
  - (iii) is a consortium of natural persons, companies and firms from ACP States and the European Union.

NB: South African bodies cannot benefit from the preference system.

## **2.4.11. Selection and award criteria**

Regardless of type of procedure used, the following criteria are always used:

### **2.4.11.1. Selection criteria**

#### **2.4.11.1.1. General principles**

The Contracting Authorities will draw up clear and non-discriminatory selection criteria in every procurement procedure regardless of the value of the contract and the type of procedure. The purpose of its use is to assess that the candidate/tenderer has sufficient financial, economic, technical and professional capacity to implement the tasks of the contract. The chosen selection criteria may not go beyond the scope of the contract and shall take account of the legitimate interests of the candidate/tenderer as regards in particular the protection of the firm's technical and business secrets.

It is of interest to have as recent information as possible to verify the capacity of the entity and the legal base is clear on the timelines in this respect. For the economic and financial capacity this period may be no more than the last three financial years. For the professional and technical capacity the timeline depends on the type of contract. For service and supply contracts it shall be what has been implemented or completed in the past three years and for works contracts it shall be what has been carried out in the last five years.

If appropriate for the project and subject to the principle of equal treatment, separate criteria for natural and legal persons may be published and applied.

Examples of criteria may be found in the relevant annexes (procurement notice or instruction to tenderers). Some examples of criteria which may pose a problem and generally should not be used:

- A request for annual turnover, number of staff, number of previous projects etc which go way beyond the amount of the contract;
- The use of words such as "sufficient", "major", "relevant" as it is not absolutely clear what these words mean in the context and if a proposed experience fulfils the criterion;

- Request information which dates further back in time than 3 years (this is regulated in the Implementing Rules of the Financial Regulation). The only exception is technical experience for works contracts which may go back 5 years in time;
- To limit requested technical experience to EU projects only as this could in general be regarded discriminatory.

Before deciding on the appropriate criteria the Contracting Authorities must consider that the criteria are possible to prove and, should, for instance, take into consideration what type of documentary evidence the tenderer may submit as proof.

The chosen selection criteria shall be specified in the procurement notice and should be applied by the Contracting Authority without modification unless a corrigendum has been published.

In procurement procedures for service and supply contracts, the selection criteria are applied to the consortium as a whole. This is applicable also to works tenders unless otherwise stipulated.

The candidate/tenderer will in the application/tender submission form be requested to submit information in response to their economic, financial, professional and technical capacity according to the selection criteria specified in the tender documents.

For the service procedures, the documents to support the information in response to the selection criteria shall be submitted by all the tenderers together with the tender. For supply procedures, only successful tenderers have to supply proof document to support the information submitted in the tender before the award of the contract. For works procedures, however, the mentioned proofs have to be submitted in accordance with the tender dossier.

For contracts with a value less than the international thresholds (service < €200.000, supply < €150.000 and works < €5.000.000.), the Contracting Authority may, depending on its assessment of the risks, decide not to require these proofs, but then no pre-financing shall be made unless a financial guarantee of an equivalent amount is provided. (However, where the Contractor is a public body, the requirement of a pre-financing guarantee in general may be waived after a risk assessment of the responsible authorizing officer. In this case, prior approval must be granted.)

A candidate/tenderer may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. Some examples of when it may *not* be considered appropriate by the Contracting Authority are when the candidate/ tenderer rely in majority on the capacities of other entities or when they rely on key criteria. If the candidate/tenderer rely on other entities it must prove to the Contracting Authority that it will have at its disposal the resources necessary for implementation of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal. Such entities, for instance the parent company of the candidate/tenderer, must respect the same rules of eligibility and notably that of nationality, as the candidate/tenderer. Furthermore, the data for this third entity for the relevant selection criterion should be included in the application/tender in a separate document. Proof of the capacity will also have to be furnished when requested by the Contracting Authority.

#### 2.4.11.1.2. **Verification of the financial and economic capacities of candidates or tenderers**

Proof of economic and financial capacity may, for example, be furnished by one or more of the following documents:

- appropriate statements from banks or evidence of professional risk indemnity insurance;

- the presentation of balance sheets or extracts from balance sheets for at least the last two years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established;
- a statement of overall turnover and turnover concerning the works, supplies or services covered by the contract during a period which may be no more than the last three financial years.

#### **2.4.11.1.3. Verification of the technical and professional capacities of candidates or tenderers**

Proof of the technical and professional capacity of the candidate/tenderer may, for example, be furnished on the basis of one or more of the following documents:

- the educational and professional qualifications of the service provider or contractor;
- a list:
  - of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private. In the case of framework contracts (without contractual value), only specific contracts corresponding to assignments implemented under such framework contracts shall be considered. Evidence of successful implementation must take the form of certificates issued or countersigned by the Contracting Authority or entity who ordered or purchased the execution of the service or supply;
  - of the works carried out in the last five years, with the sums, dates and place. The list of the most important works must be accompanied by certificates of satisfactory execution, issued by the Contracting Authority or entity who ordered or purchased the works, specifying whether they have been carried out in a professional manner and have been fully completed;
- a description of the technical equipment, tools and plant to be employed by the firm for performing a service or works contract;
- a description of the technical equipment and measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;
- an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;
- in respect of supplies: samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products with the specifications or standards in force;
- a statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;
- a copy of, or extract from, the payroll or employment contracts;
- an indication of the proportion of the contract which the tenderer may intend to subcontract. The contracting authority may also require the candidate or tenderer to submit any information on the financial, economic, technical and professional capacities of the envisaged subcontractor, in particular when subcontracting represents a significant part of the contract.

For service contracts it is possible for the candidate/tenderer to refer to a part of a project where the contract is not yet terminated, but then, only the part which is successfully completed may be used as reference and the candidate/tenderer needs to be able to submit documentary evidence of this part's successful completion (e.g. statement from the entity which ordered the service).

If a candidate/tenderer has implemented the project in a consortium, it should be clear from the documentary evidence the percentage the candidate/tenderer has successfully completed.

Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the Contracting Authority or on its behalf by a competent official body of the country in which the service provider or supplier is established, subject to that body's agreement. Such checks will concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

Where Contracting Authorities require the production of certificates drawn up by independent bodies attesting the compliance of the candidate/tenderer with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant European standards series concerning certification.

Where Contracting Authorities require the production of certificates drawn up by independent bodies attesting the compliance of the candidate/tenderer with certain environmental management standards, they shall refer to the Eco-Management and Audit Scheme (EMAS) provided for in Regulation (EC) No 761/2001 of the European Parliament and of the Council or to environmental management standards based on the relevant European or international standards certified by bodies conforming to EU law or the relevant European or international standards concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from the candidate/tenderer. The Contracting Authority may control the authenticity of certificates provided.

If the documentary evidence submitted is not written in one of the official languages of the European Union, a translation into the language of the procedure must be attached. Where the documents are in an official language of the European Union other than the one of the procedure, it is however strongly recommended to provide a translation into the language of the procedure, in order to facilitate the evaluation of the documents.

If the candidate/tenderer is unable to provide the evidence requested for some exceptional reason which the contracting authority finds justified, it may prove its capacity by any other means which the contracting authority considers appropriate (see also point 2.8.3.).

If the tenderer submits a self-declaration/statement as documentary proof, the Contracting Authority reserves the right to ask for further documentary evidence.

#### **2.4.11.2. Award criteria**

Contracts are awarded on the basis of award criteria established for the call for tender in one of the following two ways:

- under the automatic procurement procedure, in which case the contract is awarded to the tender which, while being in order and satisfying the conditions laid down, quotes the lowest price;
- under the best-value-for-money procedure (i.e. the most economically advantageous tender).

The criteria should be precise, non-discriminatory and not prejudicial to fair competition.

## 2.4.12. Procedure with “suspensive clause”

In duly justified cases, and after prior approval is granted, tender procedures may be published with a suspensive clause (i) before a financing decision is adopted or (ii) before a financing agreement between the European Commission and the beneficiary country is signed.

### **BUDGET**

The use of a suspensive clause is exceptional due to the fact that the logic of the system of EU financial rules requires the adoption of a decision by the Commission (or, where relevant, conclusion of a financing agreement) before a call for tenders or proposals is launched. Exceptional circumstances could arise where deviation from the normal decision-making process might be justified. As a rule, these circumstances justifying the use of a suspensive clause are outside the Commission's control. Note that:

financing decision but before the signature of the financing agreement in most cases may be considered as being outside the Commission's control, as the entry into force of such agreement depends of the will of a third party (i.e. the beneficiary country);

-the use of the suspensive clause before the adoption of a financing decision requires an adequate level of reasoning/motivation of the objective circumstances leading to the use of such clause and the impossibility to wait for the adoption of such decision. This reasoning should be duly reflected in the request for prior approval and in the relevant financing decision. There are some cases where the suspensive clause is justified in order to make an efficient use of procedures. This is the case of the possibility to launch call for proposals covering two budgetary years.

### **EDF**

It is reminded that the use of this clause before the adoption of the financing decision is expressly authorised under EDF (see article 19b of Annex IV of the Cotonou Agreement) in all duly substantiated cases in order to ensure early project start-up.

The actual award and signature of contracts following the call launched under suspensive clause is conditional to the adoption of the financing decision and/or, where applicable, the conclusion of the financing agreement.

Because of its implications, the existence of a suspensive clause must be explicitly mentioned in the procurement notice or the guidelines to grant applicants.

The procedure will invariably be cancelled if the European Commission's decision-making procedure is not completed or the financing agreement is not signed.

## 2.4.13. Cancellation of procurement procedures

The Contracting Authority may, before the contract is signed, abandon the procurement and cancel the procurement procedure without the candidates or tenderers being entitled to claim any compensation. If the procedure is divided into lots, a single lot may be cancelled. Cancellation requires prior approval and may occur where:

- the tender procedure has been unsuccessful, i.e. no qualitatively or financially worthwhile tender has been received or there is no valid response at all;
- the economic or technical data of the project have been fundamentally altered;
- exceptional circumstances or force majeure render normal performance of the contract impossible;

- all technically compliant tenders exceed the financial resources available;
- there have been irregularities in the procedure, in particular where these have prevented fair competition;
- the award is not in compliance with sound financial management i.e. does not respect the principles of economy, efficiency and effectiveness (e.g. the price proposed by the tenderer to whom the contract is to be awarded is objectively disproportionate with regard to the price of the market).

If a procurement procedure is cancelled, all tenderers must be notified in writing and as soon as possible of the reasons for the cancellation. A cancellation notice must be published in the event that a tender is cancelled. See template in Annex A5.

After cancelling a tender procedure, the Contracting Authority may decide:

- to launch a new tender procedure;
- to open negotiations with one or more tenderers who participated in the tender procedure and comply with the selection criteria<sup>14</sup>, provided that the original terms of the contract have not been substantially altered (this option is not available if the reason for cancellation is that there have been irregularities in the tender procedure which may have prevented fair competition);
- not to award the contract.

Whatever the case, the final decision is taken by the Contracting Authority (with the prior agreement of the European Commission in the case of contracts awarded by the Contracting Authority under the ex-ante system). In no event will the Contracting Authority be liable for any damages whatsoever including, without limitation, damages for loss of profits, in any way connected with the cancellation of a tender even if the Contracting Authority has been advised of the possibility of damages. The publication of a procurement notice does not commit the Contracting Authority to implement the programme or project announced.

#### **DIRECT CENTRALISED**

The responsibility for cancelling a tender procedure lies with the relevant services of the European Commission.

#### **DECENTRALISED: EX-ANTE**

The responsibility for cancelling a tender procedure lies with the Contracting Authority, with the prior approval of the European Commission.

#### **DECENTRALISED: EX-POST**

The responsibility for cancelling a tender lies with the Contracting Authority. No prior approval from the European Commission is required.

### **2.4.14. Ethics clauses**

Any attempt by a candidate, applicant or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee or the Contracting Authority during the process of examining, clarifying, evaluating and comparing tenders and applications will lead to the rejection of its candidacy, proposal or tender.

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<sup>14</sup> Hence the importance to carefully choose the selection criteria which must be non-discriminatory, clear, may not go beyond the scope of the tasks or budget (see point 2.4.11.1. for further details).

When putting forward a candidacy or tender, the candidate or tenderer must declare that it is affected by no potential conflict of interest (see definition and applicable principles in point 2.3.6. above) and that it has no equivalent relation in that respect with other tenderers or parties involved in the project. Should such a situation arise during performance of the contract, the contractor must immediately inform the Contracting Authority.

The exclusion of a candidate, tenderer or applicant for the above reasons will be done in accordance with the rules and procedures mentioned in point 2.3.3. above.

Civil servants or other officials of the public administration of the beneficiary country, regardless of their administrative situation, must not be engaged as experts by tenderers, unless the prior approval of the European Commission has been obtained.

Without the Contracting Authority's written authorisation, a contractor and its staff or any other company with which the contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project.

This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the contractor or grant beneficiary.

The contractor must at all time act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It must refrain from making public statements about the project or services without the Contracting Authority's prior approval. It may not commit the Contracting Authority in any way without its prior written consent.

For the duration of the contract, the contractor and its staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state. In particular and in accordance with the legal basic act concerned, tenderers who have been awarded contracts shall respect core labour standards as defined in the relevant International Labour Organisation conventions (such as the Conventions on freedom of association and collective bargaining; Elimination of forced and compulsory labour; Abolition of child labour).

The contractor may accept no payment connected with the contract other than that provided for therein. The contractor and its staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Contracting Authority.

The contractor and its staff are bound to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents drawn up or received by the contractor during the performance of the contract are confidential.

The contract governs the contracting parties' use of all reports and documents drawn up, received or presented by them during the performance of the contract.

The contractor must refrain from any relationship likely to compromise its independence or that of its staff. If the contractor ceases to be independent, the Contracting Authority may, regardless of injury, terminate the contract without further notice and without the contractor having any claim to compensation.

The Commission reserves the right to suspend or cancel project financing if corrupt practices of any kind are discovered at any stage of the award process and if the Contracting Authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the Contracting Authority.

More specifically, all tender dossiers and contracts for works, supplies and services must include a clause stipulating that tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses.

Such unusual commercial expenses are commissions not mentioned in the main contract or not stemming from a properly concluded contract referring to the main contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company which has every appearance of being a front company.

The contractor undertakes to supply the Commission on request with all supporting documents relating to the conditions of the contract's execution. The Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.

Contractors found to have paid unusual commercial expenses on projects funded by the EU are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving EU funds.

Failure to comply with one or more of the ethics clauses may result in the exclusion of the candidate, applicant, tenderer or contractor from other EU contracts and in penalties. The individual or company/entity in question must be informed of the fact in writing.

It is the obligation of the Contracting Authority to ensure that the procurement procedure is concluded in a transparent manner, based on objective criteria and disregarding any possible external influences.

**Where fraud, corruption or other irregularities concerning EU funds is suspected, the anti-fraud office of the European Commission (i.e. OLAF) should be duly informed.**

## **2.4.15. Legal remedies**

### **2.4.15.1. Complaints to the Contracting Authority**

Without prejudice to other remedies and, in particular, without altering the time-limits for bringing actions set out in paragraphs 2.4.15.3, where a candidate, tenderer or applicant believes he has been adversely affected by an error or irregularity allegedly committed as part of a selection or procurement procedure, or that the procedure was vitiated by any maladministration, he may file a complaint to the Contracting Authority.

Where the European Commission is the Contracting Authority, the complaint will be sent to the person who took the contested decision, who will endeavour to investigate the complaint and respond within 15 working days. Alternatively or if the candidate, tenderer or applicant is not satisfied with the answer received, he may refer to the relevant geographical director in headquarters.

The sole subject of the complaint shall not be to obtain a second evaluation for no reason other than the complainant disagreement with the final award decision.

### **2.4.15.2. Complaints to the European Ombudsman**

Without prejudice to other remedies and, in particular, without altering the deadlines foreseen for the appeals set out in paragraphs 2.4.15.3, any citizen of the European Union or any natural or legal person residing or having its registered office in a Member State has the right to complain to the Ombudsman for any instance of maladministration by the European Union institutions (Article 228 of the Treaty on the Functioning of the European Union (TFEU)). More information can be found on the website <http://www.ombudsman.europa.eu/en/home.faces>.

### 2.4.15.3. Ordinary Actions

When a candidate, tenderer or applicant believes he has been adversely affected by an error or irregularity allegedly committed as part of a selection procedure or procurement, he can also file ordinary actions, provided the conditions are met.

Where the European Commission is the Contracting Authority, the action shall be launched in accordance with the rules set out by the TFEU<sup>15</sup>.

No subcontract can create contractual relations between any subcontractor and the Contracting Authority. The Contracting Authority cannot be held responsible for any failure by the contractor to honour its contract with the subcontractor. In case of disagreement regarding the implementation of that contract, the subcontractor shall address itself to the Contractor and/or to the respective jurisdiction competent to hear such litigations. The same situation is applicable to experts working under service contracts.

## 2.5. Contract size

If appropriate, in order to achieve economies of scale, to ensure maximum co-ordination between related activities and to keep programme administration as simple as possible, care must be taken to design projects to allow for maximum contract size and consequently to avoid the unnecessary fragmentation of programmes into a series of small contracts.

## 2.6. Terms of reference and technical specifications

The purpose of Terms of Reference (for service contracts) and Technical Specifications (for supply and works contracts) is to give instructions and guidance to contractors at the tendering stage about the nature of the tender they will need to submit and to serve as the contractor's mandate during project implementation. The Terms of Reference or Technical Specifications will be included in the Tender Dossier and will become an annex of the eventual contract awarded as a result of the tender.

The thorough preparation of the Terms of Reference or Technical Specifications is extremely important for the ultimate success of the project. It is important to ensure that the project has been properly conceived, that the work is carried out on schedule and that resources will not be wasted. Therefore greater effort during project preparation will save time and money in the later stages of the project cycle.

The Terms of Reference and the Technical specifications must afford equal access for candidates and tenderers and should not have the effect of creating unjustified obstacles to competitive tendering. They should be clear and non-discriminatory and should be in proportion to the object and/or budget allocated for the project. They define the characteristics required by the

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<sup>15</sup> In pursuance of Articles 256 and 263 of the Treaty on the Functioning of the European Union (TFEU), the EU General Court has jurisdiction over acts of the European Commission intended to produce legal effects vis-à-vis third parties. Likewise, in pursuance of Articles 256, 268 and 340 of the TFEU, the EU General Court has jurisdiction in disputes relating to compensation for damages caused by the European Commission in the case of non-contractual liability. Note that, pursuant to the TFEU, the deadline to introduce an action for annulment before the EU General Court against the Commission's decisions runs from the moment of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Contracting Authority of the service, supply or work to be purchased. Those characteristics include:

- a) the quality levels;
- b) environmental performance (e.g attention should be given that specifications, where possible, take into consideration the latest developments on the matter);
- c) design for all requirements (including accessibility for disabled people, environmental aspects in accordance with the latest developments on the matter);
- d) the levels and procedures of conformity assessment, including environmental aspects;
- e) fitness for use;
- f) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling (including environmental labelling, e.g. on energy consumption), production procedures and methods.

It is important to ensure clarity and conciseness in drafting the Terms of Reference and Technical Specifications. In regard to the Technical Specifications, this may not point to particular brands and types. Furthermore it may not be too specific and therefore limiting competition.

The Terms of Reference or Technical Specifications are prepared by the Contracting Authority. Where the Commission is the Contracting Authority, the standard practice is to consult and obtain the approval of the beneficiary country and where appropriate of other parties involved, on the Terms of Reference or Technical Specifications, in order to strengthen both ownership and quality.

Given the technical complexity of many contracts, the preparation of the tender dossier - particularly the Technical Specifications/Terms of Reference - may require the assistance of one or more external technical specialist(s). Each such specialist must sign a Declaration of Objectivity and Confidentiality (see Annex A3).

Once the Tender Dossiers have been finalised the tender procedure should be launched as soon as possible. The Terms of Reference or Technical Specifications contained in a tender dossier - the basis for the project work-plan - must reflect the situation at the time of project start-up so as to avoid considerable effort being spent on re-design the project during the inception period.

The general structure of Terms of Reference for services has been drawn up in accordance with the principles of project cycle management. The aim is to ensure that all issues are covered systematically and that key factors related to clarity of objectives and sustainability are thoroughly examined. Annex B8 contains a skeleton Terms of Reference which indicates the minimum details to be provided within each of these section headings.

For a fee-based service contract the sections in the Terms of Reference include the allocated budget headings. They consist of the fees which is the only part of the budget where competition takes place. The services are provided on the basis of a fixed daily fee rate for the days the experts work under the contract. Furthermore the budget consists of a fixed provision for incidental expenditure which covers all actual expenses incurred by the consultant which are not included in the fees. The section for incidental expenditure should specify the type of expenditure which could be included in the expenditure verification of the contract. The Terms of Reference also specifies a provision for expenditure verification. The budgets for incidental expenditures and expenditure verification is fixed by the Contracting Authority and must correspond to the requirements of the Terms of Reference and must be carefully estimated.

The Terms of Reference and the Technical Specifications may not be disclosed to any third party and must be kept confidential until they are made available to the tenderers simultaneously in the procedure.

## 2.7. Procedural rules on conciliation and arbitration

### **EDF**

Disputes relating to a contract financed by the EDF which, pursuant to the provisions of the General Conditions and the Special Conditions governing the contract, may be settled by conciliation or by arbitration, are to be settled in accordance with the procedural rules for the said contracts set out in Annex V to Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 adopting the general regulations, the general conditions and the rules governing the conciliation and arbitration procedure for works, supply and service contracts financed under the EDF. These rules can be found in Annex A12.

### **BUDGET**

The rules on dispute settlements are provided for in the General Conditions of the relevant contractual models (Articles 40 of the General Conditions of service and supply contracts and 65 of work contracts).

## 2.8. The Evaluation Committee

### 2.8.1. Composition

Tenders are opened and evaluated by an Evaluation Committee appointed timely and formally by the Contracting Authority comprising a non-voting Chairperson, a non-voting Secretary and an odd number of voting members (minimum of three for all procedures except for works tenders above € 000 000 which requires a minimum of five). The evaluators should obtain detailed information of the timetable foreseen and workload involved as evaluator. The Contracting Authority shall make sure that appointed evaluators will be available during the scheduled evaluation period. The Contracting Authority will appoint a replacement evaluator for each procedure to prevent delays in case of unpredictable unavailability.

Every member must have a reasonable command of the language in which the tenders are submitted. The voting members must possess the technical and administrative capacities necessary to give an informed opinion on the tenders. The identity of the evaluators should be kept confidential.

### **DIRECT CENTRALISED**

The Evaluation Committee (i.e., the Chairperson, the Secretary and the voting members) must be nominated on a personal basis by the relevant services and participation of eventual observers approved. For the evaluation of call for tenders the standard practice is that at least one of the voting members should be a representative of the beneficiary country.

### **DECENTRALISED: EX-ANTE**

The Evaluation Committee (i.e., the Chairperson, the Secretary and the other voting members) must be nominated on a personal basis by the Contracting Authority. The composition of the Evaluation Committee must be submitted for approval to the European Commission. The composition of the committee is deemed approved if after 5 working days from the receipt of the nomination, the European Commission did not formulate any objection. The European Commission may nominate an observer to follow all or part of the proceedings of the Evaluation Committee. Independent experts under service contracts can only be observers or assessors. Prior approval must be sought from the European Commission for the participation of other observers.

### **DECENTRALISED: EX-POST**

The Evaluation Committee (i.e., the Chairperson, the Secretary and the voting members) must be nominated on a personal basis by the relevant services and participation of eventual observers approved.

The Evaluation Committee members should attend all meetings. Any absence must be recorded and explained in the Evaluation Report.

All voting members of the Evaluation Committee have equal voting rights.

## **2.8.2. Impartiality and confidentiality**

All members of the Evaluation Committee and any observers must sign a Declaration of Impartiality and Confidentiality (see Annex A4). Any Evaluation Committee member or observer who has a potential conflict of interest with any tenderer or applicant must declare it and immediately withdraw from the Evaluation Committee. He/she will be excluded from participating further in any capacity in the evaluation meetings.

The Chairperson of the Evaluation Committee determines to what extent the evaluation process must be restarted. Such decision must be recorded and justified in the Evaluation Report.

While the procurement procedure is under way, all contacts between the contracting authority and candidates or tenderers must satisfy conditions ensuring transparency and equal treatment; they may not lead to amendment of the conditions of the contract or the terms of the original tender. No information about the examination, clarification, evaluation or decisions about the contract award can be disclosed before the signature of the contract(s). Any attempt by a tenderer or applicant to influence the process in any way (whether by initiating contact with members of the Evaluation Committee or otherwise) may result in the immediate exclusion of its tender or proposal from further consideration.

Apart from the tender opening session, the proceedings of the Evaluation Committee are conducted in camera and are confidential for supplies and works tenders, subject to the Contracting Authority's legislation on access to documents. For service tenders and call for proposals, the proceedings of the Evaluation Committee, from the opening of tenders/proposals to the conclusion of the work of the Evaluation Committee, are conducted in camera and are confidential, subject to the Contracting Authority's legislation on access to documents. In cases

where the Contracting Authority's law contradicts the confidentiality required, the latter shall ask for prior authorisation from the European Commission before disclosing any information.

In order to maintain the confidentiality of the proceedings, participation in the Evaluation Committee meetings is strictly limited to the members of the Evaluation Committee designated by the Contracting Authority and any authorised observers (including designated assessors in the case of call for proposals).

Apart from the copies given to any assessors(s) or EU delegations in call for proposals, the tenders or proposals should not leave the room/building in which the committee meetings take place before the conclusion of the work of the Evaluation Committee. They should be kept in a safe place when not in use.

### **2.8.3. Responsibilities of the Evaluation Committee members**

The Chairperson is responsible for co-ordinating the evaluation process in accordance with the procedures of the Practical Guide and for ensuring its impartiality and transparency. The voting members of the Evaluation Committee have collective responsibility for decisions taken by the Committee.

The Secretary to the Committee is responsible for carrying out all administrative tasks connected with the evaluation procedure.

These will include:

- circulating and collecting the Declarations of Impartiality and Confidentiality;
- keeping the minutes of all meetings of the Evaluation Committee and the relevant records and documents;
- registering attendance at meetings and compiling the Evaluation Report and its supporting annexes.

Any request for clarification requiring communication with the tenderers or applicants during the evaluation process must be conducted in writing. Copies of any such communication must be annexed to the Evaluation Report.

If a tender or proposal infringes the formal requirements, the Evaluation Committee may use its discretion to decide whether or not it should still be considered during the rest of the evaluation process, while ensuring the equal treatment of tenders and applicants and in accordance with the principle of proportionality. Whatever the Evaluation Committee decides, this must be fully recorded and justified in the Evaluation Report.

Tenders or proposals falling e.g. in the following situations should not be rejected:

- submitted in fewer number of copies than required;
- submitted with the correct templates and the requested information is provided, but the way in which the document has been filed it is incorrect, e.g. the information is provided in a section X of the template and such information should have been correctly provided in section Y;
- tenders or proposals which have not been signed or contains a scanned signature (the signature can be requested subsequently - if not obtained, the tender must be rejected).
- candidates, applicants or tenderers that can demonstrate that a required document is not available (e.g. pursuant to the legislation of the country, *duplicata* of a given lost document cannot be obtained from the issuing administration), provided that an acceptable alternative is obtained (e.g. declaration of the said administration that the

document in favour of the candidate, applicant or tenderer is still valid but no *duplicata* can be issued);

- tenderers in a service contract procedure who have not submitted all the documentary evidence for the exclusion or the selection criteria together with the tender. The necessary documentary proof may be requested to the successful tenderer giving a reasonable delay;
- if information is made available to the evaluation committee that a key expert in a service tender procedure is no longer available. The evaluation committee should proceed with the evaluation and the awarded tenderer will be given a chance to replace the key expert, see 3.3.12.1.

#### **2.8.4. Timetable**

The Evaluation Committee should be formed early enough, to ensure the availability of the designated members (and any observer nominated by the European Commission, in the case of decentralised ex-ante control) during the period necessary to prepare and conduct the evaluation process. The tender evaluation should be completed as soon as possible to allow the tender procedure to be completed within the validity period of the offers. As a general rule, the exceptional extension of the validity of offers, see section 2.8.5., should be avoided. It is of high importance for all the tenderers, successful as well as non-successful, to receive information without delay.

After the completion of the evaluation the Authorising officers should explicitly and timely approve the Evaluation Report as soon as possible.

#### **2.8.5. Period of validity**

Tenderers are bound by their tenders for the period specified in the letter of invitation to tender and/or in the tender dossier. This period should be sufficient to allow the Contracting Authority to examine tenders, approve the contract award proposal, notify the successful and unsuccessful tenderers and conclude the contract. The period of validity of tenders is fixed at 90 days from the deadline for the submission of tenders.

In exceptional cases, with prior approval by relevant services of the European Commission, before the period of validity expires, the Contracting Authority may ask the tenderers to extend the period for a specific number of days, which may not exceed 40 days. This exceptional extension may be done once only.

The successful tenderer must maintain the validity of the tender for a further 60 days. The further period of 60 days is added to the validity period irrespective of the date of notification.

### **2.9. Award of the contract(except for service contracts, see chapter 3.)**

#### **2.9.1. Notifying the successful tenderer**

### **DIRECT CENTRALISED, DECENTRALISED: EX-POST**

Before the period of validity of tenders expires, and on the basis of the approved evaluation report, the Contracting Authority notifies the successful tenderer in writing that its tender has been accepted (see format of letter in Annex A8) and draws attention to any obvious arithmetical errors which were corrected during the evaluation process.

At the latest before taking the award or grant decision, the Contracting Authority / delegate body has ensured that there is not a detection of the third party (i.e. applicant or tenderer including partners) concerned in the Early Warning System (W5).

### **DECENTRALISED: EX-ANTE**

In addition to the above, the European Commission must give its formal approval of award prior to the submission of the notification letter.

This notification to the successful tenderer implies that the validity of the successful tender is automatically extended for a period of 60 days. At the same time, the Contracting Authority requests the successful tenderer i.e. to submit the evidence required by the tender dossier to confirm the declarations made in the tender submission form **within 15 days** of the date of the notification letter. The Contracting Authority must examine the evidence submitted by the successful tenderer before sending the contract to the tenderer for signature. Where a contract is awarded under a financing agreement which had not been concluded at the time the tender procedure was launched, the Contracting Authority must not notify the successful tenderer before the financing agreement has been concluded.

For the restricted procedure and the competitive dialogue, evidence documents for the exclusion criteria are submitted by all the tenderers at the tender phase (see point 2.3.3.).

For contracts with a value of less than the international thresholds (supply < €150.000, works < €5.000.000.) there is no obligation to submit the above mentioned documents (see points 2.3.3. and 2.4.11.1.1.).

## **2.9.2. Contract preparation and signature**

In preparing the contract for signature, the Contracting Authority must proceed as follows:

Prepare a contract dossier (if possible printed recto/verso) using the following structure:

- a) Explanatory note using the format in Annex A6;
- b) Copy of the financing agreement authorising the project;
- c) Copy of the call announcements (contract forecast and procurement notice), Tender Opening Report, Evaluation Report, the Annual Work Programme, Guidelines for Applicants, Proposal Opening and Administrative Check Report, Evaluation Reports, the list of grants to be awarded and any other relevant information);
- d) Three originals of the proposed contract, which is based on the standard contract template.

The standard contract annexes for the General conditions and Forms and other relevant documents must be reproduced without modification in every contract. Only the Special Conditions (and budget in the case of grants) should need to be completed by the Contracting Authority.

In the **DECENTRALISED: EX-ANTE** approach the Contracting Authority sends the contract dossier to the Delegation of the European Union for endorsement. The Delegation signs all originals of the contract for endorsement (and initials all pages of the Special Conditions) to

confirm the EU financing and sends them back to the Contracting Authority. No endorsement by the Delegation is required in certain cases contemplated in the Practical Guide for Programme Estimates.

- Sign and date all originals of the contract and initial all pages of the Special Conditions.
- Send the three signed originals of the contract to the successful tenderer/applicant, who must countersign them within 30 days of receipt and
- Return two originals to the Contracting Authority together with the eventual financial guarantee(s) required in the contract. If the successful tenderer/applicant fails to do this within the specified deadline or indicates at any stage that it is not willing or able to sign the contract, the tenderer/applicant cannot be awarded the contract. The contract preparation process must be restarted from step 1 with a new contract dossier prepared using the second-best tender (provided that that tender passed the technical threshold and is within the maximum budget available for the contract). In the case of grants, the contract will, if possible, be offered to the highest ranking applicant on the reserve list.

#### **DIRECT CENTRALISED, DECENTRALISED: EX-POST**

On receipt of the two signed originals from the successful tenderer/applicant, check that they correspond strictly to those sent originally, and send one original to the financial service in charge of payments and the other to the Project Manager.

#### **DECENTRALISED: EX-ANTE**

On receipt of the two signed originals from the successful tenderer/applicant, the Contracting Authority sends one to the Delegation of the European Union.

The Contracting authority shall verify the power of representation of the natural person who signs the contract for the legal entity to which the contract has been awarded.

The contract takes effect on the date of the later signature. The contract cannot cover earlier services or enter into force before this date, unless in duly substantiated exceptional cases (see point 6.2.8.).

Contracting Authorities must retain all documentation relating to the award and execution of contract for a minimum period of seven years after payment of the balance and up to the date of the prescription of any dispute in regard to the law which governed the contract.

During and after this period, the Contracting Authorities will treat the personal data in conformity with their privacy policy. These documents must be made available for inspection by the European Commission, OLAF and the Court of Auditors.

### **2.9.3. Publicising the award of the contract**

Regardless of the type of procedure, the Contracting Authority informs tenderers of decisions reached concerning the award of the contract as soon as possible, including the grounds for any decision not to award a contract.

Once the contract has been signed, the Contracting Authority must prepare contract award notice and send it to the European Commission, which publishes the results of the tender procedure in the Official Journal, where applicable, and on the EuropeAid website and in any other appropriate media.

The award notice shall be published for procedures where a publication of the procurement notice has taken place or if the value of the contract is above international thresholds (supply > €150.000, works > €5.000.000.), unless the contract was declared secret of where the

performance of the contract must be accompanied by special security measures, or when the protection of the essential interests of the European Union, or the beneficiary country so requires, and where the publication of the award notice is deemed not to be appropriate.

In addition, regardless of the type of procedure, the Contracting Authority must:

- send the other tenderers a standard letter (Annex C8 and Annex D8) within not more than 15 days from receipt of the countersigned contract;
- record all statistical information concerning the procurement procedure including the contract value, the names of the other tenderers and the successful tenderer.

The information submitted to the non-successful tenderers should follow the template mentioned above. However, in case of request for further information from the non-successful tenderers, any information which is not confidential may be disclosed to them. An example may be comments regarding their strengths and weaknesses as this may assist them to be successful in future tenders.

The Contracting Authority is responsible for preparing the contract award notice using the template in Annex C9 and Annex D9 and for submitting it for publication to the European Commission in electronic form without delay after having received the countersigned contract from the successful tenderer.

## **2.10. Modifying contracts**

Contracts may need to be modified during their duration if the circumstances affecting project implementation have changed since the initial contract was signed. Contract modifications must be formalised through an administrative order (not applicable to grants) or an addendum to the contract in accordance with the provisions of the General Conditions of the contract. Substantial modifications to the contract must be made by means of an addendum. Such an addendum must be signed by the contracting parties (and, under a decentralised ex-ante system, approved and endorsed by the European Commission). Changes of address, changes of bank account, and changes of auditor (in the case of grants and service contracts) may simply be notified in writing by the contractor to the Contracting Authority, although this does not affect the right of the Contracting Authority to oppose the contractor's/beneficiary's choice of bank account or auditor.

### **2.10.1. General principles**

The following general principles must always be respected:

No modification to the contract may alter the award conditions prevailing at the time the contract was awarded.

Following this logic, major changes, such as a fundamental alteration of the Terms of Reference/Technical Specifications, cannot be made by means of an addendum or an administrative order.

A request for contract modifications should not automatically be accepted by the Contracting Authority. There must be justified reasons for modifying a contract. The Contracting Authority must examine the reasons given and reject requests which have little or no substantiation.

Contracts can only be modified within the execution period of the contract. The purpose of the addendum or administrative order must be closely connected with the nature of the project covered by the initial contract.

Requests for contract modifications must be made (by one contracting party to the other) well in advance to allow for the addendum to be signed by both parties before the expiry of the execution period of the contract.

Where the modification of the contract extends activities already under way such cases are considered as negotiated procedures (see points 3.2.3.1., 4.2.4.1., 5.2.4.1. for contract-specific details concerning negotiated procedures and sections 3.5., 4.6., 5.7. for contract-specific details as regards modifications of contracts).

To the extent that EU or EDF financing is sought, any modification extending the period of implementation must be such that implementation and final payments can be completed before the expiry of the Financing agreement under which the initial contract was financed.

## 2.10.2. Preparing an addendum

In preparing an addendum, the Contracting Authority must proceed as follows:

- 1) Use the template for an addendum (Annex B16, Annex C12, Annex D11, and Annex E10):

All references in the proposed addendum to article numbers and/or annexes to be modified must correspond to those in the initial contract.

Any addendum modifying the budget must include a replacement budget showing how the full budget breakdown of the initial contract has been modified by this addendum (and any previous addenda) (see Annex B17, Annex C13, Annex D12, and Annex E3h7).

If the budget is modified by the proposed addendum, the payment schedule must also be modified accordingly, taking into account any payments already made in the course of the contract.

The payment schedule must not be modified unless either the budget is being modified or the contract is being extended.

- 2) Prepare a dossier comprising the following items:
  - a) Explanatory note (see template in Annex A6) providing a technical and financial justification for making the modifications in the proposed addendum;
  - b) Copy of the request for (or agreement to) the proposed modifications;
  - c) Three originals of the proposed addendum, which is based on the standard addendum template and includes any revised annexes.

### **DIRECT CENTRALISED, DECENTRALISED: EX-POST**

- 3) Sign and date all the originals of the addendum and initial all pages of the Special Conditions.

### **DECENTRALISED: EX-ANTE**

3) The Contracting Authority sends the addendum dossier to the Delegation of the European Union for endorsement (and initials all pages of the Special Conditions) to confirm the EU financing. No endorsement by the Delegation is required in certain cases contemplated in the Practical Guide for Programme Estimates

- 4) Send the three signed originals of the addendum to the contractor, who must countersign them within 30 days of receipt and return two originals to the Contracting Authority together with the eventual financial guarantee required in the addendum.

**DIRECT CENTRALISED, DECENTRALISED: EX-POST**

5) On receipt of the two signed originals from the contractor, send one original to the financial service in charge of payments and the other to the Project Manager.

**DECENTRALISED: EX-ANT**

5) On receipt of the two signed originals from the contractor, the Contracting Authority sends one to the Delegation of the European Union.

The addendum takes effect on the date of the later signature.

## 3. Service contracts

### 3.1. Introduction

Technical and economic support in the course of cooperation policy involves recourse to outside know-how on the basis of service contracts, most of them for studies or technical assistance.

Study contracts include studies for the identification and preparation of projects, feasibility studies, economic and market studies, technical studies, evaluations and audits.

Technical assistance contracts are used where a service provider is called on to play an advisory role, to manage or supervise a project, or to provide the experts specified in the contract.

The contracts are usually concluded by the beneficiary country, with which the Commission draws up a financing agreement (decentralised management).

#### 3.1.1. Type of service contract

A service contract may be purchased in two different ways:

- Global price - where specified outputs are defined. The service will be paid on the basis of the delivery of the specified outputs.
- Fee-based - where the output is unpredictable, or where the workload to achieve the specified output is impossible to quantify in advance. Therefore it is economically more advantageous to pay the services on the basis of time actually worked.

In most cases the whole contract is defined as either a global price contract or a fee-based contract.

Examples of global price activities:

Studies, evaluations, audits, organisation of events such as conferences, trainings. Studies include a variety of tasks like identification and preparation of projects, feasibility studies, economic and market studies, technical studies, drafting a legal document, evaluations and audits. Global price always specify the output, i.e. the consultant must provide a given product.

The tenderer should announce his intentions in terms of mobilisation of means in its tender. However during the implementation the technical and operational means by which the consultant achieves the specified output are not relevant for the method of measurement.

Examples of fee-based activities:

Project supervision, Resident Technical assistance, Facilitation in a multi-stakeholder process (depending of the complexity of the environment).

Technical assistance contracts often only specify the means, i.e. the consultant is responsible for implementing the tasks entrusted to it in the Terms of Reference and ensuring the quality of the services provided. The consultant should however contribute to improve the performance of the institution he is seconded to. A service consultant also has a duty of care under the contract: it must warn the Contracting Authority in good time of anything that might affect the proper implementation of the project.

But there may be cases where a mixed contract is needed (mix of global price and fee-based). In that case each item or each section of the contract should have a clear method of measurement and verification: global price or fee-based. It should be clear in the Terms of Reference and furthermore stipulated in the financial offer template.

An example of a mixed contract is a design and supervision contract which normally would consist of two sections: The design section is a collection of several global prices (geotechnical study, environmental study, economic study, etc.) whereas the supervision section would be fee-based.

A road supervision contract does indeed mainly consist of fee-based items, since the supervising engineer is affected by many factors which are beyond his control, like additional works, delays of various stakeholders including the contractor himself, the public authority, the donor. However, before the tender launch it is possible to single out tasks within the supervision duties, which can be treated as global price: For example, studies on technical alternatives which have to be studied by specialists outside the resident team. Once the number of expert days is agreed for the task the item will be accounted for as a global price.

Moreover, technical assistance projects may contain a mix of fee-based and global price for projects which are structured into different phases:

- A first critical phase can consist into a diagnostic, analysing institutions and stakeholders, assessing capacity, facilitating a joint process for defining precise actions and concrete outcomes. This can be a fee-based activity.
- A second phase would consist into the realisation of those specific actions. The individual output can be contracted as global price.

Useful indications are available in the Technical Cooperation Reform guidelines. See page 99 of the "The Guidelines on Making Technical Cooperation More Effective"<sup>16</sup>.

### **Increasing the use of global price contracts**

The use of fee-based service contracts where Statements of Exclusivity and Availability (SoEA) are obligatory, is justified where the output of the contract is difficult or impossible to define in advance and/or the main objective of the contract is to give support on a continuous basis to e.g. the administration of a beneficiary country.

In other cases the use of global price service contracts could be considered as more appropriate.

The following features are comparative advantages of global price contracts:

- ⇒ Global price contracts may include where relevant a price breakdown based on outputs/deliverables against which partial payments can be made (e.g. the deliverables could be related to the progress inception report/interim report/final report or to the different parts of a study/report/event) depending on the project in question.
- ⇒ It is possible to have incidental expenditures also under a global price contract in exceptional circumstances, which would make it possible to use a global price contract for organisation of seminars where the number of participants and its financial implications are difficult to estimate for the tenderers to give an example. The tender dossier should be modified accordingly to foresee incidental expenditures.

<sup>16</sup> [http://ec.europa.eu/europeaid/how/ensure-aid-effectiveness/reform\\_technical\\_cooperation\\_en.htm](http://ec.europa.eu/europeaid/how/ensure-aid-effectiveness/reform_technical_cooperation_en.htm)

- ⇒ The SoEA will as a general rule not be required in a global price contract. It will depend on the particularities of the project. If the SoEA is not deemed necessary, the Terms of Reference could instead include profiles which the tenderer will have to demonstrate in their offer that they have access to. The experts will be subject to approval by the Contracting Authority before they implement the services.
  
- ⇒ Tender procedures for global-price contracts for seminar or training sessions could include a "certification" process by which the experts proposed by the successful tenderer will be interviewed to check whether they are able to deliver as announced in the offer. As such a contract may include many experts; this "certification" may also take place during implementation of the contract.
  
- ⇒ The methodologies contained in the offers should include a workplan indicating the envisaged resources to be mobilised, allowing a better comparison of offers, and offering a basis for negotiation in case of amendment to the contract.
  
- ⇒ Global price contracts generate less micromanagement and verification of time sheets and incidental expenditures and therefore should free more time for working on operational and sector issues.

## 3.2. Procurement procedures

### 3.2.1. Contracts of € 200,000 or more

#### 3.2.1.1. Restricted procedure

All service contracts worth € 200,000 or more must be awarded by restricted tender procedure following the international publication of a contract forecast and a procurement notice as laid down in point 3.3.1.

### 3.2.2. Contracts under € 200,000

Contracts of a value of under € 200,000 may be awarded either under the Framework Contract procedure (see point 3.4.1.) or, if the use of an existing framework contract is impossible or has been unsuccessful, under a competitive negotiated procedure (see point 3.4.2.) involving at least three candidates. This does not apply to cases in which point 3.2.3.1. provides for the negotiated procedure.

### 3.2.3. Other procedures

#### 3.2.3.1. Negotiated procedure

##### **DIRECT CENTRALISED, DECENTRALISED: EX ANTE**

The prior approval of the relevant services of the European Commission must be sought for the use of the negotiated procedure.

##### **DECENTRALISED: EX-POST**

No prior approval from the European Commission is required for the use of the negotiated

procedure.

For service contracts, Contracting Authorities may use the negotiated procedure on the basis of one or several tenders in the following cases, after prior approval is granted:

- a) where, for reasons of extreme urgency brought about by events which the Contracting Authorities could not have foreseen and which can in no way be attributed to them, the time limits for the competitive procedures (referred to in points (a), (b) and (c) of Article 91(1) of the Financial Regulation applicable to the General Budget) cannot be met. The circumstances invoked to justify extreme urgency must in no way be attributable to the Contracting Authority.

Operations carried out in crisis situations as referred to in Article 168(2) of the implementing rules are considered to satisfy the test of extreme urgency (see annex A11a)<sup>17</sup>.

- b) where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field;

- c) where contracts extend activities already under way; there are two scenarios for this:

complementary services not included in the main contract but which, due to unforeseen circumstances, have become necessary to perform the contract, provided that the complementary services are technically and economically inseparable from the main contract without serious inconvenience for the Contracting Authority and the aggregate amount of additional services does not exceed 50% of the value of the principal contract;

additional services consisting of the repetition of similar services entrusted to the contractor providing these services under the initial contract, provided that a procurement notice was published for the initial contract and that the possibility of using the negotiated procedure for further services for the project as well as the estimated cost were clearly indicated in the procurement notice published for the initial contract. The contract can be extended only once, such that the value and duration of the extension do not exceed the value and duration of the initial contract.

- d) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the Contracting Authority may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, and which comply with the selection criteria<sup>18</sup> provided that the initial conditions of the tender procedure are not substantially altered and that the principle of fair competition is observed;
- e) where the contract concerned follows a contest and must, under the applicable rules, be awarded to the winner of the contest or to one of the winners, in which case, all winners must be invited to participate in the negotiations;
- f) where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider;

<sup>17</sup> Emergency assistance” is an additional case of negotiated procedure specific to EDF, distinct from the extreme urgency mentioned in a), mainly for actions which are not governed by new article 19c of Annex IV of the Cotonou Agreement. The emergency assistance is linked to the application of article 72 and/or 73 of the Cotonou Agreement (see annex A11a).

<sup>18</sup> Hence the importance to carefully choose the selection criteria which must be non-discriminatory, clear, may not go beyond the scope of the tasks or budget (see point 2.4.11.1 for further details).

- g) where one attempt for the use of the competitive negotiated procedure has failed following the unsuccessful use of a framework contract or unavailability of a suitable lot of the framework contract. In this case, after cancelling the competitive negotiated procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, and which comply with the selection criteria, provided that the original terms of the contract are not substantially altered;
- h) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the beneficiary country so requires.

The Contracting Authority must prepare a Negotiation Report (see template in Annex A10) justifying the manner in which the negotiations were conducted and the basis for the contract award decision resulting from these negotiations. The procedures given in point 3.3.12.1. and 3.3.12.2. must be followed by analogy, with the Negotiation Report being included in the contract dossier.

### **3.2.3.2. Competitive dialogue**

See point 2.4.7. for further details.

## **3.3. Restricted tenders (for contracts of € 200,000 or more)**

### **3.3.1. Publicity**

In order to ensure the widest possible participation in competitive tendering and the requisite transparency, the Contracting Authority must publish contract forecasts and procurement notices for all service contracts of € 200,000 or more.

#### **3.3.1.1. Publication of individual contract forecasts**

An individual contract forecast, setting out the specific characteristics of the planned tender procedure, must be published, save in exceptional circumstances, at least 30 days before the publication of the procurement notice.

The individual contract forecasts must give a brief indication of the subject, content and value of the contracts concerned. (See template in Annex B1). Given that they are forecasts, the publication of the forecasts do not bind the Contracting Authority to finance the contracts proposed, and service providers are not expected to submit application forms at this stage.

The contract forecasts are published in the Official Journal of the European Union, on the EuropeAid website and in any other appropriate media.

#### **DIRECT CENTRALISED, DECENTRALISED: EX-ANTE, DECENTRALISED: EX-POST**

Individual contract forecasts must be submitted for publication to the relevant services of the European Commission in electronic form using the template in Annex B1 at least 15 days before the intended date of publication, to allow time for translation.

#### **3.3.1.2. Publication of procurement notices**

In addition to forecasts, all service contracts of € 200,000 or more must also be the subject of a restricted procedure procurement notice published in the Official Journal of the European Union, on the EuropeAid website (at <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome>) and in any other appropriate media. A minimum of 30

days must be allowed to elapse between the publication of the contract forecast and the procurement notice.

The European Commission (acting on behalf of the Contracting Authority) is responsible for publication in the Official Journal of the European Union and on the EuropeAid website, while, if the procurement notice is published locally, the Contracting Authority must arrange local publication directly.

**DIRECT CENTRALISED, DECENTRALISED: EX-POST**

Procurement notices must be submitted for publication to the relevant services of the European Commission in electronic form, using the template in Annex B2, at least 15 days before the intended date of publication, to allow time for translation.

**DECENTRALISED: EX-ANTE**

In addition to the above, the finalised Terms of Reference (see section 2.6.) must also be submitted to the European Commission either at this time or in advance to demonstrate that the proposed procurement notice corresponds to the objectives of the contract.

The procurement notice must provide would-be service providers with the information they need to determine their capacity to fulfil the contract in question.

The selection criteria identified in the procurement notice must be:

- clearly formulated, without any ambiguity
- easy to verify on the basis of the information submitted using the standard application form (see Annex B3)
- devised to allow a clear YES/NO assessment to be made as to whether or not the candidate satisfies a particular selection criterion
- possible to prove by the tenderer.

The criteria specified in the annexes to this guide are given by way of illustration and should be adapted to the nature, cost and complexity of the contract.

The time allowed for candidates to submit their applications must be sufficient to permit proper competition. The minimum deadline for submitting applications is 30 days from the date of the notice's publication in the Official Journal of the European Union and on the EuropeAid website. The actual deadline will be determined by the contract's size and complexity.

If the procurement notice is also published locally by the Contracting Authority, it must be identical to the procurement notice published by the European Commission in the Official Journal and on the EuropeAid website and must appear at the same time.

The procurement notice should be clear enough to avoid candidates from having to request clarification or additional information during the procedure. Candidates may however submit questions should this be deemed necessary. If the Contracting Authority, either in response to this question or on its own initiative amends information in the procurement notice, a corrigendum with the changes must be published through the relevant service of the European Commission (see Annex A5b). The corrigendum will be published no later than 7 days after the request for publication. The deadline for the submission of applications may be extended to allow candidates to take into account the changes. Please note that in the event of clarification requests from candidates, the Contracting Authority cannot give a prior opinion on the assessment of the application.

If information in the procurement notice needs to be clarified, this can also be published on the EuropeAid Webpage.

### 3.3.2. Establishment of shortlists

The short-listing of candidates must be carried out by an Evaluation Committee appointed by the Contracting Authority comprising a non-voting Chairperson, a non-voting Secretary and an odd number of voting members (minimum of three) possessing the technical and administrative capacities necessary to give an informed opinion on the applications. Each member must have a reasonable command of the language in which the applications are submitted. All members of the Evaluation Committee are obliged to sign a Declaration of Impartiality and Confidentiality (see Annex A4). For responsibilities of the Evaluation Committee members, see 2.8.3.

#### **DIRECT CENTRALISED**

The Evaluation Committee (i.e., the Chairperson, the Secretary and the voting members) must be nominated on a personal basis by the relevant services of the European Commission. The standard practice is that at least one of the voting members should be a representative of the beneficiary country.

#### **DECENTRALISED: EX-ANTE**

The Evaluation Committee (i.e., the Chairperson, the Secretary and the voting members) must be nominated on a personal basis by the Contracting Authority. The composition of the Evaluation Committee must be submitted for approval to the European Commission. The composition of the committee is deemed approved if after 5 working days; the European Commission did not formulate any objection. As a general rule, the European Commission nominates an observer to follow all or part of the proceedings of the Evaluation Committee. Prior approval must be sought from the European Commission for the participation of other observers.

#### **DECENTRALISED: EX-POST**

The Evaluation Committee (i.e., the Chairperson, the Secretary and the voting members) must be nominated on a personal basis by the Contracting Authority.

The selection procedure involves:

- establishing a long list (see template in Annex B4) summarising all the applications received;
- eliminating candidates who are ineligible (see point 2.3.1.) or fall into one of the situations described in points 2.3.3. and 2.3.5.;
- applying the published selection criteria without modification.

For the supply of supporting documents for exclusion and selection criteria, see points 2.3.3. and 2.4.11.

After examination of the responses to the procurement notice, the service providers offering the best guarantees for the satisfactory performance of the contract will be short-listed.

The shortlist shall contain between four and eight candidates. If the number of eligible candidates meeting the selection criteria is greater than eight, the additional criteria published in the procurement notice will be applied in order to reduce the number of eligible candidates to eight.

If the number of eligible candidates meeting the selection criteria is less than the minimum of four, the Contracting Authority may invite to submit a tender only those candidates who satisfy the criteria to submit a tender.

**DIRECT CENTRALISED, DECENTRALISED: EX ANTE**

The prior approval of the relevant services of the European Commission must be sought before inviting less than four candidates.

**DECENTRALISED: EX-POST**

No prior approval from the European Commission is required.

The short-listing process and the final shortlist itself must be fully documented in a Shortlist Report (see template in Annex B5).

At the stage of the short-listing and before the shortlist is approved by the Evaluation Committee, the Contracting Authority shall also ensure that there is not a detection of the third party (i.e. a candidate including partners) concerned in the Early Warning System (W5).

The shortlist report is signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee.

**DIRECT CENTRALISED**

The shortlist report must be submitted for approval to the relevant services of the European Commission, which must decide whether or not to accept its recommendations.

**DECENTRALISED: EX-ANTE**

The shortlist report must be submitted for approval to the relevant services of the Contracting Authority, which must decide whether or not to accept its recommendations. The Contracting Authority must then submit the Shortlist Report together with its recommendation to the European Commission for approval.

If the European Commission does not accept the recommendation of the Contracting Authority, it must write to the Contracting Authority stating the reasons for its decision.

**DECENTRALISED: EX-POST**

No prior approval from the European Commission is required before the Contracting Authority acts on the recommendations of the Evaluation Committee.

Candidates not selected will be informed of that fact by the Contracting Authority by means of a standard letter, the format of which is given in Annex B7. Candidates who are selected will receive a letter of invitation to tender and the tender dossier (see template in Annex B8). At the same time, the final shortlist must be published on the EuropeAid website.

The Contracting Authority is responsible for preparing the shortlist notice using the template in Annex B6 and for submitting it in electronic form to the European Commission for publication on the EuropeAid website at the time of tender launch.

The information submitted to the non-successful candidates should follow the template mentioned above. However, in case of request for further information from the non-successful candidates, any information which is not confidential may be disclosed to them. An example may be justification why a reference is not considered to meet the technical selection criterion as this may assist them to be successful in future tenders.

### 3.3.3. Drafting and contents of the tender dossier

It is vital that tender documents be carefully drafted not only for the proper execution of the contract but also for the sound functioning of the procurement procedure.

These documents must contain all the provisions and information that candidates invited to tender need to present their tenders: the procedures to follow, the documents to provide, cases of

non-compliance, award criteria and their weightings, stipulations regarding subcontracting, etc. It may be desirable for representatives of the final beneficiaries to participate in the tender preparation at an early stage. See section 2.6. for guidelines for preparing Terms of Reference. Given the technical complexity of many contracts, the preparation of the tender dossier may require the assistance of one or more external technical specialist(s). Each such specialist must sign a Declaration of Objectivity and Confidentiality (see Annex A3).

The Contracting Authority is responsible for drawing up these documents.

#### **DIRECT CENTRALISED**

The tender dossier must be approved by the relevant services of the European Commission prior to issue. The standard practice is to consult and obtain the approval of the beneficiary country, and where appropriate of other parties involved, on the tender dossier.

#### **DECENTRALISED: EX-ANTE**

The Contracting Authority must submit the tender dossier to the Delegation of the European Union for approval prior to issue.

#### **DECENTRALISED: EX-POST**

No prior approval of the tender dossier by the European Commission is required.

#### **TENDER DOSSIER CONTENT**

In accordance with Annex B8

- A.** Instructions to tenderers
- B.** Draft Contract Agreement and Special Conditions with annexes
- C.** Other information (Shortlist notice, Administrative compliance grid, Evaluation grid)
- D.** Tender submission form

The tender dossier must clearly state whether or not the tender must be made with firm, non-revisable prices. The prices should normally be fixed and not subject to revision, but in specific cases a price revision clause might be justified. If that is the case, the tender dossier must lay down the conditions and/or formulae for revision of prices in the course of the contract. The Contracting Authority must then take particular account of:

- a) the nature of the contract and the economic situation in which it is taking place;
- b) the nature and duration of the tasks and of the contract;
- c) its financial interests.

A guarantee will be required to cover any pre-financing payment exceeding € 150,000. However, where the contractor is a public body, the responsible authorising officer may, depending on his/her risk assessment, waive that obligation. The guarantee will be released in one go at the very latest by the time 80% of the amount of the contract have been paid for fee-based contracts. For global price contracts, the financial guarantee must remain in force until the final payment has been made

### **3.3.4. Award criteria**

The contract award criteria serve to identify the best value for money. These criteria cover both the technical quality and price of the tender.

The technical criteria allow the quality of technical offers to be assessed. The two main types of technical criteria are the methodology and the curriculum vitae (CV) of the key experts

proposed. The technical criteria may be divided into sub criteria. The methodology, for example, may be examined in the light of the Terms of Reference, the optimum use of the technical and professional resources available in the beneficiary country, the work schedule, the appropriateness of the resources to the tasks, the support proposed for experts in the field etc. CVs may be awarded points for such criteria as qualifications, professional experience, geographical experience, language skills, etc.

Each criterion is allotted a number of points out of 100 distributed between the different sub-criteria. Their respective weightings depend on the nature of the services required and are determined on a case-by-case basis in the tender dossier.

The points must be related as closely as possible to the Terms of Reference describing the services to be provided and refer to parameters that are easy to identify in the tenders and, if possible, quantifiable.

The tender dossier must contain full details of the technical evaluation grid, with its criteria and sub-criteria and their weightings.

There must be no overlap between the selection criteria, which have been used to establish the shortlist and the award criteria which will be used to determine the best tender.

### **3.3.5. Additional information during the procedure**

The tender dossier should be clear enough to avoid candidates invited to tender from having to request additional information during the procedure. If the Contracting Authority, either on its own initiative or in response to the request of a short-listed candidate, provides additional information on the tender dossier, it must send such information in writing to all other short-listed candidates at the same time.

Tenderers may submit questions in writing no later than 21 days before the deadline for submission of tenders. The Contracting Authority must reply (sending a copy to the European Commission, in the case of decentralised ex-ante management) to all tenderers' questions no later than 11 days before the deadline for receipt of tenders. Please note that the Contracting Authority cannot give a prior opinion on the assessment of the tender. In the interest of transparency, all questions and answers should be sent simultaneously to all tenders.

If the tender has a particularly complex technical content, the Contracting Authority may organise an information meeting and/or site visit. This meeting must be announced in the tender dossier and must take place no later than 21 days before the expiry of the deadline for submission of tenders. All costs of attending such a meeting must be met by the tenderers. Individual visits by companies during the tender period cannot be organised by the Contracting Authority taking into account transparency and equal treatment of the tenderers.

### **3.3.6. Deadline for submission of tenders**

Tenders must reach the Contracting Authority at the address and by no later than the date and time shown in the invitation to tender. The period for submission must be sufficient to guarantee the quality of tenders and so permit truly competitive tendering. Experience shows that too short a period prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders.

**DIRECT CENTRALISED, DECENTRALISED: EX-ANTE, DECENTRALISED: EX-POST**

The minimum period between the dispatch of the letter of invitation to tender by the Contracting Authority and the deadline for receipt of tenders is 50 days. However, in exceptional cases, (in case of centralised and decentralised ex-ante: with prior authorisation from the relevant services of the European Commission), this period may be shorter.

**3.3.7. Period of validity**

See point 2.8.5.

**3.3.8. Submission of tenders**

Tenders must be submitted in accordance with the double envelope system, i.e., in an outer parcel or envelope containing two separate, sealed envelopes, one bearing the words "Envelope A - technical offer" and the other "Envelope B - financial offer". All parts of the tender other than the financial offer must be submitted in Envelope A.

Any infringement of these rules (e.g., unsealed envelopes or references to price in the technical offer) is to be considered a breach of the rules, and will lead to rejection of the tender.

This system enables the technical offer and the financial offer to be evaluated successively and separately: it ensures that the technical quality of a tender is considered independently of the price.

The tender must be submitted in accordance with the instructions to tenderers.

**3.3.9. The Evaluation Committee**

For composition, impartiality and confidentiality, responsibilities and timetable during the entire evaluation, see section 2.8.

**DIRECT CENTRALISED**

The standard practice is that at least one of the voting members should be a representative of the beneficiary country.

**3.3.10. Stages in the evaluation process****3.3.10.1. Receipt and registration of tenders**

On receiving tenders, the Contracting Authority must register them mentioning the date and time of reception and provide a receipt for those delivered by hand. The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened. The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

**3.3.10.2. Tender opening session****Part 1: Preparatory phase**

First meeting of Evaluation Committee, that is held before starting the actual evaluation. The tender dossier should have been circulated in advance to the members of the Evaluation Committee. The Chairperson presents the purpose of the tender and explains the procedures to be

followed by the Evaluation Committee, including the evaluation grid, award criteria and weightings specified in the tender dossier.

## **Part 2: Compliance with formal submission requirements**

See tender opening checklist in Annex B9.

The Committee must decide whether or not tenders comply with the formal submission requirements at this stage (i.e. following the opening of the outer envelope and the opening of the technical offer). The Summary of tenders received, which is attached to the Tender Opening Report (see Annex B10) must be used to record the compliance of each of the tenders with the formal submission requirements.

The Chairperson must check that no member of the Evaluation Committee has a potential conflict of interest with any of the tenderers (on the basis of the shortlist, the tenders received, consortium members and any identified subcontractor). See also point 2.8.2. and 2.8.3.

### **3.3.10.3. Evaluation of offers**

With the agreement of the other Evaluation Committee members, the Chairperson may communicate in writing with tenderers whose submissions require clarification, offering them the possibility to respond within a reasonable time limit to be fixed by the Committee.

## **Part 1: Administrative compliance**

The Committee checks the compliance of tenders with the instructions given in the tender dossier and in particular the administrative compliance grid (see Annex B8). Any major formal errors or major restrictions affecting performance of the contract or distorting competition result in the rejection of the tender concerned.

Nationality of subcontractors: the Evaluation Committee must check at this stage that the nationalities of any subcontractors identified in the technical offers satisfy the nationality rule in point 2.3.1. If the service provider is required by the terms of reference to provide supplies in accordance with detailed technical specifications laid down in the terms of reference, the Evaluation Committee must verify that the proposed supplies satisfy the rule of origin in point 2.3.1.

The tenderers must provide proof documents for the key experts proposed. This includes copies of the diplomas mentioned in the CV and employers' certificates or references proving the professional experience indicated in the CV. If missing proofs are requested it should only be for the relevant experience and diplomas which are among the requirements in the Terms of Reference.

The administrative compliance grid included in the Tender Dossier must be used to record the administrative compliance of each of the tenders.

Please note that the documentary proof for exclusion and selection criteria are not verified during this phase of the evaluation.

## **Part 2: Technical compliance**

The Committee then examines the technical offers, the financial offers remaining sealed. When evaluating technical offers, each member awards each offer a score out of a maximum 100 points in accordance with the technical evaluation grid (setting out the technical criteria, sub-criteria and weightings) laid down in the tender dossier (see point 3.3.4.). Under no circumstances may the Committee or its members change the technical evaluation grid communicated to the tenderers in the tender dossier.

In practice, it is recommended that tenders be scored for a given criterion one after another, rather than scoring each tender for all criteria before moving on to the next. Where the content of a tender is incomplete or deviates substantially from one or more of the technical award criteria laid down in the tender dossier (e.g. the required profile of a certain expert), the tender should be automatically rejected, without being given a score, but this should be justified in the evaluation report.

For an expert the scores should be given in comparison to the requirements stated in the Terms of Reference. Only diplomas and experience with documented proofs will be taken into account.

If the tender dossier expressly permits variants, such variants are scored separately. Where variants are allowed, the Contracting Authority may take them into account when:

- they are submitted by the tenderer submitting the offer which gives best value for money in the evaluation; and
- they meet the requirements specified by the tender dossier, attaining at least the minimum quality and performance required.

Each voting member of the Committee completes an evaluation grid (see Annex B12) to record his/her assessment of each technical offer in order to establish a general appreciation of strengths and weaknesses of the individual technical offers.

On completion of the technical evaluation, the points awarded by each member are compared at the Committee's session. Besides the numerical score, a member must explain the reasons for his/her choice and defend his/her scores before the Committee.

The Committee discusses each technical offer and each member awards it a final score. The Committee members may modify their individual evaluation grids as a result of the general discussion on the merits of each offer.

Once discussed, each Evaluation Committee member finalises his/her evaluation grid on each of the technical offers and signs it before handing it over to the Secretary of the Evaluation Committee. The Secretary must then compile a summary of the comments of the Committee members as part of the Evaluation Report.

In the case of major discrepancies, a full justification has to be provided by dissenting members during a meeting of the Evaluation Committee.

The Secretary calculates the aggregate final score, which is the arithmetical average of the individual final scores.

Interviews should be standard practice whenever the expert proposed has no relevant experience on EU projects in the same language area, as evidenced by the CV. In other cases verification/checks within EC are more appropriate (centralised procedures). They shall therefore be provided for in the tender dossier and must be well prepared if conducted.

The preferred method of conducting the interviews shall be by telephone (or equivalent). Exceptionally and only if duly justified, as it entails considerable costs both for tenderers and the Contracting Authority, the method may be an interview in person.

The Evaluation Committee may, after writing up its provisional conclusions and before definitively concluding its evaluation of the technical offers, decide to interview the key experts proposed in technically compliant tenders (i.e. those which have achieved an average score of 80 points or more in the technical evaluation). It is recommended that tenderers which have scored close to the technical threshold also be invited for the interview. In the case of interviews, the experts are interviewed by the Committee, at intervals close enough to permit comparison. Interviews must follow a standard format agreed beforehand by the Committee with questions

formulated and applied to all experts or teams called to interview. Tenderers must be given at least 10 days' advance notice of the date and time of the interview. If a tenderer is prevented from participating in an interview by force majeure, a mutually convenient alternative date/time is arranged with the tenderer. If the tenderer is unable to participate on this second occasion, its tender may be eliminated from the evaluation process.

On completion of these interviews, the Evaluation Committee, without modifying either the composition or the weighting of the criteria laid down in the technical evaluation grid, decides whether it is necessary to adjust the scores of the experts who have been interviewed. Any adjustments must be substantiated. The procedure must be recorded in the Evaluation Report. The indicative timetable for these interviews must be given in the tender dossier.

Once the Committee has established each technical offer's average score (the mathematical average of the final scores awarded by each voting member), any tender falling short of the 80-point threshold is automatically rejected. If no tender achieves 80 points or more, the tender procedure will be cancelled.

Out of the tenders reaching the 80-point threshold, the best technical offer is awarded 100 points. The others receive points calculated using the following formula:

Technical score = (final score of the technical offer in question/final score of the best technical offer) x 100.

Specimen Tender Evaluation Summary:

### Part1: Technical Evaluation

	<b>Maximum possible</b>	<b>Tenderer 1</b>	<b>Tenderer 2</b>	<b>Tenderer 3</b>
Evaluator A	100	55	88	84
Evaluator B	100	60	84	82
Evaluator C	100	59	82	90
Total	300	174	254	256
Average score (mathematical average)		$174/3 = \mathbf{58.00}$	$254/3 = \mathbf{84.67}$	$256/3 = \mathbf{85.33}$
Technical score (actual final score/highest final score)		Eliminated*	$84.67/85.33 \times 100 = \mathbf{99.22}$	<b>100.00</b>

\* Only tenderers with average score of at least 80 points qualify for the financial evaluation

#### 3.3.10.4. Evaluation of financial offers

Upon completion of the technical evaluation, the envelopes containing the financial offers for tenders who were not eliminated during the technical evaluation (i.e., those which have achieved an average score of 80 points or more) are opened and all originals of these financial offers are initialled by the Chairperson and the Secretary of the Evaluation Committee.

The Evaluation Committee has to ensure that the financial offer satisfies all formal requirements.

A financial offer not meeting these requirements may be rejected. Any rejection on these grounds will have to be fully justified in the Evaluation Report.

The Evaluation Committee checks that the financial offers contain no obvious arithmetical errors. Any obvious arithmetical errors are corrected without penalty to the tenderer.

The envelopes containing the financial offers of rejected tenderers following the technical evaluation must remain unopened and retained. They must be archived by the Contracting Authority together with the other tender procedure documents.

The total contract value comprises the fees (including employment-related overheads), the incidental expenditure and the provision for expenditure verification<sup>19</sup>, which are specified in the tender dossier. This total contract value is compared with the maximum budget available for the contract. Tenders exceeding the maximum budget allocated for the contract are eliminated.

The Evaluation Committee then proceeds with the financial comparison of the fees between the different financial offers. The provision for incidental expenditure, as well as the provision for expenditure verification is excluded from the comparison of the financial offers as it was specified in the tender dossier.

The tender with the lowest total fees receives 100 points. The others are awarded points by means of the following formula:

Financial score = (lowest total fees / total fees of the tender being considered) x 100.

When evaluating financial offers, the Evaluation Committee compares only the total fees.

Specimen Tender Evaluation Summary:

**Part 2: Financial Evaluation \***

	Maximum possible score	Tenderer 1	Tenderer 2	Tenderer 3
Total fees		Eliminated following technical evaluation	€951 322	€1 060 452
Financial score (lowest total fees/actual total fees x 100)			100	$951\,322/1\,060\,452 \times 100 = \mathbf{89.71}$

\* Only tenderers with average scores of at least 80 points in the technical evaluation qualify for the financial evaluation.

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<sup>19</sup> In the exceptional cases where the expenditure verification is to be made by the services of the Commission themselves, the tender documents, including the proposed contractual template, must be duly adapted. A derogation is thus required.

### 3.3.10.5. Conclusions of the Evaluation Committee

The best value for money is established by weighing technical quality against price on an 80/20 basis. This is done by multiplying:

- the scores awarded to the technical offers by 0,80
- the scores awarded to the financial offers by 0,20.

Specimen Tender Evaluation Summary:

#### Part 3: Composite Evaluation

	Maximum possible	Tenderer 1	Tenderer 2	Tenderer 3
Technical score x 0.80		Eliminated following technical evaluation	$99,22 \times 0.80 = \mathbf{79.38}$	$100.00 \times 0.80 = \mathbf{80.00}$
Financial score x 0.20			$100.00 \times 0.20 = \mathbf{20.00}$	$89.71 \times 0.20 = \mathbf{17.94}$
Overall score			$79.38 + 20.00 = \mathbf{99.38}$	$80.00 + 17.94 = \mathbf{97.94}$
Final ranking			<b>1</b>	<b>2</b>

The resulting, weighted technical and financial scores are then added together to find the tender with the highest score, i.e. the best value for money. It is essential to make the calculations strictly according to the above instructions. The Evaluation Committee's recommendation shall be to award the contract to the tender achieving the highest overall score on the condition that the documentary evidence submitted by the tenderer for the exclusion and selection criteria are verified and accepted.

#### EDF

Where two tenders are acknowledged to be equivalent, preference is given:

(a) to the tenderer of an ACP State; or

(b) if there is no such tender, to the tenderer who:

- offers the best possible use of the physical and human resources of the ACP States;
- offers the greatest subcontracting possibilities to ACP companies, firms or natural persons;

or

- is a consortium of natural persons, companies and firms from ACP States and the European Union.

As a result of its deliberations, the Evaluation Committee may make any of the following recommendations:

- Award the contract to the tenderer which has submitted a tender:
  - which complies with the formal requirements and the eligibility rules;
  - whose total budget is within the maximum budget available for the project;

- which meets the minimum technical requirements specified in the tender dossier;  
and
  - which is the best value for money (satisfying all of the above conditions).
- Cancel the tender procedure in exceptional circumstances, see point 2.4.13.

The Evaluation Report is drawn up. The Contracting Authority will then take its decision.

#### **DIRECT CENTRALISED**

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex B11) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee. This must be submitted for approval to the relevant services of the European Commission, which must decide whether or not to accept its recommendations.

#### **DECENTRALISED: EX-ANTE**

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex B11) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee. This must be submitted for approval to the relevant services of the Contracting Authority, which must decide whether or not to accept its recommendations. The Contracting Authority must then submit the Evaluation Report together with its proposed decision to the European Commission for approval. If there is an award proposal and the European Commission has not already received a copy of the tenders, these must be submitted.

If the European Commission does not accept the proposed decision, it must write to the Contracting Authority stating the reasons for its decision. The European Commission may also suggest how the Contracting Authority should proceed and give the conditions under which the European Commission might endorse the proposed contract on the basis of the tender procedure.

If the European Commission approves the proposed decision, the Contracting Authority will either commence awarding the contract (see point 3.3.12.) or cancel the tender, as decided.

#### **DECENTRALISED: EX-POST**

No prior approval from the European Commission is required before the Contracting Authority acts on the recommendations of the Evaluation Committee.

The entire evaluation procedure, including notification of the successful tenderer, must be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer might be unable to maintain its tender if the evaluation procedure takes too long. Please see section 2.8.5.

Subject to the Contracting Authority's legislation on access to documents, the entire tender procedure is confidential until the signature of the contract by both parties. The Evaluation Committee's decisions are collective and its deliberations must remain secret. The Committee members and any observers are bound to secrecy. In cases where the Contracting Authority's law contradicts the confidentiality required, the latter shall ask for prior authorisation from the European Commission before disclosing any information.

The Evaluation Report, in particular, is for official use only and may be divulged neither to tenderers nor to any party outside the authorised services of the Contracting Authority, the European Commission and the supervisory authorities (e.g., the European Court of Auditors).

### **3.3.11. Cancelling the tender procedure**

See point 2.4.13.

### **3.3.12. Award of the contract**

### 3.3.12.1. Notifying the award decision

#### **DIRECT CENTRALISED, DECENTRALISED: EX-POST**

Before the period of validity of tenders expires, and on the basis of the approved evaluation report, the Contracting Authority notifies the successful tenderer in writing that its tender has been accepted (see format of letter in Annex B13a) and draws attention to any obvious arithmetical errors which were corrected during the evaluation process.

At the latest before taking the award decision, the Contracting Authority/delegate body has ensured that there is not a detection of the third party (i.e. tenderer including partners) concerned in the Early Warning System (W5).

At the same time the second best tenderer (Annex B13b) and the other unsuccessful tenderers (Annex B13c) are notified of the result.

All notification letters should be sent also by e-mail or fax.

#### **DECENTRALISED: EX-ANTE**

In addition to the above, the European Commission must give its formal approval of award prior to the submission of the notification letters to the awarded tenderer (or to second best tenderer).

The notification letter (Annex B13a) to the successful tenderer implies that the validity of the successful tender is automatically extended for a period of 60 days.

At the same time the second best tenderer is informed about the result (Annex B13b). The Contracting Authority reserves the right to send a notification of award to the second best tenderer in case of inability to sign the contract with the first ranked tenderer. The validity of the second best tender will therefore be kept and will only be extended with the 60 days in case of notification of award.. Should the contract be signed with the successful tenderer before the 90 days validity expires the Contracting Authority should inform the second best tenderer without delay.

The Contracting Authority will furthermore, at the same time, also inform the remaining tenderers (Annex B13c). The consequence of these letters will be that the validity of their offers must not be retained.

### 3.3.12.2. Availability of key experts and proposed replacements

In the notification of award the Contracting Authority requests the successful tenderer to confirm the availability/unavailability of the key experts within 5 days of the date of the notification letter. As declared in the Statement of Exclusivity and Availability, should a key expert receive a confirmed engagement he/she must accept the first engagement which is offered chronologically.

Should any of the key experts be unavailable the successful tenderer will be allowed to propose a replacement expert. This may for example happen in case the expert has been successful in another tender procedure. The successful tenderer shall give due justification for the exchange of expert but acceptance by the Contracting Authority will not be limited to specific cases. The Contracting Authority will verify that the replacement expert's total score in relation to the evaluation criteria is at minimum the same as the scores given in the evaluation to the expert he/she is proposed to replace. It shall be emphasised that the minimum requirements for each evaluation criteria must be met by the replacement expert.

The maximum delay for proposing a replacement should be within 15 days of the date of the notification letter. Only one time-period to propose replacements will be offered to the successful tenderer, in which they may, if possible, propose several candidates for replacement of the same position. The Contracting Authority may choose between these proposed candidates.

If no replacement expert is proposed or if the proposed replacement expert does not either meet or exceed the total scores of the originally proposed expert, the Contracting Authority will decide either to notify the award to the second best tenderer (also giving them a chance to replace an expert in case of unavailability) or to cancel the procedure.

Summary of scenarios:

-The key experts are available.

The awarded tenderer confirms that all their key experts are available. When the Contracting Authority receives the information they proceed with contract preparation and signature, see point 3.3.12.2.

- One or more of the key experts are not available but replacements are acceptable.

The awarded tenderer confirms that one or more of their key experts are not available. They propose replacement experts within the delay also submitting the necessary documentary evidence (as requested for the original experts in the tender) and justification for unavailability. The Contracting Authority will verify that the replacement fulfils the minimum requirements in the Terms of Reference and that he/she would have scored minimum the same as the originally proposed expert (total scores). If several experts are proposed for the same position the Contracting Authority may choose between the experts. Written justification of the choice is made by the Authorising Officer and will be part of the contract dossier, see point 3.3.12.2.

- One or more of the key experts are not available and replacements are NOT acceptable.

The awarded tenderer confirms that one or more of their key experts are not available. They propose replacement experts within the delay also submitting the necessary documentary evidence (as requested for the original experts in the tender) and justification of unavailability. The Contracting Authority will verify that the expert fulfils the minimum requirements in the Terms of Reference and that the expert would have scored minimum the same as the originally proposed expert (total scores). If none of the replacements are accepted, the contract may either be awarded to the second best tenderer or the procedure may be cancelled. If the second best tenderer will be notified of the award they shall also be given the same possibility to confirm availability/unavailability and to propose replacements of their key experts. The same delay for replies will be applied (i.e. 5 and 15 days).

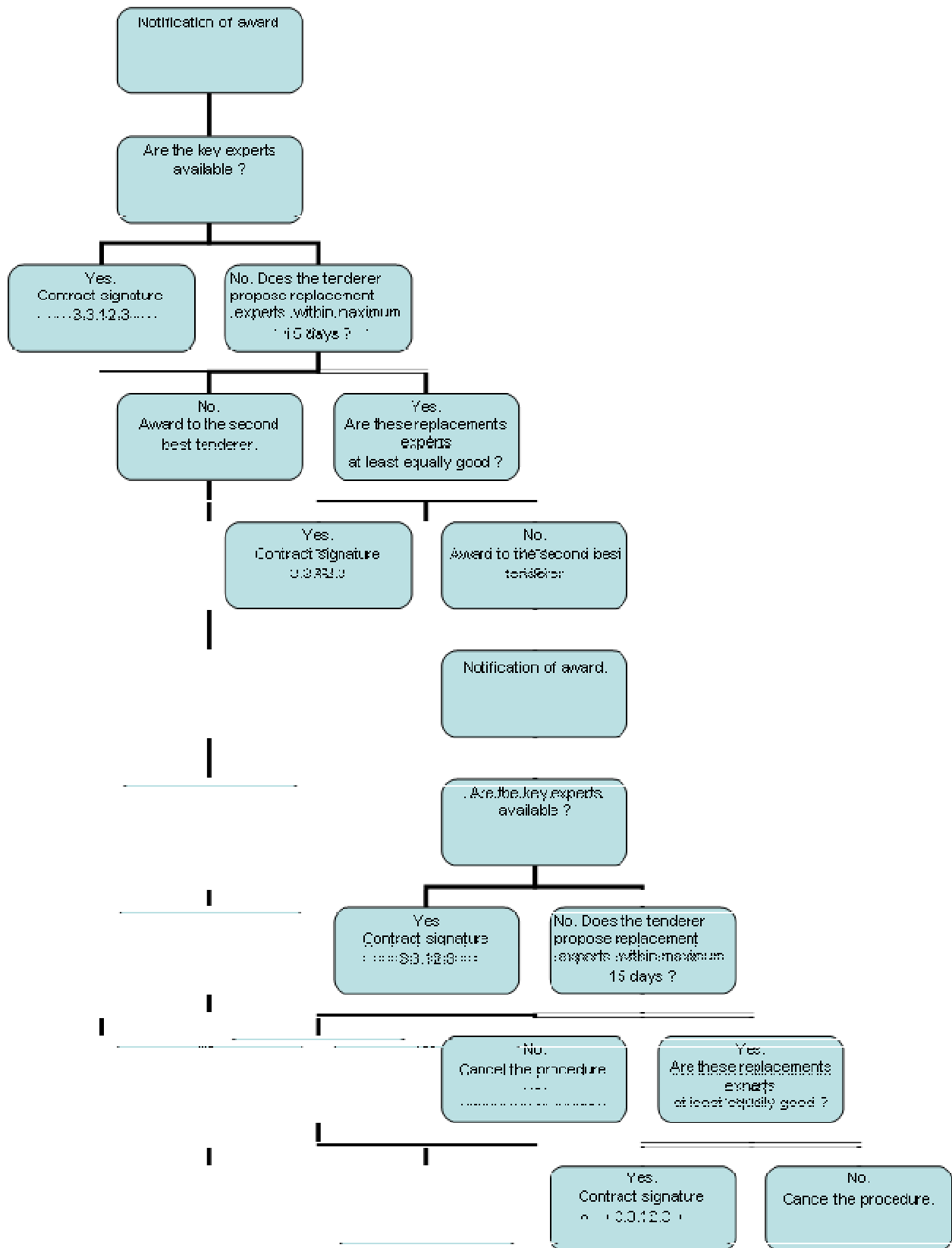
**DIRECT CENTRALISED**The justification for non acceptance of a replacement expert shall be recorded in writing and the decision shall be taken by the Authorising Officer. At the same time the Authorising Officer will take the decision to either award the contract to the second best tender or to cancel the procedure.

**DECENTRALISED: EX-ANTE**The decision not to accept the replacement experts and to award to the second best tenderer or to cancel the procedure must be submitted for approval to the relevant services of the European Commission, which must decide whether or not to accept the recommendations. If the European Commission does not accept the proposed decision, it must write to the Contracting Authority stating the reasons for its decision. The European Commission may also suggest how the Contracting Authority should proceed and give the conditions under which the European Commission might endorse the proposed recommendations.

**DECENTRALISED: EX-POST**

No prior approval from the European Commission is required before the Contracting Authority takes a decision.

Where a contract is awarded under a financing agreement which had not been concluded at the time the tender procedure was launched, the Contracting Authority must not notify the tenderers before the financing agreement has been concluded.



### 3.3.12.3. Contract preparation and signature

In preparing the contract for signature, the Contracting Authority must proceed as follows:

Prepare a contract dossier (if possible printed recto/verso) using the following structure:

- a) Explanatory note using the format in Annex A6
- b) Copy of the financing agreement authorising the project
- c) Copy of the call announcements (contract forecast, procurement notice and shortlist), Shortlist Report, Tender Opening Report, Evaluation Report and any other relevant information)
- d) Three originals of the proposed contract, which is based on the standard contract template

The standard contract annexes for the General conditions and Forms and other relevant documents must be reproduced without modification in every contract. Only the Special Conditions should need to be completed by the Contracting Authority.

In the **DECENTRALISED: EX-ANTE** approach the Contracting Authority sends the contract dossier to the Delegation of the European Union for endorsement. The Delegation signs all originals of the contract for endorsement (and initials all pages of the Special Conditions) to confirm the EU financing and sends them back to the Contracting Authority. No endorsement by the Delegation is required in certain cases contemplated in the Practical Guide for Programme Estimates

-Sign and date all originals of the contract and initial all pages of the Special Conditions.

-Send the three signed originals of the contract to the successful tenderer who must countersign them within 30 days of receipt and

-Return two originals to the Contracting Authority together with the eventual financial guarantee required in the contract. If the successful tenderer fails to do this within the specified deadline or indicates at any stage that it is not willing or able to sign the contract, the tenderer cannot be awarded the contract. The contract preparation process must be restarted from step 1 with a new contract dossier prepared using the second best tender (provided that that tender passed the technical threshold and is within the maximum budget available for the contract and that it is still valid.).

#### **DIRECT CENTRALISED, DECENTRALISED: EX-POST**

On receipt of the two signed originals from the successful tenderer, check that they correspond strictly to those sent originally, and send one original to the financial service in charge of payments and the other to the Project Manager.

**DECENTRALISED: EX-ANTE** On receipt of the two signed originals from the successful tenderer, the Contracting Authority sends one to the Delegation of the European Union.

The Contracting authority shall verify the power of representation of the natural person who signs the contract for the legal entity to which the contract has been awarded.

The contract takes effect on the date of the later signature. The contract cannot cover earlier services or enter into force before this date.

Contracting Authorities must retain all documentation relating to the award and execution of contract for a minimum period of seven years after payment of the balance and up to the date of the prescription of any dispute in regard to the law which governed the contract.

During and after this period, the Contracting Authorities will treat the personal data in conformity with their privacy policy. These documents must be made available for inspection by the European Commission, OLAF and the Court of Auditors.

The proposed contract must follow Annex B8.

#### **3.3.12.4. Publicising the award of the contract**

Regardless of the type of procedure, the Contracting Authority informs candidates and tenderers of decisions reached concerning the award of the contract as soon as possible, including the grounds for any decision not to award a contract.

Once the contract has been signed the Contracting Authority must prepare a contract award notice without delay (Annex B14). They shall send it in electronic format to the relevant service of the European Commission, which publishes the results of the tender procedure in the Official Journal, where applicable, and on the EuropeAid website and in any other appropriate media.

The award notice shall be published for procedures where a publication of the procurement notice has taken place or if the value of the contract is above international thresholds (> €200.000), unless 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 European Union, or the beneficiary country so requires, and where the publication of the award notice is deemed not to be appropriate.

In addition the Contracting Authority must record all statistical information concerning the procurement procedure including the contract value, the names of the other tenderers and the successful tenderer.

The information submitted to the non-successful tenderers should follow the templates mentioned above. However, in case of request for further information from the non-successful tenderers, any information which is not confidential may be disclosed to them. An example may be comments regarding their strengths and weaknesses as this may assist them to be successful in future tenders.

#### **3.3.13. Approval of key experts**

Where the European Commission is the Contracting Authority, where the beneficiary country has not been invited to the Evaluation Committee as evaluator, and where appropriate, a notification should be sent to the beneficiary country, through the Delegation of the European Union accredited to the country concerned, of the name of the successful tenderer and obtain its approval of the available key experts proposed before the contract signature.

The beneficiary country has to submit duly substantiated and justified objections to reject an expert which the authorising officer has to appreciate (e.g. persona non grata, public order issues, disclosure of elements unknown to the evaluation committee which could have affected the outcome of the evaluation). In case the authorising officer accepts the rejection, it may go to the second best offer if any. If this is the case the beneficiary country again gets the right to approve the experts. If there is no second best offer or in case of a second rejection the tender is cancelled. The described request for approval of the key experts is however not a request for approval of the European Commission's evaluation.

The approval shall also be obtained for any replacement key expert proposed by the contractor. The beneficiary country may not withhold its approval unless it submits duly substantiated and justified objections to the proposed experts in writing to the Delegation of the European Union.

If the beneficiary country fails to issue or to reject its approval within 15 days of the date of the request for approval for the key experts, the expert is deemed to be approved.

A replacement of experts may only be requested by the beneficiary country if duly substantiated and justified objections are given in writing.

### **3.3.14. Provision and replacement of experts**

Where the tender procedure involves the provision of experts, the contractor is expected to provide the experts specified in the tender. This specification may take various forms.

Whatever the form, the key experts to be provided by the contractor must be identified and named in the contract.

Should a company and/or proposed experts *deliberately* conceal the fact that all or some of the team proposed in their tender are unavailable from the date specified in the tender dossier for the start of the assignment, the Committee may recommend that the tenderer be excluded from the tender procedure. It is reminded that the tenderer or contractor may also be subject to administrative and financial penalties foreseen in section 2.3.4. of this Guide and furthermore it may lead to their exclusion from other contracts funded by the European Union.

#### **DIRECT CENTRALISED, DECENTRALISED: EX-POST**

Should the Contracting Authority learn that a tenderer has confirmed the availability of a key expert and signed the contract although the tenderer has deliberately concealed the fact that the expert is unavailable from the date specified in the tender dossier for the start of the assignment, the Contracting Authority may decide to terminate the contract using article 36.3 (m) of the General Conditions.

#### **DECENTRALISED: EX-ANTE**

In addition to the above, the prior approval of the European Commission is required before cancelling the contract.

However, the contract must not only identify the key staff to be provided but specify the qualifications and experience required of them. This is important if the contractor has to replace staff during the implementation of the tasks.

#### **DIRECT CENTRALISED, DECENTRALISED: EX-POST**

The contractor must first obtain the Contracting Authority's written approval by substantiating its request for replacement. The Contracting Authority has 30 days from the date of receipt of the request to reply.

#### **DECENTRALISED: EX-ANTE**

In addition to the above, the prior approval of the European Commission is required.

The contractor must, on its own initiative, propose a replacement where:

- a member of staff dies, falls seriously ill or suffers an accident;
- it becomes necessary to replace a member of staff for any other reasons beyond the contractor's control (e.g. resignation etc).

#### **DIRECT CENTRALISED, DECENTRALISED: EX POST**

In the course of implementation, the Contracting Authority may also submit a substantiated written request for a replacement where it considers a member of staff incompetent or unsuitable for the purposes of the contract.

## **DECENTRALISED: EX-ANTE**

In addition to the above, the prior approval of the European Commission is required before submitting the request for replacement.

Where a member of staff has to be replaced, the replacement must possess at least equivalent qualifications and experience and his fee-rate may in no circumstances exceed that of the expert replaced. Where the contractor is unable to provide a replacement possessing equivalent qualifications and/or experience, the Contracting Authority may either terminate the contract, if it considers that its performance is jeopardised, or, if it considers that this is not the case, accept the replacement, in which case the latter's fees are to be negotiated downwards to reflect the proper level of remuneration. Any additional expenses resulting from the replacement of staff are borne by the contractor except in the case of replacement resulting from death or where the Contracting Authority requests a replacement not provided for by the contract. Where an expert is not replaced immediately and some time elapses before the new expert takes up his functions, the Contracting Authority may ask the contractor to assign a temporary expert to the project pending the new expert's arrival or to take other steps to bridge the gap. Whatever the case may be, the Contracting Authority will make no payment for the period of absence of the expert or his replacement (whether temporary or permanent).

### **3.4. Procedures for the award of contracts under €200,000**

#### **3.4.1. Framework contracts**

The services with a value of more than €10,000, but less than €200,000, must be contracted using the Framework Beneficiaries 2009 (FWC BENEf 2009) which runs until 15/09/2011 and may be extended until 15/09/2013. It is a multiple framework contract with reopened competition. Detailed information about the use of FWC BENEf 2009 can be found in the EuropeAid FWC webpages. The information included in section 3.4. applies only to FWC BENEf 2009.

For sectors which are not covered by the Framework Contract or where such a procedure has been unsuccessful or is impossible, the competitive negotiated procedure must be used.

##### **3.4.1.1. Conditions of use**

The framework contract must be used for all the operations within its scope and when the contracting authority is the European Commission acting on behalf of the beneficiary countries.

These operations must fulfil the following conditions:

- be financed with external aid funds;
- be in the exclusive interest of an authority benefiting of external aid;
- not exceed € 200 000, addenda included, without undue splitting;
- not give rise to services exceeding 260 days per expert;
- be implemented over maximum 2 years (730 calendar days), addenda included.

The FWC BENEf 2009 can be used by other entities managing external aid funds upon authorisation of EuropeAid for operations fulfilling the above mentioned conditions of use.

As it has been concluded with an amount of €0, the contracting authority for a specific contract must therefore have the funds necessary to cover the services contracted under the Framework contract.

It is an instrument for fast and transparent recruiting of experts for all activities within the project cycle. It contains several thematic lots. Several contractors have been selected for each lot. They are consortia represented by a lead firm. The leading firm has been designated by the other partners to act on their behalf for the purposes of the contract and is the only one authorised to commit the consortium. The only valid contacts for contractual purposes are contacts with the lead firm.

### 3.4.1.2. Procedure

As it is a multiple Framework contract, the Specific contract award is based on a competition.

All the documents necessary for the different steps of the procedure must follow the forms set for the FWC BENEf 2009.

#### a) Consultation

- A request for services is sent to minimum 4 Framework contractors of the same lot. However, in case of ineligibility (conflict of interest, suspension) of a framework contractor within a lot of 4 contractors, it is authorized to consult only 3 contractors. If less than 3 framework contractors are eligible, the project manager cannot launch a FWC procedure. For the lots with more than 4 framework contractors, the project manager chooses the adequate number of framework contractors to be consulted. A request can only be issued during the period of validity of the Framework contract.
- The process of the consultation shall respect the principles of transparency, proportionality, equal treatment, non-discrimination and of sound competition. However, the derogation and exception rules applied to tendering procedures are not applicable. For example, the instructions on shortening the offer submission deadline for tendering procedures do not apply to a Framework contract request.
- In contrast to a tendering procedure, where a suspension clause may be added, no request may be issued under the Framework Contract if no funds are available to cover the operation. It is suggested not to use budget lines for which the deadline for payments is set too close to the end of a specific contract implementation.
- The specific ToR (Terms of Reference) of the future specific contract is attached to the request in order to give all the information needed by the framework contractors for submitting an offer. The ToR must be clear on how the obtained outputs are conform to the requested outputs. Their quality, in particular their clarity, is critical for the quality of the offer and the success of the assignment.
- The contractual deadline for submission of offers is at least 14 days<sup>20</sup> from the sending of the request. It is possible to extend this period but a reduction is only possible if none of the consulted framework contractors objects.
- The framework contractors can ask for clarifications. The answers are sent to all consulted framework contractors at the same time. In the event of amendments during the consultation period that affect the identification of experts, the date for submission of offers must be adapted accordingly.

#### b) Evaluation of offers

Offers are valid for 14 calendar days after the deadline for submission. The offers received, whatever their number, must be evaluated.

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<sup>20</sup> For the lot Conferences, the submission period can be reduced to 7 days for events with up to 15 participants.

The number of evaluators is at least 3 and one representative of the beneficiary country must be invited to participate to the evaluation as evaluator.

Only the offers complying with the deadline for offers submission, the eligibility rules, the Framework contractors maximum prices, the maximum budget if any indicated and the minimum requirements indicated in the specific ToR's for the experts, are evaluated.

The most economically advantageous offer is to be retained on the basis of a 80/20<sup>21</sup> ratio between technical quality (CV and availability of experts, methodology when requested) and the price (total of the fees<sup>22</sup>). The technical score can be adjusted taking into account possible interviews with the experts when foreseen in the specific ToR's.

If no offer is selected, the project manager can, after having analysed the specific ToRs, modify and relaunch the request with the same framework contractors. Otherwise the competitive negotiated procedure must be used.

The notification of the results of the evaluation must be communicated within 14 days of the deadline for receipt of offers to all the Framework contractors who submitted offers. The projectmanager does not have to wait for the specific contract to be signed.

#### a) Signature of the specific contract

The specific contract is based on the first ranked offer that emerged from the evaluation.

The specific contract comprises the specific contract itself, the specific ToRs, a methodology when relevant and the financial offer. It enters into force when the signature of the specific contract by the contracting authority is notified. A copy of the specific contract signed by the latter must be sent by fax to the retained framework contractor and then the latter can start the implementation of the services. Two sets of the specific contract are sent by courier for counter signature.

#### b) Assessment of the framework contractor's performance

The performance assessment form for the framework contractor must be filled in after the end of the assignment. This assessment relates to the quality of the execution by the framework contractor and must be communicated to the latter for comments.

### **3.4.2. Competitive negotiated procedure**

If the Contracting Authority cannot use the Framework Contract or its use is unsuccessful (e.g. the technical expertise required is not available in the Framework Contract), the Contracting Authority may award contracts under €200,000 by competitive negotiated procedure, without publication.

Note that the competitive negotiated procedure requires more time than the procedure to initiate an assignment under the Framework Contract.

The Contracting Authority draws up a list of at least three service providers of its choice. The candidates are sent a letter of invitation to tender accompanied by a tender dossier. The specific annexes for simplified tenders shall be used (procurement notice, tender form, admin grid, contract form, list of invited tenderers and invitation letter), for this procedure as well as for the single tender procedure (see below). For all other documents of the tender dossier the regular service annexes shall be used. Tenders must reach the Contracting Authority at the address and

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<sup>21</sup> For the lot Conferences, it is a 50/50 weighting.

<sup>22</sup> For the lot Conferences, the flat rates and the reimbursable are taken into account on a 50/50 basis.

by no later than the date and time shown in the invitation to tender. The chosen candidates must be allowed at least 30 days from the dispatch of the letter of invitation to tender to submit their tenders. Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise, appointed by the Contracting Authority.

If following consultation of the tenderers, the Contracting Authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.

In the event of 1 failure of the competitive negotiated procedure, following the unsuccessful use of a framework contract, the contract may be concluded by negotiated procedure subject to the prior approval of the relevant services of the European Commission. The procedure for evaluating the tenders and awarding the contract is the same as under the restricted procedure (see points 3.3.9. to 3.3.12.2.).

The Contracting Authority may award service contracts of a value of €10,000 or less on the basis of a single tender. See point 2.4.8.

### **3.5. Modifying service contracts**

See section 2.10. for the general information regarding contract modification.

Any justified modification which involves a change in the total value of the contract must be made through an addendum.

Additional services and complementary services are regarded as negotiated procedures, see point 3.2.3.1.c.), and either an addendum or a new contract should be signed.

## 4. Supply contracts

### 4.1. Introduction

Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products. A contract for the supply of products and, incidentally, for sitting and installation shall be considered a supply contract.

### 4.2. Procurement procedures

#### 4.2.1. Contracts of €150,000 or more

##### 4.2.1.1. International open procedure

All supply contracts must be the subject of an international open tender procedure following publication of a contract forecast and a procurement notice as laid down in section 4.3.

#### 4.2.2. Contracts between €60,000 and €150,000

##### 4.2.2.1. Local open procedure

In this case, supply contracts are awarded by an open procedure in which the procurement notice is published in the beneficiary country. The European Commission publishes the references of such tender procedures (publication reference, country, Contracting Authority and type of contract) on the EuropeAid website with the address from which firms can obtain further information. It is also possible to publish the full procurement notice and tender dossier on the website. For details see section 4.4.

#### 4.2.3. Contracts under €60,000 – competitive negotiated procedure

Supply contracts under €60,000 are awarded by competitive negotiated procedure. At least three candidates are sent an invitation to tender. No procurement notice needs to be published. For details, see section 4.5.

However, the Contracting Authority may award supply contracts of a value of €10,000 or less on the basis of a single tender.

#### 4.2.4. Other procedures

##### 4.2.4.1. Negotiated procedure

**DIRECT CENTRALISED**

The prior approval of the relevant services of the European Commission must be sought for the use of the negotiated procedure.

**DECENTRALISED: EX-ANTE**

The Contracting Authority must seek prior approval from the European Commission for the use of the negotiated procedure.

**DECENTRALISED: EX-POST**

No prior approval from the European Commission is required.

Supply contracts may be awarded by negotiated procedure on the basis of one or several tenders

in the following cases:

- a) where, for reasons of extreme urgency brought about by events which the Contracting Authorities could not have foreseen and which can in no way be attributed to them, the time-limit for the competitive procedures (referred to in points (a), (b) and (c) of Article 91(1) of the Financial Regulation applicable to the General Budget) cannot be met.

Operations carried out in crisis situations as referred to in Article 168(2) of the Implementing Rules are considered to satisfy the test of extreme urgency (see annex A11a)<sup>23</sup>;

- b) where warranted by the nature or particular characteristics of the supplies, for example, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents;
- c) for additional deliveries by the original supplier intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the Contracting Authority to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance;
- d) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the Contracting Authority may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, and which comply with the selection criteria<sup>24</sup>, provided that the initial conditions of the tender procedure are not substantially altered and the principle of equal treatment is observed;
- e) where after two attempts the competitive negotiated procedure has been unsuccessful, that is to say, where no administratively and technically valid tender or no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the competitive negotiated procedure, the Contracting Authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitations to tender, and which comply with the selection criteria, provided that the original terms of the contract are not substantially altered;
- f) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the beneficiary country so requires;
- g) for contracts in respect of supplies quoted and purchased on a commodity market;
- h) for contracts in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law.

The Contracting Authority must prepare a Negotiation Report (see template in Annex A10) justifying the manner in which the negotiations were conducted and the basis for the contract award decision resulting from these negotiations. The procedures described in point 4.3.11.1. - 4.3.11.2. must be followed by analogy, with the Negotiation Report being included in the

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<sup>23</sup> Emergency assistance” is an additional case of negotiated procedure specific to EDF, distinct from the extreme urgency mentioned in a), mainly for actions which are not governed by new article 19c of Annex IV of the Cotonou Agreement. The emergency assistance is linked to the application of article 72 and/or 73 of the Cotonou Agreement (see annex A11a).

<sup>24</sup> Hence the importance to carefully choose the selection criteria which must be non-discriminatory, clear, may not go beyond the scope of the tasks or budget (see point 2.4.11.1. for further details).

contract dossier.

#### 4.2.4.2. Dynamic purchasing system

A dynamic purchasing system is a completely electronic process for making commonly used purchases which is limited in duration (max 4 years). A contract notice is published to invite for indicative tenders which should be evaluated within 15 days. The tenderers that comply with the specifications are admitted to the system. The system is open throughout its validity to any economic operator who satisfies the selection criteria and has submitted an indicative tender that is found compliant.

For each individual contract, a simplified contract notice is published giving tenderers that have not yet been admitted to the system the possibility to submit an indicative tender within 15 days. The Contracting Authority then invites all the tenderers admitted to the system to submit a tender within a reasonable time limit. The contract will be awarded to the tenderer who has submitted the tender offering best value for money on the basis of the award criteria specified in the contract notice for the establishment of the dynamic purchasing system.

The Contracting Authority may not resort to this system to prevent, restrict or distort competition.

The legal framework of this procedure is defined for future use, but the IT tools (confidentiality, security) to make it possible are **not yet available** in the Commission.

#### 4.2.4.3. Competitive dialogue

See point 2.4.7. for further details.

### 4.3. International open tender for contracts of €150,000 or more

#### 4.3.1. Publicity

In order to ensure the widest possible participation in competitive tendering and the requisite transparency, a contract forecast and a procurement notice must be published for every open tender procedure.

##### 4.3.1.1. Publication of individual contract forecasts

An individual contract forecast setting out the specific characteristics of the planned tender procedure, must be published, save in exceptional circumstances, at least 30 days before the publication of the procurement notice. The individual contract forecasts must give a brief indication of the subject and content of the tenders concerned. (See template in Annex C1). Given that they are forecasts, publication does not bind the Contracting Authority to finance the contracts proposed and prospective suppliers are not expected to submit tenders at this stage.

The contract forecasts are published in the Official Journal of the European Union, on the EuropeAid website and in any other appropriate media.

#### **DIRECT CENTRALISED, DECENTRALISED: EX-ANTE, DECENTRALISED: EX-POST**

Individual contract forecasts must be submitted for publication to the relevant services of the European Commission in electronic form using the template in Annex C1 at least 15 days before the intended date of publication, to allow time for translation. They must be published at least 30 days before the corresponding procurement notice.

#### 4.3.1.2. Publication of procurement notices

In addition to forecasts, all supply contracts of €150,000 or more must also be the subject of a procurement notice published in the Official Journal of the European Union, on the EuropeAid website (at [http://ec.europa.eu/europeaid/index\\_en.htm](http://ec.europa.eu/europeaid/index_en.htm)) and in any other appropriate media. A minimum of 30 days must be allowed to elapse between the publication of the contract forecast and the procurement notice.

The European Commission (acting on behalf of the Contracting Authority) is responsible for publication in the Official Journal of the European Union and on the EuropeAid website, while, if the procurement notice is published locally, the Contracting Authority must arrange local publication directly.

#### **DIRECT CENTRALISED, DECENTRALISED: EX-ANTE, DECENTRALISED: EX-POST**

Procurement notices and tender dossiers must be submitted for publication to the relevant services of the European Commission in electronic form using the template in Annex C2 at least 15 days before the intended date of publication, to allow time for translation of the procurement notice.

The procurement notice must provide would-be suppliers with the information they need to determine their capacity to fulfil the contract in question. If the procurement notice is also published locally, it must be identical to the procurement notice published on the EuropeAid website and appear at the same time.

The tender dossier for the contract in question is published on the EuropeAid website but it must be sent to would-be suppliers upon request.

If the Contracting Authority, either on its own initiative or in response to the request of a tenderer amends information in the procurement notice, a corrigendum with the changes must be published through the relevant service of the European Commission (see Annex A5b). The corrigendum will be published no later than 7 days after the request for publication. The deadline for the submission of tenders may be extended to allow the tenderers to take into account the changes.

#### 4.3.2. Drafting and contents of the tender dossier

It is vital that tender documents be carefully drafted not only for the proper execution of the contract but also for the sound functioning of the procurement procedure.

These documents must contain all the provisions and information that tenderers need to present their tenders: the procedures to follow, the documents to provide, cases of non-compliance, award criteria, etc. It may be desirable for representatives of the final beneficiaries to participate in the tender preparation at an early stage. See section 2.6. for guidelines for preparing Technical Specifications.

Technical specifications must afford equal access for candidates and tenderers and not have the effect of creating unjustified obstacles to competitive tendering. They define the characteristics required of a product, service or material or work with regard to the purpose for which they are intended by the Contracting Authority. Those characteristics include:

- a) the quality levels;
- b) environmental performance;
- c) wherever possible, the accessibility criteria for people with disabilities or the design for all users;

- d) the levels and procedures of conformity assessment;
- e) fitness for use;
- f) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production procedures and methods.

The Contracting Authority is responsible for drawing up these documents.

Given the technical complexity of many supply contracts, the preparation of the tender dossier - particularly the Technical Specifications - may require the assistance of one or more external technical specialist(s). Each such specialist must sign a Declaration of Objectivity and Confidentiality (see Annex A3 ).

As with Terms of Reference for service contracts, particular attention must be paid to the preparation of the Technical Specifications for the supplies tendered. These are the key to successful procurement and a sound supply contract and project.

The Technical Specifications indicate - where applicable, lot by lot - the exact nature and performance characteristics of the supplies. Where applicable, they also specify delivery conditions and installation, training and after-sales service.

It is essential that the performance characteristics correspond to the intended purpose. If there needs to be an information meeting or site visit to clarify technical requirements at the site where supplies are to be installed, this should be specified in the instructions to tenderers, together with details of the arrangements.

The purpose of the Technical Specifications is to define the required supplies precisely. The minimum quality standards, defined by the Technical Specifications, will enable the Evaluation Committee to determine which tenders are technically compliant.

Unless warranted by the nature of the contract, Technical Specifications mentioning or describing products of a given brand or origin and thereby favouring or excluding certain products are prohibited. However, where products cannot be described in a sufficiently clear or intelligible manner, they may be named as long as they are followed by the words "or equivalent".

#### **DIRECT CENTRALISED**

The tender dossier must be approved by the relevant services of the European Commission. The standard practice is to consult and obtain the approval of the beneficiary country, and where appropriate of other parties involved, on the tender dossier.

#### **DECENTRALISED: EX-ANTE**

The Contracting Authority must submit the tender dossier to the Delegation of the European Union for approval prior to issue.

#### **DECENTRALISED: EX-POST**

No prior approval of the tender dossier by the European Commission is required.

### **TENDER DOSSIER CONTENT**

- A. Instruction to Tenderers
- B. Draft Contract, Special Conditions and Annexes (incl. Technical Specifications)
- C. Further Information
- D. Tender Form for a Supply Contract

See standard format in Annex C4.

The tender documents must clearly state whether a firm, non-revisable price must be quoted. The prices should normally be fixed and not subject to revision, but in specific cases a price revision clause might be justified. If that is the case, they must lay down the conditions and/or formulas for revision of prices during the lifetime of the contract. In such cases the Contracting Authority must take particular account of:

- a) the object of the procurement procedure and the economic situation in which it is taking place;
- b) the type of tasks and contract and their duration;
- c) its financial interests.

A guarantee is required in return for the payment of pre-financing exceeding €150,000. However, where the contractor is a public body, the responsible authorising officer may, depending on his risk assessment, waive that obligation. The guarantee will be released after provisional acceptance in accordance with the terms of the contract.

### **4.3.3. Selection and award criteria**

The selection criteria concern the tenderer's capacity to execute similar contracts. The selection procedure involves:

1. eliminating tenderers who are ineligible (see point 2.3.1.) or fall into one of the situations described in points 2.3.3. and 2.3.5.;
2. checking that the tenderers' financial situation (financial and economic capacity) is sound; as backed up, for example, by balance sheets and turnover for the previous three years (see point 2.4.11.) if specifically required in the Tender Dossier;
3. verifying the tenderers' technical and professional capacities, for example by looking at their average annual staffing levels, the size and professional experience of their management and the main services supplied and supplies delivered in the field in question in recent years (see point 2.4.11.).

The selection criteria specified in the annexes to this guide are given by way of illustration and should be adapted to the nature, cost and complexity of the contract.

If, for some exceptional reason which the Contracting Authority considers justified, the tenderer is unable to provide the references required by the Contracting Authority, it may prove its economic and financial capacity by any other means which the Contracting Authority considers appropriate. Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the Contracting Authority or on its behalf by a competent official body of the country in which tenderer is established, subject to that body's agreement. Such checks shall concern the tenderer's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

Only successful tenderers have to supply supporting documents for the selection criteria before the award of the contract (optional for contracts below €150.000, see point 2.4.11.).

The award criterion applied to technically compliant tenders is price or, in exceptional cases and after approval of the exception by the relevant services of the European Commission, the best value for money.

The criteria should be precise, non-discriminatory and not prejudicial to fair competition. All criteria specified in the tender dossier must be applied as such and cannot in any case be modified during the procedure. The technical evaluation will be based on the evaluation grid

published in the tender dossier, which must not be modified in any way during the evaluation process. Given the wide variety of supplies and their technical nature, the grid must be individually developed for each tender in a YES/NO format to allow clear assessment whether or not the offer responds to the technical requirements of the tender dossier.

#### **4.3.3.1. Supply contracts not including ancillary services**

Price is the sole criterion for awarding supply contracts not including ancillary services (such as after-sales services and training). All non-compliant tenders having already been eliminated, the contract is awarded to the tenderer submitting the least expensive, compliant tender.

If the selected tender exceeds the maximum budget available for the contract, the provisions of point 4.2.4.1.(d) apply.

#### **4.3.3.2. Supply contracts including ancillary services**

Where a supply contract includes ancillary services (such as after sales services and/or training), the technical evaluation should take into account the quality of such services on a YES/NO basis. All non compliant tenders having been eliminated, the contract is awarded to the tenderer offering the lowest price for both equipment and ancillary services together.

If the selected tender exceeds the maximum budget available for the contract, the provisions of point 4.2.4.1.(d) apply.

#### **4.3.3.3. Particularly complex supplies**

For particularly complex supplies, a combination of quality and price may be used as the basis for awarding the contract to the best value for money. This should be limited to products with particular security/production/implementation constraints.

#### **DIRECT CENTRALISED, DECENTRALISED: EX-ANTE**

The relevant services of the European Commission must give their prior approval to the use of this approach and will provide technical support on a case-by-case basis.

#### **DECENTRALISED: EX-POST**

If it intends to use this approach, the Contracting Authority must record the justification for this in the Evaluation Report and notify the European Commission.

#### **4.3.4. Additional information during the procedure**

The tender dossier should be clear enough to avoid tenderers having to request additional information during the tender procedure. If the Contracting Authority, either on its own initiative or in response to a request from a tenderer, provides additional information on the tender dossier, it must send such information in writing to all other tenderers at the same time.

Tenderers may submit questions in writing no later than 21 days before the deadline for submission of tenders. The Contracting Authority must reply (sending a copy to the European Commission, in the case of decentralised ex-ante management) to all tenderers' questions no later than 11 days before the deadline for receipt of tenders. The questions and answers, clarifications and possible minor changes to the tender dossier shall be published on the EuropeAid website. Please note that the Contracting Authority cannot give a prior opinion on the assessment of the tender.

If the questions result in a modification of the text in the procurement notice a corrigendum must be published as explained in point 4.3.1. The deadline for the submission of tenders may be

extended to allow tenderers to take account of the changes. The corrigendum shall also be published on the EuropeAid website.

If the tender has a particularly complex technical content, the Contracting Authority may organise an information meeting and/or site visit. This meeting must be announced in the tender dossier and must take place at least 21 days before the expiry of the deadline. All costs of attending such a meeting must be met by the tenderers. Individual visits by companies during the tender period cannot be organised by the Contracting Authority taking into account transparency and equal treatment of the tenderers.

#### **4.3.5. Deadline for the submission of tenders**

Tenders must reach the Contracting Authority at the address and, at the very latest, the date and time indicated in the tender dossier. The period for submission must be sufficient to guarantee the quality of tenders and so permit truly competitive tendering.

Experience shows that too short a period prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders. The deadline for submissions must fall on a working day in the country of the Contracting Authority and if possible be combined with the tender-opening session.

##### **DIRECT CENTRALISED, DECENTRALISED: EX-ANTE**

The minimum period between the date of publication of the procurement notice and the deadline for receipt of tenders is 60 days. However, in exceptional cases, a shorter deadline may be allowed with the prior authorization of the relevant services of the European Commission.

##### **DECENTRALISED: EX-POST**

No prior authorization is required from the European Commission in the case of shorter deadline.

#### **4.3.6. Period of validity**

See point 2.8.5.

#### **4.3.7. Submission of tenders**

Technical and financial offers must be placed in a single sealed envelope, itself placed in a package or outer envelope. The tender must be sent in accordance with the instructions to tenderers.

#### **4.3.8. The Evaluation Committee**

For composition, impartiality and confidentiality, responsibilities and timetable during the entire evaluation, see section 2.8.

##### **DIRECT CENTRALISED**

The standard practice is that at least one of the voting members should be a representative of the beneficiary country.

#### **4.3.9. Stages in the evaluation process**

##### **4.3.9.1. Receipt and registration of tenders**

On receiving tenders, the Contracting Authority must register them mentioning the date and time

of reception and provide a receipt for those delivered by hand. The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened. The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

#### **4.3.9.2. Preparatory meeting**

First meeting of the Evaluation Committee is to be held before the tender opening session. The tender dossier should have been distributed in advance to the members of the Evaluation Committee. The Chairperson presents the purpose of the tender, the procedures to be followed by the Evaluation Committee including the evaluation grid and selection and award criteria specified in the tender dossier.

#### **4.3.9.3. Tender opening session**

The purpose of the tender-opening session is to check that the tenders are complete, that the requisite tender guarantee has been provided and that the tenders are generally in order.

The tender opening session is a formal, public process. The Evaluation Committee opens the tenders in public at the place and time fixed in the tender dossier. Although it is public, participation in the tender opening session is restricted to representatives of the companies which are tendering for the contract. See tender opening checklist in Annex C5 for the detailed formalities to be carried out by the Chairperson with the assistance of the Secretary.

##### **DIRECT CENTRALISED**

The Evaluation Committee designated by the relevant services of the European Commission must carry out the tender opening session.

##### **DECENTRALISED: EX-ANTE**

The European Commission must be informed of the tender opening session. It may be represented as an observer at the tender-opening session and receive a copy of each tender.

##### **DECENTRALISED: EX-POST**

The European Commission need not be informed of the tender opening session and does not participate in it.

The Chairperson must check that no member of the Evaluation Committee has a potential conflict of interest with any of the tenderers (on the basis of the tenders received, consortium members and any identified subcontractor). See point 2.8.2.

The Committee must decide whether or not tenders comply with the formal requirements. The Summary of tenders received, which is attached to the Tender Opening Report (see Annex C6) must be used to record the compliance of each of the tenders with the formal submission requirements. The minutes of this meeting are included in the Tender Opening Report and this must be made available to the tenderers on request.

Eventual tender guarantees must be returned to the tenderers. This implies that any tenders which arrive after the submission deadline must also be opened (after the opening session) so that the guarantees can be returned.

#### **4.3.9.4. Evaluation of technical offers**

It is obligatory that the Evaluation Committee uses the administrative compliance grid and the evaluation grid published in the tender dossier.

During the technical evaluation, the Evaluation Committee analyses if the tenders satisfy the requirements set in the tender dossier. This includes possible service components included in the technical specifications. The results are recorded in a YES/NO grid for all elements specified in the tender dossier. No scoring method should be used. If the tender is divided into lots, the evaluation should be carried out lot-by-lot.

With the agreement of the other Evaluation Committee members, the Chairperson may communicate in writing with tenderers whose submissions require clarification, offering them the possibility to respond within a reasonable time limit to be fixed by the Committee.

### **Part 1: Administrative compliance**

Before conducting a detailed evaluation of the tenders, the Contracting Authority checks that they comply with the essential requirements of the tender dossier (i.e. the administrative compliance grid).

A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them. Substantial departures or restrictions are those which affect the scope, quality or performance of the contract, differ widely from the terms of the tender dossier, limit the rights of the Contracting Authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply.

Each offer is examined for compliance with the tender dossier, in particular that:

- the documentation is complete
- the language required by the tender dossier has been used

For consortia: the confirmation of association and designation of a lead company has been signed by all consortium members.

For tenderers intending to subcontract tasks (if permitted by the tender dossier): the tenderer has included a statement regarding the content and extent of subcontracting envisaged, which must be within the limit stated in the tender dossier.

The administrative compliance of each of the tenders must be recorded in the Evaluation Report (see Annex C7).

### **Part 2: Technical compliance of tenders**

The detailed technical evaluation of the tenders takes place after the administrative compliance check.

The criteria to be applied are those published in the tender dossier and, accordingly, the evaluation grid included in the tender dossier must be used. Under no circumstances may the Committee or its members change the evaluation grid communicated to the tenderers in the tender dossier.

The purpose of this evaluation is to assess whether or not the competing tenders meet the selection criteria and the minimum technical requirements.

**Rule of origin:** All tenders must satisfy the rule that the goods to be supplied fulfil the requirements as mentioned in point 2.3.1. In case of any doubt as to the origin of goods, additional information must be requested. Should doubts persist, the advice of the European Commission should be sought (in the case it is not the Contracting Authority).

The tenderer will be required to provide, if possible prior to the signature of the contract, proof of origin in the form of a Certificate of Origin or other official documentation as prima facie evidence.

To establish origin, one must determine where the product in question has been obtained or produced.

Tenders which clearly fail to satisfy the rule of origin must be rejected.

**Nationality subcontractors:** The Evaluation Committee must check at this stage that the nationalities of any subcontractors identified in the technical offers satisfy the nationality rule in point 2.3.1.

Having evaluated the tenders, the Evaluation Committee rules on the technical compliance of each tender, classifying it as technically compliant or not technically compliant. Where contracts include after-sales service and/or training, the technical quality of such services is also assessed during the technical evaluation in accordance with the published criteria.

#### 4.3.9.5. Evaluation of financial offers

Once the technical evaluation has been completed, the Committee checks that the financial offers contain no obvious arithmetical errors. Any obvious arithmetical errors are corrected without penalty to the tenderer.

If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot, taking into consideration any eventual discounts granted by the tenderers.

Specimen of application of discounts:

Company A offers a discount of 20% if awarded Lots 1 and 3, Company B offers a discount of 10% if awarded all three Lots, Company C offers NO discount

	Company A	Company B	Company C	Ranking without discount
<b>LOT 1</b>	90	80	70	Company C
<b>LOT 2</b>	not bidding	40	50	Company B
<b>LOT 3</b>	60	70	55	Company C

After applying the discount:

	<u>Company A</u> (20% discount)	<u>Company B</u> (10% discount)	<u>Company C</u> (no discount)
<b>LOT 1</b>	72	72	70
<b>LOT 2</b>	not bidding	36	50
<b>LOT 3</b>	48	63	55

The 3 combinations possible:

Combination 1:  $72 + 40 + 48 = 160$

Combination 2:  $72 + 36 + 63 = 171$

Combination 3:  $70 + 50 + 55$ , but since for Lot 2 there is a cheaper price offered, the sum becomes:  $70 + 40 + 55 = 165$

The Contracting Authority must choose combination 1, awarding contracts for Lots 1 and 3 to

company A and Lot 2 to company B for the initial price offered.

#### **4.3.9.6. Choice of contractor**

The successful tenderer is the one submitting the least expensive tender classified as "technically compliant" during the technical evaluation. It must be declared the successful tender if it is equal to or lower than the maximum budget available for the contract.

If the chosen tender exceeds the maximum budget available for the contract, the provisions set out in point 4.2.4.1.(d) apply.

In the case of abnormally low tenders, the Evaluation Committee must request any relevant information concerning the composition of the tender. If, for a given contract, tenders appear to be abnormally low, the Contracting Authority must, before rejecting such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and verify those constituent elements, after due hearing of the parties, taking account of the explanations received. The Contracting Authority may, in particular, take into consideration explanations relating to:

- a) the economics of the manufacturing process, of the provision of services or of the construction method;
- b) the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;
- c) the originality of the tender.

The justification for accepting or rejecting an abnormally low offer must be recorded in the Evaluation Report.

#### **EDF**

Tenderers of the ACP States who offer supplies of ACP origin accounting for at least 50% of contract value are accorded a 15% price preference where tenders of equivalent economic and technical quality are compared.

Moreover, where two tenders are acknowledged to be equivalent, preference is given:

- a) to the tenderer of an ACP State; or
- b) if no such tender is forthcoming, to the tenderer who:
  - offers the best possible use of the physical and human resources of the ACP States;
  - offers the greatest subcontracting possibilities to ACP companies, firms or natural persons; or
  - is a consortium of natural persons, companies and firms from ACP States and the European Union.

#### **4.3.9.7. Conclusions of the Evaluation Committee**

As a result of its deliberations, the Evaluation Committee may make any of the following recommendations:

- Award the contract to the tenderer which has submitted a tender:
  - which complies with the formal requirements and the eligibility rules;
  - whose total budget is within the maximum budget available for the project;
  - which meets the minimum technical requirements specified in the tender dossier; and
  - which is the least expensive tender (satisfying all of the above conditions).
- Cancel the tender procedure in exceptional circumstances, see point 2.4.13.

## **DIRECT CENTRALISED**

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex C7) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee. This must be submitted for approval to the relevant services of the European Commission, which must decide whether or not to accept its recommendations.

## **DECENTRALISED: EX-ANTE**

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex C7) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee. This must be submitted for approval to the relevant services of the Contracting Authority, which must decide whether or not to accept its recommendations. The Contracting Authority must then submit the Evaluation Report together with its proposed decision to the European Commission for approval. If there is an award proposal and the European Commission has not already received a copy of the tenders, these must be submitted.

If the European Commission does not accept the proposed decision, it must write to the Contracting Authority stating the reasons for its decision. The European Commission may also suggest how the Contracting Authority should proceed and give the conditions under which the European Commission may endorse a proposed contract on the basis of the tender procedure.

If the European Commission approves the proposed decision, the Contracting Authority will either commence awarding the contract (see point 4.3.11.) or cancel the tender, as decided.

## **DECENTRALISED: EX-POST**

No prior approval from the European Commission is required before the Contracting Authority acts on the recommendations of the Evaluation Committee.

The report is drawn up. The Contracting Authority will then take its decision. The entire evaluation procedure, including notification of the successful tenderer, must be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer might be unable to maintain its tender if the evaluation procedure takes too long.

Subject to the Contracting Authority's legislation on access to documents, the entire tender procedure is confidential from the end of the tender opening session to the signature of the contract by both parties. The Evaluation Committee's decisions are collective and its deliberations must remain secret. The Evaluation Committee members and any observers are bound to secrecy. In cases where the Contracting Authority's law contradicts the confidentiality required, the latter shall ask for prior authorisation from the European Commission before disclosing any information.

The Evaluation Report, in particular, is for official use only and may be divulged neither to tenderers nor to any party outside the authorised services of the Contracting Authority, the European Commission and the supervisory authorities (e.g. the Court of Auditors).

### **4.3.10. Cancelling the tender procedure**

See point 2.4.13.

Tenderers are entitled to the immediate release of their tender guarantee. When the tender procedure is cancelled before the opening session, the unopened and sealed envelopes must be returned to the tenderers.

### **4.3.11. Award of the contract**

#### **4.3.11.1. Notifying the successful tenderer**

See section 2.9. and point 2.4.12. (in the case of suspensive clause).

#### **4.3.11.2. Contract preparation and signature**

See section 2.9.

The proposed contract must follow Annex C4.

#### **4.3.11.3. Publicising the award of the contract**

See section 2.9.

### **4.4. Local open tender for contracts between €60,000 and €150,000**

In this case, the publication of a forecast notice is not obligatory and the procurement notice is not published in the Official Journal of the European Union but only in the beneficiary country. The European Commission publishes details of such tender procedures (dossier number, country, Contracting Authority etc.) on the EuropeAid website with the address from which firms can obtain further information. The procurement notice for a local tender must as a minimum be published in the Official Journal of the beneficiary country or any equivalent media. This publication is under the responsibility of the beneficiary country.

As the cost of publishing the full procurement notice in the local media may be high, the template in Annex C3 gives the minimum information, which must be included in a local advertisement. However, the full procurement notice must be available from the address referred to in the advertisement, together with the tender dossier. It is also possible to publish the tender dossier and the procurement notice on the EuropeAid website and indicate this in the Summary Procurement Notice (Annex C3). The authorising officer may decide to use the simplified tender dossier for supplies for this procedure as well as for any procedure below this threshold (see below).

Note that a local open tender procedure must provide other eligible contractors with the same opportunities as local firms. No conditions seeking to restrict the participation of other eligible contractors are allowed (e.g., obliging such firms to be registered in the beneficiary country or to have won contracts there in the past).

In this procedure, there must be a minimum of 30 days between the date of publication of the procurement notice in the local press and the deadline for receipt of tenders. However, in exceptional cases, a shorter deadline may be allowed with the prior authorization of the relevant services of the European Commission.

The measures applicable to an international open procedure, as described in section 4.3., apply by analogy to the local open procedure.

If it proves impossible to identify potential tenderers in the case of a local open tender procedure, a clarification/correction setting out eventual changes to the tender dossier must be published. The deadline for the submission of tenders may be extended to allow tenderers to take account of the changes. Possible clarifications during the tender procedure shall be published locally and on the EuropeAid website and a reference where to find possible clarifications is to be given in the Summary Procurement Notice (Annex C3).

The Contracting Authority may require a tender guarantee.

### **4.5. Competitive negotiated procedure for contracts under**

## €60,000

The Contracting Authority may award contracts under €60,000 by competitive negotiated procedure, without publication. The Contracting Authority draws up a list of at least three firms. The candidates are sent a letter of invitation to tender accompanied by a tender dossier. The authorising officer may decide to use the simplified tender dossier for supplies.

Tenders must reach the Contracting Authority at the address and by no later than the date and time shown. The chosen candidates must be allowed at least 30 days from the dispatch of the letter of invitation to tender in which to submit their tenders.

The tenders are opened and evaluated by an Evaluation Committee with the necessary technical and administrative expertise, appointed by the Contracting Authority.

If following consultation of the tenderers, the Contracting Authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.

In the event of 2 successive failures of the competitive negotiated procedure, the contract may be concluded by negotiated procedure subject to the prior approval of the relevant services of the European Commission. The remainder of the procedure (including preparation of the tender dossier, evaluating the tenders and awarding the contract) is the same as under the international open procedure (see points 4.3.2. to 4.3.11.2.). The authorising officer may decide to use the simplified tender dossier for supplies. No tender guarantee is required in this case.

The Contracting Authority may award supply contracts of a value of €10,000 or less on the basis of a single tender. See point 2.4.8.

### **4.6. Modifying supply contracts**

See section 2.10. for the general information regarding contract modification.

Save for the possibility to vary the quantities according to Article 22 GC, the Contracting Authority can under no circumstances increase the budget of the initial supply contract or agree to/arrange for the purchase of equipment that was not covered in the initial tender and subsequent contract.

The only exception to this rule is for additional deliveries by the original supplier intended either as a partial replacement of supplies or installations included in the original contract, or as an extension of existing supplies or installations where a change of supplier would oblige the Contracting Authority to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance. The additional deliveries is regarded as a negotiated procedure, see point 4.2.4.1. c), and an addendum or a new contract should be signed.

According to article 22 of the General Conditions, the Contracting Authority has the power to issue an administrative order for variations. The contractor is bound to carry out the ordered variation.

## **5. Works contracts**

### **5.1. Introduction**

Works contracts cover either the execution, or both the execution and design, of works or a work related to one of the activities referred to in Annex I to Directive 2004/18/EC of the European Parliament and the Council (BUDGET) or the realisation, by whatever means, of a work corresponding to the requirements specified by the Contracting Authority. A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.

Works contracts are usually concluded by the beneficiary with, which the Commission draws up a financing agreement (decentralised contracts).

### **5.2. Procurement procedures**

#### **5.2.1. Contracts of €5,000,000 or more**

##### **5.2.1.1. Open procedure**

The standard method of awarding works contracts is by means of an international open tender procedure following publication of a procurement notice. For details, see section 5.3.

##### **5.2.1.2. Restricted procedure**

In exceptional cases justified by the special characteristics of certain projects, a restricted tender procedure may be used (with the prior authorisation of the European Commission in the case of decentralised ex-ante control). The publication of the procurement notice remains mandatory to ensure the widest possible participation. For details, see section 5.4.

#### **5.2.2. Contracts of between €300,000 and €5,000,000**

##### **5.2.2.1. Local open procedure**

Such contracts are awarded after an open tender procedure published locally, a procedure in which the procurement notice is published only in the beneficiary country. The European Commission publishes the references of such tender procedures (publication reference, country, Contracting Authority and type of contract) on the EuropeAid website with the address from which firms can obtain further information. For details, see section 5.5.

#### **5.2.3. Contracts under €300,000 – competitive negotiated procedure**

Works contracts under €300,000 are awarded by competitive negotiated procedure. At least three candidates are sent an invitation to tender. No procurement notice needs to be published. For details, see section 5.6.

However, the Contracting Authority may award works contracts of a value of €10,000 or less on the basis of a single tender.

#### **5.2.4. Other procedures**

##### **5.2.4.1. Negotiated procedure**

**DIRECT CENTRALISED**

The prior approval of the relevant services of the European Commission must be sought for the use of the negotiated procedure.

**DECENTRALISED: EX-ANTE**

The Contracting Authority must seek prior approval from the European Commission to use the negotiated procedure.

**DECENTRALISED: EX-POST**

No prior approval from the European Commission is required.

Works contracts may be awarded by negotiated procedure with one or several tenders, after the Commission has given its agreement if it is not the Contracting Authority, in the following cases:

- a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time-limit for the competitive procedures (referred to in points (a), (b) and (c) of Article 91(1) of the Financial Regulation) cannot be met;

Operations carried out in crisis situations as referred to in Article 168(2) of the implementing rules are considered to satisfy the test of extreme urgency (see Annex A11a)<sup>25</sup>.

- b) for additional works not included in the initial contract which have, through unforeseen circumstances, become necessary for carrying out the works described therein and which have been awarded to the contractor already carrying out the work:
- where such works cannot be technically or economically separated from the main contract without serious inconvenience to the beneficiary;
  - where such works, although separable from the performance of the original contract, are strictly necessary to its completion.

However the aggregate value of contracts awarded for additional works does not exceed 50% of the value of the principal contract. See section 5.7.

- c) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the Contracting Authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, and which comply with the selection criteria<sup>26</sup>, provided that the original terms of the contract are not substantially altered and the principle of equal treatment is observed;
- d) where after two attempts the competitive negotiated has been unsuccessful, that is to say, where no administratively and technically valid tender or no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the competitive negotiated procedure, the Contracting Authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, and which comply

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<sup>25</sup> Emergency assistance” is an additional case of negotiated procedure specific to EDF, distinct from the extreme urgency mentioned in a), mainly for actions which are not governed by new article 19c of Annex IV of the Cotonou Agreement. The emergency assistance is linked to the application of article 72 and/or 73 of the Cotonou Agreement (see annex A11a).

<sup>26</sup> Hence the importance to carefully choose the selection criteria which must be non-discriminatory, clear, may not go beyond the scope of the tasks or budget (see point 2.4.11.1. for further details).

with the selection criteria, provided that the original terms of the contract are not substantially altered;

- e) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the beneficiary country so requires.

The Contracting Authority must prepare a Negotiation Report (see template in Annex A10) justifying the manner in which the negotiations were conducted and the basis for the contract award decision resulting from these negotiations. The procedures given in point 5.3.11.1. - 5.3.11.2. must be followed by analogy, with the Negotiation Report being included in the contract dossier.

#### **5.2.4.2. Competitive dialogue**

See point 2.4.7. for further details.

### **5.3. International open tender (for contracts of €5,000,000 or more)**

#### **5.3.1. Publicity**

In order to ensure the widest possible participation in competitive tendering and the requisite transparency, a contract forecast and a procurement notice must be published for every open tender procedure.

##### **5.3.1.1. Publication of individual contract forecasts**

An individual contract forecast setting out the specific characteristics of the planned tender procedure, must be published, save in exceptional circumstances, at least 30 days before the publication of the procurement notice. The individual contract forecasts must give a brief indication of the subject and content of the tenders concerned. Contract forecasts are sent as soon as possible after the decision approving the programme for works contracts. (See template in Annex D1). Given that they are forecasts, publication does not bind the Contracting Authority to finance the contracts proposed and prospective contractors are not expected to submit tenders at this stage.

The contract forecasts are published in the Official Journal of the European Union, on the EuropeAid website and in any other appropriate media.

#### **CENTRALISED, DECENTRALISED: EX-ANTE, DECENTRALISED: EX-POST**

Contract forecasts must be submitted for publication to the relevant services of the European Commission in electronic form using the template in Annex D1 at least 15 days before the intended date of publication, to allow time for translation. They must be published at least 30 days before the corresponding procurement notice.

##### **5.3.1.2. Publication of procurement notices**

In addition to contract forecasts, all works contracts of €5,000,000 or more must also be the subject of a procurement notice published in the Official Journal of the European Union, on the EuropeAid website and in any other appropriate media. A minimum of 30 days must be allowed to elapse between the publication of the contract forecast and the procurement notice. The European Commission (acting on behalf of the Contracting Authority) is responsible for publication in the Official Journal of the European Union and on the EuropeAid website, while, if the procurement notice is published locally, the Contracting Authority must arrange local

publication directly.

### **DIRECT CENTRALISED, DECENTRALISED: EX-POST**

Procurement notices must be submitted for publication to the relevant services of the European Commission in electronic form using the template in Annex D2 at least 15 days before the intended date of publication, to allow time for translation.

### **DECENTRALISED: EX-ANTE**

In addition to the above, the finalised tender dossier (see point 5.3.2.) must also be submitted to the European Commission either at this time or in advance to demonstrate that the proposed procurement notice corresponds to the objectives of the contract.

The procurement notice must identify clearly, precisely, and completely what the subject of the contract is and who the Contracting Authority is. If the procurement notice is also published locally, it must be identical to the procurement notice published on the EuropeAid website and appear at the same time.

The Contracting Authority must send tender dossiers to would-be tenderers upon request. Because of their size and printing costs, tender dossiers for works contracts are usually sent out for a fixed fee. The tender dossier will also be available for inspection at the premises of the Contracting Authority and the European Commission.

If the Contracting Authority, either on its own initiative or in response to the request of a tenderer amends information in the procurement notice, a corrigendum with the changes must be published through the relevant service of the European Commission (see Annex A5b). The corrigendum will be published no later than 7 days after the request for publication. The deadline for the submission of tenders may be extended to allow the tenderers to take into account the changes.

### **5.3.2. Drafting and contents of the tender dossier**

It is vital that tender documents be carefully drafted not only for the proper execution of the contract but also for the sound functioning of the procurement procedure.

These documents must contain all the provisions and information that tenderers need to present their tenders: the procedures to follow, the documents to provide, cases of non-compliance, award criteria, etc. It may be desirable for representatives of the final beneficiaries to participate in the tender preparation at an early stage. See section 2.6. for guidelines for preparing Technical Specifications.

Technical specifications must afford equal access for candidates and tenderers and not have the effect of creating unjustified obstacles to competitive tendering. They define the characteristics required of a product, service or material or work with regard to the purpose for which they are intended by the Contracting Authority.

Those characteristics include:

- a) the quality levels;
- b) environmental performance;
- c) wherever possible, the accessibility criteria for people with disabilities or the design for all users;
- d) the levels and procedures of conformity assessment;

- e) fitness for use;
- f) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production procedures and methods;
- g) the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the Contracting Authority may impose under general or specific regulations in relation to the finished works and to the materials or parts which they involve

The Contracting Authority is responsible for drawing up these documents.

Given the technical complexity of many works contracts, the preparation of the tender dossier - particularly the Technical Specifications - may require the assistance of one or more external technical specialist(s). Each such specialist must sign a Declaration of Objectivity and Confidentiality (see Annex A3).

As with Terms of Reference for service contracts, particular attention must be paid to the preparation of the Technical Specifications for the works tendered. These are the key to successful procurement and a sound works contract and project.

The Technical Specifications indicate - where applicable, lot by lot - the exact nature and performance characteristics of the works. Where applicable, they also specify delivery conditions and installation, training and after-sales service.

It is essential that the performance characteristics correspond to the intended purpose. If there needs to be an information meeting or site visit to clarify technical requirements at the site where the works are to be carried out, this should be specified in the instructions to tenderers, together with details of the arrangements.

The purpose of the Technical Specifications is to define the required works precisely. The minimum quality standards, defined by the Technical Specifications, will enable the Evaluation Committee to determine which tenders are technically compliant.

Unless warranted by the nature of the contract, Technical Specifications mentioning or describing products of a given brand or origin and thereby favouring or excluding certain products are prohibited. However, where products cannot be described in a sufficiently clear or intelligible manner, they may be named as long as they are followed by the words "or equivalent".

#### **DIRECT CENTRALISED**

The tender dossier must be approved by the relevant services of the European Commission. The standard practice is to consult and obtain the approval of the beneficiary country, and where appropriate of other parties involved, on the tender dossier.

#### **DECENTRALISED: EX-ANTE**

The Contracting Authority must submit the tender dossier to the Delegation of the European Union for approval prior to issue.

#### **DECENTRALISED: EX-POST**

No prior approval of the tender dossier by the European Commission is required.

The tender dossier must contain the following documents:

#### **TENDER DOSSIER CONTENT**

Volume 1: Instructions to tenderer and tender forms

Volume 2: Draft contract and conditions

Volume 3: Technical specifications

Volume 4: Model financial bid

Volume 5: Design documents and drawings

See Annex D4 for template.

The tender documents must clearly state whether a firm, non-revisable price must be quoted. A price revision clause might be justified and works contracts are commonly subject to price revision. If that is the case, it is recommended that a price revision formula, following the models established in the Special Conditions, is included. In order to take a decision in this respect, the Contracting Authority must take particular account of:

- a) the object of the procurement procedure and the economic situation in which it is taking place;
- b) the type of tasks and contract and their duration;
- c) its financial interests.

A guarantee is required in return for the payment of pre-financing exceeding € 150,000. However, when the contractor is a public body, the responsible authorising officer may, depending on his risk assessment, waive that obligation. The guarantee will be released as and when the pre-financing is deducted from interim payments or payments of balances made to the contractor in accordance with the terms of the contract.

### **5.3.3. Selection and award criteria**

The selection criteria concern the tenderer's capacity to execute similar contracts, with particular reference to works executed in recent years.

The selection procedure involves:

1. eliminating tenderers who are ineligible (see point 2.3.1.) or fall into one of the situations described in points 2.3.3. and 2.3.5.;
2. checking that the tenderers' financial situation (financial and economic capacity) is sound, as backed up, for example, by balance sheets and turnover for the previous three years (see point 2.4.11.) if specifically required in the Tender Dossier;
3. verifying the tenderers' technical and professional capacities, for example by looking at their average annual staffing levels, the size and professional experience of their management and the main services performed, supplies delivered and works carried out in the field in question in recent years (see point 2.4.11.).

The selection criteria specified in the annexes to this guide are given by way of illustration and should be adapted to the nature, cost and complexity of the contract.

If, for some exceptional reason which the Contracting Authority considers justified, the tenderer or candidate is unable to provide the references required by the Contracting Authority, it may prove its economic and financial capacity by any other means which the Contracting Authority considers appropriate. Where the works to be implemented are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the Contracting Authority or on its behalf by a competent official body of the country in which the tenderer is established, subject to that body's agreement. Such checks shall concern the tenderer's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

The criteria should be precise, non-discriminatory and not prejudicial to fair competition. All criteria specified in the tender dossier must be applied as such and cannot in any case be

modified during the procedure. The technical evaluation will be based on the evaluation grid published in the tender dossier, which must not be modified in any way during the evaluation process. Given the wide variety of works and their technical nature, these must be individually developed for each tender in a YES/NO format to allow clear assessment whether or not the offer responds to the technical requirements of the tender dossier.

The award criterion applied to technically compliant tenders is price or, in exceptional cases and after approval of the exception by the relevant services of the European Commission, the best value for money.

#### **5.3.4. Additional information during the procedure**

The tender dossier should be clear enough to avoid tenderers having to request additional information during the tender procedure. If the Contracting Authority, either on its own initiative or in response to a request from a tenderer, provides additional information on the tender dossier, it must send such information in writing to all other tenderers at the same time.

Tenderers may submit questions in writing no later than 21 days before the deadline for submission of tenders. The Contracting Authority must reply (sending a copy to the European Commission, in the case of decentralised ex-ante management) to all tenderers' questions no later than 11 days before the deadline for receipt of tenders. The questions and answers shall be published on the EuropeAid website. Please note that the Contracting Authority cannot give a prior opinion on the assessment of the tender.

If the questions result in a modification of the text in the procurement notice a corrigendum must be published as explained in point 5.3.1. The deadline for the submission of tenders may be extended to allow tenderers to take account of the changes. The corrigendum shall also be published on the EuropeAid website.

If the tender has a particularly complex technical content, the Contracting Authority may organise an information meeting and/or site visit. This meeting must be announced in the tender dossier and must take place at least 21 days before the expiry of the deadline. The Contracting Authority shall indicate in the tender dossier whether the participation to such meeting or site visit is strongly advised or compulsory. All costs of attending such a meeting must be met by the tenderers. Individual visits by companies during the tender period are not organised by the Contracting Authority taking into account transparency and equal treatment of the tenderers.

#### **5.3.5. Deadline for the submission of tenders**

Tenders must reach the Contracting Authority at the address by the date and time indicated in the tender dossier. The period for submission must be sufficient to guarantee the quality of tenders and so permit truly competitive tendering. Experience shows that too short a period prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders. The deadline should if possible be combined with the tender-opening session.

##### **DIRECT CENTRALISED, DECENTRALISED: EX-ANTE**

The minimum period between the date of publication of the procurement notice and the deadline for receipt of tenders is 90 days. However, in exceptional cases, a shorter deadline may be allowed with the prior authorization of the relevant services of the European Commission.

##### **DECENTRALISED: EX-POST**

No prior authorization is required from the European Commission in the case of shorter deadline.

### **5.3.6. Period of validity**

See point 2.8.5.

### **5.3.7. Submission of tenders**

Each technical and financial offer must be placed in a single sealed envelope, itself placed in a package or outer envelope. The tender must be sent in accordance with the instructions to tenderers.

### 5.3.8. The Evaluation Committee

For composition, impartiality and confidentiality, responsibilities and timetable during the entire evaluation, see section 2.8.

#### **DIRECT CENTRALISED**

The standard practice is that at least one of the voting members should be a representative of the beneficiary country.

### 5.3.9. Stages in the evaluation process

#### 5.3.9.1. Receipt and registration of tenders

On receiving tenders, the Contracting Authority must register them mentioning the date and time of reception and provide a receipt for those delivered by hand. The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened. The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

#### 5.3.9.2. Preparatory meeting

The first meeting of Evaluation Committee is to be held before the tender opening session. The tender dossier should have been distributed in advance to the members of the Evaluation Committee. The Chairperson presents the purpose of the tender and explains the procedures to be followed by the Evaluation Committee including evaluation grids, selection and award criteria specified in the tender dossier.

#### 5.3.9.3. Tender opening session

The purpose of the tender-opening session is to check that the tenders are complete, that the requisite tender guarantee has been provided and that the tenders are generally in order.

The tender opening session is a formal, public process. The Evaluation Committee opens the tenders in public at the place and time fixed in the tender dossier. Although it is public, participation in the tender opening session is restricted to representatives of the companies which are tendering for the contract.

See tender opening checklist in Annex D5 for the detailed formalities to be carried out by the Chairperson with the assistance of the Secretary.

#### **DIRECT CENTRALISED**

The Evaluation Committee designated by the relevant services of the European Commission must carry out the tender opening session.

#### **DECENTRALISED: EX-ANTE**

The European Commission must be informed of the tender opening session. It may be represented as an observer at the tender-opening session and receive a copy of each tender.

#### **DECENTRALISED: EX-POST**

The European Commission need not be informed of the tender opening session and does not participate in it.

The Chairperson must check that no member of the Evaluation Committee has a potential

conflict of interest with any of the tenderers (on the basis of the eventual shortlist, the tenders received, consortium members and any identified subcontractor). See point 2.8.2.

The Committee must decide whether or not tenders comply with the formal requirements. The Summary of tenders received, which is attached to the Tender Opening Report (see Annex D6) must be used to record the compliance of each of the tenders with the formal submission requirements. It must be made available to the tenderers upon request. Eventual tender guarantees must be returned to the tenderers. This implies that any tenders which arrive after the submission deadline must also be opened (after the opening session) so that the guarantees can be returned.

#### **5.3.9.4. Evaluation of offers**

It is obligatory that the Evaluation Committee uses the administrative compliance grid and the evaluation grid published in the tender dossier.

As part of the technical evaluation, the Evaluation Committee analyses the commercial aspects, and, where applicable, the service component of the tenders to determine whether they satisfy the requirements set in the tender dossier. The results are recorded in a YES/NO grid for all elements specified in the tender dossier. No scoring method should be used. If the tender is divided into lots, the evaluation should be carried out lot-by-lot.

With the agreement of the other Evaluation Committee members, the Chairperson may communicate in writing with tenderers whose submissions require clarification, offering them the possibility to respond within a reasonable time limit to be fixed by the Committee.

#### **Part 1: Administrative compliance**

Before conducting a detailed evaluation of the tenders, the Evaluation Committee checks that they comply with the essential requirements of the tender dossier (i.e. the administrative compliance grid).

A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them. Substantial departures or restrictions are those which affect the scope, quality or performance of the contract, differ widely from the terms of the tender dossier, limit the rights of the Contracting Authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply.

Each offer is examined for administrative compliance with the tender dossier in accordance with the published administrative compliance grid.

The administrative compliance of each of the tenders must be recorded in the Evaluation Report (see Annex D7).

#### **Part 2: Technical compliance of tenders**

The detailed technical evaluation of the tenders takes place after the administrative compliance check. The criteria to be applied are those published in the tender dossier and, accordingly, the evaluation grid included in the tender dossier must be used. Under no circumstances may the Committee or its members change the evaluation grid communicated to the tenderers in the tender dossier. The purpose of this evaluation is to assess whether or not the competing tenders meet the minimum technical requirements and selection criteria.

**Rule of origin:** All tenders must satisfy the rule that the goods purchased and the materials to be incorporated in the permanent works, fulfil the requirement as mentioned in point 2.3.1. Tenders which fail to satisfy the rule of origin must be rejected. The rule of origin does not apply to the contractor's equipment used during the construction, unless the tender dossier would explicitly

stipulate that this equipment becomes the full property of the contracting authority at the end of the contract. For more detail, see point 2.3.1.

**Nationality of subcontractors:** The Evaluation Committee must check at this stage that the nationalities of subcontractors identified in the technical offers satisfy the nationality rule in point 2.3.1.

Having evaluated the tenders, the Evaluation Committee rules on the technical compliance of each tender, classifying it as technically compliant or not technically compliant.

### **5.3.9.5. Evaluation of financial offers**

Once the technical evaluation has been completed, the Committee checks that the financial offers contain no obvious arithmetical errors. Any obvious arithmetical errors are corrected without penalty to the tenderer. If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot, taking due account of any discounts offered.

For a specimen of application of discounts, see point 4.3.9.5.

### **5.3.9.6. Choice of contractor**

The successful tenderer is the one submitting the least expensive tender classified as "technically compliant" during the technical evaluation. It must be declared the successful tender if it is equal to or lower than the maximum budget available for the contract.

If the chosen tender exceeds the maximum budget available for the contract, the provisions set out in point 5.2.4.1.(c) apply. In the case of abnormally low tenders, the Evaluation Committee must request any relevant information concerning the composition of the tender. If, for a given contract, tenders appear to be abnormally low, the Contracting Authority must, before rejecting such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and verify those constituent elements, after due hearing of the parties, taking account of the explanations received.

The Contracting Authority may, in particular, take into consideration explanations relating to:

- a) the economics of the manufacturing process, of the provision of services or of the construction method;
- b) the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;
- c) the originality of the tender.

The justification for accepting or rejecting an abnormally low offer must be recorded in the Evaluation Report.

#### **EDF**

Where two tenders are acknowledged to be equivalent, preference is given:

- to the tenderer of an ACP State; or
  - if no such tender is forthcoming, to the tenderer who:
  - offers the best possible use of the physical and human resources of the ACP States;
  - offers the greatest subcontracting possibilities to ACP companies, firms or natural persons;
- or
- is a consortium of natural persons, companies and firms from ACP States and the European Union.

### **5.3.9.7. Conclusions of the Evaluation Committee**

As a result of its deliberations, the Evaluation Committee may make any of the following recommendations:

- Award the contract to the tenderer which has submitted a tender:
  - which complies with the formal requirements and the eligibility rules;
  - whose total budget is within the maximum budget available for the project;
  - which meets the minimum technical requirements specified in the tender dossier; and
  - which is the least expensive tender (satisfying all of the above conditions).
- Cancel the tender procedure in exceptional circumstances, see point 2.4.13.

**DIRECT CENTRALISED**

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex D7) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee. This must be submitted for approval to the relevant services of the European Commission, which must decide whether or not to accept its recommendations.

**DECENTRALISED: EX-ANTE**

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex D7) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee. This must be submitted for approval to the relevant services of the Contracting Authority, which must decide whether or not to accept its recommendations. In addition to the above, the Contracting Authority must then submit the Evaluation Report together with its proposed decision to the European Commission for approval. If there is an award proposal and the European Commission has not already received a copy of the tenders, these must be submitted.

If the European Commission does not accept the proposed decision it must write to the Contracting Authority stating the reasons for its decision. The European Commission may also suggest how the Contracting Authority should proceed and give the conditions under which the European Commission may endorse a proposed contract on the basis of the tender procedure.

If the European Commission approves the proposed decision, the Contracting Authority will either commence awarding the contract (see point 5.3.11.) or cancel the tender, as decided.

**DECENTRALISED: EX-POST** No prior approval from the European Commission is required before the Contracting Authority acts on the recommendations of the Evaluation Committee.

The entire evaluation procedure, including notification of the successful tenderer, must be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer might be unable to maintain its tender if the evaluation procedure takes too long.

Subject to the Contracting Authority's legislation on access to documents, the entire tender procedure is confidential from the end of the tender opening session to the signature of the contract by both parties. The Evaluation Committee's decisions are collective and its deliberations must remain secret. The Evaluation Committee members and any observers are bound to secrecy. In cases where the Contracting Authority's law contradicts the confidentiality required, the latter shall ask for prior authorisation from the European Commission before disclosing any information.

The Evaluation Report, in particular, is for official use only and may be divulged neither to tenderers nor to any party outside the authorised services of the Contracting Authority, the European Commission and the supervisory authorities (e.g. the Court of Auditors).

**5.3.10. Cancelling the tender procedure**

See point 2.4.13.

Tenderers are entitled to the immediate release of their tender guarantee. When the tender procedure is cancelled before opening session, the unopened and sealed envelopes must be returned to the tenderers.

### **5.3.11. Award of the contract**

#### **5.3.11.1. Notifying the successful tenderer**

See section 2.9. and point 2.4.12. (in the case of suspensive clause).

#### **5.3.11.2. Contract signature**

See section 2.9.

The proposed contract must follow Annex D4.

#### **5.3.11.3. Publicising the award of the contract**

See section 2.9.

### **5.4. Restricted tender for contracts of €5,000,000 or more**

#### **DIRECT CENTRALISED, DECENTRALISED: EX-ANTE**

In exceptional cases justified by the special characteristics of certain projects, a restricted tender procedure may be used. The relevant services of the European Commission must give their prior approval to the use of this approach and will provide technical support on a case-by-case basis.

#### **DECENTRALISED: EX-POST**

If it intends to use this approach, the Contracting Authority must record the justification for this in the Evaluation Report and notify the European Commission.

The publication of the procurement notice in the Official Journal of the European Union, on the EuropeAid website and in any other appropriate media remains mandatory.

The restricted procedure begins with a short-listing phase which must be specially designed for each project. On the basis of the outcome of this short-listing phase, the Contracting Authority draws up a list of firms that will be invited to tender (after obtaining the European Commission's approval, in the case of decentralised ex-ante control).

The Contracting Authority sends a letter of invitation to tender accompanied by the tender dossier only to the candidates on the shortlist.

In this procedure, there must be a minimum of 60 days between the date of dispatch of the letters of invitation to tender and the deadline for receipt of tenders.

The measures applicable to an open procedure, as described in points 5.3.2. to 5.3.11.3., apply by analogy to the restricted procedure for works contracts.

### **5.5. Local open tender (for contracts of at least €300,000 and under €5,000,000)**

In this case, the procurement notice is not published in the Official Journal of the European Union. Instead, the procurement notice for a local tender must as a minimum be published in the Official Journal of the beneficiary country or any equivalent media.

The European Commission must publish details of such tender procedures (dossier number, country, Contracting Authority etc.) on the EuropeAid website with the address from which firms can obtain further information or, alternatively, publish the procurement notice and/or the tender dossier.

As the cost of publishing the full procurement notice in the local media may be high, the template in Annex D3 gives the minimum information which must be included in a local advertisement. However, the full procurement notice must be available from the address referred to in the advertisement, together with the tender dossier.

Note that a local open tender procedure must provide other eligible contractors with the same opportunities as local firms. No conditions seeking to restrict the participation of other eligible contractors are allowed (e.g., obliging such firms to be registered in the beneficiary country or to have won contracts there in the past).

In this procedure, there must be a minimum of 60 days between the date of publication of the procurement notice in the local press and the deadline for receipt of tenders. However, in exceptional cases, a shorter deadline may be allowed with the prior authorization of the relevant services of the European Commission.

If it proves impossible to identify potential tenderers in the case of a local open tender procedure, a clarification/correction setting out eventual changes to the tender dossier must be published. The deadline for the submission of tenders may be extended to allow tenderers to take account of the changes. Possible clarifications during the tender procedure shall be published locally and on the EuropeAid website and a reference where to find possible clarifications is to be given in the Summary Procurement Notice (Annex D3).

The measures applicable to an international open procedure, as described in section 5.3., apply by analogy to the local open procedure. The principal difference is that minimum number of voting members in the Evaluation Committee is three. The Contracting Authority may require a tender guarantee.

#### **EDF**

For works contracts of a value of €5,000,000 or less, tenderers of the ACP States, provided that at least one quarter of the capital stock and management staff originates from one or more ACP States, are accorded a 10% price preference where tenders of an equivalent economic and technical quality are compared.

### **5.6. Competitive negotiated procedure**

The Contracting Authority may award contracts under €300,000 by competitive negotiated procedure, without publication. The Contracting Authority draws up a list of at least three contractors. The candidates are sent a letter of invitation to tender accompanied by a tender dossier.

Tenders must reach the Contracting Authority at the address and by no later than the date and time shown in the invitation to tender. The chosen candidates must be allowed at least 30 days from the dispatch of the letter of invitation to tender in which to submit their tenders.

The tenders are opened and evaluated by an Evaluation Committee with the necessary technical and administrative expertise, appointed by the Contracting Authority.

If following consultation of the tenderers, the Contracting Authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.

In the event of 2 successive failures of the competitive negotiated procedure, the contract may be concluded by negotiated procedure subject to the prior approval of the relevant services of the European Commission. The remainder of the procedure (including preparation of the tender dossier, evaluating the tenders and awarding the contract) is the same as under the international open procedure (see points 5.3.2. to 5.3.11.2.). No tender guarantee is required in this case.

The Contracting Authority may award works contracts of a value of €10,000 or less on the basis of a single tender. See point 2.4.8.

**EDF**

For works contracts of a value of €5,000,000 or less, tenderers of the ACP States are accorded a 10% price preference where tenders of an equivalent economic and technical quality are compared., provided that at least one quarter of the capital stock and management staff originates from one or more ACP States.

## 5.7. Modifying works contracts

See section 2.10. for the general information regarding contract modification.

No contract modification:

In the overall majority of cases, the works contract stipulates that it is paid by measurement: in such contracts, the quantities indicated in the bill of quantities are estimates, as is the initial contract price derived from these estimated quantities.

Whenever an application for payment is submitted, the supervisor measures, for the respective items, the actual quantities of the works executed and certifies, by applying the unit rates, the amount due.

Increases vis-à-vis the initial contract price, which are the sole result of the measured actual quantity exceeding the stated bill of quantities or price schedule, do not represent a change of the contract and do not require an administrative order for modification nor a contract addendum.

Likewise, it can occur that the application of the price revision clause of the contract will have the same effect. Again, since the price revision formula is already agreed upon by the contracting parties in the initial contract, no modification of the contract is required to allow increases vis-à-vis the initial contract price to deal with their effect.

In no way, can a contract addendum or administrative order be used to obtain additional works which are not necessary for the completion of the initial contract.

### Administrative order:

In a works contract, the supervisor has the power to issue an administrative order for any modification to any part of the works necessary for the proper completion and/or functioning of the works. Such modifications may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, position, dimension level or line and changes in the specified sequence, method or timing of execution of the works. See General Condition article 37.

The contractor is bound to carry out the ordered modification. The contractor can not delay the ordered works pending a decision on his possible claim for extension of the period of implementation or for additional payment.

### Addendum:

Contract modifications not covered by an administrative order must be formalised through an addendum. In that respect, for additional works, not included in the initial contract, which, through unforeseen circumstances become necessary for carrying out the works described therein, an addendum can be concluded under the conditions given in point 5.2.4.1. b).

It is necessary to proceed to the modifications through contract addendum when such variation would result in an increase or reduction of the total value of the works in excess of 15% the percentage of the initial contract price.

## **DECENTRALISED: EX-ANTE**

If additional EU financing is sought, it must be endorsed by the Delegation of the European Union before any commitment is made by the Contracting Authority.

The total period of execution of a works contract includes the period of the implementation of the works and the defects liability period between provisional and final acceptance. During this time, the period(s) of implementation can be extended by administrative order or by contract addendum during the period of execution of the contract, even after the implementation period specified in the contract has expired.

A works contractor is committed to complete the works, and the Contracting Authority is committed to pay for the certified works. These commitments and the contract remain valid even if the contractor fails to complete the works within the period(s) specified thereto in the contract, the consequence being that liquidated delay damages can be deducted from the amounts due.

## 6. Grants

### 6.1. Basic rules for grants contracts

#### 6.1.1. Definition

A grant is a direct financial contribution, by way of donation, from the EU budget or the EDF, in order to finance:

- either an action intended to help achieve an objective forming part of a European Union policy;
- or the functioning of a body which pursues an aim of general European interest or has an objective forming part of a European Union policy.

In other words, it is a payment of a non-commercial nature by the Contracting Authority to a specific beneficiary to implement an action intended to help achieve an objective forming part of a European Union policy or an objective of the ACP-EC Agreement or the Overseas Association Decision or of a programme or project adopted in accordance with that Agreement or Decision.

In certain cases the grant may also finance the operation of a body which pursues an aim of general European interest or has an objective forming part of a European Union policy or an objective of the ACP-EC Agreement or the Overseas Association Decision.

A body pursuing an aim of general European interest is: a European body involved in education, training, information, innovation or research and study on European policies, any activities contributing to the promotion of citizenship or human rights, or a European standards body; or a European network representing non-profit bodies active in the Member States or in the candidate countries and promoting principles and policies consistent with the objectives of the Treaties.

The body signing a grant contract is known as the grant beneficiary and should not be confused with the final beneficiary of the operation<sup>27</sup> nor with the target group<sup>28</sup>.

Grants should be distinguished from other legal commitments entered into in the external action framework and the correct rules applied accordingly. A grant contract can be distinguished from a procurement contract in a number of ways:

A grant is made for an operation which is proposed to the Contracting Authority by a potential beneficiary (an “applicant”) and falls within the normal framework of the beneficiary's activities. This is in contrast to a procurement contract, in which the Contracting Authority draws up the terms of reference for a project it wants to be carried out.

A grant beneficiary is responsible for implementing the operation and retains ownership of its results. By contrast, under a procurement contract, it is the Contracting Authority which owns the results of the project and closely supervises its implementation.

A grant beneficiary generally contributes to the financing of the action except in cases where full EU financing is essential for the action to be carried out or full EDF financing is required (see point 6.2.9.). In the case of procurement contracts, however, the contractor does not normally contribute financially.

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<sup>27</sup> “Final beneficiaries” are those who will benefit from the project in the long term at the level of the society or sector at large

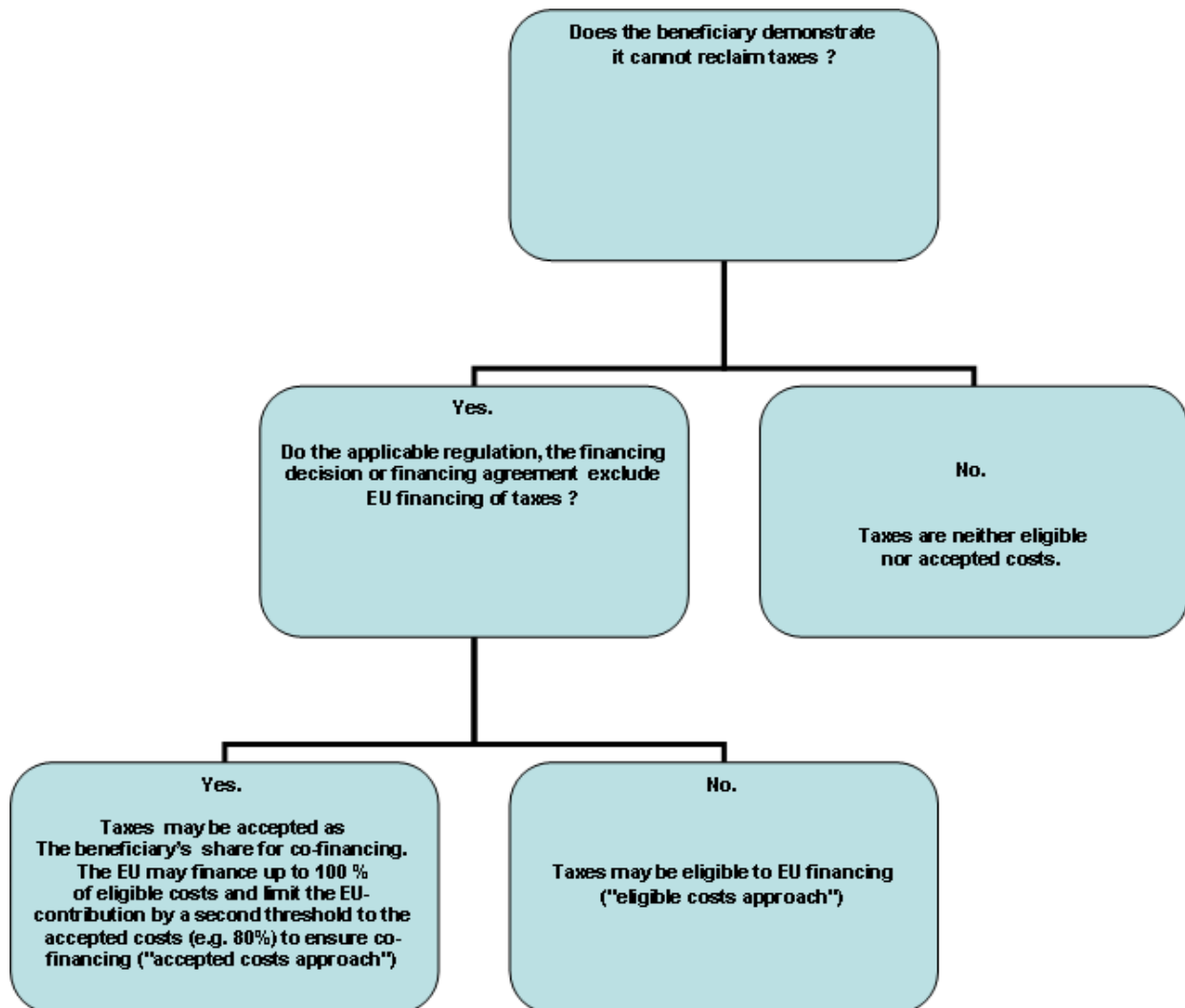
<sup>28</sup> “Target groups” are the groups/entities who will be directly positively affected by the project at the Project Purpose level

Under no circumstances may the grant give rise to profits (i.e., it must be restricted to the amount required to balance income and expenditure for the action, see point 6.2.10.), with exception of the actions with the objective of reinforcement of the financial capacity of a beneficiary or the generation of an income in the framework of external actions. Grant beneficiaries are generally non-profit-making.

The fact that a body is non-profit-making does not necessarily mean that a contract to be concluded with it will be a grant contract; non-profit bodies can also tender for procurement contracts.

The grant is expressed by ways of a percentage and a maximum amount of the eligible costs of the action actually incurred by the beneficiary. The contribution may further be limited by a percentage of the total accepted costs of the action, which include taxes, where the grant beneficiary can show it cannot reclaim them and where the applicable regulation and/or financing decision or financing agreement excludes payment of taxes.

Accepted costs vs Eligible costs approach:



If lump sums (with a unit value not exceeding € 25.000 per category(ies) of eligible cost) or flat-rate financing are envisaged, its use and the maximum amounts must be authorised by grant

or type of grant by the Commission in a decision, e.g. in the financing decision. The use of lump sums, flat-rate financing or a combination of the different forms of expressing a grant requires an amendment of the standard grant contract, which is subject to the approval of the exception.

The amount of a procurement contract, on the other hand, represents a price fixed in accordance with competitive tendering rules.

Benefit deriving from an interest subsidy and equity investments, with the exception of those for international financial institutions such as the EBRD or specialised EU bodies such as the European Investment Fund, are also considered as grants.

The following e.g. do not constitute grants within the meaning of this Practical Guide:

- programme estimates;
- loans, risk-bearing instruments of the EU or financial contributions to such instruments, contributions, interest-rate subsidies or any other financial operation managed by the EIB;
- direct or indirect budgetary assistance, or aid to help relieve debt or support export earnings in the event of short-term fluctuations;
- payments made to bodies to which implementation tasks are delegated in accordance with Articles 53 c, 53 d and 54(2) of the Financial Regulation applicable to the General Budget and Article 25(3) of the 10th EDF Financial Regulation and payments made by virtue of their constitutive basic act to bodies set up by the legislative authority. A contract should be classified as a procurement contract rather than a grant contract if its subject matter relates primarily or broadly to the administrative functions of the Contracting Authority.

Financing agreements concluded with beneficiary States do not constitute grants. If an operation involves an agreement with the beneficiary State (or a ministry or other State central administrative body), this must be in the form of a financing agreement and not a grant contract.

Grants paid under financing or related agreements, programme estimates and other agreements with the bodies referred to in Articles 54, 55 and 185 of the Financial Regulation applicable to the Budget and in Articles 25-28 of the 10th EDF Financial Regulation are covered by the rules set out in Chapter 6 of this Practical Guide.

A grant contract cannot be signed unless the action concerned meets the definition of a grant according to the abovementioned criteria.

An action eligible to receive grant funding must be clearly identified. No action may be split for the purpose of evading compliance with the rules laid down in this Practical Guide.

## **6.2. Overview**

There are strict rules governing the way in which grants are awarded. The award of grants is subject to the principles of programming, transparency and equal treatment. They may not be cumulative or awarded retrospectively and they must generally involve co-financing. The amount eligible for financing, as specified in a grant contract, may not be exceeded.

The grant may not have the purpose or effect of producing a profit for the beneficiary with exception for the actions with the objective of reinforcement of the financial capacity of a beneficiary or the generation of an income in the framework of external actions.

Grants shall be awarded either by a Commission decision notified to the successful applicant or by a written agreement (standard grant contract) concluded with it. In case of grants awarded in

the framework of external actions those are awarded through written agreement (standard grant contract).

### 6.2.1. Management modes

There are several possible approaches to managing procedures for EU external actions. See section 2.2.

This Practical Guide includes the procedures to be observed in all cases under the following headings:

#### **DIRECT CENTRALISED**

Procedures to be followed under a centralised programme. Grants are awarded by the European Commission. The Commission is responsible for publishing work programmes, issuing Calls for Proposals, receiving proposals, chairing Evaluation Committees, deciding on the results of Calls for Proposals and signing the contracts.

#### **DECENTRALISED: EX-ANTE**

Procedures to be followed under a decentralised programme with ex-ante controls. Grants are awarded by the Contracting Authority designated in the financing agreement, i.e., the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the financing agreement.

Before launching calls for proposals, the Contracting Authority must submit the annual work programmes and, where appropriate, the Guidelines for Applicants to the European Commission for approval.

On the basis of decisions thus approved, the Contracting Authority is responsible for publishing annual work programmes, issuing calls for proposals, receiving proposals, chairing Evaluation Committees and deciding on the results of calls for proposals. The Contracting Authority must submit the Evaluation Report, details of the proposed grants and, where appropriate, the draft contracts to the European Commission for endorsement. No endorsement of the contracts by the European Commission is however needed in certain cases contemplated in the Practical Guide procedures for programme estimates (point 4.2.3.).

Once the grant has been approved, the Contracting Authority will sign the contract and notify the European Commission accordingly. As a general rule, the European Commission will be represented as an observer when proposals are opened and evaluated and must always be invited.

The Contracting Authority must submit the annual work programmes, Guidelines for Applicants and grant award notices to the European Commission for publication.

The application of the derogations and exceptions specifically provided for by this Practical Guide is subject to the prior approval of the relevant services of the European Commission.

#### **DECENTRALISED: EX-POST**

Procedures to be followed under a decentralised programme with ex-post controls. Grants are awarded by the Contracting Authority designated in the financing agreement, i.e., the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the financing agreement. It is responsible for publishing annual work programmes, issuing Calls for Proposals, receiving proposals, chairing Evaluation Committees, deciding on the results of Calls for Proposals and signing the contracts without the prior approval of the European Commission.

The Contracting Authority must submit the annual work programmes, Guidelines for Applicants and grant award notices to the European Commission for publication.

## 6.2.2. Management Tools

### **DIRECT CENTRALISED**

PADOR (Potential Applicant Data On-line Registration) is the first module of EuropeAid On-Line Services which purpose is knowledge management of its partners as well as to improve the services offered to applicants. It is destined for Non State Actors and Local Authorities (not individuals) interested in applying for EU funding through calls for proposals. PADOR is open for these organisations to register and update their generic data (i.e. that are not specific to a given Call for Proposals) and upload their supporting documents (for instance statutes or equivalent document).

Once registered in PADOR, the applicant or partner do not need to fill in the sections concerning non-action specific information of the Grant Application form, nor do they need to submit supporting documents, since the evaluation in this case will be based on the information provided by the applicant in PADOR. It is the obligation of the applicant to ensure that the information is updated.

Each call for proposals needs to specify whether prior registration in PADOR is obligatory or not.

For further information, see

[http://ec.europa.eu/europeaid/work/onlineservices/pador/index\\_en.htm](http://ec.europa.eu/europeaid/work/onlineservices/pador/index_en.htm), where you can find:

- the PADOR manual
- the PADOR Quick guide for applicants
- the PADOR Quick guide for partners
- the PADOR e-learning
- Frequently Asked Questions.

For direct centralised management, in CRIS, there is a Call for Proposals Module available to facilitate the management of the evaluation procedure. The use of this module is obligatory at least for the registration of applications. This module will also be used to publish general statistics about the calls for proposals.

## 6.2.3. Eligibility criteria

### 6.2.3.1. Nationality rule

See point 2.3.1.

Participation in the award of grants contracts is open on equal terms to all natural and legal persons and, after prior approval from the relevant services of the Commission, to entities which do not have legal personality under the applicable national law, provided that their representatives have the capacity to undertake legal obligations on their behalf and assume financial liability and who are established in an eligible country in accordance with the basic act governing the programme in question.

### 6.2.3.2. Exceptions to the nationality rule

See point 2.3.2. Exceptions to the nationality rule must be specifically mentioned in the Guidelines for Applicants and is subject to the prior approval of the European Commission.

Restrictions to the nationality rule are not allowed as such, however, if provided for in the relevant basic act, on the basis of the objectives of the programme, scope and the particular location of the action(s), the eligibility of the applicants may be limited by facts; e.g. the objective of the programme is to establish cooperation between European universities and those from a specific geographical region, by definition only Universities from Europe and this specific region may apply.

### **6.2.3.3. Grounds for exclusion**

Natural or legal persons are not entitled to participate in Calls for Proposals or be awarded grants if they fall into any of the situations listed in point 2.3.3.

### **6.2.4. Programming**

Grants must be programmed by the Contracting Authority with clearly defined objectives.

The annual work programme must be published, by budget heading or programme, on the Internet site of the Contracting Authority (or any other appropriate media) and on the EuropeAid website, as appropriate, following the template in Annex E1.

Any substantial change in the work programme during the relevant year must also be adopted and published in the same conditions as the initial work programme.

#### **DIRECT CENTRALISED**

The work programme will be adopted by the Commission and published on the EuropeAid website, if necessary during the previous year and no later than 31 March of each financial year.

#### **DECENTRALISED: EX-ANTE**

The work programme will be adopted by the Contracting Authority and published on its Internet site (or any other appropriate media) and on the EuropeAid website, if necessary during the previous year and no later than 31 March of each financial year.

The Contracting Authority must submit the work programme to the European Commission for approval before publishing it.

#### **DECENTRALISED: EX-POST**

The work programme will be adopted by the Contracting Authority and published on its Internet site (or any other appropriate media) and on the EuropeAid website, if necessary during the previous year and no later than 31 March of each financial year.

### **6.2.5. Transparency**

The availability of grants must be publicised widely and in an easily accessible way.

The work programme will be implemented through the publication of calls for proposals save in duly substantiated exceptional cases of urgency or where the characteristics of the beneficiary make it the sole choice for a given action (see point 6.3.2.).

All grants awarded in the course of a financial year will be published annually with due observance of the requirements of confidentiality and security (see point 6.4.10.4.).

### **6.2.6. Equal treatment**

The grant award process must be completely impartial. This means notably that the proposals must be evaluated by an Evaluation Committee, with the advice of assessors where appropriate, using the published eligibility and evaluation (selection and award) criteria (see point 6.4.3.).

### **6.2.7. Non-cumulation**

No single beneficiary may receive more than one grant financed by the European Union - for a given action, save otherwise provided in the basic act concerned. A beneficiary may be awarded only one operating grant financed by the European Union per financial year.

Under the direct centralised management system, however, an action may be financed jointly from separate budget lines by a number of authorising officers.

The applicant shall immediately inform the authorising officer of any multiple applications and multiple grants relating to the same action or to the same work programme.

### **6.2.8. Non-retroactivity**

Grants may, as a rule, only cover costs incurred after the date on which the grant contract is signed. A grant may be awarded for an action which has already begun only where the applicant can demonstrate the need to start the action before the contract is signed.

In such cases, expenditure incurred prior to the deadline for submitting proposals or, in the case of direct award the date of submission of the grant application, will not be eligible for financing. No grant may be awarded retroactively for actions already completed. However, in the case of crisis situations within the meaning of article 168, paragraph 2 of the Implementing Rules of the Financial Regulation, expenditure incurred by a beneficiary before the date of submission of the application shall be eligible for EU financing solely where the expenditure relates to the constitution of stocks by the applicant for use in connection with the action for which the grant is awarded and/or by prior approval and for properly substantiated reasons, the Special Conditions of the grant contract explicitly provide for this by setting an eligibility date earlier than the date for submission of the application.

The contract for an operating grant shall be awarded within 6 months after the start of the beneficiary's budgetary year. Costs eligible for financing may not have been incurred before the grant application was lodged or before the start of the beneficiary's budgetary year.

### 6.2.9. Co-financing

Grants may not, as a rule, finance the entire cost of the action or the entire operating expenditure of a beneficiary body, with the following exceptions and after prior approval has been granted.

#### **BUDGET**

The financing of an action in full may be authorised in the following cases, save where prohibited by the basic act:

- humanitarian aid, including assistance for refugees, uprooted persons, rehabilitation and mine clearance;
- aid in crisis situations within the meaning of article 168 paragraph 2 of the Implementing Rules of the Financial Regulation;
- actions to protect health or the fundamental rights of peoples;
- actions resulting from the implementation of financing agreements or actions with international organisations.

The Contracting Authority must be in a position to show that financing in full is essential to carry out the action in question and must substantiate its award decision accordingly.

Where it is in the interests of the EU to be the sole donor to an action, and in particular to ensure visibility of an EU action. Grounds shall be provided in the Commission's financing decision.

#### **EDF**

The financing of an operation in full may be authorised if the Contracting Authority is in a position to show that financing in full is essential in order to carry out the operation in question and substantiates its award decision accordingly.

The beneficiary supplies evidence of the amount of the co-financing brought either with its own resources or in the form of financial transfers from third parties.

The Contracting Authority may accept co-financing in kind, if considered necessary or appropriate.

For grants with a total value of less than or equal to € 25 000, the Contracting Authority may, depending on his risk assessment, waive the obligation to provide evidence for co-financing.

### 6.2.10. Non-profit

Grants may not have the purpose or effect of producing a profit for the beneficiary, except the case where the objective(s) of the Action is to reinforce the financial capacity of a beneficiary or to generate an income. In such case, this fact has to be provided for in the Special Conditions of the Standard grant contract.

Profit is defined as:

- in the case of a grant for an action, a surplus of receipts over the costs incurred by the beneficiary when the request is made for final payment.
- in the case of an operating grant, a surplus balance on the operating budget of the beneficiary.

Lump-sums and flat-rate financing should be established in such a way as to exclude *a priori* a profit.

In the case of operating grants to bodies which pursue an aim of general European interest, the Contracting Authority shall be entitled to recover the percentage of the annual profit corresponding to the EU contribution to the operating budget of the bodies concerned where these bodies are also funded by public authorities which are themselves required to recover the percentage of the annual profit corresponding to their contribution. For the purpose of calculating the amount to be recovered, the percentage corresponding to the contributions in kind to the operating budget shall not be taken into account.

### **6.2.11. Other essential points**

See point 2.3.6.

Procurement of services, supplies or works for a grant-funded action: if the implementation of an action involves the procurement of services, supplies or works by the grant beneficiary, the contract award procedures specified in Annex IV of the grant contract must be applied for each procurement contract.

If the action requires financial support to be given to third parties (sub-granting), it may be given on the condition that the financial support is not the primary aim of the action and that the conditions for the giving of such support are strictly defined in the grant contract or decision with no margin for discretion. The grant contract must therefore specify:

- the minimum and maximum amounts of financial support that can be paid to a third party and criteria for determining the exact amount;
- the different types of activities that may receive such financial support on the basis of a fixed list.

The maximum amount of financial support that can be paid to third parties by a beneficiary is €100.000 with a maximum of €10.000 per each third party.

Unless otherwise specified in the basic act, in the case where operating grants to (BUDGET: European) bodies are renewed, they shall gradually be decreased, except if the grant is in the form of lump-sums or flat-rate financing.

## **6.3. Award procedures**

### **6.3.1. Call for proposals**

Grants must be awarded following the publication of a Call for Proposals except in the cases listed in point 6.3.2. below.

#### **6.3.1.1. Publication**

A call for proposals is always published on the EuropeAid website.

A call for proposals must also be published locally where it is not organised by a service of the European Commission headquarters.

#### **6.3.1.2. Open or restricted call for proposals**

Calls for proposals shall by default be restricted, i.e all applicants may ask to take part but only the applicants who have been shortlisted (on the basis of a concept note in response to the published Guidelines for Applicants) will be invited to submit a full proposal.

In exceptional cases, calls for proposals may be open, i.e. all applicants will be free to submit a grant application form including a full proposal in response to the published Guidelines for Applicants (see point 6.4.2.).

The choice of launching and open rather than a restricted call could only be justified by the particular technical nature of the call, the limited budget available, the expected limited number of proposals or by organisational constraints (e.g. organisation of calls by regional EU-delegations). In this case, prior approval must be granted.

### 6.3.1.3. Partnerships

Grant contracts may form part of framework partnership agreements with a view to establishing long-term cooperation with the Contracting Authority. Framework agreements specify the common objectives, the nature of actions planned on a one-off basis or as part of an approved annual work programme, the procedure for awarding specific grants, in compliance with the principles and procedural rules in this Guide, and the general rights and obligations of each party under the specific contracts. The duration of the partnership may not exceed four years, save in exceptional cases, justified in particular by the subject of the framework partnership. Framework partnership agreements are treated as grants for the purposes of the award procedure.

Partnerships of this nature (between the Contracting Authority and the beneficiary) are rare and not to be confused with the possibility frequently used by beneficiaries of carrying out an action in partnership with one or more other organisations as their "partners".

#### **DIRECT CENTRALISED, DECENTRALISED: EX-ANTE**

The prior approval of the relevant services of the European Commission must be sought for the use of a framework partnership agreement.

#### **DECENTRALISED: EX-POST**

No prior approval by the European Commission is required for the use of a framework partnership agreement.

### 6.3.2. Grants awarded without calls for proposals (“Direct award”)

#### **DIRECT CENTRALISED, DECENTRALISED: EX-ANTE**

The prior approval of the relevant services of the European Commission must be sought for use of the direct award procedure.

The negotiation report ( Annex A10a ) must be submitted for approval to the relevant services of the European Commission, which must decide whether or not to accept the negotiation result.

#### **DECENTRALISED: EX-POST**

No prior approval by the European Commission is required for the use of the direct award procedure or for the result of negotiation contained in the negotiation report ( Annex A10a ).

Only in the following circumstances is it not necessary to organise a Call for Proposals before awarding grants:

- In duly substantiated exceptional cases of urgency, i.e., where unforeseeable events oblige the Contracting Authority to act with an urgency incompatible with the periods laid down for Call for Proposals procedures described in point 6.3.1. The circumstances cited as grounds for extreme urgency must in no way be attributable to the Contracting Authority (e.g., imminent expiry of the financing agreement).

Actions carried out in crisis situations as described in Annex A11a are considered to satisfy the test of extreme urgency; this provision is *mutatis mutandis* applicable to EDF.

Under emergency assistance provided for in article 72 and/or 73 of the Cotonou

Agreement ( see Annex A11a ), it is also possible the direct award of grants.

- Where the grant is awarded to a body with a de jure or de facto monopoly, duly substantiated in the award decision.

For these purposes, "de facto" or "de jure" monopoly means that the beneficiary, which may be a consortium:

- a) has exclusive competence in the field of activity and/or geographical area to which the grant relates pursuant to any applicable law; or
  - b) is the only organisation (i) operating or (ii) capable of operating in the field of activity and/or geographical area to which the grant relates by virtue of all considerations of fact and law.
- Where the grant is to be awarded to a body identified by the relevant basic act as beneficiary of a grant. Note that "basic act" refers to the programme regulation. It is not sufficient to identify a body for a direct award in financing decisions/Annual Action Programmes, as they do not constitute basic acts.
  - In the case of research and technological development, to bodies identified in the annual work programme, where the basic act expressly provides for that possibility, and on condition that the project does not fall under the scope of a call for proposals.
  - For actions with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power, on condition that the actions concerned do not fall within the scope of a call for proposals. These cases shall be duly substantiated in the award decision.
  - In case of grants of a low amount in decentralised management (see section 6.5.)

In all cases, the Contracting Authority must prepare a report explaining the manner in which the grant beneficiaries were identified and the grant amounts established, and the grounds for the award decision ( see template in Annex A10a ). The Contracting Authority must follow the steps shown in the negotiation report template ( Annex A10a ) and ensure that all the basic principles for grants are respected (including eligibility, capacity and exclusion).

The procedures described in point 6.4.10. must be followed by analogy, with the aforementioned report being included in the contract dossier.

## **6.4. Call for proposals**

### **6.4.1. Publicity**

In order to ensure the widest possible participation and the requisite transparency, Guidelines for applicants must be published for every Call for Proposals.

The Guidelines are published on the Internet and in any other appropriate media (specialised press, local publications, etc.). They should also be available in hard copy from the Contracting Authority. They should be available in the languages appropriate to the context of the Call for Proposals.

The European Commission is responsible for publication on the EuropeAid website. When the Contracting Authority is not a service of the European Commission headquarters, it must arrange local publication directly at the same time as it is published on the Internet.

Since the publication cost of the entire Guidelines in the local press may be prohibitive, the template in Annex E2 prescribes the minimum information which is required for a local publication. The Guidelines have to be available at the address mentioned in the local publication.

It is also advisable, after the launch of the call for proposals, to organise one or more information sessions which all the potential applicants can attend. Such information sessions should take place at the latest 21 days before the submission deadline. Any presentation/documentation to be delivered in the information session will also be uploaded at least on the Europeaid website where the call was published. Information sessions for centralised global calls for proposals are organised in coordination with European Commission headquarters concerning dates, locations and presentations). The information to be disseminated in all targeted regions is harmonised in a non-discriminatory way.

## **6.4.2. Drafting and contents of the guidelines for applicants**

The Guidelines for Applicants (which include the Application Form and other annexes) explain the purpose of the Call for Proposals, the rules regarding the eligibility of applicants and partners, the types of action and costs which are eligible for financing, and the evaluation (selection and award) criteria (see annex E3a). They also contain instructions on how to fill in the application form, what to annex to it and what procedures to follow for applying. They give information on the evaluation process that will follow (including an indicative timetable) and the contractual conditions which will apply to successful applicants.

The Guidelines should set out very clearly and in detail the objectives and priorities of the call for proposals, and give particular attention to the eligibility criteria. The guidelines must be published and any modification must be published as well. The information published will become binding on the Evaluation Committee once the date for submission has elapsed.

The Application Form to be completed by the applicants comprises the following parts:

- a concept note
- information about the action proposed, including its budget
- information about the applicant
- information about any partners.

### **DIRECT CENTRALISED, DECENTRALISED: EX-POST**

The Guidelines for Applicants must be approved by the Contracting Authority prior to issue.

### **DECENTRALISED: EX-ANTE**

The Contracting Authority must submit the Guidelines for Applicants to the Delegation of the European Union for approval prior to issue.

## **6.4.3. Eligibility and evaluation (selection and award) criteria**

### **6.4.3.1. Eligibility criteria**

The eligibility criteria shall determine the conditions for participating in a call for proposals. Those criteria shall be established with due regard for the objectives of the action and shall comply with the principles of transparency and non-discrimination. The eligibility criteria relate to two different aspects:

- Eligibility of the applicant: this refers to the applicant's legal and administrative status - see points 6.2.3.1. (Rules on nationality) and 6.2.2.3. (Grounds for exclusion).  
If a Call for Proposals relates to actions to be implemented in partnership, the minimum number of partners and the eligibility criteria applicable to each of the partners of the lead applicant must be specified. The eligibility criteria applicable to the lead applicant and to the partners may differ.

- Eligibility of the action: this refers to the types of activities, sectors or themes and geographical areas covered by the Call for Proposals.

#### **6.4.3.2. Evaluation criteria: selection and award**

The evaluation criteria consist of selection and award criteria, all of which are defined in the evaluation grids.

- The selection criteria are used to assess the applicant's financial and operational capacity to complete the proposed action: the applicant must have stable and sufficient sources of funding to maintain its activity throughout the period during which the action is being carried out and to participate, where appropriate, in its funding. Applicants and their partners must also have the necessary professional competencies and qualifications to complete the proposed action.

The verification of financial capacity based in particular on an analysis of the supporting documents requested from the applicants does not apply to natural persons in receipt of scholarships, public bodies or international organisations.

- The award criteria are used to assess the quality of proposals against the set objectives and priorities, so that grants are awarded to the actions which maximise the overall effectiveness of the call for proposals. They should enable the Contracting Authority to select proposals which it can be confident will comply with its objectives and priorities and guarantee the visibility of the EU financing.

The award criteria relate, in particular, to the relevance of the action and its compatibility with the objectives of the grant programme under which the Call for Proposals is being financed, to the quality, expected impact and sustainability of the action, and to its cost-effectiveness.

All eligibility and evaluation criteria specified in the Call for Proposals must be applied as they stand and cannot be changed in the course of the procedure. The criteria should be precise and non-discriminatory. See the templates of evaluation grids given in Annexes E5a and E5b.

#### **6.4.4. Additional information before the deadline for submission of proposals**

During the time between publication and the deadline for the submission of proposals, and in addition to the eventual information session mentioned in point 6.4.1., applicants should be able to ask questions to help them fill in the form and put together their applications. The Contracting Authority should therefore provide a contact point to which questions may be addressed. Applicants may submit questions in writing up to 21 days before the deadline for the submission of proposals. The Contracting Authority must reply to all such questions at least 11 days before the deadline for submission of proposals. In the interest of equal treatment of applicants, the Contracting Authority cannot give a prior opinion on the eligibility of an applicant, a partner, an action or specific activities.

In the interests of transparency and equal opportunity, the answer provided to one applicant on points which may be of interest to the other applicants should be made available to all the others. The way to achieve this is to publish on the Internet a table of questions and answers provided. This must be updated regularly until 11 days before the deadline for submission of proposals.

#### **6.4.5. Deadline for submission of proposals**

Proposals must be submitted to the Contracting Authority at the address and, at the very latest, by the date (and time in case of hand-delivery) indicated in the Call for Proposals, as evidenced

by the date of dispatch, the postmark or the date of the deposit slip (in case of hand-deliveries, the deadline for receipt is on the date and hour fixed in the guidelines). However, for reasons of administrative efficiency where the acceptance of late arriving Concept Notes or applications that have been submitted on time would considerably delay the award procedure or put into question decisions already taken and communicated, the Contracting Authority may reject any application received after the effective date of approval of the first evaluation step. For an open procedure, this is the approval of the Concept Note evaluation. For a restricted procedure this is either the approval of the Concept Note evaluation (first stage) or the approval of the evaluation of the full application (second stage).

The deadline for submission must be long enough to allow for high-quality proposals. Experience shows that too short a deadline may prevent would-be applicants from submitting proposals or cause them to submit incomplete or ill-prepared proposals.

**The minimum period between the date of publication of the Guidelines and the deadline for submission of proposals is 90 days.** When the maximum size of each grant to be awarded within the programme is less or equal to €100,000, the minimum period is 60 days. In exceptional cases, a shorter deadline may be allowed as a derogation.

A call for proposals may set more than one deadline for submissions, either to allow for staggered processing or in cases where the actions to be financed cannot by their nature be planned long in advance. In this case, proposals submitted after one deadline are automatically carried over to the next.

#### **6.4.6. Submission of proposals**

The proposals must be submitted in accordance with the instructions given in the Guidelines for Applicants (see annex E3).

The application form consists of a concept note, the application form itself, a checklist and a declaration.

The Authorising Officer responsible for an individual call for proposals has the discretion to decide whether to request the supporting documents from all the applicants with the application form or only from the applicants which have been provisionally selected after the evaluation. Even if this does not change the basic principle that the supporting documents will be examined only for the provisionally selected applicants, the Guidelines for applicants and the Application form should be adapted accordingly. No supporting document will be requested for applications for a grant not exceeding €25 000.

Originals or photocopies of the said originals of the requested supporting documents must be provided. If the supporting documents are not written in one of the official languages of the European Union or if applicable of the country of implementation of the Action, a translation into the language/one of the languages of the call for proposals of the relevant excerpts of these documents showing proof of the applicant's eligibility may be requested for the purposes of interpreting the proposal.

In the case of actions where the cost to be financed exceeds €500,000 and operating grants of over €100,000, the applicant must provide an external audit report produced by an approved auditor. The report must certify the accounts for the last financial year available (the last two years in the case of framework partnership agreements). The obligation does not extend to international organisations nor to public bodies. Depending on his risk assessment, the Contracting Authority may waive the obligation of audit for secondary and higher education

establishments and beneficiaries who have accepted joint and several liabilities in the case of agreements with a number of beneficiaries.

#### **DIRECT CENTRALISED**

The supporting documents required by a specific call for proposals must be uploaded in PADOR by the time limit communicated by the European Commission.

### **6.4.7. The Evaluation Committee**

#### **6.4.7.1. Composition**

Proposals are evaluated by an Evaluation Committee appointed by the Contracting Authority comprising a non-voting Chairperson, a non-voting Secretary and an odd number of voting members (minimum of three). The voting members must possess the technical and administrative capacities necessary to give an informed opinion on the proposals. They must have a reasonable command of the language in which the proposals are submitted. They must represent at least two organisational entities of the Contracting Authority with no hierarchical link between them, unless there are no separate entities (e.g. in an EU-delegation). Substitutes to the members can be nominated on the same conditions as the titulars where justified by the size and/or the technical nature of the call for proposals.

#### **DIRECT CENTRALISED, DECENTRALISED: EX-POST**

The Evaluation Committee (i.e., the Chairperson, the Secretary and the voting members) must be nominated by name by the Contracting Authority. The participation of other observers must be authorised in advance by the Contracting Authority.

#### **DECENTRALISED: EX-ANTE**

The Evaluation Committee (i.e., the Chairperson, the Secretary and the voting members), must be nominated by name by the Contracting Authority which informs the European Commission. The composition of the Evaluation Committee is considered approved if after 5 working days the European Commission has not raised any objection. The European Commission may nominate an observer to follow all or part of the proceedings of the Evaluation Committee. The participation of other observers must be submitted for prior approval to the European Commission.

The Evaluation Committee members should attend all meetings, except the opening meeting. Any absence must be recorded and explained in the evaluation report. A member who withdraws from the Evaluation Committee for whatever reason must be replaced by a substitute or following the standard procedure for appointing members of the Evaluation Committee. The Chairperson of the Evaluation Committee determines to what extent the evaluation process must be restarted. Such decision as well as any decision relating to the replacement of a Committee member must be recorded and justified in the evaluation report.

All voting members of the Evaluation Committee have equal voting rights.

The Evaluation Committee should be formed early enough to ensure the availability of the designated members (and any observer nominated by the European Commission, in the case of decentralised ex-ante control) during the period necessary to prepare and conduct the evaluation process.

#### **6.4.7.2. Use of assessors**

Where the proposals received are particularly numerous or highly technical, it may not always be possible for the Evaluation Committee to examine each one in detail. If necessary, all or part of this detailed examination may be carried out by assessors so that the Evaluation Committee may conduct its deliberations on the basis of their assessments. Assessors may attend the meetings of the Evaluation Committee as observers to present the results of their assessments and answer any questions from Committee members.

In the case assessors are not used, it suffices that the Evaluation Committee completes one collective evaluation grid for each respective step of the procedure.

Assessors work under the supervision of the Chairperson of the Evaluation Committee. Although the same assessors may be used for the different stages, different types of expertise are required for the different assessments and it is recommended to use different persons wherever possible.

Where the call for proposals is organised by a service of the European Commission headquarters, one of the two assessors will be the delegation of the country where the action is to take place (in case of regional projects it is the leading delegation - or, as appropriate, headquarters - which will consult the EU delegations concerned in the region where appropriate). In the case assessors are not used, the EU delegation should nevertheless be duly consulted.

- With respect to the administrative check and the verification of eligibility, the task of assessors consists of carrying out a screening of each proposal on the basis of the Checklist and the Declaration by the applicant ( see Annex E3b ). Each proposal need only be screened by one assessor.

It would be preferable to delegate this work to officials or other staff members of the Contracting Authority. Outside assessors may be recruited as required.

- With respect to the evaluation of the concept notes and of the proposals, the task of assessors consists of carrying out a written assessment on the basis of the published evaluation grids (see Annex E5a and Annex E5b). At least two assessors must assess each concept note and each proposal, working independently of each other. These two assessors should preferably be chosen internally within the Commission services. Where there are insufficient internal resources, external assessors can however also be chosen. The external assessors must have an in-depth knowledge of the issues covered by the grant programme concerned. Their expertise should be verified on the basis of their CVs. A minimum of five years' experience of a particular issue should be expected.

#### **DIRECT CENTRALISED. DECENTRALISED: EX-POST**

The assessors are selected by the Contracting Authority. Outside assessors who are not officials or other staff of the Contracting Authority or the public administration of the beneficiary country must be selected using the applicable procedure for service contracts, i.e. in accordance with the applicable thresholds.

#### **DECENTRALISED: EX-ANTE**

The assessors are selected by the Contracting Authority. The list must be submitted for approval to the European Commission. Outside assessors who are not officials or other staff of the Contracting Authority or the public administration of the beneficiary country must be selected using the appropriate procedure for service contracts.

#### **6.4.7.3. Impartiality and confidentiality**

See point 2.8.2.

#### **6.4.7.4. Responsibilities of the Evaluation Committee**

See point 2.8.3.

## **6.4.8. Stages in the evaluation process**

The evaluation process starts with the receipt of the concept notes/proposals by the Contracting Authority, and ends with the decision to award grants to the selected applicants. The procedure is set out below.

### **6.4.8.1. Receipt and registration of proposals**

On receiving proposals, the Contracting Authority must register them and provide a receipt for those delivered by hand (see Annex A7). The envelopes must remain sealed and be kept in a safe place until they are opened.

### **6.4.8.2. Opening session and administrative check**

All proposals received should be opened in an opening session at which the registration details will be checked and completed and the proposals numbered.

The secretary to the Evaluation Committee supervises the opening session and requests the assistance of other staff of the Contracting Authority as need be.

The registration of concept notes/proposals should contain the following information:

- registration number of concept note/proposal
- date of submission
- the applicant's name and address.

For each proposal,

- the original is kept safely in the archives of the Contracting Authority;
- the copies are distributed to the evaluators and, where applicable, to the assessors.

The proposals having met the deadline are then subject to an administrative check, which will assess whether they have duly completed "yes" to all the criteria mentioned in the checklist (Part 1 of section V of the grant application form). Under no circumstances may assessors or members of the Evaluation Committee change this checklist.

Incomplete dossiers may be disqualified from the evaluation process. However, if some of the criteria are not correctly checked, according to the option chosen in the call for proposals, the application is rejected or the applicant may be invited to submit a clarification within the deadline fixed by the Evaluation Committee. In the latter, the Evaluation Committee may use its discretion to decide whether or not it should still be considered during the rest of the evaluation process, while ensuring the equal treatment of proposals and in accordance with the principle of proportionality. Whatever the Evaluation Committee decides, this must be fully recorded and justified in the Evaluation Report (see point 2.8.3.).

The Contracting Authority must keep proposals not considered for further evaluation.

The administrative check may be carried out by members of the Evaluation Committee or by one or more assessors.

If the members of the Evaluation Committee do not carry out the check themselves, the Evaluation Committee must review the conclusions of the assessor(s) on the basis of the completed grids. In order to facilitate the Evaluation Committee's review of the assessments, the Secretary to the Evaluation Committee must ensure that one list is drawn up containing proposals which did not comply with the administrative check. For each entry on the list, a justification needs to be provided.

Following the opening session and the administrative check, the Evaluation Committee meets to decide on any contentious case and proceeds with the evaluation of the concept notes.

#### **6.4.8.3. Evaluation of the concept note**

The concept notes submitted within the deadline and having duly passed the administrative check will undergo an evaluation of the relevance and design of the action. of the action on the basis of an evaluation grid (see Annex E5a). The overall assessment is based on the scores obtained under each subheading, added up by heading. In the case the Evaluation Committee does not evaluate itself the concept notes, the final score is the arithmetical average of the scores given by the assessors.

Where the call for proposals is organised by a headquarters service of the European Commission, copy of each concept note must be sent to the European Union delegation in the country where the proposed action is to take place, for assessment on the basis of the same evaluation grid (see Annex E8).

The Secretary will then prepare a list of all the concept notes, ranked by score. At a first step, only the concept notes which have been given a score of 30 points in the concept note evaluation be considered for pre-selection. The completed evaluation grids for each concept note must be sent to the Evaluation Committee, in the case assessors are used.

#### **DIRECT CENTRALISED, DECENTRALISED: EX-POST**

The evaluation report of the opening and administrative checks and concept note evaluation is submitted to the Contracting Authority, which have to decide whether or not to accept the recommendations of the Committee.

#### **DECENTRALISED: EX-ANTE**

In addition to the above, the Contracting Authority then has to submit the evaluation report to the European Commission for approval.

Following the evaluation of the concept notes, the Contracting Authority will send a letter to the applicants, indicating whether they passed the opening and administrative checks and, where applicable, the results of the concept note evaluation.

#### **6.4.8.4. Evaluation of the application form**

The quality of the applications forms must be assessed on the basis of the evaluation grid (see Annex E5b) containing the selection and award criteria. Comments are made for each heading on the basis of the questions and criteria used for that heading. In particular cases, comments may need to be made for specific subheadings. The overall assessment is based on the scores obtained under each subheading, added up by heading. In the case the Evaluation Committee does not evaluate itself the application forms, the final score is the arithmetical average of the scores given by the assessors.

Where the call for proposals is organised by a headquarters service of the European Commission, copy of each application form must be sent to the European Union delegation in the country where the proposed action is to take place, for assessment on the basis of the same evaluation grid (see Annex E8).

The Secretary will then prepare a list of all the proposals, ranked by score. The completed evaluation grids for each proposal and must be sent to the Evaluation Committee.

**DIRECT CENTRALISED, DECENTRALISED: EX-POST**

The evaluation report of the application forms is submitted to the Contracting Authority which has to decide whether or not to accept the recommendations of the Committee.

**DECENTRALISED: EX-ANTE**

In addition to the above, the Contracting Authority then has to submit the evaluation report to the European Commission for approval.

Once the required approvals received, the Contracting Authority must send a standard letter to the applicants, stating whether their proposal has passed the opening and administrative checks (in restricted procedures) and whether they have been provisionally selected according to their score, and inviting those whose proposals have been provisionally selected to supply the required supporting documents.

**6.4.8.5. Verification of eligibility**

This assessment must be carried out using the Declaration by the applicant, the required supporting documents and the criteria set out in the Guidelines for Applicants. Under no circumstances may assessors or members of the Evaluation Committee change this Declaration.

- Is the Declaration by the applicant in conformity with the supporting documents requested?

Any missing supporting document or any incoherence between the Declaration and the supporting documents may lead to the rejection of the proposal on that sole basis. However, note that the Evaluation Committee may use its discretion to decide whether or not it should still be considered during the rest of the evaluation process, while ensuring the equal treatment of proposals and in accordance with the principle of proportionality. Whatever the Evaluation Committee decides, this must be fully recorded and justified in the Evaluation Report (see point 2.8.3.).

- Eligibility: are the applicant, the partners and action eligible?

This is assessed according to the criteria set out in the Guidelines for Applicants.

The verification of eligibility may be carried out by members of the Evaluation Committee or by assessors. Each proposal may be examined by one person.

Even though the verification of eligibility is foreseen to be carried out only for the provisionally selected applicants at the end of the procedure, the Committee may decide to verify this point at any previous step of the procedure.

Taking into account good administrative practice, the Evaluation Committee can verify and subsequently exclude an applicant at any stage of the Call for proposals evaluation process whenever it is obvious that the latter does not meet the eligibility criteria.

If the members of the Evaluation Committee do not carry out the assessment themselves, the Evaluation Committee must review the conclusions of the assessors on the basis of their completed grids. In order to facilitate the Evaluation Committee's review of the assessments, the Secretary to the Evaluation Committee must ensure that one list containing the proposals which are ineligible is drawn up. For each entry on a list, the grounds for ineligibility must be identified.

**6.4.8.6. Conclusions of the Evaluation Committee**

The Evaluation Committee will draw up its recommendations after the assessors have examined all the proposals. The Evaluation Committee must not change the assessors' scores or recommendations and must not alter the evaluation grids completed by the assessors.

The Evaluation Committee may decide to approve the ranking drawn up by the secretary on the basis of the assessors' report. If the Committee does not accept the scores awarded by the assessors to a proposal, for example where there is a significant difference between the scores awarded by the assessors, it must justify this decision in the evaluation report. Subject to the points below, the Committee then has to prepare a new, collective evaluation grid for the proposal concerned. The list will be amended on the basis of the scores from the new evaluation, which replaces those completed by the assessors.

All such decisions must be recorded and fully substantiated in the Evaluation Report. The evaluation grids completed by the members of the Evaluation Committee must be kept with those completed by the assessors.

The Evaluation Committee's decisions are taken independently and in an advisory capacity. The Evaluation Committee must ultimately draw up a list of the proposals selected for financing, indicating the score obtained by each proposal, the amount of the proposed grant and the proportion of the eligible costs it is proposed to finance. Subject to the following considerations, this list is made up of the proposals obtaining the best scores, ranked by order, within the limits of the funds available under the call for proposals.

- The Committee may recommend the selection of a proposal under certain conditions that should be met prior to contract signature. Any such conditions however should not call into question the grant award decision or be contrary to the equal treatment of applicants (see point 6.4.10.2.).
- The Committee may not allocate all the available funds if it finds that there are too few proposals of the quality required to receive a grant.
- The Committee may draw up a list by subject or geographical area specified in the Guidelines for Applicants.
- The Committee may reject a proposal if it has selected another which is of a similar nature but has been awarded a higher score.
- Where several proposals submitted by the same applicant are selected for financing, but the applicant does not have the financial and operational capacity required to implement the actions all together, the Committee may reject the proposal(s) which has (have) been awarded a lower score, and select the proposal(s) that the applicant has the capacity to implement.

The Committee may furthermore draw up, in the same conditions, a reserve list comprising a limited number of proposals having obtained the best scores after those selected for financing. This reserve list is valid during the period mentioned in the evaluation report. The proposals included in that list are likely to receive a grant insofar as funds become available under the call for proposals (decrease of the eligible costs of the selected proposals, impossibility to sign a contract with a selected applicant, etc).

- The final Evaluation Report , covering the eligibility verification, is drawn up following the final meeting of the Evaluation Committee. It comprises the minutes of the evaluation sessions and must be signed by all members of the Evaluation Committee.

**DIRECT CENTRALISED, DECENTRALISED: EX-POST**

The entire evaluation procedure is recorded in an Evaluation Report to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee. This must be submitted for approval to the Contracting Authority which must decide whether or not to accept its recommendations.

**DECENTRALISED: EX-ANTE**

In addition to the above, the Contracting Authority must then submit the Evaluation Report and the recommendations of the Contracting Authority to the Delegation of the European Union for approval.

If the Contracting Authority confirms that there are no modifications (either in the special conditions or in the proposed contract annexes) from the standard contract conditions annexed to the Guidelines for Applicants, the European Commission's approval of the evaluation report including of the list of award proposals counts as a global endorsement of the corresponding contracts when this endorsement is requested. The list must include all the elements necessary to conclude the contracts (including the applicant's details, maximum grant amount and contract duration). No endorsement by the EU Delegation is required in certain cases contemplated in the Practical Guide for Programme Estimates.

Once the approvals have been given, the Contracting Authority will commence awarding the grants (see point 6.4.10.).

The award decision contains the subject and overall amount of the decision, the approved evaluation report and, where appropriate, the grounds for the decision by the Contracting Authority to depart from the recommendations made by the Committee in the report in respect of a particular proposal.

Subject to the Contracting Authority's legislation on access to documents, the entire procedure, from the drawing-up of the Call for Proposals to the selection of successful applicants, is confidential. The Evaluation Committee's decisions are collective and its deliberations must remain secret. The committee members are bound to secrecy. In cases where the Contracting Authority's law contradicts the confidentiality required, the latter shall ask for prior authorisation from the European Commission before disclosing any information.

**6.4.9. Cancelling the call for proposals procedure**

The Contracting Authority may decide to cancel the call for proposals procedure at any stage, but particularly in the light of the Evaluation Report, if:

the call for proposals has been unsuccessful, i.e., no worthwhile proposal has been received or there were no replies;

- the economic or technical data of the programme have been fundamentally altered;
- exceptional circumstances or force majeure render the normal conduct of the planned actions impossible;
- there have been irregularities in the procedure, in particular where these have prevented equal treatment

**DIRECT CENTRALISED, DECENTRALISED: EX-POST**

The responsibility for cancelling a call for proposals procedure lies with the relevant services of the Contracting Authority.

**DECENTRALISED: EX-ANTE**

In addition to the above, prior approval of the European Commission is required.

In the event of cancellation of a call for proposals, applicants must be notified of the cancellation by the Contracting Authority but will not be entitled to compensation.

## **6.4.10. Awarding grants**

### **6.4.10.1. Notification of applicants**

#### **DIRECT CENTRALISED, DECENTRALISED: EX-POST**

After the Contracting Authority has given its official approval to the final list of grants to be awarded, it notifies the successful applicants in writing that their applications have been selected

It must also send the unsuccessful applicants a standard letter informing them that they have not been selected and specifying the reasons.

Where the call for proposals is organised by a headquarters service of the European Commission, a copy of these letters, as well as, where appropriate, the entire documentation and elements of the evaluation necessary for the preparation and the management of the contract, are sent to the European Union delegation in the country where the proposed action is or was to take place.

#### **DECENTRALISED: EX-ANTE**

In addition to the above, the approval of the European Commission is required.

The letters to the successful applicants must be sent within 15 days of the award decision and letters to the unsuccessful applicants within a further 15 days of that.

### **6.4.10.2. Contract preparation and signature**

In preparing grant contracts for each of the successful applicants on the final list, the Contracting Authority must proceed as mentioned in point 2.9.1.2.

The budget proposed for the action by the successful applicant at the call for proposals stage must be corrected to remove any obvious arithmetical errors or ineligible costs prior to signing the contract. The Description of the action is corrected accordingly if need be.

Other clarifications or minor corrections may be brought to the Description of the action or to the budget in so far as they would not call into question the grant award decision or be contrary to the equal treatment of applicants and:

- Relate to aspects clearly identified by the Evaluation Committee; or
- Aim at taking into consideration the changes which have occurred since the date of receipt of the proposal

Those modifications may in any case not lead to an increase of the amount of the grant nor of the percentage of the co-financing fixed by the Evaluation Committee for the EU-contribution.

**Any other alteration to the successful applicant's proposal or negotiation with it is prohibited.**

If the successful applicant is an international organisation applying accounting, audit, internal control and procurement procedures which offer guarantees equivalent to internationally accepted standards (see Section 6.9. below), the standard Contribution Agreement or any other contract template agreed between the international organisation concerned and the Contracting

Authority, should be used instead of the standard grant contract (see points 6.9. and 7.1. of the present Guide).

#### **6.4.10.3. Characteristics of the standard grant contract**

- The standard grant contract recognises the beneficiary's independence of action and lays down simplified management rules accordingly. In particular, it allows the recipient to adapt or modify the action without the prior consent of the Contracting Authority provided that the modifications are not substantial and do not result in a change of more than 15% to any budget heading.
- The first pre-financing payment, which covers either 80% of the amount of the contract or 80% of the first annual budget, is paid after both parties have signed the contract. Subsequently, in the case of contracts for large amounts, an interim report (technical and financial) and payment request must be sent once a year as soon as 70% of the previous payment (and 100% of earlier ones) has been used up. A new payment of pre-financing is made on that basis. Where the consumption of the previous pre-financing is less than 70%, the amount of the new pre-financing payment shall be reduced by the unused amounts of the previous pre-financing payment. The balance is paid on approval of the final report. The beneficiary must not send documents in support of its request to the Contracting Authority but must keep them in case of inspection or audit for a period of seven years after payment of the balance and up to the date of the prescription of any dispute in regard to the law which governed the contract. During and after this period, the Contracting Authority will treat the personal data in conformity with its privacy policy.
- The EU finances a specific percentage of the total eligible costs rather than a particular part of the action. The contribution may further be limited by a percentage of the total accepted costs of the action. If at the end of the action, the actual eligible cost is lower than anticipated, the grant will be reduced proportionately.
- An expenditure verification report is attached to the final report where the grant is of more than € 100,000, to a request for further pre-financing in the case of grants of € 750,000 or more and in the case of an operating grant to a request for payment of over € 100,000 for the financial year.
- A financial guarantee for up to the same amount as the pre-financing is required where pre-financing represents over 80% of the total amount of the grant and provided it exceeds € 60,000 or, where the beneficiary is a non-governmental organisation, when it exceeds € 1,000,000 or 90% of the total amount of the grant. Instead of asking such a financial guarantee, the Contracting Authority can also decide to split the payments into several instalments.
- In awarding any procurement contracts required for the purposes of the action, the beneficiary must comply with the rules set out in Annex IV to the contract.
- Unless otherwise requested or agreed by the European Commission, beneficiaries must take the necessary measures to ensure the visibility of the EU financing or contribution to the financing. See section 2.3.5.

#### **6.4.10.4. Publicising the award of grants**

Once the contracts have been signed, the Contracting Authority prepares a notice of award for each call for proposals (see Annex E11). It sends this immediately to the European Commission, which publishes the results of the call for proposals on the EuropeAid website.

In addition, the Contracting Authority must record all statistical information concerning the procedure (including the number of applicants in the past year; the number and percentage of successful applications per call for proposals; the mean duration of the procedure from date of closure of the call for proposals to the award of a grant, grant amounts, the names of the applicants, and details of the beneficiaries).

At the end of each year, the Contracting Authority also prepares and submits to the European Commission for publication a summary table based on the format in the annex to the Practical Guide (Annex E11 including the table of "grants made without a call for proposals").

The Contracting Authority is responsible for preparing the grant contract award notice using the template in Annex E11 and for submitting it in electronic form to the European Commission for publication.

The Contracting Authority also publishes this information on its own Internet site and/or any other appropriate media.

The European Commission may authorise the Contracting Authority to waive the above obligations if publication of the information may threaten the safety of the beneficiaries or harm their business interests.

## **6.5. Grants of a low amount in decentralised management**

In decentralised management, when:

- the maximum size of each grant to be awarded within the programme is less or equal to €10,000, and
- the potential beneficiaries of the grants are community based organisations or other local organisations of the country of the Contracting Authority,

the Contracting Authority may award grants without calls for proposals. It implements publicity measures and evaluation procedures which are suitable for this kind of programme in order to ensure the respect of the principle of transparency and equal treatment while avoiding any conflict of interests.

Each grant contract to be concluded has to specify in particular its subject, its beneficiary, its duration, the maximal amount of the grant, the description of the action, the estimated budget, the beneficiary' acceptance of the checks to be carried out by the Commission and the Court of Auditors and the Beneficiary's obligations as regard management and reporting.

When the implementation of such grant contract requires procurement by the beneficiary, the relevant rules of nationality and origin do apply. Subcontracting may only concern a limited portion of the action.

## **6.6. Restricted call for proposals**

The measures applicable to an open Call for Proposals, as described in section 6.4., apply by analogy to a restricted Call for Proposals, except as specified below.

In a restricted call for proposals, the Guidelines for Applicants invite applicants to submit a concept note.

The administrative check of the concept notes and afterwards of the full applications is assessed through the relevant checklists.

The Guidelines for Applicants will indicate that a specific number of applicants, based on the available budget, will be invited to submit a final proposal. In this case a list restricted to the published number is drawn up consisting of the concept notes with the best scores, ranked in

order. A report is drafted to document the results of the opening and administrative checks and the following concept note evaluation.

The shortlisted applicants are then invited in writing to submit a full application form. The eligibility check will only be performed for the proposals that have been provisionally selected at the end of the evaluation on the basis of the supporting documents requested by the Contracting Authority and of the Declarations by the Applicant, according to the rules set out in the Guidelines for applicants and within the available financial envelope of the Call.

The elements assessed on the basis of the concept note may not be modified by the applicant in the full application form. The EU contribution requested for the action may not depart from the initial estimation more than 20%. Should the EU contribution requested vary from the initial estimation, the percentage between the EU contribution and the total cost of the action has to remain within the limits imposed by the Guidelines of the Call for Proposals

The minimum period between the date of publication of the Guidelines and the deadline for submission of preliminary proposals is 45 days. The minimum period between the dispatch of the letter of invitation to submit final forms and the deadline for submission of proposals is 45 days. In exceptional cases, a shorter deadline may be allowed as an exception.

## **6.7. Modifying grant contracts**

### **6.7.1. General principles**

See point 2.10.1.

- The modifications must not have the purpose or the effect of making such changes to the contract as would call into question the grant award decision or be contrary to the equal treatment of applicants.
- The maximum amount of the grant may not be increased.

### **6.7.2. Preparing an addendum**

See point 2.10.2.

## **6.8. Procurement by grant beneficiaries**

### **6.8.1. General principles**

If the implementation of an action which is supported by a grant from the EU budget or the EDF in the context of external actions requires procurement by the grant beneficiary, the contract must be awarded to the best value for money tender (i.e., the tender offering the best price-quality ratio), in accordance with the principles of transparency and fair competition for potential contractors and taking care to avoid any conflicts of interest.

To this end, the beneficiary respects the rules prescribed in Annex IV to the grant contract.

These rules apply *mutatis mutandis* to the procurements by the partners of the beneficiary. In the event of failure to comply with the rules referred to above, expenditure relating to the operations in question is not eligible for EU/EDF financing.

Concerning re-granting, see point 6.2.11.

The Commission will carry out ex-post checks on the compliance of grant beneficiaries with these rules. Grant contracts must provide expressly for the Commission, including the European Anti-Fraud Office (OLAF), and the Court of Auditors to exercise their powers of control, on

documents and on the spot, over all contractors and subcontractors which have received EU funds.

## 6.9. Grants to international organisations and national bodies

### 6.9.1. Grants to international organisations

Where the beneficiary of a grant is an international organisation, the present Chapter 6 is fully applicable (including for instance, the principles under points 6.2.4. and 6.8., limitation for sub-granting under point 6.2.11., award procedures under section 6.3., etc).

Pursuant to Article 43 of the Implementing Rules of the EU Financial Regulation, "international organisation" means international public-sector organisations set up by intergovernmental agreements, and specialised agencies set up by such organisations - these organisations may have worldwide or regional scope. Organisations created under national law are not international organisations (e.g. national NGO with several regional/country offices).

For instance, organisations such as the United Nations and its agencies and specialised entities, the World Bank, the Organisation for Economic Co-operation and Development, the World Trade Organisation, the International Monetary Fund, the Organisation for Security and Co-operation in Europe, the European Bank for Reconstruction and Development and the International Organisation for Migration clearly fall under the definition of international organisation. In cases of doubt, to ascertain whether an organisation is covered by the above-mentioned definition, it is necessary to assess the nature of the organisation mainly on the basis of the legal instruments of the organisation (for instance, its statutes and/or the intergovernmental agreement setting-up the organisation).

The following organisations are explicitly declared by article 43 of the Implementing Rules to be international organisations:

- the International Committee of the Red Cross (ICRC) and the International Federation of National Red Cross and Red Crescent Societies (note that national organisations of the Red Cross or Red Crescent are not regarded as international organisations);
- the European Investment Bank and the European Investment Fund.

#### ***Method of implementation and procedures***

The decision of the method of implementation of the action is under the responsibility of the Commission (College) and has been determined at the stage of the financing decision. Consequently, where an international organisation has been selected after a call for proposals launched under direct centralised or decentralised management, the financial support provided to the international organisation shall constitute a grant according to the present Chapter 6 and not a contribution under joint management. The Authorising officer is not entitled to change the pre-established method of implementation unless the financing decision explicitly foresees the possibility to conclude a contribution agreement with an international organisation under joint management and this is explained in the Guidelines of the call

Furthermore, the principle of equal treatment does not allow different types of agreement and obligations under the same call for proposals unless this is *explicitly* mentioned in the documentation of the call (i.e. the Guidelines)<sup>29</sup>. If the use of the contribution agreement for

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<sup>29</sup> The Commission recognises that international organisations complying with international standards are different than other entities (e.g. NGOs) and hence, in view of such differences, a different type of agreement recognising their specificities may be used (cf. agreements concluded between the Commission and international

international organisations is foreseen in the Guidelines under certain conditions (see section below), the Contracting Authority may conclude this type of agreement with the international organisation.

Note that, although the same type of contract (standard contribution agreement) can be used for grants granted to an international organisation and for contributions under joint management, many applicable procedural and substantial rules would be different.

For instance, the procedures leading to the signature of a contribution agreement are different. As provided for in Section 6.3. above, the procedure to be followed to select an entity as beneficiary of a grant should be a call of proposals unless one of the conditions of article 168 of the Implementing Rule are fulfilled. International organisations cannot be treated differently than other grant beneficiaries (e.g. NGOs) when motivating recourse to Art. 168. For instance, before arguing that an organisation has the monopoly to implement certain actions, the relevant authorising officer needs to make sure that such organisation is the only entity (public or private, national or international) which can actually carry out the required action. Moreover, a grant is subject to limitations for re-granting provided for in the applicable Financial Regulation (see point 6.2.11.), where such limitation does not exist under joint management. Also, the bulk of activities under a grant need to be carried out by the grant beneficiary (international organisations) and/or its partners; whereas joint management precisely aims at entitling the international organisation to act as Contracting Authority.

### ***Document to be signed***

The legal document to be signed should be a grant contract unless the Contracting Authority has evidence (e.g. through four-pillar assessment) that a standard contribution agreement with an international organisation may be signed according to point 6.4.10. above.

The current text of the standard contribution agreement is based on the Framework Agreements concluded with our major partners such as the UN and the World Bank. The template of the standard contribution agreement is available at the following site:

[http://ec.europa.eu/europeaid/work/procedures/financing/international\\_organisations/index\\_en.htm](http://ec.europa.eu/europeaid/work/procedures/financing/international_organisations/index_en.htm)

The signature of a standard contribution agreement implies that the international organisation is entitled to use its own audit and internal control procedures. Also, it may use its own procurement procedures as long as they respect the principles mentioned in Section 6.8. above, namely:

- choice of the best value for money tender (i.e., the tender offering the best price-quality ratio),
- transparency,
- fair competition for potential contractors,
- and taking care to avoid any conflicts of interest.

The principles above constitute international standards; for that reasons it may be assumed that international organisations providing guarantees equivalent to internationally accepted standards for procurement can use their own procedures.

Some clauses of the contribution agreement would only applicable in cases of joint management or in case of grants. It is therefore necessary to specify in the contribution agreement (art 1 of the

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organisations, treatment of international organisations in the Financial Regulations -EC Budget and EDF-, etc). However, the application of this possibility must be made public (in the relevant Guidelines).

Special Conditions) whether the action constitute joint management or not.

In the cases where a beneficiary country awards a grant to international organisation under decentralised management, it is reminded that some provisions of the standard contribution agreement are only applicable to the Commission (and not to the beneficiary country), such as art.8 of the General Conditions related to the evaluation of the Action and art. 16.4. of the General Conditions related to the verification. The Commission should pay special attention to apply the rights granted by these provisions where necessary.

It is strongly advised that **all contribution agreements to international organisations following the award of a grant be signed by the Commission (hence, under centralised management) and not by the beneficiary country under decentralised management.** This should be adequately reflected in the financing decision and financing agreement.

Note that all contributions agreements concluded under joint management are always signed by the European Commission and not by the beneficiary country.

### **6.9.2. Grants to national bodies**

Grants awarded to national public bodies in the sense of article 54(2)(c) of the EU Financial Regulation and 25(3)(b) of the Financial Regulation for the 10<sup>th</sup> EDF need to follow the normal grant rules and procedures described in Chapter 6, as well as the model of grant contract.

Where applicable, they may also benefit from other special rules applicable to public-sector bodies (for instance, possibility to waive financial guarantees or, pursuant to Section 8 of Annex IV of that contract, to apply their own procurement procedures - "*where the Beneficiary or a partner is a contracting authority and/or a contracting entity within the meaning of the Community Directives applicable to procurement procedures, it must apply the relevant provisions of those texts [...]*").

The Delegation Agreement with national bodies, by which the Commission delegates budget-implementation tasks to these bodies so they act as Contracting Authority, can only be applied to contributions under indirect centralised management. *Contrary to the standard contribution agreement with international organisation*, the Delegation Agreement is not adapted to comply with the rules and principles applicable to grants. Hence, the Delegation Agreement cannot be used in case of the award of a grant to national bodies.

## 7. Legal Texts

### 7.1. Legal framework for the procurement procedures

#### 7.1.1. BUDGET

The following legal framework applies to contracts for services, supplies and works financed by the general budget of the European Union, concluded in the course of EU cooperation with third countries and awarded by a Contracting Authority of the beneficiary country, or by the Commission for and on behalf of the beneficiary:

- Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (and in particular Chapter III of Title IV of Part Two thereof, which concerns special provisions for procurement in external actions), as amended by Commission Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 ;
- Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the abovementioned Financial Regulation, (and in particular Chapter III of Title III of Part Two thereof, which concerns special provisions for procurement in external actions), as amended by:
  - Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005;
  - Commission Regulation (EC, Euratom) No 1248/2006 of 7 August 2006;
  - Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007;
- The Regulations<sup>30</sup> and other specific basic acts relating to the various cooperation programmes.

The following are also applicable:

- The Framework Agreement signed by the EU and the beneficiary country concerned, if such an agreement exists. This agreement contains the rules for administrative cooperation between the two bodies for the implementation of External Aid.
- The Financing Agreement signed by the EU and the beneficiary country concerned for each EU-funded programme. This sets out the programme objectives and budget.
- Rules and procedures for service, supply and works contracts financed from the general budget of the European Communities in the course of cooperation with third countries [C (2007) 2034], adopted by the European Commission on 24 May, 2007.
- This Practical Guide with its standard documents and templates in the annexes to it.

#### 7.1.2. EDF

The following legal framework applies for contracts for services, supplies and works financed by the European Development Fund:

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<sup>30</sup> Such as the Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code that defines the rules regarding the origin of the products, and the Regulations on access to Community external assistance.

- The ACP-EC Partnership Agreement signed at Cotonou on 23 June 2000 ; as amended by the Agreement amending the ACP-EC Partnership Agreement signed in Luxembourg on 25 June 2005 and its Annex IV;
- Council Decision 2001/822/EC of 27 November 2001, on the association of the overseas countries and territories with the European Community (Overseas Association Decision) as amended by Council Decision 2007/249/CE of 19 March 2007;
- Annex V of Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 concerning the procedural rules on conciliation and arbitration;
- The Council Regulation (EC) No. 617/2007 OF 14th of May 2007 on the implementation of the 10th EDF under the ACP-EC Partnership Agreement;
- The Council Regulation (EC) No. 215/2008 of 18th of February 2008 on the Financial Regulation applicable to the 10th European Development Fund.

The following are also applicable:

- The Financing Agreement signed by the EU and the beneficiary country concerned for each EU-funded programme. This sets out the programme objectives and budget;
- This Practical Guide and the standard documents and templates in the annexes to it.

## **7.2. Legal framework for grant procedures**

### **7.2.1. BUDGET**

The following legal framework applies to grant contracts financed by the European Union and concluded in the course of cooperation with third countries:

- Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (and in particular Title VI of Part One thereof, on grants, and Chapter IV of Title IV of Part Two thereof, which concerns special provisions for grants in external actions), as amended by Commission Regulation (EC, Euratom) No 1995/2006 of 13 December 2006;
- Commission Regulation No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the abovementioned Financial Regulation (and in particular Title VI of Part One thereof, on grants, and Chapter IV of Title III of Part Two thereof, which concerns special provisions for grants in external actions), as amended by:
  - Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005;
  - Commission Regulation (EC, Euratom) No 1248/2006 of 7 August 2006;
  - Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007;
- the regulations or decisions of the Council, referred to as “basic acts” in the Financial Regulation and this Practical Guide, and other specific instruments relating to the various cooperation programmes.

### **7.2.2. EDF**

The following legal framework applies to grant contracts concluded under the 10th EDF:

- The ACP-EC Partnership Agreement signed at Cotonou on 23 June 2000 as amended by the Agreement amending the ACP-EC Partnership Agreement signed in Luxembourg on 25/06/05.
- Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community (Overseas Association Decision).
- The Council Regulation (EC) No. 215/2008 of 18th of February 2008 on the Financial Regulation applicable to the 10th European Development Fund, in particular Title VII of Part One on grants.

The following are also applicable:

- The Financing Agreement signed by the EU and the beneficiary country concerned for the programme, where such an agreement exists. This sets out the programme objectives and budget ;
- The standard documents and templates in the annexes to this Practical Guide, which include the standard grant contract for external actions (see Annex E3), and standard documents for Calls for Proposals (see Annex E1, Annex E2 and Annex E3).

The rules and procedures established by the European Commission for grant management under the 10<sup>th</sup> EDF are consolidated in this Practical Guide and must be applied whenever such grants are concerned.

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A11d	Guidelines for the drafting of technical specifications for vehicle tenders in the field of external actions	a11d_guidelines_vehicles_en.doc
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E3h8	Expenditure verification (annex VII)	e3h8_expendverif_en.doc
E3h9	Financial guarantee (annex VIII)	e3h9_finguarantee_en.doc
E3h10	Transfer of Ownership of Assets	e3h10_transfassets_en.doc
E5a	Concept note evaluation grid	e5a_conceptevalgrid_en.doc
E5b	evaluation grid full application form	e5b_propevalgrid_en.doc
E6a	Evaluation Report Step 1 - Opening and & administrative checks and Concept Note Evaluation	e6a_opening_conceptevalrep_en.doc
E6b	Evaluation report Step 2 - Full application evaluation	e6b_applicevalrep_en.doc
E6c	Evaluation report Step 3 – Final eligibility checks	e6c_finalevalrep_en.doc
E8	Letter to Delegation evaluation	e8_note_delegation_evaluation_en.doc

E9a	Letter Step 1	e9a_letter_step_1_en.doc
E9b	Letter Step 2	e9b_letter_step_2_en.doc
E9c	Letter Step 3	e9c_letter_step_3_en.doc
E10	Addendum	e10_addendum_en.doc
E11	Publication	e11_publication_en.doc