



**European Commission**  
**Directorate-General for International**  
**Partnerships**

**CONTRACT PROCEDURES**  
**FOR EUROPEAN UNION EXTERNAL ACTION**

*A practical guide*

applicable to any procedure to be launched as of 24 June 2022

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## 1. Introduction

### DISCLAIMER

This practical guide on contract procedures for European Union external action (PRAG) provides contracting authorities, on the one hand, and tenderers, candidates, applicants and contractors, on the other hand, with practical assistance in preparing and implementing procurement and grant contracts in the field of external action.

This practical guide does not apply to contracts for which the European Commission acts as contracting authority on its own account. These are covered by separate guides (the Vade-mecum on public procurement in the Commission and the Vade-mecum on grant management) drafted by the Directorate-General for Budget (DG BUDG). This practical guide does not apply to civil protection and humanitarian aid operations carried out by the Directorate-General for Humanitarian Aid and Civil Protection (DG ECHO).

This practical guide applies to contracts awarded by FPI in direct management for the implementation of assistance measures funded under the European Peace Facility, unless provided otherwise in the relevant regulatory framework.

It does not claim to cover every single matter that may arise with public procurement and grant procedures. It is only a general guide.

Although the PRAG provides explanations and information strictly in compliance with the rules and regulations in force, it is not legally binding<sup>1</sup>. The applicable legislation and any clarification provided by the Court of Justice of the European Union take precedence.

In the current and previous PRAG changes have been introduced following the introduction of electronic processes. Since January 2020, the specific contracts under Framework contracts (FWC) SIEA 2018, Audit 2018, PSF 2019, Events 2020, Eva 2020 are managed in eProcurement which is part of the OPSYS ecosystem. Since August 2020 the Public Procurement Management Tool (PPMT) was made available to External Action DGs. PPMT is a sub-part of the corporate eProcurement suite. PPMT is used to publish notices and procurement documents in Tenders Electronic Daily (TED) and in the Funding and Tender's Portal (F&T).

This edition of the PRAG incorporates changes related to eSubmission. eSubmission allows economic operators to respond electronically to procurement procedures by preparing submissions (i.e. requests to participate or tenders) and submitting them electronically in a structured and secured way. Practical information on the functionalities of eSubmission are available on the dedicated Relex Wiki webpage.<sup>2</sup> eSubmission will be available for the electronic management of international open and restricted procedures and negotiated procedures. eSubmission applies only to the submission of requests to participate/tenders in direct management. For indirect management, the paper submission is still applicable. As a consequence, the annexes in the PRAG will provide options differentiating electronic submission and paper submission.

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<sup>1</sup>A practical guide is a working tool, which explains the procedures applicable in a particular area. It cannot derogate from higher-ranking rules: Judgment of the General Court (Seventh Chamber) of 15 September 2011, *CMB Maschinenbau & Handels GmbH and J. Christof GmbH v European Commission*, T-407/07, EU:T:2011:477, paragraph 157.

<sup>2</sup> <https://webgate.ec.europa.eu/fpfis/wikis/display/RelexInternalWiki/Contracts+and+Procurements> .



Electronic management has a positive effect on the processes, as there are automated features embedding some Annexes of PRAG or FWC templates and there are additional options for the paperless flows. However, it does not have an effect on the principles and rules under which procurement and grant award procedures are run. Building on the previous edition of PRAG, this edition has further introduced and developed the compatibility of procurement and grant procedures with electronic management. Given that electronic management evolves at a quicker pace than the PRAG editions, it is possible that some dispositions of the current PRAG edition will be completed in the future by specific elements in the electronic management guidance available under “OPSYS documentation”.

This edition of the PRAG also introduces novelties on the new Multiannual Financial Framework (MFF) 2021-2027 and the new legal framework applicable to external actions.

## 1.1 Scope of the PRAG

This practical guide explains procurement and grant award procedures applying to European Union external actions financed by the European Union.

The previous Multiannual Financial Framework (MFF) 2014-2020 will co-exist with the new Multiannual Financial Framework (MFF) 2021-2027 as commitments made under the previous MFF will still be implemented in the next years. This co-existence is reflected in this edition of the PRAG. The financing of the EU's external action under MFF 2014-2020 will continue to be governed by the legal framework in place at the time, notably the 11<sup>th</sup> EDF, whereas the financing of the EU's external action under MFF 2021-2027 will be governed by the newly adopted legal framework.

The new MFF 2021-2027 introduces some substantial changes in respect of some established rules and practices: e.g. eligibility, rule of origin<sup>3</sup>, and the disappearance of EDF specificities such as the National Authorising Officer, private commissioned operations and EDF preferences. It is important to remain vigilant as to the applicable set of rules that will depend on the MFF financing the action.

Under MFF 2021-2027, the PRAG is used by the Commission services responsible for the management of projects and programmes financed under the external financing instruments.

This concerns:

- Directorate-General for International Partnerships (DG INTPA) for the NDICI-Global Europe geographic programmes (all areas except Neighbourhood), NDICI-Global Europe thematic programmes (Civil Society Organisations, Global Challenges, Human Rights and Democracy), NDICI-Global Europe rapid response actions (resilience component), European Instrument for International Nuclear Safety Cooperation (INSC), the Council decision on the Association of the Overseas Countries and Territories, including Greenland.
- Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) for the implementation of the Instrument for Pre-accession Assistance (IPA III), NDICI-Global Europe geographic programmes (Neighbourhood) and NDICI-Global Europe – rapid response actions (resilience component).

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<sup>3</sup> Please note that the rule of origin is kept with regard to contracts financed by the INSC Regulation 2021/948 of 27 May 2021 under the MFF 2021-2027.

- Service for Foreign Policy Instruments (FPI) for the NDICI-Global Europe thematic programmes (Peace, Stability and Conflict Prevention; Electoral Observation Missions under Human Rights and Democracy), NDICI-Global Europe rapid response actions (all components except resilience)<sup>4</sup>.

Under MFF 2014-2020, the PRAG is used by the Commission services responsible for the management of projects and programmes financed under the external financing instruments and the EDF in the context of the Cotonou Agreement<sup>5</sup>.

This concerns primarily:

- Directorate-General for International Partnerships (DG INTPA) for the EDF<sup>6</sup>, the Development Cooperation Instrument (DCI)<sup>7</sup>, the European Instrument for Democracy and Human Rights (EIDHR)<sup>8</sup>, the Nuclear Safety Co-operation Instrument (NSCI)<sup>9</sup>, the Instrument contributing to Stability and Peace (IcSP)<sup>10</sup>, the Overseas Countries and Territories (OCTs)<sup>11</sup> and the Instrument for Greenland (IfG)<sup>12</sup>;

- Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) for the implementation of the Instrument for Pre-accession Assistance (IPA II)<sup>13</sup> and the European Neighbourhood Instrument (ENI)<sup>14</sup>;

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<sup>4</sup> Furthermore, the Directorate-General for Structural Reform Support (DG REFORM) is in charge of the instrument of financial support for encouraging the economic development of the Turkish Cypriot community (Council Regulation (EC) No 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction (OJ L 65, 7.3.2006, p. 5)).

<sup>5</sup> Partnership Agreement between Member of the African, Caribbean and Pacific group of States, of one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ L 317, 15.12.2000, p.3), as amended in Luxembourg on 25 June 2005 (OJ L 287, 4.11.2010, p. 1) and Ouagadougou on 22 June 2010 (OJ L 269, 13.10.2010, p. 1).

<sup>6</sup> Internal Agreement between the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on the financing of European Union aid under the Multiannual Financial Framework for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement, and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the Treaty on the Functioning of the European Union applies (OJ L 210, 6.8.2013, p. 1) (the Internal Agreement).

<sup>7</sup> Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020 (OJ L 77, 15.3.2014, p. 44).

<sup>8</sup> Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide (OJ L 77, 15.3.2014, p. 85).

<sup>9</sup> Council Regulation (Euratom) No 237/2014 of 13 December 2013 establishing an Instrument for Nuclear Safety Cooperation (OJ L 77, 15.3.2014, p. 109).

<sup>10</sup> Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace (OJ L 77, 15.3.2014, p. 1).

<sup>11</sup> Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (OJ L 344, 19.12.2013, p. 1).

<sup>12</sup> Council Decision 2014/137/EU of 14 March 2014 on relations between the European Union on the one hand, and Greenland and the Kingdom of Denmark on the other (OJ L 76, 15.3.2014, p. 1).

<sup>13</sup> Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) (OJ L 77, 15.3.2014, p. 11).

<sup>14</sup> Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (OJ L 77, 15.3.2014, p. 27).

- Service for Foreign Policy Instruments (FPI) for the IcSP, the Partnership Instrument (PI)<sup>15</sup> and the election observation missions under the EIDHR<sup>16</sup>.

This practical guide provides users with the comprehensive information necessary to undertake procurement (services, works and supplies contracts) or grant award procedures from the first steps to the award, signature and implementation of contracts. The annexes cover both the award phase and the implementation of contracts.

It outlines the contracting procedures to be used in direct management and in indirect management with partner countries and, to a limited extent, in shared management (see Section 2.2.).

Although the procurement and grant award procedures applicable to the general budget of the European Union, to the 10<sup>th</sup> and to the 11<sup>th</sup> EDF are quite similar, some remaining differences are featured in this practical guide and its annexes.

**The financing of the EU's external action under MFF 2014-2020 is governed by the following legal framework:**

(i) Under the **general budget of the European Union**

- Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union<sup>17</sup>

The Financial Regulation (FR) entered into force on 2 August 2018.

The procurement rules for external action continue to contain differences as compared to the procurement rules in internal policies. More specifically, external action procurement rules apply when the Commission procures for the account of and on behalf of ('for the exclusive benefit of') partner countries or for the mixed interest of the Commission and the partner country.

This practical guide applies the provisions of the Financial Regulation 2018. For contracts that are still being implemented under the 2012 Financial Regulation, please refer to the 2016 practical guide.

- Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020<sup>18</sup>

- Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for external action (CIR)<sup>19</sup>

<sup>15</sup> Regulation (EU) No 234/2014 of the European Parliament and of the Council of 11 March 2014 establishing a Partnership Instrument for cooperation with third countries (OJ L 77, 15.3.2014, p. 77).

<sup>16</sup> Furthermore, the Structural Reform and Support Service (SRSS) is in charge of the instrument of financial support for encouraging the economic development of the Turkish Cypriot community (Council Regulation (EC) No 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction (OJ L 65, 7.3.2006, p. 5)).

<sup>17</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p.1).

<sup>18</sup> OJ L 347, 20.12.2013, p. 884.

<sup>19</sup> OJ L 77, 15.3.2014, p. 77.

(ii) Under the **European Development Fund**

- Internal Agreement between the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on the financing of European Union aid under the multiannual financial framework for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement, and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the Treaty on the Functioning of the European Union applies (the Internal Agreement)<sup>20</sup>

- Council Regulation (EU) 2018/1877 of 26 November 2018 on the financial regulation applicable to the 11<sup>th</sup> European Development Fund, and repealing Regulation (EU) 2015/323 (11<sup>th</sup> EDF Financial Regulation)<sup>21</sup>

The 11<sup>th</sup> EDF Financial Regulation was revised in order to incorporate the changes that were stemming from the 2018 Financial Regulation (see above).

- Council Regulation (EU) 2015/322 of 2 March 2015 on the implementation of the 11<sup>th</sup> European Development Fund<sup>22</sup>

The 11<sup>th</sup> EDF Implementing Regulation contains provisions on both multi-annual programming and implementation as well as detailed rules on the involvement of the EDF committee.

- Annex IV to the Cotonou Agreement, as amended on 20 June 2014<sup>23</sup>

The eligibility rules applicable to the EDF are included in Annex IV and have been aligned as much as possible with those of the general budget of the EU, since the entry into force of the 2010 revision of the Cotonou Agreement<sup>24</sup>.

(iii) In the **Overseas Countries and Territories (OCTs)**

- Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision)<sup>25</sup>

The Overseas Association Decision establishes the legal framework for the relations between the OCTs, the Member States to which they are linked and the EU. The OCTs comprise of non-European countries and territories that have special relations with Denmark, France, the Netherlands and the United Kingdom. They are listed in Annex II to the Treaties. According to Article 355(2) of the TFEU the specific provisions under Part IV of the TFEU apply to them. The purpose of association is to promote economic and social development of the countries and territories and to establish close economic relations between them and the European Union as a whole<sup>26</sup>. Article 77 of the Overseas Association Decision determines that OCTs are eligible for funding from resources allocated for the OCTs under the EDF Internal Agreement, the Union programmes and instruments provided for in the

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<sup>20</sup> OJ L 210, 6.8.2013, p. 1.

<sup>21</sup> OJ L 307, 3.12.2018 p. 1.

<sup>22</sup> L 58, 3.3.2015, p. 1.

<sup>23</sup> Decision No 1/2014 of the ACP-EU Council of Ministers of 20 June 2014 regarding the revision of Annex IV to the ACP-EC Partnership Agreement (OJ L 196, 3.7.2014, p. 40).

<sup>24</sup> Council Decision 2010/648/EU of 14 May 2010 on the signing, on behalf of the European Union, of the Agreement amending for the second time the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, as amended in Luxembourg on 25 June 2005 (OJ L 287, 4.11.2010, p. 1).

<sup>25</sup> See footnote **Error! Bookmark not defined.**

<sup>26</sup> Article 198 TFEU.

Union's general budget and funds managed by the European Investment Bank (EIB) under the EIB's own resources, and the resources allocated to the EDF Investment Facility, in accordance with the EDF Internal Agreement. The financial support to the OCTs is provided mainly through the EDF.

**The financing of the EU's external action under MFF 2021-2027 is governed by the following legal framework:**

- Regulation (EU, Euratom) No 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union<sup>27</sup>
- Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU and repealing Regulation (EU) 2017/1601 and Council Regulation (EC, Euratom) No 480/2009; OJ L 209, 14.6.2021, p. 1–78.
- Council Regulation (Euratom) 2021/948 of 27 May 2021 establishing a European Instrument for International Nuclear Safety Cooperation complementing the Neighbourhood, Development and International Cooperation Instrument – Global Europe on the basis of the Treaty establishing the European Atomic Energy Community, and repealing Regulation (Euratom) No 237/2014; OJ L 209, 14.6.2021, p. 79–90.
- Council Decision (EU) 2021/1764 of 5 October 2021 on the association of the Overseas Countries and Territories with the European Union including relations between the European Union on the one hand, and the Greenland and the Kingdom of Denmark on the other (Decision on the Overseas Association, including Greenland); OJ L 355, 7.10.2021, p. 6–134.
- Regulation (EU) 2021/1529 of the European Parliament and of the Council of 15 September 2021 establishing the Instrument for Pre-Accession assistance (IPA III); OJ L 330, 20.9.2021, p. 1–26.

## 1.2 What the practical guide does not cover

This practical guide does not apply:

- to contracts for which the European Commission acts as contracting authority on its own account. For these, in-house public procurement procedures and templates (the Vade-mecum on public procurement in the Commission and the Vade-mecum on grant management) are applicable;
- to humanitarian crisis management aid, civil protection operations and humanitarian aid operations carried out by the DG ECHO;
- to contracting authorities, international organisations, national bodies with which there is an agreement for use of their own procedures;
- to grant beneficiaries for which Annex IV of the standard grant contract applies (see Annex E3h3);

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<sup>27</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p.1).

- to ‘twinning’, which is governed by a separate manual<sup>28</sup>;
- to direct labour operations, which are governed by a separate guide<sup>29</sup>.

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<sup>28</sup> ‘Twinning’ is a dedicated institution-building tool providing expertise from Member States administrations to the public institutions of partner countries. Twinning is made of grant contracts signed with Member States public institutions. The ‘Common Twinning Manual’ — [https://ec.europa.eu/neighbourhood-enlargement/tenders/twinning\\_en](https://ec.europa.eu/neighbourhood-enlargement/tenders/twinning_en)

<sup>29</sup> Direct labour operations are programmes executed by public or public-private agencies or services of the partner country, if that country’s administration possesses qualified managers. They use a programme estimate: a document laying down the human and material resources required, the budget and the detailed technical and administrative implementing arrangements for execution of a project over a specified period by direct labour and possibly also by means of public procurement and the award of specific grants. Specific procedures for direct labour contracts and programme estimates are set out in a separate guide (Practical guide to procedures for programme estimates - project approach) although most of the procurement procedures described in this practical guide also apply: [https://international-partnerships.ec.europa.eu/funding/guidelines/programme-estimates\\_en](https://international-partnerships.ec.europa.eu/funding/guidelines/programme-estimates_en) .

## 2. Basic rules

### 2.1. Overview

Contracts under procurement and grants are awarded according to strict rules. These help ensuring that suitably qualified contractors and grant beneficiaries are chosen without bias and that the best price-quality ratio or the best price is obtained, with the full transparency appropriate to the use of public funds.

Procedures established by the European Commission for procurement and award of grants under the relevant European Union external financing programmes are consolidated in this practical guide. Any deviation from this practical guide and its annexes requires either a derogation or an exception from the relevant European Commission services in accordance with internal rules.

Before starting any procurement or grant procedure, the budgetary commitment must have been approved by a financing decision and, where appropriate, reflected in a subsequent financing agreement. The funds must be available, except in the case of procedures with a 'suspensive clause' (see Section 2.6.12.).

### 2.2. Management mode

Procurement or grant award procedures for projects financed under EU external financing instruments vary according to the different arrangements for implementing the project (referred to as 'management modes')<sup>30</sup>.

There are different ways to implement the general budget of the EU or the European Development Fund (EDF) funds (MFF 2014-2020), depending on the degree of delegation of a number of budget implementation tasks (such as conclusion of contracts, their operational and financial management, audit, evaluation, etc.).

There are three different management modes: direct management, indirect management and shared management.

The choice of management mode is an essential element of the financing decision and it is reflected in the corresponding documents (e.g. the 'action document' for the relevant financing decision and the (annual) action programme).

#### 2.2.1. Direct management

The European Commission is in charge of all EU budget implementation tasks, which are performed directly by its departments either at Headquarters or in the EU delegations or through EU executive agencies<sup>31</sup>.

Therefore, in direct management, the European Commission (or the EU executive agencies) is the contracting authority and takes decisions on behalf and for the account of the partner countries.

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<sup>30</sup> Article 62 of Regulation (EU, Euratom) No 1046/2018 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (OJ L 193, 30.7.2018, p.1), hereafter the "Financial Regulation" or FR.

<sup>31</sup> Article 62(1)(a) FR.

The contracts are concluded directly by the European Commission, acting on behalf of the partner country. The European Commission is responsible for the entire cycle leading to contract signature (issuing calls for tenders and calls for proposals, publication, establishing shortlist in restricted procedures, evaluation, award and contract signature, etc.).

Deviations from standard procedures in this practical guide such as exceptions and derogations, as well as prior approvals, events to be reported and non-compliance events have to be adopted in compliance with internal procedures.

## 2.2.2. Indirect management

Under indirect management the European Commission entrusts budget implementation to<sup>32</sup>:

- third countries (or to bodies designated by them);
- international organisations and their specialized agencies;
- bodies set up under the Treaty on the Functioning of the European Union and the Euratom Treaty;
- development agencies of EU Member States, or of third countries;
- public law bodies, including Member States organisations.

This practical guide mainly applies to the first case, i.e. when the European Commission entrusts budget implementation to partner countries<sup>33</sup>. In this case, the contracts are concluded by the contracting authority designated in a financing agreement, i.e. the government or an entity of the partner country with legal personality.

It also applies to some exceptional cases where international organisations, development agencies or other bodies must use EU contracting procedures.

Two modalities are possible under indirect management with partner countries<sup>34</sup>:

### - **indirect management with ex ante controls**<sup>35</sup>

Decisions on the procurement and award of contracts are taken by the partner country, acting as contracting authority, in line with the requirements set out in this practical guide and subject to the prior approval of the European Commission.

The contracts are signed by the contracting authority of the partner country and endorsed by the European Commission.

The relevant steps leading to contract award need the prior approval of the European Commission:

Prior to the launch of the procurement procedure or call for proposals, the contracting authority must submit the documents (prior information notice (not compulsory), contract notice, additional information about the contract notice, tender dossier or call for proposals file) to the European Commission for approval. The European Commission verifies that these have been drafted in accordance with the procedures and templates laid down in this practical guide. The contracting authority is then responsible for drawing up shortlists (for restricted procedures), issuing the calls for

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<sup>32</sup> Article 62(1)(c) FR.

<sup>33</sup> Please note that the European Commission usually undertakes directly activities such as project evaluation and audits even under indirect management with partner countries.

<sup>34</sup> The different *ex ante* and *ex post* control procedures are explained throughout this practical guide.

<sup>35</sup> Article 154(6)(b) FR.



tenders and calls for proposals, receiving applications/requests to participate, tenders and proposals, chairing evaluation committees and deciding on the results of the procedure. Before signing contracts, the contracting authority submits the results of the evaluations to the European Commission for prior approval.

No prior approval is required in certain cases referred to in the practical guide to procedures for programme estimates<sup>36</sup>.

#### **- indirect management with ex post controls<sup>37</sup>**

Subject to the positive outcome of a prior *ex ante* pillar assessment (in relation to the third country's accounting, internal control, external audit, recovery of funds, beneficiaries' information, and data protection systems), the European Commission may decide to rely on the rules and procedures of the third country entities' and to limit its control to *ex post* controls. Where these entities comply only in part with the requirements referred to above, the European Commission must take appropriate supervisory measures ensuring the protection of the European Union's financial interests. These measures must be specified in the relevant agreements.

For programme estimates see above. Below the thresholds defined in the programme estimate guide, transactions are subject to *ex post* controls.

### **2.2.3. Shared management**

The European Commission delegates implementation tasks to the EU Member States<sup>38</sup>. This mode is rarely used in the implementation of external actions, but there are a few cases such as joint operational programmes on cross-border cooperation implemented by a joint managing authority (for instance, in the 2014-2020 MFF, under the European Neighbourhood Instrument (ENI)<sup>39</sup> or the Instrument for Pre-accession Assistance (IPA II)<sup>40</sup>). In the 2021-2027 MFF however, under Regulation (EU) No [2021/1529] establishing the Instrument for Pre-accession Assistance (IPA III), shared management is not foreseen.

### **2.2.4. Conclusion**

In most cases, this practical guide applies to direct and indirect management with partner countries. Note, however, that the European Commission may, in some specific cases, allow partner countries to use other procedures depending on a prior positive assessment of such procedures.

The European Commission's involvement in contracts signed by the partner countries under indirect management is to authorise the financing of the contracts and check, notably with reference to established checklists, that the procedures, the implementation of the contracts and the expenditure

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<sup>36</sup> See [https://international-partnerships.ec.europa.eu/funding/guidelines/programme-estimates\\_en](https://international-partnerships.ec.europa.eu/funding/guidelines/programme-estimates_en). A programme estimate is a document containing a work programme to be implemented by a partner country of the European Union. It is drawn up by the partner country and endorsed by the European Commission. The programme estimate is a mixed form of financial implementation that may include activities entailing different levels of delegation. It is the value of the contract to be concluded, as defined in the Programme Estimate Guide, which determines which form of delegation is allowed.

<sup>37</sup> Article 154(4) FR.

<sup>38</sup> Article 62(1)(b) FR.

<sup>39</sup> Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (OJ L 77, 15.3.2014, p. 27).

<sup>40</sup> Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) (OJ L 77, 15.3.2014, p. 11).

are correctly carried out. If the procedures established in this practical guide (or whatever procedure the European Commission decides must be used) are not followed, the expenditure incurred on the related operations may be found ineligible for EU financing. The European Commission's intervention is limited to checking whether the conditions for EU financing have been met.

In no case will this intervention aim at compromising the principle according to which these contracts are drafted under the national legislation and concluded only by the contracting authority from the partner country. Tenderers, candidates and applicants for these contracts do not possess any form of contractual relationship with the European Commission during or after the implementation of the contracts. Their only contractual relationship is with the contracting authority. A contracting authority's decision may not be replaced by a decision taken by the European Commission. The contracting authority assumes full responsibility for its actions and will be accountable for those actions in any subsequent audit or other investigation.

The box below summarises the control procedures that the European Commission must follow for each management mode.

#### **DIRECT MANAGEMENT**

The contracts are concluded directly by the European Commission, acting on behalf of the partner country. It draws up shortlists (restricted procedures) and is responsible for issuing calls for tenders and calls for proposals, publishing them, receiving requests to participate, tenders and proposals, chairing evaluation committees, deciding on the results of the procedures, managing complaints and signing the contracts.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The contracts are concluded by the contracting authority designated in a financing agreement, i.e. the government or an entity of the partner country with legal personality with which the European Commission concludes the financing agreement.

Before the procedure is launched, the contracting authority must submit the documents (tender dossier, including relevant notices, or call for proposal file) to the European Commission for approval. The European Commission verifies that they have been drafted in accordance with the procedures and templates laid down in this practical guide (or whatever procedure the European Commission decides must be used). The contracting authority is then responsible for drawing up shortlists (restricted procedures), issuing the calls for tenders and calls for proposals, receiving requests to participate, tenders and proposals, chairing evaluation committees and deciding on the results of the procedure. Before signing contracts, the contracting authority submits the result of the evaluations to the European Commission for approval. The European Commission verifies conformity with the applicable procedures. The contracting authority also sends the contracts to the European Commission for endorsement before signing them<sup>41</sup>.

The European Commission must always be invited when requests to participate and tenders are opened and evaluated and a European Commission representative should, as a rule, attend as an observer in all or part of the evaluation committee meetings. The European Commission pays particular attention to potential conflicts of interests.

<sup>41</sup> The European Commission's endorsement of the contracts is not necessary in certain cases, which are specified in this practical guide or in the practical guide to procedures for Programme Estimates.

The contracting authority must submit all relevant notices in electronic form to the responsible delegation of the European Union for publication (see Annex A11e), with the exception of the cases referred to in the Practical Guide for Programme Estimates.

Under the Instrument for Pre-Accession Assistance (IPA II), a phased waiver of different types of *ex ante* controls may apply.

Regarding indirect management with beneficiary countries under the Instrument for Pre-Accession Assistance (IPA III), the approach is to progressively transition from *ex-ante* towards *ex-post* controls.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

Contracts are concluded directly by the contracting authority designated in a financing agreement. For instance the government or an entity of the partner country with the same legal personality with which the European Commission concludes the financing agreement. The contracting authority draws up shortlists (restricted procedures) and is responsible for issuing invitations to tender, receiving tenders, chairing the evaluation committees, deciding on the results of the procedures and signing the contracts without the prior authorisation of the European Commission. The contracting authority must submit all relevant notices in electronic form to the responsible delegation of the European Union for publication (see Annex A11e).

#### **SHARED MANAGEMENT AND INDIRECT MANAGEMENT WITH ENTITIES OTHER THAN PARTNER COUNTRIES**

In these cases, the entrusted entity (e.g. a national agency or international organisation) concludes contracts with third parties.

The entrusted entity procedures generally apply.

That entrusted entity is responsible for publishing the relevant notices in order to ensure an adequate level of competition.

The European Commission may verify the procedure *ex-post*, regardless of whether the European Commission has carried out a prior 'pillar assessment' of the entrusted entity.

### **2.3. Participation in award procedures**

Participation in calls for tenders and calls for proposals financed from the external financing instruments, including the EDF (MFF 2014-2020), is governed by a set of rules and principles intended to ensure the legality and regularity of the procedures as well as the compliance with sound financial management.

Eligibility criteria such as the rule of nationality and origin determine the conditions for participating in calls for tender and calls for proposals and are essential requirements that each applicant, candidate and tenderer must comply with. The rule of origin only applies to award procedures financed under the framework of the Multiannual Financial Framework for the years 2014-2020. For award procedures financed under the new Multiannual Financial Framework 2021-2027 (Regulation

(EU) 2021/947<sup>42</sup>), with the exception of the INSC Regulation 2021/948 of 27 May 2021, all supplies and materials may originate in any country.

### 2.3.1. The rule of nationality

In general, participation in procurement procedures, grant procedures and other award procedures is open to all natural persons who are nationals of, and all legal persons who are effectively established in a Member State of the European Union or in a country eligible for the respective external financing instrument under which the specific project is financed. Participation is also open to international organisations. For each external financing instrument, specific rules on nationality and origin may apply.

#### **For award procedures financed by a basic act under the MFF 2021-2027:**

For financing under the OAD-Greenland Decision 2021/1764<sup>43</sup> and NDICI-Global Europe geographic programmes, NDICI-Global Europe Civil Society Organisations and NDICI-Global Europe Global Challenges programmes, participation is open to all natural persons who are nationals of and legal persons (participating either individually or in a grouping) which are effectively established in a Member State of the European Union or in an eligible country or territory as defined under Article 28 of Regulation (EU) N° 2021/947 establishing the Neighbourhood, Development and International Cooperation Instrument (NDICI-Global Europe).

For financing under NDICI-Global Europe Human Rights and Democracy and NDICI-Global Europe Stability and Peace programmes, as well as for the NDICI-Global Europe - rapid response actions: for the contract award procedures financed by <NDICI-Global Europe Human Rights and Democracy programme>/<NDICI-Global Europe Stability and Peace programme>/<NDICI-Global Europe rapid response actions>, participation is open without limitations.

Participation is also open to international organisations.

For INSC 2021/948 of 27 May 2021<sup>44</sup> participation is open to all natural persons who are nationals of and legal persons (participating either individually or in a grouping) which are effectively established in a Member State of the European Union or in an eligible country or territory as defined under Article 11 of Council Regulation (Euratom) 2021/948 establishing a European Instrument for Nuclear

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<sup>42</sup> Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU and repealing Regulation (EU) 2017/1601 and Council Regulation (EC, Euratom) No 480/2009; OJ L 209, 14.6.2021, p. 1–78.

<sup>43</sup> Council Decision (EU) 2021/1764 of 5 October 2021 on the association of the Overseas Countries and Territories with the European Union including relations between the European Union on the one hand, and the Greenland and the Kingdom of Denmark on the other (Decision on the Overseas Association, including Greenland); OJ L 355, 7.10.2021, p. 6–134.

<sup>44</sup> Council Regulation (Euratom) 2021/948 of 27 May 2021 establishing a European Instrument for International Nuclear Safety Cooperation complementing the Neighbourhood, Development and International Cooperation Instrument – Global Europe on the basis of the Treaty establishing the European Atomic Energy Community, and repealing Regulation (Euratom) No 237/2014; OJ L 209, 14.6.2021, p. 79–90.

Safety complementing the Neighbourhood, Development and International Cooperation Instrument on the basis of the Euratom Treaty.

For IPA III 2021/1529<sup>45</sup>, participation is open to all natural persons who are nationals of and legal persons (participating either individually or in a grouping) which are effectively established in a Member State of the European Union or in an eligible country or territory as defined under Article 10 of Regulation (EU) No [2021/1529] establishing the Instrument for Pre-accession Assistance (IPA III).

For each external financing instrument financed under the new Multiannual Financial Framework for the years 2021-2027 the countries corresponding to the rules of nationality are listed in Annex A2a1.

**For commitments financed by a basic act under the MFF 2014-2020:** For the general budget of the EU, the eligibility rules for participation in public procurement, grant (including procurement under grant contracts) and other award procedures are laid down in the Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action (CIR)<sup>46</sup> as well as in the Financial Regulation. These eligibility rules differ depending on the external financing instrument under which the respective project or programme is to be financed:

- Participation in procurement and grant procedures financed by the European Instrument for Democracy and Human Rights (EIDHR) and the Instrument contributing to Stability and Peace (IcSP)<sup>47</sup> is fully untied<sup>48</sup>.

- Participation in procurement and grant procedures financed by the Development Cooperation Instrument (DCI)<sup>49</sup>, the European Neighbourhood Instrument (ENI)<sup>50</sup> and the Partnership Instrument (PI)<sup>51</sup> is open to all natural persons who are nationals of, and legal persons who are effectively established in:

- Member States, beneficiaries established in Annex I to the Pre-Accession Instrument (IPA II) and contracting parties to the Agreement on the European Economic Area;
- for the ENI, partner countries covered by the ENI and the Russian Federation under certain conditions;
- developing countries that are in the list of Official Development Assistance (ODA) recipients,

<sup>45</sup> Regulation (EU) 2021/1529 of the European Parliament and of the Council of 15 September 2021 establishing the Instrument for Pre-Accession assistance (IPA III); OJ L 330, 20.9.2021, p. 1–26.

<sup>46</sup> Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action (CIR), (OJ L 77, 15.3.2014, p. 95).

<sup>47</sup> Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace (OJ L 77, 15.3.2014, p. 1).

<sup>48</sup> Article 11 CIR.

<sup>49</sup> Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020 (OJ L 77, 15.3.2014, p. 44).

<sup>50</sup> Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (OJ L 77, 15.3.2014, p. 27).

<sup>51</sup> Regulation (EU) No 234/2014 of the European Parliament and of the Council of 11 March 2014 establishing a Partnership Instrument for cooperation with third countries (OJ L 77, 15.3.2014, p. 77).

which are not members of the G20 group<sup>52</sup>, and Overseas Countries and Territories (OCTs);

- member countries of the Organisation for Economic Co-operation and Development (OECD) in case of contracts implemented in Least Developed Countries or Highly Indebted Countries, as included in the list of ODA recipients<sup>53</sup>;
- countries for which reciprocal access to external assistance is established by the European Commission<sup>54</sup>.

Eligibility to the IPA II is more restricted; it covers only Member States and beneficiaries established in Annex I to the IPA II, contracting parties to the Agreement on the European Economic Area and partner countries covered by the ENI<sup>55</sup>.

Irrespective of the external financing instrument under which the respective project or programme is to be financed, where an agreement on widening the market for procurement of goods or services to which the Union is party applies, the **procurement procedures** for contracts **financed by the budget** shall also be open to natural and legal persons established in a third country other than those specified in the basic instruments governing the cooperation sector concerned, under the conditions laid down in that agreement<sup>56</sup>.

For the EDF, Article 20 of Annex IV to the Cotonou Agreement<sup>57</sup> replicates in general the same provisions as above for the DCI.

For each external financing instrument financed under the framework of the Multiannual Financial Framework (MFF) for the years 2014-2020, the countries corresponding to the rules on nationality and origin are listed in Annex A2a to this practical guide. Extension of the rule of nationality under MFF 2014-2020

The legislation also includes provisions that further extend the rules on nationality in certain cases.

For programmes funded by the general budget of the EU, the CIR extends the eligibility in case of<sup>58</sup>:

- Jointly co-financed actions / shared management / trust funds: whether implemented through direct or indirect management, where actions are co-financed jointly with a partner or other donors or implemented through a Member State in shared management, or through a trust fund established by the Commission, natural and legal persons from countries which are eligible under the rules of

<sup>52</sup> Members of the G20 Group only when they are beneficiaries of the action financed by the European Union, see Article 9 (1)(d) CIR.

<sup>53</sup> Article 9(1) CIR.

<sup>54</sup> Article 9(e) CIR. Reciprocal access may be granted, for a limited period of at least one year, whenever a country grants eligibility on equal terms to entities from the European Union and from a country eligible under the DCI, ENI and Partnership Instrument for cooperation with third countries. This provision is replicated also for the EDF (Article 20(1)(c) of Annex IV of Cotonou Agreement; Article 89 (1)(d) of the Overseas Association Decision for OCTs).

<sup>55</sup> Article 10(1) CIR.

<sup>56</sup> Article 179 of Regulation (EU, Euratom) No 1046/2018 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (OJ L 193, 30.7.2018, p.1).

<sup>57</sup> Council Decision 2010/648/EU of 14 May 2010 on the signing, on behalf of the European Union, of the Agreement amending for the second time the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, as amended in Luxembourg on 25 June 2005 (OJ L 287, 4.11.2010, p. 1) (Annex IV to the Cotonou Agreement).

<sup>58</sup> Article 8(2)(3) CIR.

that partner other donor or Member State or determined in the constitutive act of the trust fund are also eligible<sup>59</sup>.

- Actions implemented through indirect management: natural and legal persons from countries eligible under the rules of the entrusted body are also eligible, except when the management is entrusted to partner countries. In the latter case, only the rules of the external financing instrument apply.
- Actions financed by more than one external financing instrument, including the EDF: natural and legal persons from countries identified under any of these instruments are eligible for the purpose of those actions.
- Actions of a global, regional or cross-border nature financed by one of the external financing instruments: eligibility can be extended to natural and legal persons from countries, territories and regions covered by the actions.

For EDF-funded programmes, Annex IV to the Cotonou Agreement extends the eligibility in the following cases<sup>60</sup>:

- Actions implemented through an international organisation: all natural and legal persons who are eligible according to the rules of the organisation as also eligible, care being taken to ensure equal treatment of all donors.
- Actions implemented as part of a regional initiative: natural and legal persons from a country participating in the relevant initiative are also eligible<sup>61</sup>.
- Actions implemented through direct management and co-financed jointly with a partner or other donor or implemented through a trust fund established by the Commission: all natural and legal persons that are eligible under the rules of that partner or other donor, or under the rules determined in the trust fund constitutive act are also eligible<sup>62</sup>.
- Actions implemented in indirect management through entrusted bodies (namely Member States or their agencies, the European Investment Bank and international organisations or their agencies): natural and legal persons who are eligible under the rules of that entrusted body as identified in the agreements concluded with the co-financing or implementing body are also eligible; In addition, where actions are co-financed jointly with a partner or other donor, all persons that are eligible under the rules of that partner or other donor are also eligible.
- Actions co-financed under another external financing instrument: all natural and legal persons eligible under any of these Instruments are also eligible.

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<sup>59</sup> Where actions are co-financed in parallel with a partner or other donor, the respective rules on nationality apply, i.e. EU rules apply to the part of the action financed by the external financing instruments (without extension) and the rules of the partner or other donor apply to the part financed by it.

<sup>60</sup> Article 20, paras. (5)-(8) of Annex IV to the Cotonou Agreement.

<sup>61</sup> Article 6(4) of Annex IV to the Cotonou Agreement.

<sup>62</sup> Where actions are co-financed in parallel with a partner or other donor, the respective rules on nationality apply, i.e. EU rules apply to the part of the action financed by the external financing instruments (without extension) and the rules of the partner or other donor apply to the part financed by it.

Finally, the Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (Overseas Association Decision)<sup>63</sup> extends the eligibility in case of <sup>64</sup>:

- Actions jointly co-financed with a partner or other donor countries / shared management / trust funds: natural and legal persons from countries eligible under the rules of that partner, other donor or Member State or determined in the constitutive act of the trust fund are also eligible.
- Actions implemented through entrusted bodies (namely Member States or their agencies, the European Investment Bank or through international organisations or their agencies): entities eligible under the rules of that entrusted body, as identified in the agreements concluded with the co-financing or implementing body, are also be eligible.
- Actions financed under the Overseas Association Decision and another instrument for external action, including the EDF: natural and legal persons from countries identified under any of these instruments as eligible, are considered eligible for the purpose of that action.
- Actions of a global, regional or cross-border nature: natural and legal persons from countries, territories and regions covered by the action may participate in the procedures implementing such actions.

### **2.3.2. Rules for experts and international organisations**

Both for the EDF (including OCTs) and programmes financed by the general budget of the EU and irrespective of the applicable MFF, the nationality of experts and other natural persons employed or legally contracted does not have to follow the nationality rules<sup>65</sup>. Therefore, unless otherwise provided for in the applicable financing decision/agreement, experts recruited or otherwise legally contracted by an eligible contractor/sub-contractor, may be of any nationality.

Likewise, the nationality rule does not apply to international organisations participating in a procurement or grant award procedure<sup>66</sup>.

### **2.3.3. How to verify compliance with the nationality rules**

For the purpose of verifying compliance with the nationality rules, the tender dossier and the guidelines for applicants require the following from candidates, tenderers and applicants:

- natural persons must state the country of which they are nationals;
- legal persons must state the country in which they are established and provide evidence of such establishment by presenting the documents required under that country's law.

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<sup>63</sup> OJ L 344, 19.12.2013, p. 1.

<sup>64</sup> Article 89(1)(b)(c) of the Overseas Association Decision.

<sup>65</sup> Article 8(5) CIR, Article 1(5) of Annex IV to the Cotonou Agreement and Article 89(1)(e) of the Overseas Association Decision.

<sup>66</sup> Article 8(1) CIR, Article 1(5) of Annex IV to the Cotonou Agreement and Article 89(1)(a) of the Overseas Association Decision.



If the contracting authority (or evaluation committee) suspects that a candidate, tenderer or applicant does not comply with the nationality rules, it must ask the candidate/tenderer/applicant to provide evidence demonstrating actual compliance with the applicable rules.

To demonstrate their actual compliance with the 'establishment' criterion, legal persons have to demonstrate that:

- the legal person is established under the law of an eligible State, and
- its real seat is within an eligible State. 'Real seat' must be understood as the place where its managing board and central administration, or its principal place of business, are located<sup>67</sup>.

The decision on whether or not candidates/tenderers/applicants are eligible is taken by the contracting authority (usually on the basis of the information and evidence provided during the evaluation).

### 2.3.4. Origin of goods

Goods and materials supplied under a procurement or a grant contract, financed under the new Multiannual Financial Framework for the years 2021-2027 are fully untied and can originate in any country, with the exception of procurement and grant contracts financed by the INSC Regulation 2021/948 of 27 May 2021 where goods and materials must originate from an eligible country as designated by the financing instrument.

For the award procedures under MFF 2014-2020, in principle, goods supplied under a procurement contract or a grant contract, financed under the general budget of the EU or the EDF (including OCTs) financed under the framework of the multiannual financial framework for the years 2014-2020 must originate from an eligible country as designated by the relevant external financing instrument(s)<sup>68</sup>.

For the award procedures under MFF 2014-2020, subject to derogation (granted on a case-by-case basis), all goods to be delivered under a supply contract fall under the rules of origin, as do materials, goods and components to be incorporated or to form part of the permanent works under a works contract.

Goods purchased by the contractor for use during the execution of the contract (such as machinery used by a supply contractor for testing and installing the goods supplied, equipment used by a works contractor for building a road<sup>69</sup>, computer(s) used by a service contractor to draft a study) are not subject to the rule of origin. It is only when the contract explicitly states that at the end of the contract the ownership of the goods is transferred from the contractor to the contracting authority (in the case of procurement contracts) or transferred by the grant beneficiary to another entity/person or retained by him (in the case of grant contracts), that these goods are subject to the rule of origin.

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<sup>67</sup> This is to avoid awarding contracts to companies that have established 'letter box' companies in an eligible country to circumvent the nationality rules.

<sup>68</sup> Article 8(4) CIR, Article 1(4) of Annex IV to the Cotonou Agreement and Article 89(1)(d) of the Overseas Association Decision.

<sup>69</sup> In a works contract, the option of having equipment vested in the contracting authority, given under Article 43(2) of the general conditions, only applies while the works are being carried out and therefore does not constitute full transfer of the property.

### 2.3.5. Goods with a value under the threshold of the simplified procedure

Under the MFF 2021-2027, goods can originate in any country whatever their value (full untying), with the exception of the INSC Regulation 2021/948 of 27 May 2021, where goods must originate from an eligible country as designated by the financing instrument.

For the award procedures under the MFF 2014-2020, goods can originate in any country (full untying) if their value is below the threshold of the simplified procedure for supply contracts (EUR 100 000)<sup>70</sup>.

This provision for full untying below the threshold of the simplified procedure must be stated in the contract notice.

Where the procurement is divided into lots, the rule applies per lot (only applicable to lots of less than EUR 100 000). The division into lots must be legitimate. This rule must not lead to artificially sub-dividing procurement into smaller lots to circumvent the threshold of EUR 100 000.

This rule applies also to procurement done by grant beneficiaries and procurement of works involving the supply of products. In case of works contracts that involve multiple purchases, the EUR 100 000 threshold applies by type of supply. Where the contract takes the form of a lump sum price, the breakdown of the lump sum price must be used to verify the EUR 100 000 threshold by type of supply.

The above rules have to be clearly stated in the instructions for tenderers and applicants.

### 2.3.6. Definition of ‘origin’

For award procedures financed by a basic act under the new Multiannual Financial Framework 2021-2027, all supplies and materials are fully untied and no verification of origin is required.

The term ‘origin’ is defined in the relevant EU legislation on rules of origin for customs purposes: [Regulation \(EU\) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code](#)<sup>71</sup>, and the Code’s implementing provisions: [Commission Delegated Regulation \(EU\) 2015/2446 of 28 July 2015 supplementing Regulation \(EU\) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code](#)<sup>72</sup> and [Commission Implementing Regulation \(EU\) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation \(EU\) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code](#)<sup>73</sup>.

The country of origin is not necessarily the country from which the goods were shipped and supplied. Two basic concepts are used to determine the origin of goods, namely the concept of ‘wholly obtained’ products and the concept of products having undergone a ‘last substantial transformation’:

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<sup>70</sup> Article 8(4) CIR and Article 20(3) of Annex IV to the Cotonou Agreement.

<sup>71</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269, 10.10.2013, p. 1.

<sup>72</sup> Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code, OJ L 343, 29.12.2015, p. 1.

<sup>73</sup> Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, OJ L 343, 29.12.2015, p. 558.

- If only one country is involved in the production, the 'wholly obtained' concept will be applied. In practice, these goods wholly obtained in a single country must be regarded as having their origin in that country. This will be restricted to mostly products obtained in their natural state and products derived from wholly obtained products.

- If two or more countries are involved in the production of goods, it is necessary to determine which of those countries confers origin on the finished goods. For this purpose, the concept of 'last substantial transformation' is applied. In general, the criterion of last substantial transformation is expressed in three ways:

- by a rule requiring a change of tariff (sub)heading in the HS nomenclature (i.e. the Nomenclature governed by the Convention on the Harmonized Commodity Description and Coding System);
- by a list of manufacturing or processing operations that do or do not confer on the goods the origin of the country in which these operations were carried out;
- by a value added rule, where the increase of value due to assembly operations and incorporation of originating materials represents a specified level of the ex-works price of the product.

### **2.3.7. How to verify compliance with the origin rules?**

For award procedures financed by a basic act under the new Multiannual Financial Framework 2021-2027, with the exception of the INSC Regulation 2021/948 of 27 May 2021, all supplies and materials are fully untied and no declaration of origin is required.

For award procedures under the Multiannual Financial Framework for the years 2014-2020 and for award procedures financed by the INSC Regulation 2021/948 of 27 May 2021 under the Multiannual Financial Framework 2021-2027:

When submitting its tender, if the rules of origin apply, the tenderer must state expressly that all the goods meet the requirements concerning origin and must state the country(ies) of origin. When tendering for systems comprising more than one item, the origin of each item in the system must be specified. The tenderer is bound by the declaration of origin she/he submits. The tenderer is obliged to verify that the provided information is correct. Otherwise, the tenderer risks to be excluded because of negligently misrepresenting information. The tenderer may be requested to provide documents supporting the stated origin. In this case, the tenderer must provide a declaration of origin or additional information considering that the issuing authority may refuse to issue a certificate of origin at tendering stage without presentation of commercial invoices.

The declaration of origin must be submitted at the latest during implementation of the contract when the certificate of provisional acceptance is requested. Failing this, the contracting authority will not make any further payment to the contractor. Exceptionally, other substantiating documents can be accepted by the contracting authority instead of the aforementioned declarations if the contractor justifies that it is impossible to provide declarations of origin.

Declarations of origin must be issued by the competent authorities of the goods' or supplier's declared country of origin (for example the chamber of commerce) and comply with the international agreements to which that country is a signatory. However, declarations of origin are

not exhaustive proof of origin, and should not be regarded as a legal proof, but as useful element for determination of the origin, which may, in case of doubts, facilitate further checks.

**It is up to the contracting authority to verify compliance with the rules of origin.** Where there are serious doubts about the authenticity of a declaration of origin or the information it contains (e.g. because of discrepancies in the document, spelling errors, etc.), the contracting authority should contact the issuing authority to have the authenticity of the documents submitted and/or the information it contains confirmed. Declarations issued by an authority, other than the one located at the place of declared origin, should be investigated carefully. The contracting authority may also carry out on-the-spot checks of compliance with the origin rules, preferably before the issuance of the provisional acceptance certificate.

For EDF procurement, supplies originating in the OCTs are regarded as originating in the EU.

### 2.3.8. Derogations to the rules on nationality and origin

Basic acts provide for the possibility of adopting derogations from the general rules on a case-by-case basis. The derogation can further (a) extend or (b) limit the eligibility of certain entities/goods on grounds foreseen in the basic acts.

The decision on derogations is taken by the European Commission before the procedure is launched. In principle, it is not possible to derogate from the rules on nationality and origin to allow only one or a group of countries to become eligible unless it is duly motivated in the request for derogation. Where actions are implemented in shared management, the relevant Member State to which the Commission has delegated implementation tasks can also take such decisions.

The derogation must be mentioned in the contract notice (if published) and in the guidelines for applicants (grants).

#### a) Extension<sup>74</sup>

In duly substantiated cases, the European Commission may extend eligibility to natural and legal persons from an ineligible country and, under MFF 2014-2020, allow the purchase of goods and materials originating in an ineligible country.

Extension may be granted on the grounds of:

- economic, traditional, trade or geographical links with neighbouring countries (only for award procedures under the MFF 2014-2020);
- unavailability of products and services in the markets of the related countries concerned;
- extreme urgency / crisis situation; or
- extreme difficulties to carry out a project, programme or other action with the general rules on eligibility.

Where the EU is a party to an agreement on widening the market for the procurement of supplies, works or services, eligibility can be extended, as required by that agreement.

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<sup>74</sup> Article 9(2) CIR, Article 9(1) of Annex IV to the Cotonou Agreement, Article 89(2)(f) of the Overseas Association Decision and Article 11(8) of the INSC Regulation 2021/948.

Countries for which reciprocal access to external funding is established by the Commission; that access may be granted, for a limited period of at least one year, whenever a country grants eligibility on equal terms to entities from the Union and from countries eligible under NDICI- Global Europe; the Commission shall decide on the reciprocal access and on its duration after consultation of the recipient country or countries concerned.

b) Limitation<sup>75</sup>

In the context of grants, the basic acts also allow to limit eligibility on certain grounds, notably where this is required by the nature and the objectives of the action and as necessary for its effective implementation.

The limitation can be made with respect to the nationality, localisation or nature of applicants and does not require a prior approval / event to be reported.

## 2.4. EU restrictive measures

Article 215 of the Treaty on the Functioning of the European Union (TFEU) provides the legal basis for the interruption or reduction, in part or completely, of the European Union's economic and financial relations with one or more third countries, where such restrictive measures are necessary to achieve the objectives of the Common Foreign and Security Policy (CFSP).

By means of Council Decision taken on the basis of Article 29 of the Treaty on European Union (TEU) and related implementing Regulation pursuant to Article 215 TFEU, the EU restrictive measures are directly applicable in the European Union. Hence, when implementing the EU budget, the Commission must give effect to EU restrictive measures.

The same obligation is implicitly imposed onto persons or entities entrusted with indirect management by virtue of Article 62(1)(c) FR, which requires implementing partners to ensure that funds are only disbursed in accordance with EU law, including therefore the implementation of EU restrictive measures.

The obligation to ensure compliance with the EU restrictive measures applies:

- to the EU institutions and bodies and to all EU contracting partners;
- not only at the initial distribution of funds but also down to the level of final beneficiary.

Evaluation committees must ensure that there is no detection of a recommended tenderer (and consortia members thereof) or grant applicant, co-applicants, affiliated entities in the list of EU restrictive measures, at the latest before award of a contract.

Likewise, grant beneficiaries and contractors must ensure that there is no detection of subcontractors, natural persons (including participants to workshops and/or trainings and recipients of financial support to third parties), in the lists of EU restrictive measures.

The lists of persons, groups, entities subject to the EU restrictive measures are maintained by the DG FISMA and published on the following website: [www.sanctionsmap.eu](http://www.sanctionsmap.eu)

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<sup>75</sup> Article 8(7) CIR, Article 1(8)(9) of Annex IV to the Cotonou Agreement, Article 89(1)(f) of the Overseas Association Decision and Article 11(7) of the INSC Regulation 2021/948.

## 2.5. General principles applying to procurements and grants

There are some fundamental principles that apply to procurement and grant procedures which the contracting authority has to respect throughout the procedure. These principles are laid down in the Financial Regulation.

The contracting authority must take all necessary measures to ensure full compliance with these principles also by facilitating the detection of unreliable economic operators and the protection of the European Union's financial interests. To this aim, an early detection and exclusion system (EDES) is established by the Financial Regulation<sup>76</sup> to reinforce the protection of the European Union's financial interests and to ensure sound financial management (see Section 2.6.10.1.).

Failure to comply with these general principles may lead to the annulment of the award decision.

### 2.5.1. Procurement

EU public procurement consists in contracts concluded in writing in order to obtain, against payment of a price, the execution of works, the supply of goods or the provision of services<sup>77</sup>.

EU public procurement is governed by rules intended to remove barriers and open up markets in a non-discriminatory and competitive way.

The following principles should be followed<sup>78</sup>:

#### - Transparency

The contracting authority should ensure openness and clarity on procurement policy and its delivery. This obligation consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the market to be opened up to competition and the impartiality of procurement procedures to be reviewed<sup>79</sup>.

#### - Equal treatment and non-discrimination

All interested parties should be treated in the same way, meaning that all tenderers must be afforded equal opportunities when formulating their tenders, which therefore implies that the tenders of all competitors must be subject to the same conditions<sup>80</sup>.

#### - Competition

Procurement should be carried out by competition, unless there are justified reasons to the contrary; this obligation also means that the estimated value of a contract may not be established in such a way as to avoid the competitive tendering procedure or to circumvent the rules which apply to certain procurement procedures or above a certain threshold, nor may a contract be split for that

<sup>76</sup> In place since 1 January 2016 and replacing the early warning system and the central exclusion database.

<sup>77</sup> For the EDF, see Article 19a(2) of Annex IV to the Cotonou Agreement and Article 36 of the 11<sup>th</sup> EDF Financial Regulation. For the general budget of the EU, see Article 101 FR.

<sup>78</sup> Article 160 FR.

<sup>79</sup> Judgment of the Court (Sixth Chamber) of 7 December 2000, *Telefonadress GmbH v Telekom Austria AG*, C-324/98, ECLI:EU:C:2000:669, paragraph 62.

<sup>80</sup> Judgment of the General Court (First Chamber), 13 December 2013, *European Dynamics Luxembourg SA and Evropaiki Dynamiki — Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission*, T-165/12, ECLI:EU:T:2013:646, paragraph 46.

purpose (a practice known as ‘salami-slicing’)<sup>81</sup>. Moreover, as pointed out by the Court<sup>82</sup>, the widest possible opening-up to competition is also in the interest of the contracting authority itself, which will have thus greater choice as to the tender that is the most advantageous and the most suited to the needs of the public authority<sup>83</sup>.

#### - Proportionality

This principle requires that measures adopted by the European Commission do not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued and that where there is a choice between several appropriate measures recourse must be had to the least onerous<sup>84</sup>.

#### - Sound financial management<sup>85</sup>

Budget appropriations must be used in accordance with the principles of economy, efficiency and effectiveness.

## 2.5.2. Grants

A grant is a financial contribution made by the European Commission by way of donation to one or more beneficiaries for the purpose of carrying out an action or implementing a work programme. Grants are divided in two general categories:

- action grants financing actions intended to achieve a European Union policy;
- operating grants financing the functioning of a body pursuing an aim of general European Union interest or an objective forming part of a European Union policy objective.

The following principles should be followed<sup>86</sup>:

#### - Transparency

The contracting authority must publish all relevant information in order to enable the potential beneficiaries to obtain timely and accurate information on the actions being undertaken by the European Union. The work programme is implemented by publishing calls for proposals<sup>87</sup> and all grants awarded in the course of the financial year will be published annually with due observance of the requirements of confidentiality and security.

#### - Equal treatment

<sup>81</sup> For mixed contracts, covering a combination of works, supplies or services, the contracting authority determines the procurement thresholds and procedure to be used (with the agreement of the European Commission, for indirect management with *ex ante* controls). This determination is made on the basis of the main component (works, supplies or services) in terms of value.

<sup>82</sup> Judgment of the Court (Fifth Chamber) of 18 December 2014, *Azienda Ospedaliero-Universitaria di Careggi-Firenze v Data Medical Service srl*, C-568/13, ECLI:EU:C:2014:2466, paragraph 34.

<sup>83</sup> Any attempt by a candidate, applicant or tenderer to obtain confidential information, enter into unlawful agreements with competitors whose aim or effect is to impede, restrain or distort competition in a given market, or influence the evaluation committee or the contracting authority during the process of examining, clarifying, evaluating and comparing tenders and applications will lead to the rejection of its candidacy, proposal or tender (see Section 2.5.4.2).

<sup>84</sup> Judgment of the Court of First Instance (First Chamber) of 27 September 2002, *Tideland Signal Ltd v Commission of the European Communities*, T-211/02, ECLI:EU:T:2002:232, paragraph 39.

<sup>85</sup> Article 2(59) FR.

<sup>86</sup> Article 188 FR.

<sup>87</sup> Except for duly substantiated and exceptional cases where direct award is justified (see Section 6.4.2.).

No preferential treatment may be given to any potential beneficiary. This rule applies not only to the process of identifying and selecting beneficiaries<sup>88</sup> but also during the implementation of the action.

#### - Co-financing

The costs are shared between the Commission and the beneficiary. This means that a grant awarded for an action cannot fund the entire cost of the action and that an operating grant cannot fund all the operating costs incurred by the beneficiary body. For more details on the exceptions to the co-financing principle, see Section 6.3.9.

#### - No-profit

Grants must not have the purpose or effect of producing a profit within the framework of the action or the work programme of the beneficiary. For more details, see Section 6.3.10.

#### - No-cumulative award

Each beneficiary may not get more than one grant per action (unless otherwise provided in the applicable basic act), neither more than one operating grant for a given financial year. Under the direct management mode, however, an action may be financed jointly from separate budget lines by a number of authorising officers. The applicant must specify in the application form any applications and awarded grants relating to the same action or to the same work programme.

#### - Non-retroactivity

Financing by the general budget of the EU and EDF funding may not be used to finance actions that have already been completed and which have therefore proved achievable without financial support from the European Union. At the same time, the rule prohibits awarding an operating grant for activities carried out in previous budgetary years of the beneficiary. For more details on the non-retroactivity principle and crisis situations, see Section 6.3.8.

### **2.5.3. Visibility**

Unless the European Commission requests or agrees otherwise, all beneficiaries, managing authorities and implementing partners of EU funding must use the EU emblem and short funding statements in their communication to acknowledge the support received under EU programmes and contribute to the visibility of the EU on the ground in accordance with the guidelines ([https://ec.europa.eu/info/sites/default/files/eu-emblem-rules\\_en.pdf](https://ec.europa.eu/info/sites/default/files/eu-emblem-rules_en.pdf)). Such measures shall be carried out in accordance with the latest Communication and Visibility Requirements for EU-funded external action, published by the European Commission ([Communication and Visibility Requirements for EU External Actions | International Partnerships \(europa.eu\)](#)) or with any other guidelines agreed between the European Commission and the Organisation.

### **2.5.4. Conflict of interest**

The term 'conflict of interest'<sup>89</sup> is used with different meanings in different contexts. Four cases can be distinguished:

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<sup>88</sup> See Section 6.5.3.

<sup>89</sup> Guidance on the avoidance and management of conflicts of interest under the FR (2021/C 121/01) [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC0409\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC0409(01)&from=EN).



- (1) conflict of interest for the contracting authority
- (2) grave professional misconduct
- (3) involvement in drafting tender specifications and distortion of competition
- (4) professional conflicting interests.

### 2.5.4.1. Conflict of interest for the contracting authority

A conflict of interest<sup>90</sup> exists where the impartial and objective exercise of the authorising officer (namely, any financial actor including national authorities at any level involved under direct, indirect and shared management in budget implementation) is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.

In procurement and grant procedures, the situation of conflict of interest applies to persons in charge of the procedure as well as to persons involved in the preparation, opening and evaluation phases. A conflict of interest may arise where, for instance, a member of the opening and evaluation committee or someone in the contracting authority or others involved in the procedure grant themselves, or others, unjustified direct or indirect advantages by influencing the outcome. Special care should be taken in cases where external experts are involved in the evaluation committee<sup>91</sup>. Indeed, the authorising officer responsible must ensure that these external experts satisfy the obligations concerning conflict of interests and confidentiality<sup>92</sup>. In the potential case of members of staff of the EU delegations (local or contract agents) proposed as experts by tenderers, the European Commission must make sure that the contract with the EU institution is officially terminated before the expert starts to work on an EU financed project under a contract with an external organisation/company. In the case of civil servants or other staff of the public administration of the partner country, or of international/regional organisations based in the country, regardless of their administrative situation, these must only be approved by the European Commission if well justified. The tenderer must in its offer include information on the added value the expert will bring, as well as proof that the expert is seconded or on leave on personal ground (see Section 3.4.10.3.).

### 2.5.4.2. Grave professional misconduct

A grave professional misconduct refers to all wrongful conduct that denotes a wrongful intent or gross negligence.

It encompasses the violation of applicable laws or regulations or ethical standards of the profession to which the contractor belongs, and any wrongful conduct that has an impact on the professional credibility of the contractor<sup>93</sup> (for details, see Section 2.5.6.).

<sup>90</sup> Article 61 FR.

<sup>91</sup> Articles 150(5), 225(4), 237(2), Annex I points 28.2 and 29.1 FR 2018.

<sup>92</sup> For this purpose, each external expert must sign a declaration of impartiality and confidentiality (Annex A4). These must be attached to the specific contract concluded with the contractor under a framework contract or to the expert's contract if there is no framework contract involved.

<sup>93</sup> Article 136(1)(c) FR.

There are specific situations for economic operators that qualify as ‘grave professional misconduct’ and not as conflict of interests<sup>94</sup>:

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

Cases where an expert or company attempts to obtain information leading to an unfair advantage in subsequent or related procedures or attempts to influence the decision making process of the contracting authority or enters into agreement with other economic operators with the aim of distorting competition are rather to be treated as grave professional misconduct and are a basis to reject/exclude the economic operator concerned (see Section 2.6.10.1.).

### 2.5.4.3. Involvement in drafting tender specifications and distortion of competition

There are cases where the contracting authority uses a technical assistance contract to help drafting the tender specifications of a subsequent procurement procedure. In this case, it is the responsibility of the contracting authority to ensure equality of treatment between the operator involved in the technical assistance and other economic operators. The contractor can be rejected from the subsequent procedure when the contractor, its personnel or subcontractors were involved in the preparation of procurement documents and this entails a breach of the principle of equality of treatment, including a distortion of competition that cannot be remedied otherwise<sup>95</sup>. On this regard, please note the existence of a declaration of objectivity and confidentiality (Annex A3) that should be completed by all persons involved in preparing terms of reference, technical specifications or other documents relating to a call for tenders or a call for proposals.

Burden of proof: it is up to the contracting authority to prove the distortion of competition and to prove that it has taken all possible measures to avoid the rejection. In particular, these measures must include the communication to the other candidates/tenderers of the relevant information exchanged in the context of or resulting from the involvement of the candidate/tenderer in the preparation of the procurement procedure and the fixing of adequate time-limits for the receipt of tenders. The rejection is subject to a contradictory procedure, so the tenderer must be given the opportunity to prove that its prior involvement cannot distort competition.

### 2.5.4.4. Professional conflicting interest

Finally, there are specific cases where the operator has a professional conflicting interest that negatively affects its capacity to perform a contract<sup>96</sup>. Such a situation arises where an operator could be awarded a contract to evaluate a project in which it has participated or to audit accounts that it has previously certified, and therefore is treated at the selection stage.

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<sup>94</sup> Article 136 FR.

<sup>95</sup> Article 141(c) FR.

<sup>96</sup> Article 20(6) of the Annexe 1 to the FR.

A case-by-case assessment is required to confirm that the situation of conflict of interest may negatively affect the performance on the contract in question<sup>97</sup>. If the operator is in such a situation, the corresponding tender is rejected. These cases often arise in evaluation or audit framework contracts, where the contractor can have a professional conflicting interest for a specific contract.

Where a conflict of interest might occur with regard to on-going contracts, the contractor must immediately inform the contracting authority and measures must be adopted to prevent or to resolve such a conflict, including terminating the contract if necessary.

## 2.5.5. Other essential points

### Exceptional changes to the composition of the consortium

To ensure fair competition, no changes to the identity or composition of the candidate/tenderer are permitted, except in the situations listed below where the contracting authority has to give prior approval in writing.

The only cases where a change in composition of a consortium may be accepted are:

- (i) where there is a merger or takeover of one member of the consortium (universal succession);
- (ii) where the change comes from the contracting authority, i.e. one member (leader or other member) of the consortium is subject to exclusion or rejected because it does not comply with a selection criterion applicable to it. Indeed, in this case, exclusion or rejection applies to a legal entity, not to a group, so it may be disproportionate to reject the whole request to participate/tender on that basis; such situations should be appreciated on a case-by-case basis. The position to adopt could be different according to the various exclusion cases (for instance, a change could be accepted in case of bankruptcy, but not in the case where the member of the group has been convicted of fraud, corruption, etc.). In case of rejection, withdrawal of the rejected member of the group could be accepted if the selection criterion is still fulfilled without it.

The fact that the entity excluded is the leader of the consortium does not affect the substance of the changes to the consortium. A leader has powers of attorney to represent other members of the group of economic operators, but this does not determine *per se* its relative weight in the consortium. What has to be considered is the incidence that the entity concerned has in the selection criteria and in the award criteria.

In both cases (i) and (ii) above, the contracting authority must verify the following conditions:

1. in the case (i) above, whether the new entity meets eligibility requirements;
2. in the case (i) above, whether the new entity is not in an exclusion situation;
3. in both cases, whether the selection criteria are still fulfilled (without the excluded or rejected entity if applicable and without replacing it) compared to the request to participate/tender originally submitted;

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<sup>97</sup> For further guidance about the procedure, please consult Guidance on the avoidance and management of conflicts of interest under the FR (2021/C 121/01), p. 19 [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC0409\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC0409(01)&from=EN).

4. in both cases, whether the change in composition of the consortium does not entail any substantial change in the tender as originally submitted. For the case (ii), this condition is met as long as:

- (a) all the tasks assigned to the excluded entity are taken over by the other members of the consortium;
- (b) the change does not make the tender non-compliant with the requirements set in tender documents;
- (c) the change does not modify the evaluation of award criteria as originally submitted.

If all the conditions are fulfilled, the contracting authority can accept the change in the composition of the consortium. Otherwise, the request to participate/tender must be rejected.

Once the contract is signed by the consortium, as a matter of principle there should be no change, except in the cases of universal succession (merger/takeover of one of the members of the consortium). In this case, the contracting authority must verify the following conditions:

- (a) whether the new entity is eligible;
- (b) whether the new entity is not in an exclusion situation;
- (c) whether the selection criteria are still fulfilled.

For the selection criteria, the principle of proportionality may be used if the contract implementation is already well advanced when the change occurs (e.g. selection criteria which were only necessary for the start phase do not have to be fulfilled anymore at a later stage of the contract).

However, if a change, including the replacement of a member of the consortium, happens for another reason, the contracting authority must analyse the consequences of terminating the contract vs. accepting the change, and it must in particular assess whether the change is substantial or not (i.e. if it requires to terminate the contract and launch a new procurement procedure or not). If the change is accepted, the same verification as in the case of universal succession must be made.

#### Requesting information only once

As provided for by Article 128 FR, information already available at European Union institutions, the management authorities and other bodies and entities implementing the European Union budget, must be used to the extent possible to avoid asking persons and entities receiving European Union funds for the same information more than once.

#### Non-retroactivity

Contracts take effect from the date of signature of the last signatory. All contracts must show the true dates on which the contracting parties signed them. Exceptionally, they might be applicable from an earlier date (in cases of retroactive financing for instance).

#### Verification of financial guarantees

Financial guarantees have the effect of making the third party stand as irrevocable collateral security, or first-call guarantor of the defaulting contractor's or grant beneficiary's obligations. At the contracting authority's request, the third party will therefore automatically replace the contractor or grant beneficiary if the latter fails to fulfil its obligations towards the contracting authority, up to the

amount for which the financial guarantee has been given. A thorough check on the legality, reliability and authenticity of any financial guarantees is therefore essential.<sup>98</sup>

In indirect management, the contracting authority should seek guidance from the European Commission before accepting a financial guarantee.

#### Record keeping<sup>99</sup>

Subject to the contracting authority's legislation on access to documents, written records of the entire procurement and grant award procedure must be kept confidential and kept by the contracting authority in accordance with the policy adopted on archiving. If its law conflicts with the confidentiality required, the contracting authority must obtain prior authorisation from the European Commission before disclosing any information.

Unsuccessful proposals have to be kept for 5 years from the submission deadline of the call, and unsuccessful tenders have to be kept for 5 years from the submission deadline of the tender. Contractual and financial documents have to be kept for a minimum of 7 years from payment of the balance and up to the prescription date of any dispute about the law governing the contract. During and after this period, the contracting authority will treat personal data in conformity with its privacy policy. The documents to be conserved include all the preparatory documents, the corresponding financing agreement, the originals of all requests to participate/tenders/proposals submitted, and any related correspondence.

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

#### Availability of funds

Before initiating any procedure, the funds must be available. Calls may exceptionally be launched with a suspensive clause after prior approval of the relevant services. The call is then launched before the financing decision is adopted or before the financing agreement between the European Commission and the partner country is signed. The call is cancelled if the financing decision is not adopted or if the financing agreement is not signed. The contract cannot be signed until the funds are available.

#### Cross-cutting issues

Concepts such as environmental issues, climate change, gender equality, accessibility for disabled people need to be taken into account by tenderers, candidates and applicants in the context of procurement and calls for proposals. Furthermore, appropriate environmental screening, including for climate change and biodiversity impacts, must be undertaken at project level, in accordance with the applicable legislative acts of the European Union, for both procurements and grants. Where relevant, strategic environmental assessments must be used in the implementation of sectoral programmes.

#### Joint procurement with an EU Member State, an EFTA State or an EU candidate country

In case of joint action between an EU institution and a contracting authority from a Member State, from an EFTA State or from an EU candidate country, the procurement procedure may be carried out

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<sup>98</sup> For additional details, see chapter 9.1 of the INTPA Companion.

<sup>99</sup> Article 132 FR.

jointly by the EU institution and that contracting authority. In this case, the procedures applicable to the European Union Institutions must apply<sup>100</sup>.

#### Ex post publication of recipients

In addition to the publicity rules applicable to each type of procedure, the European Commission provides information on the recipient of EU funds (both grants beneficiaries and procurement contractors) on an annual basis, regardless of the management mode used. The information is available at the following site: [https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/transparency/funding-recipients\\_en](https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/transparency/funding-recipients_en).

#### Per diem

Per diem are daily subsistence allowances that may be reimbursed for missions foreseen in the terms of reference and/or approved by the Contracting Authority, carried out by the contractor's authorised experts outside the expert's normal place of posting. The per diem is a maximum fixed flat-rate covering daily subsistence costs. These include accommodation, meals, tips and local travel, including travel to and from the airport. Taxi fares are therefore covered by the per diem. Per diem are payable on the basis of the number of hours spent on the mission. Per diem may only be paid in full or in half (no other fractions are possible). A full per diem shall be paid for each 24-hour period spent on mission. Half of a per diem shall be paid in case of a period of at least 12 hours but less than 24 hours spent on mission. No per diem shall be paid for missions of less than 12 hours. Travelling time is to be regarded as part of the mission. Any subsistence allowances to be paid for missions undertaken must not exceed the per diem rates published on the website - [https://international-partnerships.ec.europa.eu/funding/guidelines/managing-project/diem-rates\\_en](https://international-partnerships.ec.europa.eu/funding/guidelines/managing-project/diem-rates_en) - in force at the time of contract signature.

### 2.5.6. Ethics clauses

All types of contracts (procurement and grants) include a code of conduct laying down ethical clauses the respect of which is considered as a contractual obligation.

Any mention of the contractor in the present section has to be understood as the beneficiary in case of a grant contract. The contractual obligations referred to in the present section must also apply to all members of a consortium, to any sub-contractors and capacity providing entities, to lead applicants, co-applicants, associates and affiliated entities.

**The contractor as impartial and faithful adviser - absence of conflict of interest:** 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 authorisation. It may not commit the contracting authority in any way without its prior written consent. The contractor must refrain from any relationship likely to give rise to a conflict of interest compromising its independence or that of its personnel. If the contractor ceases to be independent, the contracting authority may terminate the contract with immediate effect

**The contractor must respect human rights as well as environmental legislation and core labour standards:** the contractor and its -personnel must comply with human rights. In particular and in accordance with the applicable basic act, tenderers and applicants who have been awarded contracts

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<sup>100</sup> Article 165(2) FR.

must comply with the environmental legislation including multilateral environmental agreements, and with the core labour standards as applicable and as defined in the relevant International Labour Organisation conventions (such as the conventions on freedom of association and collective bargaining; elimination of forced and compulsory labour; abolition of child labour).

**Zero tolerance for sexual exploitation, abuse and harassment**

The European Commission applies a policy of ‘zero tolerance’ in relation to all wrongful conduct that has an impact on the professional credibility of the contractor.

Physical abuse or punishment, or threats of physical abuse, sexual abuse or exploitation, harassment and verbal abuse, as well as other forms of intimidation must be prohibited. Should the contractor become aware of any breach of the above mentioned ethical standards, it must report in writing to the contracting authority.

For grant award procedures, please refer to Section 6.3.11.

**The contractor and payments:** the contractor may not accept any payment connected with the contract other than that provided for therein. The contractor and its personnel must not exercise any activity or receive any advantage inconsistent with their obligations to the contracting authority.

**The contractor and professional secrecy:** the contractor and its personnel 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 contractor and anti-corruption and anti-bribery:** the contractor must comply with all applicable laws and regulations and codes relating to anti-bribery and anti-corruption.

The European Commission reserves the right to suspend or terminate the contract, if corrupt practices of any kind are discovered at any stage of the award process or implementation of the contract and if the contractor 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.

Corrupt practices may also include unusual commercial expenses that are not mentioned in the contract or not stemming from a properly concluded contract referring to the 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 commission paid to a company that looks like a front company. Contractors found to have paid unusual commercial expenses on projects funded by the EU are liable, depending on the seriousness of the facts noted, to have their contracts terminated or to be excluded from receiving EU funds.

The European Commission may carry out whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.

**Consequences of non-compliance with the ethical clauses and code of conduct**

Failure to comply with the aforementioned contractual obligations constitutes a breach of the contract that may lead to suspension or termination of the contract.

A serious breach of the obligations under the code of conduct and ethical rules can amount to grave

professional misconduct that may lead to immediate termination of the contract without prejudice to further administrative sanctions and exclusion from future calls for tenders.

A grave professional misconduct is not only constituted by violations of applicable laws or regulations or ethical standards of the profession to which the contractor belongs, but also encompasses any wrongful conduct that has an impact on the professional credibility of the contractor, and refers to conduct that denotes a wrongful intent or gross negligence (see in detail Section 2.6.10.1. on the exclusion criteria).

### 2.5.7. Anti-fraud strategy

The European Commission is committed to fight and mitigate fraud, corruption or other illegal activity affecting the financial interests of the European Union. In this context, the development of an anti-fraud culture among all the stakeholders is of great importance.

The Commission adopted its first anti-fraud strategy (CAFS) in 2011, which is an internal policy document binding on the Commission services and executive agencies in their fight against fraud and corruption affecting the EU's financial interests. The CAFS was updated in 2019 to enhance the protection of the EU budget, to strengthen the corporate oversight of the Commission regarding all issues related to fraud and to reinforce the overall anti-fraud system already in place.

In line with the requirements of the CAFS, DG INTPA has an anti-fraud strategy (AFS) and a related action plan to enhance the prevention, detection and correction of fraud. The first AFS<sup>101</sup> came into effect in January 2014 and has been regularly updated to reflect the evolution in the Commission's external action policy and operations.

In 2021, the DG adopted a significant review to align its anti-fraud policy to the evolving financial and operational context<sup>102</sup>. The latest AFS highlights the DG's operational specificities that make the fight against fraud particularly complex and important. The accompanying action plan focuses on increasing internal and external awareness on fraud-related issues; strengthening the follow-up measures taken once fraud is detected; on the reinforcement of coordination, cooperation and processes; and on the use of the Early Detection and Exclusion System (EDES) as a fraud-sanctioning tool.

An important factor in combatting fraud is staff awareness and an effective system of reporting indications of fraud and irregularities. While whistleblowing is a right in many legal systems, it is an obligation for EU staff. The EU Staff Regulations<sup>103</sup> and the Financial Regulation<sup>104</sup> set out an obligation to report serious irregularities for any EU official who becomes aware of:

- facts that give rise to a presumption of possible illegal activity, including fraud or corruption, detrimental to the interests of the EU;

<sup>101</sup> The AFS and related information is available for European Commission staff on INTPA's intranet: <https://myintracomm.ec.europa.eu/dg/INTPA/audit-and-control/anti-fraud/Pages/olaf.aspx>

<sup>102</sup> In particular, the creation of the Neighbourhood, Development and International Cooperation Instrument (NDICI) under the Multiannual Financial Framework 2021-2027, the in-depth reorganisation of DG INTPA on 16/01/2021, and the adoption of the new CAFS in 2019.

<sup>103</sup> EEC/EAEC Council: [Regulation No 31 \(EEC\), 11 \(EAEC\)](#), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, Article 22a-c.

<sup>104</sup> [Regulation \(EU, Euratom\) 2018/1046](#) on the financial rules applicable to the general budget of the Union, repealing Regulation (EU, Euratom) No 966/2012 (2012 Financial Regulation), Article 74(8).



- conduct relating to the discharge of professional duties that may constitute a serious failure to comply with the obligations of EU officials.

While fraud prevention and detection is primarily the responsibility of each head of a Commission service (as appropriate in each management mode), two complementary bodies reinforce the protection of EU's financial interests in a comprehensive way:

- The European Anti-Fraud Office, commonly known as OLAF, in charge of administrative investigations;
- The newly created European Public Prosecutor's Office, the EPPO, to conduct criminal investigations.

OLAF investigates fraud against the EU budget, corruption and serious misconduct within the EU, and develops anti-fraud policy for the Commission. OLAF has to be informed of suspicions of fraud, corruption or other irregularities concerning EU funds<sup>105</sup>, and is entitled to conduct:

- external investigations relating to expenditure and revenue under the EU budget/EDF;
- internal administrative investigations concerning staff of the EU institutions.

OLAF makes its investigations independently and in compliance with the cooperation agreements in force in third countries. It cooperates actively with its partners in the EU Member States and third countries.

Following its investigation, OLAF makes a report indicating its findings and recommendations. The competent responsible authorising officer by sub-delegation must ensure the financial follow-up, vis-à-vis the recovery of amounts wrongly paid, in cooperation with OLAF.

The EPPO represents the first true supranational prosecutorial body with the powers to carry out independently investigations and prosecutions into crimes affecting the financial interests of the EU. The focus of its mandate is fraud and other crimes affecting the EU's financial interest as defined under Directive 2017/1371<sup>106</sup>. Since 2021, the EPPO can prosecute and bring the suspected perpetrators of such crimes to judgment in the 22 participating Member States<sup>107</sup>.

## 2.6. Procurement procedures

The basic means of awarding contracts is competitive tendering. The purpose is twofold:

- to ensure that operations comply with the awarding principles; and
- to obtain the quality of services, supplies or works wanted, at the best possible price.

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

<sup>105</sup> [Regulation \(EU, Euratom\) No 883/2013](#) of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, Article 8. This OLAF Regulation will be amended in 2021.

<sup>106</sup> [Directive \(EU\) 2017/1371](#) of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017.

<sup>107</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain.

Article 164 FR provides the following list of procedures for awarding concession contracts<sup>108</sup> or public contracts, including framework contracts:

- (a) open procedure;
- (b) restricted procedure, including through a dynamic purchasing system;
- (c) design contest;
- (d) negotiated procedure, including without prior publication;
- (e) competitive dialogue;
- (f) competitive procedure with negotiation;
- (g) innovation partnership;
- (h) procedures involving a call for expression of interest.

Article 178 FR on external action procurement provides on the one hand that the common provisions on public procurement must be applicable to the external action procurement, subject to special provisions relating to the arrangements for awarding external contracts laid down in its Annex I.

On the other hand, it also adds further conditions to the use of certain common provisions. Accordingly, the publicity measures of Article 163(1) and the obligation to respect a standstill period must only apply as from:

- (a) EUR 300 000 for service and supply contracts;
- (b) EUR 5 000 000 for works contracts.

In addition to the above-mentioned types of procurement procedures, Article 38 of Annex I to the FR further indicates that procurement procedures in the field of external actions must be as follows:

- a) the restricted procedure as provided for in Article 164(1)(b);
- b) the open procedure as provided for in Article 164(1)(a);
- c) the local open procedure; and
- d) the simplified procedure.

The simplified procedure is the new terminology adopted to replace the former 'competitive negotiated procedure' under the previous Financial Regulation<sup>109</sup> (the 2012 Financial Regulation).

Note also that for services, supply and works contracts both open and restricted procedures can be used. However, only templates for the restricted procedure for services, and templates for the open procedure for supplies and works are available as annexes to the PRAG. Templates for the simplified and negotiated procedures for services, supply and works are now also available.

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<sup>108</sup> See Article 2(14) FR for the definition of concession contracts.

<sup>109</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union (OJ L 298, 26.10.2012, p. 1).

## 2.6.1. Which procurement procedure to apply and how?

The applicable standard procedures further explained in this practical guide are summarised in the table below. They are divided between those for services (e.g. technical assistance and studies), supplies (i.e. equipment and materials) and works (i.e. infrastructure and other engineering works). Once the European Commission has approved an action by adopting a financing decision and, where appropriate, a financing agreement, the contracting authority can proceed with tendering and contracting following these standard procedures. The thresholds given in the table are based on the maximum budget for the contract in question (including any co-financing). Where contracts are subdivided into lots, the value of each lot is taken into account when calculating the overall threshold.

Regardless of which procedure is used, all basic principles must be complied with (including the eligibility, exclusion and selection criteria).

Where possible and appropriate in light of the nature of the action, and in line with the financing agreement if any, the use of the simplest procedures must be favoured.

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

**Other procedures can be applied regardless of the thresholds, for instance negotiated procedures on the basis of a single tender — as long as the relevant conditions are met (see Sections 2.6.5., 2.6.6., 2.6.7. and 2.6.8.).**

<b>SERVICE CONTRACTS</b>	<b>≥ EUR 300 000</b>  - International restricted or open tender procedure	- Audit 2018  <b>≤ EUR 999 999</b>  - Framework contract SIEA 2018, Events 2020  Or <b>&lt; EUR 300 000</b> - Framework contracts (EVA 2020) - Simplified procedure		<b>≤ EUR 20 000</b>  - Single tender   A payment may be made against invoice without prior acceptance of a tender if the expenditure is ≤ <b>EUR 2 500</b>
<b>SUPPLY CONTRACTS</b>	<b>≥ EUR 300 000</b>  - International restricted or open tender procedure	<b>&lt; EUR 300 000 but ≥ EUR 100 000</b>  - Local open tender procedure	<b>&lt;EUR 100 000 but &gt; EUR 20 000</b>  - Simplified procedure	
<b>WORKS CONTRACTS</b>	<b>≥ EUR 5 000 000</b>  - International open tender procedure or	<b>&lt; EUR 5 000 000 but ≥ EUR 300 000</b>  - Local open tender procedure	<b>&lt; EUR 300 000 but &gt; EUR 20 000</b>  - Simplified procedure	

	- International restricted tender procedure			
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Electronic Submission (eSubmission) has been introduced for the management of the procurement procedures in external actions. eSubmission is available through the TED eTendering website and accessible on the [Funding and Tenders Opportunities portal \(F&T portal\)](#). eSubmission allows economic operators to electronically submit requests to participate or tenders in a structured and secure way. At the moment, eSubmission supports the following procurement procedures:

- Open procedures
- Restricted procedures
- Negotiated procedures without prior publication of a contract notice

When applying the direct management mode, the requests to participate and tenders in in the above-mentioned procurement procedures must be submitted exclusively via eSubmission. Requests to participate and tenders submitted in any other way (e.g. post, courier, e-mail, hand delivery) will be disregarded.

In order to submit a request to participate or tender using eSubmission, economic operators will need to register in the European Commission's [Participant Register](#) - an online register of organisations participating in EU calls for tenders or proposals. In case of consortia, requests to participate will have to be made through a group submission which requires for each member of the group a registration in the Participant Register.

When registered, each organisation obtains a Participant Identification Code (PIC, 9-digit number) which acts as its unique identifier in the above register. Instructions on how to create a PIC can be found on this [page](#). Economic operators already registered in the Participant Register shall reuse their existing PICs when preparing tenders in eSubmission.

It is up to the contracting authority to request the legal and financial validation of the data (PIC validation) of any organisation applying via eSubmission. The EU Validation Services of the Research Executive Agency (REA) are in charge of the PIC validation. The request for supporting documents in no way implies that the organisation has been successful in a procurement procedure. All communications with the EU Validation Services will take place through the F&T portal.

When applying the indirect management mode, the requests to participate and tenders will continue to be submitted through paper documents.

## 2.6.2. Open procedure

In 'open' calls for tenders (international or local), all economic operators may submit a tender. The contract is given maximum publicity by publishing a notice in the official journal of the European Union (S series), the official journal of the partner country, the F&T portal, and in any other appropriate media.

See guidelines for publication (Annex A11e).

The tenders are examined, the eligibility and the financial, economic, technical and professional capacity of the tenderers are checked to arrive at a selection, the tenders are evaluated and the contract is awarded (see Sections 2.6.11. and 2.6.11.4.). No negotiation is allowed.

### **2.6.3. Restricted procedure**

In 'restricted' calls for tenders, all economic operators may submit a request to participate but only those who satisfy the selection criteria may be invited to submit a tender.

The contract is given maximum publicity by publishing a notice in the Official Journal of the European Union (S series), in the Official Journal of the partner country, on the F&T portal, and in any other appropriate media.

The selection criteria and the tasks to be undertaken are described in the published additional information about the contract notice (A5f) document. A 'long list' of all the candidates replying to the notice is cut down to a shortlist of the best qualified, on the basis of their replies. At the shortlisting stage, before the list is approved by the evaluation committee, the contracting authority checks that none of the candidates or their partners is in an exclusion situation in the early detection and exclusion system (see Section 2.6.11.).

The contracting authority prepares the shortlist notice and publishes it together with the award notice on TED (Section VI.3 of the award notice).

The contracting authority -sends the tender dossier only to the short-listed candidates.

See guidelines for publication (Annex A11e).

Once the tenders have been analysed, they are evaluated and the successful tenderer is chosen (see Sections 2.6.11. and 2.6.11.4.). No negotiation is allowed.

### **2.6.4. Simplified procedure (formerly known as 'competitive negotiated' procedure)**

Under the simplified procedure, the contracting authority invites at least three candidates of its choice to submit tenders.

The evaluation (including the use of an evaluation committee) and the award of the contract follow the rules of the open procedure.

For further details regarding simplified procedure in services, see Section 3.5.2., for supplies see Section 4.5. and for works Section 5.6.

### **2.6.5. Framework contracts**

Although it is not a procurement procedure in itself, a framework contract is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing specific contracts which may be awarded during a given period, in

particular with regard to price and, where appropriate, the quantity envisaged<sup>110</sup>. In this way, the framework contract represents a structure within which subsequent specific contracts are concluded.

Framework contracts with several economic operators are called 'multiple' framework contracts; they take the form of separate contracts but they are all concluded on identical terms. The specifications must state both the minimum and the maximum number of operators with which the contracting authority intends to conclude contracts. The minimum may not be less than three.

The duration of a framework contract may not exceed 4 years, save in exceptional cases duly justified in particular by the subject matter 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.

The award of a framework contract always requires a public procurement procedure. However, once a framework contract has been concluded, the award of specific contracts follows a request for services sent by the contracting authority to a fixed number of framework contractors, usually three, and the evaluation of their offers. A specific contract or a purchase order is then concluded. Specific contracts based on framework contracts are thus awarded in accordance with the terms of the framework contract. Hence, when awarding specific contracts under a framework contract, the procedure set out in the framework contract should be followed (and not the rules applicable to tenders), provided that the principles of transparency, proportionality, equal treatment and non-discrimination are respected, and framework contracts are not used improperly or in such a way that their purpose or effect is to prevent, restrict or distort competition.

### **2.6.6. Dynamic purchasing system**

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

For each individual contract, the contracting authority publishes a contract notice and invites all contractors admitted to the system to bid. The contract is awarded to the cheapest tender proposing the delivery of the items requested most economically advantageous tender (i.e. the sole award criterion is the price).

See Section 4.2.6.2. for further details. A legal framework for this procedure has been devised for future use, but the IT tools to make it possible (ensuring confidentiality and security) are not yet available in the European Commission.

### **2.6.7. Competitive dialogue**

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

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<sup>110</sup> Article 2(31) FR.

Contracting authorities must publish a contract notice/additional information about the contract notice setting out or attaching their needs and requirements. They must open a dialogue with the candidates satisfying the selection criteria. The dialogue may cover all aspects of the tender; however, it is conducted separately with each candidate on the basis of their proposed solutions and ideas. The contracting authority must ensure equal treatment of tenderers and keep the tenders confidential. It is therefore not allowed to pick the best solutions from different tenderers (i.e. no 'cherry-picking' is allowed).

The minimum number of candidates invited to tender is three. Before selecting the candidates, the contracting authority checks that none of the candidates or their partners is in an exclusion situation in the EDES system (see Section 2.6.10.1.3.). If fewer than three candidates meet the selection criteria, the contracting authority may continue the procedure with the one or two who do meet the criteria. The contracting authority may not make up the number with other economic operators who did not take part in the procedure or candidates who do not meet the selection criteria.

During the dialogue, the contracting authority must treat all tenderers equally and ensure that the solutions proposed or other information received in the dialogue is kept confidential unless the candidate agrees to disclosure.

The contracting authority may reduce the number of solutions for dialogue by applying the award criteria at a pre-dialogue stage, if the contract notice informs candidates of this possibility. The contracting authority must prepare a report explaining the manner in which dialogue was conducted.

The contracting authority must inform tenderers who are not in an exclusion situation, whose tender is compliant with the procurement documents and who make a request in writing, of the progress of dialogue. Such information should not prejudice the legitimate commercial interest of tenderers or distort fair competition between them. After informing the participants that the dialogue has been concluded, contracting authorities must ask them to submit their final tenders on the basis of the solutions presented and specified during the dialogue. The tenders must contain all the information 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 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 amending substantial aspects of the tender or of the call for tenders and does not risk distorting competition or causing discrimination.

The contracting authorities may specify prices or payments to the participants in the dialogue.

The contract is awarded to the technically compliant tender which is the most economically advantageous (i.e. the sole criterion is the best price-quality ratio).

The standard templates must be adapted as required.

**DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

Prior approval by the European Commission must be sought to use competitive dialogue.

**INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation of the European Commission is required.

## 2.6.8. Negotiated procedure / single tender procedure

A contract may be awarded directly in the following circumstances:

- using the 'single tender procedure' when the contract does not exceed EUR 20 000;
- using the 'negotiated procedure' whatever the value of the contract in exceptional and duly justified cases, provided the factual or legal circumstances described in Sections 3.3.5.1., 4.2.6.1. and 5.2.5.1. are met. No specific threshold applies in such cases.

The negotiated procedure may only be used in cases stipulated in this practical guide. No prior approval can be granted to apply the negotiated procedure in cases others than the ones stipulated in this practical guide.

Before selecting the candidates, the contracting authority checks that none of the candidates or their partners is in an exclusion situation in the early detection and exclusion system (see Section 2.6.10.1.3.).

In the case of negotiated procedures, an evaluation committee must be nominated prior to proceeding with the negotiation. However, depending on a risk analysis by the contracting authority, appointing an evaluation committee might not be deemed necessary in the following cases:

- extreme urgency not attributable to the contracting authority;
- crisis situation;
- new services or works consisting in the repetition of similar activities as in the original contracts, provided the conditions laid down in Sections 3.3.5.1., point e) and 5.2.5.1., point c) are met;
- additional supplies, provided the conditions laid down in Section 4.2.6.1., point d) are met;
- supplies quoted and purchased on a commodity market;
- legal services which do not have mandatorily to be awarded through a simplified procedure (see Section 3.3.5.1.(f)).

When the contract does not exceed EUR 20 000 appointing an evaluation committee is never mandatory.

For all procedures, a negotiation report (Annex A10a for negotiated procedures and Annex A10b for single tender procedures) must be produced, explaining how participant(s) in the negotiations were chosen, how they met the selection criteria, how the price was set, and the grounds for the award decision.

The negotiation steps shown in the negotiation report template must be followed. Eligibility rules (nationality as well as exclusion situations mentioned in Sections 2.3.1. and 2.3.2.) and selection criteria must be duly complied with. Documentary evidence for exclusion criteria and selection criteria should be submitted as referred to in Sections 2.6.10.1.3. and 2.6.11., respectively.

The negotiated procedure covers two different types of negotiations for which different templates should be used:

- negotiation with one economic operator to which the contracting authority awarded an initial contract. The amendment of the initial contract is the outcome of the procedure. This type of negotiated procedure takes place to procure similar services or works or additional supplies



- negotiation with one or several economic operators, which, if successful, will result in the award of a new contract.

#### Negotiated procedure resulting in the award of a new contract

The tender dossier, to be drafted and approved by the relevant contracting authority for the negotiated procedure before launching the procedure, shall include at least the invitation letter, contract notice with the selection and award criteria, ITT, standard draft contract, relevant annexes and terms of reference/technical specifications. For negotiated procedures the templates of the simplified procedure, with the exception of the contract and its annexes, should be used and adapted on a case-by-case basis. The invitation letter shall specify that it is a negotiated procedure, indicate the deadline to receive the offer (to be determined on a case-by-case basis) and outline the process.

#### Negotiated procedure resulting in the amendment of an initial contract

The conditions stated in section 3.3.5.1 under e), 4.2.6.1 under d) or 5.2.5.1 under c) should be met in case a negotiated procedure takes place to procure similar services or works or additional supplies. Annex a8 is the template to be used to invite to tender for an amendment of a contract. The invitation letter describes the scope and the revised terms of reference/technical specifications. The invitation letter also provides the necessary background information, outline the negotiation process and indicate the deadline to receive the offer.

There is no minimum time-limit for receiving tenders in negotiated procedures, but tenderers should be given reasonable time to prepare good tenders, especially taking particular account of the complexity of the contract. The minimum requirements included in the terms of reference / technical specifications and the exclusion, selection and award criteria specified in the procurement documents are not negotiable. Whenever appointed, the evaluation committee may organise negotiation round(s) and possibly invite the tenderer(s) to discuss the technical and financial offer(s), which can be disclosed at any time during the process. In such cases, recommendations on the award decision will be made by the evaluation committee on the basis of the outcome of discussions held during the negotiation(s) round(s) and will be documented in the negotiation report.

The contracting authority may award a contract on the basis of the initial tender without negotiation where it has indicated in the procurement documents that it reserves the possibility to do so.

The contracting authority must inform tenderers who are not in an exclusion situation, whose tender is compliant with the procurement documents and who make a request in writing, of the progress of negotiation. Such information should not prejudice the legitimate commercial interest of tenderers or distort fair competition between them.

The negotiation report must be approved by the contracting authority.

**DIRECT MANAGEMENT**

Prior approval/event to be reported as the case may be is required from the European Commission to use the negotiated procedure.

**INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

Prior authorisation by the European Commission must be sought to use the negotiated procedure. The negotiation report must be endorsed by the European Commission.

**INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation by the European Commission is required to use the negotiated procedure and the negotiation report does not need to be endorsed by the European Commission.

If applicable, payments for amounts less than or equal to EUR 2 500 may be made against invoices without prior acceptance of a tender.

**2.6.9. Preferences**

No ACP preference is possible in procurement procedures under MFF 2021-2027.

Only for award procedures under MFF 2014-2020:

**EDF-FUNDED PROGRAMMES**

See Article 26 of Annex IV to the Cotonou Agreement:

1. Measures must be taken to encourage the widest participation of the natural and legal persons of ACP States in the performance of contracts financed by the EDF in order to permit the optimisation of the physical and human resources from those States. To this end:
  - a. for works contracts of a value of less than EUR 5 000 000, tenderers of the ACP States, provided that at least one quarter of the capital stock and management staff originates from one or more ACP States, must be accorded a 10% price preference during the financial evaluation;
  - b. for supply contracts of a value of less than EUR 300 000, tenderers of the ACP States, either individually or in a consortium with European partners, shall be accorded a 15% price preference during the financial evaluation;
  - c. in respect of service contracts other than the European Commission's Framework contracts, where tenders of equivalent economic and technical quality are compared, preference must be given to:
    - i. experts, institutions or consultancy companies or firms from ACP States with the required competence;
    - ii. offers submitted by ACP firms, either individually or in consortium with European partners; and
    - iii. offers presented by European tenderers with ACP sub-contractors or experts;
  - d. where subcontracting is envisaged, preference must be given by the successful tenderer to natural persons, companies and firms of ACP States capable of performing the contract required on similar terms; and

- e. the ACP State may, in the invitation to tender, propose to the prospective tenderers the assistance of other ACP States' companies or firms or national experts or consultants selected by mutual agreement. This cooperation may take the form either of a joint venture, or of a subcontract or of on the job training of trainees.

2. Without prejudice to the provisions in paragraph 1, where two tenders for works, supplies or service contracts are acknowledged to be equivalent, preference must be given:

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

NB. South African natural or legal persons cannot benefit from the preference system.

#### **GENERAL BUDGET OF THE EUROPEAN UNION**

In order to promote local capacities, markets and purchases, priority must be given to local and regional contractors when the applicable Financial Regulation provides for an award on the basis of a single tender. In all other cases, participation of local and regional contractors must be promoted in accordance with the relevant provisions of that regulation.

## **2.6.10. Exclusion, selection and award criteria**

Regardless of the type of procurement procedure used (including negotiated procedures), the capacity of the candidate or tenderer to implement the contract is always assessed on the basis of objective criteria set out below.

### **2.6.10.1. Exclusion criteria**

In the Financial Regulation, the provisions on early detection and exclusion system are contained in Articles 135 FR. The exclusion system is a system to facilitate the detection of persons and entities that pose a risk to the European Union's financial interests. It aims at excluding from receiving European Union funds or participating in grant or procurement procedures the entities or persons found in specific exclusion situations (also called 'exclusion grounds').

The exclusion is decided by the Commission on the basis of a final judgment or a final administrative decision or, in the absence of such a judgment or decision, on the basis of established facts or findings and their preliminary classification in law contained in the recommendation of the EDES panel<sup>111</sup> referred to in Article 143 FR.

<sup>111</sup> The EDES panel must be composed of a standing high-level independent chair (chosen from former members of the Court of Auditors, the Court of Justice or former officials with at least the rank of director general in an EU institution other than the Commission), two representatives of the Commission and one representative of the contracting authority. The EDES panel has no investigative powers but bases its preliminary classification in law on established facts and findings presented to it by the competent authorising officers.

### 2.6.10.1.1. Exclusion criteria from participation in procurement and grant procedures

An economic operator will be excluded from participation in procurement and grant procedures if:

- a) it is bankrupt, subject to insolvency or winding-up procedures, where its assets are being administered by a liquidator or by a court, where it is in an arrangement with creditors, where its business activities are suspended, or where it is in any analogous situation arising from a similar procedure provided for under national laws or regulations;
- b) it has been established by a final judgment or a final administrative decision that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;
- c) it has been established by a final judgment or a final administrative decision that the economic operator is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the economic operator belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes a wrongful intent or gross negligence, including, in particular, any of the following:
  - i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;
  - ii) entering into agreement with other economic operators with the aim of distorting competition;
  - iii) violating intellectual property rights;
  - iv) attempting to influence the decision-making process of the contracting authority during the procurement procedure;
  - v) attempting to obtain confidential information that may confer upon it undue advantages in the procurement procedure;
- d) it has been established by a final judgment that the economic operator is guilty of any of the following:
  - i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law<sup>112</sup> and Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995<sup>113</sup>;
  - ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 and Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997<sup>114</sup>, and in Article 2(1) of Council Framework Decision

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<sup>112</sup> OJ L 198, 28.7.2017, p. 29.

<sup>113</sup> OJ C 316, 27.11.1995, p. 48.

<sup>114</sup> OJ C 195, 25.6.1997, p. 1.

2003/568/JHA of 22 July 2003 on combating corruption in the private sector<sup>115</sup>, as well as corruption as defined in the law of the country where the contracting authority is located, the country in which the economic operator is established or the country of the performance of the contract;

- iii) conduct related to a criminal organisation referred to in Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime<sup>116</sup>;
  - iv) money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance) of the European Parliament and of the Council<sup>117</sup>;
  - v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision of 13 June 2002 on combating terrorism<sup>118</sup>, respectively, or inciting or aiding or abetting or attempting to commit such offences, as referred to in Article 4 of that Framework Decision;
  - vi) child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA<sup>119</sup>;
- e) the economic operator has shown significant deficiencies in complying with main obligations in the performance of a contract financed by the EU, which has led to the early termination of a legal commitment or to the application of liquidated damages or other contractual penalties or which has been discovered following checks and audits or investigations by an authorising officer, OLAF or the Court of Auditors;
  - f) it has been established by a final judgment or final administrative decision that the economic operator has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests<sup>120</sup>.
  - g) it has been established by a final judgment or final administrative decision that the person or entity has created an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations of mandatory application in the jurisdiction of its registered office, central administration or principal place of business.
  - h) it has been established by a final judgment or final administrative decision that an entity has been created with the intent provided for in point (g).

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<sup>115</sup> OJ L 192 , 31.07.2003, p. 54.

<sup>116</sup> OJ L 300, 11.11.2008, p. 42.

<sup>117</sup> OJ L 309, 25.11.2005, p. 15.

<sup>118</sup> OJ L 164, 22.6.2002, p. 3.

<sup>119</sup> OJ L 101, 15.4.2011, p. 1.

<sup>120</sup> OJ L 312, 23.12.1995, p. 1.

Point a) does not apply to the purchase of supplies on particularly advantageous terms either from a supplier that is definitively winding up its business activities or from liquidators of an insolvency procedure, an arrangement with creditors, or a similar procedure under EU or national law.

In cases referred to in points c), d), f), g) and h) in the absence of a final judgment or a final administrative decision, or in the case referred to in point e), the contracting authority must exclude an economic operator on the basis of a preliminary classification in law having regard to established facts or other findings contained in the recommendation of the EDES panel. The EDES panel ensures a centralised assessment of those situations after giving the economic operator the opportunity to submit its observations. In indirect management, where applicable according to the correspondent financing or contribution agreement, the contracting authority/entrusted entity will transmit the information to the European Commission and the European Commission may refer the case to the EDES panel.

The contracting authority must exclude the economic operator where:

- a natural or legal person who is member of the administrative, management or supervisory body or has power of representation, decision or control on the economic operator is in a situation listed in points c) to h);
- a natural or legal person that assumes unlimited liability for the debts of that economic operator is in a situation listed in points a) or b);
- a natural or legal person who is essential for the award or for the implementation of the legal commitment and is in a situation referred to in point c) to h).

The contracting authority must not exclude an economic operator where i) it can demonstrate that adequate measures<sup>121</sup> have been adopted which ensure its reliability, except in the cases listed in point d); ii) it is indispensable for the continuity of the service for a limited duration and pending the adoption of remedial measures; iii) where the exclusion would be disproportionate.

#### **The exclusion system and the new requirements to promote good tax governance**

With reference to taxation avoidance and money laundering, the following exclusion criteria apply:

1. breach of obligations relating to the payment of taxes or social security contributions in accordance with the applicable law (point (b) above);
2. involvement in money laundering or terrorism financing as defined in Directive (EU) 2015/849 (point (d)(iv) above);
3. creation of an entity to circumvent tax, social or other legal obligations (empty shell company) (points (g) and (h) above).

For the first case (breach of obligations relating to taxes or social security), a final judgement or final administrative decision is required in order to exclude an entity. For the second (involvement in money laundering or terrorism financing) and the third case (creation of an entity to circumvent tax,

<sup>121</sup> These measures may include, in particular: (a) measures to identify the origin of the situations giving rise to exclusion and concrete technical, organisational and personnel measures within the relevant business area of the economic operator, appropriate to correct the conduct and prevent its further occurrence; (b) proof that the economic operator has undertaken measures to compensate or redress the damage or harm caused to the European Union's financial interests by the underlying facts giving rise to the exclusion situation; (c) proof that the economic operator has paid or secured the payment of any fine imposed by the competent authority or of any taxes or social security contributions.

social or other legal obligations), the authorising officer can bring the case before the EDES panel (see Section 2.6.10.1.) at any moment, on the basis of established facts and findings brought to its attention.

#### **Evidence to be provided**

Candidates, tenderers and participants are obliged to declare that they are not in one of the exclusion grounds mentioned above through a signed declaration on honour (see Section 2.6.10.1.3.).

Where it is necessary to ensure the proper conduct of the procedure and there is a risk that the declaration may contain false or distorted data, the authorising officer should verify the reliability of the information provided in the declaration on honour by requesting appropriate evidence. Such verification should in particular be undertaken if the authorising officer becomes aware of concrete signs or indications (such as press reports) that put into question the information provided in the declaration. Authorising officers should notably pay attention in this regard if the participant is incorporated or established in a jurisdiction considered by the EU as non-cooperative for tax purposes<sup>122</sup>.

- For the purpose of non-payment of taxes, a recent certificate by the competent authority of the State concerned may be accepted as satisfactory.
- For the purpose of creation of an entity to circumvent tax, social or other legal obligations, the authorising officer may accept as satisfactory evidence a recent extract from the judicial record or, failing that, an equivalent document issued by a judicial or administrative authority in the country of establishment demonstrating that those requirements are satisfied. Particular attention should be paid in the case that the information cannot be obtained because this includes a condition of confidentiality or when the information reveals that specific tax clearances are being applied. To the extent possible this information should be analysed in conjunction with the situation of the jurisdiction as regard the EU list of non-cooperative jurisdictions.

#### **Under the Financial Regulation, participants also have the obligation to disclose their beneficial ownership structure upon request of the contracting authority<sup>123</sup>.**

If the result of this analysis confirms that the participant/recipient may be in a ground for exclusion, the authorising officer must submit the case to the EDES panel<sup>124</sup>.

In the context of ongoing grant or procurement award procedures, the authorising officer may ask that the case is treated by the EDES panel as a matter of priority.

### **2.6.10.1.2. Rejection from a given procedure**

The contracting authority must reject from a given award procedure a candidate, tenderer or applicant who:

- a) is in one of the exclusion situations established under Section 2.6.10.1.1.;

<sup>122</sup> The Council of the European Union adopted a list of non-cooperative jurisdictions for tax purposes on 5 December 2017. It contains two Annexes: (i) Annex I includes jurisdictions that are classified as non-cooperative and (ii) Annex II includes further jurisdictions ('Annex II Jurisdictions' or 'Committed Jurisdictions') that have taken sufficient commitments to address their identified deficiencies and as such have not been considered as non-cooperative for the time being. Annexes I and II will be updated by the Council as appropriate and the changes will become effective once published in the Official Journal of the EU. See <http://www.consilium.europa.eu/media/31945/st15429en17.pdf>.

<sup>123</sup> Article 137(2)(b) FR.

<sup>124</sup> Article 143(6)(a) FR.

- b) has misrepresented the information required by the contracting authority as a condition for participating in the procedure or has failed to supply that information;
- c) was previously involved in the preparation of procurement documents used in the award procedure where this entails a breach of the principle of equality of treatment, including distortion of competition that cannot be remedied otherwise.

In cases under (a), if the contracting authority becomes aware of a situation of exclusion where a recommendation of the EDES panel is required in accordance with Section 2.6.10.1.1., it will immediately seize the EDES panel. The evaluation will not be suspended, except in procurement restricted procedures at shortlisting stage (in this case the establishment of the shortlist must be suspended until a decision on the rejection is taken). If the contract is to be awarded to the entity/person concerned by the situation of exclusion, the award of the contract will be suspended until the EDES panel has issued its recommendation. Where necessary, the contracting authority may ask all tenderers to extend the period of validity of the offers accordingly. If the situation of exclusion is confirmed in the recommendation of the EDES panel, the relevant entity/person must be rejected from the given procedure according to Section 2.6.10.1.4.) and the procedure can resume with an award to the second tenderer on the list or, if necessary, cancellation. In parallel, after the recommendation of the EDES panel, a decision of exclusion must be taken according to Section 2.6.10.1.1.

If the rejection is justified by the fact that the participant is already included at exclusion level in the EDES, the decision of rejection must be taken directly without any contradictory procedure with the participant.

In cases under (b) and (c), before taking the decision to reject a tenderer, candidate or applicant from a given procedure, the contracting authority must give the economic operator the opportunity to submit its observations (right to be heard) and to prove, in case of (c) that its involvement in the preparation of documents used in the award procedure does not breach the principle of equal treatment, including distortion of competition.

These grounds of rejection may have serious consequences for the economic operator concerned as they may also qualify as grave professional misconduct according to Section 2.6.10.1.1. and result in a decision of exclusion. In this case, after or in parallel to the decision of rejection, the contracting authority must refer the case to the EDES panel according to Section 2.6.10.1.1.

### **2.6.10.1.3. Evidence to be provided**

#### **A) Declaration on honour**

Candidates, tenderers and applicants must sign a declaration together with their applications, certifying that they do not fall into any of the exclusion situations cited under Sections 2.6.10.1.1. and 2.6.10.1.2. and, where applicable, that they have taken adequate measures to remedy the situation. For calls for proposals, the obligation to fill and sign the declaration on honour (PRAG Annex A14b) applies to all applicants, co-applicants and affiliated entities.

They must also declare whether i) natural and legal persons that are members of the administrative, management or supervisory body or that have powers of representation, decision or control and; ii)



beneficial owners as referred to in Article 3 of Directive (EU) No. 2015/849<sup>125</sup> are in one of the situations under points c) to g) of Section 2.6.10.1.1.

Where the candidate or tenderer intends to rely on capacity providing entities or subcontractor(s), he/she must provide the same declaration signed by this/these entity(ies).

The contracting authority must accept the European single procurement document (ESPD)<sup>126</sup> as an alternative to the declaration. The declaration must not be requested when it has already been submitted for the purposes of another award procedure, provided the situation has not changed and that the time elapsed does not exceed one year.

For procurement contracts with a value of EUR 15 000 or less, the contracting authority may waive the requirement to submit a declaration depending on its risk assessment. For grants of EUR 15 000 or less, no declaration on honour must be required. The obligation to submit a declaration on honour does not apply to entities implementing European Union funds in indirect management<sup>127</sup>.

## B) Documentary evidence

When specifically requested by the contracting authority and where this is necessary to ensure the proper conduct of the procedure, candidates and tenderers, the entity on whose capacity they intend to rely or subcontractors must provide:

- a) appropriate evidence that they are not in a situation of exclusion;
- b) information on natural or legal persons that are members of its administrative, management or supervisory body or that have powers of representation, decision or control and appropriate evidence that one or several of these persons are not in one of the exclusion situations listed in points c) to h);
- c) appropriate evidence that natural or legal persons that assume unlimited liability for the debts of that economic operator is not in a situation listed in points a) or b) of Section 2.6.10.1.1.

For procurement contracts with a value equal or greater than the international thresholds (services  $\geq$  EUR 300 000, supply  $\geq$  EUR 300 000, works  $\geq$  EUR 5 000 000), before the notification of potential award, tenderer(s) to which the contract is to be awarded (including consortium members) must supply evidence that they do not fall into the exclusion situations, unless such evidence has already been submitted earlier in the procedure.

In **restricted and open procedures**, these supporting documents will be requested from tenderers at evaluation stage and verified by the contracting authority before the award of the contract to the potential successful tenderer(s). In addition, the tenderers and candidates must certify that the situation has not altered since the date of issue of the evidence.

The contracting authority must waive the obligation to submit documentary evidence: (i) if it can access it on a national database free of charge; or, (ii) if such evidence has already been submitted to it for the purposes of another procedure and provided that any submitted documents are still valid and that the time that has elapsed since the issuing date of the documents does not exceed one year;

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<sup>125</sup> According to this provision, ‘beneficial owner’ means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted.

<sup>126</sup> Standard electronic declaration for exclusion and selection criteria created under Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance (OJ L 94, 28.3.2014, p. 65).

<sup>127</sup> This refers in particular to pillar assessed entities and entities designated by third countries.

(iii) if it recognises that there is a material impossibility to provide such evidence. The obligation to submit documentary evidence does not apply to entrusted entities.

For **grants**, no documentary evidence has to be submitted unless specifically requested by the contracting authority.

As satisfactory evidence that the candidate or tenderer is not in one of the situations described in:

- a), c), d), f), g) or h) of Section 2.6.10.1.1. (exclusion criteria from participation in procurement procedures), the contracting authority may accept a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of establishment showing that the requirements are satisfied;
- a) or b) of Section 2.6.10.1.1. (exclusion criteria from participation in procurement procedures), the contracting authority will accept a recent certificate issued by the competent authority of the State concerned. Where the certificate is not issued in the country concerned it may be replaced by a sworn/solemn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in the country of establishment.

The documents may be originals or copies. However, originals must be made available to the contracting authority upon request. The date of issuing of the documents provided must be no earlier than one year before the date of submission of the tender. If the supporting documents are not written in one of the official languages of the European Union, a translation into the language of the procedure must be attached. Where the documents are in an official language of the European Union other than the one of the procedure, they have to be accepted. However, it is strongly recommended that a translation into the language of the procedure be provided, in order to facilitate the evaluation of the documents.

### **C) Check of the EDES database**

During the evaluation procedure and at the latest before taking the award decision, the contracting authority must check whether any of the entities involved (i.e. candidates or tenderers, including all consortium members, indicated subcontractors and capacity providing entities) have been recorded in EDES. Where the contracting authority limits the number of candidates invited to submit a tender, e.g. in a restricted procedure, such checks must be conducted before the candidates are selected. For restricted procedures in calls for proposals, such checks must be conducted once applicants are provisionally selected or placed in a reserve list, during the final eligibility checks before the award of the contract.

The EDES is a database, containing restricted information on cases of early detection, exclusion and/or financial penalties. The EDES replaced as from 1<sup>st</sup> of January 2016 the early warning system and the central exclusion database.

The purpose of this system is to facilitate:

- the early detection of risks threatening the European Union's financial interests following information provided by OLAF, authorising officers of the Commission, European offices, executive agencies, other Union institutions, a body or person entrusted with implementation of Common Foreign and Security Policy actions or entities implementing the EU budget under indirect and shared management;
- the exclusion of economic operators which are in one of the situations of exclusion listed in

point 2.6.10.1.1.;

- the imposition of a financial penalty on an economic operator in accordance with Article 138 FR.

and to encourage the contracting authorities in these various situations to take the appropriate measures provided in the Union legislation to protect the financial interest of the European Union.

The contracting authority cannot conclude a contract with entities that are recorded in EDES at exclusion level. If any of the parties involved are recorded at the early detection level, the signature of the contract might be conditioned upon measures to strengthen monitoring to be applied during the execution of the contract and payments.

The contracting authority must notify the third party in question of its registration in the EDES database. For early detection cases, such notification is deferrable in exceptional circumstances, where there are compelling legitimate grounds to preserve the confidentiality of an investigation or of national judicial proceedings, until such compelling legitimate grounds to preserve the confidentiality cease to exist.

#### **2.6.10.1.4. Consequences of an exclusion/rejection situation in an award procedure**

When the contracting authority takes the decision to reject a candidate/tenderer or applicant from an award procedure because it is in an exclusion situation established according to Section 2.6.10.1.1. or because it is in another situation of rejection (Section 2.6.10.1.2., points b) and c)), it must notify it to the economic operator. Depending on the reason of rejection, the notification will specify that the request to participate/tender/application is unsuitable (for the situations under Section 2.6.10.1.2., point a)) or irregular (for the situations under Section 2.6.10.1.2., points b) and c)).

If a subcontractor or an entity on whose capacity the candidate or tenderer intends to rely is in an exclusion situation, the contracting authority must require their replacement.

#### **2.6.10.1.5. Consequences of fraud and irregularities in an award procedure**

Where the award procedure has been subject to irregularities or fraud, the authorising officer responsible must suspend the procedure and may take any necessary measures, including the cancellation of the procedure. The authorising officer responsible must inform the OLAF immediately of suspected cases of fraud<sup>128</sup>.

Where, after the award, the award procedure proves to have been subject to irregularities or fraud, the authorising officer responsible may:

- (a) refuse to sign the legal commitment;
- (b) suspend payments;
- (c) suspend the implementation of the legal commitment;

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<sup>128</sup> Article 131(1) FR.

(d) where appropriate, terminate the legal commitment in whole or with regard to one or more recipients<sup>129</sup>.

## 2.6.11. Selection and award criteria

### 2.6.11.1. General principles

The contracting authorities must draw up clear and non-discriminatory selection criteria for the purpose of assessing that the candidate/tenderer has sufficient financial, economic, technical and professional capacity to implement the tasks of the contract. The chosen criteria must be proportionate and may not go beyond the scope of the contract.

For contracts divided into lots, different minimum levels of capacity can be set for each lot. Additional levels of capacity can be added for the case several lots are awarded to the same tenderer.

It is important to seek to enhance the quality of short-listed organisations/consortia rather than merely seeking to shortlist organisations/consortia that have the biggest project references, e.g. reference to the number of projects presented above the value of the contract being procured should be avoided. Rather, the pertinence of experience should be advantaged, e.g. in the technical area and/or in similar environments.

For the international restricted procedure the contracting authority must shortlist a maximum of eight candidates (six in case of an international restricted procedure for works). The contracting authority will also publish criteria in addition to the financial, professional and technical ones. These additional criteria will only be used to reduce the shortlist to eight candidates (six for works). These criteria must therefore not be drafted in such a way that they would reduce competition too much<sup>130</sup>. For example, a criterion such as ‘experience in the country’ is too restrictive and should be avoided.

The contract notice, additional information about the contract notice or the instructions to tenderers templates include examples of criteria to be used in the procedure. Below, examples of criteria **not** to be used:

- requesting disproportionate annual turnover, number of personnel, number of previous projects, etc. as regards the amount of the contract;
- using imprecise terms such as ‘sufficient’, ‘major’, ‘relevant’ as they are too ambiguous.
- requesting a percentage of the personnel working in specific fields as this may be discriminatory for large companies;
- requesting technical experience relating to EU projects only, as this may in general be regarded as discriminatory;
- requesting prior experience in the partner country, unless specific justification is provided, as this could in general be regarded as discriminatory;

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<sup>129</sup> Article 131(2)(d) FR.

<sup>130</sup> Article 38(3) of Annex I to the FR.

- requesting technical experience in an overly prescriptive manner that effectively restricts the number of eligible candidates to one or a few firms.

When deciding on the appropriate criteria, contracting authorities must consider whether compliance can be proved and should, for instance, consider what type of documentary evidence the tenderer may submit as proof.

The selection criteria must be specified in the contract notice/additional information about the contract notice/instructions to tenderers and applied by the contracting authority without modification unless a corrigendum has been published.

The contract notice must clarify how each selection criterion will be assessed in the case of application submitted by a consortium. For instance, some criteria aiming at assessing the financial and economic capacity might not be checked on the basis of aggregate values but are rather to be met by each member of a consortium.

The candidates/tenderers are asked to provide a declaration on honour and to indicate in the application form or tender submission form their economic, financial, professional and technical capacity in accordance with the selection criteria laid down in the tender documents. Previous experience that would have led to breach of contract and termination by a contracting authority must not be used as reference. This is also applicable concerning the previous experience of experts required under a fee-based service contract.

For service award procedures, the documentary evidence of the financial and economic capacity and the technical and professional capacity according to the selection criteria specified in the additional information about the contract notice (annex A5f) has to be provided at evaluation stage, upon request of the contracting authority.

For supply procedures, only successful tenderers have to supply documentary evidence supporting the information submitted in the tender before the award of the contract.

For works procedures however, the documentary evidence has to be submitted in accordance with the tender dossier.

When in doubt about the authenticity of the documents provided, the contracting authority should carry out additional checks and request additional documents.

For contracts with a value less than the international thresholds (services < EUR 300 000, supplies < EUR 300 000 and works < EUR 5 000 000), the contracting authority may, depending on its assessment of risks, decide not to require evidence of the legal, regulatory, financial, economic, technical and professional capacity of economic operators.

Where the contracting authority decides not to require evidence of the legal, regulatory, financial, economic, technical and professional capacity of economic operators, **no pre-financing must be made** except in duly justified cases.

#### Capacity-providing entities and subcontractors

A candidate/tenderer may, where appropriate and for a particular contract, rely on the capacity of other entities, regardless of the legal nature of the links that it has with them, to fulfil one or more selection criteria.

With regard to technical and professional criteria, an economic operator may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required.

Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial capacity, the economic operator and those entities are jointly liable for the performance of the contract. If the candidate/tenderer relies on other entities it must prove to the contracting authority that it will have the necessary resources available to implement the contract, by producing a commitment by those entities to place such resources at its disposal. Such entities, for instance the parent company of the economic operator, must respect the same rules of eligibility, and notably that of nationality, that apply to the economic operator relying on them.

The contracting authority must verify whether the entities on whose capacity the economic operator intends to rely and the envisaged subcontractors, fulfil the relevant selection criteria. The data for these entities as concerns the relevant selection criterion must be included in the tender in a separate document. Proof of the capacity will also have to be furnished when requested by the contracting authority.

The contracting authority must require that the economic operator replace an entity or subcontractor who does not meet a relevant selection criterion.

The contracting authority may request information from the tenderer on any part of the contract that the tenderer intends to subcontract and on the identity of any subcontractors.

In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, the contracting authority may require that certain critical tasks be performed directly by the tenderer itself of, where the tender is submitted by a group of economic operators, a participant in the group.

The contracting authority must not demand that a group of economic operators have a legal form in order to submit a tender or request to participate, but the selected group may be required to adopt a legal form after it has been awarded the contract if this change is necessary for proper performance of the contract.

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

If the candidate/tenderer is unable to provide the evidence requested for some exceptional reason that the contracting authority finds to be justified, it may prove its capacity by any other means which the contracting authority considers appropriate (see also Section 2.9.3.).

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

### 2.6.11.2. Economic and financial capacity

- To ensure that economic operators possess the necessary economic and financial capacity to perform the contract, the contracting authority may require in particular that<sup>131</sup>:

- a. economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract;
- b. economic operators provide information on their annual accounts showing ratios between assets and liability;
- c. economic operators provide an appropriate level of professional risk indemnity insurance.

For the purposes of point (a), the minimum yearly turnover must not exceed two times the estimated annual contract value, except in duly justified cases linked to the nature of the purchase, which the contracting authority must explain in the procurement documents.

For the purposes of point (b), the contracting authority must explain the methods and criteria for such ratios in the procurement documents.

- In the case of dynamic purchasing systems, the maximum yearly turnover must be calculated on the basis of the expected maximum size of specific contracts to be awarded under that system.

The contracting authority must define in the procurement documents the evidence to be provided by an economic operator to demonstrate its economic and financial capacity. It may request in particular one or more of the following documents:

- a. appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
- b. financial statements or their extracts for a period equal to or less than the last 3 years for which accounts have been closed;
- c. a statement of the economic operator's overall turnover and, where appropriate, turnover in the area covered by the contract for a maximum of the last 3 financial years available.

If, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, it may prove its economic and financial capacity by any other document that the contracting authority considers appropriate.

### 2.6.11.3. Technical and professional capacity

The contracting authority must define in the procurement documents the evidence to be provided by an economic operator to demonstrate its technical and professional capacity<sup>132</sup>. It may request one or more of the following documents:

- a. for works, supplies requiring siting or installation operations or services, the educational and professional qualifications, skills, experience and expertise of the persons responsible for performance;
- b. a list of the following, with a description providing sufficient details on their relevance to the

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<sup>131</sup> Article 19 of Annex I to the FR.

<sup>132</sup> Article 20 of Annex I to the FR.

selection criteria:

1. of the principal services provided and supplies delivered in the past 3 years, with the nature of the services, the sums, dates and clients, public or private, accompanied upon request by statements issued by the clients; where necessary in order to ensure an adequate level of competition, the contracting authority may indicate that evidence of relevant supplies or services delivered or performed more than 3 years before will be taken into account;
2. of the works carried out in the last 5 years, accompanied by certificates of satisfactory execution for the most important works; where necessary in order to ensure an adequate level of competition, the contracting authority may indicate that evidence of relevant works delivered or performed more than 5 years before will be taken into account;
- c. a statement of the technical equipment, tools or plant available to the economic operator for performing a service or works contract;
- d. a description of the technical facilities and means available to the economic operator to for ensuring quality, and a description of available study and research facilities;
- e. a reference to the technicians or technical bodies available to the economic operator, whether or not belonging directly to it, especially those responsible for quality control;
- f. in respect of supplies: samples, descriptions or authentic photographs or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products clearly identified by references to technical specifications or standards;
- g. for works or services, a statement of the average annual manpower and the number of managerial personnel of the economic operator for the last 3 years;
- h. an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract;
- i. an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.

Candidates/tenderers are allowed to refer either to projects completed within the reference period (although started earlier) or to projects not yet completed. Only the portion satisfactorily completed during the reference period (although started earlier) will be taken into consideration. This portion will have to be supported by documentary evidence (statement or certificate from the entity that awarded the contract or proof of final payment) also detailing its value.

If a candidate/tenderer has implemented the project in a consortium, the percentage that the candidate/tenderer has completed must be clear from the documentary evidence, together with a description of the nature of the services, supplies or works provided if the selection criteria relating to the pertinence of the experience have been used.

Where the supplies or services 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 economic operator is established, subject to that body's agreement. Such checks must concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.



Where the contracting authority requires the provision of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, including on accessibility for disabled persons, it must refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. The contracting authority must also accept other evidence of equivalent quality assurance measures from an economic operator that has demonstrably no access to such certificates or has no possibility of obtaining such certificates within the relevant time-limits, for reasons that are not attributable to that economic operator and provided that the economic operator proves that the proposed quality assurance measures comply with the required quality assurance standards.

Where the contracting authority requires the provision of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, it must refer to the European Union Eco-Management and Audit Scheme or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC<sup>133</sup> or other environmental management standards based on the relevant European Union or international standards by accredited bodies. Where an economic operator had demonstrably no access to such certificates, or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority must also accept other evidence of environmental management measures, provided that the economic operator proves that these measures are equivalent to those required under the applicable environmental management system or standard.

A contracting authority may conclude that an economic operator does not possess the required professional capacity to perform the contract to an appropriate quality standard where the contracting authority has established that the economic operator has conflicting interests that may negatively affect its performance.

#### **2.6.11.4. Award criteria**

Contracts are awarded on the basis of the most economically advantageous tender established for the call for tender in one of the following two ways<sup>134</sup>:

- under the best price-quality ratio, in which case the contracting authority takes into account the price and other quality criteria linked to the subject matter of the contract, and apply a weighting formula;

Quality criteria may include elements such as technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics, production, provision and trading process and any other specific process at any stage of their life cycle, organisation of the -personnel assigned to performing the contract, after-sales service, technical assistance or delivery conditions such as delivery date, delivery process and delivery period or period of completion.

The contracting authority may lay down minimum levels of quality. Tenders below those levels of quality must be rejected.

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<sup>133</sup> OJ L 342, 22.12.2009, p. 1.

<sup>134</sup> Article 21 of Annex I to the FR.

- under the lowest price, provided the tender satisfies the minimum requirements laid down.

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

**Abnormally low tenders:** see Sections 3.4.4. for services, 4.3.9.6. for supplies and 5.3.9.6 for works.

### 2.6.11.5. Distinction between selection and award criteria

In the tender procedure, a firm distinction between selection and award criteria should be made, in particular when preparing the tender specifications and when tenders are evaluated in order to avoid any legal uncertainty with regard to the conditions of the award of the contract.

Confusing selection and award criteria constitutes a procedural defect that may result in the annulment of the procedure in case of dispute. Indeed, as confirmed by the case law<sup>135</sup>, this confusion could favour certain economic operators at the detriment of others regardless of the quality of their technical offer.

At the stage of evaluation of award criteria, the contracting authority can no longer review the capacity or ability of the tenderers as already assessed during the selection phase. Only the technical and financial offers must be evaluated at this stage by reference to the award criteria which are to be directly related to the tender specifications in order to assess the intrinsic quality of the offer and which may not relate to the capacity of the tenderer.

**In this regard, particular attention should be paid when defining award criteria for key experts in order to avoid overlapping and double evaluation with the requirements related to personnel (professional capacity) in the selection criteria.**

### 2.6.12. Procedure with a suspensive clause

In duly justified cases and via a prior approval, tender or grant award procedures may be published with a suspensive clause in the two following cases:

- a) before a financing decision is adopted or
- b) before a financing agreement between the European Commission and the partner country is signed.

#### **PROGRAMMES FUNDED BY THE GENERAL BUDGET OF THE EU**

Suspensive clauses are rarely used because the EU financial rules generally require the adoption of a financing decision by the European Commission (or, where relevant, conclusion of a financing agreement) before a call for tenders or proposals is launched. However, exceptional circumstances may arise that give grounds for departing from the usual decision-

<sup>135</sup> Judgment of the Court (Fourth Chamber) of 20 September 1988, *Gebroeders Beentjes BV v State of the Netherlands*, C-31/87, ECLI:EU:C:1988:422, paragraphs 15-16; Judgment of the Court (Sixth Chamber) of 19 June 2003, *Gesellschaft für Abfallentsorgungs-Technik GmbH (GAT) v Österreichische Autobahnen und Schnellstraßen AG (ÖSAG)*, C-315/01, ECLI:EU:C:2003:360, paragraphs 65-67; Judgment of the Court (First Chamber) of 24 January 2008, *Emm. G. Lianakis AE, Sima Anonymi Techniki Etaireia Meleton kai Epivlepseon and Nikolaos Vlachopoulos v Dimos Alexandroupolis and Others*, C-532/06, ECLI:EU:C:2008:40, paragraphs 30-32; Judgment of the General Court (Eighth Chamber) of 8 December 2011, *Evropaïki Dynamiki v European Commission*, T-39/08, ECLI:EU:T:2011:721, paragraphs 21-24 and 40-42.

making process. As a rule, circumstances justifying the use of a suspensive clause are outside the European Commission's control. Note that:

- the use of the suspensive clause after the financing decision is adopted but before the financing agreement is signed may be considered in most cases as being outside the European Commission's control, as the entry into force of such agreement depends on the will of a third party (i.e. the partner country);
- the use of the suspensive clause before a financing decision is adopted requires good reasons why there are objective circumstances leading to the use of such clause and it is impossible to wait for the decision to be adopted. These reasons must be duly reflected in the request for prior approval. There are some cases where a suspensive clause is justified in order to make efficient use of procedures, e.g. by having the option of launching a call for proposals covering two budgetary years.

#### **PROGRAMMES FUNDED BY THE EDF**

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

The actual award and signing of contracts following a call/a negotiated procedure launched with a suspensive clause depends on the adoption of the financing decision and/or, where applicable, the conclusion of the financing agreement.

Because of its implications, the contract notice or the guidelines for grant applicants/invitation to negotiate must explicitly state that there is a suspensive clause.

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

### **2.6.13. Cancellation of procurement procedures**

According to Article 171 FR the contracting authority may, before the contract is signed, cancel the procedure without the candidates or tenderers being entitled to claim any compensation. If the procedure is divided into lots, single lots may be cancelled.

Cancellation may occur, for example, if:

- the tender procedure has been unsuccessful, i.e. no suitable, qualitatively or financially acceptable tender has been received or there is no valid response at all;
- the economic or technical data of the project have fundamentally changed;
- exceptional circumstances or a force majeure render normal performance of the contract impossible;
- all technically acceptable tenders exceed the financial resources available;
- there have been breach of obligations, irregularities or frauds in the procedure, in particular where these have prevented fair competition;
- the award is not in compliance with sound financial management i.e. does not obey the principles of economy, efficiency and effectiveness (e.g. the price proposed by the tenderer to whom the contract is to be awarded bears no relation to the market price).

If a procurement procedure is cancelled, all tenderers having submitted a request to participate or a tender must be notified in writing and as soon as possible of the reasons for the cancellation. If a contract notice was published, a cancellation notice must be published. See annex A11e for additional guidance.

After cancelling a tender procedure, the contracting authority may decide:

- to launch a new tender procedure;
- to re-launch the tender procedure using the same reference as the original call.
- to open negotiations with one or more tenderers who participated in the tender procedure and who meet the selection criteria,<sup>136</sup> provided that the original terms of the contract have not been substantially altered (this option is not available if the procedure was cancelled because of irregularities which might have prevented fair competition);
- not to award the contract.

Whatever the case, the final decision is taken by the contracting authority (with the prior agreement of the European Commission for 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 contract notice or the issuance of an invitation to negotiate does not commit the contracting authority to implement the programme or project announced.

#### **DIRECT MANAGEMENT**

The responsibility for cancelling a tender procedure lies with the competent authority of the European Commission in compliance with internal procedures.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The responsibility for cancelling a tender procedure lies with the contracting authority, with the prior authorisation of the European Commission.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

The responsibility for cancelling a tender lies with the contracting authority. No prior authorisation from the European Commission is required.

## **2.7. Contract value**

To the extent possible and for the purpose of simplification of the financial administration, small contracts should be avoided. Therefore, it should be avoided to split programmes unnecessarily into a series of small contracts.

## **2.8. Terms of reference and technical specifications**

Terms of reference (for service contracts) and technical specifications (for supply and works contracts) give instructions and guidance to contractors to submit a tender that responds to all

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<sup>136</sup> Hence the importance of carefully choosing the selection criteria, which must be clear and non-discriminatory, and may not go beyond the scope of the tasks or budget (see Section 2.8.1. for further details).

technical and administrative requirements, and later to serve as the contractor's mandate during project implementation. The terms of reference or technical specifications are included in the tender dossier and will become an annex to the resulting contract.

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. Greater effort during project preparation will save time and money at later stages of the project cycle.

The terms of reference and the technical specifications must allow equal access for candidates and tenderers and must not have the effect of creating unjustified obstacles to competitive tendering. They must be clear and non-discriminatory, and proportionate to the objective and/or the budget for the project. They specify what is required of the service, supply or work to be purchased. They also specify the minimum requirements whose non-compliance entails the rejection of the tender. The specifications include:

- a) quality levels;
- b) environmental and climate performance (e.g. care is taken to ensure that specifications take into consideration the latest developments on the matter);
- c) for purchases intended for use by natural persons, design for all users requirements (accessibility for disabled people, environmental issues, etc. in accordance with the latest developments), excepted in duly justified cases;
- d) levels of and procedures for conformity assessment, including environmental aspects;
- e) performance or use of the supply;
- f) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling (including environmental labelling, e.g. on energy consumption), production processes and methods.

Make the terms of reference and technical specifications clear and concise. Technical specifications may not point to particular brands and types, and they may not limit competition by being too specific.

The terms of reference or technical specifications are drafted by the contracting authority. Where the European Commission is the contracting authority, the standard practice is to consult and obtain the approval of the partner country and, where appropriate, of other parties involved, on the terms of reference or technical specifications, in order to strengthen both ownership and quality.

Given the technical complexity of many contracts, preparing 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 may 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 to avoid considerable effort being spent on re-designing the project during the inception period.

The general structure of terms of reference for services reflects 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 skeleton terms of reference that show the minimum details to be provided within each of these section headings.

For fee-based service contracts, the sections in the terms of reference include the allocated budget headings. They consist of the fees, which are the only part of the budget that is subject to competition (except if a component with global price is planned, which is also subject to competition). The services are provided on the basis of a fixed daily fee rate for the days the experts work under the contract. The budget also contains a fixed provision for incidental expenditure that covers all current expenses incurred by the contractor that are not included in the fees. The section on incidental expenditure must specify the type of expenditure that can be included in the expenditure verification of the contract. The terms of reference also make provision for expenditure verification. The budgets for incidental expenditure and expenditure verification are fixed by the contracting authority. They must meet the requirements of the terms of reference and must be carefully estimated. Unless exceptionally specified in the terms of reference, the use of the allocated provision for incidental expenditures does not require a prior authorisation by the contracting authority.

For global price service contracts, the terms of reference should clearly indicate output(s) expected. 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. Therefore, terms of reference should describe precisely the output(s) expected. Please note that global price contracts do not entail any reimbursable expenses/incidental expenditure and are not subject to an expenditure verification.

The terms of reference and the technical specifications may not be disclosed to any third party and must be kept confidential until they are made available to the tenderers simultaneously as part of the procedure.

## **2.9. The evaluation committee**

These instructions apply to all procedures governed by the PRAG including, when the value of the specific contract is equal to or above EUR 300 000 , the evaluation of offers submitted in reply to requests for services under framework contracts with reopening of competition managed by DG INTPA<sup>137</sup> and under framework contracts managed by other DGs whenever DG INTPA is using them.

### **2.9.1. Appointment and composition**

Requests to participate/tenders are opened and evaluated by an evaluation committee formally and promptly appointed by the contracting authority comprising a non-voting chairperson, a non-voting secretary and an odd number of voting members (the evaluators)<sup>138</sup>. In case of eSubmission there will be an opening and evaluation committee for the tender opening sessions and evaluation

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<sup>137</sup> The framework contracts currently managed by DG INTPA are SIEA 2018, AUDIT 2018, EVA 2020 and EVENTS 2020, however this instruction is to be followed for any other framework contract that DG INTPA would conclude after the release of this version of the PRAG.

<sup>138</sup> Article 150 FR.

sessions. It is recommended that the opening committee is made up of the same members as the evaluation committee.

Although Art 150 FR exempts Delegations from ensuring a hierarchical separation between members of evaluation committees, the hierarchical separation amongst voting members should in principle be applied whenever possible. In order to ensure an appropriate segregation of duties, cumulating the role of authorising officer with that of any member of the evaluation committee must be avoided. If appropriate, on a case-by-case basis, the chairperson may also act as secretary, in particular during periods of limited resources in terms of staff and internal expertise.

There must be a minimum of three evaluators for all procedures except for calls for tenders for works above EUR 5 000 000, which require a minimum of five of them.

Evaluators must be provided with detailed information regarding the planned timetable and the workload that the evaluation implies.

The contracting authority must make sure that evaluators are available during the scheduled evaluation period. The contracting authority will appoint a replacement evaluator for each procedure to prevent delays in case of unavailability.

Every member must have reasonable command of the language in which the tenders are submitted. Evaluators must have the technical and administrative ability to give an informed opinion on the tenders.

Although observers are not part of the evaluation committee, they may attend the sessions of the committee if appointed by the responsible authorising officer. They shall only intervene in the debates at the request of the evaluators or the chairperson.

#### **DIRECT MANAGEMENT**

Members of the evaluation committee (i.e. the chairperson, the secretary and the evaluators) are appointed on a personal basis by the relevant European Commission services that also approve any observer. In eSubmission and only for procurement procedures, there are two types of committees: opening and evaluation committee. It is recommended that for each lot, the composition of both committees is the same. The opening and evaluation committees must be appointed in PPMT before the start of the opening session and evaluation of requests to participate/tenders.

For procurement procedures, a representative of the partner country may participate as appropriate, either as an evaluator or as an observer.

In grant procedures, a representative of the partner country may participate as an observer, or in the case of EDF, as an evaluator.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The members of the evaluation committee (i.e. the chairperson, the secretary and the evaluators) are appointed on a personal basis by the contracting authority and the appointments are submitted in due time to the European Commission in order to get its approval, together with the CVs of those members who are not staff of the Contracting Authority. If the European Commission does not object within 5 working days, the committee is deemed to be approved. The European Commission must be invited to appoint an observer and is encouraged to attend all or part of the

meetings. Independent experts recruited under service contracts may only attend as observers. Attendance by other observers requires prior authorisation by the European Commission.

#### **INDIRECT MANAGEMENT WITH EX POST CONTROLS**

The members of the evaluation committee (i.e. the chairperson, the secretary and the evaluators) are appointed on a personal basis by the relevant services, which also approve any observers. Independent experts recruited under service contracts may only attend as observers.

Evaluation committee members must attend all meetings. Any absence must be recorded and explained in the evaluation report. The only exception is the opening session meeting in case of eSubmission, whereby the technical opening can be done by the chair and secretary on behalf of the opening committee.

All evaluators have equal voting rights.

An evaluation committee must be established for all procurement procedures, with the exception of the single tender one (less than or equal to EUR 20 000) and the cases of negotiated procedure mentioned under Section 2.6.8. However, in case of a negotiated procedure using eSubmission, it is recommended to appoint an evaluation committee to allow the evaluation committee members to access the offers.

For grants procedures, see Section 6.5.7. and Section 6.4.2.

For consultation procedures under a framework contract, the guidelines of that specific framework contract should be followed. In case no such guidelines are set, the present rules and Section 3.5.1. apply.

### **2.9.2. Impartiality and confidentiality**

All members of the evaluation committee and any observers must sign a declaration of impartiality and confidentiality (see Annex A4) prior to carrying out any tasks related to the evaluation. Any evaluation committee member or observer who has or might have an actual or potential conflict of interest with any tenderer or applicant must declare it and immediately withdraw from the evaluation committee.

There is a conflict of interests where the impartial and objective exercise of the functions of a financial actor or other person is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest (see in detail Section 2.5.4.1.). Should the conflict of interests be proven, the member or observer will be excluded from participating further in any capacity in the evaluation meetings.

Acts likely to be affected by a conflict of interest may, inter alia, take one of the following forms:

- (a) granting oneself or others unjustified direct or indirect advantages;
- (b) refusing to grant a beneficiary the rights or advantages to which that beneficiary is entitled;
- (c) committing undue or wrongful acts or failing to carry out acts that are mandatory.



A conflict of interest must be presumed to exist if an applicant, candidate or tenderer is a member of staff covered by the EU Staff Regulations, unless her/his participation in the procedure has been authorised in advance by his superior.

The chairperson of the evaluation committee decides whether the evaluation process must be restarted. That decision must be recorded and reasons given in the evaluation report.

During the grant award procedure or during the procurement procedure, all contacts between the contracting authority and candidates, applicants or tenderers must be transparent and ensure equal treatment. Those contacts must not lead to any amendment to the conditions of the contract or the terms of the original tender or call for proposal.

No information about the examination, clarification, or evaluation of tenders, or proposals, or decisions about the award of a contract, may be disclosed before the evaluation report is approved by the contracting authority (and by the European Commission in indirect *ex ante* management).

Any attempt by a tenderer, candidate or applicant to influence the process in any way (whether by making contact with members of the evaluation committee or otherwise) will result in the immediate exclusion of its tender or proposal from further consideration and might lead to the exclusion from future award procedures according to Section 2.6.10.1.1.

For supplies and works tenders, apart from the tender opening session, which is public, the proceedings of the evaluation committee are conducted *in camera* and are confidential. For service tenders and calls for proposals, the proceedings of the evaluation committee, from the opening of tenders/proposals to the conclusion of the work of the evaluation committee, are conducted *in camera* and are confidential.

In case of electronic opening through MyWorkplace and in duly justified cases<sup>139</sup>, proceedings can be done using videoconference systems. The system to be used must ensure the confidentiality of the communication<sup>140</sup>. Any electronic transfer of information needed under this modality must also guarantee its confidentiality<sup>141</sup>.

If its law conflicts with the confidentiality required, then the contracting authority must obtain prior authorisation from the European Commission before disclosing any information.

In order to keep the proceedings confidential, attendance at evaluation committee meetings is strictly limited to the committee members and to any authorised observer (including assessors in the case of call for proposals<sup>142</sup>).

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

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<sup>139</sup> For instance when the chair/secretary/voting members/assessors/observers are in another country.

<sup>140</sup> The system to be used has to support encryption and this option has to be enabled. It also has to support protocol H.323 and/or SIP.

<sup>141</sup> Encryption must be used (using S/MIME V3 standard or equivalent).

<sup>142</sup> See Section 6.5.7.2.

### 2.9.3. Responsibilities of evaluation committee members

The chairperson is responsible for coordinating the evaluation process in accordance with the procedures in 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 evaluation committee is responsible for carrying out all administrative tasks connected with the evaluation procedure. These 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;
- recording attendance at meetings and compiling the evaluation reports and their supporting annexes.

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

Where a participant fails to submit evidence or to make statements, the evaluation committee or, where appropriate, the authorising officer responsible shall, except in duly justified cases, ask the participant to provide the missing information or to clarify supporting documents, within a reasonable period of time. Such information, clarification or confirmation shall not substantially change application documents.

If an applicant, who was short-listed solely by relying on **capacity providing entities**, submits an offer where the organisation and methodology does not include a written commitment proving that these entities will, depending on the case, perform the work or services for which their capacities are required, and/or will be jointly liable for the performance of the contract, the evaluation committee shall ask the applicant to submit the requested evidence within a reasonable period of time. In case the applicant fails to do so, the evaluation committee shall not evaluate further the technical offer and shall reject it on those grounds.

If a tender or proposal infringes the formal requirements, the evaluation committee may use its discretion to decide whether it will still be considered during the rest of the evaluation process, while ensuring equal treatment of tenderers and applicants and upholding the principle of proportionality. Whatever the evaluation committee decides, this must be fully recorded and reasons given in the evaluation report.

Tenders or proposals should not be rejected in the following cases:

- If they are submitted in fewer than the number of copies required.
- If they are submitted in the correct format and provide the requisite information, but the document is organised incorrectly, e.g. information is provided in Section X of the form when it should have been provided in Section Y.
- If they have not been signed or contain a scanned signature (the signature can be requested later — but if it is not obtained or if the original document provided later is not exactly the same as the one received earlier, the tender must be rejected). If a tender guarantee is required, the tender must always contain an original of the tender guarantee. If only a copy of the tender guarantee is provided, the offer must be rejected.

- If candidates, applicants or tenderers can demonstrate that a required document is not available (e.g. under national law, duplicates of a given lost document cannot be obtained from the issuing administration), provided that an acceptable alternative is obtained (e.g. a declaration by the said administration that the document for the candidate, applicant or tenderer is still valid but no duplicate can be issued).
- In a service contract award procedure, tenderers who have not submitted all the documentary evidence regarding the exclusion or the selection criteria together with the tender. The necessary supporting documentation may be requested from the successful tenderer giving a reasonable time-limit.
- If information is made available to the evaluation committee that a key expert in a service tender procedure is no longer available. Instead, the evaluation committee should proceed with the evaluation of the original tender and the awarded tenderer will be given a chance to replace the key expert, see Section 3.4.12.1.
- The tender was sent in a single envelope rather than the two envelopes required, provided the envelope is sealed (the confidentiality of the tender has been preserved).
- The tender combines the technical part and the financial part or has not used the requested standard presentation.

#### **2.9.4. Timetable**

The evaluation committee must be formed early enough to ensure that the members (and any observer appointed by the European Commission) are available in time to prepare and conduct the evaluation process. The tenders must be evaluated in time to allow the procedure to be completed within the validity period of the tenders. Extending the validity of tenders (see Section 2.9.5.) should be avoided. It is very important that all tenderers, whether successful or unsuccessful, receive information without delay.

Once the evaluation has been completed, the contracting authority is required to promptly approve the evaluation report and take the award decision in annex to the evaluation report. Any failure of the contracting authority to approve the evaluation report or to follow any recommendations and conclusions contained in the report must be subject to a detailed and reasoned written explanation.

#### **2.9.5. Period of validity of tenders**

Tenderers are bound by their tenders for the period specified in the letter of invitation to tender 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 and unsuccessful tenderers and conclude the contract. The period of validity of tenders is fixed at 90 days from the deadline for the submission of tenders.

In exceptional cases with prior approval by the competent authority of the European Commission, before this period of validity expires, the contracting authority may ask the tenderers for a one-off, specific extension, which may not exceed 40 days.

The successful tenderer is bound by the tender for a further 60 days, irrespective of the date of notification (i.e. 90 (+ 40) + 60 days) of the award of the contract. This period can only be further extended when the contracting authority has referred a potential case of exclusion to the EDES panel mentioned in Section 2.6.11. and for the duration of the procedure before the EDES panel.

The contracting authority may also request a one-off extension of the validity of the offers submitted in response to request for services of framework contracts, before the original validity period has expired. For request for services below EUR 300 000, the period of validity can be extended for maximum 14 days. For request for services equal or above EUR 300 000 EUR, the period of validity can be extended for maximum 30 days.

## 2.10. Award of the contract (see also special features for service contracts in Chapter 3)

### 2.10.1. Notifying the successful tenderer and unsuccessful tenderers

#### **DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

At the latest before taking the award decision, the contracting authority ensures:

- the submission of the original<sup>143</sup> signed Declaration on honour on exclusion criteria and selection criteria
- the submission and admissibility of the documentary evidence on compliance with exclusion and selection criteria
- that the pre-selected tenderer, including all consortium members, subcontractors and capacity providing entities, if any, are not recorded in the EDES Database as an excluded economic operator nor in the lists entities subject to EU restrictive measures (see Sections 2.6.10.1. and 2.4.).

Before the tenders expire but after the award decision is taken and approved by the European Commission, the contracting authority notifies the successful tenderer in writing that its tender has been accepted and draws attention to any obvious arithmetical errors which were corrected as part of the evaluation.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

In addition to the above, the European Commission must formally approve the award before the notification letter is sent.

Regardless of the type of procedure for works and supplies contracts (for specific provisions on service contracts see Section 3.4.12.1.), the contracting authority must notify the award to **the successful tenderer** (Annexes C8A and D8A) and, **at the same time**, inform in writing the unsuccessful tenderers using the appropriate template (Annexes C8B or D8B).

The contract with the successful tenderer can only be signed after the expiry of the **standstill period**. The duration of the standstill period is **10 calendar days when using electronic means or 15 days when using other means**, starting from the day following the date on which the notification to tenderers was sent.

<sup>143</sup> The requirement to submit an original Declaration on honour on exclusion criteria and selection criteria is only applicable in case of paper submission.

Notification of the award to the successful tenderer automatically extends the validity of the successful tender for 60 days. If a contract is awarded under a financing agreement that is not concluded before the tender procedure is launched, the contracting authority must not notify the successful tenderer before the financing agreement is concluded.

The notification submitted to successful and unsuccessful tenderers must follow the templates referred to above.

If unsuccessful tenderers (i) are not in a situation of exclusion and fulfil the selection criteria, and (ii) request further information in writing, they may be given any information that is not confidential<sup>144</sup> e.g. comments.

Article 170 FR lays down the content of the **duty to state reasons** pursuant to Article 296 TFEU, which the contracting authority has to discharge towards unsuccessful tenderers in a public procurement procedure.

The General Court ruled in this respect<sup>145</sup> that a contracting authority fulfils its obligation to state reasons if it confines itself first to informing unsuccessful tenderers immediately of the reasons for the non-award of the contract (the non-award decision) and then subsequently, if expressly requested to do so by an unsuccessful tenderer who has submitted an admissible tender, provides the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer.

The information should be provided within 15 days of receipt of a request in writing.

The contracting authority may suspend the signature of the contract for additional examination if this is justified by the requests or comments made by unsuccessful tenderers or by any other relevant information received during the standstill period.

In case of suspension, all tenderers have to be informed within **3 working days** following the suspension decision, which automatically extends the validity of their tender for the appropriate period.

In case the evaluation committee revises its initial award recommendation on the basis of examination of information received in the standstill period and decides to award the contract to another tenderer, a further standstill period has to be respected in the notification of the revised award decision.

It is not necessary to apply the standstill period in the following cases:

<sup>144</sup> Information is confidential where its disclosure would e.g. hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between those undertakings. See Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

<sup>145</sup> Judgment of the General Court (Seventh Chamber) of 15 September 2011, *CMB Maschinenbau & Handels GmbH and J. Christof GmbH v European Commission*, T-407/07, EU:T:2011:477, paragraph 160; Judgment of the General Court (Third Chamber) of 19 March 2010, *Evropaiki Dynamiki - Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission*, T-50/05, ECLI:EU:T:2010:101, paragraph 133ff.

- 1) when the value of the contract does not exceed the threshold of EUR 300 000 for service and supply contracts; and EUR 5 000 000 for works contracts;
- 2) in a procedure where only one tender has been submitted;
- 3) to specific contracts based on a framework contract;
- 4) to dynamic purchasing system;
- 5) in a simplified procedure under Section 2.6.4.

For grants, see Section 6.5.10.

## 2.10.2. Contract preparation and signature

When preparing the contract for signature, the contracting authority must proceed as follows:

- Prepare a contract dossier (if possible printed in double-sided copies) with the following structure:
  - a) explanatory note, using the format in Annex A6
  - b) copy of the financing decision/ agreement authorising the project
  - c) copy of the call (prior information notice (if applicable) and contract notice, additional information about the contract notice, tender opening record, evaluation report, guidelines for applicants, evaluation reports, list of grants to be awarded, and any other relevant information)
  - d) the originals of the proposed contract, which is based on the standard contract
  - e) special care should be taken to incorporate all minutes of pre-tender meetings, questions and answers, clarifications and corrigenda issued during the tender procedure, clarifications requests by the evaluation committee and replies received, and any minutes of negotiation meetings into the contract intended for signature. For grant contracts, include minutes of information sessions and published Q&A, if any.

The standard contract annexes including the general conditions, forms and other relevant documents must be reproduced unchanged in every contract. Only the special conditions (and the budget in the case of grants) need to be completed by the contracting authority.

### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The contracting authority sends the contract dossier to the delegation of the European Union for endorsement. The delegation signs all originals of the contract (and initials all pages of the special conditions and the budget) to endorse the EU financing and sends them back to the contracting authority. No endorsement by the delegation is required in certain cases referred to in the practical guide to procedures for programme estimates.

- Sign and date all originals of the contract and initial all pages of the special conditions and most relevant annexes including, for grants, the budget. In the case of grants, the contracts must be signed within 3 months from the date of notification of the evaluation results, save in exceptional cases, in particular for complex actions, calls using 2 budgetary years, calls for proposals launched in the context of facilities, multi-beneficiary contracts, or large number of proposals or where there have been delays attributable to the applicants.

- Send the signed originals of the contract to the successful tenderer/applicant, who must countersign them within 30 days of receipt.
- The tenderer or grant applicant keeps one original and returns the other(s) to the contracting authority together with any financial guarantee(s) required in the contract. If the successful tenderer/applicant fails to do this within the specified deadline or indicates at any stage that it is not willing or able to sign the contract, the tenderer/applicant cannot be awarded the contract. The contract preparation process must be restarted from step 1 with a new contract dossier prepared using the second-best tender (provided that that tender passed the technical threshold and is within the maximum budget available for the contract). In the case of grants, the contract will be offered to the highest-ranking applicant on the reserve list (see Section 6.5.10.2.).

#### **DIRECT MANAGEMENT**

On receipt of the signed original(s) from the successful tenderer/applicant, the contracting authority checks that it/they correspond(s) strictly to those sent originally.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS AND INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

On receipt of the signed originals from the successful tenderer/applicant, the contracting authority checks that they correspond strictly to those sent originally. One original is kept and the other is sent to the delegation of the European Union.

The contracting authority checks that the natural person who signs the contract for the successful legal entity has the power to represent that legal entity.

The contract takes effect on the date of the last signature. The contract cannot cover earlier services or costs or enter into force before that date, unless in duly substantiated exceptional cases (see Section 6.3.8.).

Contracting authorities must retain all documentation relating to the award and execution of the contract for a minimum period of 7 years after payment of the balance and up to the date of prescription of any dispute under the law governing the contract.

During and after this period, the contracting authorities will treat personal data in accordance with their privacy policy. The documentation referred to above must be made available for inspection by the European Commission, OLAF, the European Public Prosecutor's Office (EPPO) and the Court of Auditors.

### **2.10.3. Qualified electronic signature**

Qualified Electronic Signature (QES) is a standard that comes from the eIDAS Regulation (Regulation (EU) No 910/2014<sup>146</sup>) and is recognised as the digital equivalent to the handwritten (also known as 'blue-ink') signature in all EU Member States. QES can only be used by Authorising Officers who have obtained a qualified certificate for electronic signatures.

QES can be used as a solution for signing any document for which a handwritten signature is required. However, QES only applies to contracts managed outside OPSYS (since the digital

<sup>146</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

signatures embedded into OPSYS are equivalent to handwritten signatures) and where both the applicable law and the dispute settlement forum are in an EU Member State.

Currently, QES cannot apply to the following legal commitments:

- Financing Agreements with partner countries.

Moreover, the QES feature is currently not available for indirect management by partner countries.

European Commission staff in Delegations belong from an IT point of view to the EEAS domain. Currently, the EEAS is not yet covered by the DG DIGIT qualified certificates for electronic signatures. Therefore, European Commission staff in Delegations will only be able to apply QES once the DG DIGIT certificates have been extended to the EEAS domain.

## Signature process

Before applying QES, the other party needs to be contacted to be informed about the use of QES and inquired whether they can also use it. In the signature process, there are three options, which are described below:

### **Option 1: Both parties can sign with QES**

If both parties can sign electronically using QES, both parties will sign the same original. There will be no need to send paper documents by post or keep paper copies of the contract. The qualified electronic seal is automatically applied on all the documents registered in ARES.

Before sending the contract in pdf format to the contractor/beneficiary for signature, the European Commission, as the Contracting Authority, applies a qualified electronic seal on the pdf version of the contract. The European Commission electronic seal serves as evidence that an electronic document was issued by the Commission. This seal ensures the origin and integrity of the document. If someone tries to modify or compromise the integrity of a 'sealed' document, the seal will no longer be valid.

Before sending back the countersigned document to the Contracting Authority, it is recommended that the contractor/beneficiary check the signature and validity of the certificate. Once the contractor/beneficiary has checked the signature and validity of the certificate, the contractor/beneficiary can sign the document using QES and send it back to the European Commission via email.

Once the signed contract has been received, the European Commission checks if the content of the document is intact by verifying that the European Commission electronic seal has not been compromised and that the signature used is a valid QES.

### **Option 2 (hybrid): The Contracting Authority signs with QES, the contractor/beneficiary signs on paper**

The process to apply the QES on behalf of the European Commission is the same as in Option 1.

As in Option 1, it is recommended that the contractor/beneficiary check the signature and validity of the certificate. After applying the necessary checks, the contractor/beneficiary should print two or three copies of the contract, initial each page, provide a handwritten signature and send one or two original(s) back to the Contracting Authority by post. For this purpose, the Contracting Authority should provide the contractor/beneficiary with a postal address.



Once the Contracting Authority has received the signed original paper copy by post, the Contracting Authority verifies the signature and the initials on the original. Then the Contracting Authority scans the signed original, certifies the scan's conformity with the signed original and registers it in ARES. The new document must be linked to the previous ARES document containing the electronically signed version signed by the Contracting Authority.

The European Commission will keep the original signed document received by post, file and store it in the paper archives.

### **Option 3 (hybrid): The Contracting Authority signs on paper, the contractor/beneficiary signs with QES**

The European Commission, as the Contracting Authority, will print out the contract and provide the two or three originals with a handwritten signature. One of the signed originals will be sent to the contractor/beneficiary. The Contracting Authority will keep an original for archiving purposes.

The contractor/beneficiary scans the contract, signs it with QES and sends it back by email.

The Contracting Authority checks if the document received by email containing the counter-party's QES is intact and corresponds exactly to the signed original carrying the handwritten signature. The Contracting Authority also checks the validity of the QES from the contractor/beneficiary and registers the document in ARES. The new document must be linked to the previous ARES document containing the version signed by the Contracting Authority.

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

Publishing award notices is an important legal obligation to comply with the principle of transparency.

### **2.10.4.1. Procurement**

In the case of procurement, after having received the countersigned contract from the successful tenderer, the contracting authority fills in the appropriate award notice template and sends it for publication (see Annex A11e).

The European Commission publishes the results of the tender procedure in the Official Journal (where applicable), and on the F&T portal.

If the award notice is also published locally, the contracting authority must arrange local publication directly.

An award notice is published if the value of the contract is above international thresholds (services > EUR 300 000, supplies > EUR 300 000, works > EUR 5 000 000), unless the contract was declared secret (and the secrecy is still relevant at the time of the award), or where the performance of the contract must be accompanied by special security measures, or where the protection of the essential interests of the EU or the partner country so requires, and where the publication of the award notice is deemed not to be appropriate. Please note that in case of restricted procedures, the list of selected candidates has to be given in Section VI.3 of the award notice.

### 2.10.4.2. Grants

Grants awarded in direct management from EUR 15 000 or more are published in the Financial Transparency System (FTS) (as extracted from ABAC) and also on the website of DG International Partnerships or Funding and Tender opportunities website<sup>147</sup> (F&T portal) (as extracted from PROSPECT in case of call for proposals).

For grants contracts concluded in the framework of programme estimates, the relevant contracting authority shall prepare for publication a summary table based on the format in annex E11 to the practical guide ('Publication of awards') and i) publish it on its own Internet site and/or in any other appropriate media. If the relevant contracting authority does not publish on its own internet site, the EU Delegation should remind this obligation and if still not published, the EU Delegation should ii) immediately upload annex E11 in electronic form in Prospect (indirect management - publication only) and it is automatically sent for publication on the website of DG International Partnerships or Funding and Tender opportunities website (F&T portal).

Unsuccessful applicants should be informed without delay, and in any event no later than 15 calendar days after information has been sent to the successful applicants, in writing using the appropriate template (Annex E9).

They may receive, at their request, further information regarding the evaluation of their own proposal (any weakness, poor or insufficient description of the action, budget not matching the proposed activities, overall lack of consistency, etc.).

As a rule, all applicants should be notified the outcome of the evaluation of their applications within 6 months following the submission deadline of the full application.

## 2.11. Modifying contracts

For modifications of grant contracts, please refer also to Section 6.8.

For modifications of the composition of a consortium, please refer to Section 2.6.3.

Contracts may need to be modified if the circumstances of project implementation have changed since the contract was signed. However, the subject matter of the contract cannot be altered. Contracts can only be modified during their execution period. Any changes to the contract must be made officially by means of an administrative order or an addendum in accordance with the general conditions. Substantial changes to the contract must be made by means of an addendum. Such an addendum must be signed by the contracting parties (and, under an indirect *ex ante* management, approved and endorsed by the European Commission). The contractor may simply notify the contracting authority of changes of address, changes of bank account, and changes of auditor; this does not affect the contracting authority's right to oppose the contractor's/beneficiary's choice of bank account or auditor. The same applies to clerical and administrative changes (contact persons, addresses, other contact details) that affect the contracting authority. Please note that any such notification sent by the contracting authority must request an acknowledgment of receipt by the contractor.

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<sup>147</sup> With the next PROSPECT release, the publication tool will move from the [website of DG International Partnerships](#) to the [Funding & tender opportunities](#) (F&T Portal).

### 2.11.1. General principles

The following general principles must always be complied with:

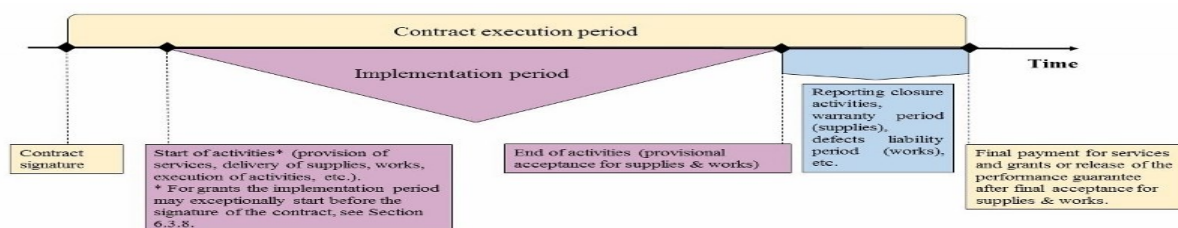
Contracts cannot be amended after the end of the execution period. Note that the execution period of the contract is generally longer than the implementation period. For definition of the execution period of the contract and implementation period, see Annex A1a.

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 (if any) under which the initial contract was financed.

A contract can be amended through an administrative order or an addendum under the conditions provided for in the contract itself. In exceptional circumstances, the amendment may have a retroactive effect provided the execution period has not expired but the contractor or grant beneficiary will only receive confirmation that the contracting authority has agreed to its request once the addendum has been duly signed or an administrative order has been issued. The contractor or grant beneficiary bears the financial risk of any costs incurred or goods and services provided before the addendum or administrative order has been issued, because the contracting authority has the right to refuse to sign the addendum or issue the order. Only once the addendum or order enters into force may the contractor or grant beneficiary claim payment for the costs, goods or services.

Examples:

- i. A contractor reports an urgent need to replace a key expert in March, which is accepted in an addendum in April. The amendment enters into force in April, acknowledging the change as from March. The contractor is only entitled to ask for payment for the work carried out in March *after* the entry into force of the amendment.
- ii. In a grant, the implementation period expired in May and the grant beneficiary requests a one-month extension in June. If the contracting authority accepts the justification, including for the late request, and issues an addendum in July, the implementation period will be extended by 1 month from May to June. Costs incurred from May to June would only become eligible after the entry into force of the addendum in July.



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

Following this logic, major changes, such as a fundamental change to the terms of reference or to the technical specifications, cannot be made by means of an addendum or an administrative order.

A request for changes to the contract must 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 that are not fully substantiated.

Modifications to contract amounts may entail changes for the financial guarantees linked to the contract.

The purpose of the addendum or administrative order must be closely connected with the nature of the project covered by the initial contract.

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

A contract, a framework contract or a specific contract under a framework contract can be modified by means of a simple addendum, with no need to undertake a negotiated procedure, in the following cases<sup>148</sup>, provided the modification does not alter the subject matter of the contract or framework contract:

a) additional works, supplies or services by the original contractor that have become necessary, if the following cumulative conditions are fulfilled:

- they were not included in the initial procurement (i.e. not similar to the ones which were provided for in the initial contract);
- changing contractor is not feasible for technical reasons (e.g. compatibility with existing equipment, services or installations);
- changing contractor would cause substantial duplication of costs for the contracting authority;
- any increase in price, including the net cumulative value of successive modifications, does not exceed 50% of the initial contract value.

b) modifications needed because of circumstances which a diligent contracting authority could not foresee, provided that any increase in price does not exceed 50% of the initial contract value;

c) where the value of modifications is below the following thresholds (also known as the double *de minimis* rule):

- (i) EUR 300 000 for service and supply contracts, and EUR 5 000 000 for works contracts; and
- (ii) 10% of the initial contract value for service, and supply contracts, and 15% of the initial contract value for works contracts; and
- (iii) the net cumulative value of several successive modifications does not exceed the thresholds under points i) and ii) above.

d) all other modifications which do not alter the minimum requirements of the initial procurement but the value of which is within the limits of c) (i) and (ii) above, unless such modification of value results from the strict application of the procurement documents or contractual provisions.

Cases under d) above concern minor changes which do not affect substantial aspects of the contract or the initial procurement procedure, or changes that are part of the economic life of the contractor.

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<sup>148</sup> Article 172(3) 2018 FR.

They entail administrative changes such as universal succession or concern administrative details (e.g. change of address, replacement of auditor).

Reference to the initial contract value does not take into account price revisions.

All kind of modifications listed above apply also to specific contracts under framework contracts. Moreover, cases under points a), b), c) and d) also apply to the framework contract itself.

Modifications consisting in the repetition of similar services or works, or in additional deliveries, require a negotiated procedure and must comply with some conditions (see Sections 3.3.5.1.e), 4.2.6.1.d), and 5.2.5.1.c) for contract-specific information about negotiated procedures and Sections 3.6., 4.7., and 5.7. for contract-specific information on changes to contracts).

### **2.11.2. . Preparing an addendum**

The contracting authority drafts an addendum as follows:

- 1) Use the templates for an addendum provided in Annex B16, Annex C12, Annex D11 and Annex E10.

All references in the proposed addendum to article numbers and/or annexes to be amended 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 (and any previous) addendum (see Annex B17, Annex C13, Annex D12 and Annex E3h7).

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

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

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

**DIRECT MANAGEMENT, INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

- 3) Sign and date all the originals of the addendum and initial all pages of the special conditions and most relevant annexes including, for grants, the budget.

**INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

- 3) Send the addendum dossier to the delegation of the European Union for endorsement (initialling all pages of the special conditions) to confirm the EU financing. No endorsement by the delegation is required in certain cases referred to in the practical guide to procedures for programme estimates.

- 4) Send the 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 possible financial guarantee required in the addendum.

**DIRECT MANAGEMENT**

- 4) On receipt of the signed originals from the contractor, the contracting authority checks that it/they correspond(s) strictly to those sent originally.

**INDIRECT MANAGEMENT WITH *EX POST* CONTROLS AND INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

- 5) On receipt of the signed originals from the contractor, the contracting authority checks that they correspond strictly to those sent originally. One original is kept and the other is sent to the delegation of the European Union.

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

- 6) Publish a notice for modification of contract in the Official Journal of the European Union and on F&T portal, when the addendum concerns the addition of activities that were not included in the original contract or have become necessary due to unforeseeable circumstances (i.e. cases of modification through simple addendum under points (a) and (b) of Section 2.11.1.). However, the publication of such notice is not requested when the value of the modification is lower than EUR 300 000 for service and supply contracts, or lower than EUR 5 000 000 for works contracts.

## 2.12. Legal remedies

### 2.12.1. Complaints to the contracting authority

Without prejudice to other remedies and, in particular, without altering the time-limits for bringing actions set out in paragraphs 2.12.3., where a candidate, tenderer or applicant believes she/he has been adversely affected by an error or irregularity allegedly committed as part of a selection or procurement procedure, or that the procedure was vitiated by any maladministration, she/he may file a complaint to the contracting authority.

Where the European Commission is the contracting authority, the complaint will be sent to the person who took the contested decision, who will endeavour to investigate the complaint and respond within 15 working days. If the candidate, tenderer or applicant is not satisfied with the answer received, she/he may refer to the relevant geographical director in Headquarters. The

complaint shall be substantiated and its sole object shall not be to obtain a second evaluation for no reason other than the complainant disagrees with the final award decision.

### 2.12.2. Complaints to the European Ombudsman

Without prejudice to other remedies and, in particular, without altering the deadlines laid down for the appeals set out in Section 2.12.3., any citizen of the European Union or any natural or legal person residing or having its registered office in a Member State has the right to complain to the Ombudsman for any instance of maladministration by the European Union institutions (Article 228 TFEU). Ombudsman inquiries do not affect time-limits for appeal in legal proceeding. More information may be found on the website <http://www.ombudsman.europa.eu/en/home.faces>.

### 2.12.3. Ordinary actions - litigation

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

Where the European Commission is the contracting authority, the action must be launched in accordance with the rules set out by the TFEU<sup>149</sup>.

Where the European Commission is not the contracting authority, the action must be launched in accordance with the conditions and deadlines fixed by the national legislation of the contracting authority.

The Court of Justice of the European Union has the sole jurisdiction in disputes relating to compensation for damages caused by the European Commission in the case of non-contractual liability<sup>150</sup>.

National tribunals are competent in case of contractual liability as set out in the general conditions of the contract.

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

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<sup>149</sup> The General Court has jurisdiction over acts of the European Commission intended to produce legal effects vis-à-vis third parties — pursuant to Articles 256 and 263 TFEU.

<sup>150</sup> Pursuant to Articles 256, 268 and 340 TFEU. The deadline to introduce an action for annulment before the General Court against the European Commission's decisions runs from the moment of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be (pursuant to the TFEU).

## 2.12.4. Amicable settlement, conciliation and arbitration procedures

The amicable settlement of disputes is an essential precondition before starting a legal action before the courts or an arbitration procedure (this latter foreseen only for procurement contracts). Therefore, a party to the contract is able to initiate a court proceeding only if this party has attempted to resolve the dispute amicably without being able to reach an agreement. Therefore, if the contracting authority is the initiator of the legal action before the courts, it must provide a proof that it has made firstly an attempt to resolve the dispute amicably. This means that the contracting authority should have a preliminary contact with the beneficiaries or the contractors aiming at resolving the disputes amicably, following which it turned out that the parties could not reach a settlement.

### **PROGRAMMES FUNDED BY THE EDF**

Disputes relating to an EDF-financed contract may be settled by conciliation or by arbitration under the general conditions and the special conditions governing the contract. The procedure to be used is set out in Annex V to Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 adopting the general regulations, general conditions and procedural rules on conciliation and arbitration for works, supply and service contracts financed by the European Development Fund (EDF) and concerning their application<sup>151</sup>.

These rules can be found in Annex A12.

### **PROGRAMMES FUNDED BY THE EU BUDGET**

The rules on dispute settlements are to be found in the general conditions for the relevant contract models (Article 40 for service and supply contracts and Article 68 for works contracts).

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<sup>151</sup> OJ L 382, 31.12.1990, p. 1.



## 3. Service contracts

### 3.1. Introduction

Service contracts are meant for studies, technical assistance and are also used for audits or communication services.

A study contract is a service contract concluded between a contractor and the contracting authority, which includes studies for the identification and preparation of projects, feasibility studies, economic and market studies, technical studies and audits.

A technical assistance contract is a service contract where the contractor is called on to play an advisory role, to manage or supervise a project, or to provide the expertise specified in the contract.

### 3.2. Types of service contracts

A service contract may be concluded in two different ways:

#### 3.2.1. Global price

Global price is a lump sum contract where specified output(s) is/are set out, in the form of clearly defined deliverables like a report or drawings. Global price always specify the output(s), i.e. the contractor must provide given output(s).

The service will be paid on the basis of the delivery of the specified output(s). Payments might be totally or partially withheld if the contractual result(s) have not been reached in conformity with the detailed terms of reference. Payment(s) is/are based on the approval of this/these deliverable(s).

Partial payment has to be determined according to the partial implementation of the output(s).

The project manager must not request in the terms of reference a breakdown **of inputs** for a global price contract, e.g. minimum number of experts (unless Key experts are requested) or a fixed list of expenses.

The contractor might be requested to submit a breakdown **of price** per deliverable. Indeed, the financial offer for a global price contract may include — where requested, see below — a price breakdown based on outputs/deliverables against which partial payments can be made (e.g. the deliverables could be related to the progress inception report/interim report/final report or to the different parts of a study/report/event) depending on the project in question. Timesheets for experts or supporting documents for expenses incurred will not be requested to process payments since global price contracts do not entail any reimbursable expenses/incidental expenditure and are not subject to an expenditure verification.

The contracting authority will provide the maximum budget available on the basis of the expertise required or the required category of staff and the number of working days needed, including where necessary travel costs and per diem. Where several results are to be achieved, the tenderers must provide in their offer a detailed breakdown in order to compare the offers and check if no input has been forgotten. However, during and after the implementation, the technical and operational means by which the contractor achieves the specified output(s) are not relevant for the satisfactory implementation of the contract.

#### **Examples of global price activities:**

Studies, evaluations, audits, organisation of events such as conferences, training sessions. Studies include a variety of tasks like identification and preparation of projects, feasibility studies, economic and market studies, technical studies, drafting a legal document, evaluations and audits.

### 3.2.2. Fee-based

Where the output is unpredictable, or where the workload to achieve the specified output is impossible to quantify in advance, fee-based contracts are more appropriate, as it is economically more advantageous to pay the services on the basis of time actually worked.

Fee-based contracts may also include activities paid on the basis of lump sums. An example could be a fee-based contract for training, where the trainings would be paid on a fee-based basis, and where the development of the training material would be paid on a lump sum basis.

#### Examples of fee-based activities

Project supervision, technical assistance, facilitation in a multi-stakeholder process (depending of the complexity of the environment).

Technical assistance contracts often only specify the means. For instance, the contractor is responsible for implementing the tasks entrusted to it in the terms of reference and ensuring the quality of the services provided. The contractor should, however, contribute to improve the performance of the institution she/he is seconded to. A service consultant also has a duty of care under the contract: it must warn the contracting authority in good time of anything that might affect the proper implementation of the project.

In most cases the whole contract is set out in the form of either a global price contract or a fee-based contract.

Some contracts may combine global price and fee based. In such cases, each item or each section of the contract should have a clear method of measurement and verification: global price or fee-based. It should be clear in the terms of reference and furthermore stipulated in the financial offer template.

An example of a combined service contract is a design and supervision contract that usually would consist of two distinct sections and terms of reference: 1) the design section is a collection of several global price outputs: geotechnical study, environmental study, socio-economic study, etc. — whereas 2) the supervision section would be fee-based items.

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

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

- A first critical phase may consist of a diagnostic, analysing institutions and stakeholders, assessing capacity, facilitating a joint process for defining precise actions and concrete

outcomes. This may be a fee-based activity.

- A second phase would consist of the realisation of those specific actions. The individual output may be contracted as global price.

### **3.2.3. Increasing the use of global price service contracts**

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

In other cases the use of global price service contracts is encouraged as more appropriate.

The following features are comparative advantages of global price contracts:

Global price contracts do not require key experts. In such cases the terms of reference will describe the expertise required and the tenderer will demonstrate in its tender that he has/has access to this expertise. An example where key experts are not deemed necessary is a mission that consists in a well-defined technical output, e.g. design documents for an investment project. In that case, provided the contractor has qualified permanent staff, his professional responsibility should lead him to select the best possible staff in order to deliver the expected results. Should key experts be deemed to be indispensable, they would also have to sign a SoEA.

The methodologies contained in the offers must include a work plan indicating the envisaged resources to be mobilised, allowing a better comparison of offers and offering a basis for negotiation in case of amendment to the contract.

Global price contracts generate less micromanagement and do not imply verification of timesheets and incidental expenditure and therefore will free more time for working on operational and sector issues.

## **3.3. Procurement procedures**

### **3.3.1. Contracts with a value of EUR 300 000 or more**

- **Restricted procedure**

All service contracts worth EUR 300 000 or more may be awarded by restricted tender procedure following international publication of a prior information notice (not compulsory), a contract notice and additional information about the contract notice (see Section 3.4.1.)<sup>152</sup>.

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<sup>152</sup> For thresholds and procedures see point 38 of Annex I to the Regulation (EU, Euratom) No 1046/2018 of the European Parliament and of the Council of 30 July 2018 on the financial rules applicable to the general budget of the Union (OJ L 193, 30.7.2018, p.212) (FR).

- **Framework contract ‘Services for implementation of external aid 2018’ (FWC SIEA 2018)**

Alternatively, contracts worth less than EUR 1 000 000 may be awarded under the framework contract procedure laid down in FWC SIEA 2018. The award of the specific contracts and their signature in direct management is administered electronically in OPSYS.

- **Audit framework contract 2018, & Framework contract EVA 2020**

The Audit FWC 2018 is a quick tool to contract audit-related services to be carried out on the premises of entities receiving funds from external action programmes or in the form of desk studies. It covers all the types of assignments related to audits and verifications (there is no lot). There is no limit in the amount or the duration of the assignment.

EVA 2020 serves exclusively the purpose of Strategic Evaluations of EU External Strategies, Policies, and Instruments managed by FPI, INTPA, and NEAR evaluation Units. For evaluations of projects and programmes interventions, EU Delegations and HQ Units must use Framework Contract SIEA 2018.

### **3.3.2. Contracts with a value of less than EUR 300 000**

Contracts worth under EUR 300 000 may be awarded either under the framework contract procedure laid down in framework contracts (see Section 3.5.1.) or under a simplified procedure (see Section 3.5.2.) involving at least three candidates.

### **3.3.3. Contracts with a value of less than EUR 20 000**

Contracts with a value of less than or equal to EUR 20 000 may be awarded either under framework contracts or on the basis of a single tender.

For the single tender procedure the specific annexes for simplified tenders must be used (administrative compliance grid, contract, contract notice, invitation letter, instructions to tenderer, terms of reference and tender form) for this procedure. They can be adjusted to the procedure, including deleting non-relevant sections, without this requiring derogation.

### **3.3.4. Contracts with a value of less than EUR 2 500**

For services with a value of less than or equal EUR 2 500 the contracting authority may simply pay against invoices without prior acceptance of a tender.

However, please note that the budgetary commitment against which the invoice is paid has to be validated before the contracting authority enters into the corresponding ‘legal commitment’. In this context, such legal commitment may take the form, *inter alia*, of an agreement, a pro-forma invoice, a written acceptance of a quotation, a booking confirmation, an order form, etc.

### 3.3.5. Procedures applicable without ceilings

#### 3.3.5.1. Negotiated procedure

##### **DIRECT MANAGEMENT**

Prior approval / event to be reported as the case may be is required from the European Commission for the use of the negotiated procedure.

##### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

Prior authorisation by the European Commission is required for the use of the negotiated procedure.

##### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation by the European Commission is required for the use of the negotiated procedure.

For service contracts, contracting authorities may use the negotiated procedure on the basis of one or several tenders in the following cases<sup>153</sup>:

- a) Where no tenders, or no suitable tender, or no request to participate or no suitable request to participate have been submitted in response to an open procedure or restricted procedure after this procedure has been completed, provided that the original procurement documents are not substantially altered.

A tender must be considered unsuitable where it does not relate to the subject matter of the contract and a request to participate must be considered unsuitable where the economic operator is in an exclusion situation or does not meet the selection criteria<sup>154</sup>.

- b) Where the services can only be provided by a single economic operator and for any of the following reasons:
- (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
  - (ii) competition is absent for technical reasons;
  - (iii) the protection of exclusive rights including intellectual property rights must be ensured.

The exceptions set out in points (ii) and (iii) must only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement.

- c) In so far as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events, it is impossible to comply with the applicable time limits and where the justification of such extreme urgency is not attributable to the contracting authority.

Operations carried out in crisis situations must be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other

<sup>153</sup> Annex I to the FR, points 11 and 39.

<sup>154</sup> Annex I to the FR, point 11(2).

authorising officers by delegation concerned, must establish that a situation of extreme urgency exists and must review his decision regularly with regard to the principle of sound financial management<sup>155</sup>.

- d) Where a service contract follows a design contest and is to be awarded to the winner or to one of the winners; in the latter case, all winners must be invited to participate in the negotiations.
- e) For new services consisting in the repetition of similar services entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that the original contract was awarded after publication of a contract notice that indicated the extent of possible new services, the conditions under which they will be awarded (i.e. the possible use of the negotiated procedure), and the total estimated amount for these subsequent services. This total amount has to be taken into consideration in applying the applicable thresholds to determine the correct procurement procedure to follow for the original contract.
- f) For contracts for any of the following:
  - (i) legal representation by a lawyer within the meaning of Article 1 of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services<sup>156</sup>;
  - (ii) legal advice given in the preparation of the proceedings referred to above or where there is tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;
  - (iii) for arbitration and conciliation services;
  - (iv) document certification and authentication services which must be provided by notaries. For legal services not covered under point f), the contracting authority may use the simplified procedure, whatever is the estimated value of the contract<sup>157</sup>.
- g) For contracts declared to be secret or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or when the protection of the essential interests of the European Union so requires, provided the essential interests concerned cannot be guaranteed by other measures; these measures may consist of requirements to protect the confidential nature of information which the contracting authority makes available in the procurement procedure.
- h) For financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the

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<sup>155</sup> For the general budget of the Union: Annex I to the FR, point 39(2). For the EDF: ‘emergency assistance’ is another case specific to the EDF and distinct from the ‘extreme urgency’ referred to here, in which the negotiated procedure may be used for actions that are not governed by Article 19c of Annex IV to the 2000/483/EC: Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ L 317, 15.12.2000, p. 3) (Cotonou Agreement). Emergency assistance is linked to the application of Articles 72 and/or 73 of the Cotonou Agreement. For the overseas countries and territories (OCTs): see Article 79(5) of the Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (OJ L 344, 19.12.2013, p. 1).

<sup>156</sup> OJ L 78, 26.3.1977, p. 17.

<sup>157</sup> Annex I to the Financial Regulation, point 38(4).

Council and repealing Council Directive 93/22/EEC<sup>158</sup>, central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism.

- i) Loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments.
- j) For the purchase of public communication networks and electronic communications services within the meaning of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)<sup>159</sup>.
- k) Services provided by an international organisation where it cannot participate in competitive procedures according to its statute or act of establishment.
- l) 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.
- m) Where the tender procedure has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, 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 procedure, provided that the original procurement documents are not substantially altered.
- n) Where a new contract has to be concluded after early termination of an existing contract.

In all cases, a negotiation report must be prepared (see template in Annex A10) justifying the manner in which the negotiations were conducted and the basis for the resulting contract award decision.

The procedures described in Section 3.4.12.1. and Section 3.4.12.2. must be followed by analogy. The negotiation report must be included in the contract dossier and the contracting authority must approve it.

### **3.3.5.2. Competitive dialogue**

See Section 2.6.7. for further details.

### **3.3.5.3. Framework contract**

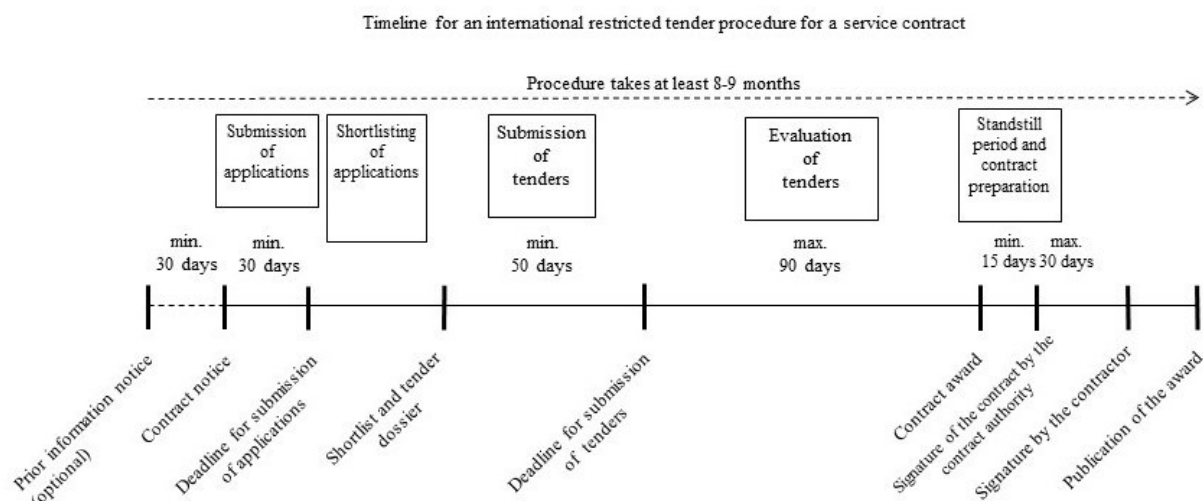
See Section 2.6.5. for further details.

## **3.4. Restricted tenders (for contracts of EUR 300 000 or more)**

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<sup>158</sup> OJ L 145, 30.4.2004, p. 1.

<sup>159</sup> OJ L 108, 24.4.2002, p.33.



### 3.4.1. Publicity

In order to ensure the widest possible participation in competitive tendering and the requisite transparency, the contracting authority must publish a contract notice and additional information about the contract notice for all service contracts of EUR 300 000 or more (except for specific contracts under the Framework Contracts, in accordance with the guidelines on publication (see Annex A11e).

#### 3.4.1.1. Publication of prior information notices

It is recommended, but not compulsory, to publish a prior information notice setting out the specific characteristics of the planned tender procedure, at least 30 days — but not more than 12 months — before the publication of the contract notice in the Official Journal of European Union and on the F&T portal.

The purpose of the prior information notice is to provide greater publicity for calls for tenders and more preparation time for tenderers. Encoding and processing a prior information notices requires time and human resources. If due to time constraints a prior information notice can only be published shortly before the contract notice (e.g. 30 days), an alternative option would be not to publish a prior information notice and to provide tenderers with a longer submission deadline in the contract notice. Publishing the contract notice earlier would provide economic operators with more time to submit a good quality offer. Prior information notices on the other hand have an added value when there is a sufficient period between its publication and the planned publication of the Contract Notice.

The prior information notice must briefly state the subject, content and value of the contracts in question. Publishing a prior information notice does not oblige the contracting authority to award the contracts proposed, and economic operators are not expected to submit requests to participate at this stage.



The contracting authority drafts the prior information notice directly via PPMT in direct management and in case of indirect management using the appropriate template (A5d) and submits it for publication to the relevant delegation of the European Union (see guidelines for publication in Annex A11e).

If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

### 3.4.1.2. Publication of contract notices

A minimum of 30 days after publication of the prior information notice, if any, a contract notice and the additional information about the contract notice (Annex A5f) must be published in the Official Journal of the European Union, on the F&T portal (see publication guidelines in Annex A11e) and in any other appropriate media (except for specific contracts under the FWC SIEA).

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 F&T portal. If the contract notice is published locally, the contracting authority must arrange local publication directly.

#### **DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

Contract notices must be submitted for publication directly in PPMT in case of direct management, (also Annex A5f is needed) and in case of indirect management to the relevant delegation of the European Union (both Annexes A5e and A5f are needed) in electronic form and according to the publication guidelines (A11e).

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

In addition to the above, the finalised terms of reference (see Section 2.8.) must be submitted to the European Commission either at the same time or in advance to demonstrate that the proposed contract notice/additional information about the contract notice corresponds to the objectives of the contract.

The contract notice and the additional information about the contract 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 set out in the contract notice and in the additional information about the contract notice must be:

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

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

The time allowed for candidates to submit their requests to participate must be sufficient to permit proper competition. The minimum deadline for submitting requests to participate is 30 days from the date of the notice's publication in the Official Journal of the European Union and on the F&T portal. However, in exceptional cases, this period may be shortened in compliance with internal procedures. Under indirect management this is also subject to prior authorisation by the European Commission. The actual deadline will be determined by the contract's size and complexity.

If the contract notice and the additional information about the contract notice are also published locally by the contracting authority, these documents must be identical to the ones published in the European Union Official Journal and on the F&T portal and must be published at the same time.

The contract notice and the additional information about the contract notice must be clear enough to save candidates from requesting clarification or additional information during the procedure.

Candidates may, however, submit questions should they need to.

If the contracting authority, either on its own initiative or in response to a request for clarification from a tenderer, amends information in the contract notice or in the additional information about the contract notice, it must submit a corrigendum stating the changes made. The corrigendum to the contract notice will be encoded directly in eNotices in direct management and, in indirect management, the appropriate template (Annex A5b) shall be used and forwarded to the relevant delegation of the European Union, always complying with the deadlines set up in the publication guidelines (see Annex A11e). However, a corrigendum to the additional information about the contract notice might also be published in eTendering, if necessary.

The corrigendum must be published not later than 8 days before the original submission deadline. Be aware that the corrigendum has to be sent to the relevant service not later than 5 days before the expected date for its publication.

The corrigendum may extend the deadline to allow candidates to take the changes into account. Please note that with a clarification, the contracting authority cannot give an opinion on the assessment of the request to participate.

**If information in the contract notice/additional information about the contract notice needs to be clarified but does not require an amendment of the contract notice, the request for clarification must be submitted at the latest 21 days before the submission deadline and the clarification will be published in eTendering, not in the Official Journal of the European Union, at the latest 8 days before the submission deadline.**

### 3.4.2. Drawing up shortlists

The first meeting of the committee is held before the actual evaluation starts. The chairperson presents the purpose of the evaluation and explains the procedures to be followed by the committee.

In eSubmission and only for direct management procedures, there are two types of committees: opening and evaluation committees. It is recommended that for each lot, the composition of both committees is the same. The opening and evaluation committees must be appointed in PPMT before the start of the opening session<sup>160</sup> and the evaluation of requests to participate.

Candidates are shortlisted by the evaluation committee.

The selection procedure involves:

- compliance with formal submission requirements (see Annex B10)<sup>160</sup>. The committee must decide whether or not candidates comply with the formal submission requirements;
- drawing up a long list (see template in Annex B4) summarising all the requests to participate received;
- eliminating requests to participate that are inadmissible due to being submitted by ineligible candidates (see Section 2.3.) or by candidates falling into one of the situations described in Section 2.6.10.1. This is assessed, *inter alia*, on the basis of their declaration on honour;
- applying the selection criteria exactly as published.

For the supply of supporting documents in relation to the exclusion and selection criteria, see sections 2.6.10. and 2.6.11.

After examining the responses to the contract notice/additional information about the contract notice, the evaluation committee shortlists the candidates offering the best guarantee of satisfactory performance of the contract.

The shortlist comprises between four and eight candidates.

If the number of eligible candidates meeting the selection criteria is greater than eight, the additional criteria published in the contract notice are applied in order to reduce the number to the eight best candidates. For further details, please see Section 2.6.11. (selection criteria).

If the number of eligible candidates meeting the selection criteria is less than the minimum of four, the contracting authority may invite only those candidates who satisfy the selection criteria to submit a tender, or even the only candidate satisfying the selection criteria. Before accepting a reduced competition of less than four candidates, an event to be reported or a prior authorisation is required depending on the case, as stated in the text box below. This prior authorisation may be granted based on a verification showing that the timing of the publication, the selection criteria used and the scope of the services in relation to the budget were satisfactory. This must be justified in the evaluation report.

**DIRECT MANAGEMENT**

An event to be reported is required.

**INDIRECT MANAGEMENT WITH EX ANTE CONTROLS**

Prior authorisation by the European Commission is required.

**INDIRECT MANAGEMENT WITH EX POST CONTROLS**

<sup>160</sup> For eSubmission, several automatic validation checks take place to ensure that the submissions comply with the deadline and that they were received in the same state as they were submitted, i.e. that their integrity and confidentiality have been preserved. When all requests to participate for all lots are verified and marked as “In Order” / “Not in Order”, the Record of Opening (see Annex B10a\_specimen\_openreport\_eSubmission) can be generated. After closing the opening session, the evaluation committee members, nominated through PPMT, can access the request to participate that are “In Order”. Then, the evaluation committee must decide in Annex B4 whether or not the request to participate complies with the formal submission requirements.

No prior authorisation by the European Commission is required.

The shortlisting process and the final shortlist itself must be fully documented in a shortlist report (see template in Annex B5).

Before the shortlist is approved by the evaluation committee, the contracting authority must check that no candidate (including partners) is in an exclusion situation in the early detection and exclusion system or subject to European Union restrictive measures (see Section 2.4.).

The shortlist report is signed by the chairperson, the secretary and all evaluators.

#### **DIRECT MANAGEMENT**

The shortlist report must be submitted to the contracting authority, which must decide whether or not to accept its recommendations, before the shortlisted candidates can be invited to submit a tender.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The shortlist report must be submitted to the contracting authority, which must decide whether or not to accept its recommendations. The contracting authority must then submit for approval the shortlist report together with its recommendations to the relevant delegation of the European Union, before the shortlisted candidates can be invited to submit a tender.

If the relevant delegation of the European Union does not accept the recommendations of the contracting authority, it must write to the contracting authority stating the reasons for its decision.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No authorisation by the European Commission is required before the contracting authority acts on the recommendations of the evaluation committee.

Candidates not selected will be informed in writing by the contracting authority (see Annex B7).

Selected candidates will receive a letter of invitation to tender and the tender dossier (see template in Annex B8).

The contracting authority prepares the shortlist notice and publishes it together with the award notice on TED (section VI.3 of the award notice). (See guidelines for publication in Annex A11e).

If unsuccessful candidates request further information, they may be given any information that is not confidential, e.g. reasons why a reference does not meet the technical selection criterion, as this may help them to be successful in future tenders.

### **3.4.3. Drafting and content of the tender dossier**

Tender documents must be carefully drafted, to ensure that the contract is complete and that the procurement procedure is carried out correctly.

These documents must contain all the provisions and information that candidates need to submit a tender: the procedures to follow, the documents to provide, cases of non-compliance, award criteria and their weightings, etc. Where the European Commission is the contracting authority, the standard practice is to consult and obtain the approval of the partner country and, where appropriate, of

other parties involved, on the terms of reference or technical specifications, in order to strengthen both ownership and quality. See Section 2.8. for guidelines on drafting 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 specialist must sign a declaration of objectivity and confidentiality (see Annex A3).

The contracting authority is responsible for drawing up these documents.

#### **DIRECT MANAGEMENT**

The tender dossier must be agreed upon by the European Commission prior to issue. The standard practice is to consult and obtain the agreement of the partner country, and where appropriate of other parties involved, on the tender dossier.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The contracting authority must submit the tender dossier to the relevant delegation of the European Union for authorisation prior to issue.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation on the tender dossier by the European Commission is required.

### **TENDER DOSSIER CONTENT**

See Annex B8.

- A. Instructions to tenderers
- B. Draft contract agreement and special conditions with annexes
- C. Other information (administrative compliance grid, evaluation grid)
- D. Tender submission form

The tender dossier must clearly state that the tender must be made with firm, non-revisable prices.

According to the applicable rules, a pre-financing guarantee could be required or not. If required, this must be mentioned in the tender dossier.

In case of direct management, the tender dossier will be published on the TED eTendering platform. The shortlisted candidates will receive a notification granting access to the tender. In case of indirect management, the tender dossier will be sent simultaneously to all shortlisted candidates via mail or email. Any tender received from a legal or natural person not invited to tender will be rejected.

### **3.4.4. Award criteria**

The contract award criteria serve to identify the best quality-price ratio. These criteria cover both the technical quality and price of the tender.

The technical criteria allow the quality of technical tenders to be assessed. The two main types of technical criteria are the methodology, and for fee-based contracts, the curriculum vitae (CV) of the key experts proposed. The technical criteria may be divided into sub-criteria. The methodology, for example, may be examined in the light of the terms of reference, the optimum use of the technical

and professional resources available in the partner country, the work schedule, the appropriateness of the resources to the tasks, the support proposed for experts in the field, the complementarity of the consortium members, etc. CVs may be awarded points for such criteria as qualifications, professional experience<sup>161</sup>, geographical experience, language skills, etc. The tender evaluation committee is required to ensure that any methodology submitted by the tenderer complies with the requirements of the terms of reference. The methodology may add to the requirements of the terms of reference but must in no way detract from them.

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 as indicated in the evaluation grid.

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 used to draw up the shortlist and the award criteria used to determine the best tender.** In that regard, particular attention should be paid to experience, in order **not** to have it evaluated twice in the selection criteria and in the award criteria (see Section 2.6.11.5.).

### **Abnormally low tenders**

Contracting authorities can reject tenders that appear to be abnormally low in relation to services concerned.

However, rejection on that ground alone is not automatic.

The concerned tenderer must be asked, in writing, to provide details of the constituent elements of its tender, notably those relating to compliance with employment protection legislation and working conditions in the location of the contract, such as the service provision process, the technical solutions chosen or any exceptionally favourable condition available to the tenderer, the originality of the tender.

In view of the evidence provided by the tenderer, the contracting authority decides on whether the tender is to be considered irregular and has consequently to be rejected.

Both that decision and its justification must be recorded in the evaluation report.

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

The tender dossier must be clear enough to save shortlisted candidates from requesting additional information during the procedure. If the contracting authority provides additional information<sup>162</sup> on the tender dossier, either on its own initiative or in response to a request from a shortlisted candidate, it must send such information in writing to all other shortlisted candidates at the same time.

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<sup>161</sup> Only the professional experience mentioned in the CV will be considered by the evaluation committee.

<sup>162</sup> Article 169(1) FR.

Tenderers may submit questions via TED e-Tendering platform (electronic submission - direct management) or in writing (paper submission - indirect management) no later than 21 days before the deadline for submission of tenders. The contracting authority must reply to all tenderers' questions in TED e-Tendering (electronic submission - direct management) or in writing (paper submission - indirect management) no later than 8 days before the deadline for receipt of tenders.

Clarifications and any minor changes to the tender dossier must also be published on TED e-Tendering (direct management) and, in indirect management, in writing and simultaneously addressed to all shortlisted candidates. No prior opinion on the assessment of the tender can be given by the contracting authority in reply to a question or a request for clarification.

If the technical content of the tender is complex, the contracting authority may hold an information meeting and/or site visit. This meeting must be announced in the tender dossier and must take place no later than 21 days before the expiry of the deadline for submission of tenders. All costs of attending such a meeting must be met by the tenderers. Individual visits by companies during the tender period cannot be organised by the contracting authority taking into account transparency and equal treatment of the tenderers. Although they are not compulsory, these information meetings are encouraged since they have proven to be an efficient way to clarify many questions related to the tender dossier. Any presentation/documentation to be delivered in the information session, as well as the outcome and the minutes, must also be shared with all shortlisted candidates. In case of direct management, documents will be shared via TED e-Tendering. In case of indirect management, documents will be sent via mail or email.

### 3.4.6. Deadline for submission of tenders

Tenders must be submitted to the contracting authority no later than the date and time referred to in the invitation to tender. The deadline for submission must be long enough to guarantee the quality of tenders and so permit truly competitive tendering. Experience shows that too short a deadline prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders.

#### **DIRECT MANAGEMENT, INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

The minimum period between the dispatch of the letter of invitation to tender by the contracting authority and the deadline for submission of tenders is 50 days. However, in exceptional cases, this period may be shortened in compliance with internal procedures. Under indirect management this is also subject to prior authorisation by the European Commission.

### 3.4.7. Period of validity

See Section 2.9.5.

### 3.4.8. Submission of tenders

In case of electronic submission (direct management), tenders must be submitted exclusively via the electronic submission system (eSubmission) available via a link in the TED eTendering platform<sup>163</sup>. Tenders submitted in any other way (e.g. e-mail or by letter) will be disregarded.

In case of paper submission (indirect management), tenders should 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.

The technical offer and the financial offer always have to be evaluated successively and separately: the technical offer is evaluated first and financial offer checked only after the evaluation of technical offer. 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. See Section 2.9.3. for consequences of infringements to formal requirements in the further evaluation process.

### 3.4.9. The Evaluation Committee

For the Committee's composition, impartiality and confidentiality, responsibilities and the timetable, see Section 2.9.

In eSubmission and only for direct management procedures, there are two types of committees: opening and evaluation committee. It is recommended that for each lot, the composition of both committees is the same. The opening and evaluation committees must be appointed in PPMT before the start of the opening session and the evaluation of tenders.

### 3.4.10. Stages in the evaluation process

#### 3.4.10.1. Receipt and registration of tenders

On receiving tenders, the contracting authority must register them, stating the date and time of submission, and provide a receipt for those delivered by hand or submitted electronically.

In case of paper submission (indirect management), 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).

#### 3.4.10.2. Tender opening session

##### Part 1: Preparatory phase

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<sup>163</sup> For detailed instructions on how to submit a tender please consult the eSubmission Quick Guide available at: [https://ec.europa.eu/info/funding-tenders/opportunities/docs/esubmission/quickguidepp\\_en.pdf](https://ec.europa.eu/info/funding-tenders/opportunities/docs/esubmission/quickguidepp_en.pdf)

The supported browsers, file types, size of attachments and other system requirements can be consulted at: <https://webgate.ec.europa.eu/fpfis/wikis/x/Oo5kl>. In case of technical problems, please contact the eSubmission Helpdesk (see contact details in the eSubmission Quick Guide) as soon as possible.



The first meeting of the evaluation committee is held before the actual evaluation starts. 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: Tender opening**

For tender openings in case of paper submission (indirect management), see tender opening checklist in Annex B9.

### **Part 3: Compliance with formal submission requirements**

See Annex B10.

At this stage the evaluation committee must decide whether or not tenders comply with the formal submission requirements.

In case of electronic submission (direct management), several automatic validation checks take place to ensure that the tenders comply with the deadline and that they were received in the same state as they were submitted, i.e. that their integrity and confidentiality have been preserved. When all tenders for all lots are verified and marked as “In Order” / “Not in Order”, the Record of Opening (see Annex B10a\_specimen\_openrecord\_eSubmission) can be generated. After closing the opening session, the evaluation committee members, nominated through PPMT, can access the tenders that are “In Order”.

In case of paper submission (indirect management), the summary of tenders received, which is attached to the opening record (see Annex B10), must be used to record whether each of the tenders complies with the formal submission requirements.

The chairperson must check that no member of the evaluation committee has a potential conflict of interest with any of the tenderers (on the basis of the shortlist, the tenders received, consortium members and any identified subcontractor). See also Sections 2.9.2. and 2.9.3.

### **Part 4: Financial offers**

In case of electronic submission (direct management), the financial offers will remain unopened until technical assessment of all the tenders has been completed.

In case of paper submission (indirect management), the envelopes containing the financial offers will remain sealed. All financial offers will be deposited in safe deposit until technical assessment of all the tenders has been completed.

## **3.4.10.3. Evaluation of offers**

If requested by a majority of the evaluation committee voting members, the chairperson may write to tenderers whose submissions require clarification, offering them the chance to reply within a reasonable time limit to be fixed by the evaluation committee.

### **Part 1: Administrative compliance (regularity)**

The evaluation committee checks that the tenders comply with the instructions given in the tender dossier and in particular in 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 related tender.

Nationality of subcontractors: the evaluation committee must check at this stage that any subcontractors identified in the technical offers satisfy the nationality rule in Section 2.3.1.

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

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

## **Part 2: Technical acceptance**

The evaluation committee then examines the technical offers, while the financial offers remain sealed/unopened. When evaluating technical offers, each member gives each offer a technical score out of a maximum of 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 Section 3.4.4.). Only offers that achieve an average technical score of 75/100 or more are declared 'technically accepted'. Under no circumstances may the evaluation 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 given points for a given criterion one after another, rather than scoring each tender for all criteria before moving on to the next tender. 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. if an expert does not meet the minimum requirements in the profile), the tender will be automatically rejected, without being given a technical score, but this must be justified in the evaluation report.

For instructions and guidelines how to allocate points in the evaluation for fee-based and global-price contracts, please see the evaluator's grid (Annex B12a and Annex B12b, respectively). Experts must be evaluated against the requirements stated in the terms of reference. The key experts must fulfil the minimum requirements for all the criteria. If it is not the case, the offer should be considered inadmissible and be rejected.

The tenderers must provide documentary proof for the key experts proposed. This includes copies of the diplomas referred to in the CV and employers' certificates or references proving the professional experience stated in the CV. If missing proofs are requested it will only be for the relevant experience and diplomas that are among the requirements in the terms of reference. Only diplomas and experience supported by documentary proof will be taken into account.

Civil servants or other staff of the public administration of the partner country, or of international/regional organisations based in the country, regardless of their administrative situation, must only be accepted by the European Commission if well justified. The tenderer must in its offer include information on the added value the expert will bring, as well as proof that the expert is seconded or on leave on personal ground.

In the potential case of members of staff of the European Union delegations (local agents) proposed as experts by tenderers, the European Commission must make sure that the contract with the EU institution is officially terminated before the expert starts to work on an EU financed project under a contract with an external organisation/company (see Section 2.5.4.).

For fee-based contracts, the precise time input of the key expert is left to the discretion of the tenderers as it has to be linked with the methodology provided. The methodology should include the time needed for each key expert in order to achieve the required outputs of the project.

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

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

The evaluation committee discusses each technical offer and each member gives each tender a technical score. Evaluators may change their individual evaluation as a result of the general discussion on the merits of each offer.

In case of major discrepancies, full justification has to be provided by dissenting members. Once discussed, each evaluator finalises his/her evaluation grid on each of the technical offers and signs it before handing it over to the secretary of the evaluation committee. The secretary must then compile a summary of the comments of the evaluation committee members as part of the evaluation report.

The secretary calculates the average technical score of each technical offer, which is the arithmetical average of the technical scores given by each member for a given offer.

Interviews should be standard practice whenever the expert proposed has no relevant experience of EU projects, as evidenced by the CV, and when this experience is a key element for the position and for the project implementation. In other cases (e.g. under direct management) verification/checks within the European Commission may be more appropriate. Interviews should therefore be provided for in the tender dossier and must be well prepared if conducted.

The preferred method of conducting interviews is by telephone (or equivalent). Exceptionally and only if duly justified, given the cost both to tenderers and the contracting authority, the expert may be interviewed in person.

Before definitively concluding its evaluation of the technical offers, the evaluation committee may decide to interview the key experts proposed in technically accepted tenders (i.e. those that have achieved an average technical score of 75 points or more in the technical evaluation). It is recommended that tenderers that have scored close to the technical threshold also be invited for interview. Any interviews should be held by the evaluation committee at intervals close enough to allow the experts to be compared. Interviews must follow a standard format agreed beforehand by the committee with questions drafted and applied to all experts or teams called to interview. The indicative timetable for these interviews must be given in the tender dossier.

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 date/time is arranged. If the tenderer is unable to attend on this second occasion, its tender may be eliminated.

On completion of the interviews, and without modifying either the composition or the weighting of the criteria laid down in the technical evaluation grid, the evaluation committee decides whether it is

necessary to adjust the scores of the experts who have been interviewed. Any adjustments must be substantiated. The procedure must be recorded in the evaluation report.

Once the evaluation committee has established each offer's average technical score (the mathematical average of the technical scores given by each voting member), any tender falling short of the 75-points threshold is automatically rejected. If no tender achieves 75/100 points or more, the tender procedure is cancelled.

Out of the tenders reaching the 75-point threshold, the weighted technical score of each offer is calculated using the following formula:

Weighted technical score = (average technical score of the offer in question/average technical score of the best technical offer) x 100.

**Important:** the weighted technical score of the best technical offer must always be 100 points.

Specimen tender evaluation summary:

#### Part 1: Technical evaluation

	Maximum possible	Offer 1	Offer 2	Offer 3
Evaluator A Technical score	100	55	88	84
Evaluator B Technical score	100	60	84	82
Evaluator C Technical score	100	59	82	90
Total	300	174	254	256
Average technical score (mathematical average)		$174/3 = 58.00$	$254/3 = 84.67^*$	$256/3 = 85.33^*$
Weighted technical score (average technical score of the offer in question / average technical score of the best technical offer x 100)		Eliminated**	$84.67/85.33 \times 100 = 99.22$	$85.33/85.33 \times 100 = 100.00$

\* The score is rounded to two digits after the decimal point.

\*\* Only offers with an average technical score of at least 75 points qualify for the financial evaluation.

#### 3.4.10.4. Evaluation of financial offers

Upon completion of the technical evaluation, the financial offers for tenders that were not eliminated (i.e. those that scored an average of 75 points or more) are opened.

In case of indirect management, the chairperson and the secretary of the evaluation committee initial the envelopes containing all the originals of these financial offers

The evaluation committee has to ensure that the financial offer satisfies all formal requirements.

A financial offer not meeting these requirements may be considered inadmissible and be rejected. Any rejection on these grounds must be fully justified in the evaluation report.

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

In case of indirect management, the envelopes containing the financial offers of rejected tenderers following the technical evaluation must remain unopened and are kept. They must be archived by the contracting authority together with the other tender procedure documents.

The total contract value comprises the fees (including employment-related overheads), the incidental expenditure, lump sums (if applicable) and the provision for expenditure verification<sup>164</sup> that are specified in the tender dossier. Only the price without VAT/indirect taxes should be taken into consideration for the financial evaluation. This total contract value is compared with the maximum budget available for the contract. Tenders exceeding the maximum budget allocated for the contract are considered unacceptable and are eliminated.

The evaluation committee then proceeds with the financial comparison of the fees and lump sums between the different financial offers. Both the provision for incidental expenditure and the provision for expenditure verification are excluded from the comparison of the financial offers as they are specified in the tender dossier.

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

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

When evaluating financial offers, the evaluation committee compares only the total fees and lump sums.

Specimen tender evaluation summary:

### Part 2: Financial evaluation\*

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

<sup>164</sup> In the exceptional cases where the expenditure is verified by the European Commission, the tender documents, including the proposed contractual template, must be duly amended. A derogation is thus required.

- \* Only tenderers with an average technical score of at least 75 points in the technical evaluation qualify for the financial evaluation.

### 3.4.10.5. The evaluation committee's conclusions

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

- the scores awarded to the technical offers by 0.80
- the scores awarded to the financial offers by 0.20.

Specimen tender evaluation summary:

#### Part 3: Composite evaluation

	Maximum possible	Tenderer 1	Tenderer 2	Tenderer 3
Weighted technical score x 0.80		Eliminated following technical evaluation	$99.22 \times 0.80 = 79.38$	$100.00 \times 0.80 = 80.00$
Financial score x 0.20			$100.00 \times 0.20 = 20.00$	$89.71 \times 0.20 = 17.94$
Overall score			$79.38 + 20.00 = 99.38$	$80.00 + 17.94 = 97.94$
Final ranking			<b>1</b>	<b>2</b>

The resulting, weighted, technical and financial scores are then added together to determine the tender with the highest score, i.e. the best quality-price ratio. It is essential to make the calculations strictly according to the above instructions. The evaluation committee's recommendation must be to award the contract to the tender achieving the highest overall score on the condition that the documentary evidence submitted by the tenderer for the exclusion and selection criteria is verified and admissible.

#### **EDF-FUNDED PROGRAMMES (APPLICABLE ONLY TO TENDERS FINANCED UNDER MFF 2014-2020).**

In respect of service contracts other than the European Commission's Framework contracts, when technical offers are evaluated, a preference must be given to tenders submitted by legal or natural persons of ACP States, either individually or in a consortium among them.

Where two tenders are acknowledged to be equivalent on the basis of the final score, preference is given:

- a) to the tenderer of an ACP State; or
- b) if there is no such tender, to the tenderer who:
  - offers the best possible use of the physical and human resources of the ACP States;
  - offers the greatest subcontracting possibilities to ACP companies, firms or natural persons;
 or

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

(See also Section 2.6.9.)

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:
  - that complies with the formal requirements and the eligibility rules;
  - whose total budget is within the maximum budget available for the project;
  - that meets the minimum technical requirements specified in the tender dossier; and
  - that provides the best value for money (satisfying all of the above conditions).
- Cancel the tender procedure

(See Section 2.6.13.).

The evaluation report is drawn up. The verification of documentary evidence for exclusion and selection criteria and eventual clarifications must be carried out during the evaluation and before taking the award decision. The contracting authority will then take its decision.

#### **DIRECT MANAGEMENT**

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 evaluators.

This must be submitted to the competent authority of the European Commission, which must decide whether or not to accept its recommendations.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

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 to the relevant services of the contracting authority, which must decide whether or not to accept its recommendations. The contracting authority must then submit the evaluation report together with its proposed decision to the European Commission. If there is an award proposal and the European Commission has not already received a copy of the tenders, these must be submitted.

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

If the European Commission accepts the proposed decision, the contracting authority will either commence with the award of the contract (see Section 3.4.12.) or cancel the tender, as decided.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation by the European Commission is required before the contracting authority acts on the recommendations of the evaluation committee.

The tender evaluation must be concluded step by step to reach a conclusion. The principle behind requesting separately the technical and financial offers is to ensure that the evaluators do not know the financial offer and thus cannot be influenced by the price when assessing the technical quality of a tender. **Consequently, the technical proposals cannot be re-scored once the financial offers have been opened, except if the contracting authority rejects the proposal of the evaluation report (due to a mistake in the evaluation) and ask the evaluation committee to convene again.**

The entire evaluation procedure, including notification of the successful tenderer, must be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer might be unable to maintain its tender if the evaluation procedure takes too long. Please see Section 2.9.5.

Subject to the contracting authority's legislation on access to documents, the entire tender procedure is confidential during the evaluation process. The evaluation committee's decisions are collective and its deliberations must remain secret. The committee members and any observers are bound to secrecy. If its law conflicts with the confidentiality required, the contracting authority must obtain prior authorisation from the European Commission before disclosing any information.

The evaluation report, in particular, is for official use only and may be divulged neither to tenderers nor to any party outside the authorised services of the contracting authority, the European Commission and the supervisory authorities (e.g. the European Court of Auditors). Extracts from the evaluation report may however be disclosed (see Section 2.12.1.).

### 3.4.11. Cancelling the tender procedure

See Section 2.6.13.

### 3.4.12. Prior verifications and award of the contract

#### 3.4.12.1. Verifications prior notifying the award decision

See section 2.10.1.

At the latest during the evaluation procedure and before taking the award decision, the contracting authority ensures that there is no record of the successful tenderer, including consortium members, subcontractors or capacity providing entities, if any, in exclusion situation in the EDES nor in the lists of EU restrictive measures (see sections 2.6.10.1. and 2.4.).

During the evaluation procedure and before taking the award decision, the evaluation committee will request the original<sup>165</sup> Declaration on honour on exclusion criteria and selection criteria and copies of documentary evidence for exclusion and selection criteria from the potential successful tenderer. If upon verification, the evaluation committee considers the submitted evidence not admissible, it will request the same evidence from the second best ranked tenderer.

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<sup>165</sup> The requirement to submit an original Declaration on honour on exclusion criteria and selection criteria is only applicable in case of paper submission.



See section 2.6.10.1.3 for more details.

#### **DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROL**

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

At the latest before taking the award decision, the contracting authority has ensured that the relevant third party (i.e. tenderer including partners) is not registered at exclusion level in the early detection and exclusion system nor included in the list of European Union restrictive measures (see Section 2.4).

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

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

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROL**

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

The notification letter (Annex B13a) to the successful tenderer implies that the validity of the successful tender is automatically extended for a period of 60 days (if the contracting authority is required to obtain the recommendation of the panel referred to in Section 2.6.10.1.1., the tender validity period can be further extended up to the adoption of that recommendation).

At the same time the second best tenderer is informed about the result (Annex B13b). The contracting authority reserves the right to send a notification of award to the second best tenderer in case of inability to sign the contract with the first ranked tenderer. The validity of the second best tender will therefore be kept and will only be extended with the 60 days in case of notification of award.

The contracting authority will furthermore, at the same time, also inform the remaining tenderers (Annex B13c). The consequence of these letters will be that the validity of their offers must not be retained. In case of request, for further information from the non-successful tenderers, any information which is not confidential may be disclosed to them. An example may be comments regarding their strengths and weaknesses as this may assist them to be successful in future tenders.

As soon as the contract is signed by the successful tenderer, the contracting authority must inform the second best tenderer that she/he will not be awarded the contract.

#### **Availability of key experts and proposed replacements**

In the notification of award the contracting authority requests the successful tenderer to confirm the availability/unavailability of the key experts **within 5 days** of the date of the notification letter. As declared in the statement of exclusivity and availability, should a key expert receive a confirmed engagement he/she must accept the first engagement that is offered chronologically.

Should any of the key experts be unavailable the successful tenderer will be allowed to propose a replacement expert. This may for example happen in case the expert has been successful in another

tender procedure. The successful tenderer must give due justification for the exchange of expert but acceptance by the contracting authority will not be limited to specific cases. The contracting authority will verify that the replacement expert's total score in relation to the evaluation criteria is at minimum the same as the scores given in the evaluation to the expert he/she is proposed to replace. The contracting authority may consult the original evaluation committee and may interview one or more replacement experts by videoconference or telephone. It must be emphasised that the minimum requirements for each evaluation criteria must be met by the replacement expert.

The maximum time limit for proposing a replacement should be **within 15 days** of the date of the notification letter. Only one time-period to propose replacements will be offered to the successful tenderer, in which they may, if possible, propose several candidates for replacement of the same position. The replacement expert cannot be one presented in a bid from an unsuccessful tenderer participating in the same tender. The contracting authority may choose between these proposed candidates. If the contracting authority accepts the proposed replacements the contract dossier must contain the justification for the acceptance.

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

Summary of scenarios:

- a) The key experts are available.

The awarded tenderer confirms that all their key experts are available. When the contracting authority receives the information they proceed with contract preparation and signature, see Section 3.4.12.2.

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

The awarded tenderer confirms that one or more of their key experts are not available. They propose replacement experts within the time limit, submitting the necessary documentary evidence (as requested for the original experts in the tender) and justification for unavailability. The contracting authority will verify that the replacement fulfils the minimum requirements in the terms of reference and that he/she would have scored minimum the same as the originally proposed expert (total scores). If several experts are proposed for the same position the contracting authority may choose between the experts. Written justification of the choice is made by the authorising officer and will be part of the contract dossier, see Section 3.4.12.2.

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

The awarded tenderer confirms that one or more of their key experts are not available. They propose replacement experts within the time limit, submitting the necessary documentary evidence (as requested for the original experts in the tender) and justification of unavailability. The contracting authority will verify that the expert fulfils the minimum requirements in the terms of reference and that the expert would have scored minimum the same as the originally proposed expert (total scores). If none of the replacements are accepted, the contract may either be awarded to the second best tenderer or the procedure may be cancelled. If the second best tenderer will be notified of the award they must also be given the same possibility

to confirm availability/unavailability and to propose replacements of their key experts. The same time limit applies to the replies (i.e. 5 and 15 days).

**DIRECT MANAGEMENT**

The justification for non-acceptance of a replacement expert must be recorded in writing and the decision must be taken by the authorising officer. At the same time the authorising officer will take the decision to either award the contract to the second best tender or to cancel the procedure.

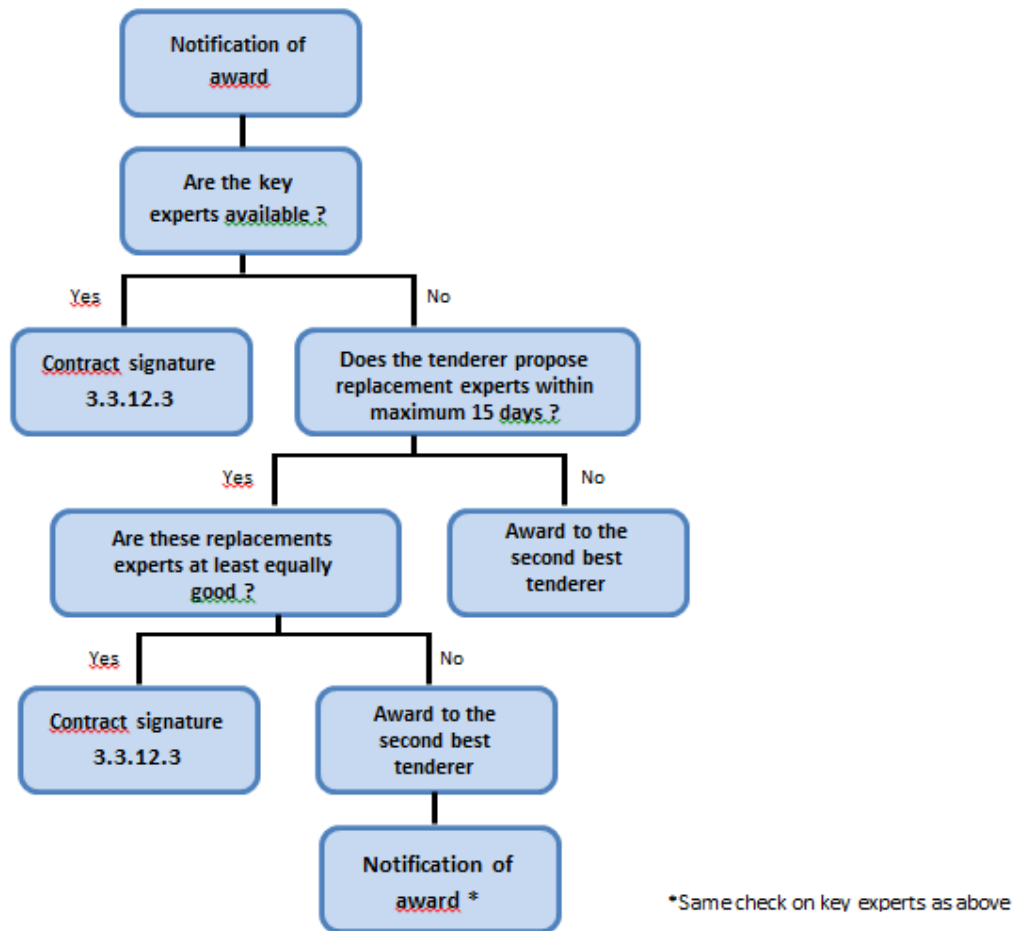
**INDIRECT MANAGEMENT WITH *EX ANTE* CONTROL**

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

**INDIRECT MANAGEMENT WITH *EX POST* CONTROL**

No prior authorisation from the European Commission is required before the contracting authority takes a decision.

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



### 3.4.12.2. Approval of key experts

Where the European Commission is the contracting authority and a representative of the partner country has not been invited to the evaluation committee as an evaluator, the relevant delegation of the European Union must notify the partner country, if appropriate<sup>166</sup>, of the name of the successful tenderer and ask to approve the available key experts proposed before the contract is signed.

The representative of the partner country must submit duly substantiated and justified objections to reject an expert (e.g. the expert is persona non grata, there are public order issues, or information unknown to the evaluation committee has been disclosed which could have affected the outcome of the evaluation). If the authorising officer accepts the rejection of the expert, the successful tenderer is allowed to propose a replacement (see Section 3.4.12.1.). If this procedure fails, the award may go to the second best tenderer, if any. In this case, the representative of the partner country again has the right to approve the experts. If there is no second best tenderer or if the experts are rejected again, the tender is cancelled. A request for the approval of key experts is not a request for approval of the European Commission's evaluation.

The partner country's approval must also be obtained for any replacement key expert proposed by the contractor. The representative of the partner country may not withhold its approval unless it submits duly substantiated and justified objections to the proposed experts in writing to the

<sup>166</sup> An example where it may not be appropriate is a multi-country project where many partner countries are involved and it would be practically difficult to obtain the approvals.

delegation of the European Union. If the representative of the partner country fails to issue or to reject its approval within 15 days of the date of the request, the expert is deemed to be approved.

The representative of the partner country may only ask for experts to be replaced if duly substantiated and justified objections are given in writing.

### **3.4.12.3. Standstill clause (applicable for direct contracts above EUR 300 000)**

See Section 2.10.1.

### **3.4.12.4. Contract preparation and signature**

In preparing the contract for signature, the contracting authority must proceed as follows:

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

- a) Explanatory note using the format in Annex A6 (if applicable including the justification for acceptance of replacement key experts);
- b) Copy of the financing agreement authorising the project (if there is one);
- c) Copy of the call announcements (prior information notice, contract notice, additional information about the contract notice and shortlist), shortlist report, tender opening record, evaluation report with award decision, and any other relevant information)
- d) Three originals in indirect management; two originals in direct management, 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.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The contracting authority sends the contract dossier to the delegation of the European Union for endorsement. The delegation signs all originals of the contract for endorsement (and initials all pages of the special conditions and the budget) to confirm the EU financing and sends them back to the contracting authority. No endorsement by the delegation is required in certain cases contemplated in the practical guide to procedures for programme estimates.

- Once the standstill period is passed, sign and date all originals of the contract and initial all pages of the special conditions and the budget.
- Send the signed originals of the contract to the successful tenderer who must countersign them within 30 days of receipt. The contractor keeps one original, and returns the remaining original(s) to the contracting authority. If the successful tenderer fails to do this within the specified deadline or indicates at any stage that it is not willing or able to sign the contract, the tenderer cannot be awarded the contract. The contract preparation process must be restarted from step 1 with a new contract dossier prepared using the second best tender (provided that that tender is still valid).

**DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

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

**INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

On receipt of the two signed originals from the successful tenderer, the contracting authority sends one to the delegation of the European Union.

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

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

Contracting authorities must retain all documentation relating to the award and execution of contract for a minimum period of 7 years after payment of the balance and up to the date of the prescription of any dispute in regard to the law which governed the contract.

During and after this period, the contracting authorities will treat the personal data in conformity with their privacy policy. These documents must be made available for inspection by the European Commission, the European Anti-Fraud Office, the European Public Prosecutor's Office and the Court of Auditors.

The proposed contract must follow Annex B8.

### 3.4.12.5. Contract signature with Qualified Electronic Signature (QES)

Qualified Electronic Signature (QES) is a standard that comes from the eIDAS Regulation (Regulation (EU) No 910/2014<sup>167</sup>) and is recognised as the digital equivalent to the handwritten (also known as 'blue-ink') signature in all EU Member States. QES can only be used by Authorising Officers who have obtained a qualified certificate for electronic signatures.

QES can be used as a solution for signing any document for which a handwritten signature is required. However, QES only applies to contracts managed outside OPSYS (since the digital signatures embedded into OPSYS are equivalent to handwritten signatures) and where both the applicable law and the dispute settlement forum are in an EU Member State.

Currently, QES cannot apply to the following legal commitments:

- Grant contracts or contribution agreements signed with an international organisation;
- Financing Agreements with partner countries.

Moreover, the QES feature is currently not available for indirect management by partner countries.

European Commission staff in Delegations belong from an IT point of view to the EEAS domain. Currently, the EEAS is not yet covered by the DG DIGIT qualified certificates for electronic signatures.

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<sup>167</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC

Therefore, European Commission staff in Delegations will only be able to apply QES once the DG DIGIT certificates have been extended to the EEAS domain.

For more information on the process to obtain the QES certificate as well as the procedure step-by-step, see Chapter 2.10.3 of the PRAG.

### 3.4.12.6. Publicising the award of the contract

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

Once the contract has been signed the contracting authority is responsible for preparing the award notice without delay (in indirect management using the template in Annex A5g) and for submitting it for publication in the Official Journal of the European Union and on the F&T portal (see publication guidelines in Annex A11e). If necessary, the contracting authority must arrange simultaneous local publication in any other appropriate media directly.

The award notice must be published if the value of the contract is above international thresholds (> EUR 300 000), unless the contract was declared secret (and the secrecy is still relevant at the time of the award) or where the performance of the contract must be accompanied by special security measures, or when the protection of the essential interests of the European Union, or the partner country so requires, and where the publication of the award notice is deemed not to be appropriate. Please remember that the list of selected candidates has to be given in section VI.3 of the award notice.

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

See Section 2.10.

### 3.4.13. Provision and replacement of experts

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

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

The evaluation committee may recommend that a tenderer be excluded from the tender procedure, and its offer considered irregular, if this 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, or if it can be established that this company has proposed names of experts which in fact had not given their consent to participate. This may lead to their exclusion from other contracts funded by the European Union (see Section 2.6.10.1.2.).

#### **DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

Should the contracting authority learn that a tenderer has confirmed the availability of a key expert and signed the contract although the tenderer has deliberately concealed the fact that the expert is unavailable from the date specified in the tender dossier for the start of the assignment,

the contracting authority may decide to terminate the contract using article 36(2)(l) of the general conditions.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

In addition to the above, prior authorisation by the European Commission is required before cancelling the contract.

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

#### **DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

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

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

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

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

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

#### **DIRECT MANAGEMENT, AND INDIRECT MANAGEMENT WITH *EX-POST* CONTROLS**

In the course of implementation, the contracting authority may also submit a substantiated written request for a replacement where it considers a member of staff incompetent or unsuitable for the purposes of the contract. **The contractor must be asked to provide his own and the staff member's observations to such request.**

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

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

During the implementation of a service contract, where a member of staff has to be replaced, the replacement must possess at least equivalent qualifications and experience and the fee/rate may in no circumstances exceed that of the expert replaced. Where the contractor is unable to provide a replacement possessing equivalent qualifications and/or experience, the contracting authority may either terminate the contract, if it considers that its performance is jeopardised, or, if it considers that this is not the case, accept the replacement, in which case the latter's fees are to be negotiated downwards to reflect the proper level of remuneration. Any additional expenses resulting from the replacement of staff are borne by the contractor except in the case of replacement resulting from death or where the contracting authority requests a replacement not provided for by the contract. Where an expert is not replaced immediately and sometime 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).

### 3.5. Procedures for the award of contracts under EUR 1 000 000

#### 3.5.1. Framework contract SIEA 2018

##### Description

The Framework contract 'Services for the Implementation of External Aid 2018' (FWC SIEA 2018) is a multiple framework contract with reopening of competition between three or four framework contractors of the concerned lot, to provide short-term technical assistance assignments covering the entire range of project cycle operations with the exception of programmes' financial audits (which are covered by a dedicated framework contract).

It entered into force on 1 June 2018 and it is valid until 31 May 2022.

The FWC SIEA 2018 in itself has no overall contract amount. **No request for services may be issued under the FWC SIEA 2018 if no funds are available** to cover the operation.

Services worth less than EUR 1 000 000 may be contracted using the FWC SIEA 2018.

Detailed information on how to use FWC SIEA 2018 can be found in the guidelines available on the internet<sup>168</sup>.

##### Conditions of use

There are 5 main conditions of use:

- a. operations have to be in the exclusive interest of third countries benefiting from funding under the external financing instruments or in the interest of the European Commission together with third countries benefiting from such funding;
- b. operations have therefore to be financed by external aid funds (Heading IV of the multiannual financial framework or the European Development Fund (EDF));
- c. the maximum amount for each specific contract, addenda included, must not exceed EUR 999 999;
- d. the total duration of a specific contract may not exceed 3 calendar years, addenda included; There is no set limit on the number of expert input in working days;
- e. the use of the dedicated IT tool<sup>169</sup>.

##### Users

The contracting authority for each individual specific contract may be:

- the European Union represented by the European Commission, acting on behalf of partner countries.

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<sup>168</sup> <https://ec.europa.eu/international-partnerships/framework-contract-siea-2018>

<sup>169</sup> OPSYS since January 2020. For requests of services funded under Trust Funds, CRIS FWC module has to be used.

- a partner country under indirect management (if authorised by INTPA, and only once the IT system will allow it).

### Content

- Lot 1 – Sustainable management of natural resources and resilience
- Lot 2 – Infrastructure, sustainable growth and jobs
- Lot 3 - Human Rights, democracy and peace
- Lot 4 – Human development and safety net
- Lot 5 – Budget support
- Lot 6 – Innovative financing for development

### 3.5.1.1. Procedure

A specific contract can only be concluded during the validity of the framework contract.

All the documents for the different steps of the procedure must follow the forms designed for FWC SIEA 2018, available on the dedicated internet site<sup>170</sup>. These forms may be updated during implementation of the framework contract, so users must ensure they use the most up-to-date versions. Users of the framework contract should be aware that there are two distinct procedures that must be used under the framework contract; one for contracts under EUR 300 000 and one for contracts of EUR 300 000 or above and less than EUR 1 000 000, the first being a simpler and shorter procedure

#### a) Consultation

A request for services must be sent to three or four<sup>171</sup> framework contractors within the same lot. Providing that at least one offer satisfies the admissibility, quality and financial criteria, the project manager can award the contract on this basis.

If, however, there is no qualitatively and/or financially satisfactory tender received, the relevant authorising officer may simply cancel the consultation, or cancel and either:

1. Relaunch with different framework contractors under unchanged terms of reference.
2. Relaunch with the same framework contractors a request for services after analysing/redrafting the specific terms of reference.
3. Initiate a negotiated procedure with one or framework contractors of its choice, from among those that took part in the request for services with a view to obtain improved offers within the terms of the specific request (N.B. the terms of the specific request cannot be substantially altered).
4. Initiate the relevant alternative procedure depending on the amount outside the framework contract.

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<sup>170</sup> [https://ec.europa.eu/europeaid/funding/framework-contracts\\_en](https://ec.europa.eu/europeaid/funding/framework-contracts_en)

<sup>171</sup> Three for a budget under EUR 300 000, and four for a budget equal to or above EUR 300 000.

The consultation must comply with the principles of transparency, proportionality, equal treatment, non-discrimination and of sound competition and with the terms of the framework contract.

Offers should be submitted via OPSYS. For those cases where CRIS is still used, offers should be submitted by e-mail to a functional mailbox specified in the request, which is accessible only to those persons authorised by the authorising officer. If the offer is sent to another address, the offer may be rejected. The specific ToR (terms of reference) for the proposed specific contract are attached to the request in order to give the framework contractors all the information they need to submit an offer. Their quality, in particular their clarity, is critical for the quality of the offer and the success of the assignment. The contractual deadline for submission of offers is minimum 14 calendar days for requests < EUR 300 000, and a minimum of 30 calendar days for requests with a maximum budget  $\geq$  EUR 300 000, from the date of dispatch of the request. It is always possible to allow a longer period of submission of offers. The framework contractors can ask for clarifications. The answers are sent simultaneously to all the framework contractors consulted. If amendments made during the consultation period may have an impact on the selection of the experts, the date for submission of offers must be extended accordingly.

#### b) Evaluation of offers

##### **Requests for services < EUR 300 000**

Offers are valid for 14 calendar days after the deadline for submission

There must be at least three evaluators. As appropriate, one of them may be a representative of the partner country. However, depending on a risk analysis by the contracting authority, a formal evaluation committee might be appointed.

##### **Requests for services $\geq$ EUR 300 000**

Offers are valid for 30 calendar days after the deadline for submission

An evaluation committee will be formally appointed by the contracting authority. See Section 2.9.1.

For all requests for services:

Only offers fulfilling the following criteria of admissibility will be evaluated:

- the deadline for the submission of offers has been respected;
- the offer complies with the eligibility rules of the external financing instrument which finances the specific contract; (see Section 2.3.)
- the fee rates, including those in the budget breakdown of a global price specific contract do not exceed the contractual maxima;
- the maximum budget is not exceeded (if applicable),

The contracting authority chooses the most economically advantageous offer<sup>172</sup>.

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<sup>172</sup> Using 80/20 ratio between technical quality and price, see above at 3.4.10.5.

For the evaluation of the technical quality, the specific contract's contracting authority will define the detailed criteria and their respective weights in the evaluation grid attached to the request for services.

Unless clearly stated to the contrary in the request for services, if one of the experts does not comply with any minimum requirement set out in the tender specifications, his/her score will be 0 and the whole offer must be rejected. Therefore, it is recommended to pay careful attention to minimum requirements and to the use of terms that imply a minimum requirement (e.g. 'experience in at least three developing countries', 'minimum C1 level of English', etc.)

Unless otherwise indicated in the evaluation grid, any offer falling short of the technical threshold of 75 out of 100 points, is automatically rejected. Out of the offers reaching the 75-point evaluation threshold, the best technical offer is given 100 technical points (using the automatic formula in the IT system, equivalent to the one explained in Section 3.4.10.3.).

For the financial evaluation of a fee-based specific contract, the provision for incidental expenditure and the provision for expenditure verification will not be taken into account in comparison of the financial offers. For the financial evaluation of a global price based specific contract the total price will be taken into account in the comparison of the financial offers. The offer with the lowest total price (taking above into consideration) receives 100 financial score (using the automatic formula in the IT system, equivalent to the one explained in Section 3.4.10.4.).

For the final score of the offer, the best price-quality ratio is established by weighing technical quality against price (using the automatic formula in the IT system, equivalent to the one explained in Section 3.4.10.5.).

If no offer is selected, the project manager may, after analysing the specific terms of reference, change and relaunch the request with the same framework contractors.

Within 14 days or 30 days of the deadline for receipt of offers, all the framework contractors who submitted offers must be notified of the results of the evaluation and the award decision. The notification is also obligatory when a new request for services is sent to the same framework contractors (relaunch). The contracting authority can sign the contract as soon as notification has taken place. There is no standstill period between notification and signature.

c) Signature of the specific contract

The specific contract comprises the assignment letter, the specific terms of reference, any methodology used, and the financial offer.

For specific contracts managed in OPSYS, the framework contractor signs first and the contracting authority for the specific contract signs last. For specific contracts managed in CRIS, the contracting authority for the specific contract signs first and the framework contractor signs last.

d) Assessment of the framework contractor's performance

The performance assessment form for the framework contractor must be filled in after the end of the assignment. This assessment covers the standard to which the framework contractor has executed the contract and must be sent to the latter for comments.

### 3.5.2. Simplified procedure

For contacts of a value of less than EUR 300 000, depending on the context and the needs (for instance the availability of required services in the different lots of the FWC and or in the partner country, time and budget available, etc.), the contracting authority may use the simplified procedure as an alternative to the framework contract without publishing the contract notice<sup>173</sup>.

Note that the simplified procedure requires more time than the procedure to start an assignment under the framework contract.

In order to start the simplified procedure, the contracting authority creates a procedure in CRIS/PPMT and gets a reference number.

The contracting authority draws up a list of at least three service providers and justifies its choice. The candidates are sent a letter of invitation to tender accompanied by a tender dossier. The specific annexes for simplified tenders must be used (administrative compliance grid, contract, contract notice, invitation letter, instructions to tenderers and tender form) for this procedure. For any other document of the tender dossier the regular service annexes must be used. The contract notice is not published, but it is included in the tender dossier as it contains important information for those service providers that are invited to tender, notably the selection criteria. Tenders must be sent or hand delivered to 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. Tenders must be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise, appointed by the contracting authority.

Tenderers for the simplified procedure may also be chosen from a list of vendors. The list must be drawn up following a call for expression of interest and must be valid for no more than 4 years from the date of advertisement. A legal framework for this procedure will be developed for future use.

If, having consulted the tenderers, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.

In the event of a failure of the simplified procedure the contract may be concluded by negotiated procedure (see Section 3.3.5.1.). The procedure for evaluating the tenders and awarding the contract is the same as under the restricted procedure (see Sections 3.4.9. to 3.4.12.4.).

As an exception the contracting authorities may use the simplified procedure for legal services according to the common procurement vocabulary (CPV) nomenclature<sup>174</sup>, regardless of the estimated value of the contract<sup>175</sup>.

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<sup>173</sup> Annex I to the FR, point 38(1)(d) and 38(2)(c), new terminology: ‘simplified procedure’ instead of ‘competitive negotiated procedure’.

<sup>174</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:074:0001:0375:en:PDF>

<sup>175</sup> Some legal services may be awarded following a negotiated procedure, see Section 3.3.5.1.

### **3.6. Modifying service contracts**

See Section 2.11. for general information on modifying contracts.

Any justified modification that involves a change in the total value of the contract must be made by means of an addendum.

The purchase of services which consist in the repetition of similar services as those foreseen in the original contract is regarded as a negotiated procedure (see Section 3.3.5.1. under e)), unless the value of the purchase of similar services is within the limits of the 'double de minimis rule' (see Section 2.11.1. under (c) or in case of unforeseen circumstances that a diligent contracting authority could not foresee (see Section 2.11.1. under (b)).

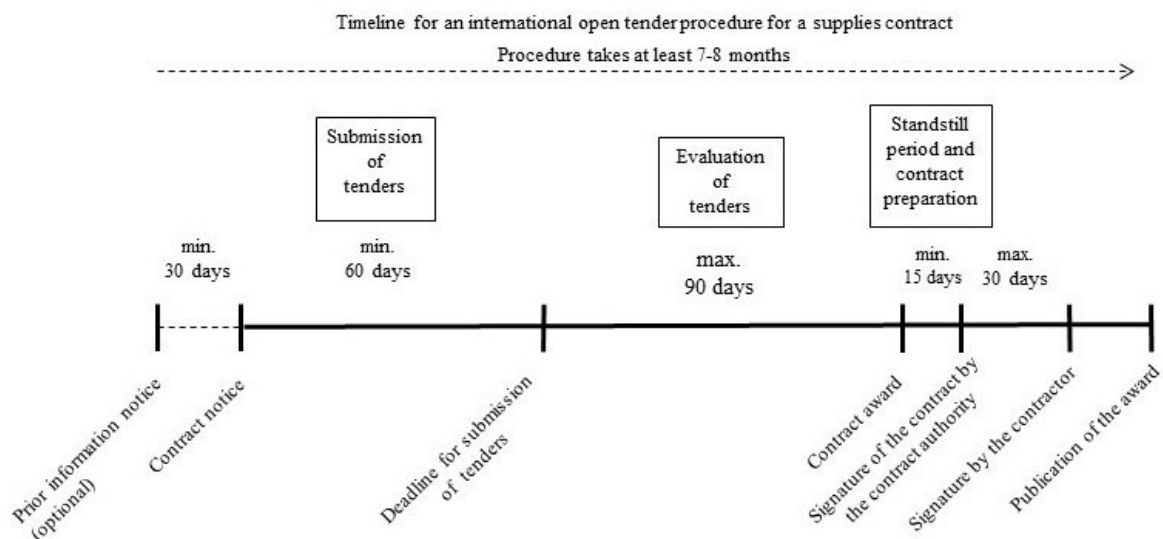
## 4. Supply contracts

### 4.1. Introduction

Supply contracts cover the purchase, leasing, rental or hire purchase (with or without option to buy) of products. For mixed contracts, see Section 2.5.1.

### 4.2. Procurement procedures

#### 4.2.1. Contracts with a value of EUR 300 000 or more



All supply contracts above this threshold must be the subject of an international open tender procedure following publication of a contract notice and additional information about the contract notice (see Section 4.3.)<sup>176</sup>.

#### 4.2.2. Contracts of more than EUR 100 000 and less than EUR 300 000

These supply contracts may be awarded through a local open procedure<sup>177</sup>.

##### 4.2.2.1. Local open procedure

In this case, supply contracts are awarded by an open procedure in which the contract notice is published in the local official journal of the partner country or any equivalent local media and where

<sup>176</sup> Point 38(2)(a)(i) of Annex I to the Regulation (EU, Euratom) No 1046/2018 of the European Parliament and of the Council of 30 July 2018 on the financial rules applicable to the general budget of the Union (OJ L 193, 30.7.2018, p.1) (FR).

<sup>177</sup> Annex I to the FR, point 38(2)(b)(i).

necessary in order to ensure an adequate level of competition on the Official Journal of the European Union, F&T portal. For details, see Section 4.4.

### 4.2.3. Contracts with a value of less than EUR 100 000

These supply contracts may be awarded through a simplified procedure<sup>178</sup>.

#### 4.2.3.1. Simplified procedure

Supply contracts under EUR 100 000 are awarded by simplified procedure. At least three candidates are sent an invitation to tender. No contract notice needs to be published. For details, see Section 4.5.

### 4.2.4. Contracts with a value of less than or equal to EUR 20 000

The contracting authority may award supply contracts of a value of EUR 20 000 or less on the basis of a single tender<sup>179</sup>. See Section 2.6.8.

### 4.2.5. Contracts with a value of less than or equal to EUR 2 500

For supplies with a value of less than or equal to EUR 2 500, the contracting authority may pay on the basis of an invoice without prior acceptance of a tender. However, please note that the budgetary commitment against which the invoice is paid has to be validated before the contracting authority enters into the corresponding 'legal commitment'. In this context, such legal commitment may take the form, inter alia, of an agreement, a pro-forma invoice, a written acceptance of a quotation, an order form, etc.

### 4.2.6. Procedures applicable without ceilings

#### 4.2.6.1. Negotiated procedure

##### **DIRECT MANAGEMENT**

Prior approval / event to be reported, as the case may be, is required from the European Commission.

##### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The contracting authority must seek prior authorisation from the European Commission for the use of the negotiated procedure.

##### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation by the European Commission is required.

See also text box in Section 2.6.8.

<sup>178</sup> Annex I to the FR, point 38(2)(c)(ii).

<sup>179</sup> Annex I to the FR, point 38(2)(d).



Supply contracts may be awarded by negotiated procedure on the basis of one or several tenders in the following cases<sup>180</sup>:

- a) Where no tenders, or no suitable tender, or no request to participate or no suitable request to participate have been submitted in response to an open procedure or restricted procedure after this procedure has been completed, provided that the original procurement documents are not substantially altered.

A tender must be considered unsuitable where it does not relate to the subject matter of the contract and a request to participate must be considered unsuitable where the economic operator is in an exclusion situation or does not meet the selection criteria<sup>181</sup>.

- b) Where the supplies can only be provided by a single economic operator and for any of the following reasons:
- (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
  - (ii) competition is absent for technical reasons;
  - (iii) the protection of exclusive rights including intellectual property rights must be ensured.

The exceptions set out in points (ii) and (iii) must only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement<sup>182</sup>.

- c) In so far as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events, it is impossible to comply with the applicable time limits and where the justification of such extreme urgency is not attributable to the contracting authority.

Operations carried out in crisis situations must be 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, must establish that a situation of extreme urgency exists and must review his decision regularly with regard to the principle of sound financial management<sup>183</sup>.

- d) For additional deliveries that are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics that would result in incompatibility or disproportionate technical difficulties in operation or maintenance.
- e) Where the products are manufactured purely for the purpose of research, experimentation, study or development; however such contracts must not include quantity production to establish

<sup>180</sup> Annex I to the FR, points 11(1) and 39(1).

<sup>181</sup> Annex I to the FR, point 11(2).

<sup>182</sup> Annex I to the FR, point 11(3).

<sup>183</sup> Annex I to the FR, point 39(2). 'Emergency assistance' is another case specific to the EDF and distinct from the 'extreme urgency' referred to here, in which the negotiated procedure may be used for actions that are not governed by Article 19c of Annex IV to the 2000/483/EC Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (Cotonou Agreement) (OJ L 317, 15.12.2000, p. 3 ). Emergency assistance is linked to the application of Articles 72 and/or 73 of the Cotonou Agreement. See also Article 79(5) of Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ('Overseas Association Decision').

commercial viability or to recover research and development costs.

- f) For supplies quoted and purchased on a commodity market.
- g) For purchases of supplies on particularly advantageous terms, either from a supplier that is definitively winding up its business activities, or the liquidators in an insolvency procedure, an arrangement with creditors, or a similar procedure under national law.
- h) For contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or where the protection of the essential interests of the European Union or the partner country so requires, provided the essential interests concerned cannot be guaranteed by other measures (such as requirements to protect the confidential nature of information that the contracting authority makes available in the procurement procedure).
- i) For the purchase of public communication networks and electronic communications services within the meaning of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)<sup>184</sup>.
- j) Where the tender procedure has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, 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 procurement documents are not substantially altered.
- k) Where a new contract has to be concluded after early termination of an existing contract.

The contracting authority must prepare a negotiation report (see template in Annex A10) justifying the manner in which the negotiations were conducted and the basis for the resulting contract award. The procedures set out in Sections 4.3.11.1. to 4.3.11.3. must be followed by analogy, and the negotiation report must be included in the contract dossier.

#### 4.2.6.2. Dynamic purchasing system

A dynamic purchasing system is a completely electronic process for making commonly used purchases for a period of up to 4 years. A contract notice invites indicative tenders, which must be evaluated within 15 days. Tenderers that comply with the specifications are admitted to the system. The system is open to any economic operator who meets the selection criteria and submits 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 of submitting an indicative tender within 15 days. The contracting authority then invites the tenderers admitted to the system to submit a tender within a reasonable time limit. The contract will be awarded to the tender offering the best price-quality ratio 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 European Commission.

<sup>184</sup> OJ L 108, 24.4.2002, p. 33.

### **4.2.6.3. Competitive dialogue**

See Section 2.6.7. for further details.

## **4.3. International open tender for contracts of EUR 300 000 or more**

### **4.3.1. Publicity**

In order to ensure the widest possible participation in competitive tendering and the requisite transparency, a contract notice and additional information about the contract notice must be published for every open tender procedure according to the guidelines for publication (Annex A11e).

#### **4.3.1.1. Publication of prior information notice**

It is recommended, but not compulsory, to publish a prior information notice setting out the specific characteristics of the planned tender procedure, at least 30 days — but not more than 12 months — before the publication of the contract notice in the Official Journal of European Union and on the F&T portal. Prior information notices must briefly state the subject and content of the related tenders. Publishing a prior information notice does not bind the contracting authority to finance the contracts proposed and prospective suppliers are not expected to submit tenders at this stage.

The purpose of the prior information notice is to provide greater publicity for calls for tenders and more preparation time for tenderers. Encoding and processing a prior information notices requires time and human resources. If due to time constraints a prior information notice can only be published shortly before the contract notice (e.g. 30 days), an alternative option would be not to publish a prior information notice and to provide tenderers with a longer submission deadline in the contract notice. Publishing the contract notice earlier would provide economic operators with more time to submit a good quality offer. Prior information notices on the other hand have an added value when there is a sufficient period between its publication and the planned publication of the Contract Notice.

The prior information notices are published in the Official Journal of the European Union, on F&T portal<sup>185</sup> and in any other appropriate media according to the guidelines for publication (Annex A11e).

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<sup>185</sup> See: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/home>

**DIRECT MANAGEMENT, INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

Prior information notices must be submitted for publication directly via PPMT in direct management. In case of indirect management, prior information notices are sent to the EU delegation in electronic form using the relevant template (A5d) according to the guidelines for publication (A11e). They must be published at least 30 days before the corresponding contract notice.

### 4.3.1.2. Publication of contract notices

All supply contracts of EUR 300 000 or more must also be the subject of a contract notice and additional information about the contract notice (Annex A5f) published in the Official Journal of the European Union, on the F&T portal and in any other appropriate media according to the guidelines for publication (Annex A11e). A minimum of 30 days must be respected between the publication of the prior information notice and the contract notice/additional information about the contract notice.

The contracting authority drafts the contract notice in PPMT, in case of direct management (also Annex A5f is needed) and in indirect management using the appropriate templates (both Annexes A5e and A5f are needed) and send it in due time in electronic form to the EU delegation for publication.

If necessary, the contracting authority must arrange simultaneous local publication and publication in any other appropriate media directly.

**DIRECT MANAGEMENT, INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS AND INDIRECT MANAGEMENT WITH *EX POST* CONTROL**

Contract notices, additional information about the contract notices and tender dossiers must be submitted for publication directly in PPMT in case of direct management and in case of indirect management to the EU delegation in electronic form using the relevant templates according to the guidelines for publication (A11e).

The contract notice must provide would-be suppliers with the information they need to determine their capacity to fulfil the contract in question. No estimated value or available budget is to be indicated in the contract notice. Instead, the contracting authority will provide an estimation of the volume of the purchase (e.g. number of supply items) as short description in the contract notice, in order to give the necessary elements allowing the economic operators to prepare and submit offers. If the contract notice and additional information about the contract notice are also published locally, it must be identical to the ones published on the Official Journal of the European Union, F&T portal and issued at the same time.

The tender dossier for the contract in question is published on the TED e-Tendering and F&T portal.

If the contracting authority, either on its own initiative or in response to the request of a tenderer, amends information in the contract notice or in the additional information about the contract notice, it must submit a corrigendum stating the changes made. The corrigendum to the contract notice will be encoded directly in eNotices for direct management. In indirect management the appropriate template (Annex A5b) shall be used and forwarded to the relevant EU delegation for publication,

always complying with the deadlines set up in the publication guidelines (see Annex A11e). However, a corrigendum to the additional information about the contract notice might also be published in eTendering, if necessary.

The corrigendum may extend the deadline to allow candidates to take the changes into account.

The corrigendum must be published not later than 8 days before the original submission deadline. Be aware that the corrigendum has to be sent to the relevant service not later than 5 days before the expected date for its publication.

### **4.3.2. Drafting and content of the tender dossier**

Tender documents must be carefully drafted to ensure that both the contract and the procurement procedure are carried out correctly.

Tender documents must contain all the provisions and information that tenderers need to submit their tenders: the procedures to follow, the documents to provide, cases of non-compliance, award criteria, etc. When the contracting authority is the European Commission, it may be desirable to involve representatives of the final beneficiaries in preparing the tender at an early stage. See Section 2.8. for guidelines on drafting 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 specify what is required of a product, service or material or work to achieve the purpose for which they are intended.

The specifications may include as appropriate:

- a) a clear definition of the tasks to be performed
- b) minimal quality levels
- c) environmental and climate performance
- d) for purchases intended for use by natural persons, wherever possible, the accessibility criteria for people with disabilities or the design for all users
- e) the levels and procedures of conformity assessment
- f) performance or use of the supply (fitness for use)
- g) safety or dimensions, including the sales name and user instructions, terminology, symbols, testing and test methods, packaging, marking and labelling, production processes and methods.

The contracting authority is responsible for drawing up these documents. The tender documents will be shared via TED e-Tendering.

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 specialists. 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 drafting the technical specifications. They are the key to successful procurement, a sound supply contract and a successful project.

The technical specifications state — where applicable, lot by lot — the exact nature and performance characteristics of the supplies. Where applicable, they also specify conditions for delivery and installation, training and after-sales service.

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

The purpose of the technical specifications is to define the required supplies precisely. The minimum quality standards, defined by the technical specifications, will enable the evaluation committee to determine which tenders are technically compliant.

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

#### **DIRECT MANAGEMENT**

The tender dossier must be agreed upon by the European Commission prior to issue. The standard practice is to also consult and obtain the agreement of the partner country and, where appropriate, of other parties involved.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The contracting authority must submit the tender dossier to the delegation of the European Union for authorization prior to issue.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorization on the tender dossier by the European Commission is required.

### **TENDER DOSSIER CONTENT**

- A. Instructions to tenderers**
- B. Draft contract, special conditions and annexes (including technical specifications)**
- C. Further information**
- D. Tender form for a supply contract**

See the standard format in Annex C4 as described in Section 4.8.

The tender dossier 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, the tender dossier must lay down the conditions and/or formulas for revision of prices during the lifetime of the contract (Article 26(9) of the special conditions). 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 tender guarantee assures the contracting authority that submitted tenders will not be withdrawn. If the contracting authority deems a tender guarantee to be appropriate and proportionate, it may request it, representing 1% to 2% of the overall value of the contract. The contracting authority must return the tender guarantee as foreseen in Sections 4.3.9.3. and 4.3.10. and release it for all tenderers when the contract is signed.

The contracting authority must call in the tender guarantee if the tender is withdrawn before contract signature.

According to the applicable rules, guarantees (pre-financing and/or performance guarantee) could be required or not. If so, this must be mentioned in the tender dossier.

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

The criteria should be precise, non-discriminatory and not prejudicial to fair competition. All criteria must be applied as specified in the tender dossier and cannot be changed during the procedure.

#### **1. The selection criteria**

They relate to the tenderer's capacity to execute the contract. The selection procedure involves:

1. Eliminating tenderers who are ineligible in view of their nationality (see Section 2.3.1.), are subject to European Union restrictive measures (see Section 2.4.), or fall into one of the situations described in Sections 2.6.10.1.1. (exclusion from participation in procurement procedures) and 2.6.10.1.2. (rejection from a given procedure); 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 3 years (see Section 2.6.11.2.) if specifically required in the tender dossier.
2. Verifying the tenderers' technical and professional capacity, for example by looking at their average annual staffing levels, the size and professional experience of their management and the main supplies delivered in the field in question in recent years (see Section 2.6.11.3.).

The selection criteria specified in the annexes to this practical guide are given by way of illustration and need to be adapted to the nature, cost and complexity of the contract. They must be in a yes/no format to allow a clear assessment of whether or not the offer meets them.

#### **2. Evidence of selection criteria**

If, for some exceptional reason that 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 that the contracting authority considers appropriate. Where the supplies 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 will cover the tenderer's

technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

Only successful tenderers must supply supporting documents for the selection criteria before the award of the contract (optional for contracts below EUR 300 000, see Section 2.6.11.).

### **3. Technical evaluation**

The technical evaluation will be based on the evaluation grid published in the tender dossier, that must not be changed in any way during the evaluation process. Given the wide variety of supplies and their technical nature, the technical requirements must be tailored to each tender in a yes/no format to allow a clear assessment of whether or not the offer meets the technical specifications set out in the tender dossier.

### **4. The award criterion**

The award criterion applied to technically compliant tenders is the lowest price or, in exceptional cases mentioned in Section 4.3.3.3., the best price-quality ratio.

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

Price is the sole award 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. Where specified in the technical specifications, the financial evaluation may take into account not only the acquisition costs but, to the extent relevant, costs borne over the life cycle of the supplies (such as maintenance costs and operating costs), in line with the conditions set out in Article 20(4)(c) of the instructions to tenderers. If so, the procurement dossier must in advance indicate the data to be provided by the tenderers and the method that will be used to determine the life-cycle costs on the basis of those data.

If the selected tender exceeds the maximum budget available for the contract, Section 4.2.6.1.(j) applies.

#### **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, Section 4.2.6.1.(j) applies.

#### **4.3.3.3. Supply contracts including particularly significant ancillary services**

Where a supply contract includes particularly significant ancillary services (such as after sales services and/or training), the evaluation may be carried out either as in Section 4.3.3.2. or, subject to prior approval, according to the best price-quality ratio criterion.



#### 4.3.4. Additional information during the procedure

The tender dossier must be clear enough to save tenderers from requesting additional information during the tender procedure. If the contracting authority provides additional information on the tender dossier, either on its own initiative or in response to a tenderer's request, it must send that information in writing to all tenderers at the same time.

Tenderers may submit questions via TED e-Tendering platform no later than 21 days before the deadline for submission of tenders. The contracting authority must reply to all tenderers' questions in TED e-Tendering no later than 8 days before the deadline for receipt of tenders. In case of indirect management with *ex ante* controls, the European Commission transmits the questions to the partner country. The partner country then submits the clarifications to the European Commission for *ex ante* approval and publication in TED e-Tendering.

Clarifications and any minor changes to the tender dossier must also be done in TED e-Tendering. No prior opinion on the assessment of the tender can be given by the contracting authority in reply to a question or a request for clarification.

If the questions result in an amendment to the contract notice, a corrigendum must be published, as explained in Section 4.3.1.2. The corrigendum must be published before the submission deadline in TED e-Tendering. The deadline for the submission of tenders may be extended to allow tenderers to take account of the changes.

If the technical content of the tender is complex, the contracting authority may hold an information meeting and/or site visit. This meeting must be announced in the tender dossier and must take place at least 21 days before the deadline for submission of tenders. The contracting authority must state in the tender dossier if attendance at this meeting or site visit is strongly advised or compulsory. All costs of attending the meeting must be met by the tenderers. Individual visits by companies during the tender period cannot be organised by the contracting authority for reasons of transparency and equal treatment of the tenderers. Although they are not compulsory, these information meetings are encouraged since they have proven to be an efficient way to clarify many questions related to the tender dossier. Any presentation/documentation to be delivered in the information session, as well as the outcome and the minutes, must also be uploaded on TED e-Tendering.

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

Tenders must be submitted to the contracting authority no later than the date and time referred to in the contract notice. A tender received after the time-limit for receipt of tenders will be rejected.

The deadline for submission must be long enough 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. It is advised to organise the tender-opening session one week after the deadline for submission to allow tenders submitted on the last day, in paper submission, and tenders guarantees, if applicable, to arrive at the contracting authority premises.

The minimum period between the date of publication of the contract notice and the deadline for submitting tenders is 60 days. However, in exceptional cases, a shorter deadline may be allowed in compliance with internal procedures.

**INDIRECT MANAGEMENT WITH EX ANTE AND EX POST CONTROLS**

Prior authorisation is required from the European Commission for a shorter deadline.

### 4.3.6. Period of validity

See Section 2.9.5.

### 4.3.7. Submission of tenders

For electronic submission (direct management), tenders must be submitted exclusively via the electronic submission system (eSubmission) available via a link in the TED eTendering platform<sup>186</sup>. Tenders submitted in any other way (e.g. e-mail or by letter) will be disregarded.

For paper submission (indirect management), each technical and financial tenders must be placed in a single sealed envelope, itself placed in a package or outer sealed envelope. The tender must be sent in accordance with the instructions to tenderers.

### 4.3.8. The evaluation committee — supplies

For the committee's composition, impartiality and confidentiality, responsibilities and timetable, see Section 2.9.

In eSubmission and only for direct management procedures, there are two types of committees: opening and evaluation committee. It is recommended that for each lot, the composition of both committees is the same. The opening and evaluation committees must be appointed in PPMT before the start of the opening session and the evaluation of tenders.

### 4.3.9. Stages in the evaluation process

#### 4.3.9.1. Receipt and registration of tenders

For electronic submission (direct management), electronic tenders should be submitted within the deadline specified under Heading IV.2.2 of the contract notice.

On receiving tenders, the contracting authority must register them, stating the date and time of submission. It must provide a receipt for tenders delivered by hand or submitted electronically.

For paper submission (indirect management), 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).

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<sup>186</sup> For detailed instructions on how to submit a tender please consult the eSubmission Quick Guide available at: [https://ec.europa.eu/info/funding-tenders/opportunities/docs/esubmission/quickguidepp\\_en.pdf](https://ec.europa.eu/info/funding-tenders/opportunities/docs/esubmission/quickguidepp_en.pdf)

The supported browsers, file types, size of attachments and other system requirements can be consulted at: <https://webgate.ec.europa.eu/fpfis/wikis/x/Oo5kl>. In case of technical problems, please contact the eSubmission Helpdesk (see contact details in the eSubmission Quick Guide) as soon as possible.

### 4.3.9.2. Preparatory meeting

The first meeting of the evaluation committee should 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 states 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 were submitted on time. In indirect management, it is also meant to check that the tenders are complete, the requisite tender guarantee - if applicable - 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 set in the tender dossier. Although it is public, participation in the tender opening session is restricted to representatives of the companies that are tendering for the contract.

See the tender opening checklist in Annex C5 for the detailed formalities to be carried out by the chairperson with the assistance of the secretary.

#### **DIRECT MANAGEMENT**

The opening committee appointed by the European Commission through PPMT, must carry out the tender opening session.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS:**

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.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

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

The chairperson must check that no member of the evaluation committee has a potential conflict of interest with any of the tenderers (on the basis of the tenders received, consortium members and any identified subcontractor). See Sections 2.9.2. and 2.9.3.

The evaluation committee must decide whether or not tenders comply with the formal requirements.

For electronic submission (direct management), several automatic validation checks take place to ensure that the tenders comply with the deadline and that they were received in the same state as they were submitted, i.e. that their integrity and confidentiality have been preserved. When all tenders for all lots are verified and marked as “In Order” / “Not in Order”, the Record of Opening can be generated. After closing the opening session, the evaluation committee members, nominated through PPMT, can access the tenders that are “In Order”.

For paper submission (indirect management), the summary of tenders received, which is attached to the tender opening record (see Annex C6) must be used to record whether each of the tenders complies with the formal submission requirements.

The minutes of this meeting are included in the tender opening record and the tender opening record must be made available to the tenderers on request.

Any tender guarantee must be returned to the tenderers that do not comply with the formal submission requirements. This implies that tenders that have been submitted, in paper submission, 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**

The evaluation committee must use the administrative compliance grid and the evaluation grid published in the tender dossier.

During the technical evaluation, the evaluation committee analyses whether the tenders satisfy the requirements set in the tender dossier. This includes any service components included in the technical specifications. The results are recorded in a yes/no grid for all the items specified in the tender dossier. No scoring method should be used. If the tender is divided into lots, the evaluation should be carried out lot by lot.

With the agreement of the majority of the evaluation committee voting members, the chairperson may write to tenderers whose submissions require clarification, asking them to reply within a reasonable deadline set by the evaluation committee.

##### **Part 1: administrative compliance**

Before conducting a detailed evaluation of the tenders, the contracting authority checks that they comply with the essential requirements of the tender dossier (i.e. the administrative compliance grid).

A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them. Substantial departures or restrictions are those that 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: the tenderer has included a statement regarding the content and extent of subcontracting envisaged.

The administrative compliance of each of the tenders must be recorded in the evaluation report (see Annex C7).

## Part 2: technical compliance

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 evaluation committee or its members change the evaluation grid communicated to the tenderers in the tender dossier.

The purpose of this evaluation is to assess whether or not the competing tenders meet the selection criteria and the minimum technical requirements.

**Rule of origin (applicable only to contracts financed by a basic act under the Multiannual Financial Framework 2014-2020 (contracts/lots above EUR 100 000 under CIR and irrespective of the value for other instruments) and to contracts financed by the INSC Regulation 2021/948 of 27 May 2021 under the Multiannual Financial Framework 2021-2027):** all tenders must fulfil the requirements listed in Sections 2.3.5. and 2.3.8. 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 (if it is not the contracting authority).

The tenderer will be required to provide proof of origin in the form of a certificate of origin or other official documentation as prima facie evidence, before the contract is signed if possible. It is the responsibility of the tenderer to verify that the provided information is correct.

To establish origin, one must determine where the product in question has been obtained or produced.

Tenders that clearly fail to satisfy the rule of origin must be rejected.

**Important: For contracts financed by a basic act under the new Multiannual Financial Framework 2021-2027, with the exception of the INSC Regulation 2021/948 of the 27 May 2021, all supplies and material may originate in any country and no declaration of origin is required.**

**Nationality of subcontractors:** the evaluation committee must check at this stage that the nationalities of any subcontractors identified in the technical offers comply with the nationality rule explained in Section 2.3.1.

Having evaluated the tenders, the evaluation committee must then rule 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 in accordance with the published criteria.

### 4.3.9.5. Evaluation of financial offers

Once the technical evaluation has been completed, the evaluation committee checks that the financial offers contain no obvious arithmetical errors. Any obvious arithmetical errors are corrected without penalty to the tenderer.

If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation must pick out the best financial offer for each lot, taking into consideration any discounts granted by the tenderers.

An example of how to treat discounts:

Company A offers a discount of 20% if awarded lots 1 and 3, company B offers a discount of 10% if awarded all three lots, company C offers no discount.

	Company A	Company B	Company C	Ranking without discount
<b>Lot 1</b>	90	80	70	Company C
<b>Lot 2</b>	Not bidding	40	50	Company B
<b>Lot 3</b>	60	70	55	Company C

After applying the discount:

	Company A (20% discount)	Company B (10% discount)	Company C (no discount)
<b>Lot 1</b>	72	72	70
<b>Lot 2</b>	not bidding	36	50
<b>Lot 3</b>	48	63	55

The 3 combinations possible:

Combination 1:  $72 + 40 + 48 = 160$

Combination 2:  $72 + 36 + 63 = 171$

Combination 3:  $70 + 50 + 55$ , but since there is a cheaper price offered for lot 2, 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 (or, in exceptional cases mentioned in Section 4.3.3.3., the tender with the best price-quality ratio) 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, Section 4.2.6.1.(j) applies.

##### Abnormally low tenders

Contracting authorities can reject tenders that appear to be abnormally low in relation to the goods, concerned.

However rejection on that ground alone is not automatic.

The concerned tenderer must be asked, in writing, to provide details of the constituent elements of its tender, notably those relating to compliance with employment protection legislation and working

conditions in the location of the contract, such as the economics of the products, the manufacturing process, the technical solutions chosen or any exceptionally favourable condition available to the tenderer, the originality of the tender.

In view of the evidence provided by the tenderer, the contracting authority decides on whether to reject the tender or not.

Both that decision and its justification must be recorded in the evaluation report.

**Applicable only to contracts financed by a basic act under the multiannual financial framework for the years 2014-2020:**

**EDF-FUNDED PROGRAMMES**

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

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

#### **4.3.9.7. The evaluation committee's conclusions**

As a result of its deliberations, the evaluation committee may make any of the following recommendations:

- Award the contract to the tenderer that has submitted a tender:
  - that complies with the formal requirements and the eligibility rules;
  - whose total budget is within the maximum budget available for the project;
  - that meets the minimum technical requirements specified in the tender dossier;
  - that is the least expensive tender (or, in exceptional cases mentioned in Section 4.3.3.3., the tender with the best price-quality ratio (satisfying all of the above conditions)).

At the latest during the evaluation procedure and before taking the award decision, the contracting authority ensures that there is no record of the successful tenderer, including consortium members, subcontractors or capacity providing entities, if any, in exclusion situation in the EDES nor in the lists of EU restrictive measures (see sections 2.6.10.1. and 2.4.).

During the evaluation procedure and before taking the award decision, the evaluation committee will request the original<sup>187</sup> Declaration on honour on exclusion criteria and selection criteria and copies of documentary evidence for exclusion and selection criteria from the potential successful tenderer. If upon verification, the evaluation committee considers the submitted evidence not admissible, it will request the same evidence from the second best ranked tenderer.

- Cancel the tender procedure (see Section 2.6.13.).

#### **DIRECT MANAGEMENT**

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 evaluators. This evaluation report must be submitted to the European Commission, which must decide whether or not to accept its recommendations.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

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 evaluators. This evaluation report must be submitted to the contracting authority, which must decide whether or not to accept its recommendations. The contracting authority must then submit the evaluation report together with its proposed decision to the European Commission. If there is an award proposal and the European Commission has not already received a copy of the tenders, these must be submitted.

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

If the European Commission accepts the proposed decision, the contracting authority will either commence awarding the contract (see Section 4.3.11.) or cancel the tender, as decided.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation from the European Commission is required before the contracting authority acts on the recommendations of the evaluation committee.

The report is drawn up. The contracting authority will then take its decision. The entire evaluation procedure, including the notification to the successful tenderer, must be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer might be unable to maintain its tender if the evaluation procedure takes too long.

Subject to the contracting authority's legislation on access to documents, the entire tender procedure is confidential from the end of the tender opening session until both parties have signed the contract. The evaluation committee's decisions are collective and its deliberations must remain secret. The evaluation committee members and any observers are bound to secrecy. If its law

<sup>187</sup> The requirement to submit an original Declaration on honour on exclusion criteria and selection criteria is only applicable in case of paper submission.



conflicts with the confidentiality required, the contracting authority must obtain prior authorisation from the European Commission before disclosing any information.

The evaluation report is for official use only and may be divulged neither to tenderers nor to any party outside the authorised services of the contracting authority, the European Commission and the supervisory authorities (e.g. the Court of Auditors).

#### **4.3.10. Cancelling the tender procedure**

See Section 2.6.13.

A cancellation notice must be published following the guidelines for publication (see Annex A11e).

It may happen that the procedure must be cancelled. Cancellation of the procedure can take place up until signature of the contract (Art. 171 FR). Candidates or tenderers must always be informed as soon as possible if it is decided, in the course of the procedure, to cancel it.

Tenderers are entitled to the immediate release of their tender guarantee.

If the tender procedure is cancelled before the opening session, in case of paper submission (indirect management), the unopened and sealed envelopes must be returned to the tenderers.

#### **4.3.11. Award of the contract**

#### **4.3.12. Notifying the successful and unsuccessful tenderers**

See Section 2.10. for the award of contract and Section 2.6.12. in case of suspensive clause.

##### **4.3.12.1. Standstill clause (applicable for contracts above EUR 300 000)**

See Section 2.10.1.

##### **4.3.12.2. Contract preparation and signature**

See Section 2.10.2 and 2.10.3.

The proposed contract must follow Annex C4 as described in Section 4.8.

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

See Section 2.10.3.1.

#### **4.4. Local open tender for contracts between EUR 100 000 and EUR 300 000**

In this case, the contract notice is published in the local official journal of the partner country or any equivalent local media, and where necessary in order to ensure an adequate level of competition, in the Official Journal of the European Union, F&T portal. Publication in the local official journal or equivalent media is the responsibility of the partner country.

As the cost of publishing the full contract notice in the local media may be high, the template in Annex C3 gives the minimum information that must be included in a local advertisement. However,

the full contract 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 companies. No conditions seeking to restrict the participation of other eligible contractors are allowed (e.g. obliging such companies to be registered in the partner 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 contract notice in the local press and the deadline for submission of tenders. However, in exceptional cases, a shorter deadline may be allowed in compliance with internal procedures.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* AND *EX POST* CONTROLS**

Prior authorisation by the European Commission must also be sought for a shorter deadline.

The measures applicable to an international open procedure, as described in Section 4.3., apply by analogy to the local open procedure.

Paper submission instructions in tender documents should be followed in local procedures both in direct and indirect management.

#### **Applicable only to contracts financed by a basic act under the multiannual financial framework for the years 2014-2020:**

##### **EDF-FUNDED PROGRAMMES**

Tenderers from the ACP States, either individually or in a consortium with European partners, must be accorded a 15% price preference during the financial evaluation.

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

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

See also Section 2.6.9.

## **4.5. Simplified procedure for contracts under EUR 100 000**

The contracting authority may award contracts under EUR 100 000 by simplified procedure, without publishing the contract notice<sup>188</sup>. The contracting authority draws up a list of at least three companies with a justification for its choice. The candidates are sent a letter of invitation to tender

<sup>188</sup> See, points 38(1)(d) and 38(2)(c) ('simplified procedure' instead of 'competitive negotiated procedure') of Annex I to the FR.

accompanied by a tender dossier. The contract notice (annex c2) is not published, but it is included in the tender dossier as it contains important information for those companies that are invited to tender.

Tenders must be sent to the contracting authority at the address and by no later than the date and time referred to 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. 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.

The tenders are opened and evaluated by an evaluation committee with the necessary technical and administrative expertise, appointed by the contracting authority. It is advised to organise the tender-opening session one week after the deadline for submission to allow tenders sent on the last day to arrive at the contracting authority premises.

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

In the event of one failure of the simplified procedure, the contract may be awarded by negotiated procedure (see Section 4.2.6.1.(j)). The remainder of the procedure (preparing the tender dossier, evaluating the tenders, awarding the contract, etc.) is the same as under the international open procedure (see Sections 4.3.2. to 4.3.11.2.).

#### **4.6. Single tender procedure for contracts between EUR 20 000 and EUR 2 500**

If the estimated budget is less than EUR 20 000, one offer is enough. However, no slicing of budget is allowed to avoid following the rule and applying the simplified procedure.

#### **4.7. Modifying supply contracts; addendum**

See Section 2.11. for general information on modifying contracts.

Leaving aside varying the quantities according to Article 22 of the general conditions (see below) before contracting and/or during the execution of the contract, the contracting authority may not increase the budget of the initial supply contract or agree to/arrange for the purchase of equipment that was not covered in the initial tender and subsequent contract.

The only exceptions to this rule are:

(1) 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. This is only allowed where a change of supplier would oblige the contracting authority to acquire equipment having different technical characteristics that would result in either incompatibility or disproportionate technical difficulties in operation and maintenance. The additional deliveries arrangement is regarded as a negotiated procedure (see Section 4.2.6.1.(d)) and an addendum or a new contract should be signed.

(2) The situations listed in Section 2.11.1.

Under Article 22 of the general conditions, the contracting authority has the power to issue an administrative order on variations. The contractor must comply with the variation order.

## **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 II to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC <sup>189</sup> or the realisation, by whatever means, of a work corresponding to the requirements

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<sup>189</sup> OJ L 94, 28.3.2014, p. 65.

specified by the contracting authority exercising a decisive influence on the type or design of the work. A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient in itself to fulfil an economic or technical function.

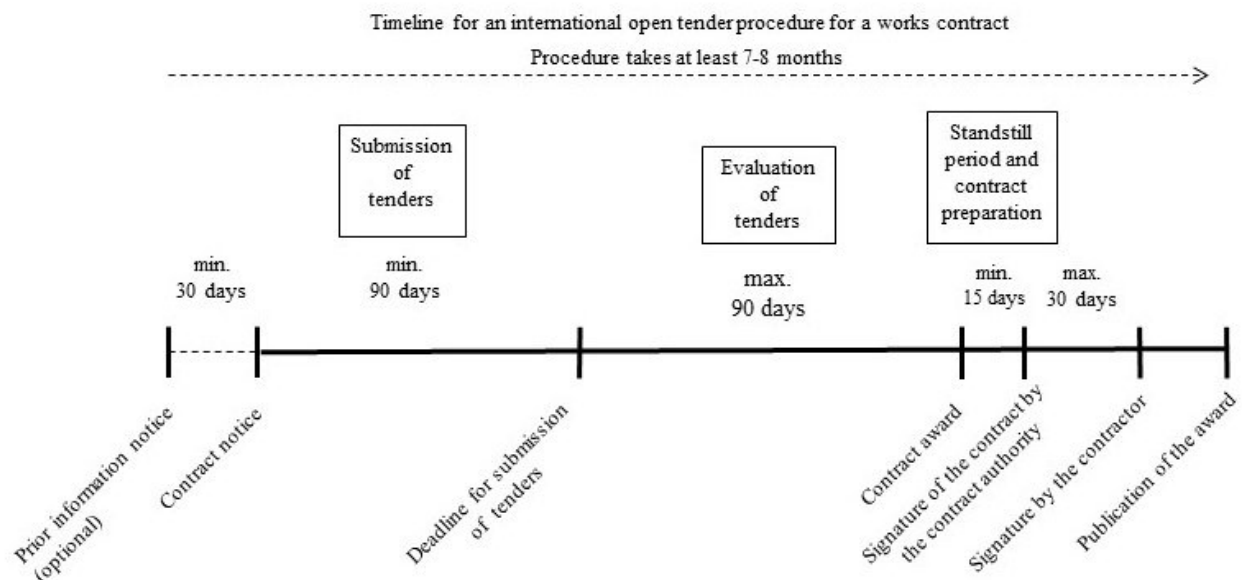
Works contracts are usually concluded by the partner country with which the European Commission has a financing agreement (under indirect management).

## 5.2. Procurement procedures

### 5.2.1. Contracts with a value of EUR 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 all relevant notices as stipulated in the publication guidelines (Annex A11e). For details, see Section 5.3.



#### 5.2.1.2. Restricted procedure

In view of the characteristics of certain works, a restricted tender procedure may be used. The templates for Restricted and Design&Build procedures are not maintained in the current list of annexes. Services which, however, want to use these templates will have to adapt them using the archived PRAG version 2018.0 of the Restricted or Design&Build procedures and inserting all provisions of mandatory application that have been incorporated since the 2018.0 PRAG version, notably in the contract notice, additional information about the contract notice, the instructions to tenderers and the draft contract of the international open procedure. The competent authority of the European Commission must authorise the use of this approach and may provide technical support on a case-by-case basis. Publication of the relevant notice as stipulated in the publication guidelines (Annex A11e) remains mandatory to ensure the widest possible participation. For details, see Section 5.4.

## 5.2.2. Contracts with a value of EUR 300 000 or more but less than EUR 5 000 000

### 5.2.2.1. Local open procedure

Contracts are awarded after an open tender procedure published locally. The contract notice is published in the local official journal of the partner country or any equivalent media, and where necessary in order to ensure an adequate level of competition, on the Official Journal of European Union, F&T portal. For details, see Section 5.5.

## 5.2.3. Contracts with a value of less than EUR 300 000

### 5.2.3.1. Simplified procedure

Works contracts under EUR 300 000 are awarded by the simplified procedure<sup>190</sup>. At least three candidates are sent an invitation to tender. No contract notice needs to be published. For details, see Section 5.6.

## 5.2.4. Contracts with a value of less than EUR 20 000

The contracting authority may award works contracts of a value of EUR 20 000 or less on the basis of a single tender. See Section 2.6.8.

For works less than or equal to EUR 2 500, payments may be made against invoices without prior acceptance of a tender. However, please note that the budgetary commitment against which the invoice is paid has to be validated before the contracting authority enters into the corresponding 'legal commitment'. In this context, such legal commitment may take the form, inter alia, of an agreement, a pro-forma invoice, a written acceptance of a quotation, an order form, etc.

## 5.2.5. Procedures applicable without ceilings

### 5.2.5.1. Negotiated procedure

#### **DIRECT MANAGEMENT**

Prior approval / event to be reported as the case may be is required from the European Commission for the use of the negotiated procedure.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The contracting authority must seek prior authorisation from the European Commission to use the negotiated procedure.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation by the European Commission is required.

<sup>190</sup> Annex I to the Regulation (EU, Euratom) No 1046/2018 of the European Parliament and of the Council of 30 July 2018 on the financial rules applicable to the general budget of the Union (OJ L 193, 30.7.2018, p.1) (FR), points 38(1)(d) and 38(2)(c) for new terminology: 'simplified procedure' instead of 'competitive negotiated procedure'.

See also text box in Section 2.6.8.

Works contracts may be awarded by negotiated procedure on the basis of one or several tenders in the following cases<sup>191</sup>:

- a) Where no tenders, or no suitable tender, or no request to participate or no suitable request to participate have been submitted in response to an open procedure or restricted procedure after this procedure has been completed, provided that the original procurement documents are not substantially altered.

A tender must be considered unsuitable where it does not relate to the subject matter of the contract and a request to participate must be considered unsuitable where the economic operator is in an exclusion situation or does not meet the selection criteria.

- b) In so far as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events, it is impossible to comply with the applicable time limits and where the justification of such extreme urgency is not attributable to the contracting authority.

Operations carried out in crisis situations must be 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, must establish that a situation of extreme urgency exists and must review his decision regularly with regard to the principle of sound financial management<sup>192</sup>.

- c) For new works consisting in the repetition of similar works entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that these works are in conformity with a basic project for which the original contract was awarded after publication of a contract notice that indicate the extent of possible new works and the conditions under which they will be awarded (i.e. the possible use of the negotiated procedure). The total estimated amount for these subsequent works must be taken into consideration in applying the applicable thresholds to determine the correct procurement procedure to follow.
- d) Where the tender procedure has been unsuccessful, that is to say 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 procedure, if they comply with the selection criteria, provided that the original procurement documents are not substantially altered and the principle of equal treatment is observed.
- e) For contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or when the protection of the essential interests of the Union so requires provided the essential interests concerned cannot be guaranteed by other measures; these measures may consist of requirements to protect the confidential nature of information that the contracting authority makes available in

<sup>191</sup> Annex I to the FR, points 11 and 39.

<sup>192</sup> ‘Emergency assistance’ is another case specific to the EDF and distinct from the ‘extreme urgency’ referred to here, in which the negotiated procedure may be used for actions which are not governed by Article 19c of Annex IV to the 2000/483/EC Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (Cotonou Agreement). Emergency assistance is linked to the application of Articles 72 and/or 73 of the Cotonou Agreement. See also Article 79(5) of Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ( ‘Overseas Association Decision’ ) (OJ L 344, 19.12.2013, p. 1).

the procurement procedure.

- f) For the purchase of public communication networks<sup>193</sup>.
- g) For building contracts, after prospecting the local market.
- h) Where a new contract has to be concluded after early termination of an existing contract.
- i) Where the works can only be provided by a single economic operator by a single economic operator and for any of the following reasons:
  - (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
  - (ii) competition is absent for technical reasons;
  - (iii) the protection of exclusive rights including intellectual property rights must be ensured.

The exceptions set out in points (ii) and (iii) must only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement.

The contracting authority must prepare a negotiation report (see template in Annex A10) justifying the manner in which the negotiations were conducted and the basis for the contract award decision resulting from these negotiations. The procedures set out in Section 5.3.11.1. and Section 5.3.11.2. must be followed by analogy, and the negotiation report included in the contract dossier.

### **5.2.5.2. Competitive dialogue**

See Section 2.6.7. for further details.

## **5.3. International open tender (for contracts of EUR 5 000 000 or more)**

### **5.3.1. Publicity**

To ensure the widest possible participation in competitive tendering and the requisite transparency, a contract notice and additional information about the contract notice must be published for every open tender procedure, according to the guidelines on publication (see Annex A11e).

#### **5.3.1.1. Publication of prior information notices**

It is recommended, but not compulsory, to publish a prior information notice setting out the specific characteristics of the planned tender procedure, at least 30 days — but not more than 12 months — before the publication of the contract notice in the Official Journal of European Union and on the F&T portal.

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<sup>193</sup> ‘Electronic communications network’ means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.



The purpose of the prior information notice is to provide greater publicity for calls for tenders and more preparation time for tenderers. Encoding and processing a prior information notices requires time and human resources. If due to time constraints a prior information notice can only be published shortly before the contract notice (e.g. 30 days), an alternative option would be not to publish a prior information notice and to provide tenderers with a longer submission deadline in the contract notice. Publishing the contract notice earlier would provide economic operators with more time to submit a good quality offer. Prior information notices on the other hand have an added value when there is a sufficient period between its publication and the planned publication of the Contract Notice.

The prior information notices must give a brief indication of the subject and content of the tenders. Prior information notices are sent as soon as possible after the decision approving the programme for works contracts. Publishing a prior information notice does not bind the contracting authority to finance the contracts proposed and prospective contractors are not expected to submit tenders at this stage. Prior information notices are published in the Official Journal of the European Union, on the F&T portal and in any other appropriate media.

#### **DIRECT MANAGEMENT**

Prior information notices are to be submitted for publication via PPMT at least 5 days before the intended date of publication.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

Prior information notices are to be submitted for publication to the relevant EU delegation in electronic form using the template in Annex A5d at least 15 days before the intended date of publication.

See Annex A11e.

### **5.3.1.2. Publication of contract notices**

All works contracts of EUR 5 000 000 or more must be the subject of a contract notice and additional information about the contract notice (Annex A5f) published in the Official Journal of the European Union, on the F&T portal and in any other appropriate media. A minimum of 30 days must be given between the publication of the prior information notice, if any, and the contract notice/additional information about the contract 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 F&T portal. The contracting authority must arrange local publication and publication in any other appropriate media directly.

#### **DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

Contract notices and additional information about the contract notices must be submitted for publication directly in PPMT in case of direct management (also Annex A5f is needed) and in case of indirect management (both Annexes A5e and A5f are needed) to the relevant EU delegation in electronic form and according to the guidelines for publication (A11e).

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

In addition, the finalised tender dossier (see Section 5.3.2.) must be submitted to the European Commission either at the same time or in advance to demonstrate that the proposed contract notice/additional information about the contract notice correspond to the objectives of the contract.

The contract notice must state clearly, precisely and completely the subject of the contract and the contracting authority. No estimated value or available budget is to be indicated in the contract notice. Instead, the contracting authority will provide an estimation of the volume of the purchase as short description of the contract notice, in order to give the necessary elements allowing the economic operators to prepare and submit offers. If the contract notice and additional information about the contract notice are also published locally, it must be identical to the ones published on the Official Journal of the European Union, F&T portal and appear at the same time.

If the contracting authority, either on its own initiative or in response to the request of a tenderer, amends information in the contract notice or additional information about the contract notice, it must submit a corrigendum stating the changes made. The corrigendum to the contract notice will be encoded directly in eNotices for direct management. In indirect management the appropriate template (Annex A5b) shall be used and forwarded to the relevant EU delegation for publication, always complying with the deadlines set up in the publication guidelines (see Annex A11e). However, a corrigendum to the additional information about the contract notice might also be published in eTendering, if necessary.

The corrigendum may extend the deadline to allow candidates to take the changes into account.

The corrigendum must be published not later than 8 days before the original submission deadline. Be aware that the corrigendum has to be sent to the relevant service not later than 5 days before the expected date for its publication.

### **5.3.2. Drafting and content of the tender dossier**

Tender documents must be carefully drafted to ensure that both the contract and the procurement procedure are carried out correctly.

Tender documents must contain all the provisions and information that tenderers need to submit their tenders: the procedures to follow, the documents to provide, cases of non-compliance, award criteria, etc. When the contracting authority is the European Commission, it may be appropriate for representatives of the final beneficiaries to participate in preparing the tender dossier at an early stage. See Section 2.8. for guidelines on drafting 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 specify what is required of a product, service or material or work to achieve the purpose for which they are intended.

The specifications may include as appropriate:

- a) quality levels;
- b) environmental performance and climate performance;
- c) for purchases intended for use by natural persons, accessibility criteria for people with disabilities or design for all users, except in duly justified cases;
- d) the levels and procedures of conformity assessment;

- e) performance (fitness for use);
- f) safety and measurements, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production processes 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 other technical conditions that the contracting authority is in a position to prescribe under general or specific regulations in relation to the finished works and to the constituent materials or parts.

The contracting authority is responsible for drawing up these documents. The tender documents will be shared via TED e-Tendering.

Given the technical complexity of many works contracts, preparation of the tender dossier — particularly the technical specifications — may require the assistance of one or more external technical specialists. Each such specialist must sign a declaration of objectivity and confidentiality (see Annex A3).

As with the terms of reference for service contracts, particular care must be taken when drafting the technical specifications. They are the key to successful procurement, a sound works contract and a successful project.

Technical specifications state — where applicable and lot by lot — the exact nature and performance characteristics of the works. Where applicable, they also specify conditions for delivery and installation, training and after-sales service.

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

The purpose of the technical specifications is to define the required works precisely. The minimum quality standards, defined by the technical specifications, will enable the evaluation committee to determine which tenders are technically compliant.

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

#### **DIRECT MANAGEMENT**

The tender dossier must be agreed upon by the relevant services of the European Commission. The standard practice is to also consult and obtain the agreement of the partner country, and where appropriate of other parties involved, on the tender dossier.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The contracting authority must submit the tender dossier to the delegation of the European Union for authorisation prior to issue.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

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

The tender dossier must contain the following documents:

## **CONTENT OF THE TENDER DOSSIER**

**Volume 1: Instructions to tenderers and tender submission forms**

**Volume 2: Draft contract and conditions**

**Volume 3: Technical specifications**

**Volume 4: Model financial offer**

**Volume 5: Design documents and drawings**

See Annex D4 for template.

The tender dossier must clearly state whether a firm, non-revisable price must be quoted. A price revision clause might be justified and works contracts are commonly subject to price revision. If that is the case, it is recommended that a price revision formula, following the models given in Article 48 of the special conditions, be included. When taking a decision on price revision, the contracting authority must consider:

- 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 tender guarantee assures the contracting authority that submitted tenders will not be withdrawn. If the contracting authority deems a tender guarantee to be appropriate and proportionate, it may request it, representing 1% to 2% of the overall value of the contract. The contracting authority must return the tender guarantee as foreseen in Sections 5.3.9.3. at the end and 5.3.10. and release it for all tenderers when the contract is signed. The contracting authority must call in the tender guarantee if the tender is withdrawn before contract signature.

According to the applicable rules, guarantees (pre-financing, retention and/or performance guarantee) could be required or not. If so, this must be mentioned in the tender dossier.

### **5.3.3. Selection and award criteria**

The criteria should be precise, non-discriminatory and not prejudicial to fair competition. All criteria must be applied as specified in the tender dossier and cannot be changed during the procedure.

#### **1. The selection criteria**

They concern the tenderer's capacity to execute the contract.

The selection procedure involves:

- eliminating tenderers who are ineligible in view of their nationality (see Section 2.3.1.), are subject to EU restrictive measures (see Section 2.4) or fall into one of the situations described in Sections 2.6.10.1.1. (exclusion from participation in procurement procedures) and 2.6.10.1.2. (rejection from a given procedure);

- 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 3 years (see Section 2.6.11.2.) if specifically required in the tender dossier;
- verifying the tenderers' technical and professional capacity, for example, by looking at their average annual staffing levels, the size and professional experience of their management, and the main works carried out in the sector in question in recent years (see Section 2.6.11.3.).

The selection criteria specified in the annexes to this practical guide are given by way of illustration and need to be adapted to the nature, cost and complexity of the contract. They must be in a yes/no format to allow a clear assessment of whether or not the offer meets them.

## 2. Evidence of selection criteria

If, for some exceptional reason that 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 that 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. These checks will cover the tenderer's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

## 3. Technical evaluation

The technical evaluation will be based on the evaluation grid published in the tender dossier, which must not be changed in any way during the evaluation process.

As a rule, the technical requirements for the works are laid down in the design (including plans, drawings, material-specifications, ...) previously made by a service provider in engineering/architecture that is annexed to the tender dossier and which to the very detail determines how the works must look like. In such cases, in a yes/no format, a clear assessment can be made of whether or not the offer meets the technical specifications set out in the tender dossier.

Only very exceptionally, subject to derogation<sup>194</sup>, the technical requirements for the works will limit themselves to minima above for which the tenderers can propose its own solutions: only in such cases, the offers that comply with those minimum quality levels, should be technically scored in accordance with the technical evaluation grid (setting out the technical criteria, subcriteria and weightings) laid down in the tender dossier.

## 4. Financial evaluation

As a rule, the award criterion during the financial evaluation of works offers, is the lowest price.

Subject to prior approval, the financial evaluation may take into account not only the acquisition costs but, to the extent relevant, costs borne over the life cycle of the works (such as for instance maintenance costs and operating costs): if so, the tender dossier must in advance indicate the data

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<sup>194</sup> Such derogation must no longer be required for a design and build (DB) and/or a design, build and operate (DBO) tender dossier if and when such tender dossier templates have been added to the PRAG's annexes.

to be provided by the tenderers and the method that will be used to determine the life-cycle costs on the basis of those data.

### **5. Most economically advantageous tender**

Where no technical scoring is given to the offers, the most economically advantageous tender is the technically compliant tender with the lowest price.

Where exceptionally, subject to derogation, a technical scoring is given to the offers, the most economically advantageous tender is the technically compliant tender with the best price-quality ratio, determined by the results of the technical and financial evaluation in accordance with the weightings laid down in the tender dossier.

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

The tender dossier must be clear enough to save tenderers from requesting additional information during the tender procedure. The contracting authority can provide additional information on the tender dossier, either on its own initiative or in response to a tenderer's request. It must send that information in writing to all tenderers at the same time.

Tenderers may submit questions via TED e-Tendering platform no later than 21 days before the deadline for submission of tenders. The contracting authority must reply to all tenderers' questions in TED e-Tendering no later than 8 days before the deadline for receipt of tenders. In case of indirect management with *ex ante* controls, the European Commission transmits the questions to the partner country. The partner country then submits the clarifications to the European Commission for *ex ante* approval and publication in TED e-Tendering.

Clarifications and any minor changes to the tender dossier must also be done in TED e-Tendering. No prior opinion on the assessment of the tender can be given by the contracting authority in reply to a question or a request for clarification.

If the questions result in an amendment to the contract notice, a corrigendum must be published as explained in Section 5.3.1.2. The corrigendum must be published before the submission deadline. The deadline for the submission of tenders may be extended to allow tenderers to take account of the changes. The corrigendum must also be published in TED e-Tendering.

If the technical content of the tender is complex, the contracting authority may hold an information meeting and/or site visit. This meeting must be announced in the tender dossier and must take place at least 21 days before the deadline for submission of tenders. The contracting authority must state in the tender dossier if attendance at this meeting or site visit is strongly advised or compulsory. All costs of attending the meeting must be met by the tenderers. Individual visits by companies during the tender period cannot be organised by the contracting authority for reasons of transparency and equal treatment of the tenderers. Although they are not compulsory, these information meetings are encouraged since they have proven to be an efficient way to clarify many questions related to the tender dossier. Any presentation/documentation to be delivered in the information session, as well as the outcome and the minutes, must also be uploaded at least on the TED e-Tendering.

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

Tenders must be submitted to the contracting authority no later than the date and time indicated in the contract notice. 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 submission must fall on a working day in the country of the contracting authority. It is advised to organise the tender-opening session one week after the deadline for submission to allow tenders submitted on the last day, in case of paper submission, and tender guarantees, if applicable, to arrive at the contracting authority premises.

**DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH EX ANTE CONTROLS**

The minimum period between the date of publication of the contract notice and the deadline for receipt of tenders is 90 days. However, in exceptional cases, this time period may be shortened in compliance with internal procedures. Under indirect management this is also subject to prior authorisation of the relevant services of the European Commission.

**INDIRECT MANAGEMENT WITH EX POST CONTROLS**

No prior authorisation is required from the European Commission for a shorter deadline.

### 5.3.6. Period of validity

See Section 2.9.5.

### 5.3.7. Submission of tenders

For electronic submission (direct management), tenders must be submitted exclusively via the electronic submission system (eSubmission) available via a link in the TED eTendering platform<sup>195</sup>. Tenders submitted in any other way (e.g. e-mail or by letter) will be disregarded.

For paper submission (indirect management), each technical and financial offer must be placed in a single sealed envelope, itself placed in a package or outer sealed envelope.

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

### 5.3.8. The evaluation committee

For the committee's composition, impartiality and confidentiality and responsibilities, and the timetable, see Section 2.9.

In eSubmission and only for direct management procedures, there are two types of committees: opening and evaluation committee. It is recommended that for each lot, the composition of both committees is the same. The opening and evaluation committees must be appointed in PPMT before the start of the opening session and the evaluation of tenders.

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<sup>195</sup> For detailed instructions on how to submit a tender please consult the eSubmission Quick Guide available at: [https://ec.europa.eu/info/funding-tenders/opportunities/docs/esubmission/quickguidepp\\_en.pdf](https://ec.europa.eu/info/funding-tenders/opportunities/docs/esubmission/quickguidepp_en.pdf)

The supported browsers, file types, size of attachments and other system requirements can be consulted at: <https://webgate.ec.europa.eu/fpfis/wikis/x/Oo5kl>. In case of technical problems, please contact the eSubmission Helpdesk (see contact details in the eSubmission Quick Guide) as soon as possible.

## 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, stating the date and time of submission. It must provide a receipt for tenders delivered by hand or submitted electronically.

For paper submission (indirect management), the envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened. The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

### 5.3.9.2. Preparatory meeting

The first meeting of the evaluation committee should 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 states the purpose of the tender and explains the procedures to be followed by the evaluation committee, including evaluation grids, and 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 set in the tender dossier. Although it is public, participation in the tender opening session is restricted to representatives of the companies that are tendering for the contract.

See the tender opening checklist in Annex D5 for the detailed formalities to be carried out by the chairperson with the assistance of the secretary.

#### **DIRECT MANAGEMENT**

The opening committee appointed by the relevant services of the European Commission through PPMT, must carry out the tender opening session.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

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.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

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

The chairperson must check that no member of the evaluation committee has a potential conflict of interest with any of the tenderers (on the basis of the shortlist, the tenders received, consortium members and any identified subcontractor). See Sections 2.9.2 and 2.9.3.

The evaluation committee must decide whether or not tenders comply with the formal requirements.



In case of electronic submission (direct management), several automatic validation checks take place to ensure that the tenders comply with the deadline and that they were received in the same state as they were submitted, i.e. that their integrity and confidentiality have been preserved. When all tenders for all lots are verified and marked as “In Order” / “Not in Order”, the Record of Opening can be generated. After closing the opening session, the evaluation committee members, nominated through PPMT, can access the tenders that are “In Order”.

In case of paper submission (indirect management), the summary of tenders received, which is attached to the tender opening record (see Annex D6), must be used to record the compliance of each of the tenders with the formal submission requirements. It must be made available to the tenderers upon request.

Any tender guarantee that does not comply with the formal submission requirements, must be returned to the tenderers. In case of paper submission, this implies that any tenders that have been submitted after the submission deadline, must be opened (after the opening session) so that the guarantees can be returned.

### **5.3.9.4. Evaluation of tenders**

The evaluation committee must use 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. Only very exceptionally, subject to derogation, a technical scoring method should be used, in accordance with Section 5.3.3. above. If the tender is divided into lots, the evaluation should be carried out lot by lot.

With the agreement of the majority of the evaluation committee voting members, the chairperson may write to tenderers whose submissions require clarification, asking them to reply within a reasonable deadline set by the evaluation committee.

#### **Part 1: administrative compliance**

Before conducting a detailed evaluation of the tenders, the evaluation committee checks that they comply with the essential requirements of the tender dossier (i.e. the administrative compliance grid).

A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them. Substantial departures or restrictions are those that affect the scope, quality or performance of the contract, differ widely from the terms of the tender dossier, limit the rights of the contracting authority or the tenderer’s obligations under the contract or distort competition for tenderers whose tenders do comply.

Each offer is examined for administrative compliance with the tender dossier in accordance with the published administrative compliance grid.

The administrative compliance of each of the tenders must be recorded in the evaluation report (see Annex D7).

## Part 2: technical compliance of tenders

The detailed technical evaluation of the tenders takes place after the administrative compliance check. The criteria to be applied are those published in the tender dossier and, accordingly, the evaluation grid included in the tender dossier must be used. Under no circumstances may the evaluation 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:** (applicable only to contracts financed by a basic act under the multiannual financial framework for the years 2014-2020 (above EUR 100 000 under CIR and independently of the value for other instruments) and to contracts financed by the INSC Regulation 2021/948 of 27 May 2021 under the multiannual financial framework for the years 2021-2027): all tenders must comply with the rule that goods purchased and materials to be incorporated in the permanent works fulfil the requirements referred to in Section 2.3.5. Tenders that fail to satisfy the rule of origin must be rejected. The rule of origin does not apply to the contractor's equipment used during the construction, unless the tender dossier explicitly stipulates that this equipment becomes the full property of the contracting authority at the end of the contract.

The tenderer will be required to provide proof of origin in the form of a certificate of origin or other official documentation as prima facie evidence, before the contract is signed if possible. It is the responsibility of the tenderer to verify that the provided information is correct.

For more details, see Section 2.3.5. and 2.3.8.

For contracts financed by a basic act under the Multiannual Financial Framework 2021-2027, with the exception of the INSC Regulation 2021/948 of 27 May 2021, all supplies and material may originate from any country and no declaration of origin is required.

**Nationality of subcontractors:** the evaluation committee must check at this stage that the nationalities of subcontractors identified in the technical offers comply with the nationality rule in Section 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'. Only very exceptionally, subject to derogation, the technically compliant offers are subsequently technically scored in accordance with a technical evaluation grid laid down in the tender dossier (see Section 5.3.3. above).

### 5.3.9.5. Evaluation of financial offers

Once the technical evaluation has been completed, the evaluation committee checks that the financial offers contain no obvious arithmetical errors. Any obvious arithmetical errors are corrected without penalty to the tenderer. If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation must pick out the best financial offer for each lot, taking due account of any discounts offered.

For an example of how to treat discounts, see Section 4.3.9.5.

### 5.3.9.6. Choice of contractor

The successful tenderer is the one with the most economically advantageous tender determined in accordance with Section 5.3.3. above. 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 Section 5.2.5.1.(c) may apply.

#### Abnormally low tenders

Contracting authorities can reject tenders that appear to be abnormally low in relation to the works concerned.

However rejection on that ground alone is not automatic.

The concerned tenderer must be asked, in writing, to provide details of the constituent elements of its tender, notably those relating to compliance with employment protection legislation and working conditions in the location of the contract, such as the construction method, the technical solutions chosen or any exceptionally favourable condition available to the tenderer, the originality of the tender.

In view of the evidence provided by the tenderer, the contracting authority decides on whether to reject the tender or not.

Both that decision and its justification must be recorded in the evaluation report.

**ACP States' preference is not applicable for commitments financed by a basic act under the new Multiannual Financial Framework 2021-2027**

**For commitments financed by a basic act under the MFF 2014-2020:**

**EDF-FUNDED PROGRAMMES**

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

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

### 5.3.9.7. The evaluation committee's conclusions

As a result of its deliberations, the evaluation committee may make any of the following recommendations:

- Award the contract to the tenderer that has submitted a tender:
  - that complies with the formal requirements and the eligibility rules;
  - whose total budget is within the maximum budget available for the project;
  - that meets the minimum technical requirements specified in the tender dossier;

- that is the most economically advantageous tender (satisfying all of the above conditions).

At the latest during the evaluation procedure and before taking the award decision, the contracting authority ensures that there is no record of the successful tenderer, including consortium members, subcontractors or capacity providing entities, if any, in exclusion situation in the EDES nor in the lists of EU restrictive measures (see sections 2.6.10.1. and 2.4.).

During the evaluation procedure and before taking the award decision, the evaluation committee will request the original<sup>196</sup> Declaration on honour on exclusion criteria and selection criteria and copies of documentary evidence for exclusion and selection criteria from the potential successful tenderer. If upon verification, the evaluation committee considers the submitted evidence not admissible, it will request the same evidence from the second best ranked tenderer.

- Cancel the tender procedure, see Section 2.6.13.

#### **DIRECT MANAGEMENT**

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 evaluators. This evaluation report must be submitted to the competent authority of the European Commission, which must decide whether or not to accept its recommendations.

#### **INDIRECT MANAGEMENT WITH EX ANTE CONTROLS**

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 evaluation report must be submitted to the relevant services of the contracting authority, which must decide whether or not to accept its recommendations. Consequently, the contracting authority must then submit the evaluation report together with its proposed decision to the European Commission. If there is an award proposal and the European Commission has not already received a copy of the tenders, these must be submitted.

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

If the European Commission accepts the proposed decision, the contracting authority will either commence awarding the contract (see Section 5.3.11.) or cancel the tender, as decided.

#### **INDIRECT MANAGEMENT WITH EX POST CONTROLS**

No prior authorisation from the European Commission is required before the contracting authority acts on the recommendations of the evaluation committee.

The entire evaluation procedure, including the notification to 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.

<sup>196</sup> The requirement to submit an original Declaration on honour on exclusion criteria and selection criteria is only applicable in case of paper submission.

Subject to the contracting authority's legislation on access to documents, the entire tender procedure is confidential from the end of the tender opening session to the signature of the contract by both parties. The evaluation committee's decisions are collective and its deliberations must remain secret. The evaluation committee members and any observers are bound to secrecy. If the law of the country of the contracting authority conflicts with the confidentiality required, the contracting authority must obtain prior authorisation from the European Commission before disclosing any information.

The evaluation report is for official use only and may be divulged neither to tenderers nor to any party outside the authorised services of the contracting authority, the European Commission and the supervisory authorities (e.g. the Court of Auditors).

### **5.3.10. Cancelling the tender procedure**

See Section 2.6.13.

Tenderers are entitled to the immediate release of their tender guarantee.

For paper submission (indirect management), if the tender procedure is cancelled before the 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 and unsuccessful tenderers**

See Section 2.10. and Section 2.6.12. in case of suspension clause.

#### **5.3.11.2. Standstill clause (applicable for contracts above EUR 5 000 000)**

See Section 2.10.1.

#### **5.3.11.3. Contract preparation and signature**

See Section 2.10.2 and 2.10.3.

The proposed contract must comply with the template in Annex D4.

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

See Section 2.10.3.1.

## **5.4. Restricted tender for contracts of EUR 5 000 000 or more**

In view of the characteristics of certain works, a restricted tender procedure may be used in justified cases. The relevant services of the European Commission may provide technical support on a case-by-case basis. References to PRAG annexes in this section refer to the archived PRAG version 2018.0.

#### **DIRECT MANAGEMENT**

A prior approval is required.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

Prior authorisation by the European Commission is required.

**INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation by the European Commission is required.

## 5.4.1. Publicity

In order to ensure the widest possible participation in competitive tendering and the requisite transparency, the contracting authority must publish contract notices and additional information about the contract notices (annex a5f) for all work contracts of EUR 5 000 000 or more.

### 5.4.1.1. Publication of prior information notice

It is recommended, but not compulsory, to publish a prior information notice setting out the specific characteristics of the planned tender procedure, at least 30 days — but not more than 12 months — before the publication of the contract notice in the Official Journal of European Union and on the F&T portal.

The purpose of the prior information notice is to provide greater publicity for calls for tenders and more preparation time for tenderers. Encoding and processing a prior information notices requires time and human resources. If due to time constraints a prior information notice can only be published shortly before the contract notice (e.g. 30 days), an alternative option would be not to publish a prior information notice and to provide tenderers with a longer submission deadline in the contract notice. Publishing the contract notice earlier would provide economic operators with more time to submit a good quality offer. Prior information notices on the other hand have an added value when there is a sufficient period between its publication and the planned publication of the Contract Notice.

The prior information notice is to be sent as soon as possible after the decision approving the programme for works contracts and must briefly state the subject and content of the contracts concerned. Publishing a prior information notice does not oblige the contracting authority to finance the contracts mentioned and candidates are not expected to submit applications at this stage.

The contracting authority is responsible for drafting the prior information notice using the relevant template and for submitting it for publication on the F&T portal and in the Official Journal of the European Union in electronic form (see publication guidelines in Annex A11e). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

**DIRECT MANAGEMENT, INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

Prior information notices are to be submitted for publication directly via PPMT in direct management. In case of indirect management, prior information notices are sent to the EU delegation in electronic form using the relevant template (A5d) according to the guidelines for publication (A11e).

### 5.4.1.2. Publication of contract notices

Minimum 30 days after publication of the prior information notice, if any, a contract notice and additional information about the contract notice must be published in the Official Journal of the European Union, on the F&T portal and in any other appropriate media.

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 F&T portal. If the contract notice is published locally, the contracting authority must arrange local publication directly.

#### **DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

Contract notices, additional information about the contract notices must be submitted for publication directly in PPMT in case of direct management (also Annex A5f is needed) and in case of indirect management to the relevant EU delegation in electronic form, using the relevant templates (both Annexes A5e and A5f) according to the guidelines for publication (A11e).

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

In addition to the contract notice and additional information about the contract notice required above, the finalised terms of reference must be submitted to the European Commission either at the same time or in advance to demonstrate that the proposed contract notice corresponds to the objectives of the contract.

The contract notice/additional information about the contract notice must provide potential candidates with the information they need to determine their capacity to fulfil the contract in question.

The selection criteria set out in the contract notice must be:

- clearly formulated, without any ambiguity
- easy to check on the basis of the information submitted using the standard application form (see Annex dr3)
- devised to allow a clear yes/no assessment to be made as to whether or not the candidate satisfies a particular selection criterion
- possible to prove by the tenderer.

The selection criteria given in the annexes to this practical guide are given by way of illustration and need to 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 F&T portal. The actual deadline will be determined by the contract's size and complexity.

If the contract notice and additional information about the contract notice are also published locally by the contracting authority, it must be identical to the ones published by the European Commission in the Official Journal and on the F&T portal and must appear at the same time.

The contract notice must be clear enough to save candidates from requesting clarifications or additional information during the procedure. Candidates may however submit questions should they need to. If the contracting authority modifies the contract notice/additional information about the

contract notice, either in response to a question or on its own initiative, a corrigendum including the changes must be submitted for publication to the relevant service of the European Commission (see Annex A5b). The corrigendum will be encoded directly in eNotices and, in indirect management the appropriate template (Annex A5b) shall be used and forwarded to the relevant EU delegation for publication, always complying with the deadlines set up in the publication guidelines (see Annex A11e). The corrigendum must be published before the submission deadline and the latter may be extended to allow candidates to take the changes into account. Please note that with a clarification, the contracting authority cannot give an opinion on the assessment of the application.

If information in the contract notice/additional information about the contract notice needs to be clarified but does not require an amendment of the contract notice, a clarification must be published on the Official Journal of European Union and F&T portal.

### 5.4.2. Drawing up shortlists

In eSubmission and only for direct management procedures, there are two types of committees: opening and evaluation committee. For each lot, the composition of both committees should be the same. The opening and evaluation committees must be appointed in PPMT before performing the opening session and the evaluation of requests to participate (or of applications forms if annex dr3 from PRAG 2018 is used).

Candidates are shortlisted 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 (the evaluators).

There must be at least five evaluators. They must have the technical and administrative capacities necessary to give an informed opinion on the applications. Each member must have a reasonable command of the language in which the applications are submitted. All members of the evaluation committee must sign a declaration of impartiality and confidentiality (see Annex A4). For the responsibilities of the evaluation committee members, see Section 2.9.3.

#### **DIRECT MANAGEMENT**

The evaluation committee (i.e. the chairperson, the secretary and the evaluators) must be appointed on a personal basis, in PPMT by the European Commission.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The evaluation committee (i.e. the chairperson, the secretary and the voting members) must be appointed on a personal basis by the contracting authority and the appointments submitted to the European Commission for agreement. The European Commission should participate as an observer. The membership of the evaluation committee is deemed to be approved if the European Commission does not object within 5 working days. As a general rule, the European Commission appoints an observer to attend all or part of the evaluation committee meetings. Prior authorization must be sought from the European Commission for other observers to attend.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

The evaluation committee (i.e. the chairperson, the secretary and the evaluators) must be appointed on a personal basis by the contracting authority.

The selection procedure involves:

- drawing up a long list (see template in Annex dr4) summarising all the applications received;



- eliminating applications that are inadmissible because submitted by ineligible candidates (see Section 2.3.1. on nationality rules) or fall into one of the situations described in Sections 2.6.10.1.1. (exclusion from participation in procurement procedures) and 2.6.10.1.2. (rejection from a given procedure);
- applying the selection criteria exactly as published.

For the supply of supporting documents in relation to the exclusion and selection criteria, see points 2.6.10.1.3. and 2.6.11.

After examining the responses to the contract notice, the evaluation committee shortlists the candidates offering the best guarantee of satisfactory performance of the contract.

The shortlist comprises between four and six candidates.

If the number of eligible candidates meeting the selection criteria is greater than six, the additional criteria published in the contract notice are applied in order to reduce the number to the six best candidates. For further details, please see Section 2.6.11.

If the number of eligible candidates meeting the selection criteria is less than the minimum of four, the contracting authority may invite only those candidates who satisfy the selection criteria to submit a tender. Before accepting a reduced competition of less than four candidates, prior authorisation of the European Commission is required save in indirect management with *ex-post* control as stated in the text box below. This prior authorisation may be granted based on a verification showing that the timing of the publication, the selection criteria used and the scope of the works in relation with the budget were satisfactory. This must be justified in the evaluation report.

**DIRECT MANAGEMENT**

An event to be reported is required.

**INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

Prior authorisation by the European Commission is required.

**INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation by the European Commission is required.

The shortlisting process and the final shortlist itself must be fully documented in a shortlist report (see template in Annex dr5 of the dR1 tender dossier).

Before the shortlist is approved by the evaluation committee, the contracting authority must check that no candidate (including partners) are in an exclusion situation in the early detection and exclusion system (see section 2.6.10.1.1.) or are subject to European Union restrictive measures (see section 2.4.).

The shortlist report is signed by the chairperson, the secretary and all the evaluators.

**DIRECT MANAGEMENT**

The shortlist report must be submitted to the European Commission, which must decide whether or not to accept its recommendations, before the shortlisted candidates can be invited to submit a tender.

**INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The shortlist report must be submitted to the contracting authority, which must decide whether or not to accept its recommendations. The contracting authority must then submit the shortlist report together with its recommendation to the European Commission before the shortlisted candidates can be invited to submit a tender.

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.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation by the European Commission is required before the contracting authority acts on the recommendations of the evaluation committee.

Candidates not selected will be informed of that fact by the contracting authority by means of a standard letter, the format of which is given in Annex dr7. Candidates who are selected will receive a letter of invitation to tender and the tender dossier (see template in Annex dr8a).

The contracting authority is responsible for preparing the shortlist notice, which will be published together with the award notice in TED (section VI.3 of the award notice).

If unsuccessful candidates request further information, they may be given any information that is not confidential, e.g. reasons why a reference does not meet the technical selection criterion, as this may help them to be successful in future tenders.

Tender documents must be carefully drafted, to ensure that the contract is complete and that the procurement procedure is carried out correctly

Between the date of dispatch of the letters of invitation to tender and the deadline for receipt of tenders there must be a minimum of 60 days.

In case of direct management, the tender dossier will be published on the TED eTendering platform. The shortlisted candidates will receive a notification granting access to the tender. Tenders must be submitted exclusively via the electronic submission system (eSubmission) via a link in the TED eTendering platform<sup>197</sup>.

In case of indirect management, the tender dossier will be sent simultaneously to all shortlisted candidates via mail or email. Any tender received from a legal or natural person not invited to tender will be rejected. Tenders should be submitted in accordance with the double envelope system.

The measures applicable to an open procedure, apply by analogy to the rest of the restricted procedure for works contracts, with the caveat that the elements related to the selection phase should not be taken into account. The publication of the tender dossier and way of submission will differ in case of direct or indirect management.

<sup>197</sup> For detailed instructions on how to submit a tender please consult the eSubmission Quick Guide available at: [https://ec.europa.eu/info/funding-tenders/opportunities/docs/esubmission/quickguidepp\\_en.pdf](https://ec.europa.eu/info/funding-tenders/opportunities/docs/esubmission/quickguidepp_en.pdf)

The supported browsers, file types, size of attachments and other system requirements can be consulted at: <https://webgate.ec.europa.eu/fpfis/wikis/x/Oo5kl>. In case of technical problems, please contact the eSubmission Helpdesk (see contact details in the eSubmission Quick Guide) as soon as possible.

## 5.5. Local open tender (for contracts of at least EUR 300 000 and under EUR 5 000 000)

In this case, the contract notice is published in the local official journal or equivalent local media, and where necessary in order to ensure an adequate level of competition, in the Official Journal of the European Union, F&T portal. Publication in the local official journal or equivalent local media is the responsibility of the partner country.

As the cost of publishing the full contract notice in the local media may be high, the template in Annex D3 gives the minimum information that must be included in a local advertisement. However, the full contract 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 companies. No conditions seeking to restrict the participation of other eligible contractors are allowed (e.g. obliging such companies to be registered in the partner 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 contract notice in the local press and the deadline for receipt of tenders. However, in exceptional cases, a shorter deadline may be allowed in compliance with internal procedures, and subject to prior authorisation of the competent authority of the European Commission.

The measures applicable to an international open procedure, as described in Section 5.3., apply by analogy to the local open procedure. The principal difference is that the minimum number of evaluators in the evaluation committee is three.

Paper submission instructions in tender documents should be followed in local procedures both in direct and indirect management.

**ACP States' preference is not applicable for commitments financed by a basic act under the new Multiannual Financial Framework 2021-2027 For commitments financed by a basic act under the MFF 2014-2020:**

### **EDF-FUNDED PROGRAMMES**

For works contracts of a value of less than EUR 5 000 000, tenderers from the ACP States, provided that at least one quarter of the capital stock and management staff originates from one or more ACP States, must be accorded a 10% price preference during the financial evaluation.

In addition, where two tenders for works are acknowledged to be equivalent, preference must be given:

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

## 5.6. Simplified procedure

The contracting authority may award contracts under EUR 300 000 using the simplified procedure, without publishing the contract notice. The contracting authority draws up a list of at least three contractors with a justification for its choice. The candidates are sent a letter of invitation to tender accompanied by a tender dossier. The contract notice is not published, but it is included in the tender dossier as it contains important information for those companies that are invited to tender.

Annex dS1 contains a specific tender dossier for the simplified procedures.

Tenders must be sent to the contracting authority at the address and by no later than the date and time shown in the invitation to tender. The chosen candidates must be allowed at least 30 days from the dispatch of the letter of invitation to tender in which to submit their tenders.

The tenders are opened and evaluated by an evaluation committee with the necessary technical and administrative expertise, appointed by the contracting authority.

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

In the event of one failure of the simplified procedure, the contract may be awarded by negotiated procedure subject to prior authorisation of the relevant services of the European Commission. The remainder of the procedure (including preparation of the tender dossier, evaluating the tenders and awarding the contract) is the same as under the international open procedure (see Sections 5.3.2. to 5.3.11.2.).

**ACP States' preference is not applicable for commitments financed by a basic act under the new Multiannual Financial Framework 2021-2027 .**

**For commitments financed by a basic act under the MFF 2014-2020:**

### **EDF-FUNDED PROGRAMMES**

For works contracts of a value of less than EUR 5 000 000, tenderers from the ACP States, provided that at least one quarter of the capital stock and management staff originates from one or more ACP States, must be accorded a 10% price preference during the financial evaluation.

In addition, where two tenders for works are acknowledged to be equivalent, preference must be given:

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

## 5.7. Modifying works contracts

See Section 2.11. for general information on modifying contracts.

### Where no contract modification is needed

In the vast majority of cases, the works contract stipulates that it is paid by measurement: in such contracts, the quantities indicated in the bill of quantities are estimates, as is the initial contract price derived from these estimated quantities.

Whenever an application for payment is submitted, the supervisor measures, for each item, the actual quantities of the works executed and calculates the amount due by applying the unit rates.

Increases vis-à-vis the initial contract price that are the sole result of the measured actual quantity exceeding the stated bill of quantities or price schedule do not represent a change of the contract and do not require an administrative order to amend the contract or an addendum.

Likewise, the application of the price revision clause of the contract will have the same effect. Again, since the price revision formula is already agreed upon by the contracting parties in the initial contract, the contract does not need to be amended to allow increases vis-à-vis the initial contract price to deal with their effect.

### Administrative order

In a works contract, the supervisor has the power to issue an administrative order to change any part of the works if necessary for the proper completion and/or functioning of the works. These changes may include additions, omissions, substitutions, changes in quality, quantity, form, character, kind, position, dimension, level or line and changes in the specified sequence, method or timing of execution of the works. See Article 37 of the general conditions.

The contractor is bound to make the changes ordered. The contractor cannot delay the works ordered pending a decision on the claim he might have either to extend the period of implementation or for additional payment.

### Addendum

Changes to the contract not covered by an administrative order must be formalised through an addendum. An addendum must be issued when the change entails an increase or reduction of the total value of the works in excess of 15% of the initial contract price.

#### **INDIRECT MANAGEMENT WITH EX ANTE CONTROLS**

If additional EU financing is sought, it must be endorsed by the European Commission before any commitment is made by the contracting authority.

The total period of execution of a works contract includes the period of implementation of the works and the defects liability period between provisional and final acceptance. During this time, the period(s) of implementation can be extended by administrative order or by contract addendum, even after the implementation period specified in the contract has expired.

A works contractor is committed to completing the works, and the contracting authority is committed to paying for the certified works. These commitments and the contract remain valid even if the contractor fails to complete the works within the period(s) specified in the contract, the consequence being that liquidated damages for delay can be deducted from the amounts due.

## 6. Grants

For the purpose of this section, the term ‘grant beneficiary’ should be understood as (i) the only beneficiary of the grant (in case of mono-beneficiary grants) or as (ii) all beneficiaries of the grant (in case of multi-beneficiaries grants).

Where it is not specified otherwise the lead applicant (i.e. the organisation or individual who submits an application for a grant) and the co-applicant(s) are hereinafter jointly referred as the applicant(s).

The terms “proposals” and “applications” are used interchangeably in this chapter to refer to the submission by the applicant of either the concept note, in restricted procedures, or the concept note and full proposal, in open procedures. By contrast, “full applications” is used in restricted and open calls for proposals to refer to the full proposal.

### 6.1. Basic rules for grant contracts

#### 6.1.1. Definition

A grant is a financial donation/non-commercial payment by the contracting authority from the general budget of the European Union or the European Development Fund (EDF) given to a specific grant beneficiary to finance:

- either an action intended to help achieve a European Union policy objective (action grant);
- or the operation (i.e. the running costs) of an entity that pursues an aim of general European Union interest and supports a European Union policy (operating grant<sup>198</sup><sup>199</sup>).

The body(ies) signing a grant contract is known as the grant beneficiary(ies) and should not be confused with the partner country, the final beneficiary of the operation<sup>200</sup> nor with the target group<sup>201</sup>.

In the case of an operating grant, the grant must take the form of a financial contribution to the work programme of the entity.

A grant contract differs from a procurement contract in a number of ways:

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<sup>198</sup> The duration of an operating grant may not exceed 12 months.

<sup>199</sup> For the 11<sup>th</sup> EDF and amended 10<sup>th</sup> EDF Financial Regulation (bridging facility) the relevant objective/interest is defined as: (a) an action intended to help achieve an objective of the 2000/483/EC Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (Cotonou Agreement) or the Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (‘Overseas Association Decision’) (OJ L 344, 19.12.2013, p. 1), or of a programme or project adopted in accordance with that agreement or decision; or (b) the functioning of a body which pursues an objective referred to in point (a).

<sup>200</sup> ‘Final beneficiaries’ are those who will benefit from the project in the long term at the level of the society or sector at large.

<sup>201</sup> ‘Target groups’ are the groups/entities who will be directly positively affected by the project at the project purpose level.

Procurement "Buying things"		Grants "Giving money"
Purchase of services, supplies or works	<b>Object</b>	Proposal from an applicant to contribute to the achievement of a policy objective through: - a project (i.e an action grant); or - the functioning costs of the applicant (i.e. an operating grant)
Contracting Authority	<b>Owner of Results</b>	Grant beneficiary
100% of the cost	<b>Financial contribution</b>	The Union finances a part of the costs, which are eligible for Union-financing. The grant beneficiary (or another donor) finance the other part.
Allowed	<b>Profit</b>	Not allowed

A grant is made for an action, proposed to the contracting authority by an applicant, which falls within the normal framework of the applicant's activities. This is in contrast to a procurement contract, in which the contracting authority draws up the terms of reference for a project it wants to be carried out.

The lead applicant may act individually or with co-applicant(s): however, if awarded the grant contract, both the lead applicant and the co-applicant(s) (if any) become grant beneficiary(ies).

The action must be clearly identified. No action may be split for the purpose of evading compliance with the rules laid down in this practical guide.

A grant beneficiary is responsible for implementing the action and owns the results. By contrast, under a procurement contract, it is the contracting authority who owns the results of the action.

A grant beneficiary generally contributes to the financing of the action unless full Union financing is essential for the action to be carried out (see Section 6.3.9.). In the case of procurement contracts, the contractor does not contribute financially. The amount of a procurement contract represents a price fixed in accordance with competitive tendering rules.

No grant may give rise to profits (i.e. it must only balance income and expenditure for the action see Section 6.3.10. for exceptions), unless the objective is to reinforce the financial capacity of a beneficiary or generate income. The no-profit rule applies to the action and not necessarily to the grant beneficiary.

The fact that a body is non-profit-making does not mean that it can only conclude grant contracts; non-profit bodies can also tender for procurement contracts<sup>202</sup>.

<sup>202</sup> Please note however that references acquired in implementing grant contracts cannot be presented in support of an application for a service contract (in Section 6 of the application form for service tenders, PRAG Annex b3), and that references to implemented service contracts cannot be presented in support of a grant application (in Sections 2.2 and 2.3 of Part B of the grant application form, PRAG Annex e3b).

No grant contract can be signed unless the action meets the above requirements.

The following, amongst others, are not grants under the European Union Financial Regulation<sup>203</sup>:

- programme estimates;
- procurement contracts<sup>204</sup>;
- macro financial assistance, budgetary and debt relief support;
- payments made to bodies entrusted with budget implementation under Articles 62 and 63 FR<sup>205</sup> (e.g. international organisations, national agencies of the Member States or third countries etc.);
- financial instruments within the meaning of Articles 208 and 209 of the Financial Regulation, including interest rate rebates associated to these instruments. NB: Interest rate rebates and guarantee fee subsidies not combined in a single measure with these financial instruments are assimilated to grants, but not subject to the co-financing and no-profit rule (See Section 6.3.10.).

In principle, grants paid under direct management and indirect management with partner countries are covered by the rules set out in this chapter.

## 6.1.2. Actors involved

There are three kinds of actors that may receive funding under a grant contract:

- **the lead applicant**

If awarded the grant contract, the lead applicant will become the beneficiary identified as the coordinator in the special conditions of the grant contract. The coordinator is the main interlocutor of the contracting authority. It represents and acts on behalf of the co-beneficiary(ies) (if any) and coordinates the design and implementation of the action.

- **co-applicants (if any) – who will become the co-beneficiaries following the award of the grant**

Co-applicant(s) participate in designing and implementing the action, and the costs they incur are eligible in the same way as those incurred by the lead applicant.

and

- **affiliated entities (if any)**

Only the lead applicant and co-applicants will become parties to the grant contract.

Their affiliated entities<sup>206</sup> are neither beneficiaries of the action nor parties to the contract. However, they participate in the design and in the implementation of the action and the costs they incur (including those incurred for implementation contracts and financial support to third parties) may be eligible, provided they comply with all the relevant rules already applicable to

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<sup>203</sup> See Article 180(3) of Regulation (EU, Euratom) No 1046/2018 of the European Parliament and of the Council of 30 July 2018 on the financial rules applicable to the general budget of the Union (OJ L 193, 30.7.2018, p.118) (FR).

<sup>204</sup> Article 1(52) FR.

<sup>205</sup> Applicable also to EDF as per Article 17(2) of the Council Regulation (EU) 2015/323 of 2 March 2015 on the financial regulation applicable to the 11<sup>th</sup> European Development Fund (OJ L 58, 3.3.2015, p. 17).

<sup>206</sup> Article 187 FR.



the beneficiaries under the grant contract. Affiliated entities must satisfy the same eligibility criteria as the lead applicant or the co-applicant to which they are affiliated.

Only entities having a structural link with the applicants, in particular a legal or capital link, may be considered as affiliated entities to the lead applicant and/or to co-applicant(s).

This structural link encompasses mainly two notions:

- a) Control, as defined in Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC<sup>207</sup>.

Entities affiliated to a beneficiary may hence be:

- Entities directly or indirectly controlled by the beneficiary (daughter companies or first-tier subsidiaries). They may also be entities controlled by an entity controlled by the beneficiary (granddaughter companies or second-tier subsidiaries) and the same applies to further tiers of control.
  - Entities directly or indirectly controlling the beneficiary (parent companies). Likewise, they may be entities controlling an entity controlling the beneficiary.
  - Entities under the same direct or indirect control as the beneficiary (sister companies).
- b) Membership, i.e. the beneficiary is legally defined as an e.g. network, federation, association in which the proposed affiliated entities also participate or the beneficiary participates in the same entity (e.g. network, federation, association) as the proposed affiliated entities.

The structural link must be neither limited to the action nor established for the sole purpose of its implementation. This means that the link would exist independently of the award of the grant; it should exist before the award procedure and remain valid after the end of the action.

By way of exception, an entity may be considered as affiliated to a beneficiary even if it has a structural link specifically established for the sole purpose of the implementation of the action in the case of so-called 'sole applicants' or 'sole beneficiaries'. A sole applicant or a sole beneficiary is a legal entity formed by several entities (a group of entities) which together comply with the criteria for being awarded the grant. For example, an association is formed by its members.

#### What is not an affiliated entity?

The following are not considered entities affiliated to a beneficiary:

- entities that have entered into a (procurement) contract or sub-contract with a beneficiary, act as concessionaires or delegates for public services for a beneficiary;
- entities that receive financial support from the beneficiary;
- entities that cooperate on a regular basis with the beneficiary on the basis of a memorandum of understanding or share some assets;

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<sup>207</sup> OJ L 182, 29.6.2013, p. 19.

- entities that have signed a consortium agreement under the grant contract (unless this agreement implies the creation of a sole applicant as described above).

#### How to verify the existence of the required link with the beneficiary?

The affiliation resulting from control may be proved in particular on the basis of the consolidated accounts of the group of entities the beneficiary and its proposed affiliates belong to.

The affiliation resulting from membership may in particular be proved on the basis of the statutes or equivalent act establishing the entity (network, federation, association) that the beneficiary constitutes or in which the beneficiary participates.

If the analysis of the accounts or of the statutes does not provide for a clear-cut affiliation between the applicant and the entity that it presents as its affiliate, the entity may be treated as separate co-applicant in the same proposal. The change in the treatment of that entity, from an affiliated entity to a co-applicant, is not to be considered substantial and falls within the scope of corrections that may be made during the finalisation phase of the grant contract.

Affiliated entities are only relevant for action grants, not for operating grants.

The following entities are neither applicants nor affiliated entities:

- Associates

Other organisations or individuals may be involved in the action. Such associates play a real role in the action but may not receive funding from the grant, with the exception of per diem or travel costs. Associates do not have to meet the eligibility criteria referred to in Section 2.1.1. of the Guidelines for applicants.

- Contractors

The grant beneficiaries and their affiliated entities are permitted to award contracts. Associates or affiliated entities cannot be also contractors in the project.

- If financial support is allowed under the relevant grant contract

The grant beneficiaries may award financial support to third parties. These third parties are neither affiliated entities nor associates nor contractors.

## **6.2. Forms of grants**

Grants, being a Union contribution, may take any of the forms provided for in Article 125(1) FR, namely:

(a) financing not linked to costs of the relevant operations based on<sup>208</sup>:

- (i) either the fulfilment of conditions set out in sector specific legislation or Commission Decisions; or

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<sup>208</sup> Specific guidelines on the procedure to be followed to accept financing not linked to costs will be provided to the services in due time.

(ii) the achievement of results measured by reference to the previously set milestones or through performance indicators;

(b) reimbursement of eligible costs that may be based on any or a combination of the following forms:

(i) actual costs incurred by the beneficiary(ies) and affiliated entity(ies);

(ii) one or more simplified cost options.

Simplified costs options may take the form of:

(i) unit costs, which cover all or certain specific categories of eligible costs that are clearly identified in advance by reference to an amount per unit;

(ii) lump sums, which cover in global terms all or certain specific categories of eligible costs that are clearly identified in advance;

(iii) flat-rate financing, which covers specific categories of eligible costs, which are clearly identified in advance, by applying a percentage;

(c) a combination of the forms referred to in points (a) to (b).

#### **DIRECT MANAGEMENT**

A prior approval must be sought for the use of financing not linked to costs.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

Prior authorisation by the European Commission must be sought for the use of financing not linked to costs.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation by the European Commission is required.

#### **New possibilities for grants**

While until the recent past grants were mainly awarded in the form of reimbursement of eligible costs actually incurred, the 2018 Financial Regulation:

- has introduced the possibility of a financing not linked to costs;
- has introduced the notion of single lump sum for grants.

#### **Maximum amount of a grant and eligible costs**

Grants must not exceed an overall ceiling expressed in terms of an absolute value ('maximum grant amount') that must be established on the basis of:

(a) estimated eligible costs, where possible, in the case of reimbursement of eligible costs actually incurred;

(b) the overall amount of estimated eligible costs clearly defined in advance in the form of lump sums, unit costs or flat rates (see above Art. 125(1)(c),(d) and(e));

(c) the overall amount of financing not linked to costs in the case referred to in point (a) of Article 125(1).

Without prejudice to the basic act, grants may in addition be expressed as a percentage of the estimated eligible costs where the grant takes the form specified in point (a) above or as a percentage of the lump sums, unit costs or flat rate financing referred to in point (b) above.

The grant is generally expressed as a maximum amount and a percentage of the eligible costs. This means that the contracting authority's contribution usually covers only a certain percentage of the costs, according to the rules set out in the call for proposals. The call for proposals also establishes the maximum and minimum amounts of the contribution.

These forms of reimbursement can be combined together to cover different categories of eligible costs, provided the limits and conditions stated in the call for proposals are complied with.

Example: A grant for an action may be awarded in the form of a lump sum covering costs for equipment together with unit costs covering personnel costs and reimbursement of actual costs covering other running costs (see Section 6.2.1.).

### 6.2.1. Simplified cost options

Simplified cost options (SCOs) may take the form of unit costs, lump sums and/or flat-rates or a combination of these forms<sup>209</sup>. They are meant to simplify the management of the grant. It should be noted that there is no limitation (other than the total amount of estimated eligible costs) on the amount of costs that can be declared in the form of SCOs.

They are of two types, each type being subject to different conditions as regards their prior authorisation:

1. 'Output or result based SCOs', sometimes also referred to as 'performance based' SCOs: this category includes costs linked to outputs, results, activities, deliverables in the framework of a specific project (for example the determination of a lump sum for the organisation of a conference, or for the realisation of a determined output/activity). Where possible and appropriate, lump sums or unit costs must be determined in such a way to allow their payment upon achievement of concrete outputs and/or results. They will be authorised by the relevant contracting authority (if recommended to be accepted by the evaluation committee, they will be formally approved by the contracting authority responsible and stated in the contract<sup>210</sup>).
2. 'Other SCOs': This second category entails simplified cost options embedded in the accounting practices of the beneficiary. This category is only applicable to pillar assessed entities when receiving a grant awarded directly without a call for proposals, for which an ex-ante assessment is deemed necessary<sup>211</sup> to ensure coherence across services, considering the need for a consistent application of the conditions required. In order for the contracting authority to allow the use of these SCOs, the beneficiary's cost accounting practices need to have been positively assessed by an independent external auditor.

<sup>209</sup> Article 125(c) to (f) and Article 180(3) FR.

<sup>210</sup> At least in the 'justification sheet' of the budget and in the budget itself.

<sup>211</sup> Other SCOs need to be always ex-ante assessed independently of their amount.

Please also refer to Annex e3a2 Guidelines for simplified cost options for further details.

For calls for proposals and grants awarded without a call for proposals to non-pillar assessed entities, applicants may only propose output or result-based SCOs, which can only take the form of unit costs and lump sums, since flat-rate financing is input based and therefore cannot be proposed by applicants. The contracting authority will decide whether or not to accept SCOs. SCOs can apply to one or more of the direct cost headings of the budget (i.e. cost headings 1 to 6), or to cost sub-headings, or to specific cost items within these cost headings. Please note that, in the case of grants awarded without a call for proposals to non-pillar assessed entities, output or result-based SCOs are admissible only if an evaluation committee has been appointed.

With regard to “Other SCOs”, unless otherwise provided for in the basic act, the use of lump sums, unit costs or flat-rate financing embedded in the accounting practices of the beneficiary must be authorised by a decision of the contracting authority responsible, who must act in accordance with the internal rules of the European Commission.

Once the amounts have been assessed and approved by the contracting authority (as clearly laid down in the budget of the action<sup>212</sup>), they will not be challenged by ex post controls. This means that auditors will not check all the supporting documents to establish the actual costs incurred, but they will concentrate on the correct application of the formula used and the related inputs or generating events as established in the contract. Auditors will not check the actual costs to verify the generation of a profit or a loss, even though the auditors and/or the European Commission have the right to access the statutory records of the beneficiary, notably its general accounting statements, for statistical, methodological or anti-fraud purposes (as applicable to all forms of grants) according to article 16 of the general conditions. This means that the beneficiary has to keep supporting documents establishing that the grant has been effectively implemented.

## 6.2.2 Single lump sum

The 2018 Financial Regulation provides for the possibility that a lump sum, as referred to in point (d) of Article 125(1) FR, may cover the entire eligible costs of an action or a work programme.

Single lump sums may be determined on the basis of the estimated budget, which should comply with the principles of economy, efficiency and effectiveness. Compliance with these principles must be verified ex ante at the time of evaluation of the grant application.

When authorising single lump sums, the contracting authority responsible must comply with the conditions applicable to output or result based SCOs.

When using this form of financing, the description of the action must include detailed information on the essential conditions triggering the payment, including, the achievement of outputs and/or results.

## 6.3. Overview

There are strict rules governing the way in which grants are awarded. They require programming, transparency and equal treatment. Grants may not be cumulative or awarded retrospectively and they must generally involve co-financing. The amount specified in the grant contract as eligible for financing may not be exceeded.

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<sup>212</sup> See example in Annex e3a2 ‘Guidelines for simplified costs options for Union financed grant contracts.

As general rule with some specific exceptions, the grant may not have the purpose or effect of producing a profit for the beneficiary.

Grants are awarded either by a European Commission decision notified<sup>213</sup> to the successful applicant or by a written agreement (standard grant contract) concluded with it. Grants awarded in the framework of external action are awarded through written agreement (standard grant contract).

### 6.3.1. Management modes - grants

See Section 2.2. for an explanation of the different management modes applicable to the European Union external actions.

The differences relating to grants are as follows:

#### **DIRECT MANAGEMENT**

Grants are awarded by the European Commission, which is responsible for issuing calls for proposals, receiving proposals, chairing evaluation committees, deciding on the results of calls for proposals and signing the contracts.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

Grants are awarded by the contracting authority designated in the financing agreement, i.e. the government or an entity of the partner country with legal personality with which the European Commission concludes the financing agreement.

The contracting authority is responsible for issuing calls for proposals, receiving proposals, chairing evaluation committees and deciding on the results of calls for proposals. The contracting authority must submit the evaluation report, details of the proposed grants and, where required, the draft contracts to the European Commission for endorsement. No endorsement of the contracts by the European Commission is, however, needed in certain cases contemplated in the practical guide to procedures for programme estimates.

Once the grant has been approved, the contracting authority signs the contract and notifies the European Commission accordingly. As a general rule, the European Commission is represented as an observer when proposals are opened and evaluated and must always be invited.

The contracting authority must submit the guidelines for applicants and grant award notices to the European Commission for publication, with the exception of the cases referred to in the practical guide to procedures for programme estimates.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

Grants are awarded by the contracting authority designated in the financing agreement, i.e. the government or an entity of the partner country with legal personality with which the European Commission concludes the financing agreement. It is responsible for issuing calls for proposals,

<sup>213</sup> Please note that legal commitments for grants implementing the budget under the Multiannual Financial Framework 2014-2020 may continue to take form of grant decisions. The provisions of Title VIII of FR 2018 applicable to grant contracts shall apply *mutatis mutandis* to grant decisions. The European Commission shall review the use of grant decisions under the post-2020 multiannual financial framework, in particular in view of the progress made in electronic signature and electronic management of grants by the time (Article 279(1) FR 2018).

receiving proposals, chairing evaluation committees, deciding on the results of calls for proposals and signing the contracts without the prior authorisation of the European Commission.

The contracting authority must submit the guidelines for applicants and grant award notices to the European Commission for publication.

### 6.3.2. Management Tools

#### DIRECT MANAGEMENT

Calls for proposals in **direct management** launched by the DG International Partnerships will be processed through the two following online tools: PADOR and PROSPECT<sup>214</sup>.

**PADOR** (potential applicant data online registration) is the database where lead applicants, co-applicants and affiliated entities should register, update information about their organisation and upload their supporting documents (statutes, audit reports, legal entity form (LEF) etc.). The purpose of the on-line registration in PADOR is to provide the European Commission with information about the organisations involved in the action.

By registering on-line in PADOR, lead applicants, co-applicants and their affiliated entities get a unique identifier (EuropeAid ID), which they need to insert in their application form. The organisations are responsible for keeping information in PADOR up to date.

In case on-line registration is impossible because of technical difficulties, the lead applicants, co-applicants and affiliated entities must submit, together with their application, the PADOR registration form (Annex F) following the instructions given in the guidelines for applicants.

For further information, see :

<https://wikis.ec.europa.eu/display/ExactExternalWiki/e-Calls+PADOR> where you can find the PADOR help guides for applicants and co-applicants, the PADOR help guide for affiliated entities and the frequently asked questions.

As PADOR is designed for organisations, natural persons who participate in a call (where the relevant guidelines allow for their participation) do not have to register in PADOR nor submit PADOR registration form. All information necessary for the evaluation of their applications is included in PROSPECT and the application form.

**PROSPECT** is the single online platform to be used for the management of calls for proposals and it is used for all calls managed by DG International Partnerships (both in headquarters and delegations).

PROSPECT consists of four modules:

- Module 1: to be used by the business administrator only, in order to configure the templates in PROSPECT
- Module 2: to be used by the European Commission services to create and publish calls for proposals
- Module 3: to be used by lead applicants (including individuals) to submit their application

<sup>214</sup> Exceptions may apply e.g. to twinning projects.

online

- Module 4: to be used by evaluators and external assessors to conduct the evaluation of proposals.

Online submission is in principle mandatory for applicants. However, by default the guidelines for applicants include an option to submit applications exceptionally offline. Only if applicants are not prevented from submitting via PROSPECT due to technical issues in their country will this option be deleted and applications will only be accepted via PROSPECT.

When applicants encode in PROSPECT their EuropeAid ID, PROSPECT retrieves automatically from PADOR all relevant information about the organisation. When applicants encode in PROSPECT a PADOR offline form (Annex F), Commission staff will use this form to create or update their PADOR profile. The functionality of 'Upload PDF' available in PADOR allows European Commission staff to quickly transfer the data from Annex F into PADOR.

For further information use this link, <https://wikis.ec.europa.eu/display/ExactExternalWiki/e-Calls+PROSPECT> where you can find:

- PROSPECT manuals for internal users, external assessors and applicants
- PROSPECT e-learning

### 6.3.3. Eligibility criteria

#### 6.3.3.1. Nationality rule

See Section 2.3.1.

Participation in grant award procedures is open on equal terms to all natural and legal persons and to entities that do not have legal personality under the applicable national law, provided that their representatives have the capacity to take on legal obligations on their behalf and that they offer financial and operational guarantees equivalent to those provided by legal persons. Furthermore, applicants must be established in an eligible country in accordance with the applicable basic act (for more details see Section 2.3.1.).

#### **DIRECT MANAGEMENT**

A prior approval must be sought for the participation in grant award procedures of entities that do not have legal personality under the applicable national law.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

Prior authorisation by the European Commission must be sought for the participation in grant award procedures of entities that do not have legal personality under the applicable national law.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation by the European Commission is required.

#### 6.3.3.2. Exceptions to the nationality rule

See Section 2.3.9.



### **6.3.3.3. Grounds for exclusion**

See Section 2.6.10.1.

### **6.3.4. Programming**

Grants under direct management are subject to a financing decision, which at the same time constitutes the annual or multiannual work programme. The financing decision indicates the period it covers, the basic act, if any, the objectives pursued, the expected results, the method of implementation, the indicative timetable of calls for proposals with the indicative amount and the maximum rate of co-financing. The financing decision is adopted by a Commission decision and published on the website of DG International Partnerships. There is no need for a work programme for grants under indirect management.

### **6.3.5. Transparency**

See Section 2.5.2.

### **6.3.6. Equal treatment**

See Section 2.5.2.

### **6.3.7. Non-cumulation**

See Section 2.5.2.

### **6.3.8. Non-retroactivity**

See Section 2.5.2.

Exceptionally, a grant may be awarded for an action that has already begun where the applicants can demonstrate and justify the need to start the action before the contract is signed. In this case, expenditure incurred before the submission of grant applications is, as a general rule, not eligible for financing<sup>215</sup>.

The acceptance of costs from an earlier date<sup>216</sup> (i.e. before submission of grant applications) is possible only in duly substantiated exceptional cases<sup>217</sup>:

- a) in duly justified exceptional cases as provided for in the basic act; or
- b) in the event of extreme urgency where an early engagement by the Union would be of major importance, for the purposes of humanitarian aid, emergency support operations, civil protection operations or for crisis management aid and in other exceptional and duly substantiated emergencies.

In these cases, the costs incurred by a beneficiary before the date of submission of the application must be eligible for Union financing under the following conditions:

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<sup>215</sup> For direct awards, the financing may go back to the starting date of negotiations as confirmed by administrative evidence.

<sup>216</sup> That could be even an earlier date than that of the financing decision.

<sup>217</sup> Under the FR (Article 110), it is no longer necessary to indicate cases of cost-eligibility-retroactivity in the financing decision.

- (i) the reasons for such derogation have been properly substantiated by the contracting authority responsible;
- (ii) the grant agreement sets explicitly the eligibility date earlier than the date for submission of applications.

The relevant eligibility date should also be included in the guidelines for applicants.

The contract for an operating grant must be awarded within 4 months from the start of the beneficiary's financial year. Costs eligible for financing may not have been incurred before the grant application was lodged nor before the start of the beneficiary's financial year.

No grant may be awarded retroactively for actions already completed.

#### **DIRECT MANAGEMENT**

Retroactive financing constitutes an event to be reported.

The approval by the AOSD of cost eligibility before the signature of a grant contract, but after submission of a grant application is an event to be reported.

Moreover, retroactive financing to cover costs incurred before the submission of the proposal, for reasons of extreme urgency in crisis management aid or in other exceptional and duly substantiated emergencies also constitutes an event to be reported.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

Prior authorisation by the European Commission must be sought for the retroactive financing.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation by the European Commission is required.

### **6.3.9. Co-financing**

See Section 2.5.2.

As general rule, a grant may not finance the entire cost of the action or the entire operating expenditure of a beneficiary, with the following exceptions:

#### **Full Financing**

The contracting authority must be in a position to show that financing in full is essential to carry out the action in question and must substantiate its award decision accordingly. Under direct management, full financing constitutes an event to be reported. Under indirect management with ex-ante controls, the contracting authority must obtain the prior authorisation of the European Commission.

For instance, the financing of an action in full may be authorised in the following cases, save where prohibited by the basic act:

- humanitarian aid, including assistance for refugees, uprooted persons, rehabilitation and mine clearance;

- aid in crisis situations;
- action to protect health or the fundamental rights of people;
- where the relevant financing agreement foresees full financing;
- actions with international organisations;
- where it is in the interests of the European Union to be the sole donor to an action, and in particular to ensure visibility of a European Union action. Grounds must be provided for in the award decision.

For EIDHR financed actions (MFF 2014-2020), full financing is also possible for cases (i) and (ii) under g) in section 6.4.2.

For the MFF 2021-2027 financed actions, full financing is also possible for cases a) and b) under h) in section 6.4.2.

The co-financing may take the form of the beneficiary's own resources (self-financing), income generated by the action and financial or in kind contributions from third parties.

The contracting authority may accept contributions in kind as co-financing, if considered necessary or appropriate. Co-financing in kind means the provision of goods or services to the grant beneficiary free of charge by a third party. Therefore, contributions in kind do not involve any expenditure for the grant beneficiary<sup>218</sup>. For the purpose of the no-profit rule (see Section 6.3.10.), in kind contributions are not taken into account.

If contributions in kind are accepted as co-financing, the beneficiary(ies) must ensure they comply with national tax and social security rules.

Contributions in kind from third parties, with the exception of in kind contributions in the form of volunteers' work<sup>219</sup>, must be presented separately from the contributions to the eligible costs in the estimated budget (like non eligible taxes, they are presented as accepted costs in the estimated budget for the action). Their approximate value must be indicated in the estimated budget and must not be subject to subsequent changes.

The beneficiary has to declare the co-financing actually provided in the final report. The beneficiary(ies) may at that point replace any planned contribution from its own resources by financial contributions from third parties.

For low value grants (i.e. any grant up to EUR 60 000) refusal of co-financing in kind — if proposed but not considered appropriate or necessary — should be clearly justified.

#### **Volunteers' work**

Where the relevant call for proposals allows for the work performed by volunteers to be considered as acceptable co-financing, beneficiaries may declare personnel costs for the work carried out by volunteers under an action or work programme as eligible cost, on the basis of unit costs determined by the European Commission at the following address:

<sup>218</sup> Nevertheless, actual costs generated by the acceptance, distribution, warehousing etc. of in kind contributions may be eligible for funding if complying with Article 14 of the general conditions.

<sup>219</sup> See dedicated box for details on the presentation of volunteer's work in the budget.

<https://ec.europa.eu/transparency/regdoc/?fuseaction=list&cotelId=3&year=2019&number=2646&version=ALL&language=en> .

Contributions in kind from third parties in the form of volunteers' work, valued in accordance with the above paragraph, must be presented in the estimated budget, separately from the other eligible costs, in the dedicated budget line 10.2 of the budget template (PRAG Annex e3c) . The value of the volunteer's work must always be excluded from the calculation of indirect costs. Volunteers' work may comprise up to 50% of the co-financing, the latter corresponding to the part not financed by the EU grant. For the purposes of calculating this percentage, other contributions in kind, if allowed, and other co-financing must be based on estimates provided by the applicant<sup>220</sup>.

### 6.3.10. No-profit rule

See Section 2.5.2.

Grants may not have the purpose or effect of producing a profit within the framework of the action or the work programme, with the exception of some specific cases (see below) as provided for in the special conditions of the standard grant contract.

Profit is defined as a surplus of the receipts over the eligible costs approved by the contracting authority when the request for payment of the balance is made.

The receipts to be taken into account are the consolidated receipts on the date on which the payment request for the balance is made by the coordinator that fall within one of the two following categories:

- a) European Union grant;
- b) income generated by the action; unless otherwise specified in the special conditions.

In case of an operating grant, amounts dedicated to the building up of reserves must not be considered as a receipt.

When grants or parts of grants are based on simplified cost options, these amounts should be established in such a way as to exclude profit *a priori*. If this is the case, the amounts of unit costs, lump sums and/or flat rates established in the contract must not be challenged by ex post controls, i.e. through comparison with the actual costs they cover (see Section 6.2.1. and Annex E3a2 Guidelines for simplified cost options).

In case a profit is made, the contracting authority has the right to reduce the final amount of the grant by the percentage of the profit corresponding to the final European Union contribution to the eligible costs actually incurred approved by the contracting authority (thus excluding other eligible costs declared on a simplified cost option basis), except in the cases listed below.

The no-profit rule does not apply to<sup>221</sup>:

- a) actions the objective of which is the reinforcement of the financial capacity of a beneficiary. Where applicable, this must be specified in Article 7 of the special conditions;

<sup>220</sup> Article 190(2) FR.

<sup>221</sup> Article 192(3) FR.

- b) actions that generate an income to ensure their continuity after the period of Union financing provided for in the grant agreement. Where applicable, this must be specified in Article 7 of the special conditions;
- c) study, research, training or education support paid to natural persons or other direct support paid to natural persons most in need, such as unemployed persons and refugees. Where applicable, this must be specified in Article 7 of the special conditions;
- d) actions implemented by non-profit organisations;
- e) grants in the form of financing not linked to costs of the relevant operations (see Article 125(1)(a) FR);
- f) low value grants (i.e. grants of EUR 60 000 or less).

### 6.3.11. Other essential points

See Section 2.5.5.

Contingency reserve:

A reserve for contingencies and/or possible fluctuations in exchange rates not exceeding 5% of the direct eligible costs may be included by the applicants in the budget for external actions given the specificity and the higher level of unpredictability of external actions.

Ethics clauses:

See Section 2.5.6.

In addition, for all grant award procedures (calls for proposals or direct award) where the requested grant exceeds EUR 60 000, lead applicants, co-applicants and affiliated entities other than (i) natural persons (ii) pillar-assessed entities and (iii) governments and other public bodies whose application has been provisionally selected or placed in a reserve list, shall assess their internal policy against sexual exploitation, abuse and harassment (SEA-H) through a self-evaluation questionnaire with the aim to inform the contracting authority about the entity's SEA-H policy in place and the measures envisaged in order to improve the SEA-H policy within the relevant organisation<sup>222</sup>.

## 6.4. Award procedures

### 6.4.1. Call for proposals

Grants must be awarded following the publication of a call for proposals, except in the cases listed in Section 6.4.2. below.

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<sup>222</sup> Please note that in direct management, for calls for proposals where PROSPECT is used, the self-evaluation questionnaire on SEA-H must be submitted via PADOR. In case of direct award of grants, where PROSPECT is not used, all submitted data, including the self-evaluation questionnaire on SEA-H, must be transferred into the relevant European Commission information systems.

### 6.4.1.1. Publication

A call for proposals is always published on the website of DG International Partnerships or Funding & Tender opportunities website (F&T Portal)<sup>223</sup>. A call for proposals must also be published locally where it is not organised by a service of the European Commission headquarters.

For the publication of calls for proposals in direct or indirect management and calls for proposals for Twinning projects, please refer to the relevant webpages of the two online tools: PADOR<sup>224</sup> and PROSPECT<sup>225</sup>. Calls for proposals are published on [the website of DG International Partnerships<sup>226</sup>](#) or [Funding & Tender opportunities website \(F&T Portal\)](#), while local calls for proposals are also published locally. The grants awarded under the Programme Estimates, if not published locally, have to be published on [the website of DG International Partnerships](#) or [Funding & Tender opportunities website \(F&T Portal\)](#) via PROSPECT (PRAG Sections 2.10.3.2 and 6.5.11.1). Trust Fund-related Calls for Proposals are not published in PROSPECT.

### 6.4.1.2. Open or restricted call for proposals

Calls for proposals are by default restricted, i.e. a two-step procedure where all applicants may ask to take part but only the applicants who have been shortlisted (on the basis of a concept note in response to a call launched through published guidelines for applicants) are invited to submit a full application.

In exceptional cases, calls for proposals may be open, i.e. all applicants are free to submit a full application. In this case a concept note must still be submitted together with the full application and the evaluation process is carried out in two steps (shortlisting on the basis of the concept note), in accordance with the published guidelines for applicants (see Section 6.5.2.).

A decision to launch an open rather than a restricted call must be justified by the particular technical nature of the call, the limited budget available, the limited number of proposals expected or organisational constraints (e.g. calls by regional European Union delegations).

#### **DIRECT MANAGEMENT**

A prior approval must be sought for the launch of an open call for proposals.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

Prior authorisation by the European Commission must be sought for the launch of an open call for proposals.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation by the European Commission is required.

<sup>223</sup> With the next PROSPECT release, the publication of call for proposals will move from the [website of DG International Partnerships](#) to the Funding & Tender opportunities (F&T Portal).

<sup>224</sup> <https://webgate.ec.europa.eu/pador>

<sup>225</sup> <https://webgate.ec.europa.eu/prospect>

### 6.4.1.3. Partnerships

Grant contracts may take the form of financial framework partnership agreements with a view to establishing a long-term cooperation between the Commission and beneficiaries implementing European Union funds<sup>227,228</sup>. Financial framework partnership agreements must specify the forms of financial cooperation, including the obligation to set out, in the specific agreements signed arrangements for monitoring the achievement of specific objectives. In addition, in case the financial partnership agreements takes the form of a grant, it must specify the nature of actions planned on a one-off basis or as part of an approved work programme, the procedure for awarding specific grants, in compliance with the principles and procedural rules in this practical guide and the general rights and obligations of each party under the specific contracts. The duration of the partnership may not exceed 4 years, save in duly justified cases clearly indicated in the annual activity report. Financial framework partnership agreements are treated as grants for the purposes of programming, *ex ante* publication and the award procedure and may, under indirect management, provide for the reliance on the systems and procedures of the beneficiary<sup>229</sup>. Financial framework partnership agreements should only be envisaged if their use has a clear extra value. For example, if only one specific grant is foreseen, financial framework partnership agreements are not the appropriate modality.

#### **DIRECT MANAGEMENT**

A prior approval must be sought for the use of a financial framework partnership agreement.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

Prior authorisation by the European Commission must be sought for the use of a financial framework partnership agreement.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation by the European Commission is required.

### 6.4.2. Grants awarded without calls for proposals ('Direct award')

#### **DIRECT MANAGEMENT**

Direct awards require a prior approval/constitute an event to be reported.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

Prior authorisation of the European Commission must be sought. The negotiation report (Annex A10a) must be submitted to the relevant services of the European Commission, which must decide whether to accept the negotiation result.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

No prior authorisation by the European Commission is required for the use of the direct award procedure or for the results of negotiation contained in the negotiation report (Annex A10a).

<sup>227</sup> Article 130 FR.

<sup>228</sup> FFPA templates for mono-beneficiary grants under direct management including a template for the specific grant contracts based on the standard grant contract for European Union external actions are available as annexes to the practical guide.

<sup>229</sup> In line with the conditions set by Article 154(2)(3)(4) FR.

In the following circumstances, it is not necessary to organise a call for proposals before awarding grants<sup>230</sup>:

- a) Exceptional and duly substantiated emergencies (urgency);
- b) For the purposes of humanitarian aid and civil protection operations or for crisis management aid. This provision is *mutatis mutandis* applicable to programmes funded by the EDF under emergency assistance provided for in Articles 72 and/or 73 of the Cotonou Agreement;
- c) Where the grant is awarded to a body with a *de jure* or *de facto* monopoly, duly substantiated in the award decision. ‘De facto’ or ‘de jure’ monopoly means that the grant beneficiary:
  - has exclusive competence in the field of activity and/or geographical area to which the grant relates pursuant to any applicable law; or
  - is the only organisation (i) operating or (ii) capable of operating in the field of activity and/or geographical area to which the grant relates by virtue of all considerations of fact and law.
- d) Where the grant is to be awarded to a body identified by the relevant basic act<sup>231</sup>, as beneficiary of a grant or to bodies designated by the Member States, under their responsibility, where those Member States are identified by a basic act as beneficiaries of a grant. Note that ‘basic act’ refers to the Regulation governing the programme. It is not sufficient to identify a body for a direct award in financing decisions/annual action programmes, as these do not constitute basic acts;
- e) In case of research and technological development, to bodies identified in the work programme, where the basic act expressly provides for that possibility, and on condition that the action does not fall under the scope of a call for proposals;
- f) For actions with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power, on condition that the actions concerned do not fall within the scope of a call for proposals. These cases must be duly substantiated in the award decision.
- g) For EIDHR financed actions under MFF 2014-2020:
  - i. low value grants to human rights defenders to finance urgent protection actions, where appropriate without the need for co-funding;
  - ii. grants, where appropriate without the need for co-funding, to finance actions in the most difficult conditions or in situations referred to in Article 2(4) of Regulation (EU) No 235/2014 where the publication of a call for proposals would be inappropriate. Such grants shall not exceed EUR 1 000 000 and shall have a duration of up to 18 months, which may be extended by a further 12 months in the event of objective and unforeseen obstacles to their implementation;

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<sup>230</sup> Article 195 FR.

<sup>231</sup> For the European Instrument for Democracy & Human Rights (multiannual financial framework 2014-2020), Article 6(1) (c) (iii) of Regulation (EU) No 236/2014 of the European Parliament and of the Council of 11 March 2014 laying down common rules and procedures for the implementation of the Union's instruments for financing external action (CIR) (OJ L 77, 15.3.2014, p. 95), and for the MFF 2021-2027, Article 27 (3) (c) of Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe.



- h) For the MFF 2021-2027 financed actions:
- a) low-value grants to human rights defenders to finance urgent protection actions and needs, including through mechanisms for the protection of human rights defenders at risk, as well as to mediators and other civil society actors involved in crisis and armed conflict related dialogue, conflict resolution, reconciliation and peacebuilding, where appropriate without the need for co-financing;
  - b) grants, where appropriate without the need for co-financing, to finance actions in the most difficult conditions where the publication of a call for proposals would be inappropriate, including situations where there is a serious lack of fundamental freedoms, including violation of human rights, threats to democratic institutions, escalation of crisis or armed conflict, where human security is most at risk or where human rights organisations and defenders, mediators and other civil society actors involved in crisis and armed conflict related dialogue, reconciliation and peacebuilding operate under the most difficult conditions; such grants shall not exceed EUR 1 000 000 and their duration shall not exceed 18 months, which may be extended by a further 12 months in the event of objective and unforeseen obstacles to their implementation;
  - c) low value grants to civil society organisations using, to the extent possible, simplified forms of financing in accordance with Article 125 of the Financial Regulation.

In all cases, the contracting authority must prepare a report explaining the manner in which the grant beneficiary was identified and the grant amounts established, and the grounds for the award decision (see template negotiation report — Annex A10a). The contracting authority must follow the steps shown in the negotiation report template and ensure that all the basic principles for grants are respected (including eligibility, capacity and exclusion).

In the case of grants awarded without a call for proposals, even though an evaluation committee may be useful, it is not compulsory.

The procedures described in Section 6.5.10. must be followed by analogy, with the report referred to in the previous paragraph being included in the contract dossier.

Even if the beneficiary is designated in the basic act or it is in a monopoly situation the financial capacity always has to be verified as the financial interests of the European Union have to be protected.

## 6.5. Calls for proposals

### 6.5.1. Publicity

To ensure the widest possible participation and the requisite transparency, every call for proposals must be accompanied by guidelines for applicants.

The guidelines for applicants are published on the website of DG International Partnerships or Funding & Tender opportunities website (F&T Portal)<sup>232</sup> and in any other appropriate media (other websites, specialised press, local publications, etc.). They should also be available in hard copy from

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<sup>232</sup> With the next PROSPECT release, the publication of call for proposals will move from the [website of DG International Partnerships](#) to the Funding & Tender opportunities (F&T Portal).

the contracting authority. They should be available in the languages appropriate to the call for proposals.

The European Commission is responsible for publishing the guidelines for applicants on the website of DG International Partnerships or F&T portal. If the contracting authority is not a service of the European Commission headquarters, it must arrange local publication directly at the same time as they are published on the designated website.

Since the cost of publishing the entire guidelines for applicants in the local press might be prohibitive, the template in Annex e2 prescribes the minimum information that is required for local publication. Those guidelines must be available at the address stated in the local publication.

It is also highly advisable, after the launch of the call for proposals, to hold one or more information sessions that all the potential applicants can attend. Such information sessions must take place at the latest 21 days before the deadline for submission of the concept notes<sup>233</sup>. Moreover, information sessions can also be organised at the latest 21 days before the deadline for submission of the full application for applicants whose concept notes have been pre-selected. Any presentation/documentation to be delivered in the information session must also be uploaded at least on the website of DG International Partnerships or F&T portal, where the call was published. In direct management the dates, locations and presentations for information sessions on global calls for proposals must be coordinated with the European Commission headquarters. The information to be disseminated in all targeted regions must be harmonised in a non-discriminatory way.

If the contracting authority, either on its own initiative or in response to a request for clarification amends information in the call for proposals, a corrigendum with the changes must be published subject to the same publicity conditions as those for the call for proposals. The corrigendum may extend the deadline to allow applicants to take the changes into account.

In order to make more efficient use of calls for proposals the contracting authority may group calls for proposals for different instruments (it may then be advisable to divide the calls into lots<sup>234</sup>) and/or use the budget of several successive years. In the latter case, a suspensive clause must be included for the following years. Calls may also cover several countries of one region and group the related budgetary appropriations.

## **6.5.2. Drafting and contents of the guidelines for applicants**

The guidelines for applicants (that include the application form and other annexes) explain the purpose of the call for proposals, the rules on eligibility of applicants, the types of action and costs that are eligible for financing, and the evaluation (selection and award) criteria (see template guidelines for applicants). They also contain instructions on how to fill in the application form, what to attach to it and what procedures to follow for applying. They give information on the evaluation process that will follow (including an indicative timetable) and the contractual conditions applying to successful applicants.

The guidelines for applicants should set out very clearly and in detail the objectives and priorities of the call for proposals, and give particular attention to the eligibility criteria. They must be published and any change to them must be published as well.

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<sup>233</sup> Full application in case of open procedures.

<sup>234</sup> Note that a division of lots into sub-lots is not possible.

It is advisable to clarify and limit the priorities and objectives of calls and to clearly explain the eligibility criteria for applicants (see Section 6.5.3. below) to ensure that only adequate applications will be submitted.

#### **DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

The guidelines for applicants are adopted by the contracting authority.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The contracting authority must submit the guidelines for applicants to the delegation of the European Union for approval prior to issuance.

### **6.5.3. Eligibility and evaluation (selection and award) criteria**

#### **6.5.3.1. Eligibility criteria**

The eligibility criteria determine the conditions for participating in a call for proposals. They must be drafted with due regard to the objectives of the action and be transparent and non-discriminatory.

The eligibility criteria apply to two different points:

- Eligibility of the applicants: this refers to the applicants' legal and administrative status - see in particular Sections 2.3.1. and 2.6.10.1. (rules on nationality and grounds for exclusion). If a call for proposals relates to actions that might or need to be implemented by several entities, the minimum, maximum or the recommended number of entities and the eligibility criteria applicable to each entity or to all together may be specified.
- Eligibility of the action: this refers to the types of activities, sectors or themes and geographical areas covered by the call for proposals.

#### **6.5.3.2. Evaluation criteria: selection and award**

The evaluation criteria consist of selection and award criteria, all of which are defined in the evaluation grid.

- The selection criteria are used to assess the lead applicant's financial capacity as well as the lead applicant's and the co-applicant(s)'s (and their affiliated entity(ies)) operational capacity to complete the proposed action:
  - the lead applicant must have stable and sufficient sources of funding to keep operating throughout the action implementation period and to participate, where appropriate, in its funding;
  - applicants (and their affiliated entity(ies)) must have altogether the necessary experience, professional competencies and qualifications to complete the proposed action.

The financial capacity has always to be verified<sup>235</sup>, except where the lead applicant belongs to one of the following categories: natural persons in receipt of education support, natural

<sup>235</sup> For financial framework partnership agreements, the verification of the financial capacity takes place before entering into the framework agreement.

persons most in need and receiving direct support, public bodies or international organisations<sup>236</sup>.

Assessments are made on the basis of the information and supporting documents submitted in the context of the call for proposals. Supporting documents may include an external audit report of the lead applicant, the profit and loss account and the balance sheet for up to the three last financial years for which the accounts were closed. In case of doubts about the capacity of the applicants, the evaluation committee may ask for additional proof.

- The award criteria are used to assess proposals against the set objectives and priorities, so that grants are awarded to actions that maximise the overall effectiveness of the call for proposals. They should enable the contracting authority to select proposals that will comply with its objectives and priorities and guarantee the visibility of the European Union financing.

The award criteria relate, in particular, to the relevance of the action and its compatibility with the objectives of the grant programme under which the call for proposals is being financed; the quality, expected impact and sustainability of the action, and its cost-effectiveness.

All eligibility and evaluation criteria specified in the call for proposals must be applied as specified and cannot be changed in the course of the procedure. The criteria should be precise and non-discriminatory (see the evaluation grid templates).

#### **6.5.4. Additional information before the deadline for submission of proposals**

During the time between the publication and the deadline for the submission of the concept note/full application<sup>237</sup>, in addition to any information session held (see Section 6.5.1.), applicants should be able to ask questions to help them fill in the form and put together their applications. The contracting authority should therefore provide a contact point to which questions may be addressed. Lead applicants may submit questions in writing up to 21 days before the deadline for the submission of the concept notes/full applications.

The contracting authority must reply to all such questions at least 11 days before the deadline for submission of concept notes/full applications. Replies will be published on the relevant website(s), i.e. there is no need to provide individual replies. In the interest of equal treatment of applicants, the contracting authority cannot give a prior opinion on the eligibility of an applicant, an affiliated entity, an action or specific activities.

In compliance with transparency and equal opportunities requirements, the answer provided to applicants on points that may be of interest to other applicants must be made available to all applicants. The way to achieve this is to publish on the website where the call was published, website of DG International Partnerships or Funding and Tender opportunities website (F&T portal) (and other websites, where appropriate) a document containing all the questions and answers provided. This document must be updated regularly until 11 days before the deadline for submission of concept notes/full applications.

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<sup>236</sup> Article 198(5) FR

<sup>237</sup> For open calls, during the time between the publication and the deadline for the submission of the application form.

### **DIRECT MANAGEMENT AND INDIRECT MANAGEMENT**

For calls for proposals launched in **direct management** as well as for calls for proposals in **indirect management** published in PROSPECT, the publication of all questions received and answers provided on the website of DG International Partnerships/F&T portal, is done via PROSPECT.

## **6.5.5. Deadline for submission of proposals**

### **DIRECT MANAGEMENT**

For calls for proposals launched in **direct management**, proposals must be submitted online via PROSPECT by the date and time indicated in the guidelines for applicants. Lead applicants receive a confirmation of the date and time of their submission in PROSPECT. All dates and times in PROSPECT are expressed in Brussels time (GMT+1).

### **INDIRECT MANAGEMENT**

Where PROSPECT is not used (i.e. under indirect management) or where PROSPECT is used but it is technically impossible for the applicant to submit the proposal via PROSPECT<sup>238</sup> proposals must be submitted to the contracting authority at the address and, at the very latest, by the date (and time, for hand-delivery) indicated in the guidelines for applicants, as evidenced by the date of dispatch, the postmark or the date of the deposit slip (for hand-delivery, the deadline for receipt is on the date and hour fixed in the guidelines for applicants). However, if accepting concept notes/full applications<sup>239</sup> that were submitted on time but arrived late would considerably delay the award procedure or jeopardise decisions already taken and notified, the contracting authority may, for reasons of administrative efficiency, reject any application received after the effective date of approval of the concept note evaluation (first stage) or of the evaluation of the full application (second stage)<sup>240</sup>.

The deadline for submission must be long enough to allow for high-quality proposals. Experience shows that a too short deadline may prevent potential applicants from submitting proposals or cause them to submit incomplete or ill-prepared proposals.

The minimum period for submission is 45 days. In exceptional cases, a shorter deadline may be allowed as a derogation<sup>241</sup>.

## **6.5.6. Submission of the concept note and full application**

Concept notes and full applications<sup>242</sup> must be submitted in accordance with the instructions given in the guidelines for applicants (see template guidelines, Annex e3a).

<sup>238</sup> This only applies where the option to exceptionally submit applications offline is foreseen in the guidelines for applicants.

<sup>239</sup> For open calls, full application forms.

<sup>240</sup> For open calls, this first step is the approval of the concept note evaluation.

<sup>241</sup> For open calls, the minimum period between the date of publication of the guidelines for applicants and the deadline for submission of proposals is 90 days. Where the maximum size of each grant to be awarded within the programme is EUR 100 000 or less, the minimum period is 60 days.

<sup>242</sup> For open calls, the application form should be submitted in accordance with the instructions given in the guidelines for applicants.

Lead applicants invited to submit a full application following a pre-selection of their concept note must submit the following documents<sup>243</sup> together with the full application form<sup>244</sup>:

- The statutes or articles of association of the lead applicant, of each co-applicant (if any) and of each affiliated entity (if any);
- The legal entity form duly completed and signed by each of the applicants;
- A financial identification form of the lead applicant.

In addition, for the purpose of the evaluation of the financial capacity, the following documents should be submitted:

- For action grants exceeding EUR 750 000 and for operating grants above EUR 100 000, the lead applicant must provide an audit report produced by an approved external auditor where it is available, and always in cases where a statutory audit is required by European Union or national law. That report must certify the accounts for up to the last three available financial years. In all other cases, the applicant must provide a self-declaration signed by its authorised representative certifying the validity of its accounts for up to the last three available financial years<sup>245</sup>;
- For action grants not exceeding EUR 750 000 and for operating grants below EUR 100 000, a copy of the lead applicant's profit and loss account and the balance sheet for up to the last three financial years for which the accounts were closed).

Originals or photocopies of originals of the requested supporting documents must be provided showing legible stamps, signatures and dates of the said originals. If the supporting documents are not written in one of the official languages of the European Union or (if applicable) of the country of implementation of the action, a translation into the language/one of the languages of the call for proposals of the relevant excerpts of these documents showing proof of the applicants' eligibility may be requested for the purposes of interpreting the proposal.

### Exceptions

The audit obligation does not apply to international organisations nor to public bodies.

Depending on its risk assessment, the contracting authority may waive the audit obligation for secondary and higher education and training establishments.

The applicants must indicate the sources and amounts of European Union funding received or applied for the same action or part of the action or for its functioning during the same financial year as well as any other funding received or applied for the same action.

### DIRECT MANAGEMENT

<sup>243</sup> No supporting documents are requested for an application for a grant not exceeding EUR 60 000.

<sup>244</sup> For open calls, these documents should be submitted together with the application form.

<sup>245</sup> This requirement must apply only to the first application made by a beneficiary to a contracting authority responsible in any one financial year.

The supporting documents required by a specific call for proposals must be uploaded in PADOR by the time limit given by the European Commission. If it is impossible to access PADOR on-line, lead applicants must submit the requested supporting documents together with PADOR registration form at the time of the full application.

No supporting document will be requested for applications for low value grants and for the following categories of applicants: (i) natural persons in receipt of education support (ii) natural persons most in need, such as unemployed and refugees, and in receipt of direct support (iii) public bodies, including Member State organisations (iv) international organisations (v) persons or entities applying for interest rate rebates and guarantee fee subsidies where the objective of those rebates and subsidies is to reinforce the financial capacities of beneficiaries or to generate an income.

### 6.5.7. The Evaluation Committee

All members of the evaluation committee and any observer must sign a declaration of impartiality and confidentiality (see Annex A4) prior to carrying out any task related to the evaluation.

#### 6.5.7.1. Composition

Proposals are evaluated by an evaluation committee appointed by the contracting authority comprising a non-voting chairperson, a non-voting secretary and an odd number of voting members (the evaluators) with a minimum of three of them<sup>246</sup>.

The evaluators must possess the technical and administrative capacity necessary to give an informed opinion on the proposals. They must have a reasonable command of the language in which the proposals are submitted. They must represent at least two organisational entities of the contracting authority with no hierarchical link between them, unless there are no separate entities (e.g. in a European Union delegation). If necessary, substitutes for the members can be appointed on the same conditions as the members.

#### **DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

The evaluation committee (i.e. the chairperson, the secretary and the evaluators) must be appointed by name by the contracting authority. Participation by observers must be authorised in advance by the contracting authority.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The members of the evaluation committee (i.e. the chairperson, the secretary and the evaluators) are appointed by name by the contracting authority, who informs the European Commission at the latest 15 working days before the start of the evaluation. If the European Commission does not object within 5 working days, the evaluation committee is deemed to be approved. The European Commission must be invited to appoint an observer and is strongly encouraged to attend all or part of the meetings. Attendance by other observers requires prior authorisation by the European Commission.

<sup>246</sup> Note that the evaluation committee, the chairperson, the secretary and the voting members are appointed for the call for proposals as a whole, i.e. there may not be different committees, chairpersons, secretaries or voting members for different lots.

The evaluation committee members should attend all meetings, except the opening meeting. Any absence must be recorded and explained in the evaluation report. A member who withdraws from the evaluation committee for whatever reason must be replaced by a substitute evaluator designated according to the standard procedure for appointing members of the evaluation committee. The chairperson of the evaluation committee determines to what extent the evaluation process must be restarted. This decision and any other decision relating to the replacement of a committee member must be recorded and reasons to be given in the evaluation report.

All evaluators have equal voting rights. Although Article 150 FR exempts Delegations from ensuring a hierarchical separation between members of evaluation committees, the hierarchical separation amongst voting members should in principle be applied whenever possible.

The evaluation committee should be formed early enough to ensure that the members (and any observer appointed by the European Commission, in the case of indirect management with partner countries with *ex ante* controls) are available in time to prepare and conduct the evaluation process.

The allocation of the final scores is a joint decision of the evaluation committee. However, the assessment of proposals may be split among the voting members. In this case, each concept note or full application must be assessed independently at least by two voting members<sup>247</sup>.

The committee reserves the right to perform re-evaluations in duly substantiated cases. However, in the case of substantial discrepancies between the two assessments, the committee must re-evaluate the application concerned.

### 6.5.7.2. Use of assessors

Where the proposals received are particularly numerous or highly technical, it may not always be possible for the evaluation committee to examine each one in detail. If necessary, the assessment of all proposals or part thereof, may be carried out by external or internal assessors<sup>248</sup> so that the evaluation committee may conduct its deliberations on the basis of their assessments. Usually, the same assessors will be used for the different steps. Different assessors may be appointed for different lots<sup>249</sup>.

Assessors work under the supervision of the chairperson of the evaluation committee. Assessors may attend the meetings of the evaluation committee as observers to present the results of their assessments and answer any questions from the evaluation committee members.

- For the administrative checks (including the eligibility of the action), the assessors check each proposal against the criteria listed in the checklist<sup>250</sup> and the declaration by the lead applicant (see the application form). Each proposal needs only to be checked by one assessor.

External assessors may be recruited as required.

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<sup>247</sup> The foregoing is only relevant where no assessors are used. For the avoidance of doubt, neither the chairperson nor the secretary may assess concept notes/full applications.

<sup>248</sup> Internal assessors are to be understood as internal to the contracting authority (based in European Union delegations or at Headquarters). External assessors are external experts.

<sup>249</sup> Where different types of expertise are required for the different assessments, different assessors may also be appointed for the different steps of the award procedure.

<sup>250</sup> Please note that the concept note / full application should not be rejected only because the information filled in by the applicant in the checklist is not correct (relevant for indirect management only).



- For the evaluation of concept notes and full applications, assessors must use the published evaluation grids (see template evaluation grids) to give scores and provide comments.
- At least two assessors must assess each concept note and each full application, working independently of each other<sup>251</sup>. The two assessors should preferably be chosen from among European Commission staff. In case of scarcity of internal resources, external assessors may also be chosen. The external assessors must have an in-depth knowledge of the issues covered by the grant programme concerned. Their expertise should be checked against their CVs. A minimum of 5 years of experience of a particular issue should be requested.

### 6.5.7.3. EU Delegations as internal assessors for European Commission headquarters' calls for proposals

Where the call for proposals is organised by a service of the European Commission headquarters, one of the two assessors for the evaluation of the full application will be from the EU delegation of the country where the action is to take place<sup>252</sup>. For regional actions, it is the lead EU delegation or, as appropriate, Headquarters that will consult the European Union delegations in the region concerned.

The assessor coming from the EU delegation will be nominated in accordance with the applicable instructions on the nomination of evaluation committees by the relevant authorizing officer. If assessors are not used, the EU delegation should nevertheless be duly consulted. If an EU delegation is not in a position to carry out the evaluation within the deadline, in order to avoid delays, its assessment can be taken over by a voting member from the evaluation committee or other internal or external assessor.

#### **DIRECT MANAGEMENT, AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

The assessors are selected by the contracting authority. External assessors who receive a remuneration for their contribution (i.e. not officials or other staff of the contracting authority or the public administration of the partner country, staff of Member States embassies or of NGOs who participate pro bono) must be selected using the procedure for service contracts, i.e. in accordance with the applicable thresholds.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The assessors are selected by the contracting authority. The list must be submitted for approval to the European Commission. Outside assessors who receive a remuneration for their contribution (i.e. not officials or other staff of the contracting authority or the public administration of the partner country, staff of Member States embassies or of NGOs who participate pro bono) must be selected using the relevant procedure for service contracts, i.e. in accordance with the applicable thresholds.

### 6.5.7.4. Impartiality and confidentiality

See Section 2.9.2.

<sup>251</sup> It is also possible to have proposals evaluated by one assessor and one voting member of the evaluation committee acting as the second assessor.

<sup>252</sup> In duly justified cases, the European Union delegation may also be involved in the evaluation of the concept notes.

### **6.5.7.5. Responsibilities of the evaluation committee**

See Section 2.9.3.

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

The evaluation process starts with the receipt of the concept notes<sup>253</sup> by the contracting authority, and ends with the decision to award grants to the selected applicants.

#### **6.5.8.1. Receipt and registration of proposals**

##### **6.5.8.1.1 Submission by PROSPECT**

In direct management, where PROSPECT is used for the management of calls for proposals, lead applicants must submit their proposals online via PROSPECT following the instructions given in the PROSPECT user manual.

Upon submission of the proposal, the lead applicants will receive an automatic confirmation of receipt in their PROSPECT profile.

##### **6.5.8.1.2 Submission by other means**

In indirect management, lead applicants must submit proposals by post, private courier service or by hand delivery. When receiving proposals, the contracting authority must register them and provide a receipt for those delivered by hand (see Annex A7). The envelopes must remain sealed and be kept in a safe place until they are opened. The outer envelopes of proposals must be numbered in order of receipt (whether or not they are received before the deadline for submission of proposals).

Under direct management in the exceptional cases where for technical reasons is not possible to register in PROSPECT, lead applicants must submit proposals by post, private courier or by hand delivery. The service in charge of the call must ensure that all applications received are registered in PROSPECT following the opening session. Lead applicants who submitted online will receive an automatic acknowledgement of receipt. Applications received by post, private courier or hand deliveries (including any overdue applications) must be encoded on behalf of the applicants in the system and the original must be kept in the archives. Once an application is encoded, PROSPECT will generate an automatic acknowledgement of receipt to the email address of the organisation and of the contact person. In case of overdue applications, PROSPECT will generate the respective letter. In case the specific call does not allow the submission of proposals by post, private courier or hand deliveries, the applications received by these means will be rejected.

#### **6.5.8.2. Opening session and administrative checks**

Members of the evaluation committee and external assessors where relevant, must have signed their declarations of impartiality and confidentiality, before they may have access to the applications.

##### **6.5.8.2.1 Opening session**

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<sup>253</sup> Full applications and concept notes in case of open calls for proposals.

Under indirect management and direct management in cases where some applications are received on paper, all proposals received should be opened in an opening session (after expiry of the submission deadline) at which the registration details are checked and the proposals are numbered.

The secretary to the evaluation committee supervises the opening session and requests the assistance of other staff of the contracting authority if need be.

The register of proposals received should contain the following information:

- the registration number of the proposal;
- the date of submission;
- the lead applicant's name and address.

For each proposal:

- the original is kept safely in the archives of the contracting authority;
- copies are distributed to the evaluators and, where applicable, to the assessors.

#### **6.5.8.2.2 Administrative checks**

Only those proposals that met the deadline are subject to an administrative check to assess whether the criteria mentioned in the checklist are fulfilled. Under no circumstances may assessors or members of the evaluation committee change the checklist.

Note that the administrative check also includes an assessment of the eligibility of the action. Administrative checks may be carried out by members of the evaluation committee (including the secretary) or by one or more assessors.

If any of the requested information is missing or is incorrect, the application may be rejected on that sole basis and the application will not be evaluated further. However, if due to a clerical error on the part of the applicants, the applicants fail to submit evidence or to give a statement, the evaluation committee may, except in duly justified cases, ask the lead applicant to provide, within a set deadline, the missing information or clarify supporting documents. Such information or clarifications may not substantially change the proposal or alter the terms of the call. Once received, the evaluation committee may use its discretion in deciding whether it should be accepted, while ensuring equal treatment of proposals and proportionality. Any decision taken by the evaluation committee must be fully recorded and the evaluation report(s) shall give reasons (see Section 2.9.3.).

The contracting authority must keep proposals not considered for further evaluation.

If the members of the evaluation committee do not carry out the check themselves, the evaluation committee must review the conclusions of the assessor(s) using the completed grids. To facilitate the evaluation committee's review of the assessments, the secretary must ensure that one list is drawn up containing proposals that did not comply with the administrative checks. Reasons must be given for each entry on the list.

Following the opening session (where relevant), and the administrative checks, the evaluation committee meets to decide on any contentious case (including the eligibility of actions) and proceeds with the evaluation of the concept notes.

### 6.5.8.3. Evaluation of the concept note

Concept notes submitted within the deadline and that duly passed the administrative checks are then evaluated for the relevance and design of the action, using an evaluation grid (see Annex e5a<sup>254</sup>). The overall assessment is based on the scores obtained under each subheading, added up by heading. If the evaluation committee does not evaluate the concept notes itself, the final score is the arithmetical average of the scores given by the assessors. The completed evaluation grids for each concept note must be sent to the evaluation committee, if assessors are used.

Where the call for proposals is organised by a headquarters service of the European Commission and an European Union delegation exceptionally participates as assessor in the evaluation of concept notes, each concept note is assessed by the European Union delegation in the country where the proposed action is to take place, for assessment on the basis of the same evaluation grid (see Annex E8). The completed evaluation grids for each full application must be sent to the evaluation committee.

The secretary then draws up a list of all the concept notes, ranked by score. As a first step, only the concept notes that receive a score of at least 30 points in the evaluation are considered for pre-selection. Concept notes that reach the above threshold will then be ranked by score. The highest scoring applications will be pre-selected until at least twice the available budget for the call for proposals is reached.

#### **DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

The evaluation report on step 1 (the opening session (where relevant), the administrative checks and the concept notes) is submitted to the contracting authority, which must then decide whether to accept the recommendations of the evaluation committee.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

In addition to the above, the contracting authority must then submit the evaluation report to the European Commission for prior authorisation.

Following the evaluation of the concept notes, the contracting authority informs all lead applicants in writing of the results of the evaluation and whether or not they passed the opening (where applicable) and administrative checks and shall invite the shortlisted lead applicants to submit a full application<sup>255</sup>. Under direct management, this letter is generated and sent via PROSPECT. In case of hand deliveries or applications received by post, PROSPECT sends the letter to the email addresses encoded. Lead applicants who did not provide an email address will be informed by post.

### 6.5.8.4. Evaluation of the full applications

The opening session (indirect management and direct management in exceptional cases of paper submission) and administrative checks described above are also undertaken before the full application is evaluated<sup>256</sup>.

<sup>254</sup> For direct management, the same grid is generated in PROSPECT.

<sup>255</sup> For open procedures, following the assessment of the concept note by the evaluation committee, the contracting authority shall inform applicants whether their concept notes have been pre-selected and therefore, the full application will be evaluated.

<sup>256</sup> For open procedures, there is no opening and administrative checks before the evaluation of the full application.

The quality of the full application is assessed using the evaluation grid (see Annex e5b<sup>257</sup>) containing the selection and award criteria. Comments are made for each subheading on the basis of the questions and criteria used for that heading. In addition, there must always be a check of consistency between budget items and the description of the action. The overall assessment is based on the scores obtained under each subheading, added up by heading. If the evaluation committee does not evaluate the applications itself, the final score is the arithmetical average of the scores given by the assessors. For indirect management, the completed assessments for each proposal must be sent to the evaluation committee (for direct management they are available in PROSPECT).

Where the call for proposals is organised by a Headquarters service of the European Commission each full application will be allocated via PROSPECT to the European Union delegation in the country where the proposed action is to take place, for an internal assessment on the basis of the same evaluation grid (see Annex e8).<sup>258</sup> The completed evaluation grids for each full application must be sent to the evaluation committee.

Under direct management (members of) the evaluation committee or internal assessors evaluating the full applications may re-evaluate the scores given for the relevance at concept note stage and transferred to the full application. It is up to the evaluation committee to accept this new assessment or not.

Please note that the information assessed on the basis of the concept note may not be changed by the applicants in the full application except for the following: i) the contribution requested from the European Union for the action may not differ from the initial estimate by more than 20%. Should that requested contribution differ from the initial estimate, the difference between the European Union contribution and the total cost of the action must remain within the limits imposed by the guidelines for applicants; ii) the lead applicant may add, remove or replace one or more co-applicant(s) or affiliated entity (ies) only in duly justified cases; iii) the lead applicant may adjust the duration of the action if unforeseen circumstances outside the scope of the applicants have taken place following the submission of the concept note and require such adaptation (risk of action not being carried out). In such cases the duration must remain within the limits imposed by the guidelines for applicants. An explanation/justification of the relevant replacement/adjustment must be included in an accompanying letter or email<sup>259</sup>.

The secretary then draws up a list of all the full applications, ranked by score. The highest scoring applications will be pre-selected until the available budget for this call for proposals is reached.

#### **DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

The evaluation report on the full applications (Step 2) is submitted to the contracting authority, which must decide whether to accept the recommendations of the evaluation committee.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

In addition, the contracting authority must then submit the evaluation report to the European Commission for authorisation.

<sup>257</sup> For direct management, the same grid is generated in PROSPECT.

<sup>258</sup> This means that one of the assessors will be from the relevant European Union delegation.

<sup>259</sup> In case of direct management when PROSPECT is used in Annex A.2 – Instructions for drafting the Full Application, Section 2.1.1, point viii.

Following the evaluation of the full applications, the contracting authority informs all lead applicants in writing of the results of the evaluation, whether or not they passed the opening (where applicable) and administrative checks and whether they have been provisionally selected according to their score. Those whose proposals have been provisionally selected will be invited to supply the required supporting documents.

Under direct management, the notification letter is generated and sent via PROSPECT. In case of hand deliveries or applications received by post, PROSPECT sends the notification letter to the email addresses encoded. Lead applicants who did not provide an email address will be informed by post.

### 6.5.8.5. Submission of supporting documents<sup>260</sup>

Lead applicants must submit the documents listed in Section 6.5.6 together with the full application<sup>261</sup>. In addition, a lead applicant whose application has been provisionally selected or placed on the reserve list will be requested to supply any other additional document requested by the contracting authority as well as the Declaration on Honour where the amount of the grant exceeds EUR 15 000. In direct management, lead applicants must provide these documents by uploading them in PROSPECT. When the value of the grant exceeds EUR 60 000, lead applicant, co-applicants and affiliated entities shall submit via PADOR the self-evaluation questionnaire on SEA-H.

### 6.5.8.6. Final Eligibility checks

Only those applications for which supporting documents were provided by the set deadline will be subject to an eligibility check. This assessment is carried out using the declaration by the lead applicant (including the lead applicant's statement of not being in an exclusion situation), the required supporting documents and the criteria set out in the guidelines for applicants. Under no circumstances may assessors or members of the evaluation committee change the declaration.

- Is the declaration by the lead applicant in conformity with the supporting documents requested?

Any missing supporting document or any inconsistency between the declaration and the supporting documents is sufficient to reject the proposal. However, the evaluation committee may use its discretion in deciding whether the concerned applicants should be allowed to submit missing documents or correct the relevant information, having regard to the principles of equal treatment and proportionality. Any decision taken by the evaluation committee must be fully recorded and the reasons leading to this decision must be explained in the evaluation report(s) (see Section 2.9.3.).

- Eligibility: are the applicants (and any affiliated entity(ies)) eligible?

This is assessed according to the criteria set out in the guidelines for applicants.

The eligibility checks may be carried out by members of the evaluation committee or by assessors. Each proposal may be examined by one person only.

While the eligibility checks are usually carried out only for the provisionally selected applicants at the end of the procedure, the evaluation committee may decide to check eligibility at any previous step

<sup>260</sup> No supporting documents will be requested for applications for a grant not exceeding EUR 60 000.

<sup>261</sup> In case open calls for proposals, documents should be submitted together with the application form.

in the procedure. In the interest of good administrative practice, the evaluation committee can check and then exclude applicants at any stage of the evaluation if it is immediately obvious that the latter do not meet the eligibility criteria.

If the members of the evaluation committee do not carry out the assessment themselves, the evaluation committee must review the conclusions of the assessors using their completed grids. To facilitate the evaluation committee's review of the assessments, the secretary must ensure that one list containing the ineligible proposals is drawn up. Reasons must be given for the ineligibility of each entry on the list.

### **6.5.8.7. The evaluation committee's conclusions**

The evaluation committee drafts its recommendations; in case assessors participate to the evaluation committee, such recommendations are drafted only after the assessors have examined all the applications. In this respect, the evaluation committee must not change the assessors' scores or recommendations and must not alter the evaluation grids completed by the assessors.

The evaluation committee may decide to approve the ranking drawn up by the secretary on the basis of the assessors' report. If the evaluation committee does not accept the scores awarded by the assessors to an application (where for instance there is a significant difference or clear discrepancies between the scores awarded by the assessors), it must give reasons for this decision in the evaluation report. The committee then has to fill in a new evaluation grid (either collectively or by one of the voting members of the committee) for the proposal concerned. Such a re-evaluation may not be entrusted to external assessors. A new list will be produced on the basis of the scores from the new evaluation, which replace those given by the assessors. The new evaluation may also cover only one or more parts of the evaluation (for example, where the evaluation committee decides to re-evaluate only the relevance of the actions).

All such decisions must be recorded and fully substantiated in the evaluation report. The evaluation grids completed by the members of the evaluation committee must be kept with those completed by the assessors.

The evaluation committee's decisions are taken independently and in an advisory capacity. The evaluation committee must ultimately draw up a list of the applications selected for financing, indicating the score obtained by each application, the requested amount of the proposed grant and the proportion of the eligible costs proposed to be financed. Subject to the following considerations, this list is made up of the applications obtaining the best scores, ranked by order, within the limits of the funds available under the call for proposals.

- The evaluation committee may recommend the selection of an application under certain conditions that should be met prior to contract signature. Any such conditions, however, should not call into question the grant award decision or be contrary to the equal treatment of applicants (see Sections 6.3.6. and 2.5.2).
- The evaluation committee may decide not to allocate all the available funds if it finds that there are too few applications of the quality required to receive a grant. In other words, the mere availability of funds should not lead to the award of contracts for applications that do not reach the necessary level of quality.
- The evaluation committee may draw up a list by subject or geographical area according to the guidelines for applicants.

- The evaluation committee may reject an application if it has selected another that is of a similar nature but has been awarded a higher score.
- Where several applications submitted by the same lead applicant are selected for financing, but the lead applicant does not have the financial and operational capacity required to implement all the actions together, the committee may reject the applications that have been awarded a lower score, and select the applications that the lead applicant has the capacity to implement.

The evaluation committee may also draw up, in the same conditions, a ranked reserve list comprising a limited number of applications that obtained the best scores after those selected for financing. This reserve list is valid for the period stated in the evaluation report. The applications included in that list are likely to receive a grant if funds become available under the call for proposals (if the eligible costs of the selected applications decrease, or it is impossible to sign a contract with the selected applicants, etc.).

The final evaluation report, covering the eligibility checks, is drawn up following the final meeting of the evaluation committee. It must be signed by all members of the evaluation committee.

#### **DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

The entire evaluation procedure is recorded in an evaluation report to be signed by the chairperson, the secretary and all evaluators. This must be submitted to the contracting authority, which must decide whether or not to accept its recommendations.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

In addition to the above, the contracting authority must then submit the evaluation report and the recommendations of the contracting authority to the European Commission for authorisation.

If the contracting authority confirms that no modifications have been made (either in the special conditions or in the proposed contract annexes) to the standard contract conditions annexed to the guidelines for applicants, the European Commission's authorisation of the evaluation report, including the final list of grants to be awarded counts as a global endorsement of the corresponding contracts if such endorsement is required. The list must include all the information necessary to conclude the contracts (including the applicants' details, the maximum grant amount and the duration of the contract). No endorsement by the EU delegation is required in certain cases referred to in the practical guide to procedures for Programme Estimates.

Once the approvals have been given, the contracting authority will begin awarding the grants (see Section 6.5.10.).

The award decision states the subject and overall amount of the decision, the approved evaluation report and, where appropriate, the grounds for the decision by the contracting authority to depart from the recommendations made by the evaluation committee in the report in respect of a particular application.

Subject to the contracting authority's legislation on access to documents, the entire procedure, from the drawing-up of the call for proposals to the selection of successful applicants, is confidential. The evaluation committee's decisions are collective and its deliberations must remain secret. The evaluation committee members and assessors are bound to secrecy. If its law conflicts with the



confidentiality required, the contracting authority must obtain prior authorisation from the European Commission before disclosing any information.

### 6.5.9. Cancelling the call for proposals procedure

The contracting authority may decide to cancel the call for proposals procedure at any stage, but particularly in the light of the evaluation report, if:

- the call for proposals has been unsuccessful, i.e. no worthwhile proposal has been received or there were no replies;
- the economic or technical data of the programme have been fundamentally altered;
- exceptional circumstances or force majeure render the normal implementation of the planned actions impossible;
- there have been irregularities in the procedure, in particular where these have prevented equal treatment.

#### **DIRECT MANAGEMENT**

The cancellation of a call for proposals constitutes an event to be reported.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

The contracting authority must obtain the prior authorisation of the European Commission.

#### **INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

The responsibility for cancelling a call for proposals procedure lies with the contracting authority.

If a call for proposals is cancelled, all lead applicants must be notified of the cancellation by the contracting authority but will not be entitled to compensation. Under direct management, this letter is generated and sent via PROSPECT. In case of hand deliveries or applications received by post, PROSPECT sends the letter to the email addresses encoded. Lead applicants who did not provide an email address will be informed by post.

The contracting authority must then send a cancellation notice to the relevant services in the European Commission for publication on the website where the call was published, website of DG International Partnerships or Funding and Tender opportunities website (F&T portal).

### 6.5.10. Awarding grants

#### 6.5.10.1. Notification of applicants

##### **DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS**

Notifications to the successful lead applicants on the outcome of the evaluation of their applications must be provided within 6 months following the submission deadline of the full application. However, for complex actions (such as multi-beneficiaries calls or calls with a large number of proposals) or where there have been delays attributable to the applicants, the 6 months deadline can be extended.

After the contracting authority has given its official approval of the final list of grants to be awarded, it notifies all successful lead applicants in writing that their applications have been selected.

Under direct management, this letter is generated and sent via PROSPECT. In case of hand deliveries or applications received by post, PROSPECT sends the letter to the email addresses encoded. Lead applicants who did not provide an email address will be informed by post.

#### **INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS**

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

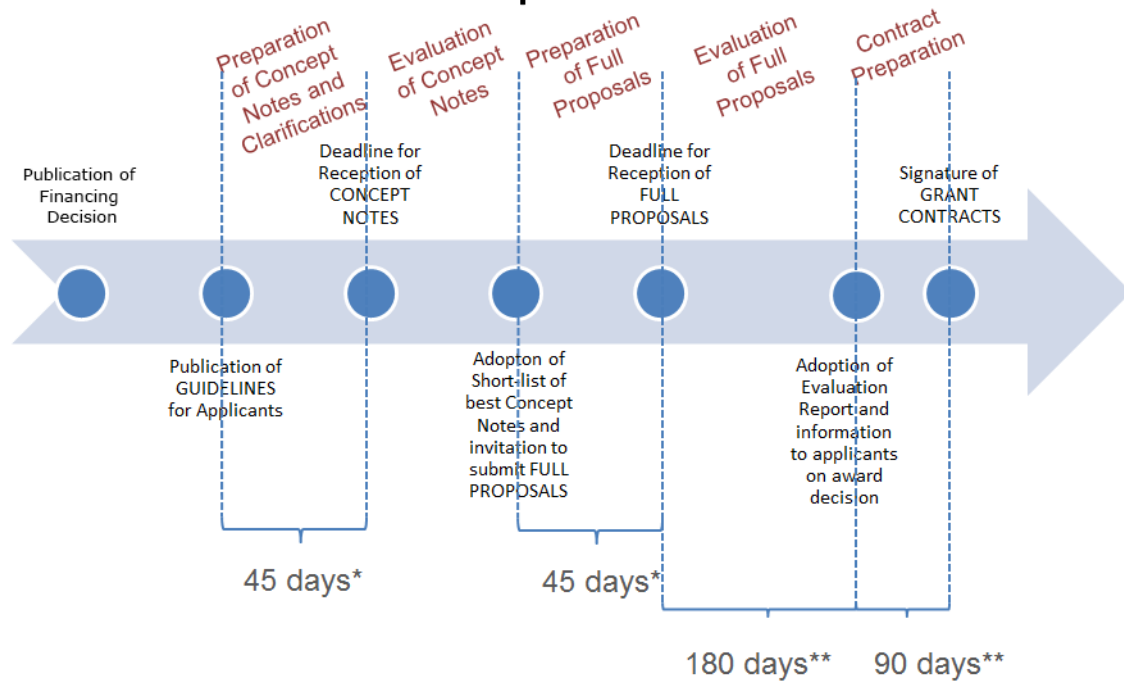
If the call for proposals was organised by a headquarters service of the European Commission a copy of these notifications, and, where appropriate, all the documentation and information from the evaluation needed to draft and manage the contract, are sent to the European Union delegation in the country where the proposed action is to take place.

Letters to successful lead applicants must be sent within 15 days of the award decision: unsuccessful lead applicants must be informed that they have not been selected (including the reasons why they were unsuccessful) within 15 days of the notification to the successful lead applicants.

At the latest before taking the award decision, the contracting authority ensures that there is no record of the successful applicant, including partners, in exclusion situation in the early detection and exclusion system nor in the lists of European Union restrictive measures (see Sections 2.4. and 2.6.11.1 and 2.6.11.3.) (in indirect management this must be checked with the EU delegation).

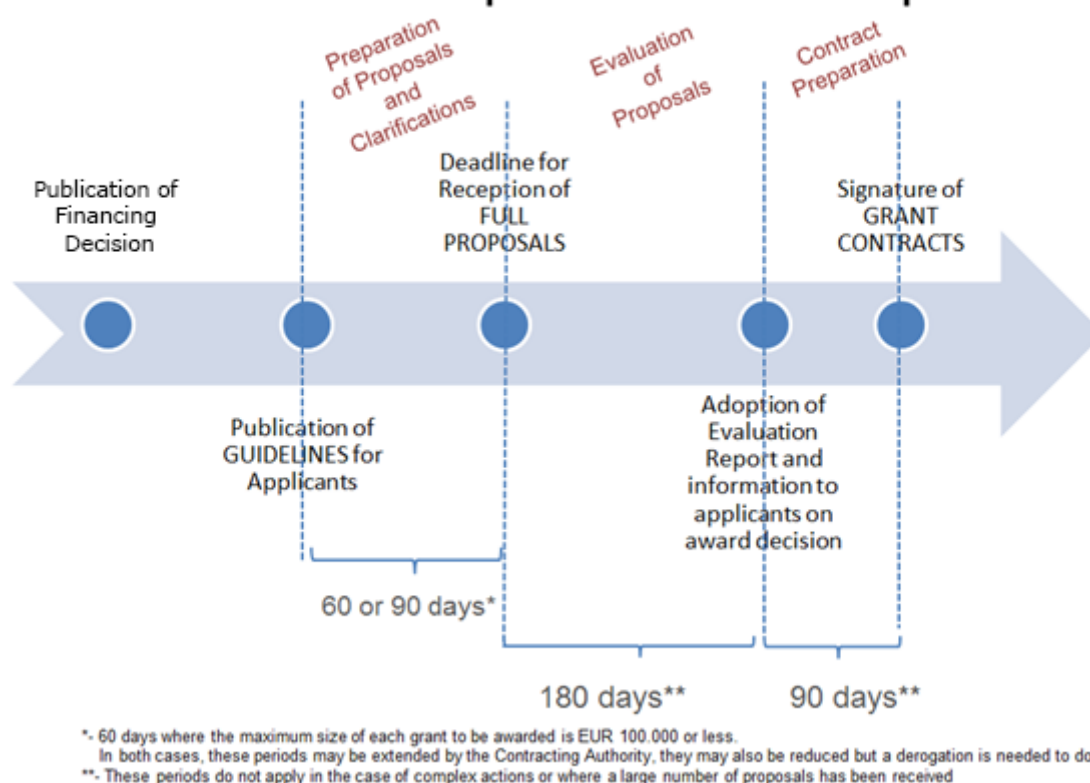
The timeline and the different stages of restricted and open calls for proposals can be summarised as follows:

# Timeline of a restricted Call for Proposals



\*. These periods may be extended by the Contracting Authority, they may also be reduced but a derogation is needed in this case  
 \*\*. These periods do not apply in the case of complex actions or where a large number of proposals has been received

## Timeline of an open Call for Proposals



### 6.5.10.2. Contract preparation and signature

In preparing grant contracts for each of the successful applicants on the final list, the contracting authority must follow the steps outlined in Sections 2.10.2 and 2.10.3.

The budget proposed for the action by the successful applicants at the call for proposals stage must be corrected to remove any obvious arithmetical errors or ineligible costs prior to signing the contract. The description of the action is corrected accordingly if need be.

The contracting authority may decide that other clarifications or minor corrections may be made to the description of the action or to the budget in so far as they do not call into question the grant award decision, do not conflict with equal treatment of applicants, and:

- relate to matters clearly identified by the evaluation committee; or
- aim at taking into consideration changes that have occurred since the date of receipt of the proposal.

These amendments cannot lead to an increase in either the amount of the grant or the percentage of the European Union contribution as set in the guidelines of the call for proposals. In this respect, records of the contacts with the applicants must be kept on the file.

In direct management, the signing of a grant contract with an applicant must take place within 3 months from the notification of the award decision. However, in exceptional circumstances, in particular in case of complex actions (such as multi-beneficiaries calls or, in case of calls with a large

number of proposals) or where there have been delays attributable to the applicants, this rule should not be applied.

**Any other alteration to the successful applicant's proposal, or negotiation of it, is prohibited.**

#### **Use of reserve lists**

Once the above mentioned procedure has been followed, and all possible contracts have been signed with successful applicants on the final list, it may be the case that some funds remain available under the budget of the call for proposals. It may even be the case that additional funds are added while the reserve list is still valid.

In these cases, the procedure for signing additional contracts from the reserve list will be:

- If the funds still available suffice to finance the requested European Union contribution from the first runner on the reserve list, the provisions above regarding the notification and contract preparation/signature are followed. In order to verify whether the funds are enough, the arithmetical errors and potential ineligible costs must have been taken into consideration as they may lead to a reduction of the budget.
- If the funds available do not suffice, this same applicant will be offered the possibility to increase its co-financing in order to bridge the gap. If the applicant is able to do so (please note that, as a result of this exercise, the percentage of eligible costs must remain within the authorised co-financing rules set by the guidelines of the concerned call), the contract will be signed in line with the instructions in this chapter. In the case that no additional funds can be secured by the applicant, or in case that the new percentage of co-financing is not compliant with the guidelines for applicants, no contract will be signed and the second runner in the list will be contacted. The same approach is followed (availability of funds to finance the action after correction of potential arithmetical errors or ineligible expenditure, possibility is given to increase their contribution if the remaining funds cannot cover the requested European Union financing, etc.).

If needed, the same will be done with the subsequent applicants on the reserve list (3<sup>rd</sup>, 4<sup>th</sup>, etc.).

**Under no circumstances will applicants be requested to reduce or amend their actions (apart from the possible corrections and clarifications explained in this chapter) in order to make them fit the available European Union financing, since this would entail a negotiation and an alteration of the proposal.**

This procedure may lead to situations where lower ranked proposals are finally given a contract instead of higher ranked ones. For the sake of transparency and equal treatment, it is important to keep a record of all communications with the applicants when following the above described process.

#### **6.5.11. Characteristics of the standard grant contract**

If awarded the grant contract, the applicants will become the grant beneficiary(ies) and party(ies) to the grant contract. In particular, the lead applicant will become the beneficiary identified in Annex e3h1 (special conditions) as the coordinator.

- The coordinator is the main interlocutor of the contracting authority. It represents and acts on behalf of any other beneficiary (if any) and coordinates the design and implementation of the action.

- The costs eligible for financing are the costs incurred by the grant beneficiary (or beneficiaries in case of multi-beneficiary grants). Costs incurred by affiliated entities to a beneficiary may also be accepted as eligible costs.
- The standard grant contract recognises the beneficiary's independence of action and lays down simplified management rules accordingly. In particular, it allows the coordinator to adapt or modify the action without the prior consent of the contracting authority provided that the modifications are not substantial (i.e. they do not put into question the conditions of award of the contract) and do not result in a change of more or less than 25% to any budget heading.
- In awarding any procurement contracts required for the purposes of the action, the beneficiary must comply with the rules set out in Annex IV to the contract.
- Unless otherwise requested or agreed by the European Commission, the grant beneficiary must take the necessary measures to ensure the visibility of the Union financing or contribution (see Section 2.5.3.).

### 6.5.11.1. Publicising the award of grants

#### **DIRECT MANAGEMENT**

Grants awarded in direct management of EUR 15 000 or more are published in the Financial Transparency System (FTS) (as extracted from ABAC) and on the website of DG International Partnerships/F&T portal (as extracted from PROSPECT in case of call for proposals).

#### **INDIRECT MANAGEMENT**

Grants awarded in indirect management are published locally. If such local publication is not done, the EU delegation shall upload in PROSPECT Annex e11 as filled in by the contracting authority.

Once the contracts have been signed, the contracting authority drafts a notice of award for each call for proposals (see award notice, Annex e11).

In direct management, it immediately uploads it in electronic form in PROSPECT and it is automatically sent for publication on the website of DG International Partnerships or F&T portal<sup>223</sup>. In addition, the contracting authority must record all information concerning the procedure (including the number of applicants in the past year; the number and percentage of successful applications per call for proposals; the mean duration of the procedure from the date of closure of the call for proposals to the award of a grant; the grant amounts; the names of the applicants; and details of the beneficiaries).

In indirect management, for the grant contracts concluded in the framework of programme estimates, the relevant contracting authority shall prepare for publication a summary table based on the format in Annex e11 to the Practical Guide ('Publication of awards') and i) publishes it on its own Internet site and/or in any other appropriate media. If the relevant contracting authority does not publish on its own internet site, the EU Delegation should remind this obligation and if still not published, the EU Delegation should ii) immediately upload Annex e11 in electronic form in PROSPECT (indirect management - publication only) and it is automatically sent for publication on the website of DG International Partnerships or F&T portal.

The European Commission may waive or authorise the contracting authority from the partner country to waive the above obligations if publication of the information might threaten the safety of the beneficiaries or harm their business interests.

## 6.6. Low value grants

Low value grants are those grants that are lower than or equal to EUR 60 000.

In this case, specific simplifications apply:

- The refusal of accepting in kind co-financing must be justified.
- No supporting documents are requested.
- The pre-financing guarantee may not be asked.
- Accounting records and supporting documents must be kept for 3 years after the payment of the balance.
- The no-profit rule does not apply.

## 6.7. Modifying grant contracts

### 6.7.1. General principles

See Section 2.11.2.

Grant contracts may be amended only by written additional agreements, not by administrative orders. Such additional agreements, including those aiming at adding or removing a beneficiary, must not have the purpose or the effect of making changes to the contract that would call into question the grant award decision or be contrary to the equal treatment of applicants.

When using the standard grant contract, the maximum amount of the grant and the maximum percentage of the European Union contribution must not be increased.

### 6.7.2. Preparing an addendum

See Section 2.11.2.

## 6.8. Award of contracts & financial support to third parties by grant beneficiaries

### 6.8.1. Award of contracts

Procurement of services, supplies or works for a grant-funded action: if the implementation of an action or work programme requires the procurement of services, supplies or works by the grant beneficiary, the rules specified in Annex IV of the grant contract must be applied for each procurement contract. Should the grant beneficiary fail to comply with Annex IV, the related expenditures will not be eligible for European Union / EDF financing.

However, these contracts may only cover a limited portion of the action.

### 6.8.2. Financial support to third parties by grant beneficiaries

If the action requires financial support to be given to third parties<sup>262</sup>, it may be given on condition that:

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<sup>262</sup> Article 204 FR.

- Before awarding the grant, the contracting authority has verified that the grant beneficiary offers appropriate guarantees as regards the recovery of amounts due to the European Commission. This is due to the fact that the grant beneficiaries remain financially responsible vis-à-vis the contracting authority for the correct use of the financial support.
- The following conditions for giving such support are strictly defined in the grant contract to avoid the exercise of discretion by the grant beneficiary. By default, the applicants will include this information in their applications:

a) The objectives and results to be obtained with the financial support

b) The different types of activities eligible for financial support, on the basis of a fixed list

Where no specific activities are supported (e.g. unconditional cash transfers to refugees to support their living or to human right defenders to support their work in general) this must also be specified. In this case, the grant beneficiary does not have to demonstrate that the financial support has been used by the recipients of financial support for a specific purpose.

c) The types of persons or categories of persons that may receive financial support

As basic acts usually do not foresee restrictions on nationality and origin regarding the recipients of financial support the contracting authority has to include any such restrictions in the guidelines for applicants.

d) The criteria for selecting these entities and giving the financial support

Where the contracting authority wants to ensure that the beneficiary complies with certain principles and/or procedures justified by the specifics of a call (e.g. where large amounts will be redistributed through calls for proposals), this should be set forth in the guidelines for applicants. For example, the guidelines could foresee that, when launching calls for proposals for the award of financial support, beneficiaries may use their own procedures provided these procedures comply with the principles of proportionality, sound financial management, equal treatment and non-discrimination, ensure transparency with adequate publication of calls for proposals and prevent conflict of interests throughout the entire award procedure.

e) The criteria for determining the exact amount of financial support for each third entity

Where the contracting authority wants to ensure that the financial support should be based e.g. on costs actually incurred or comply with the no-profit-principle this needs to be specified in the guidelines for applicants.

f) The maximum amount that may be given

The maximum amount of financial support that can be paid must not exceed EUR 60 000 per third party, except where achieving the objectives of the actions would otherwise be impossible or overly difficult. In that case, no limits apply<sup>263</sup>.

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<sup>263</sup> Under the initial 10<sup>th</sup> (and previous) EDF Financial Regulation, financial support could not be the primary aim of the action.



Where the contracting authority wants to apply a total ceiling for the giving of financial support (i.e. the available envelope for the applicants in this regard), this needs to be specified in the guidelines for applicants.

Applicants may also be invited in the guidelines for applicants to propose the necessary documents to be kept by third parties to demonstrate that the financial support has been used in accordance with the grant contract.

In the current context where grants of a large amount are encouraged to avoid the multiplication of small contracts, financial support to third parties can be an effective way to fund grass-roots organisations or local authorities, within the above described limits.

For the avoidance of doubt, rules on financial support apply only where a beneficiary provides this support to a third party. The criteria above do not need to be complied with when funds are provided to co-beneficiaries or affiliated entities.

## **6.9. Grants to organisations whose pillars have been positively assessed, (other) international organisations and national bodies**

### **6.9.1. Grants to organisations whose pillars have been positively assessed by the European Commission and (other) international organisations**

If the beneficiary of a grant (i.e. the coordinator in a multi-beneficiary contract) is an organisation whose pillars have been positively assessed by the European Commission, this organisation will not sign a grant contract but a contribution agreement based on the related template<sup>264,265</sup>.

However, the template of the contribution agreement will need to take into consideration standard templates published with the call for proposals, i.e. the budget (Annex B) and the logical framework (Annex C)<sup>266</sup> which is to be included in the description of the action. The description of the action (Annex I to the contribution agreement) will be drawn from the application form submitted by the organisation<sup>267</sup>.

Where the lead applicant is not a pillar assessed organisation but one or more co-applicant are international organisations whose pillars have been positively assessed, the standard grant contract

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<sup>264</sup> Organisations who have concluded framework agreements complementing the PAGoDA template can continue using the PA Grant template also after adoption of the contribution agreement template until a new framework partnership agreement has been signed.

<sup>265</sup> Available on the website of DG INTPA. With the new Financial Regulation this does not apply to grant contracts with the World Bank which are based on a different set of templates.

<sup>266</sup> For direct awards (direct award by contracting authorities from Partner Countries or duly substantiated and exceptional cases where direct award is justified -see Section 6.4.2.-), the organisation and the contracting authority may agree to use other budget and financial report templates (e.g. the templates of the organisation) as long as these templates comply with the provisions of the contribution agreement.

<sup>267</sup> Where the contribution agreement results from a call for proposals, the template for financial reports attached to the practical guide (Annex E3h7) has to be used. Where the contribution agreement results from a direct award (direct award by contracting authorities from Partner Countries or duly substantiated and exceptional cases where direct award is justified -see Section 6.4.2.-), the organisation and the contracting authority may agree to use different budget and financial report templates as long as these templates comply with the provisions of the contribution agreement. For the narrative reports, the organisation may use its own templates as long as these templates comply with the relevant provisions of the contribution agreement.

will be signed. In this case, additional provisions of Annex e3h11 will be incorporated under Article 7 of the special conditions.

Some provisions of Annex e3h11 (see Annex e3h11 for details) also need to be included in the special conditions if the lead applicant or a co-applicant is an international organisation whose pillars have not been positively assessed.

– **Definition of international organisation**

As per Article 156 FR, ‘international organisation’ means an international public-sector organisation set up by international agreement, and specialised agencies set up by such organisations — these organisations may have a worldwide or regional scope. Entities created under national law are not international organisations (e.g. a national NGO with several regional or country offices).

Organisations such as the United Nations and its agencies and specialised entities, the World Bank, the Organisation for Economic Cooperation and Development, the World Trade Organisation, the International Monetary Fund, the Organisation for Security and Cooperation in Europe, the European Bank for Reconstruction and Development and the International Organisation for Migration clearly fall under the definition of ‘international organisation’. In cases of doubt, to ascertain whether an organisation is covered by the definition, the nature of the organisation must be determined mainly on the basis of its legal founding documents (for instance, its statutes and/or the intergovernmental agreement setting it up).

Other non-profit organisations can be assimilated to international organisations by a Commission decision.

### 6.9.2. Grants awarded to (other) national public bodies from Member States or third donor countries

Grants awarded to national public bodies from Member States or third donor countries **whose pillars have not been positively assessed** by the European Commission must follow the normal grant rules and procedures set out in this chapter and the standard grant contract will be signed. However, national public bodies may benefit from special rules applicable to public-sector bodies (for instance, being exempted from submitting a financial guarantee).

### 6.9.3. Grants to national public bodies from a partner country

Where a public body from a partner country successfully participates in a call for proposals, it will implement the action by way of a grant and the standard grant contract will be signed<sup>268</sup>.

Where a public body from a partner country implements an action outside the scope of a call for proposals the applicable modality depends on the concrete action:

1. If the activities to be implemented by the public body with its own resources/staff are envisaged as a stand-alone project (i.e. not involving budget implementation tasks) the public body will sign the standard grant contract. In these cases, a direct award is always justified due to the

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<sup>268</sup> Note that before the entry into force of the 2015 practical guide, public bodies from partner countries that were part of the national government did in general not implement actions by way of a grant but under a financing agreement with the relevant partner country.

monopoly situation of the beneficiary<sup>269</sup>. Such activities may also include the award of contracts but only to supplement the activities to be implemented by the staff of the public body.

2. Where the financial contribution of the European Union aims at supporting the running costs of the National Authorising Officer (NAO) under the EDF or of a ministry, such support will be provided by way of an operating grant. Again, the NAO or ministry may award contracts in line with the relevant provisions of the grant contract. The aforementioned support to the NAO or to a ministry must not be confused with support to the implementing structure of a project under a programme estimate. In the latter case, the European Union contribution supports the body in managing budget implementation tasks (not the running costs) and will be provided as part of the programme estimate under the financing agreement with the partner country(ies)<sup>270</sup>.
3. If the activities to be implemented by the public body are part of a larger project or programme involving also budget implementation tasks the public body will implement the activities under a programme estimate<sup>271</sup>.

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<sup>269</sup> Note that a prior approval must still be requested.

<sup>270</sup> Note that the support to the running costs of the NAO/ministry will be included in a programme estimate, if the relevant financing agreement foresees also the award and management of procurement contracts and/or grants.

<sup>271</sup> Some of these activities may be performed as direct labour. For further information on programme estimates, please consult the practical guide for programme estimates.



## 7. List of Annexes

<b>A</b>	<b>General</b>	
A1a	Glossary of terms	a1a_glossary_en.docx
A1b	Glossary of Terms (multi)	a1b_glossarymulti_en.docx
A2a	Eligibility programmes 2014-2020	a2a_ecprogrammes_eligibility2014_2020_en.docx
A2a1	Eligibility programmes 2021-2027	a2a1_ecprogrammes_eligibility2021_2027
A2b1	EU external aid programmes	a2b1_ecprogrammes_en.docx
A3	Declaration of objectivity and confidentiality	a3_decl_ob_conf_en.docx
A4	Declaration of impartiality and confidentiality	a4_decl_imp_conf_en.docx
<b>A5</b>	<b>Notices</b>	
A5a	Cancellation notice (e-notices)	a5a_cancnotice_en.docx
A5b	Corrigendum of contract notice	a5b_corrignotcontractnotice_en.docx
A5c	Notice for modification of contract	a5c_contractmodificationnotice_en.docx
A5d	Prior information notice (e-notices)	a5d_priorinfornotice_enotices_en.docx
A5e	Contract notice (e-notices)	a5e_contractnotice_enotices_en.docx
A5f	Additional information about the Contract Notice (e-notices)	a5f_additional_information_contract_notice_en.docx
A5g	Award notice (e-notices)	a5g_awardnotice_enotices_en.docx
A6	Explanatory note	a6_explnote_en.docx
A7	Receipt for hand delivered requests to participate/ tenders/ proposals	a7_receipt_en.docx
A8	Invitation for tender (amendment of contract through a negotiated procedure)	a8_invit_neg_en.docx

A9	Cover letter for submission of contract/addendum	a9_coverletter_en.docx
A10a	Negotiation report for negotiated procedures (procurement) and direct award (grants)	a10a_negotiationreport_en.docx
A10a1	Award decision for negotiated procedures	a10a1_awardecision_neg_en.docx
A10b	Negotiation report for single tenders	a10b_singletenderreport_en.docx
<b>A11</b>	<b>Guidelines</b>	
A11b	Guidelines for the drafting of IT tenders' technical specifications in the field of external actions	a11b_it_guidelines_en.docx
A11c	Guidelines for the drafting of technical specifications for office furniture tenders in the field of external actions	a11c_guidelines_furniture_en.docx
A11d	Guidelines for the drafting of technical specifications for vehicle tenders in the field of external actions	a11d_guidelines_vehicles_en.docx
A11e	Guidelines publication	a11e_publication_guidelines_en.docx
A12	Annex V to Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 adopting the general regulations, the general conditions and the rules governing the conciliation and arbitration procedure for contracts financed under the EDF	a12_conciliationandarbitration_en.pdf
A13	Privacy statement	a13_privacy_statement_en.docx

A14a	Declaration on honour on exclusion and selection criteria for procurement	a14a_declaration_honour_procurement_en.docx
A14b	Declaration on honour on exclusion and selection criteria for grants	a14b_declaration_honour_grant_en.docx

<b>B</b>	<b>Service contracts</b>	
B2b	Summary contract notice – Local publication	b2b_summarycn_en.docx
B3	Standard request to participate form	b3_req_part_form_en.docx
B4	Long list	b4_longlist_en.docx
B5	Shortlist report	b5_shortreport_en.docx
B6	Shortlist notice	b6_shortnotice_en.docx
B7	Letter to candidates who have not been short-listed	b7_lettershort_en.docx
<b>B8</b>	<b>Standard tender dossier (including standard contract)</b>	
B8a	Letter of invitation to tender	b8a_invit_en.docx
B8b	Instructions to tenderers	b8b_itt_en.docx
B8c	Draft contract: Special conditions	b8c_contract_en.docx
B8d	Draft contract: General conditions (Annex I)	b8d_annexigc_en.pdf
B8e	Draft contract: Terms of reference Fee-based (Annex II)	b8e_annexiitorfee_en.docx
B8f	Draft contract: Terms of reference Global (Annex II)	b8f_annexiitorglobal_en.docx
B8g	Draft contract: Organisation & methodology (Annex III)	b8g_annexiiiom_en.docx
B8h	Draft contract: List and CVs of key experts (Annex IV)	b8h_annexivexperts_en.xlsx
<b>B8i</b>	<b>Draft contract: Budget (Annex V)</b>	
B8i1	Budget for a global-price contract	b8i1_annexvbudgetglobal_en.docx

B8i2	Budget breakdown for a fee-based contract	b8i2_annexvbudgetfee_en.xlsx
<b>B8j</b>	<b>Draft contract: Forms and other relevant documents (Annex VI)</b>	
B8j1	Bank account notification form	b8j1_annexvifif_en.pdf
B8j2	Financial guarantee template	b8j2_annexviguarantee_en.docx
B8j3	Legal entity file (individual)	b8j3_annexvilefind_en.pdf
B8j4	Legal entity file (private companies)	b8j4_annexvilefcompany_en.pdf
B8j5	Legal entity file (public bodies)	b8j5_annexvilefpublic_en.pdf
B8k1	Expenditure verification: Terms of reference and report of factual findings (Annex VII)	b8k1_annexviexpverif_en.docx
B8k2	Expenditure verification: table of transactions and table of errors (Annex VII)	b8k2_annexviexpverif_en.xlsx
B8l	Administrative compliance grid	b8l_admingrid_en.docx
B8m1	Evaluation grid (fee-based)	b8m1_evalgrid_fees_en.docx
B8m2	Evaluation grid (global price)	b8m2_evalgrid_global_en.docx
B8n	Tender submission form	b8n_tenderform_en.docx
B8o	Simplified tender dossier (for the simplified procedure and for the single tender procedure)	b8o_simplified_en.zip
B8p	Tax and customs arrangements	b8p_taxcustomsarrangements_en.docx
B9	Tender opening checklist	b9_openchecklist_en.docx
B10	Tender opening record	b10_openrecord_en.docx
B10a	Specimen_open record_eSubmission	B10a_specimen_openrecord_eSubmission_en_p df
B11a	Evaluation report	b11a_evalreport_en.docx
B11b	Award decision	b11b_awardecision_en.docx
B12a	Evaluators grid (fee-based)	b12a_evaluatorsgrid_fees_en.docx
B12b	Evaluators grid (global price)	b12b_evaluatorsgrid_global_en.docx
B13a	Notification letter to awarded tenderer	b13a_notification_letter_en.docx
B13b	Letter to second best tenderer	b13b_lettersecond_best_en.docx



B13c	Letter to unsuccessful tenderer	b13c_letterunsuccessful_en.docx
B15	Contractor assessment form	b15_assessment_en.docx
B16	Addendum to contract	b16_addendum_en.docx
B17	Budget modification to a contract	b17_budgetmodif_en.xlsx

<b>C</b>	<b>Supplies</b>	
C2	Contract notice for simplified and negotiated procedures	c2_contractnotice_simp_neg_en
C3	Summary contract notice – local advertisement	c3_summarycn_en.docx
<b>C4</b>	<b>Standard tender dossier (including standard contract)</b>	
C4a	Letter of invitation to tender	c4a_invit_en.docx
C4b	Instructions to tenderers	c4b_itt_en.docx
C4c	Draft contract	c4c_contract_en.docx
C4d	Draft contract : special conditions	c4d_specialconditions_en.docx
C4e	Draft contract : general conditions (Annex I)	c4e_annexigc_en.pdf
C4f	Technical specifications (Annex II) & technical offer (Annex III)	c4f_annexiitechspeciitechoffer_en.docx
C4g	Financial offer (Annex IV)	c4g_annexivfinoffer_en.docx
C4h	Performance guarantee (Annex V)	c4h_perfguarantee_en.docx
C4i	Pre-financing guarantee (Annex V)	c4i_prefinanceguarantee_en.docx
C4j	Administrative compliance grid	c4j_admingrid_en.docx
C4k	Evaluation grid	c4k_evalgrid_en.docx
C4l	Tender submission form	c4l_tenderform_en.docx
C4m	Tax and customs arrangements (Annex V)	c4m_taxcustomsarrangements_en.docx

C4n	Tender guarantee	c4n_tenderguarantee_en.docx
C4o1	Bank account notification form	c4o1_fif_en.pdf
C4o2	Legal entity file (individual)	c4o2_lefind_en.pdf
C4o3	Legal entity file (private companies)	c4o3_lefcompany_en.pdf
C4o4	Legal entity file (public bodies)	c4o4_lefpublic_en.pdf
C5	Tender opening checklist	c5_openchecklist_en.docx
C6	Tender opening record	c6_openrecord_en.docx
C7a	Evaluation report	c7a_evalreport_en.docx
C7b	Award decision	c7b_awardecision_en.docx
C8a	Notification letter to tenderers	c8a_notifletter_supply_en.docx
C8b	Letter to unsuccessful tenderers	c8b_letterunsuccessful_en.docx
C10	Contractor assessment form	c10_assessment_en.docx
C11	Provisional and final acceptance	c11_provfinalaccept_en.docx
C12	Addendum to contract	c12_addendum_en.docx
C13	Budget modification	c13_budgetmodif_en.docx

<b>D</b>	<b>Works</b>	
D3	Summary contract notice – local advertisement	d3_summarycn_en.docx
<b>D4.1.1</b>	<b>Standard tender dossier (including standard contract) - VOLUME 1 - Section 1</b>	
D4a	Letter of invitation to tender	d4a_invit_en.docx
D4b	Instructions to tenderers	d4b_itt_en.docx

<b>D4.1.2</b>	<b>Standard tender dossier (including standard contract) - VOLUME 1 - Section 2</b>	
D4c	Tender form	d4c_tenderform_en.docx
<b>D4.1.3</b>	<b>Standard tender dossier (including standard contract) - VOLUME 1 - Section 3</b>	
D4d	Tender guarantee	d4d_tenderguarantee_en.docx
<b>D4.1.4</b>	<b>Standard tender dossier (including standard contract) - VOLUME 1 - Section 4</b>	
D4e	Technical offer questionnaire	d4e_techofferquestion_en.docx
D4f	Technical offer form 4.1	d4f_techofferform_4dot1_en.docx
D4g	Technical offer form 4.2	d4g_techofferform_4dot2_en.docx
D4h	Technical offer form 4.3	d4h_techofferform_4dot3_en.docx
D4i	Technical offer form 4.4	d4i_techofferform_4dot4_en.docx
D4j1	Bank account notification form	d4j1_fif_en.pdf
D4j2	Legal entity file (individual)	d4j2_lefind_en.pdf
D4j3	Legal entity file (private companies)	d4j3_lefcompany_en.pdf
D4j4	Legal entity file (public bodies)	d4j4_lefpublic_en.pdf
D4k	Technical offer form 4.6	d4k_techofferform_4dot6_en.docx
<b>D4.1.5</b>	<b>Standard tender dossier (including standard contract) - VOLUME 1 - Section 5</b>	
D4l	Administrative compliance grid	d4l_admingrid_en.docx
D4m	Evaluation grid	d4m_evalgrid_en.docx
<b>D4.2</b>	<b>Standard tender dossier (including standard contract) - VOLUME 2</b>	
D4n	Draft contract	d4n_contract_en.docx
D4o	Draft contract: special conditions	d4o_specialconditions_en.docx

D4p	Draft contract: general conditions	d4p_annexgc_en.pdf
D4q	Pre-financing guarantee	d4q_prefinanceguarantee_en.docx
D4r	Performance Guarantee	d4r_perfguarantee_en.docx
D4s	Retention guarantee	d4s_retentionguarantee_en.docx
D4t	Tax and customs arrangements	d4t_taxcustomsarrangements_en.docx
<b>D4.3</b>	<b>Standard tender dossier (including standard contract) - VOLUME 3</b>	
D4u	Technical specifications	d4u_techspec_en.docx
<b>D4.4</b>	<b>Standard tender dossier (including standard contract) - VOLUME 4</b>	
D4v	Financial interpretative note	d4v_finoffer_4dot1_en.docx
D4w	Financial offer lump sum contracts	d4w_finoffer_4dot2_en.docx
D4x	Financial offer unit price contracts	d4x_finoffer_4dot3_en.docx
<b>D4.5</b>	<b>Standard tender dossier (including standard contract) - VOLUME 5</b>	
D4y	Design drawings	d4y_designdrawing_en.docx
D5	Tender opening checklist	d5_openchecklist_en.docx
D6	Tender opening record	d6_openrecord_en.docx
D7a	Evaluation report	d7a_evalreport_en.docx
D7b	Award decision	d7b_awardecision_en.docx
D8a	Notification letter	d8a_notifletter_works_en.docx
D8b	Letter to unsuccessful tenderers	d8b_letterunsuccessful_en.docx
D10	Contractor assessment form	d10_assessment_en.docx
D11	Addendum to contract	d11_addendum_en.docx
D12	Budget modification	d12_budgetmodif_en.xlsx

DS1	Tender dossier for simplified and negotiated tender procedures	ds1_tender_dossier_simpl_en.zip
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<b>E</b>	<b>Grants</b>	
E2	Local publication	e2_localpub_en.docx
<b>E3</b>	<b>Guidelines for grant applicants</b>	
E3a	Guidelines for grant applicants (indirect management)	e3a_guidelines_en.doc
E3aP	Guidelines for grant applicants (PROSPECT)	e3aP_guidelines_prospect_en.zip
E3a1	Annex J – Information on the tax regime applicable to grant contracts	e3a1_guidelines_annexK_en.doc
E3a2	Annex K - Guidelines and checklist for assessing budget and simplified cost options	e3a2_simplifiedcostoptions_en.doc
E3b	Application form (indirect management)	e3b_applicform_en.doc
E3bP	Application form – Annexes A.1 and A.2 - Concept note and full application (PROSPECT)	e3bP_applicform_cn_fa_prospect_en.zip
E3c	Annex B – Budget	e3c_budget_en.xlsx
E3d	Annex C – Logical framework	e3d_logframe_en.docx
E3e1	Annex D – Legal entity file (natural person)	e3e1_lefind_en.pdf
E3e2	Annex D – Legal entity file (private or public law body with legal form)	e3e2_lefcompany_en.pdf
E3e3	Annex D – Legal entity file (public law body)	e3e3_lefpublic_en.pdf
E3f	Annex E – Financial identification form	e3f_fif_en.pdf
E3h1	Annex G – Standard grant contract (special conditions)	e3h1_specond_en.doc
E3h2	Annex G – Annex II – General conditions	e3h2_gencond_en.pdf

E3h3	Annex G – Annex IV – Procurement rules for beneficiaries	e3h3_awardproc_en.doc
E3h4	Annex G – Annex V – Standard request for payment	e3h4_requestpay_en.doc
E3h5	Annex G – Annex VI (1) – Model narrative and financial report (Interim narrative report)	e3h5_interreport_en.doc
E3h6	Annex G – Annex VI (2) – Model narrative and financial report (Final narrative report)	e3h6_finalreport_en.doc
E3h7	Annex G – Annex VI (3) – Model narrative and financial report (Financial report)	e3h7_financialreport_en.xlsx
E3h8a	Annex G – Annex VII – Expenditure verification: terms of reference and report of factual findings (Annex VII)	e3h8a_expendverif_en.docx
E3h8b	Annex G – Annex VII – Expenditure verification: table of transactions and table of errors (Annex VII)	e3h8b_expendverif_en.xlsx
E3h9	Annex G – Annex VIII – Model financial guarantee	e3h9_finguarantee_en.doc
E3h10	Annex G – Annex IX - Standard template for transfer of ownership of assets	e3h10_transferassetsownership_en.doc
E3h11	Derogations international organisations	e3h11_derogations_ios_en.doc
E4a	Terms of reference for assessors	e4a_torassessors_en.docx
E4b	Guidelines for assessors	e4b_guidelinesassessors_en.docx
E5a	Concept note evaluation grid	e5a_conceptevalgrid_en.docx
E5b	Evaluation grid full application form	e5b_propevalgrid_en.docx
E6a	Evaluation report step 1 – Opening and & administrative checks and concept note evaluation (indirect management)	e6a_opening_conceptevalrep_en.docx
E6b	Evaluation report step 2 – Full application evaluation (indirect management)	e6b_applicevalrep_en.docx

E6c	Evaluation report step 3 — Final eligibility checks (indirect management)	e6c_finalevalrep_en.docx
E8	Letter to delegation evaluation	e8_note_delegation_evaluation_en.docx
E9a	Letter step 1 (indirect management)	e9a_letter_step_1_en.docx
E9b	Letter step 2 (indirect management)	e9b_letter_step_2_en.docx
E9c	Letter step 3 (indirect management)	e9c_letter_step_3_en.docx
E10	Addendum to contract	e10_addendum_to_contract_en.docx
E11	Publication of award	e11_publication_of_award_en.docx
E12a	Financial Framework partnership agreement	e12a_NEW FFPA_en.docx.
E13	Annex F – PADOR offline registration form	e13_organisation_data_form_offline_en.pdf
E14	Annex L – Self-evaluation questionnaire on SEA-H	e14_self-evaluation questionnaire on SEA-H_en.docx