

MIASP II

PROJECT IMPLEMENTATION MODULE 1

TITLE: EC CONTRACT PROCEDURES

HAND-OUT FOR TRAINING

**Practical Guide
to contract procedures for EC external actions**

Edited for BUDGET and DECENTRALISED: EX-ANTE

(deleted EDF, CENTRALISED and DECENTRALISED: EX-POST)

CONTENTS:

1. Introduction
2. Basic rules for Service, Supply and Works Contracts
3. Service Contracts
4. Supply Contracts
5. Works Contracts
6. Grants (omitted)
7. Relations with International Organisations and Donors (omitted)
8. Legal Texts

Table of Contents

| | |
|---|----|
| 1. Introduction | 5 |
| 2. Basic rules for service, supply & works contracts | 5 |
| 2.1. Overview | 5 |
| 2.2. Centralised and decentralised management | 5 |
| 2.3. Eligibility criteria and other essentials..... | 7 |
| 2.3.1. The rule on nationality and origin | 7 |
| 2.3.2. Exceptions to the rule on nationality and origin..... | 8 |
| 2.3.3. Grounds for exclusion | 8 |
| 2.3.4. Participation on equal terms (EDF only, not applicable to MIASP) | 9 |
| 2.3.5. Administrative and financial penalties | 9 |
| 2.3.6. Visibility | 10 |
| 2.3.7. Other essentials points | 11 |
| 2.4. Procurement procedures | 11 |
| 2.4.1. Which procurement procedure to apply? | 11 |
| 2.4.2. Open procedure | 12 |
| 2.4.3. Restricted procedure..... | 12 |
| 2.4.4. Competitive negotiated procedure | 13 |
| 2.4.5. Framework contracts | 13 |
| 2.4.6. Dynamic purchasing system | 13 |
| 2.4.7. Competitive dialogue | 13 |
| 2.4.8. Negotiated procedure | 14 |
| 2.4.9. Emergency aid (EDF only, not applicable to MIASP)..... | 14 |
| 2.4.10. Fair competition | 14 |
| 2.4.11. Preferences (EDF only, not applicable to MIASP) | 15 |
| 2.4.12. Selection and award criteria..... | 15 |
| 2.4.13. Tender procedure with “suspension clause” | 17 |
| 2.4.14. Cancellation of procurement procedures | 17 |
| 2.4.15. Ethics clauses..... | 18 |
| 2.4.16. Appeals..... | 19 |
| 2.5. Contract size | 20 |
| 2.6. Terms of reference and technical specifications..... | 20 |
| 2.7. Procedural rules on conciliation and arbitration of contracts financed by the European Development Fund (EDF, not applicable to MIASP) | 21 |
| 2.8. The Evaluation Committee | 21 |
| 2.8.1. Composition | 21 |
| 2.8.2. Impartiality and confidentiality | 21 |
| 2.8.3. Responsibilities of the Evaluation Committee members | 22 |
| 2.8.4. Timetable | 23 |
| 2.8.5. Period of validity | 23 |
| 2.9. Award of the contract | 23 |
| 2.9.1. Notifying the successful tenderer..... | 23 |
| 2.9.2. Contract preparation and signature..... | 23 |
| 2.9.3. Publicising the award of the contract | 24 |
| 2.10. Modifying contracts | 24 |
| 2.10.1. General principles | 25 |
| 2.10.2. Preparing an addendum | 25 |
| 3. Service contracts | 27 |
| 3.1. Introduction..... | 27 |

| | |
|---|----|
| 3.2. Procurement procedures | 27 |
| 3.2.1. Contracts of €200,000 or more | 27 |
| 3.2.2. Contracts under €200,000 | 27 |
| 3.2.3. Other procedures | 27 |
| 3.3. Restricted tenders (for contracts of €200,000 or more) | 29 |
| 3.3.1. Publicity | 29 |
| 3.3.2. Establishment of shortlists | 30 |
| 3.3.3. Drafting and contents of the tender dossier | 31 |
| 3.3.4. Award criteria | 32 |
| 3.3.5. Additional information during the procedure | 32 |
| 3.3.6. Deadline for submission of tenders | 33 |
| 3.3.7. Period of validity | 33 |
| 3.3.8. Submission of tenders | 33 |
| 3.3.9. The Evaluation Committee | 33 |
| 3.3.10. Stages in the evaluation | 33 |
| 3.3.11. Cancelling the tender procedure | 38 |
| 3.3.12. Award of the contract | 39 |
| 3.3.13. Approval of key experts (for centralised tender procedures only, not applicable to MIASP) | 39 |
| 3.3.14. Provision and replacement of experts | 39 |
| 3.4. Procedures for the award of contracts under €200, | 40 |
| 3.4.1. Framework contracts | 40 |
| 3.4.2. Competitive negotiated procedure | 40 |
| 3.5. Modifying service contracts | 41 |
| 4. Supply contracts | 42 |
| 4.1. Introduction | 42 |
| 4.2. Procurement procedures | 42 |
| 4.2.1. Contracts of €150,000 or more | 42 |
| 4.2.2. Contracts between €30,000 and €150,000 | 42 |
| 4.2.3. Contracts under €30,000 – competitive negotiated procedure | 42 |
| 4.2.4. Other procedures | 42 |
| 4.3. International open tender (for contracts of €150,000 or more) | 44 |
| 4.3.1. Publicity | 44 |
| 4.3.2. Drafting and contents of the tender dossier | 45 |
| 4.3.3. Selection and award criteria | 46 |
| 4.3.4. Additional information during the procedure | 48 |
| 4.3.5. Deadline for the submission of tenders | 48 |
| 4.3.6. Period of validity | 48 |
| 4.3.7. Submission of tenders | 49 |
| 4.3.8. The Evaluation Committee | 49 |
| 4.3.9. Stages in the evaluation process | 49 |
| 4.3.10. Cancelling the tender procedure | 53 |
| 4.3.11. Award of the contract | 53 |
| 4.4. Local open tender (for contracts of at least €30,000 and under €150,000) | 54 |
| 4.5. Competitive negotiated procedure for contracts under €30,000 | 54 |
| 4.6. Modifying supply contracts | 55 |
| 5. Works contracts | 56 |
| 5.1. Introduction | 56 |
| 5.2. Procurement procedures | 56 |

| | |
|---|----|
| 5.2.1. Contracts of €5,000,000 or more | 56 |
| 5.2.2. Contracts of between €300,000 and €5,000,000 | 56 |
| 5.2.3. Contracts under €300,000 – competitive negotiated procedure..... | 56 |
| 5.2.4. Other procedures | 57 |
| 5.3. International open tender (for contracts of €5,000,000 or more) | 58 |
| 5.3.1. Publicity | 58 |
| 5.3.2. Drafting and contents of the tender dossier | 59 |
| 5.3.3. Selection and award criteria..... | 60 |
| 5.3.4. Additional information during the procedure | 61 |
| 5.3.5. Deadline for the submission of tenders..... | 61 |
| 5.3.6. Period of validity | 62 |
| 5.3.7. Submission of tenders | 62 |
| 5.3.8. The Evaluation Committee..... | 62 |
| 5.3.9. Stages in the evaluation process | 62 |
| 5.3.10. Cancelling the tender procedure | 65 |
| 5.3.11. Award of the contract | 66 |
| 5.4. Restricted tender for contracts of €5,000,000 or more | 66 |
| 5.5. Local open tender (for contracts of at least €300,000 and under €5,000,000) | 66 |
| 5.6. Competitive negotiated procedure for contracts under €300,000 | 67 |
| 5.7. Modifying works contracts | 67 |
| 8. Legal Texts | 69 |
| 8.1. Legal framework for the procurement procedures | 69 |
| 8.2. Legal framework for grant procedures..... | 69 |

1. INTRODUCTION

This Practical Guide is the first sole working tool, which explains the contracting procedures applying to all EC external aid contracts financed from the European Communities general budget (Budget) and the European Development Fund (EDF)¹.

Since it incorporates the relevant provisions of the legal texts ruling the EC Budget, the purpose of this Practical Guide is to provide all users, in an encompassing manner, with all the information necessary to undertake a procurement procedure from the very first steps to the award of contracts. The annexes cover both the procurement phase and the execution of contracts. This Guide provides the procedures to be used in decentralised systems with ex-ante approval by the European Commission.

As regards the responsibilities of Municipalities as Contracting Agencies for EU-funded projects, the European Commission is represented by the European Agency for Reconstruction who in turn delegates certain responsibilities to the Municipal Infrastructure Agency Support Programme (MIASP).

The power-point hand-outs that accompany this Guide differentiate between the responsibilities of EAR, MIASP and the Municipalities

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.

In the context of the SAPARD² programme, the provisions of this Practical Guide apply to decentralised management referred to in Article 164(1) of the Financial Regulation, as specified in the financing agreements established with the beneficiary third countries and in accordance with the principles defined in Article 167(2) of the Financial Regulation.

2. BASIC RULES FOR SERVICE, SUPPLY & WORKS CONTRACTS

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 EC 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 in a Financing Agreement and the funds must be available, except in the case of procedures with "suspension clause".

2.2. Centralised and decentralised management

There are three possible approaches to managing the procurement procedures for projects financed under the external aid programmes of the EC:

- **Centralised:** the European Commission is the Contracting Authority and takes decisions for and on behalf of the beneficiary country (not applicable to the MIASP)

¹ EDF is not applicable for the MIASP II and has therefore been omitted from this version of the PRAG

² Regulations 1266/1999, 1268/1999 and 2222/2000

- Decentralised:

- Ex-ante: decisions concerning the procurement and award of contracts are taken by the Contracting Authority and referred for approval to the European Commission.

- Ex-post: decisions concerning the procurement and award of contracts are taken by the Contracting Authority without referral for approval to the European Commission (not applicable to the MIASP)

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

The European Commission decides for each project which management approach will be used, in conformity with its internal rules and procedures. For MIASP only the de-centralised ex-ante procedure applies.

The implication of the Commission for the decentralised contracts consists simply on its authorisation to the financing of the contracts. In case of non-respect of the procedures established in the present Guide, the expenditure related to the operations involved are ineligible in terms of Community financing.

The interventions of the Commissions' representatives within the decentralised procedures for the conclusion or implementation of the contracts financed in the context of external actions are only to see whether or not the conditions for the Community financing are met.

They will not, in any case, have as an objective nor as a possible effect, the attempt against the principle by which the decentralised contracts become national contracts that are only prepared, elaborated and concluded by the decentralised Contracting Authority. The tenderers and candidates 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 Community. 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.

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.

The Contracting Authority will draw up shortlists (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 Budget for contracts below -€50.000, see points 2.3.3 and 2.4.12.1.1) the contract award proposal to the European Commission for endorsement. No endorsement by the Delegation is however required in certain cases contemplated in the Practical Guide for Programme Estimates. Once it has received this endorsement, it signs the contracts and awards the contract. 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.

2.3. Eligibility criteria and other essentials

2.3.1. The rule on nationality and origin

Nationality

Access to Community external assistance is defined in the basic acts regulating such assistance, in conjunction with the Financial Regulation and the Regulations on access to Community external assistance.

1) In particular, participation in the procurement procedures is open on equal terms to all legal persons who are established in:

- a. a Member State of the European Community, in an official candidate country as recognised by the European Community or in a Member State of the European Economic Area;
- b. where the procurement is financed under a Community instrument with thematic scope defined in Annex A2, Part 1, a developing country, specified in the OECD Development Assistance Committee list set out in Annex A2, Part 2, in addition to those legal persons already eligible by virtue of the instrument concerned;
- c. where the procurement is financed under a Community instrument with geographical scope defined in Annex A2, Part 1, a developing country as specified in the OECD Development Assistance Committee list set out in Annex A2, Part 2, and who are expressly mentioned as eligible, and to those already stated to be eligible by the instrument concerned.
- d. any country other than those referred in a), b) and c), where reciprocal access to their external assistance has been established in conformity to Article 6 of the Regulations on access to Community external assistance. Participation of natural persons is directly governed by the specific instrument applicable to the programme under which the contract is financed.

Participation is also opened to international organisations.

2) Whenever Community funding covers an operation implemented through an international organisation, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible pursuant the above-mentioned rules as well as to all legal persons who are eligible pursuant to the rules of that organisation, care being taken to ensure that equal treatment is afforded to all donors. The same rules shall apply in respect of supplies, materials and experts.

3) Whenever Community funding covers an operation co-financed with a third country, subject to reciprocity as defined in the Regulations on access to Community external assistance, or with a regional organisation, or with a Member State, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible pursuant to the rules of that organisation as well as to all legal persons who are eligible under the rules of such third country, regional organisation or Member State. The same rules shall apply in respect of supplies, materials and experts.

4) As far as food aid operations are concerned, the application of points (2) and (3) shall be limited to emergency operations.

Without prejudice to the qualitative and financial requirements set out in the Community's procurement rules and in conformity with the Regulations on access to Community external assistance, all experts engaged by tenderers may be of any nationality.

Origin

All supplies and materials purchased under a contract financed under a Community instrument

must originate from the Community or from an eligible country (see above 'nationality' and below 'exceptions to the rule on nationality and origin').

The term origin is defined in the relevant Community legislation on rules of origin for customs purposes.

Origin: A product 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 provisions of Council Regulation (EEC) 2913/92 and its implementing regulation are fulfilled.

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 Community 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 supplies' 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 origin, it will be up to the relevant services of the European Commission to decide on the course of action.

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.

2.3.3. Grounds for exclusion

Candidates or tenderers will be excluded from participation in a procurement procedure 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 Communities' financial interests;

f) following another procurement procedure or grant financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

For contracts with a value of less than EUR 50.000, the Contracting Authority may, depending on its analysis of risks, ask candidates or tenderers to provide only a signed declaration that they do not fall into the categories listed above. In that case no pre-financing or interim payment may be made.

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 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.

2.3.4. Participation on equal terms (EDF only, not applicable to MIASP)

2.3.5. Administrative and financial penalties

Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have been guilty of making false declarations or have been found to have seriously failed to meet their contractual obligations in an earlier procurement procedure will be excluded from the award of all contracts and grants financed by the Community budget for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor. That period may be extended to three years in the event of a repeat offence within five years of the first infringement.

Tenderers or candidates who have been guilty of making false declarations will also receive financial penalties representing 2% - 10% of the total value of the contract being awarded. Contractors who have been found to have seriously failed to meet their contractual obligations will receive financial penalties representing 2% - 10% of the total value of the contract in question. That rate may be increased to 4% - 20% in the event of a repeat offence within five years of the first infringement.

In the cases referred to in point 2.3.3 (a), (c), (d) and (f) applicable to budget, the candidates or tenderers will be excluded from the award of all contracts and grants for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor.

In the cases referred to in point 2.3.3 (b) and (e) applicable to budget, the candidates or tenderers will be excluded from the award of all contracts and grants for a minimum of one year and a maximum of four years from the date of notification of the judgment.

Those periods may be extended to five years in the event of a repeat offence within five years of the first infringement or the first judgment.

The cases referred to in point 2.3.3 (e) applicable to budget are the following:

a) 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;³

b) 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;^{4,7}

c) cases of participation in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council;⁵

d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC.^{6,9}

Where the procurement procedure or performance of the contract is vitiated by substantial errors or irregularities or by fraud, the Commission will suspend performance of the contract. Where such errors, irregularities or fraud are attributable to the contractor, the Commission may in addition refuse to make payments or may recover amounts already paid, 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 Community budget.

2.3.6. Visibility

Unless otherwise requested or agreed by the European Commission, contractors for services, supplies or works 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 EU guidelines on visibility available from the EuropeAid website at:

http://europa.eu.int/comm/europeaid/visibility/index_en.htm

³ 6 OJ C 316, 27.11.1995, p.48.

⁴ OJ C 195, 25.6.1997, p.1.

⁵ 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.

⁶ 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).

2.3.7. Other essentials points

Conflict of interest: Any firm or expert participating in the preparation of a project must be 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.

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

No retroactive awards: Contracts are considered to take effect from the date of signature of the last signatory. Contracts or contract addenda cannot be awarded retroactively (i.e. after the end of the execution period) under any circumstances. This means that no disbursements can be effected and no goods and services provided prior to the signature of the contract and/or addendum.

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 policy on access to documents, written records of the entire tendering and contracting procedure must be kept confidential and retained by the Contracting Authority for a period of seven years from payment of the balance. These must include the originals of all tenders submitted, together with the corresponding tender dossiers and any related correspondence.

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 section 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 within 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 cofinancing). Where contracts are subdivided in lots, the value of each lot shall be taken into account when calculating the overall threshold.

Summary of rules for applying standard procurement procedures:

| | | | |
|-----------------|--|--|--|
| SERVICES | ≥ €200,000 International restricted tender procedure | < €200,000 but > € 5,000 1.Framework contracts 2.Competitive negotiated procedure | ≤ €5,000 Single tender |
| SUPPLIES | ≥ €150,000 International open tender procedure | < €150,000 but ≥ 30,000 Local open tender procedure | <€30,000 but > €5,000 Competitive negotiated procedure |
| WORKS | ≥ €5,000,000 1.International open tender procedure 2.International restricted tender procedure (exceptional cases). | < € 5,000,000 but ≥ €300,000 Local open tender procedure | < € 300,000 but > € 5,000 Competitive negotiated procedure |

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

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 (Sseries) 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 2.4.12. 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.

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. No change whatsoever in the identity or composition of the tenderer is permitted unless the Contracting Authority has given its prior approval in writing. A situation where such approval could be given is e.g. 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 or unfair competition. The successful tenderer is chosen by the procurement procedure once the tenders have been analysed (see point 2.4.12). No negotiation is allowed.

2.4.4. Competitive negotiated procedure

Under the competitive negotiated procedure, the Contracting Authority invites tenders from candidates of its choice. At the end of the procedure, it selects the most economically advantageous tender in case of service tenders and the cheapest compliant offer in case of supplies or works tenders. See points 3.4.2, 4.5 and 5.6 for further details.

2.4.5. Framework contracts

A framework contract is a contract concluded between a Contracting Authority and an economic operator for the purpose of laying down the essential terms governing a series of specific contracts to be awarded during a given period, in particular as regards the duration, subject, prices, conditions of performance and the quantities envisaged.

The Contracting Authority may also conclude multiple framework contracts, which are separate contracts with identical terms awarded to a number of suppliers or service providers. The specifications will then specify the maximum number of operators with whom the Contracting Authority will conclude contracts.

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 the framework contracts referred to in the second paragraph will be awarded in accordance with the terms laid down in the framework contract. Only specific contracts concluded under framework contracts are preceded by a budget commitment.

For each individual assignment, the Contracting Authority invites contractors drawn from the list to submit an offer within the bounds of the Framework Contract. It then selects the most economically advantageous tender. See point 3.4.1 for further details.

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. It then selects the most economically advantageous tender. 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.

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 order to identify and define the means best suited to satisfying their needs. 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 he/she 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.

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

2.4.8. Negotiated procedure

To be used in exceptional cases. See points 3.2.3.1, 4.2.4.1 and 5.2.4.1. No specific threshold applies.

2.4.9. Emergency aid (EDF only, not applicable to MIASP)

2.4.10. Fair 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.

2.4.11. Preferences (EDF only, not applicable to MIASP)

2.4.12. Selection and award criteria

Whether contracts are awarded by open or restricted procedure, the following operations are always performed:

2.4.12.1. Selection criteria

2.4.12.1.1. General principles

The Contracting Authorities will draw up clear and non-discriminatory selection criteria. The following selection criteria apply in every procurement procedure:

- the eligibility of the tenderer or candidate to take part in the procedure, checks having been carried out on the possible grounds for exclusion;
- criteria for assessing its financial, economic, technical and professional capacity.

The Contracting Authority may lay down minimum capacity levels below which it cannot select candidates. Any tenderer or candidate may be asked to prove that it is authorised to perform the contract under national law, as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.

The Contracting Authorities shall specify in the procurement notice or in the call for expressions of interest or the invitation to submit a tender, the references chosen to test the status and the legal capacity of tenderers or candidates. The information requested by the Contracting Authority as proof of the financial, economic, technical and professional capacity of the candidate or tenderer and the minimum capacity levels required fixed by the selection criteria may not go beyond the subject of the contract and shall take account of the legitimate interests of the economic operators as regards in particular the protection of the firm's technical and business secrets.

For service and supply procedures, only successful tenderers have to supply the above mentioned proofs before the award of the contract.

For works procedures the mentioned proofs have to be submitted in accordance with the tender dossier.

For contracts with a value of less than EUR 50.000, the Contracting Authority may, depending on its analysis of risks, choose not to ask tenderers to provide documentary proof of their financial and economic, technical and professional capacity. In that case no pre-financing or interim payment may be made.

2.4.12.1.2. Verification of the eligibility of tenderer or candidates

This is done as laid down in point 2.3, "Eligibility criteria and other essentials".

2.4.12.1.3. Verification of the financial and economic capacities of tenderers or candidates

Proof of economic and financial capacity may in particular be furnished by one or more of the following documents:

- (a) appropriate statements from banks or evidence of professional risk indemnity insurance;
- (b) 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;
- (c) 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.

An economic operator 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. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal. Under the same conditions, a consortium of economic operators may rely on the capacities of members of the consortium or of other entities.

2.4.12.1.4. Verification of the technical and professional capacities of tenderers, candidates and their managerial staff

The technical and professional capacity of economic operators must be evaluated and verified in accordance with the following paragraph. In procurement procedures for supplies requiring installation operations, services and/or works etc, such capacity must be assessed with particular reference to their know-how, efficiency, experience and reliability.

Evidence of such capacity may, depending on the nature, quantity or scale and purpose of the supplies, services or works to be provided, be furnished on the basis of one or more of the following documents:

the educational and professional qualifications of the service provider or contractor and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services or carrying out the works;

a list:

- of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private; Where the services or supplies were provided to Contracting Authorities, evidence of performance must take the form of certificates issued or countersigned by the competent authority;
- 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, 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; For public works contracts and public service contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.
- 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;

- an indication of the proportion of the contract which the service provider may intend to subcontract.

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 economic operator 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 economic operator with certain environmental management standards, they shall refer to the community 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 Community 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 economic operators.

An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, see further 2.4.12.1.3.

2.4.12.2. Award criteria

Contracts are awarded in one of the following two ways:

- a) 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;
- b) under the best-value-for-money procedure (ie the most economically advantageous tender).

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

2.4.13. Tender procedure with “suspension clause”

In exceptional and duly justified cases, tender procedures may be published with a suspension clause. This means that a tender procedure is launched before a financing decision is issued or a financing agreement signed between the European Commission and the beneficiary country; the award of that contract is therefore subject to the conclusion of the financing agreement and the provision of funding. Because of its implications, the existence of a suspension clause must be explicitly mentioned in the procurement notice.

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

2.4.14. 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. Cancellation may occur where:

- the tender procedure has been unsuccessful, i.e. no qualitatively or financially worthwhile tender

has been received or there is no response at all;
International restricted tender procedures must be cancelled if there are fewer than four eligible candidates.

- 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.

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 comply with the selection criteria, 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 or if there are fewer candidates than four in a restricted procedure for services);
- 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.

2.4.15. Ethics clauses

Any attempt by a candidate 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 will lead to the rejection of its candidacy or tender.

Without the Contracting Authority's prior 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.

When putting forward a candidacy or tender, the candidate or tenderer must declare that it is affected by no potential conflict of interest 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.

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 Contracting Authority has been obtained.

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.

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 Community are liable, depending on the seriousness of the facts observed, to have their contracts terminated or to be permanently excluded from receiving Community funds.

Failure to comply with one or more of the ethics clauses may result in the exclusion of the candidate, tenderer or contractor from other Community contracts and in penalties. The individual or company 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.

2.4.16. Appeals

Tenderers believing that they have been harmed by an error or irregularity during the award process may petition the Contracting Authority directly. The Contracting Authority must reply

within 90 days of receipt of the complaint. If this procedure fails, the tenderer may have recourse to the following:

Where the European Commission is not the Contracting Authority and where informed of such a complaint, it must communicate its opinion to the Contracting Authority and do all it can to facilitate an amicable solution between the complainant (tenderer) and the Contracting Authority. Should a Contracting Authority fail to adhere to the procurement procedures provided for in this Practical Guide, the European Commission reserves the right to refuse to finance the contract or to suspend, withhold or recover funding for the contracts concerned. If this procedure fails, the tenderer may have recourse to procedures established under the beneficiary country's national legislation.

Where the European Commission is the Contracting Authority, the tenderer may have recourse to procedures established under Community legislation. European citizens or residents, including legal entities with a registered office in the European Union, also have the right to complain to the European Ombudsman, who investigates complaints of maladministration by the European Community institutions.

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.

In particular, the budget for the standard service contract incorporates a fixed provision for incidental expenditure (for all, actual expenses not related to fees) as well as a provision for expenditure verification to be both determined in the tender dossier. Those provisions must correspond to the requirements of the Terms of Reference and must be carefully estimated.

Terms of Reference, Technical specifications and budget 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:

- the quality levels;
- environmental performance;
- design for all requirements (including accessibility for disabled people);
- the levels and procedures of conformity assessment;
- fitness for use;
- 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 Terms of Reference or Technical Specifications are prepared by the Contracting Authority. It is helpful to consult all parties involved in the proposed project in preparing Terms of Reference or Technical Specifications. This should improve both the quality of the project as well as the commitment of the Contracting Authority and beneficiaries.

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 having to be spent re-designing 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.

2.7. Procedural rules on conciliation and arbitration of contracts financed by the European Development Fund (EDF, not applicable to MIASP)

2.8. The Evaluation Committee

2.8.1. Composition

Tenders are opened and 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 for service and supply tenders and minimum of five for works tenders). 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 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. The observer may be an independent expert. Prior approval must be sought from the European Commission for the participation of other observers.

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 due to a link with any tenderer must declare it and

immediately withdraw from the Evaluation Committee. He will be excluded from participating further in any capacity in the evaluation meetings.

Any Evaluation Committee member who withdraws from the Evaluation Committee for whatever reason must be replaced and the evaluation process must be restarted. Any assessment by a voting member withdrawing from the Committee at whatever stage of the evaluation has to be disregarded.

No information about the examination, clarification, evaluation or decisions about the contract award can be disclosed before the signature of the contract by the Contracting Authority and the successful tenderer. Any attempt by a tenderer 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 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 policy on access to documents. For service tenders, the proceedings of the Evaluation Committee, from the opening of tenders to the conclusion of the work of the Evaluation Committee, are conducted in camera and are confidential, subject to the Contracting Authority's policy on access to documents.

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.

The tenders 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 during the evaluation process must be conducted in writing. Copies of any such communication must be annexed to the Evaluation Report.

If a tender 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 in accordance with the principle of proportionality. Whatever the Evaluation Committee decides, this must be fully recorded and justified in the Evaluation Report.

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

- tenders submitted in fewer number of copies than required;
- tenders with the wrong presentation (but the correct templates used);
- tenders that the tenderer has failed to sign or contains a scanned signature (the signature can be requested subsequently - if not obtained, the tender must be rejected)

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 successful tenderer to be notified by the Contracting Authority (after all necessary approvals) within the tender validity period specified in the tender dossier.

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 must be sufficient to allow the Contracting Authority to examine tenders, approve the contract award proposal, notify the successful tenderer 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, 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. The successful tenderer must maintain its tender for a further 60 days from the date of notification of award. The further period of 60 days is added to the initial period of 90 days irrespective of the date of notification.

2.9. Award of the contract

2.9.1. Notifying the successful tenderer

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. The further period is added to the initial period of 90 days irrespective of the date of notification. 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 (optional for Budget for contracts below €50.000, see point 2.4.12.1.1). 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.

2.9.2. Contract preparation and signature

In preparing the contract for signature, the Contracting Authority must proceed as follows:
Prepare a contract dossier 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 tender 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 Commission for endorsement. The Delegation signs all originals of the contract for endorsement (and initials all pages of the Special Conditions) to confirm the Community 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, in any case, before the expiry of the tender validity period) and
- Return two originals to the Contracting Authority together with the eventual financial guarantee(s) 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 tender which has achieved the next highest score (provided that that tender passed the technical threshold and is within the maximum budget available for the contract).

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

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

2.9.3. Publicising the award of the contract

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 for which there has been competitive tendering or to recommence the procedure.

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, on the EuropeAid website and in any other appropriate media. In addition, the Contracting Authority must:

- send the other tenderers a standard letter (Annexes B13, C8, 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 Contracting Authority is responsible for preparing the contract award notice using the template in Annexes B14, C9, 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 or an addendum to the contract in accordance with the provisions of the General Conditions of the contract. Substantial modifications to the contract, including modifications to the total contract amount, 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 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 choice of bank account or auditor.

2.10.1. General principles

The following general principles must always be respected:

A contractor's 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 must be closely connected with the nature of the project covered by the initial contract. Major changes, such as a fundamental alteration of the Terms of Reference/Technical Specifications, cannot be made by means of an addendum as the addendum must not alter the competition conditions prevailing at the time the contract was awarded.

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

Where addenda extend 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 details).

For complementary services, a new contract should be signed.
For additional services, an addendum should be prepared.

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 standard template for an addendum (Annex B16, C12, D11):

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, C13, D12).

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 contractor's request for (or agreement to) the proposed modifications

- c) Copy of the financing agreement authorising the project
 - d) Copy of the initial contract and any subsequent addenda
 - e) Copy of the initial tender announcements (contract forecast, procurement notice and shortlist), Shortlist Report, Tender Opening Report, Evaluation Report, and any other relevant information
 - f) Three originals of the proposed addendum, which is based on the standard addendum template and includes any revised annexes.
- 3) The Contracting Authority sends the addendum dossier to the Delegation of the European Commission for endorsement (and initials all pages of the Special Conditions) to confirm the Community 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.
- 5) On receipt of the two signed originals from the contractor, the Contracting Authority sends one to the Delegation of the European Commission.

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.

Study contracts generally specify an outcome, ie, the contractor must provide a given product: the technical and operational means by which it achieves the specified outcome are irrelevant. These are, therefore, lump-sum (global-price) contracts and the contractor will be paid only if the specified outcome is achieved.

Technical assistance contracts (fee-based) 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.

Technical assistance contracts often only specify the means, ie, the contractor is responsible for performing the tasks entrusted to it in the Terms of Reference and ensuring the quality of the services provided. Payment for these contracts is dictated by the resources and services actually provided. The contractor does, however, have a duty of care under the contract: it must warn the Contracting Authority in good time of anything that might affect the proper execution of the project.

Some service contracts may, however, combine both types, specifying both the means and the outcome.

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 3.3.1.1.

3.2.2. Contracts under €200,000

Contracts of a value of under €200,000 may be awarded either under the Framework Contract procedure or, if the use of an existing framework contract is impossible or has been unsuccessful, under a competitive negotiated procedure 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

The prior approval of the relevant services of the European Commission must be sought 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:

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 procedures referred to in Article 91(1)(a), (b) and (c) of the Financial Regulation 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. The authorising officer by delegation, where appropriate after consulting the other authorising officers by delegation concerned, will establish that a situation of extreme urgency exists and review his decision regularly with regard to the principle of sound financial management;

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 canceling 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, 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.

The Contracting Authority must prepare a Negotiation Report 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 must be followed by analogy, with the Negotiation Report being included in the contract dossier.

3.2.3.2. Competitive dialogue

In the case of particularly complex contracts 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 make-up of the project and where it considers that direct use of a restricted

tender procedure will not allow the contract to be awarded to the tender offering best value for money, it may make use of this procedure. The procedure should however be used with precaution, in view of its exceptional nature.

The Contracting Authority publishes a contract notice setting out the needs and requirements. It opens a dialogue with a minimum of 3 candidates which meet the published selection criteria. All aspects of the tender can be discussed during the dialogue; however, the dialogue is conducted with each tenderer individually 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. See point 2.4.7 for further details.

Considering that this is a new procedure, for the time being the standard templates should be used and modified as required.

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, publication does 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.

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 http://europa.eu.int/comm/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.

In addition to the above, the finalised Terms of Reference (see point 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

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.

If there is a need to correct the procurement notice, a corrigendum notice setting out eventual changes to the procurement notice must be published as explained above, taking into account that international notices must be submitted for publication to the relevant service of the European Commission at least 15 days before the intended date of publication. The deadline for the submission of applications may be extended to allow tenderers to take into account the changes.

3.3.2. Establishment of shortlists

The short-listing of candidates must be carried out by a Shortlist Panel 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 Shortlist Panel are obliged to sign a Declaration of Impartiality and Confidentiality (see Annex A4).

The Shortlist Panel (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 Shortlist Panel 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 Shortlist Panel. Prior approval must be sought from the European Commission for the participation of other observers.

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 2.3.4;
- applying the published selection criteria without modification

Only successful tenderers have to supply supporting documents for the selection criteria before the award of the contract (optional for Budget for contracts below €50.000, see point 2.4.12.1.1)

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 should contain a minimum of four candidates and a maximum of eight. 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 must cancel the tender procedure and may republish the procurement notice.

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

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.

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 noncompliance, 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 point 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.

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

Where the European Commission will not make payments under the contract on behalf of the Contracting Authority, the relevant services of the Commission determine, on the basis of their analysis of management risks, whether the Contracting authority must submit the tender dossier to the European Commission for approval prior to issue unless otherwise specified in the Financing Agreement.

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. It 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

A guarantee will be required to cover any pre-financing payment. It will be released as and when advances are reimbursed.

3.3.4. Award criteria

The contract award criteria serve to identify the most economically advantageous tender. 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 subcriteria. 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 up to 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 at least 11 days before the deadline for receipt of tenders.

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.

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

See point 2.8.

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, which 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 (ie, 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 point 2.8.2

3.3.10.3. Evaluation of offers

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 experts (EDF) and subcontractors: the Evaluation Committee must check at this stage that the nationalities of any experts and/or 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.

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 timelimit to be fixed by the Committee.

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

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.

If the tender dossier expressly permits variants, such variants are scored separately. All the variant solutions in the tenders must be evaluated on the basis of the points awarded to the criteria in the evaluation grid concerning such variants.

Each voting member of the Committee completes an evaluation grid (see Annex B12) to record his

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 choice and defend his 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 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 example in Annex B11 shows the format of the summary as part of the Evaluation Report and indicates the level of detail expected. The Secretary calculates the aggregate final score, which is the arithmetical average of the individual final scores.

If interviews were provided for in the tender dossier, the Committee may, after writing up its provisional conclusions and before definitively concluding its evaluation of the technical offers, decide to interview the key members of the team of 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, preferably collectively in the case of a team, at intervals close enough to permit comparison. Interviews must follow a standard format agreed beforehand by the Committee 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 attending an interview by force majeure, a mutually convenient alternative appointment is arranged with the tenderer. If the tenderer is unable to attend this second appointment, its tender will 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.

This procedure entails considerable costs both for tenderers and the Contracting Authority and should therefore be used with restraint. 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

| | Maximum possible | Tenderer 1 | Tenderer 2 | Tenderer 3 |
|--|------------------|-----------------|-----------------------|-----------------|
| 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) | | $174/3 = 58.00$ | $254/3 = 84.67$ | $256/3 = 85.33$ |
| Technical Score (actual final score/highest final score) | | Eliminated * | $84.67/85.33 = 99.22$ | 100.00 |

* 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 which 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 arithmetical errors. Any 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.

The total contract value comprises the fees (including employment-related overheads), the incidental expenditure and the provision for expenditure verification, 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 are 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 (EDF: fees, direct/lumpsum costs etc) | | € 951 322 | € 1 060 452 |
| Financial score (lowest total fees/actual total fees x 100) | Eliminated following technical evaluation | 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.

3.3.10.5. Conclusions of the Evaluation Committee

The most economically advantageous tender is established by weighing technical quality against price on an 80/20 basis. This is done by multiplying:

- o the scores awarded to the technical offers by 0,80
- o 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 | | | $99,22 \times 0.80 = 79.38$ | $100.00 \times 0.80 = 80.00$ |
| Financial score x 0.20 | | Eliminated following technical evaluation | $100.00 \times 0.20 = 20.00$ | $89.71 \times 0.20 = 17.94$ |
| Overall score | | | $79.38 + 20.00 = 99.38$ | $80.00 + 17.94 = 97.94$ |
| Final ranking | | | 1 | 2 |

The resulting, weighted technical and financial scores are then added together and the contract is awarded to the tender achieving the highest overall score. It is essential to make the calculations strictly according to the above instructions.

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:
 - o which complies with the formal requirements and the eligibility rules;
 - o whose total budget is within the maximum budget available for the project;
 - o which meets the minimum technical requirements specified in the tender dossier; and
 - o which is the most economically advantageous tender (satisfying all of the above conditions).

- Cancel the tender procedure in exceptional circumstances, such as:
 - None of the tenders satisfies the selection/award criteria of the tender procedure;
 - No tenders achieved the minimum threshold during the technical evaluation;
 - The total price (comprising both the fees, the incidental expenditure and the provision for expenditure verification for BUDGET and comprising both the fees, direct/lump-sum costs etc and reimbursables for EDF) of all tenders received exceed the maximum amount available for the contract.

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 recommendation 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 recommendation of the Contracting Authority, 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 Authority might endorse a proposed contract on the basis of the tender procedure.

If the European Commission approves the recommendation of the Contracting Authority will either commence awarding the contract (see point 3.3.12) or cancel the tender, as recommended.

The Evaluation 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 (for example, because one or more of the key experts are no longer available) if the evaluation procedure takes too long.

Subject to the Contracting Authority's policy 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.

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).

3.3.11. Cancelling the tender procedure

The Contracting Authority may decide to cancel the tender procedure at any stage, but particularly in the light of the Evaluation Report, if:

- the tender procedure has been unsuccessful, i.e., no qualitatively or financially worthwhile tender has been received or there is no 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 procedure must be cancelled at the call for candidates stage if there are fewer than four eligible candidates.

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

In the event of cancellation of any tender procedure, tenderers must be notified of the cancellation by the Contracting Authority. Such tenderers shall not be entitled to compensation. When the tender procedure is cancelled before the opening session, the unopened and sealed envelopes must be returned to the tenderers.

3.3.12. Award of the contract

3.3.12.1. Notifying the successful tenderer

See point 2.9 and 2.4.13 (in the case of suspension clause)

3.3.12.2. Contract preparation and signature

See point 2.9.

The proposed contract must follow Annex B8

3.3.12.3. Publicising the award of the contract

See point 2.9.

3.3.13. Approval of key experts (for centralised tender procedures only, not applicable to MIASP)

3.3.14. Provision and replacement of experts

Where the tender procedure involves the provision of technical assistance staff, the contractor is bound to provide the staff 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.

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 after the contract has been signed and concluded. This situation may arise before performance of the contract has even begun or while it is in progress.

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.).

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 feels that its performance is jeopardised, or, if it feels 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

For short-term, technical assistance contracts under €200,000 and with a performance period (ie, duration of actual services to be provided) of under 12 months, the Contracting Authority must use the Framework Contract. 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 use framework contracts in such a way that the purpose or effect is to prevent, restrict or distort competition. Detailed information including templates for the Framework Contracts can be found on the EuropeAid website.

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

3.4.2. Competitive negotiated procedure

If the Contracting Authority cannot use the Framework Contract or its use is unsuccessful (eg, the technical expertise required is not available in the Framework Contract), the Contracting Authority may award a contract 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. 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 to submit their tenders.

If the Contracting Authority does not receive at least three valid tenders (ie arrived on time and respecting the formal submission requirements), the procedure must be cancelled and started again.

Consequently, it would be prudent to invite tenders from more than three service providers. In the event of 2 successive failures of the competitive negotiated procedure/ simplified procedure, 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 €5,000 or less on the basis of a single tender.

3.5. Modifying service contracts

See point 2.10.

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 siting 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 point 4.3.

4.2.2. Contracts between €30,000 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.

4.2.3. Contracts under €30,000 – competitive negotiated procedure

Supply contracts under €30,000 are awarded by competitive negotiated procedure/ simplified procedure. Three valid tenders (i.e. arrived on time and respecting the formal submission requirements) must be obtained so at least three contractors must be consulted, but no procurement notice needs to be published.

However, the Contracting Authority may award supply contracts of a value of €5,000 or less on the basis of a single tender.

4.2.4. Other procedures

4.2.4.1. Negotiated procedure

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

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 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. The authorising officer by delegation, where appropriate after consulting the other authorising officers by delegation concerned, will establish that a situation of extreme urgency exists and review his decision regularly with regard to the principle of sound financial management;

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, provided that the initial conditions of the tender procedure are not substantially altered and the principle of equal treatment is observed.

The Contracting Authority must prepare a Negotiation Report 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 must be followed by analogy, with the Negotiation Report being included in the 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 timelimit. 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

In the case of particularly complex contracts 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 make-up of the project and where it considers that direct use of a restricted tender procedure will not allow the contract to be awarded to the tender offering best value for money, it may make use of this procedure. The procedure should however be used with precaution, in view of its exceptional nature.

The Contracting Authority publishes a contract notice setting out the needs and requirements. It

opens a dialogue with a minimum of 3 candidates which meet the published selection criteria. All aspects of the tender can be discussed during the dialogue; however, the dialogue is conducted with each tenderer individually 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. See point 2.4.7 for further details.

Considering that this is a new procedure, for the time being the standard templates should be used and modified as required

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.

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 (BUDGET) or more than €150,000 (EDF) must also be the subject of a procurement notice published in the Official Journal of the European Union, on the EuropeAid website (at http://europa.eu.int/comm/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.

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.

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 point 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.

Procurement notices must indicate whether or not tenderers may submit tenders for 'variant

solutions'. Where variants are allowed by the tender dossier, the Contracting Authority may take them into account when:

- they are submitted by the tenderer submitting the least expensive, compliant tender; and
- they meet the technical specifications required by the tender dossier, attaining at least the minimum quality and performance required.

The Contracting Authority must clearly state in the tender dossier the minimum specifications to be respected by the variants and any specific requirements for their presentation.

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".

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

Where the European Commission will not make payments under the contract on behalf of the Contracting Authority, the relevant services of the Commission determine, on the basis of their analysis of management risks, whether the Contracting Authority must submit the tender dossier to the European Commission for approval prior to issue unless otherwise specified in the Financing Agreement.

TENDER DOSSIER CONTENT

A. INSTRUCTIONS 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.

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 2.4.12.1.3) 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 2.4.12.1.4).

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 Budget for contracts below €50.000, see point 2.4.12.1.1)

The award criteria applied to technically compliant tenders are price or, in exceptional cases and after prior approval by the relevant services of the European Commission, the most economically advantageous tender.

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 4.2.1.2(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 most economically advantageous tender. This should be limited to products with particular security/production/implementation constraints.

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.

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 up to 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 at least 11 days before the deadline for receipt of tenders. The questions and answers shall be published on the EuropeAid website.

If it proves impossible to identify potential tenderers in the case of an open tender procedure, a corrigendum notice setting out eventual changes to the tender dossier must be published as explained in point 4.3.1, taking into account that international notices must be submitted for publication to the relevant service of the European Commission at least 15 days before the intended date of publication. 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 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. Visits by individual companies during the tender period cannot be permitted unless information meetings and/or site visits have been specifically scheduled for all 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.

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.

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

See point 2.8.

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 Evaluation Committee 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.

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.

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 must be recorded separately and 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.

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.

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 (ie 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.

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 by fax within a reasonable time limit to be fixed by the Committee.

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 minimum technical requirements and selection criteria.

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. If variants are allowed and if the tenderer submitting the compliant tender with the lowest price also has submitted a variant solution, the variant tender from this tenderer should also be evaluated.

4.3.9.5. Evaluation of financial offers

Once the technical evaluation has been completed, the Committee checks that the financial offers contain no arithmetical errors. Any 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 |
|-------|-------------|-----------|-----------|--------------------------|
| LOT 1 | 90 | 80 | 70 | Company C |
| LOT 2 | Not bidding | 40 | 50 | Company B |
| LOT 3 | 60 | 70 | 55 | Company C |

After applying the discount:

| | Company A (20% discount) | Company B (10% discount) | Company C (no discount) |
|-------|-----------------------------|-----------------------------|----------------------------|
| LOT 1 | 72 | 72 | 70 |
| LOT 2 | Not bidding | 36 | 50 |
| LOT 3 | 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.

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, for example when:
 - None of the tenders satisfies the selection/award criteria of the tender procedure
 - All tenders received exceed the maximum budget available for the contract.

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 recommendation of the Contracting Authority to the European Commission for approval. If there is an award proposal and the European Commission has not already received the original tender of the recommended tenderer and copies of the other tenders, these must be submitted.

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. 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 recommendation, the Contracting Authority will either

commence awarding the contract (see point 4.3.11) or cancel the tender, as recommended.

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 policy 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.

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

The Contracting Authority may decide to cancel the tender procedure at any stage, but particularly in the light of the Evaluation Report, if:

- the tender procedure has been unsuccessful, i.e., no qualitatively or financially worthwhile tender has been received or there is no 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 responsibility for cancelling a tender procedure lies with the Contracting Authority, with the prior approval of the European Commission.

In the event of cancellation of any tender procedure, tenderers must be notified of the cancellation by the Contracting Authority. Such tenderers are not entitled to compensation. They will be 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 point 2.9 and 2.4.13 (in the case of suspensive clause).

4.3.11.2. Contract preparation and signature

See point 2.9

The proposed contract must follow Annex C4.

4.3.11.3. Publicising the award of the contract

See point 2.9

4.4. Local open tender (for contracts of at least €30,000 and under €150,000)

In this case, the procurement notice is not published in the Official Journal of the European Union but only in the beneficiary country. The European Commission publishes the references of such tender procedures (dossier number, country, Contracting Authority and type of contract) 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).

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.

The measures applicable to an international open procedure, as described in point 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 corrigendum notice 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 €30,000

The Contracting Authority may award contracts under €30,000 by competitive negotiated procedure/ simplified 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.

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 evaluated by an Evaluation Committee possessing the requisite technical and administrative capacities appointed by the Contracting Authority.

If the Contracting Authority receives fewer than three valid tenders (i.e. arrived on time and respecting the formal submission requirements), the procedure must be cancelled and started again.

Consequently, it would be prudent to invite tenders from more than three contractors. In the event of 2 successive failures of the competitive negotiated procedure/ simplified 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. No tender guarantee is required in this case.

The Contracting Authority may award supply contracts of a value of €5,000 or less on the basis of a single tender.

4.6. Modifying supply contracts

See point 2.10.

Under no circumstances can the Contracting Authority increase the budget of the initial supply contract or agree to/arrange for the purchase of equipment that was not covered in the Technical Specifications of 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.

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.

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.

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.

5.2.3. Contracts under €300,000 – competitive negotiated procedure

Works contracts under €300,000 are awarded by competitive negotiated procedure/ simplified procedure. Three valid tenders (i.e. arrived on time and respecting the formal submission requirements) must be obtained so at least three contractors must be consulted, but no procurement notice need be published.

However, the Contracting Authority may award works contracts of a value of €5,000 or less on the basis of a single tender.

5.2.4. Other procedures

5.2.4.1. Negotiated procedure

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

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 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. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, will establish that a situation of extreme urgency exists and review his decision regularly with regard to the principle of sound financial management;

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.

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, provided that the original terms of the contract are not substantially altered and the principle of equal treatment is observed.

The Contracting Authority must prepare a Negotiation Report 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 must be followed by analogy, with the Negotiation Report being included in the contract dossier.

5.2.4.2. Competitive dialogue (Budget only)

In the case of particularly complex contracts 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 make-up of the project and where it considers that direct use of a restricted tender procedure will not allow the contract to be awarded to the tender offering best value for money, it may make use of this procedure. The procedure should however be used with precaution, in view of its exceptional nature.

The Contracting Authority publishes a contract notice setting out the needs and requirements. It opens a dialogue with a minimum of 3 candidates which meet the published selection criteria. All aspects of the tenderer can be discussed during the dialogue; however, the dialogue is conducted with each tenderer individually 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. See point 2.4.7 for further details.

Considering that this is a new procedure, for the time being the standard templates should be used and modified as required

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.

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.

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.

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 point 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.

Procurement notices must indicate whether or not tenderers may submit tenders for 'variant solutions'. Where variants are allowed by the tender dossier, the Contracting Authority may take them into account when:

- they are submitted by the tenderer submitting the least expensive, compliant tender; and
- they meet the technical specifications required by the tender dossier, attaining at least the minimum quality and performance required.

The Contracting Authority must clearly state in the tender dossier the minimum specifications to be respected by the variants and any specific requirements for their presentation.

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".

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

Where the European Commission will not make payments under the contract on behalf of the Contracting Authority, the relevant services of the Commission determine, on the basis of their analysis of management risks, whether the Contracting Authority must submit the tender dossier to the European Commission for approval prior to issue unless otherwise specified in the Financing Agreement.

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. 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. It 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 2.4.12.1.3) 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 2.4.12.1.4).

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.

Following selection and the elimination of all non-compliant offers, the sole criterion for award is the tender price.

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 up to 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 at least 11 days before the deadline for receipt of tenders. The questions and answers shall be published on the EuropeAid website.

If it proves impossible to identify potential tenderers in the case of an open tender procedure, a corrigendum notice setting out eventual changes to the tender dossier must be published as explained in point 5.3.1, taking into account that international notices must be submitted for publication to the relevant service of the European Commission at least 15 days before the intended date of publication. The corrigendum shall also be published on the EuropeAid website.

The deadline for the submission of tenders may be extended to allow tenderers to take account of the changes.

If the tender has a particularly complex technical content, the Contracting Authority may organise an information meeting 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. Visits by individual companies during the tender period are permitted on the condition that the Contracting Authority has given its prior authorization, ensuring transparency and equal treatment.

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.

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.

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

See point 2.8.

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

First meeting of Evaluation Committee 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.

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.

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 may 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.

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 (ie 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.

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 by fax within a reasonable time limit to be fixed by the Committee.

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 to be supplied and the materials to be used for the construction fulfil the requirement as mentioned in point 2.3.1. Tenders which clearly fail to satisfy the rule of origin must be rejected. The rule of origin does not apply to the

contractor's equipment which will be used during the construction.

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. If variants are allowed and if the tenderer submitting the compliant tender with the lowest price has also submitted a variant solution, the variant tender should also be evaluated.

5.3.9.5. Evaluation of financial offers

Once the technical evaluation has been completed, the Committee checks that the financial offers contain no arithmetical errors. Any 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.

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 for example when:

- None of the tenders satisfies the selection/award criteria of the tender procedure
- All tenders received exceed the maximum budget available for the contract.

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 the recommendation of the Contracting Authority to the European Commission for approval. If there is an award proposal and the European Commission has not already received the original tender of the recommended tenderer and copies of the other tenders, these must be submitted.

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. 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 recommendation of the Evaluation Committee, the Contracting Authority will either commence awarding the contract (see point 5.3.11) or cancel the tender, as recommended.

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 policy 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.

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 (eg, the Court of Auditors).

5.3.10. Cancelling the tender procedure

The Contracting Authority may decide to cancel the tender procedure at any stage, but particularly in the light of the Evaluation Report, if:

- the tender procedure has been unsuccessful, i.e., no qualitatively or financially worthwhile tender has been received or there is no 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 responsibility for cancelling a tender procedure lies with the Contracting Authority, with the prior approval of the European Commission.

In the event of cancellation of any tender procedure, tenderers must be notified of the cancellation by the Contracting Authority. Such tenderers are not entitled to compensation. They will be 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 point 2.9 and 2.4.13 (in the case of suspensive clause)

5.3.11.2. Contract signature

See point 2.9

The proposed contract must follow Annex D4

5.3.11.3. Publicising the award of the contract

See point 2.9

5.4. *Restricted tender for contracts of €5,000,000 or more*

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.

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 but only in the beneficiary country. The European Commission publishes the references of such tender procedures (dossier number, country, Contracting Authority and type of contract) 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 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.

If it proves impossible to identify potential tenderers in the case of a local open tender procedure, a corrigendum notice 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 point 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.

5.6. Competitive negotiated procedure for contracts under €300,000

The Contracting Authority may award contracts under €300,000 by competitive negotiated procedure/ simplified 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 possessing the requisite technical and administrative capacities appointed by the Contracting Authority. The members of the Committee must each sign a Declaration of Impartiality and Confidentiality (see Annex A4).

If the Contracting Authority receives fewer than three valid tenders (ie arrived on time and respecting the formal submission requirements) the procedure must be cancelled and started again.

Consequently, it would be prudent to invite tenders from more than three contractors. 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 €5,000 or less on the basis of a single tender.

5.7. Modifying works contracts

See point 2.10

Under no circumstances can the Contracting Authority increase the budget of the initial contract or agree to/arrange for works that was not covered in the Technical Specifications of the initial tender and subsequent contract.

The only exception to this rule is for additional works not included in the initial contract but which have, through unforeseen circumstances, become necessary for the works initially foreseen to be carried out, provided that the award is made to the contractor already carrying out such work:

-where such works cannot be technically or economically separated from the main contract without serious inconvenience for the Contracting Authority;

-where such works, although separable from the performance of the initial contract, are absolutely necessary to its completion.

This should remain exceptional and should not be used to cover deficiencies in the technical specifications of the tender dossier. However, the aggregate cost of contracts awarded for additional works must not exceed 50% of the amount of the main contract.

8. LEGAL TEXTS

8.1. Legal framework for the procurement procedures

8.1.1. 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 Community 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 Title IV of Part Two thereof, which specifically concerns external action;
- Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended by Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005 and in particular Chapter III of Title III thereof, which specifically concerns procurement aspects of external action;
- The Regulations¹⁶ and other specific basic acts relating to the various cooperation programmes.

The following are also applicable:

- The Framework Agreement signed by the EC 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 EC and the beneficiary country concerned for each EC-funded programme. This sets out the programme objectives and budget.
- The general regulations for service, supply and works contracts financed from the general budget of the European Communities in the course of cooperation with third countries [SEC (2003) 387/2], adopted by the European Commission on 24 January, 2006.
- This Practical Guide with its standard documents and templates in the annexes, which include the standard tender documents for service contracts (see Annex B8), supply contracts (see Annex C4) and works contract (see Annex D4).

8.2. Legal framework for grant procedures

8.2.1. The following legal framework applies to grant contracts financed by the European Community 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, on grants, and Title IV of Part Two, on External Actions;
- Commission Regulation No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the abovementioned Financial Regulation as amended by Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005;
- 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.