

Practical Guide
to contract procedures for
European Union external actions

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1. Introduction

This Practical Guide explains the contracting procedures applying to all EU external aid contracts financed from the EU general budget (the Budget) and the 10th European Development Fund (EDF). The financing of external action contracts is governed by the applicable EU and EDF Financial Regulations and by the relevant basic acts, for example, the programme regulation, such as the DCI, ENPI, IPA, or EIDHR for actions financed from the Budget¹, and the Cotonou Agreement for actions financed from the EDF.

As from the adoption of the revision of Annex IV to the Cotonou Agreement in 2008, procurement contracts and grants financed under 10th EDF are awarded and implemented in accordance with EU rules and (except in cases provided for in those rules) in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of cooperation operations with third countries, in force at the time of the launch of the procedure in question.

The eligibility rules applicable to the EDF have also been aligned as much as possible with those of the EU budget and are applicable since the entry into force of the amended Cotonou Agreement in November 2010.

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

This Guide provides users with the comprehensive information necessary to undertake procurement or grant procedures from the very first steps to the award, signature and implementation of contracts. The annexes cover both the award phase and the execution of contracts. The Guide outlines the contracting procedures to be used in centralised management (centralised and indirect centralised²) and decentralised management with ex-ante approval or with ex-post controls by the European Commission.

Although the procurement and grant award procedures applicable to the Budget and to the 10th EDF are quite similar, some differences are featured in this Guide. Chapter 7 lists the relevant legal texts and Chapter 8 lists the annexes to the Guide. Annex A1 includes a glossary of the terms used in the Guide.

Direct labour operations are programmes executed by public or public-private agencies or services of the beneficiary country, where that country's administration possesses qualified managers. 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.

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- 1 Regulation (EC) No 1638/2006, of the European Parliament and of the Council, of 24 October 2006, laying down general provisions establishing the European Neighbourhood and Partnership Instrument; Regulation (EC) No 1905/2006, of the European Parliament and of the Council, of 18 December 2006, establishing a financing instrument for development cooperation; Regulation (EC) No 1889/2006, of the European Parliament and of the Council, of 20 December 2006, on establishing a financing instrument for the promotion of democracy and human rights worldwide; Council Regulation (EURATOM) No 300/2007, of 19 February 2007, establishing an Instrument for Nuclear Safety Cooperation; Council Regulation (EC) No 1085/2006, of 17 July 2006, establishing an Instrument for Pre-Accession Assistance; Regulation (EC) No 1337/2008, of the European Parliament and of the Council, of 16 December 2008, establishing a facility for rapid response to soaring food prices in developing countries.
 - 2 Centralised indirect management refers to cases in which the European Commission delegates its powers to entities such as Member States' executive agencies.

What does the Practical Guide not cover?

It does not apply to contracts for which the European Commission acts as Contracting Authority on its own account, in the Commission's sole interest or shared interest with the beneficiary countries. These come under Title V, Chapters 1 and 2, of the Financial Regulation, and European Commission staff must use in-house public procurement procedures and models (the *Vade-mecum on Public Procurement*) to deal with them. However, in case of service contracts in Commission's sole interest or shared interest with beneficiary countries, and irrespective of the procedure used, the authorising officer may decide to use the DEVCO standard service contract which be more suitable for actions located outside of the EU

This Guide does not apply to humanitarian aid operations or emergency operations carried out by ECHO.

Nor does it apply to Contracting Authorities such as beneficiary countries, international organisations and national bodies which the European Commission has authorised to use their own procurement/grant award procedures, or procurement/grant award procedures agreed among donors according to the relevant regulation, nor to grant beneficiaries which must follow the procurement provision of Annex IV of the standard grant contract.

Twinning is a dedicated institution building tool providing expertise from Member States administrations to the public institutions of candidate, pre-candidate and Neighbourhood countries. Twinning is made of grant contracts signed with Member States public institutions. Twinning operations obey specific rules that are described in the "Common Twinning Manual"³.

3 DEVCO twinning english: http://ec.europa.eu/europeaid/where/neighbourhood/overview/twinning_en.htm

2. Basic rules

2.1. Overview

Procurements 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 value for money 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 EU external aid programmes are consolidated in this Practical Guide.

Before starting any tender or grant procedure, it must have been approved under a Financing Decision and, where appropriate, under a subsequent Financing Agreement and the funds must be available, except in the case of procedures with a ‘suspension clause’ (see section 2.4.12.).

2.2. Management modes

Procurement or grant award procedures for projects financed under EU external aid programmes vary according to the different arrangements for managing the project (referred to as ‘management modes’ or ‘implementation methods’):

- Direct centralised management. The European Commission is the Contracting Authority and takes decisions for the beneficiary country so, in such cases, references in this Guide to the ‘Contracting Authority’ in fact refer to the European Commission, acting on behalf of and for the account of the beneficiary country.
- Indirect centralised management. The European Commission delegates certain budget implementation tasks to a national body, which thus becomes the Contracting Authority. This national body is usually a development agency (or equivalent) of an EU Member State. In most cases, the national body’s rules and procedures are used, so this Guide does not apply, but if the delegated entity awards grants financed by the EU General Budget, the Guide does apply, with the exception of the obligation to publish calls for proposals on the Europeaid website.
- Decentralised management:
 - *Ex-ante decentralised management*. Decisions on the procurement and award of contracts are taken by the beneficiary country, which acts as the Contracting Authority, following the prior approval of the European Commission.
 - *Ex-post decentralised management*: decisions provided for in the Financing Agreement are taken by the beneficiary country, which acts as the Contracting Authority without prior approval by the European Commission (apart from exceptions to the standard procedures given in this Guide).

The different ex-ante and ex-post approval procedures are explained at various points throughout the Guide.

The beneficiary country may or may not use its own procedures depending on the degree of decentralisation (partial or substantial). As a rule, the beneficiary country uses the contractual procedures set out in the Guide and the financial procedures (i.e. payments) set out in the Practical Guide to procedures for Programme Estimates.

- Joint management: Certain implementation tasks are delegated by the European Commission to an international organisation such as the United Nations and the World Bank, which thus becomes Contracting Authority. In most cases, the rules and procedures of the international organisation are used, so this Guide does not apply.

- Shared management. The European Commission delegates implementation tasks to Member States in accordance with Article 56 of the Financial Regulation. This is done, for example, for joint operational programmes on cross-border cooperation implemented by a joint managing authority under the Regulation establishing a European Neighbourhood and Partnership Instrument⁴. In such cases, procurement is governed by the Rules of application for the cross-border cooperation. Similarly, the regulations on the Instrument for Pre-accession Assistance (IPA)⁵ allow this option. This management mode does not apply to other instruments used by the EU.

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 fiche' for the relevant financing decision or (annual) action programme).

Important points with regard to decentralised management

In most cases, this Guide will apply in cases of (i) centralised and (ii) decentralised management. Note, however, that the European Commission may, in some specific cases, authorise beneficiary countries to use other procedures subject to a prior positive assessment of such procedures.

The European Commission's involvement in decentralised contracts is to authorise the financing of the contracts and check, notably with the help of established checklists, that the procedures, the implementation of the contracts and the expenditure are correctly carried out. If the procedures established in this Guide (or whatever procedure the European Commission decides must be used) are not followed, the expenditure incurred on the operations concerned is 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 the intervention aim at compromising the principle according to which decentralised contracts are national contracts drafted and concluded only by the decentralised Contracting Authority. Tenderers, candidates and applicants for these contracts cannot be considered beneficiaries of acts carried out by the European Commission to implement and conclude the contracts and their only legal tie is with the decentralised Contracting Authority. A Contracting Authority's decision may not be replaced by a decision taken by the EU. 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.

4 Regulation No 1638/2006 of 24.10.2006.

5 Regulation No 1085/2006 of 17.07.2006.

DIRECT CENTRALISED MANAGEMENT

The contracts are concluded directly by the European Commission, acting for the beneficiary country. It draws up shortlists (restricted procedures) and is responsible for issuing calls for tenders and calls for proposals, publishing them, receiving applications, tenders and proposals, chairing Evaluation Committees, deciding on the results of the procedures, managing complaints and signing the contracts.

DECENTRALISED 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 beneficiary 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 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 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 applications, 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 for approval to the European Commission, that verifies conformity with the applicable procedures. It also sends the contracts to the European Commission for endorsement before signing them⁶.

The European Commission must always be invited when applications 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 a particular attention to potential conflicts of interests

The Contracting Authority must submit all relevant notices as stipulated in the Guidelines for publication (A11e) to the European Commission for publication, with the exception of the cases referred to in the Practical Guide for Programme Estimates.

Under the Instrument for Pre-accession Assistance (IPA), a phased waiver of different types of ex-ante control may apply.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

Contracts are concluded directly by the Contracting Authority designated in a financing agreement, i.e. the government or an entity of the beneficiary country with 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 Tender Evaluation Committees, deciding on the results of the procedures and signing the contracts without the prior approval of the European Commission. The Contracting Authority must submit contract notices and award notices to the European Commission for publication.

OTHER MANAGEMENT MODES

Under other management modes, the delegated entity (e.g. the national agency or international organisation) concludes contracts with third parties. The procedures of the delegated entity are normally used. The European Commission may control the procedure ex post, regardless of whether the European Commission has carried out a prior 'pillar review' of the delegated entity.

⁶ The European Commission's endorsement of the contracts is not necessary in certain cases, which are specified in this Guide or in the Practical Guide to procedures for Programme Estimates

2.3. Eligibility criteria and other essentials

2.3.1. The rules on nationality and origin

Nationality and origin

The conditions of access to EU external assistance (including EDF) are laid down in the basic acts governing such assistance. When there is no basic act, the eligibility rules are those laid down in Title V of Part I of the Financial Regulations, under articles 119 and 120, as well as in article 172 and the Rules of Application of the Financial Regulations.

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

For each basic act, specific eligibility provisions may apply⁷. However, in general, participation in the procurement and grant procedures is normally open on equal terms to all natural persons who are nationals of or legal persons established in:

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

These procedures are also open to international organisations. For aid channelled through an international organisation or in co-financing with third countries, its rules on nationality and origin may be applied provided that these do not exclude any eligible country according to the applicable EDF/EU basic act(s).

Under EDF, whenever the fund finances an operation implemented as part of a regional initiative, participation in procedures for the awarding of procurement contracts of grants shall be open to all natural and legal persons eligible under EDF, and to all natural and legal persons from a country participating in the relevant initiative. The same rule applies for supplies and materials.

For the purposes of verifying compliance with the nationality rule, the tender dossier and the guidelines for applicants require tenderers and applicants being natural persons to state the country of which they are nationals. For legal persons, the tender dossier and the guidelines for applicants requires that the country

⁷ These instruments may contain additional ad hoc rules (e.g. under IPA Regulation No 1085/2006 of 17 July 2006, nationals/goods from countries that are beneficiaries of the European Neighbourhood and Partnership Instrument are eligible; Article 20 of Annex IV of the Cotonou Agreement refers to 'regional initiatives', OCTs for which the rules of nationality and origin are much more restrictive – See annex A2).

in which they are established is stated and evidenced by presenting the documents required under that country's law.

If the Contracting Authority (or Evaluation Committee) suspects that a candidate/tenderer/applicant does not comply with the rules it must ask the candidate/tenderer/applicant to provide evidence demonstrating actual compliance with the applicable rules.

- In view to demonstrate their actual compliance with the "establishment" criteria, legal person have to demonstrate that their legal person is formed under the law of an eligible State and
- That its real seat is within an eligible State. "real seat" must be understood as the place where managing board and its central administration are located or its principal place of business.

This is to avoid awarding contracts to firms which have formed "letter box" companies in an eligible country to circumvent the nationality rules.

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).

Experts: Unless otherwise provided for in the basic act and/or the Financing Agreement, natural persons employed or otherwise legally contracted by an eligible contractor or, where applicable, by an eligible subcontractor, may be of any nationality.

Origin of goods

- The rule of origin:

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

- The scope of the rule:

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 (subject to any specific exceptions as stated below).

Considering that the rule of origin applies to all items tendered and supplied, it is not enough if only a certain percentage of the goods tendered and supplied or a certain percentage of the total tender and contract value comply with this requirement.

Goods purchased by the Contractor use during the carrying out 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, computer used by a service contractor to draft a study) are not subject to the rule of origin. It is only if 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 to the designated local beneficiary(ies) or affiliated entity(ies) and/or final recipients of the action (in the case of grant contracts) that these good are subject to the rule of origin.

In a work contract, the option of having equipment vested in the Contracting Authority, given under Article 43.3 of the General Conditions, only applies while the works are being carried out and therefore does not constitute full transfer of the property.

- Definition of "origin":

The term 'origin' is defined in the relevant EU legislation on rules of origin for customs purposes: the Customs Code (Council Regulation (EEC) No 2913/92) in particular its Articles 22 to 24 thereof, and the Code's implementing provisions (Commission Regulation (EEC) No 2454/93).

The country of origin is not necessarily the country from which the goods have been 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”.

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 shall 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.

- The proof:

When submitting its tender, 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 supplier may be requested to provide documents supporting the stated origin. In this case, the supplier must provide a certificate of origin or additional information considering that the issuing authority may refuse to issue at tendering stage a certificate of origin without presentation of commercial invoices.

The official certificates of origin must, in any case, be submitted before provisional acceptance. Failing this, the Contracting Authority will not make any further payment to the Contractor.

Certificates of origin must be issued by the competent authorities of the goods’ or supplier’s country of origin (usually the Chamber of Commerce) and comply with the international agreements to which that country is a signatory.

It is the Contracting Authority's obligation to check the existence of a certificate of origin. Where there are serious doubts about the authenticity of a certificate 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 and request confirmation of the authenticity of the documents submitted and the information it contains. For EDF procurement, supplies originating in the Overseas Countries and Territories are regarded as originating in the EU.

2.3.2. Derogations to the rules on nationality and origin

Basic acts provide for derogation to the rules that should be decided on a case-by-case basis by the European Commission before the procedure is launched.

If a contract notice is published, it must mention the derogation. Unless good reason is given, such derogations apply not to one country but every nationality/origin.

BUDGET-FUNDED PROGRAMMES

Depending on the basic acts, in duly substantiated cases the European Commission may:

- extend eligibility to natural and legal persons from an ineligible country;
- allow the purchase of goods and materials originating in an ineligible country.

Derogations may be granted, depending on derogations provided for in the basic acts, on the grounds of economic, traditional, trade or geographical links, on the grounds that products and services are unavailable in the markets of the countries concerned; for reasons of extreme urgency; or if the eligibility rules would make it extremely difficult to carry out a project, programme or other action. Note, however, that the argument that a product of ineligible origin is cheaper than the EU or local product would not

alone constitute grounds for awarding derogation.

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

EDF-FUNDED PROGRAMMES

In exceptional, duly substantiated circumstances, natural or legal persons from third countries not eligible under the rules on nationality and origin may be authorised to compete for EU-financed procurement contracts upon a reasoned request from the ACP States or regional or intra-ACP bodies concerned. On each occasion, the ACP States or bodies concerned must provide the European Commission with the information needed to decide whether to grant a derogation, with particular attention being given to:

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

Moreover, subject to the requirement to inform the Head of Delegation, while operations are carried out the ACP State or regional or intra-ACP body concerned may decide to purchase goods on the local market, irrespective of their origin, up to the maximum for the competitive negotiated procedure, i.e. € 100 000.

2.3.3. Exclusion criteria

I- Exclusion criteria applicable for participation in procurement procedures

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

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they, or persons having powers of representation, decision making or control over them, have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of *res judicata*; (i.e. against which no appeal is possible);
- (c) they have been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify, including by decisions of the European Investment Bank and international organisations;
- (d) they are not in compliance with their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Contracting Authority or those of the country where the contract is to be performed;
- (e) they, or persons having powers of representation, decision making or control over them, have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a

criminal organisation, money laundering or any other illegal activity, where such an illegal activity is detrimental to the EU's financial interests;

- (f) they are currently subject to an administrative penalty referred to in Article 109(1) of the Financial Regulation (for budget-funded programmes) / Article 99 of the Financial Regulation (for 10th EDF-funded programmes).

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

Points (b) and (e) do not apply when the candidates or tenderers can demonstrate that adequate measures have been adopted against the persons having powers of representation, decision making or control over them who are subject to the judgement referred to in points (b) or (e).

Points (a), (c) and (d) do not apply if duly justified by the Contracting Authority in negotiated procedures where it is indispensable to award the contract to a particular entity for technical or artistic reasons or for reasons connected with the protection of exclusive rights.

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

- 1) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995;⁸
- 2) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997;⁹
- 3) cases of involvement in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA¹⁰
- 4) cases of money laundering as defined in Article 1 of Directive 2005/60/EC of the European Parliament and the Council¹¹;
- 5) cases of terrorist offences, offences linked to terrorist activities, and inciting, aiding, abetting or attempting to commit such offences, as defined in Articles 1, 3 and 4 of Council Framework Decision 2002/475/JHA¹²

II- Exclusion criteria applicable during the procurement procedure

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

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

8 OJ C 316, 27.11.1995, p.48.

9 OJ C 195, 25.6.1997, p. 1.

10 OJ L 300, 11.11.2008, p. 42.

11 OJ L 309, 25.11.2005, p. 15.

12 OJ L 164, 22.6.2002, p. 3.

Candidates, tenderers and applicants other than those in a restricted procedure, negotiated procedure or competitive dialogue, must sign a declaration together with their applications, certifying that the entity does not fall into any of the exclusion situations cited under points I and II (see article 143.1 RAP).

Information on the ownership/management, control and power of representation of the entity and a certification that they do not fall into the relevant exclusion situations must be provided where specifically requested by the Contracting Authority. This may be the case where there are doubts about the personal situation and in consideration of the national legislation of the country in which the tenderer, candidate or applicant is established.

However, for procurement contracts with a value of € 20 000 or less, the Contracting Authority may refrain from requiring a declaration depending on its risk assessment. For grants, no declaration shall be required for contributions of €60 000 or less.

Following the notification of 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 procedures for services and for the competitive dialogue, these supporting documents must be sent together with the tender and verified by the Contracting Authority before signature of the contract with the successful tenderer(s). In restricted procedures for works, these supporting documents must be sent together with the application. The evidence on non exclusion must be verified for all the candidates to be invited to tender. In addition, the tenderers and candidates must certify that the situation has not altered since the date of issue of the evidence. As regards subcontractors and experts, where specifically requested by the Contracting Authority, the successful tenderers must submit a declaration from the intended subcontractor/expert, and/or documentary evidence that the subcontractor/expert is not in one of the exclusion situations.

For procurement contracts with a value of less than the international thresholds (services ≤€ 300 000, supply <€ 300 000, works <€ 5 000 000) the Contracting Authority may waive the obligation to submit documentary evidence, depending on its risk assessment. Furthermore, a waiver may be granted where documentary evidence has been submitted in the past 12 months to the Contracting Authority for another procedure, provided that this evidence is still valid. In all cases, evidence may still be required in case of doubts. For grants, generally no documentary evidence is required.

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

- (a), (b) or (e) of point I (Exclusion criteria applicable for participation in procurement procedures), the Contracting Authority will 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 origin or provenance showing that the requirements are satisfied. For (d), The Contracting Authority will accept a recent certificate issued by the competent authority of the State concerned. Where no such document or certificate is issued in the country concerned¹³ and for the other exclusion criteria listed above, it may be replaced by a sworn/solemn statement made before a judicial or administrative authority, a notary or a qualified professional body in the country of origin or provenance.

Whenever one candidate, tenderer or applicant, due to its nature (for instance, national public administrations and international organisations), cannot fall into some of the categories above and/or cannot provide the documents indicated above, a simple declaration explaining their situation will suffice.

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

¹³ Information from the 27 Member States, some Candidate Countries and EEA countries on the different forms of documentary evidence issued/acceptable in each of the countries is available via the eCERTIS tool, which is managed by the Internal Market DG: - http://ec.europa.eu/internal_market/publicprocurement/e-procurement/e-certis/index_en.htm.

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. It is, however, strongly recommended that a translation into the language of the procedure be provided, in order to facilitate the evaluation of the documents.

Delegated Contracting Authorities can, if necessary, consult the relevant European Commission services in order to judge the situation of the candidates, tenderers or applicants.

Note that, before excluding a candidate, tenderer or applicant from a procurement or grant procedure, principles such as the right of defence and proportionality must be considered. To that end, unless the evidence is such that no further investigation is necessary (for example in case of a judgement of a competent authority of a Member State which has the force of *res judicata*), a contradictory procedure with the candidate, tenderer or applicant should be ensured.

Before taking the award decision at the very latest, the Contracting Authority must check whether any of the parties involved (i.e. applicants and co-applicants, candidates or tenderers, including affiliated entity(ies), indicated subcontractors and individual experts) have been recorded by the Early Warning System (EWS). The Contracting Authority cannot conclude a contract with entities which are recorded at exclusion level of the EWS.¹⁴ If any of the parties involved are recorded in the EWS at other level, measures of reinforced monitoring should be applied during the execution of the contract and payments. Where the Contracting Authority limits the number of candidates invited to submit a tender or full proposal, e.g. in a restricted procedure, such checks must be conducted before the candidates are selected.

2.3.4. Regulatory penalties: administrative and financial penalties

Candidates, tenderers and applicants, who have made false declarations, made substantial errors, committed irregularities or fraud may be excluded from participation in all procurement and call for proposal procedures financed by the EU for a maximum of five years from the date on which the infringement is established, following an adversarial procedure with the contractor or beneficiary. That period may be extended to 10 years in the event of a repeated offence within five years of that date. The decision is adopted by the European Commission (College) following an adversarial procedure.

Tenderers, candidates or applicants who have made false declarations, or who have committed substantial errors, or irregularities, or fraud, may also be subject to financial penalties representing 2 % to 10 % of the total estimated value of the contract being awarded. The percentage shall be decided in accordance with the principle of proportionality. Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the Contracting Authority must suspend the procedure and may take whatever measures are necessary, including cancellation. Where, after the award of the contract, the award procedure or the performance of the contract proves to have been subject to substantial errors, irregularities or fraud, the Contracting Authority may, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract or, where appropriate, terminate the contract. Where such errors, irregularities or fraud are attributable to the contractor or beneficiary, the European Commission may also refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with this contractor or beneficiary, in proportion to the seriousness of the errors, irregularities or fraud.

The purpose of suspending the contract is to check whether the presumed substantial errors and irregularities or fraud have actually occurred. If they are not confirmed, performance of the contract will

¹⁴ European Commission Decision of 16 December 2008 on the Early Warning System for the use of authorising officers of the European Commission and the executive agencies (2008/969/CE, Euratom) OJ 2008 L 344 of 20 December, p. 125 (<http://www.cc.cec/budg/i/early-warning/early-warning-system-intro-en.html>).

resume as soon as possible. A substantial error or irregularity is an infringement of the contract or regulation through an act or an omission which causes or might cause a loss to the EU budget/EDF.

2.3.5. Visibility

Unless otherwise requested or agreed by the European Commission, all EU partners, whether they may be contractors, grant beneficiaries or entities managing funds on behalf of the European Commission, must ensure the visibility of EU financing. If required, a communication plan must be submitted for approval of the Contracting Authority, according to the requirements and guidelines provided in the Communication and Visibility Manual for EU External Actions, published at: http://ec.europa.eu/europeaid/work/visibility/index_en.htm.

2.3.6. Other essential points

Conflicts of interest:

A conflict of interest occurs when the impartial and objective exercise of the functions of the Contracting Authority, or observance of the principles of competition, non-discrimination against or equality of treatment of candidates, tenderers, applicants and contractors, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a beneficiary of EU-funded programmes. A conflict of interest may arise where, for instance, a member of the 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, or allow an expert or company to obtain information leading to an unfair advantage in subsequent or related procedures.

For instance, any firm or expert involved in preparing a project (e.g. drafting the Terms of Reference) must, as a rule, be excluded from tendering for services that are based on those preparations, unless they can prove to the Contracting Authority that their initial involvement does not constitute unfair competition.

Candidates/tenderers/applicants that have a conflict of interest in relation to a particular contract are excluded from this contract award. The grounds for exclusion must be considered case by case. The European Court of Justice has consistently ruled that exclusion must be based on an actual risk of conflict based on the specific circumstances of the case in question. Any automatic exclusion deprives the candidate/tenderer/applicant of the right to present supporting evidence which might remove all suspicion of a conflict of interest.

Where a conflict of interest might occur with regard to on-going contracts, measures must be adopted to prevent such a conflict, including cancelling the contract if necessary.

Awarding principles:

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

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.

Use of standard documents:

Standard contracts and document formats must be used.

Record keeping:

Subject to the Contracting Authority's legislation on access to documents, written records of the entire 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 three years from the submission deadline of the call, while unsuccessful tenders have to be kept for five years from the submission deadline of the tender. Contractual and financial documents have to be kept for a minimum of seven 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 applications/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.

Availability of funds:

Before initiating any procedure, the funds must be available. Calls may exceptionally be launched with a suspension clause after prior approval of the relevant services. The call is then launched before the financing decision or before the signature of the financing agreement between the European Commission and the beneficiary country. The call is cancelled if the European Commission decision is not taken or if the financing agreement is not signed. The contract cannot be signed until the funds are available (see point 2.4.12.).

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

Environmental issues:

Environmental matters must be duly considered, to the possible extend, subject to the principles governing the award of procurement contracts and grants like competition and non-discrimination. This might result in more environment-friendly terms of reference/guidelines/specifications, increased use of information technology, and less paper consumption (with double-sided printing, degradable material for folders, presentations, etc.). For example, when drafting the technical specifications of a tender dossier, if one type of product is considered more environmental friendly than others, it should be chosen, except if requesting such a product would lead to a reduction of the competition.

Accessibility for disabled people:

All services, supplies, work and grants that relate to good, services and infrastructures the subject of which is intended for the use of persons, whether general public or staff of the contracting entity must include in its technical specifications accessibility requirements for person with disabilities following a design for all approach" (reference can be made to national/European or international standards on accessibility).

Joint procurement with an EU Member State (budget-funded programmes only):

Where a public contract or framework contract is necessary for the implementation of a joint action between one institution and a contracting authority from a Member State, the procurement procedure may be carried out jointly by the institution and the Contracting Authority from that Member State. In that case, European Commission procedures apply.¹⁵ Nevertheless, in some specific cases, it may be decided

¹⁵ See Article 91 of the Financial Regulation.

that the procedural rules of the contracting authority from a Member State apply, provided that they can be considered equivalent to those of the institution.

Ex post publication of beneficiaries:

In addition to the publicity rules applicable to each type of procedure, the European Commission makes information available on the beneficiary 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: http://ec.europa.eu/europeaid/work/funding/beneficiaries_en.htm

2.4. Procurement procedures

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

- to ensure that operations respect 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.

2.4.1. Which procurement procedure to apply?

The applicable standard procedures explained later in this 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 activity 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 in lots, the value of each lot is taken into account when calculating the overall threshold.

All basic principles must be respected (including the eligibility, exclusion and selection criteria), regardless of which procedure is used.

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 points 2.4.6., 2.4.7. and 2.4.8.).

SERVICE CONTRACTS	≥ € 300 000 International restricted tender procedure	< € 300 000 but > € 20 000 - Framework contracts or - Competitive negotiated procedure		≤ € 20 000 Single tender For service and supply contracts, a payment may be made against invoice without prior acceptance of a tender if the expenditure is ≤ EUR 2 500
SUPPLY CONTRACTS	≥ € 300 000 International open tender procedure	< € 300 000 but ≥ € 100 000 - Local open tender procedure or - Framework contract	<€ 100 000 but > € 20 000 - Competitive negotiated procedure or - Framework contract	
WORKS CONTRACTS	≥ € 5 000 000 - International open tender procedure or - International restricted tender procedure	< € 5 000 000 but ≥ € 300 000 Local open tender procedure	< € 300 000 but > € 20 000 Competitive negotiated procedure	

2.4.2. Open procedure

In ‘open’ calls for tender (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) (for international open procedure only), the official journals of all the ACP States (for EDF programmes), on the EuropeAid website, and in any other appropriate media.

Any natural or legal person wishing to tender may ask to receive the tender dossier (which may have to be paid for), in accordance with the procedures specified in the contract notice. 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 compared and the contract is awarded (see point 2.4.11.). No negotiation is allowed.

2.4.3. Restricted procedure

In ‘restricted’ calls for tender, all economic operators may ask to submit a tender but only those who satisfy the selection criteria may be invited to do so.

The selection criteria and the tasks to be undertaken are described in the published contract notice. 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 are in exclusion situation in the Early Warning System.

The contract is given maximum publicity by publishing a notice in the Official Journal of the European Union (S series), the official journals of all the ACP States (for EDF programmes), on the EuropeAid website, and in any other appropriate media.

The Contracting Authority is responsible for preparing the shortlist notice using the template in Annex B6 and for submitting it in electronic form to the European Commission for publication in the Official Journal of the European Union if necessary and on the EuropeAid website at the time of tender launch, and sends the tender dossier to the shortlisted candidates. To ensure fair competition, tenders must be submitted by the same service provider or consortium which requested to tender, which was shortlisted and to which the invitation to tender was addressed. No changes to the identity or composition of the tenderer are permitted, unless good reasons have been given and the Contracting Authority has given its approval in writing. If deemed necessary the evaluation committee may be consulted. Examples of situations where such approval could be given, based on the details of the case and provided that they do not change the conditions of competition, are:

- where a shortlisted candidate/member of a consortium has merged with another company and where the new company is found to meet the eligibility and exclusion criteria and does not give rise to any conflict of interest;
- where positions are swapped within the consortium, if it does not lower the score received by the consortium during the technical evaluation;
- where a partner leaves but the consortium still meets the conditions under which it was shortlisted, i.e. the rest of the consortium meets the selection criteria and would have been shortlisted without that partner.

Once the tenders have been analysed, they are compared and the successful tenderer is chosen (see point 2.4.11.). No negotiation is allowed.

2.4.4. Competitive negotiated procedure

Under the competitive negotiated procedure, the Contracting Authority invites candidates of its choice to submit tenders. From the technically compliant tenders, it selects the one that offers the best value for money in the case of tenders for services, and the cheapest, in the case of tenders for supplies or works.

The tenders are evaluated (including the use of an evaluation committee) and the contract awarded in the same way as they are in the restricted procedure.

See point 3.4.2., and sections 4.5. and 5.6. for further details.

2.4.5. Framework contracts

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

Framework contracts with several economic operators are called ‘multiple’ framework contracts; they take the form of separate contracts but they are all concluded in 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 such contracts may not exceed four years, save in exceptional cases justified in particular by the subject of the framework contract. Contracting Authorities may not make undue use of framework contracts or use them in such a way that the purpose or effect is to prevent, restrict or distort competition.

Specific contracts based on framework contracts are awarded under the terms of the framework contract and must obey the principles of transparency, proportionality, equal treatment, non-discrimination and fair competition.

2.4.6. 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 most economically advantageous tender (i.e. the sole award criterion is the best value for money).

See point 4.2.4.2. 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.

2.4.7. 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 Article 104(1)(e) of 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.

Contracting authorities must publish a contract notice setting out or attaching their needs and requirements. They must open a dialogue with the candidates satisfying the selection criteria in the contract notice. 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. 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, contracting authorities 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. Contracting authorities 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 justifying the manner in which dialogue was conducted.

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 value for money).

The standard templates must be adapted as required.

DIRECT CENTRALISED MANAGEMENT, DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

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

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

No prior European Commission approval is required.

2.4.8. Negotiated procedure/single tender procedure

A contract may be awarded directly in the following circumstances:

- when the contract to be concluded does not exceed EUR 20 000 (using the ‘single tender procedure’);
- in exceptional and duly justified cases, where the factual or legal circumstances described in Articles 266, 268 and 270 of the Rules of application of the Financial Regulation are met (see points 3.2.4.1., 4.2.5.1. and 5.2.5.1.) (using the ‘negotiated procedure’). No specific threshold applies in such cases.

Since EU law states when the negotiated procedure may be used, no prior approval can be granted to use other negotiated procedures not stipulated in this Guide.

In case of negotiated procedure without prior related unsuccessful tender procedure, an evaluation committee must be nominated in order to proceed with the negotiation. In all cases, the Contracting Authority must draft a report explaining how participant(s) in the negotiations were picked and the price set, and the grounds for the award decision (see Annex A10a for negotiated procedures and Annex A10b for single tender procedures). The Contracting Authority must follow the negotiation steps shown in the negotiation report template (Annex A10a for negotiated procedures and Annex A10b for single tender procedures) and ensure that basic principles relating to procurement procedures such as checking compliance with eligibility rules (nationality rules) Selection and exclusion criteria are duly applied.

DIRECT CENTRALISED MANAGEMENT, DECENTRALISED MANAGEMENT WITH EX ANTE CONTROLS

Prior approval by the European Commission must be sought to use the negotiated procedure, and for the negotiation report.

DECENTRALISED MANAGEMENT WITH EX POST CONTROLS

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

If applicable, for services and supplies, payments for amounts less than or equal to EUR 2500 may consist simply in payment against invoices without prior acceptance of a tender.

2.4.9. Fair and transparent competition

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

For mixed contracts, covering a combination of works, supplies or services, the Contracting Authority decides the procurement procedure to be used (with the agreement of the European Commission, for decentralised management with ex ante controls). This will depend on which is the main component (works, supplies or services) in terms of value and strategic importance.

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

Whatever the procedure used, the Contracting Authority must ensure that the conditions allow fair competition. If there is any obvious and significant disparity between the prices proposed and the services offered by a tenderer, or in the prices proposed by the various tenderers (especially where private companies are competing with publicly owned companies, non-profit associations or non-governmental organisations for a tender), the Contracting Authority must carry out checks and request any additional information necessary. It must keep such information confidential.

2.4.10. Preferences (EDF only)

EDF-FUNDED PROGRAMMES

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

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

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

- (i) allows for the best possible use of the physical and human resources of the ACP States;
- (ii) offers the greatest subcontracting possibilities for ACP companies, firms or natural persons; or
- (iii) is a consortium of natural persons, companies and firms from ACP States and the European Union.

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

2.4.11. Selection and award criteria

Regardless of the type of procurement procedure used, the same criteria are always used and are set out below.

2.4.11.1 Selection criteria

2.4.11.1.1. 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 shall be proportionate and may not go beyond the scope of the contract and must take account of the legitimate interests of the candidate/tenderer, in particular the firm's right to protection of its technical and business secrets.

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

It is important to seek to enhance the quality of shortlisted 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 shall shortlist a maximum of 8 candidates (6 in case of an international restricted procedure for works). In addition to the financial, professional and technical selection criteria the Contracting Authority will also publish additional criteria, only used to reduce the shortlist to a maximum of 8 candidates (6 for works). These criteria shall therefore not be drafted in such a way that it would reduce the shortlist to less than 8 candidates (6 for works) fulfilling that criteria. For example, a criterion such as "experience in the country" could reduce a shortlist to 5 candidates only. This type of criteria should be avoided. If appropriate for the project, subject to the principle of equal treatment, separate criteria for natural and legal persons may be published and applied.

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

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

- Requesting information which dates further back in time than three years (this is regulated in the Rules of application of the Financial Regulation). The only exception is technical experience for works contracts which may go back five years in time;
- Requesting a percentage of the staff 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 beneficiary country, unless specific justification is provided, as this could in general be regarded as discriminatory;
- Requesting technical experience in an overly prescriptive manner which 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 and applied by the Contracting Authority as specified unless a corrigendum has been published.

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

The candidate/tenderer is asked 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 which would have led to breach of contract and termination by a Contracting Authority shall not be used as reference. This is also applicable concerning the previous experience of experts required under a fee-based service contract.

For the service procedures the documents to support the information in response to the selection criteria shall be submitted by all the tenderers together with the tender. For supply procedures, only successful tenderers have to supply proof documents to support the information submitted in the tender before the award of the contract. For works procedures however, the mentioned proofs have to be submitted in accordance with the tender dossier. 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 < € 300 000, supplies < € 300 000 and works < € 5 000 000), the Contracting Authority may, depending on its assessment of the risks, decide not to require proof, but in that case no pre-financing will be granted unless a financial guarantee of an equivalent amount is provided. (However, where the contractor is a public body, the pre-financing guarantee requirement may be waived, depending on the authorising officer's assessment of the risk and via a prior approval).

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 which it has with them. Some examples of when it may *not* be considered appropriate by the Contracting Authority are when the candidate/tenderer relies mainly on the capacity of other entities or when it relies on them for key criteria. 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, for example by producing an undertaking by those entities to place such resources at its disposal. Such entities, for instance the parent company of the candidate/tenderer, must obey the same eligibility rules as the candidate/tenderer, e.g. the nationality rule. The data for the other entities for the relevant selection criterion should be included in the application/tender in a separate document. Proof of capacity will also have to be furnished at the Contracting Authority's request.

2.4.11.1.2. Checking the financial and economic capacity of candidates or tenderers

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

- appropriate statements from banks;
- evidence of professional risk indemnity insurance;
- presentation of balance sheets or extracts from balance sheets for at most the last three years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established;
- a statement of overall turnover and turnover for works, supplies or services covered by a contract during a period of no more than the last three financial years.

2.4.11.1.3. Checking the technical and professional capacity of candidates or tenderers

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

- the educational and professional qualifications of the service provider or contractor;
- a list:
 - of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private. In the case of framework contracts, only specific contracts corresponding to assignments implemented under such framework contracts will be considered. Evidence of successful implementation must take the form of certificates issued or countersigned by the Contracting Authority or entity who ordered or purchased the execution of the service or supply;
 - of the works carried out in the last five years, with the sums, dates and place. The list of the most important works must be accompanied by certificates of satisfactory execution, issued by the Contracting Authority or entity who ordered or purchased the works, specifying whether they have been carried out in a professional manner and have been fully completed;
- a description of the technical equipment, tools and plant to be employed by the firm for performing a service or works contract;
- a description of the technical equipment and measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;
- an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;
- for supplies: samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products with the specifications or standards in force;
- a statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;
- a copy of, or extract from, the payroll or employment contracts;
- an indication of the proportion of the contract which the tenderer may intend to subcontract. The contracting authority may also require the candidate or tenderer to submit any information on the financial, economic, technical and professional capacities of the envisaged subcontractor, in particular when subcontracting represents a significant part of the contract.

For service contracts it is possible for the candidate/tenderer to refer to a part of a project if the contract has not yet been completed. However, only that part which has been completed may be used as a reference. The candidate/tenderer needs to be able to submit documentary evidence of that part's completion (e.g. a statement from the entity which ordered the service, a copy of a contract, approval of progress reports, projects deliverables, proof of payment of interim/final invoices, etc.). For example, a contract signed two years earlier concerning a project to be implemented in four years may be presented by the candidate/tenderer to fulfil some criteria. In this example, half of the price and half of the duration of this contract shall be taken into account by the Evaluation Committee.

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

Where Contracting Authorities require the production of certificates drawn up by independent bodies attesting the compliance of the candidate/tenderer with certain quality assurance standards, they must refer to quality assurance systems based on the relevant European or, where appropriate, international standards certified by bodies conforming to the European or international standards certification. Contracting Authorities shall also accept other evidence of equivalent quality assurance measures from economic operators.

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

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

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

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

2.4.11.2 Award criteria

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

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

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

2.4.12. Procedure with a ‘suspension clause’

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

- (i) before a financing decision is adopted or
- (ii) before a financing agreement between the European Commission and the beneficiary country is signed.

BUDGET-FUNDED PROGRAMMES

Suspension 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 normal decision-making process. As a rule, circumstances justifying the use of a suspension clause are outside the European Commission’s control. Note that:

- the use of the suspension 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 beneficiary country);
- the use of the suspension 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 and in the relevant financing decision. There are some cases where a suspension 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.

EDF-FUNDED PROGRAMMES

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 of 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 launched with a suspension 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 must explicitly state that there is a suspension 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.

2.4.13. Cancellation of procurement procedures

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 lot may be cancelled.

Cancellation may occur, for example, if:

- the tender procedure has been unsuccessful, i.e. no qualitatively or financially worthwhile tender has been received or there is no valid response at all;
- the economic or technical data of the project have fundamentally changed;
- exceptional circumstances or a force majeure render normal performance of the contract impossible;
- all technically compliant tenders exceed the financial resources available;
- there have been irregularities in the procedure, in particular where these have prevented fair competition;
- the award is not in compliance with sound financial management i.e. does not 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, after prior approval, a procurement procedure is cancelled, all tenderers must be notified in writing and as soon as possible of the reasons for the cancellation. A cancellation notice must be published. See the template in Annex A5.

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. In that case, the publication of a new individual prior information notice is not compulsory;
- to open negotiations with one or more tenderers who participated in the tender procedure and who meet the selection criteria,¹⁶ 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 does not commit the Contracting Authority to implement the programme or project announced.

DIRECT CENTRALISED MANAGEMENTThe responsibility for cancelling a tender procedure lies with the relevant service of the European Commission.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLSThe responsibility for cancelling a tender procedure lies with the Contracting Authority, with the prior approval of the European Commission.

¹⁶ 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 point 2.4.11.1 for further details).

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLSThe responsibility for cancelling a tender lies with the Contracting Authority. No prior approval from the European Commission is required.

2.4.14. Ethics clauses

Any attempt by a candidate, applicant or tenderer to obtain confidential information, enter into unlawful agreements with competitors 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.

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

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

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

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

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

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

For the duration of the contract, the contractor and its staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state. In particular and in accordance with the legal basic act concerned, tenderers who have been awarded contracts must respect 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).

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

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

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

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

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

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

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

The contractor undertakes to supply the European Commission on request with all supporting documents relating to the conditions of the contract’s execution. 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.

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 permanently excluded from receiving EU funds.

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

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

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

2.4.15. Legal remedies

2.4.15.1 Complaints to the Contracting Authority

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

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

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

2.4.15.2 Complaints to the European Ombudsman

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

2.4.15.3 Ordinary Actions

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

Where the European Commission is the Contracting Authority, the action shall be launched in accordance with the rules set out by the TFEU¹⁷.

Where the European Commission is not the Contracting Authority, the action shall be launched in accord under the conditions and deadlines fixed by the national legislation of the Contracting Authority.

No subcontract can create contractual relations between any subcontractor and the Contracting Authority. The Contracting Authority shall 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 shall address itself to the Contractor and/or to the respective jurisdiction competent to hear such litigations. The same situation is applicable to experts working under service contracts.

2.5. Contract size

Care must be taken to design projects to allow for maximum contract size and consequently to avoid unnecessary fragmentation of programmes into a series of small contracts, whenever appropriate, to achieve economies of scale, to ensure maximum coordination between related activities and to keep programme administration as simple as possible.

2.6. Terms of reference and technical specifications

The purpose of Terms of Reference (for service contracts) and Technical Specifications (for supply and works contracts) is to give instructions and guidance to contractors to submit a tender which responds to all 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 form an annex to any contract awarded.

¹⁷ In pursuance of Articles 256 and 263 of the Treaty on the Functioning of the European Union (TFEU), the EU General Court has jurisdiction over acts of the European Commission intended to produce legal effects vis-à-vis third parties. Likewise, in pursuance of Articles 256, 268 and 340 of the TFEU, the EU General Court has jurisdiction in disputes relating to compensation for damages caused by the European Commission in the case of non-contractual liability. Note that, pursuant to the TFEU, the deadline to introduce an action for annulment before the EU General Court against the 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.

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 afford 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. The specifications include:

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

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 beneficiary country and, where appropriate of other parties involved, on the Terms of Reference or Technical Specifications, in order to strengthen both ownership and quality.

Given the technical complexity of many contracts, 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 so as 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 which show the minimum details to be provided within each of these section headings.

For a fee-based service contract, the sections in the Terms of Reference include the allocated budget headings. They consist of the fees, which are the only part of the budget that is subject to competition (except if a component with global price is foreseen, 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 which covers all current expenses incurred by the contractor which are not included in the fees. The section on incidental expenditure must specify the type of expenditure which 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 approval by the Contracting Authority.

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.

2.7. Conciliation and arbitration procedures

EDF-FUNDED PROGRAMMES

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, the general conditions and the rules governing the conciliation and arbitration procedure for works, supply and service contracts financed under the EDF. These rules can be found in Annex A12.

BUDGET-FUNDED PROGRAMMES

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 65 for work contracts).

2.8. The Evaluation Committee

2.8.1. Appointment and Composition

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 (minimum of three for all procedures except for works tenders above € 5 000 000, which require a minimum of five). The evaluators must be provided with detailed information of the timetable foreseen and workload involved as evaluator. The Contracting Authority shall make sure that appointed 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 a reasonable command of the language in which the tenders are submitted. The voting members must have the technical and administrative ability to give an informed opinion on the tenders. The identity of the evaluators should be kept confidential.

DIRECT CENTRALISED MANAGEMENT

The members of the Evaluation Committee (i.e. the Chairperson, the Secretary and the voting members) are appointed on a personal basis by the relevant European Commission services which also approve any observers. For procurement procedures, a representative of the beneficiary country may participate as appropriate, either as a voting member (evaluator) or as an observer. In grant procedures, a representative of the beneficiary country may participate as an observer, or in the case of EDF, as a voting member.

EX-ANTE DECENTRALISED MANAGEMENT

The members of the Evaluation Committee (i.e. the Chairperson, the Secretary and the other voting members) 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. If the European Commission does not object within five 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 approval by the European Commission.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

The members of the Evaluation Committee (i.e. the Chairperson, the Secretary and the voting members) are appointed on a personal basis by the relevant services, which also approve any observers.

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

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

The obligation to establish an evaluation committee may only be waived for single tenders with a value less than or equal to 20 000 EUR.

For grants procedures, see section 6.4.7.1.

2.8.2. Impartiality and confidentiality

All members of the Evaluation Committee and any observers must sign a Declaration of Impartiality and Confidentiality (see Annex A4). Any Evaluation Committee member or observer who has 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, as referred in the previous paragraph, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary. 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 shall be presumed to exist if an applicant, candidate or tenderer is a member of staff covered by the Staff Regulations, unless 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 procurement procedure, all contacts between the contracting authority and candidates, applicants or tenderers must be under conditions ensuring transparency and equal treatment; they may not lead to any amendment to the conditions of the contract or the terms of the original tender or call for proposals. 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 approval of the evaluation report by the Contracting Authority and by the European Commission in decentralised 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) may result in the immediate exclusion of its tender or proposal from further consideration.

Apart from the tender opening session, the proceedings of the Evaluation Committee are conducted in camera and are confidential for supplies and works tenders. 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. 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 members of the Committee appointed by the Contracting Authority and any authorised observers (including designated assessors in the case of call for proposals see 6.4.7.2.).

Apart from the copies given to any assessors(s) 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.

2.8.3. 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 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.

If a tender or proposal infringes the formal requirements, the Evaluation Committee may use its discretion to decide whether or not it will still be considered during the rest of the evaluation process, while ensuring equal treatment of tenders 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). The possibility to provide copies cannot be accepted for tender guarantees.
- 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);

- Tenderers in a service contract procedure who have not submitted all the documentary evidence for the exclusion or the selection criteria together with the tender. The necessary documentary proof may be requested from the successful tenderer giving a reasonable delay.
- If information is made available to the evaluation committee that a key expert in a service tender procedure is no longer available. 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 3.3.12.1.

2.8.4. 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 point 2.8.5.) 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 take the award decision by approving 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.

2.8.5. Period of validity

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

In exceptional cases with prior approval by relevant services of the European Commission, before 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.

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

2.9.1. Notifying the successful tenderer

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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 (see the model in Annex A8) and draws attention to any obvious arithmetical errors which were corrected as part of the evaluation.

At the latest before taking the award or grant decision, the Contracting Authority / delegate body ensures that there is no record of the successful tenderer, including partners, in exclusion situation in the Early Warning System.

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

Notification of the award to the successful tenderer automatically extends the validity of the successful tender for 60 days. At the same time, the Contracting Authority asks the successful tenderer to submit the evidence substantiating the statements made in the tender **within 15 days** of the date of the notification letter. The Contracting Authority must examine this evidence before sending the contract to the tenderer for signing. If a contract is awarded under a financing agreement which is not concluded before the tender procedure is launched, the Contracting Authority must not notify the successful tenderer before the financing agreement is concluded.

For the restricted procedure and the competitive dialogue, documentary evidence relating to the exclusion criteria is submitted as explained in point 2.3.3.

For contracts with a value of less than the international thresholds (services < € 300 000, supplies < € 300 000, works < € 5 000 000) there is no obligation to submit such documentary evidence (see points 2.3.3. and 2.4.11.1.1.).

For grants, see point 6.4.10.1.

2.9.2. Contract preparation and signature

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

- Prepare a contract dossier (if possible printed recto/verso) with the following structure:
 - a) Explanatory note, using the format in Annex A6
 - b) Copy of the financing agreement authorising the project
 - c) Copy of the call (contract prior information notice and contract notice, Tender Opening Report, Evaluation Report, Work Programme, Guidelines for Applicants, Evaluation Reports, list of grants to be awarded, and any other relevant information)
 - d) Three originals of the proposed contract, which is based on the standard contract
 - e) Special care should be taken to incorporate all minutes of pre-tender meetings, questions and answers during tender period, clarification requests by the evaluation committee and any minutes of negotiation meetings into the Contract intended for signature.

The standard contract annexes for the General Conditions and Forms and other relevant documents must be reproduced unchanged in every contract. Only the Special Conditions (and budget in the case of grants) need to be completed by the Contracting Authority.

In contracts under **decentralised 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. 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 three signed originals of the contract to the successful tenderer/applicant, who must countersign them within 30 days of receipt.
- The tenderer or grant applicant returns two originals 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, if possible, be offered to the highest ranking applicant on the reserve list.

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

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

The Contracting Authority 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 point 6.2.8.).

Contracting Authorities must retain all documentation relating to the award and execution of the contract for a minimum period of seven 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 and the Court of Auditors.

2.9.3. Publicising the award of the contract

Publishing award notices is important a legal obligation so as to respect the principle of transparency.

In the case of procurement, once the contract has been signed, the Contracting Authority must draft a contract award notice without delay using the template in Annex C9 and Annex D9, and send it to the European Commission, which publishes the results of the tender procedure in the Official Journal (where applicable), and on the EuropeAid website. If the award notice is also published locally, the Contracting Authority must arrange local publication directly. An award notice is published if the contract notice was published or if the value of the contract is above international thresholds (supplies > € 300 000, works > € 5 000 000), unless the contract was declared secret, or where the performance of the contract must be

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

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

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

The information submitted to the unsuccessful tenderers must follow the template referred to above. If unsuccessful tenderers request further information, they may be given any information which is not confidential, e.g. comments regarding their strengths and weaknesses, as this may assist them to be successful in future tenders.

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

In the case of grants, all awarded grants in the course of a financial year shall be published annually on the EuropeAid website and, if relevant, in other appropriate media, in accordance with the template in Annex E11.

The unsuccessful applicants should be informed without delay, and in any event no later than 30 days after the award decision has been taken, using the template in annex e9. As also stated in the chapter on Grants, save in exceptional cases, notifications to all applicants on the outcome of the evaluation of their applications should take place within 6 months following the submission deadline of the full application. If unsuccessful applicants request further information, they may be given more details (for instance any weakness detected in their proposals, poor or insufficient description of the action, budget not matching the proposed activities, overall lack of coherence, etc.) relating to the evaluation of their own proposals.

2.10. Modifying contracts

For modifications of grant contracts, please refer to section 6.7.

Contracts may need to be modified if the circumstances of project implementation have changed since the contract was signed. 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 a decentralised ex-ante system, 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 (in the case of service contracts); this does not affect the Contracting Authority's right to oppose the contractor's/beneficiary's choice of bank account or auditor.

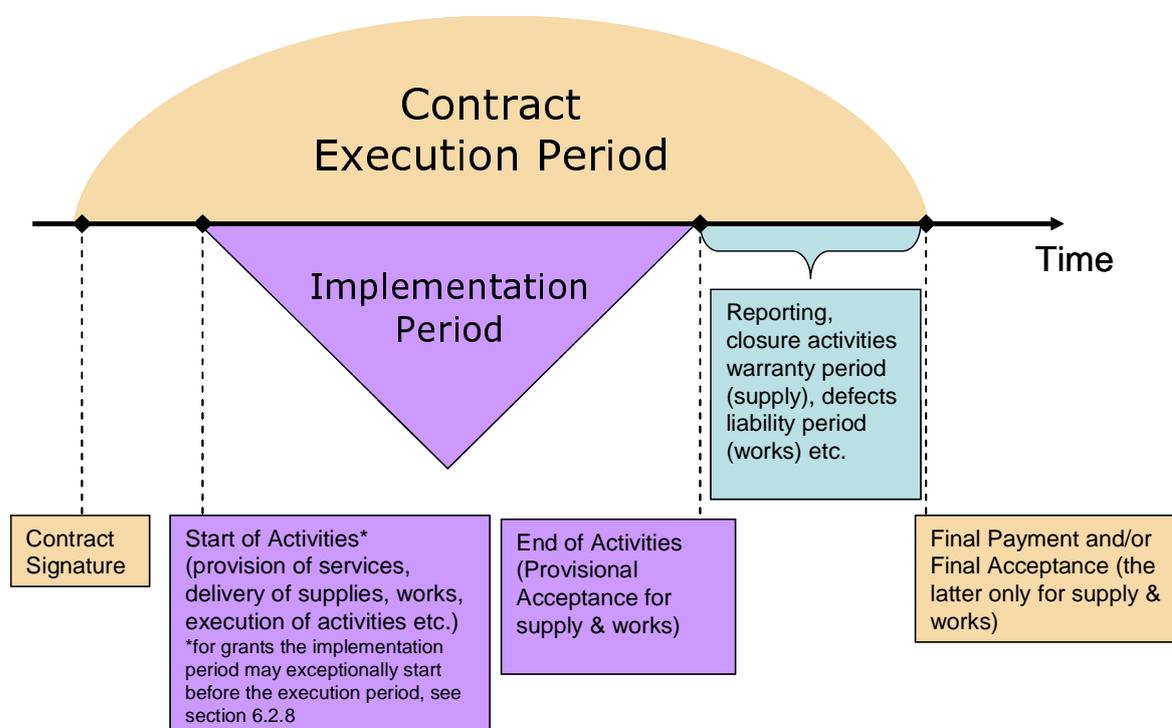
2.10.1. General principles

The following general principles must always be respected:

Contracts cannot be amended after the end of the execution period. Note that the execution period of the contract is longer than the implementation period. For definition of the execution period of the contract and implementation period, see Annex A1.

A contract can be amended through an administrative order or addendum 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.

Example: 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.



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/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 which 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.

Where the change to the contract extends activities already under way, it requires a negotiated procedure (see points 3.2.3.1., 4.2.4.1., and 5.2.5.1. for contract-specific information about negotiated procedures and sections 3.5., 4.6., and 5.7. for contract-specific information on changes to contracts).

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

2.10.2. Preparing an addendum

The Contracting Authority drafts an addendum as follows:

- 1) Use the templates for an addendum provided in Annex B16, Annex C12, Annex D1, 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) Three originals of the proposed addendum, which is based on the standard addendum and includes any revised annexes.

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

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

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

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

- 5) On receipt of the two signed originals from the contractor, send one to the Delegation of the European Union.

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

3. Service contracts

3.1. Introduction

Service contracts shall comprise study and technical assistance contracts. Service contracts are sometimes used to draw on outside know-how.

A study contract is a service contract concluded between a service provider 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 a service provider is called on to play an advisory role, to manage or supervise a project, or to provide the experts specified in the contract.

The service contracts should be decentralised: they are concluded by the beneficiary country, under a financing agreement with the European Commission.

3.1.1. Type of service contract

A service contract may be concluded in two different ways:

- Global-price - where specified outputs are defined. The service will be paid on the basis of the delivery of the specified outputs. Payments might be totally or partially withheld if the contractual results have not been reached. Partial payments have to be determined according to the partial implementation of the outputs, and are subject to:
 - o several budget lines per output, which may be required but are not compulsory
 - o negotiations with the service provider;
- Fee-based - where the output is unpredictable, or where the workload to achieve the specified output is impossible to quantify in advance. Therefore it is economically more advantageous to pay the services on the basis of time actually worked.

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

Examples of global price activities:

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

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

Examples of fee-based activities:

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

Technical assistance contracts often only specify the means, i.e. the 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 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.

Fee-based contracts may also include activities paid under 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.

Where a mixed contract is needed, 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.

Finally, an example of a mixed contract is a design and supervision contract which normally would consist of two sections: The design section is a collection of several global prices (geotechnical study, environmental study, economic study, etc.) whereas the supervision section would be fee-based¹⁸.

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

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

- A first critical phase 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.

18 A combined tender dossier for design and supervision can be found at: <https://myintracomm.ec.europa.eu/dg/devco/finance-contracts-legal/financing-contracting-guides/Pages/practical-guide-prag.aspx>

Useful indications are available in the Technical Cooperation Reform guidelines. See page 99 of the "The Guidelines on Making Technical Cooperation More Effective"¹⁹.

Increasing the use of global price contracts

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

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

The following features are comparative advantages of global price contracts:

- ⇒ Global price contracts may include where relevant a price breakdown based on outputs/deliverables against which partial payments can be made (e.g. the deliverables could be related to the progress inception report/interim report/final report or to the different parts of a study/report/event) depending on the project in question.
- ⇒ It is possible to have incidental expenditures also under a global price contract in exceptional circumstances, which would make it possible to use a global price contract for organisation of seminars where the number of participants and its financial implications are difficult to estimate for the tenderers to give an example. The tender dossier may be modified accordingly to foresee incidental expenditures.
- ⇒ The SoEA will as a general rule, not be required in a global price contract. It will depend on the particularities of the project. If the SoEA is not deemed necessary, the Terms of Reference could instead include profiles which the tenderer will have to demonstrate in their offer that they have access to. The experts will be subject to approval by the Contracting Authority before they implement the services.
- ⇒ Tender procedures for global-price contracts could include a "certification" process by which the experts proposed by the successful tenderer will be interviewed to check whether they are able to deliver as announced in the offer. As such a contract may include many experts; this "certification" may also take place during implementation of the contract.
- ⇒ The methodologies contained in the offers must include a workplan indicating the envisaged resources to be mobilised, allowing a better comparison of offers, and offering a basis for negotiation in case of amendment to the contract.
- ⇒ Global price contracts generate less micromanagement and verification of time sheets and incidental expenditures and therefore will free more time for working on operational and sector issues.

3.2. Procurement procedures

3.2.1. Contracts with a value of EUR 300 000 or more

3.2.1.1 Restricted procedure

All service contracts worth € 300 000 or more must be awarded by restricted tender procedure following international publication of a contract prior information notice and a contract notice (see point 3.3.1.).

¹⁹ http://ec.europa.eu/europeaid/how/ensure-aid-effectiveness/reform_technical_cooperation_en.htm

3.2.2. Contracts with a value of less than EUR 300 000

Contracts worth under € 300 000 may be awarded either under the Framework Contract procedure (see point 3.4.1.) or under a competitive negotiated procedure (see point 3.4.2.) involving at least three candidates.

3.2.3. Contracts with a value of less than EUR 20 000

The Contracting Authority may award service contracts of a value of EUR 20 000 of less on the basis of a single tender.

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.

3.2.4. Procedures applicable without ceilings

3.2.4.1 Negotiated procedure

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Prior approval by the European Commission must be sought for the use of the negotiated procedure.

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No prior approval 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:

- a) Where, for reasons of extreme urgency brought about by events which the Contracting Authorities could not have foreseen and which can in no way be attributed to them, the time limits for the procedures referred to in points (a), (b) and (c) of Article 104(1) of the Financial Regulation applicable to the General Budget) cannot be kept.

Operations carried out in crisis situations as referred to in Article 190(2) of the Rules of Application of the Financial Regulations for Budget shall be considered to satisfy the test of extreme urgency (see Annex A11a)²⁰.

- b) Where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field.
- c) For services which are an extension of services already started, subject to the following conditions:

complementary services not covered by the initial contract but which, as a result of unforeseen circumstances, have become necessary for the performance of the contract, provided that the

²⁰ '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 Cotonou Agreement. Emergency assistance is linked to the application of Articles 72 and/or 73 of the Cotonou Agreement (see Annex A11a). See also Article 30(5) of the OCT decision.

complementary services cannot be technically and economically separated from the initial contract without serious inconvenience for the Contracting Authority and the aggregate amount of complementary services does not exceed 50 % of the value of the principal contract;

additional services consisting of the repetition of similar services entrusted to the contractor providing these services under the initial contract, provided that a contract notice was published for the initial contract and that the possibility of using the negotiated procedure for new services for the project and the estimated cost were clearly indicated in the contract notice published for the initial contract²¹. The extension of the contract is for a value and duration not exceeding the value and duration of the initial contract.

- d) Where the tender procedure or the attempt to use a framework contract 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, if they comply with the selection criteria, provided that the original terms of the contract are not substantially altered and that the principle of fair competition is observed. If no offer was received, or if none of the tenderers meets the selection criteria, no negotiation procedure can be allowed on the basis of this Article.
- e) Where the contract concerned follows a contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates, in which case, all successful candidates shall be invited to participate in the negotiations.
- f) Where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider.
- g) For contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the beneficiary country so requires.
- h) 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 decision. The procedures described in sections 3.3.12.1. and 3.3.12.2. must be followed by analogy, and the Negotiation Report must be included in the contract dossier.

3.2.4.2 Competitive dialogue

See point 2.4.7. for further details.

3.3. Restricted tenders (for contracts of € 300 000 or more)

3.3.1. Publicity

In order to ensure the widest possible participation in competitive tendering and the requisite transparency, the Contracting Authority must publish contract prior information notices and contract notices for all service contracts of € 300 000 or more.

3.3.1.1 Publication of individual contract prior information notices

²¹ This case is therefore only applicable after a restricted call for tender.

An individual contract prior information notice setting out the specific characteristics of the planned tender procedure must be published, at least 30 days before the publication of the contract notice.

The prior information notice must briefly state the subject, content and value of the contracts concerned. (See template in Annex B1). Publishing a prior information notice does not oblige the Contracting Authority to finance the contracts proposed, and service providers are not expected to submit applications at this stage.

The Contracting Authority is responsible for drafting the individual contract prior information notice using the template in Annex B1 and for submitting it for publication on EuropeAid and in OJ to the European Commission 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 CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS, DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS Prior information notices must be submitted for publication to the relevant services of the European Commission in electronic form using the template in Annex B1 at least 15 days before the intended date of publication, to allow time for translation.

3.3.1.2 Publication of contract notices

Minimum 30 days after publication of the prior information notice, a contract notice must be published in the Official Journal of the European Union, on the EuropeAid website (at <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome>) and in any other appropriate media.

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

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

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

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

In addition to the above, the finalised Terms of Reference (see section 2.6.) 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 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 must be:

- clearly formulated without any ambiguity
- easy to check on the basis of the information submitted using the standard application form (see Annex B3)

- devised to allow a clear YES/NO assessment to be made as to whether or not the candidate satisfies a particular selection criterion
- possible to prove by the tenderer.

The criteria given in the annexes to this 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 EuropeAid website. The actual deadline will be determined by the contract's size and complexity.

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

The contract notice must be clear enough to avoid candidates from having to request clarification or additional information during the procedure. Candidates may, however, submit questions should they need to. If the Contracting Authority amends information in the contract notice, either in response to a question or on its own initiative, a corrigendum with the changes must be submitted for publication to the relevant service of the European Commission (see Annex A5b). The corrigendum will be published no later than seven days after the request for publication. The corrigendum must be published before the submission deadline. That deadline 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 needs to be clarified but does not require an amendment of the contract notice, this clarification must be published on the EuropeAid Webpage.

3.3.2. Drawing up shortlists

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 (with a minimum of three) possessing the technical and administrative capacities necessary to give an informed opinion on the applications. Each member must have a reasonable command of the language in which the applications are submitted. All members of the Evaluation Committee are obliged to sign a Declaration of Impartiality and Confidentiality (see Annex A4). For the responsibilities of the Evaluation Committee members, see point 2.8.3.

DIRECT CENTRALISED MANAGEMENT

The Evaluation Committee (i.e. the Chairperson, the Secretary and the voting members) must be appointed on a personal basis by the European Commission. The beneficiary country may participate as appropriate, either as a voting member (evaluator) or as an observer.

DECENTRALISED 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 approval. The European Commission should participate as an observer. The membership of the committee is deemed to be approved if the European Commission does not object within five working days. As a general rule, the European Commission appoints an observer to attend all or part of the Evaluation Committee meetings. Prior approval must be sought from the European Commission for other observers to attend.

DECENTRALISED MANAGEMENT WITH EX-POST 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.

The selection procedure involves:

- drawing up a long list (see template in Annex B4) summarising all the applications received;
- eliminating candidates who are ineligible (see point 2.3.1.) or fall into one of the situations described in sections 2.3.3. and 2.3.5.;
- applying the selection criteria exactly as published.

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

After examining the responses to the contract notice, the Evaluation Committee shortlists the service providers 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 2.4.1.1. "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. Before accepting a reduced competition of less than four candidates, a prior approval is required. This prior approval 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 shall be justified in the evaluation report.

**DIRECT CENTRALISED MANAGEMENT,
DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS**

Prior approval by the European Commission must be sought before inviting fewer than four candidates.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

No prior approval 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 Warning System.

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

DIRECT CENTRALISED MANAGEMENT

The shortlist report must be submitted for approval 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.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLSThe shortlist report must be submitted for approval 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 for approval, 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.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLSNo prior approval 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 B7. Candidates who are selected will receive a letter of invitation to tender and the tender dossier (see template in Annex B8). At the same time, the final shortlist must be published on the EuropeAid website.

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

If unsuccessful candidates request further information, they may be given any information which 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.

3.3.3. 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. When the Contracting Authority is the Commission, it may be desirable to involve representatives of the final beneficiaries in preparing the tender at an early stage. See section 2.6. 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 CENTRALISED MANAGEMENTThe tender dossier must be approved by the European Commission prior to issue. The standard practice is to consult and obtain the approval of the beneficiary country, and where appropriate of other parties involved, on the tender dossier.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLSThe Contracting Authority must submit the tender dossier to the Delegation of the European Union for approval prior to issue.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLSNo prior approval of 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 (shortlist notice, administrative compliance grid, evaluation grid)
- D. Tender submission form

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

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

A guarantee will be required to cover any pre-financing payment exceeding EUR 300 000. However, where the contractor is a public body, the authorising officer responsible may waive that obligation, depending on his/her risk assessment. The guarantee will be released in one go, at the very latest by the time 80 % of the amount of the contract has been paid, for fee-based contracts. For global price contracts, the financial guarantee will be released after the clearing of the pre-financing.

3.3.4. Award criteria

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

The technical criteria allow the quality of technical 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 beneficiary country, the work schedule, the appropriateness of the resources to the tasks, the support proposed for experts in the field, etc. CVs may be awarded points for such criteria as qualifications, professional experience, geographical experience, language skills, etc. 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.

3.3.5. Additional information during the procedure

The tender dossier must be clear enough to save candidates invited to tender from having to request additional information during the procedure. If the Contracting Authority provides additional information 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.

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

If the technical content of the tender is particularly 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.

3.3.6. Deadline for submission of tenders

Tenders must reach the Contracting Authority at the address and by no later than the date and time shown in the invitation to tender. The 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 CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS,

DECENTRALISED 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 receipt of tenders is 50 days. However, in exceptional cases, (under centralised management and decentralised management with ex-ante controls, subject to prior authorisation by the European Commission), this period may be shorter.

3.3.7. Period of validity

See point 2.8.5.

3.3.8. Submission of tenders

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

Any infringement of these rules (e.g. unsealed envelopes or references to price in the technical offer) will lead to rejection of the tender.

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

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

3.3.9. The Evaluation Committee

For the Committee's composition, impartiality and confidentiality, responsibilities and the timetable, see section 2.8.

DIRECT CENTRALISED MANAGEMENT

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

3.3.10. Stages in the evaluation process

3.3.10.1 Receipt and registration of tenders

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

3.3.10.2 Tender opening session

Part 1: Preparatory phase

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

See tender opening checklist in Annex B9.

Part 3: Compliance with formal submission requirements

See Annex B10.

At this stage, the Committee must decide whether or not tenders comply with the formal submission requirements. The Summary of Tenders Received, which is attached to the Tender Opening Report (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 points 2.8.2. and 2.8.3.

Part 4: Financial Offers

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.

3.3.10.3 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 Committee.

Part 1: Administrative compliance

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

Nationality of subcontractors: the Evaluation Committee must check at this stage that any subcontractors identified in the technical offers satisfy the nationality rule in point 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 Committee then examines the technical offers, while the financial offers remaining sealed. When evaluating technical offers, each member awards each offer a score out of a maximum 100 points in accordance with the technical evaluation grid (setting out the technical criteria, sub-criteria and weightings) laid down in the tender dossier (see point 3.3.4.). Only offers which achieve a score of 80 or more are declared "technically accepted". Under no circumstances may the Committee or its members change the technical evaluation grid communicated to the tenderers in the tender dossier.

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

Experts must be scored against the requirements stated in the Terms of Reference. 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 which are among the requirements in the Terms of Reference. Only diplomas and experience supported by documentary proof will be taken into account.

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.

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

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

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

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

The Committee discusses each technical offer and each member awards it a final score. The Committee members may 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 voting member finalises his/her evaluation grid on each of the technical offers and signs it before handing it over to the Secretary of the Evaluation Committee. The Secretary must then compile a summary of the comments of the Committee members as part of the Evaluation Report.

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

Interviews should be standard practice whenever the expert proposed has no relevant experience of EU projects in the same language area, as evidenced by the CV, and when this experience is a key element for the position and the project implementation. In other cases (e.g. under centralised management) verification/checks within the European Commission are 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 which have achieved an average score of 80 points or more in the technical evaluation). It is recommended that tenderers which have scored close to the technical threshold also be invited for interview. Any interviews should be held by the 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 formulated 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 Committee has established each technical offer's average score (the mathematical average of the final scores awarded by each voting member), any tender falling short of the 80-point threshold is automatically rejected. If no tender achieves 80 points or more, the tender procedure is cancelled.

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

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

Specimen Tender Evaluation Summary:

Part1: Technical Evaluation

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

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

3.3.10.4 Evaluation of financial offers

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

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

A financial offer not meeting these requirements may be rejected. Any rejection on these grounds 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.

The envelopes containing the financial offers of rejected tenderers following the technical evaluation must remain unopened and be 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, lumpsums (if applicable) and the provision for expenditure verification²² that are specified in the tender dossier. This total contract value is compared with the maximum budget available for the contract. Tenders exceeding the maximum budget allocated for the contract are eliminated.

The Evaluation Committee then proceeds with the financial comparison of the fees and lumpsums between the different financial offers. Both the provision for incidental expenditure and the provision for

²² 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.

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+lumpsums receives 100 points. The others are awarded points by means of the following formula:

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

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

Specimen Tender Evaluation Summary:

Part 2: Financial Evaluation *

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

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

3.3.10.5 The Evaluation Committee's conclusions

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

- the scores awarded to the technical offers by 0,80
- the scores awarded to the financial offers by 0.20.

Specimen Tender Evaluation Summary:

Part 3: Composite Evaluation

	Maximum possible	Tenderer 1	Tenderer 2	Tenderer 3
Technical score x 0.80			$99.22 \times 0.80 = 79.38$	$100.00 \times 0.80 = 80.00$
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			1	2

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

EDF-FUNDED PROGRAMMES

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.

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

- Award the contract to the tenderer which has submitted a tender:
 - which complies with the formal requirements and the eligibility rules;
 - whose total budget is within the maximum budget available for the project;
 - which meets the minimum technical requirements specified in the tender dossier; and
 - which is the best value for money (satisfying all of the above conditions).
- Cancel the tender procedure
(see point 2.4.13.).

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

DIRECT CENTRALISED 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 voting members of the Evaluation Committee. This must be submitted for approval to the relevant services of the European Commission, which must decide whether or not to accept its recommendations.

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

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

If the European Commission approves the proposed decision, the Contracting Authority will either

commence with the award of the contract (see point 3.3.12.) or cancel the tender, as decided.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS No prior approval by the European Commission is required before the Contracting Authority acts on the recommendations of the Evaluation Committee.

The tender evaluation shall be concluded step by step to reach a conclusion. The principle behind requesting the technical and financial offer in separate envelopes is to ensure that none of the evaluators knows the financial offer and hence that they cannot be influenced by the price when assessing the technical quality of a tender. Any deviation from the sequence of the evaluation would lead to the cancellation of the tender.

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

Subject to the Contracting Authority's legislation on access to documents, the entire tender procedure is confidential. 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).

3.3.11. Cancelling the tender procedure

See point 2.4.13.

3.3.12. Award of the contract

3.3.12.1 Notifying the award decision

DIRECT CENTRALISED, DECENTRALISED: EX-POST

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

At the latest before taking the award decision, the Contracting Authority has ensured that there is not a detection of the third party (i.e. tenderer including partners) concerned in the Early Warning System. The Early Warning System (EWS) is an internal alert tool, containing restricted information concerning third parties likely to represent a threat to the EU financial interests in the form of warnings (often called flags), inserted in the LEF (Legal Entity File). The EWS was created by the Commission in 1997 and is currently ruled by the Commission's EWS Decision of 16.12.2008 (footnote 12).

The purpose of these warnings is to inform the various services of the Commission that the third parties concerned by those warnings and with whom the Commission has or is likely to have financial relations either:

- are suspected of having committed or have committed fraud or serious administrative errors;

- are subject to an attachment order ("saisie-arrêt" in French) which prevents the Commission to pay directly the third parties;
- are subject to significant recovery orders issued by the Commission on which payment is significantly overdue, i.e. are "very bad debtors";
- or are excluded in accordance with the Financial Regulation or Council regulations imposing CFSP related financial restrictions;

and to incite them in these various situations to take the appropriate measures provided in the Union legislation to protect the financial interest of the Union.

The information contained in the EWS is confidential and may only be disclosed to the third party concerned by the warning upon its request as provided for in Article 8 of the EWS Decision (but not to other third parties).

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

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

DECENTRALISED: EX-ANTE

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

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

At the same time the second best tenderer is informed about the result (Annex B13b). The Contracting Authority reserves the right to send a notification of award to the second best tenderer in case of inability to sign the contract with the first ranked tenderer. The validity of the second best tender will therefore be kept and will only be extended with the 60 days in case of notification of award.

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 he will not be awarded the contract.

3.3.12.1.1. Availability of key experts and proposed replacements

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

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

videoconference or telephone. It shall be emphasised that the minimum requirements for each evaluation criteria must be met by the replacement expert.

The maximum delay for proposing a replacement should be **within 15 days** of the date of the notification letter. Only one time-period to propose replacements will be offered to the successful tenderer, in which they may, if possible, propose several candidates for replacement of the same position. The 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 shall contain the justification for the approval.

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 point 3.3.12.2.

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 delay also submitting the necessary documentary evidence (as requested for the original experts in the tender) and justification for unavailability. The Contracting Authority will verify that the replacement fulfils the minimum requirements in the Terms of Reference and that he/she would have scored minimum the same as the originally proposed expert (total scores). If several experts are proposed for the same position the Contracting Authority may choose between the experts. Written justification of the choice is made by the Authorising Officer and will be part of the contract dossier, see point 3.3.12.2.

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 delay also submitting the necessary documentary evidence (as requested for the original experts in the tender) and justification of unavailability. The Contracting Authority will verify that the expert fulfils the minimum requirements in the Terms of Reference and that the expert would have scored minimum the same as the originally proposed expert (total scores). If none of the replacements are accepted, the contract may either be awarded to the second best tenderer or the procedure may be cancelled. If the second best tenderer will be notified of the award they shall also be given the same possibility to confirm availability/unavailability and to propose replacements of their key experts. The same delay for replies will be applied (i.e. 5 and 15 days).

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

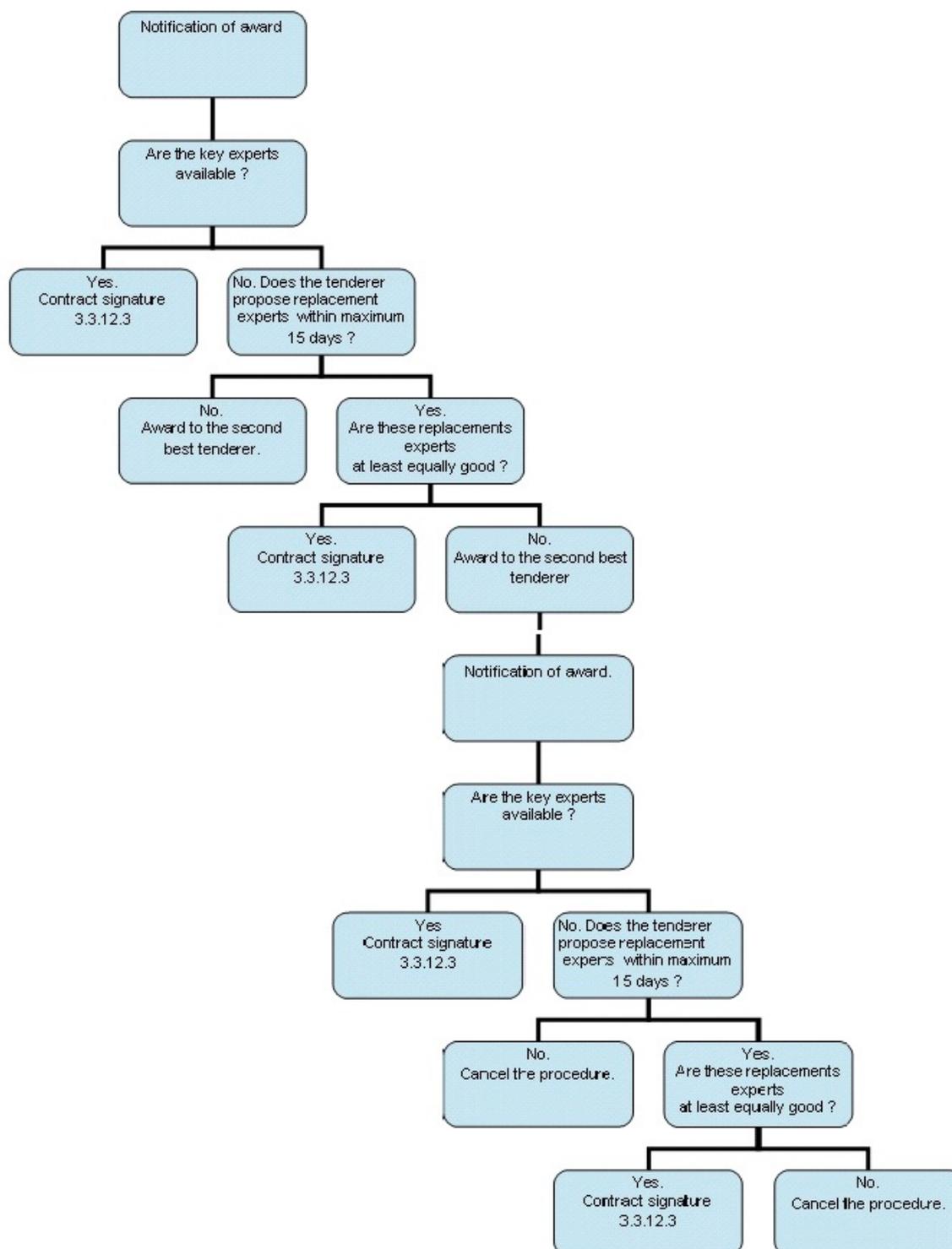
DECENTRALISED: EX-ANTEThe decision to accept or not the replacement experts and to award to the second best tenderer, or to cancel the procedure must be submitted for approval to the relevant services of the European Commission, which must decide whether or not to accept the recommendations. If the European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

Contracting Authority should proceed and give the conditions under which the European Commission might endorse the proposed recommendations.

DECENTRALISED: EX-POST

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

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



3.3.12.2 Approval of key experts

Where the European Commission is the Contracting Authority and a representation of the beneficiary country has not been invited to the Evaluation Committee as an evaluator, the beneficiary country must

be notified by the relevant Delegation of the European Union, if appropriate²³, of the name of the successful tenderer and asked to approve the available key experts proposed before the contract is signed.

The representative of the beneficiary 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 tender is allowed to propose a replacement (see section 3.3.12.1.1.). If this procedure fails, the award may go to the second best tender, if any. In that case, the representative of the beneficiary country again gets the right to approve the experts. If there is no second best tender 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 beneficiary country's approval must also be obtained for any replacement key expert proposed by the contractor. The representative of the beneficiary country may not withhold its approval unless it submits duly substantiated and justified objections to the proposed experts in writing to the Delegation of the European Union. If the representative of the beneficiary 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 beneficiary country may only ask for experts to be replaced if duly substantiated and justified objections are given in writing.

3.3.12.3 Contract preparation and signature

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

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

- a) Explanatory note using the format in Annex A6 (if applicable including the justification for acceptance of replacement key experts)
- b) Copy of the financing agreement authorising the project
- c) Copy of the call announcements (contract prior information notice, contract notice and shortlist), Shortlist Report, Tender Opening Report, Evaluation Report with award decision, and any other relevant information)
- d) Three originals in decentralised management; two originals in centralised 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.

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

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

²³ An example where it may not be appropriate is a multi-country project where many beneficiary countries are involved and it would be practically difficult to obtain the approvals.

- 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 CENTRALISED, DECENTRALISED: EX-POST

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.

DECENTRALISED: EX-ANTE

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

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

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

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

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

The proposed contract must follow Annex B8.

3.3.12.4 Publicising the award of the contract

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

Once the contract has been signed the Contracting Authority is responsible for drafting the award notice without delay using the template in Annex B14 and for submitting it for publication on EuropeAid and in the Official Journal to the European Commission in electronic form (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 shall be published for procedures where a publication of the contract notice has taken place or if the value of the contract is above international thresholds (> € 300.000), unless the contract was declared secret or where the performance of the contract must be accompanied by special security measures, or when the protection of the essential interests of the European Union, or the beneficiary country so requires, and where the publication of the award notice is deemed not to be appropriate.

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

The information submitted to the non-successful tenderers must follow the templates mentioned above. However, in case of request for further information from the non-successful tenderers, any information

which is not confidential may be disclosed to them. An example may be comments regarding their strengths and weaknesses as this may assist them to be successful in future tenders.

See section 2.9.

3.3.13. 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 Committee may recommend that a tenderer be excluded from the tender procedure 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. Note that in such case, the tenderer may also be subject to administrative and financial penalties imposed by the European Commission (see point 2.3.4.) and this may furthermore lead to their exclusion from other contracts funded by the European Union.

DIRECT CENTRALISED MANAGEMENT, DECENTRALISED 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 36.3 (m) of the General Conditions.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

In addition to the above, prior approval 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 CENTRALISED MANAGEMENT, DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

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

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLSIn addition to the above, the prior approval of the European Commission is required.

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

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

DIRECT CENTRALISED MANAGEMENT, DECENTRALISED 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.**

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

In addition to the above, the prior approval 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 some time elapses before the new expert takes up his functions, the Contracting Authority may ask the contractor to assign a temporary expert to the project pending the new expert's arrival or to take other steps to bridge the gap. Whatever the case may be, the Contracting Authority will make no payment for the period of absence of the expert or his replacement (whether temporary or permanent).

3.4. Procedures for the award of contracts under € 300 000

3.4.1. Framework contracts

Services worth more than € 20 000, but less than € 300 000, may be contracted using the framework contract Beneficiaries 2009 (FWC BENEf 2009) which runs until 15 September 2013. It is a multiple framework contract 'with reopening of competition'. Detailed information on how to use FWC BENEf 2009 can be found on the EuropeAid framework contract webpages. The information given in this section applies only to FWC BENEf 2009.

3.4.1.1 Conditions of use

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

These operations must:

- be financed with external aid funds;
- be in the exclusive interest of an authority receiving external aid;
- not exceed € 300 000, addenda included, without being unduly split;
- not give rise to services exceeding 260 days per expert;
- be implemented over a maximum of two years (730 calendar days), addenda included.

FWC BENEf 2009 can be used by other entities managing external aid funds, if authorised by EuropeAid, for operations meeting these conditions.

As FWC BENEf 2009 was not concluded with a linked budgetary commitment at the time of its signature, the contracting authority for a specific contract must have the funds necessary to cover the services contracted under the framework contract.

It provides quick, transparent means of recruiting experts for all activities within the project cycle. It is divided into a number of thematic lots, with several contractors selected for each lot. These contractors are consortia represented by a lead firm that has been designated by the other partners to act on their behalf for the purposes of the contract. The lead firm is the only one authorised to commit the consortium, hence only contacts with the lead firm are valid for contractual purposes.

3.4.1.2 Procedure

As this is a multiple framework contract, the specific contract award is based on a competition.

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

a) Consultation

- A request for services is sent to four framework contractors in the same lot. However, in case of ineligibility (conflict of interest, suspension) of a framework contractor within a lot of 4 contractors, it is authorized to consult only 3 contractors. If less than three framework contractors are eligible, the project manager cannot launch a framework contract procedure. A specific contract can only be concluded during the period of validity of the Framework contract.
- The consultation must comply with the principles of transparency, proportionality, equal treatment, non-discrimination and of sound competition. The derogation and exception rules applied to tendering procedures are not applicable. For example, the instructions on shortening the tender submission deadline for tendering procedures do not apply to a framework contract request.
- In contrast to a tendering procedure, where a suspension clause may be added, no request may be issued under the Framework Contract if no funds are available to cover the operation. It is suggested not to use budget lines for which the deadline for payments is set too close to the end of implementation of a specific contract.
- The specific ToR (Terms of Reference) for the proposed specific contract is attached to the request in order to give the framework contractors all the information they need to submit an offer. The ToR must be clear on how the outputs obtained will conform to the outputs requested. Their quality, in particular their clarity, is critical for the quality of the offer and the success of the assignment.
- The contractual deadline for submission of offers is at least 14 days²⁴ from the sending of the request. It is possible to extend this period but not to shorten it, unless none of the consulted framework contractors objects.
- The framework contractors can ask for clarification. The answers are sent simultaneously to all the framework contractors consulted. If amendments would need to be made during the consultation period that affect the choice of experts, the date for submission of offers must be adapted accordingly.

b) Evaluation of offers

²⁴ For the Conferences lot, the submission period can be reduced to 7 days for events with up to 15 participants.

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

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

Only offers complying with the deadline for submission, the eligibility rules, the maximum prices, the maximum budget stated (if any) and the minimum requirements stated in the specific ToRs for the experts are evaluated.

The most economically advantageous offer is selected on the basis of a 80/20²⁵ ratio between technical quality (CV and availability of experts, methodology when requested) and the price (total of the fees²⁶). The technical score can be adjusted taking into account any interviews held with the experts if such interviews are envisaged in the specific ToRs.

If no offer is selected, the project manager may, after analysing the specific ToRs, change and relaunch the request with the same framework contractors.

Within 14 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 project manager does not have to wait for the specific contract to be signed.

c) Signature of the specific contract

The specific contract is based on the highest ranking offer.

The specific contract comprises the contract proper, the specific ToRs, any methodology used, and the financial offer. It enters into force upon notification that the Contracting Authority has signed the specific contract. A copy of the signed contract must be sent by fax to the selected framework contractor and then the latter can start to provide the services. Two sets of the specific contract are sent by courier for counter signature.

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.

3.4.2. Competitive negotiated procedure

Depending on the context and the needs, the Contracting Authority may use a competitive negotiated procedure as an alternative to the framework contract without publishing the contract notice .

Note that the competitive negotiated procedure requires more time than the procedure to start an assignment under the framework contract.

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 (admin grid, contract, contract notice, invitation letter, instructions to tenderers, list of invited tenderers and tender form) for this procedure as well as for the single tender procedure (see below). For any other document of the tender dossier the regular service annexes shall 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 which are

25 For the Conferences lot, it is a 50/50 weighting.

26 For the Conferences lot, the flat rates and reimbursable expenses are taken into account on a 50/50 basis.

invited to tender. Tenders must reach the Contracting Authority at the address and by no later than the date and time shown in the invitation to tender. The chosen candidates must be allowed at least 30 days from the dispatch of the letter of invitation to tender to submit their tenders. 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 competitive negotiated procedure may also be chosen from a list of vendors. The list shall be drawn up following a call for expression of interest and shall be valid for no more than five 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 competitive negotiated procedure the contract may be concluded by negotiated procedure (see point 3.2.4.1.). The procedure for evaluating the tenders and awarding the contract is the same as under the restricted procedure (see points 3.3.9. to 3.3.12.2.).

As an exception the Contracting Authorities may use the competitive negotiated procedure for legal services according to the Common Procurement Vocabulary (CPV) nomenclature²⁷, whatever the estimated value of the contract.

The Contracting Authority may award service contracts of a value of € 20 000 or less on the basis of a single tender. See point 2.4.8.

For services with a value of less than or equal to EUR 2 500 the Contracting Authority may simply pay against invoices without prior acceptance of a tender.

3.5. Modifying service contracts

See section 2.10. for general information on modifying contracts.

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

Additional services and complementary services are regarded as negotiated procedures (see point 3.2.4.1.b), and either an addendum or a new contract may be signed.

²⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:074:0001:0375:en:PDF>

4. Supply contracts

4.1. Introduction

Supply contracts cover the purchase, leasing, rental or hire purchase (with or without option to buy) of products. A contract for both the supply and installation of products is considered a supply contract.

4.2. Procurement procedures

4.2.1. Contracts with a value of EUR 300 000 or more

4.2.1.1 International open procedure

All supply contracts must be the subject of an international open tender procedure following publication of a contract prior information notice and a contract notice (see section 4.3.).

4.2.2. Contracts of more than EUR 100 000 and less than 300 000

These supply contracts may be awarded through a local open procedure.

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 beneficiary country and on the EuropeAid website with the address from which firms can obtain further information. 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 competitive negotiated procedure.

4.2.3.1 Competitive negotiated procedure

Supply contracts under € 100 000 are awarded by competitive negotiated 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

These supply contracts may be awarded on the basis of a single tender.

For supplies with a value of less than EUR 2 500, the Contracting Authority may pay on the basis of an invoice without prior acceptance of a tender.

4.2.5. Procedures applicable without ceilings

4.2.5.1 Negotiated procedure

DIRECT CENTRALISED MANAGEMENT

Prior approval by the European Commission must be sought for the use of the negotiated procedure.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

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

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

No prior approval by the European Commission is required.

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

- a) Where, for reasons of extreme urgency brought about by events which the Contracting Authorities could not have foreseen and which can in no way be attributed to them, the time-limit for competitive procedures (referred to in points (a), (b) and (c) of Article 111(1) of the Financial Regulation applicable to the General Budget) cannot be met.

Operations carried out in crisis situations as referred to in Article 190(2) of the Rules of Application of the Financial Regulations of Budget are considered to satisfy the test of extreme urgency (see Annex A11a).²⁸

- b) Where warranted by the nature or particular characteristics of the supplies, for example, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents.
- c) For additional deliveries by the original supplier intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the Contracting Authority to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance.
- d) Where the tender procedure has been unsuccessful, i.e. where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the Contracting Authority may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, if they comply with the selection criteria, provided that the initial terms of the contract 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 or where the protection of the essential interests of the European Union or the beneficiary country so requires.
- f) For contracts in respect of supplies quoted and purchased on a commodity market.
- g) For contracts in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law.
- h) Where a new contract has to be concluded after early termination of an existing contract.

²⁸ '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, mainly for actions which are not governed by Article 19c of Annex IV to the Cotonou Agreement. Emergency assistance is linked to the application of Article 72 and/or 73 of the Cotonou Agreement (see Annex A11a).

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 point 4.3.11.1.-2 must be followed by analogy, and the Negotiation Report must be included in the contract dossier.

4.2.5.2 Dynamic purchasing system

A dynamic purchasing system is a completely electronic process for making commonly used purchases for a period of up to four 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 value for money on the basis of the award criteria specified in the contract notice for the establishment of the dynamic purchasing system.

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

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

4.2.5.3 Competitive dialogue

See point 2.4.7. for further details.

4.3. International open tender for contracts of € 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 prior information notice and a contract notice must be published for every open tender procedure.

4.3.1.1 Publication of individual contract prior information notices

An individual contract prior information notice setting out the specific characteristics of the planned tender procedure, must be published, save in exceptional circumstances, at least 30 days before the publication of the contract notice. Individual contract prior information notices must briefly state the subject and content of the tenders concerned. (See template in Annex C1). 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 contract prior information notices are published in the Official Journal of the European Union, on the EuropeAid website and in any other appropriate media.

**DIRECT CENTRALISED MANAGEMENT,
DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS,
DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS**

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

4.3.1.2 Publication of contract notices

In addition to prior information notices, all supply contracts of € 300 000 or more must also be the subject of a contract notice published in the Official Journal of the European Union, on the EuropeAid website (at http://ec.europa.eu/europeaid/index_en.htm) and in any other appropriate media. A minimum of 30 days must be allowed to elapse between the publication of the contract prior information notice and the contract notice.

The Contracting Authority is responsible for drafting the contract notice using the template in Annex C2 and for submitting it for publication on EuropeAid and in OJ to the European Commission in electronic form (see publication guidelines in Annex A11e). If necessary, the Contracting Authority must arrange simultaneous local publication and publication in any other appropriate media directly.

**DIRECT CENTRALISED MANAGEMENT,
DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS,
DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS**

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

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

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

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

4.3.2. Drafting and content of the tender dossier

Tender documents must be carefully drafted to ensure 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 Commission, it may be desirable to involve representatives of the final beneficiaries in preparing the tender at an early stage. See section 2.6. 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 include:

- a) a clear definition of the tasks to be performed;
- b) minimal quality levels;
- c) environmental performance;
- d) wherever possible, accessibility criteria for people with disabilities or design for all users;
- e) levels of and procedures for conformity assessment;
- f) fitness for use;
- g) safety or 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 procedures and methods;

The Contracting Authority is responsible for drawing up these documents.

Given the technical complexity of many supply contracts, the preparation of the tender dossier - particularly the Technical Specifications — may require the assistance of one or more external technical specialist(s). Each 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 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 CENTRALISED MANAGEMENTThe tender dossier must be approved by the European Commission. The standard practice is also to consult and obtain the approval of the beneficiary country, and where appropriate of other parties involved.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLThe Contracting Authority must submit the tender dossier to the Delegation of the European Union for approval prior to issue.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

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

TENDER DOSSIER CONTENT

- A. Instruction to Tenderers**
- B. Draft Contract, Special Conditions and Annexes (incl. Technical Specifications)**
- C. Further Information**

D. Tender Form for a Supply Contract

See the standard format in Annex C4.

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. In such cases the Contracting Authority must take particular account of:

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

A guarantee is required in return for a pre-financing payment exceeding € 300 000. However, where the contractor is a public body, the authorising officer responsible may waive that obligation, depending on his or her risk assessment. The guarantee will be released after provisional acceptance of the goods in accordance with the terms of the contract.

4.3.3. Selection and award criteria

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

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

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

If, for some exceptional reason which the Contracting Authority considers justified, the tenderer is unable to provide the references required by the Contracting Authority, it may prove its economic and financial capacity by any other means which the Contracting Authority considers appropriate. Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the Contracting Authority or on its behalf by a competent official body of the country in which tenderer is established, subject to that body's agreement. Such checks will assess 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 € 300.000, see point 2.4.11.).

The award criterion applied to technically compliant tenders is price or, in exceptional cases given an approval of the derogation by the European Commission, the best value for money.

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. 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. Given the wide variety of supplies and their technical nature, the criteria must be tailored to each tender in a YES/NO format to allow a clear assessment of whether or not the tender meets the technical requirements set out in the tender dossier.

4.3.3.1 Supply contracts not including ancillary services

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

If the selected tender exceeds the maximum budget available for the contract, the provisions of point 4.2.5.1.(d) apply.

4.3.3.2 Supply contracts including ancillary services

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

If the selected tender exceeds the maximum budget available for the contract, point 4.2.5.1.(d) applies.

4.3.3.3 Particularly complex supplies

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

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

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

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

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

4.3.4. Additional information during the procedure

The tender dossier must be clear enough to save tenderers having to request 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 other tenderers at the same time.

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

If the questions result in an amendment to the contract notice, a corrigendum must be published, as explained in point 4.3.1. The deadline for the submission of tenders may be extended to allow tenderers to take account of the changes. The corrigendum must also be published on the EuropeAid website.

If the technical content of the tender is particularly 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. 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.

4.3.5. Deadline for the submission of tenders

Tenders must reach the Contracting Authority at the address and, at the very latest, the date and time indicated in the tender dossier. The 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 and, if possible, be combined with the tender-opening session.

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED 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 60 days. However, in exceptional cases, a shorter deadline may be given subject to prior authorisation by the European Commission.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

No prior authorisation is required from the European Commission for a shorter deadline.

4.3.6. Period of validity

See point 2.8.5.

4.3.7. Submission of tenders

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

4.3.8. The Evaluation Committee

For the committee's composition, impartiality and confidentiality, responsibilities and timetable, see section 2.8.

DIRECT CENTRALISED MANAGEMENT

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

4.3.9. Stages in the evaluation process

4.3.9.1 Receipt and registration of tenders

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

4.3.9.2 Preparatory meeting

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 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 C5 for the detailed formalities to be carried out by the Chairperson with the assistance of the Secretary.

DIRECT CENTRALISED MANAGEMENTThe Evaluation Committee appointed by the European Commission must carry out the tender opening session.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLThe European Commission must be informed of the tender opening session. It may be represented as an observer at the tender-opening session and receive a copy of each tender.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLThe 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 point 2.8.2.

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

Any tender guarantee must be returned to the tenderers which do not comply with the formal submission requirements. This implies that any tenders which arrive after the submission deadline must also be opened (after the opening session) so that the guarantees can be returned.

4.3.9.4 Evaluation of technical offers

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 other Evaluation Committee members, the Chairperson may write to tenderers whose submissions require clarification, asking them to reply within a reasonable deadline set by the Committee.

Part 1: Administrative compliance

Before conducting a detailed evaluation of the tenders, the Contracting Authority checks that they comply with the essential requirements of the tender dossier (i.e. the administrative compliance grid).

A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them. Substantial departures or restrictions are those which affect the scope, quality or performance of the contract, differ widely from the terms of the tender dossier, limit the rights of the Contracting Authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply.

Each offer is examined for compliance with the tender dossier, in particular that:

- the documentation is complete
- the language required by the tender dossier has been used
- For consortia: the confirmation of association and designation of a lead company has been signed by all consortium members.

For tenderers intending to subcontract tasks (if permitted by the tender dossier): the tenderer has included a statement regarding the content and extent of subcontracting envisaged, which must be within the limit stated in the tender dossier.

The administrative compliance of each of the tenders must be recorded in the Evaluation Report (see Annex C7).

Part 2: Technical compliance

The detailed technical evaluation of the tenders takes place after the administrative compliance check.

The criteria to be applied are those published in the tender dossier and, accordingly, the evaluation grid included in the tender dossier must be used. Under no circumstances may the Committee or its members change the evaluation grid communicated to the tenderers in the tender dossier.

The purpose of this evaluation is to assess whether or not the competing tenders meet the selection criteria and the minimum technical requirements.

Rule of origin: All tenders must fulfil the requirements listed in point 2.3.1. In case of any doubt as to the origin of goods, additional information must be requested. Should doubts persist, the advice of the European Commission should be sought (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.

To establish origin, one must determine where the product in question has been obtained or produced.

Tenders which clearly fail to satisfy the rule of origin must be rejected.

Nationality 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 point 2.3.1.

Having evaluated the tenders, the Evaluation Committee rules on the technical compliance of each tender, classifying it as technically compliant or not technically compliant. Where contracts include after-sales service and/or training, the technical quality of such services is also assessed in accordance with the published criteria.

4.3.9.5 Evaluation of financial offers

Once the technical evaluation has been completed, the Committee checks that the financial offers contain no obvious arithmetical errors. Any obvious arithmetical errors are corrected without penalty to the tenderer.

If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation 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
LOT 1	90	80	70	Company C
LOT 2	Not bidding	40	50	Company B
LOT 3	60	70	55	Company C

After applying the discount:

	Company A (20 % discount)	Company B (10 % discount)	Company C (no discount)
LOT 1	72	72	70
LOT 2	not bidding	36	50
LOT 3	48	63	55

The 3 combinations possible:

Combination 1: $72 + 40 + 48 = 160$

Combination 2: $72 + 36 + 63 = 171$

Combination 3: $70 + 50 + 55$, but since for Lot 2 there is a cheaper price offered, the sum becomes:
 $70 + 40 + 55 = 165$

The Contracting Authority must choose combination 1, awarding contracts for Lots 1 and 3 to company A and Lot 2 to company B for the initial price offered.

4.3.9.6 Choice of contractor

The successful tenderer is the one submitting the least expensive tender classified as ‘technically compliant’ during the technical evaluation. It must be declared the successful tender if it is equal to or lower than the maximum budget available for the contract.

If the chosen tender exceeds the maximum budget available for the contract, point 4.2.5.1.(d) applies.

In the event of abnormally low tenders, the Evaluation Committee must request information on the breakdown of the tender. If, for a given contract, tenders appear to be abnormally low, the Contracting Authority must, before rejecting such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and verify those constituent elements, after due hearing of the parties, taking account of the explanations received. The Contracting Authority may, in particular, take into consideration explanations relating to:

- a) the economics of the manufacturing process, of the provision of services or of the construction method;
- b) the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;
- c) the originality of the tender.

The justification for accepting or rejecting an abnormally low offer must be recorded in the Evaluation Report.

EDF-FUNDED PROGRAMMES

Tenderers from the ACP States which offer supplies of ACP origin accounting for at least 50 % of contract value are accorded a 15 % price preference where tenders of equivalent economic and technical quality are compared.

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

- a) to the tenderer from 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 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.

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

- they are submitted by the successful tenderer;
- they meet the requirements specified by the tender dossier, attaining at least the minimum quality and performance required by the technical specifications; and
- the price of the variant proposed is not higher than the price of the winning tender.

It is up to the Evaluation Committee to compare the variant and the original offer, and to recommend the best solution to the Contracting Authority.

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 which has submitted a tender:
 - which complies with the formal requirements and the eligibility rules;
 - whose total budget is within the maximum budget available for the project;
 - which meets the minimum technical requirements specified in the tender dossier; and
 - which is the least expensive tender (satisfying all of the above conditions).
- Cancel the tender procedure (see point 2.4.13.).

DIRECT CENTRALISED 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 voting members of the Evaluation Committee. This must be submitted for approval to the European Commission, which must decide whether or not to accept its recommendations.

DECENTRALISED 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 voting members of the Evaluation Committee. This must be submitted for approval to the Contracting Authority, which must decide whether or not to accept its recommendations. The Contracting Authority must then submit the Evaluation Report together with its proposed decision to the European Commission for approval. If there is an award proposal and the European Commission has not already received a copy of the tenders, these must be submitted.

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

If the European Commission approves the proposed decision, the Contracting Authority will either commence awarding the contract (see point 4.3.11.) or cancel the tender, as decided.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

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

The report is drawn up. The Contracting Authority will then take its decision. The entire evaluation procedure, including notification of the successful tenderer, must be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer might be unable to maintain its tender if the evaluation procedure takes too long.

Subject to the Contracting Authority's legislation on access to documents, the entire tender procedure is confidential from the end of the tender opening session 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 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 point 2.4.13.

Tenderers are entitled to the immediate release of their tender guarantee. If the tender procedure is cancelled before the opening session, the unopened and sealed envelopes must be returned to the tenderers.

4.3.11. Award of the contract

4.3.11.1 Notifying the successful tenderer

See section 2.9. and point 2.4.12. (for the suspension clause).

4.3.11.2 Contract preparation and signature

See section 2.9.

The proposed contract must follow Annex C4.

4.3.11.3 Publicising the award of the contract

See section 2.9.

4.4. Local open tender for contracts between € 100 000 and € 300 000

In this case, the publication of a prior information notice is not obligatory and the contract notice is not published in the Official Journal of the European Union but only in the beneficiary country and on the EuropeAid website with the address from which firms can obtain further information. The contract notice for a local tender must as a minimum be published in the Official Journal of the beneficiary country or any equivalent media. Publication is the responsibility of the beneficiary 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 which 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 firms. No conditions seeking to restrict the participation of other eligible contractors are allowed (e.g. obliging such firms to be registered in the beneficiary country or to have won contracts there in the past).

In this procedure, there must be a minimum of 30 days between the date of publication of the contract notice in the local press and the deadline for receipt of tenders. However, in exceptional cases, a shorter deadline may be allowed.

<p>DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS</p>
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<p>Prior approval by the European Commission must be sought for a shorter deadline.</p>

The measures applicable to an international open procedure, as described in section 4.3., apply by analogy to the local open procedure.

The Contracting Authority may require a tender guarantee.

4.5. Competitive negotiated procedure for contracts under € 100 000

The Contracting Authority may award contracts under € 100 000 by competitive negotiated procedure, without publishing the contract notice. The Contracting Authority draws up a list of at least three firms 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 firms which are invited to tender.

Tenders must reach the Contracting Authority at the address and by no later than the date and time shown. The chosen candidates must be allowed at least 30 days from the dispatch of the letter of invitation to tender in which to submit their tenders.

The tenders are opened and evaluated by an Evaluation Committee with the necessary technical and administrative expertise, appointed by the Contracting Authority.

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

In the event of one failure of the competitive negotiated procedure, the contract may be concluded by negotiated procedure (see point 4.2.5.1.). 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 points 4.3.2. to 4.3.11.2.).

The Contracting Authority may award supply contracts of a value of € 20 000 or less on the basis of a single tender. See point 2.4.8.

For supplies 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.

4.6. Modifying supply contracts

See section 2.10. for general information on modifying contracts.

Leaving aside varying the quantities according to Article 22 of the Special and General Conditions (see below) before contracting and/or during the execution of the contract, the Contracting Authority may under no circumstances increase the budget of the initial supply contract or agree to/arrange for the purchase of equipment that was not covered in the initial tender and subsequent contract.

The only exception to this rule is for additional deliveries by the original supplier intended either as a partial replacement of supplies or installations included in the original contract, or as an extension of existing supplies or installations where a change of supplier would oblige the Contracting Authority to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance. The additional deliveries arrangement is regarded as a negotiated procedure (see point 4.2.5.1. c) and an addendum or a new contract should be signed.

Under Article 22 of the General Conditions, the Contracting Authority has the power to issue an administrative order on variations. The contractor is bound to 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 I to Directive 2004/18/EC of the European Parliament and the Council (for budget-funded programmes) or the realisation of performance of work corresponding to the requirements specified by the Contracting Authority. A ‘work’ means the outcome of building or civil engineering project that on its own is sufficient to fulfil an economic or technical function.

Works contracts are usually concluded by the beneficiary country with which the European Commission has a financing agreement (under decentralised 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 relevant services of the European Commission must give prior approval for 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 of 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 i.e a procedure in which the contract notice is published in the beneficiary country and on the EuropeAid website with the address from which firms can obtain further information. For details, see section 5.5.

5.2.3. Contracts with a value of less than EUR 300 000

5.2.3.1 Competitive negotiated procedure

Works contracts under €300 000 are awarded by competitive negotiated procedure. At least three candidates are sent an invitation to tender. No 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 € 20 000 or less on the basis of a single tender.

5.2.5. Procedures applicable without ceilings

5.2.5.1 Negotiated procedure

DIRECT CENTRALISED MANAGEMENT

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

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

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

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

No prior approval by the European Commission is required.

Works contracts may be awarded by negotiated procedure on the basis of one or several tenders in the following cases:

- a) Where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time-limit for the competitive procedures (referred to in points (a), (b) and (c) of Article 111(1) of the Financial Regulation for Budget) cannot be kept.

Operations carried out in crisis situations as referred to in Article 190(2) of the Rules of Application for the Financial Regulations of Budget are considered to satisfy the test of extreme urgency (see Annex A11a);²⁹

- b) For additional works not included in the initial contract but which have, through unforeseen circumstances, become necessary for carrying out the works described therein subject to the following conditions:
 - where such works cannot be technically or economically separated from the main contract without serious inconvenience for the Contracting Authority;
 - where such works, although separable from the performance of the original contract, are strictly necessary to its completion;

The aggregate value of contracts awarded for additional works must not exceed 50 % of the value of the principal contract. See section 5.7.

- c) Where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the Contracting Authority may negotiate with one or more tenderers of its choice, from among those

²⁹ 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 mainly for actions which are not governed by Article 19c of Annex IV to the Cotonou Agreement. Emergency assistance is linked to the application of Articles 72 and/or 73 of the Cotonou Agreement (see Annex A11a).

that took part in the invitation to tender, and which comply with the selection criteria,³⁰ provided that the original terms of the contract 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 or when the protection of the essential interests of the European Union or the beneficiary country so requires.
- f) 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 contract award decision resulting from these negotiations. The procedures set out in sections 5.3.11.1. and 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 point 2.4.7. for further details.

5.3. International open tender (for contracts of € 5 000 000 or more)

5.3.1. Publicity

To ensure the widest possible participation in competitive tendering and the requisite transparency, a contract prior information notice and a contract notice must be published for every open tender procedure.

5.3.1.1 Publication of individual contract prior information notices

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

The prior information notices must give a brief indication of the subject and content of the tenders (see template in Annex D1). 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 EuropeAid website and in any other appropriate media.

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS,

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS Prior information notices must be submitted for publication to the relevant services of the European Commission in electronic form using the template in Annex D1 at least 15 days before the intended date of publication, to allow time for translation.

5.3.1.2 Publication of contract notices

³⁰ 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 point 2.4.11.1. for further details).

In addition to prior information notices, all works contracts of € 5 000 000 or more must also be the subject of a contract notice published in the Official Journal of the European Union, on the EuropeAid website and in any other appropriate media. A minimum of 30 days must be given between the publication of the contract prior information notice and 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 the EuropeAid website. The Contracting Authority must arrange local publication and publication in any other appropriate media directly.

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS Contract notices must be submitted for publication to the relevant services of the European Commission in electronic form using the template in Annex D2 at least 15 days before the intended date of publication, to allow time for translation.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS In addition, the finalised tender dossier (see point 5.3.2) must also 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 must state clearly, precisely and completely the subject of the contract and the Contracting Authority. If the contract notice is also published locally, it must be identical to the contract notice published on the EuropeAid website and appear at the same time.

The Contracting Authority must send tender dossiers to would-be tenderers upon request. Because of their size and printing costs, tender dossiers for works contracts are usually sent out for a fixed fee. The tender dossier will also be available for inspection at the premises of the Contracting Authority. If applicable, the complete bank details will be published in the contract notice to transfer the fee for purchase of the tender documents.

If the Contracting Authority, either on its own initiative or in response to the request of a tenderer amends information in the contract notice, a corrigendum with the changes must be sent to the relevant services of the European Commission for publication (see Annex A5b). The corrigendum may extend the deadline to allow candidates to take the changes into account.

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 Commission, it may be desirable for representatives of the final beneficiaries to participate in preparing the tender at an early stage. See section 2.6. 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 include:

- a) quality levels;
- b) environmental performance;

- c) wherever possible, accessibility criteria for people with disabilities or design for all users;
- d) the levels and procedures of conformity assessment;
- e) 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 procedures and methods;
- g) the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the Contracting Authority may require 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.

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 specialist(s). Each such specialist must sign a Declaration of Objectivity and Confidentiality (see Annex A3).

As with Terms of Reference for service contracts, particular care must be taken to drafting the Technical Specifications. They are the key to successful procurement, a sound works contract and a successful project.

The Technical Specifications state - where applicable, 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 CENTRALISED MANAGEMENTThe tender dossier must be approved by the relevant services of the European Commission. The standard practice is also to consult and obtain the approval of the beneficiary country, and where appropriate of other parties involved, on the tender dossier.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLSThe Contracting Authority must submit the tender dossier to the Delegation of the European Union for approval prior to issue.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

No prior approval 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 tenderer and tender 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 the Special Conditions, is 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 financial guarantee is required in return for pre-financing payment exceeding €300 000. However, when the contractor is a public body, the responsible authorising officer may waive that obligation, depending on his or her risk assessment. The guarantee will be released as and when the pre-financing is deducted from interim payments or payments of balances made to the contractor in accordance with the terms of the contract.

5.3.3. Selection and award criteria

The selection criteria concern the tenderer's capacity to execute similar contracts, with particular reference to works executed in recent years.

The selection procedure involves:

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

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

If, for some exceptional reason which the Contracting Authority considers justified, the tenderer or candidate is unable to provide the references required by the Contracting Authority, it may prove its economic and financial capacity by any other means which the Contracting Authority considers appropriate. Where the works to be implemented are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the Contracting Authority or on its behalf by a competent official body of the country in which the tenderer is established, subject to that body's agreement. These checks will cover the tenderer's technical

capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

The criteria should be precise, non-discriminatory and not prejudicial to fair competition. All criteria must be applied as specified in the tender dossier and cannot be changed during the procedure. 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. Given the wide variety of works and their technical nature, the criteria 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 requirements set out in the tender dossier.

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

5.3.4. Additional information during the procedure

The tender dossier must be clear enough to save tenderers having to request 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.

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

If the questions result in an amendment to the contract notice, a corrigendum must be published as explained in point 5.3.1. The deadline for the submission of tenders may be extended to allow tenderers to take account of the changes. The corrigendum must also be published on the EuropeAid website.

If the technical content of the tender is particularly 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 are not organised by the Contracting Authority for reasons of transparency and equal treatment of the tenderers.

5.3.5. Deadline for the submission of tenders

Tenders must reach the Contracting Authority at the address and by the date and time indicated in the tender dossier. The period for submission must be sufficient to guarantee the quality of tenders and so permit truly competitive tendering. Experience shows that too short a period prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders. The deadline should, if possible, be combined with the tender opening session.

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED 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, a shorter deadline may be given with prior authorisation of the relevant services of the European Commission.

DECENTRALISED 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 point 2.8.5.

5.3.7. Submission of tenders

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

5.3.8. The Evaluation Committee

For the committee's composition, impartiality and confidentiality, responsibilities and the timetable, see section 2.8.

DIRECT CENTRALISED MANAGEMENT

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

5.3.9. Stages in the evaluation process

5.3.9.1 Receipt and registration of tenders

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

5.3.9.2 Preparatory meeting

The first meeting of 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, 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 tender opening checklist in Annex D5 for the detailed formalities to be carried out by the Chairperson with the assistance of the Secretary.

DIRECT CENTRALISED MANAGEMENT

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

DECENTRALISED 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.

DECENTRALISED 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 point 2.8.2

The Committee must decide whether or not tenders comply with the formal requirements. The Summary of tenders received, which is attached to the Tender Opening Report (see Annex D6) must be used to record the compliance of each of the tenders with the formal submission requirements. It must be made available to the tenderers upon request.

Any tender guarantee must be returned to the tenderers which do not comply with the formal submission requirements. This implies that any tenders which arrive after the submission deadline must also be opened (after the opening session) so that the guarantees can be returned.

5.3.9.4 Evaluation of 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. No scoring method should be used. If the tender is divided into lots, the evaluation should be carried out lot by lot.

With the agreement of the other Evaluation Committee members, the Chairperson may write to tenderers whose submissions require clarification, asking them to reply within a reasonable deadline set by the Committee.

Part 1: Administrative compliance

Before conducting a detailed evaluation of the tenders, the Evaluation Committee checks that they comply with the essential requirements of the tender dossier (i.e. the administrative compliance grid).

A tender is deemed to comply if it satisfies all the conditions, procedures and specifications in the tender dossier without substantially departing from or attaching restrictions to them. Substantial departures or restrictions are those which affect the scope, quality or performance of the contract, differ widely from the terms of the tender dossier, limit the rights of the Contracting Authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply.

Each offer is examined for administrative compliance with the tender dossier in accordance with the published administrative compliance grid.

The administrative compliance of each of the tenders must be recorded in the Evaluation Report (see Annex D7).

Part 2: Technical compliance of tenders

The detailed technical evaluation of the tenders takes place after the administrative compliance check. The criteria to be applied are those published in the tender dossier and, accordingly, the evaluation grid included in the tender dossier must be used. Under no circumstances may the Committee or its members change the evaluation grid communicated to the tenderers in the tender dossier. The purpose of this evaluation is to assess whether or not the competing tenders meet the minimum technical requirements and selection criteria.

Rule of origin: All tenders must comply with the rule that goods purchased and materials to be incorporated in the permanent works fulfil the requirements referred to in point 2.3.1. Tenders which fail to satisfy the rule of origin must be rejected. The rule of origin does not apply to the contractor's equipment used during the construction, unless the tender dossier explicitly stipulates that this equipment becomes the full property of the Contracting Authority at the end of the contract. For more details, see point 2.3.1.

Nationality of subcontractors: The Evaluation Committee must check at this stage that the nationalities of subcontractors identified in the technical offers comply with the nationality rule in point 2.3.1.

Having evaluated the tenders, the Evaluation Committee rules on the technical compliance of each tender, classifying it as technically compliant or not technically compliant.

5.3.9.5 Evaluation of financial offers

Once the technical evaluation has been completed, the Committee checks that the financial offers contain no obvious arithmetical errors. Any obvious arithmetical errors are corrected without penalty to the tenderer. If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation 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 point 4.3.9.5.

5.3.9.6 Choice of contractor

The successful tenderer is the one submitting the least expensive tender classified as 'technically compliant' during the technical evaluation. It must be declared the successful tender if it is equal to or lower than the maximum budget available for the contract.

If the chosen tender exceeds the maximum budget available for the contract, the provisions set out in point 5.2.5.1(c) may apply. In the event of abnormally low tenders, the Evaluation Committee must request information on the breakdown of the financial offer. If, for a given contract, tenders appear to be abnormally low, the Contracting Authority must, before rejecting such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and verify those constituent elements, after due hearing of the parties, taking account of the explanations received.

The Contracting Authority may, in particular, take into consideration explanations relating to:

- a) the economics of the manufacturing process, of the provision of services or of the construction method;
- b) the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;
- c) the originality of the tender.

The justification for accepting or rejecting an abnormally low offer must be recorded in the Evaluation Report.

EDF-FUNDED PROGRAMMES

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

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

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

- they are submitted by the chosen contractor at the end of the evaluation; and
- they meet the requirements specified by the tender dossier, attaining at least the minimum quality and performance required by the technical specifications; and
- the price of the variant proposed is not higher than the price of the winning tender.

It is up to the Evaluation Committee to compare the variant and the original offer, and to recommend the best solution to the Contracting Authority.

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 which has submitted a tender:
 - which complies with the formal requirements and the eligibility rules;
 - whose total budget is within the maximum budget available for the project;
 - which meets the minimum technical requirements specified in the tender dossier; and
 - which is the least expensive tender (satisfying all of the above conditions).
- Cancel the tender procedure, see point 2.4.13.

DIRECT CENTRALISED MANAGEMENTThe entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex D7) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee. This must be submitted for approval to the relevant services of the European Commission, which must decide whether or not to accept its recommendations.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLSThe entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex D7) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee. This must be submitted for approval to the relevant services of the Contracting Authority, which must decide whether or not to accept its recommendations. In addition, the Contracting Authority must then submit the Evaluation Report together with its proposed decision to the European Commission for approval. If there is an award proposal and the European Commission has not already received a copy of the tenders, these must be submitted.

If the European Commission does not accept the proposed decision it must write to the Contracting Authority stating the reasons for its decision. The European Commission may also suggest how the Contracting Authority should proceed and give the conditions under which the European Commission

may endorse a proposed contract on the basis of the tender procedure.

If the European Commission approves the proposed decision, the Contracting Authority will either commence awarding the contract (see point 5.3.11) or cancel the tender, as decided.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS No prior approval from the European Commission is required before the Contracting Authority acts on the recommendations of the Evaluation Committee.

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

Subject to the Contracting Authority's legislation on access to documents, the entire tender procedure is confidential from the end of the tender opening session to the signature of the contract by both parties. The Evaluation Committee's decisions are collective and its deliberations must remain secret. The Evaluation Committee members and any observers are bound to secrecy. If the law of the country of the 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 point 2.4.13.

Tenderers are entitled to the immediate release of their tender guarantee. If the tender procedure is cancelled before opening session, the unopened and sealed envelopes must be returned to the tenderers.

5.3.11. Award of the contract

5.3.11.1 Notifying the successful tenderer

See section 2.9. and point 2.4.12. (for the suspension clause).

5.3.11.2 Contract signature

See section 2.9.

The proposed contract must follow Annex D4.

5.3.11.3 Publicising the award of the contract

See section 2.9.

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

DIRECT CENTRALISED MANAGEMENT, DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

In view of the characteristics of certain works, a restricted tender procedure may be used. The relevant

services of the European Commission must give prior approval for the use of this approach and may provide technical support on a case-by-case basis. **DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS**

No prior approval by the European Commission is required. If it intends to use this approach, the Contracting Authority must record its justification in the Evaluation Report and notify the European Commission accordingly.

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 prior information notices and contract notices for all work contracts of € 5000 000 or more.

5.4.1.1 Publication of individual contract prior information notice

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

The prior information notice is 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 (see Annexe D1). 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 individual contract prior information notice using the template in Annex D1 and for submitting it for publication on EuropeAid and in OJ to the European Commission in electronic form (see publication guidelines Annex A11e). If necessary, the contracting Authority arranges simultaneous local publication and publication in any other appropriate media directly.

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS,

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS Prior information notices must be submitted for publication to the relevant services of the European Commission in electronic form using the template in Annex D1 at least 15 days before the intended date of publication, to allow time for translation.

5.4.1.2 Publication of contract notices

Minimum 30 days after publication of the prior information notice, a contract notice must be published in the Official Journal of the European Union, on the EuropeAid website (at <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome>) and in any other appropriate media.

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

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

Contract notices must be submitted for publication to the relevant services of the European Commission

in electronic form, using the template in Annex D2, at least 15 days before the intended date of publication, to allow time for translation.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

In addition to the 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 must provide potential candidate 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 D4c)
- 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 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 EuropeAid website. The actual deadline will be determined by the contract's size and complexity.

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

The contract notice must be clear enough to avoid candidates from having to request clarification or additional information during the procedure. Candidates may however submit questions should they need to. If the Contracting Authority amends information in the contract notice, either in response to a question or on its own initiative, a corrigendum with the changes must be submitted for publication to the relevant service of the European Commission (see Annex A5b). The corrigendum will be published no later than seven days after the request for publication. The corrigendum must be published before the submission deadline and it 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 needs to be clarified but does not require an amendment of the contract notice, clarification must be published on the EuropeAid Webpage.

5.4.2. Drawing up shortlists

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 (with a minimum of five (5) possessing the technical and administrative capacities necessary to give an informed opinion on the applications. Each member must have a reasonable command of the language in which the applications are submitted. All members of the Evaluation Committee are obliged to sign a

Declaration of Impartiality and Confidentiality (see Annex A4). For the responsibilities of the Evaluation Committee members, see point 2.8.3.

DIRECT CENTRALISED MANAGEMENTThe Evaluation Committee (i.e. the Chairperson, the Secretary and the voting members) must be appointed on a personal basis by the European Commission.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLSThe 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 approval. The European Commission should participate as an observer. The membership of the committee is deemed to be approved if the European Commission does not object within five working days. As a general rule, the European Commission appoints an observer to attend all or part of the Evaluation Committee meetings. Prior approval must be sought from the European Commission for other observers to attend.

DECENTRALISED MANAGEMENT WITH EX-POST 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.

The selection procedure involves:

- drawing up a long list (see template in Annex D4) summarising all the applications received;
- eliminating candidates who are ineligible (see point 2.3.1.) or fall into one of the situations described in sections 2.3.3. and 2.3.5.;
- applying the selection criteria exactly as published.

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

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 2.4.11.; "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. Before accepting a reduced competition of less than four candidates, prior approval of the European Commission is required. This prior approval 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 shall be justified in the evaluation report.

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

Prior approval by the European Commission must be sought before inviting fewer than four candidates.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

No prior approval 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 D5).

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 Warning System.

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

DIRECT CENTRALISED MANAGEMENT The shortlist report must be submitted for approval 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;

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS The shortlist report must be submitted for approval 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 for approval.

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

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

No prior approval 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 D7. Candidates who are selected will receive a letter of invitation to tender and the tender dossier (see template in Annex B8). At the same time, the final shortlist must be published on the EuropeAid website.

The Contracting Authority is responsible for preparing the shortlist notice using the template in Annex D6 and for submitting it in electronic form to the European Commission for publication on the EuropeAid website at the time of tender launch.

If unsuccessful candidates request further information, they may be given any information which 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.

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.

The measures applicable to an open procedure, as described in sections 5.3.2.; to 5.3.11.3. apply by analogy to the rest of the restricted procedure for works contracts.

5.5. Local open tender (for contracts of at least € 300 000 and under € 5 000 000)

In this case, the publication of a prior information notice is not obligatory and the contract notice is not published in the Official Journal of the European Union, but only in the beneficiary country and on the EuropeAid website with the address from which firms can obtain further information. The contract notice for a local tender must, as a minimum, be published in the Official Journal of the beneficiary country or any equivalent media. Publication is the responsibility of the beneficiary 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 which 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 firms. No conditions seeking to restrict the participation of other eligible contractors are allowed (e.g. obliging such firms to be registered in the beneficiary country or to have won contracts there in the past).

In this procedure, there must be a minimum of 60 days between the date of publication of the contract notice in the local press and the deadline for receipt of tenders. However, in exceptional cases, a shorter deadline may be given, subject to prior authorisation of the relevant services of the European Commission.

If it proves impossible to identify potential tenderers in a local open tender procedure, a clarification/correction notice setting out any changes to the tender dossier must be published. The deadline for the submission of tenders may be extended to allow tenderers to take account of the changes. Any clarification given during the tender procedure must be published locally and on the EuropeAid website and a reference to it must be given in the Summary Contract notice (Annex D3).

The measures applicable to an international open procedure, as described in section 5.3. apply by analogy to the local open procedure. The principal difference is that the minimum number of voting members in the Evaluation Committee is three. The Contracting Authority may require a tender guarantee.

EDF-FUNDED PROGRAMMES

For works contracts of a value of € 5 000 000 or less, 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, are accorded a 10 % price preference where tenders of an equivalent economic and technical quality are compared.

5.6. Competitive negotiated procedure

The Contracting Authority may award contracts under € 300 000 by competitive negotiated procedure, without 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 firms which are invited to tender.

Tenders must reach the Contracting Authority at the address and by no later than the date and time shown in the invitation to tender. The chosen candidates must be allowed at least 30 days from the dispatch of the letter of invitation to tender in which to submit their tenders.

The tenders are opened and evaluated by an Evaluation Committee with the necessary technical and administrative expertise, appointed by the Contracting Authority.

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

In the event of one failure of the competitive negotiated procedure, the contract may be concluded by negotiated procedure subject to prior approval of the relevant services of the European Commission. The remainder of the procedure (including preparation of the tender dossier, evaluating the tenders and awarding the contract) is the same as under the international open procedure (see points 5.3.2. to 5.3.11.2.). No tender guarantee is required in that case.

The Contracting Authority may award works contracts of a value of € 20 000 or less on the basis of a single tender. See point 2.4.8.

EDF-FUNDED PROGRAMMES

For works contracts of a value of € 5 000 000 or less, tenderers from the ACP States are accorded a 10 % price preference where tenders of an equivalent economic and technical quality are compared, provided that at least one quarter of the capital stock and management staff originates from one or more ACP States.

5.7. Modifying works contracts

See section 2.10. for 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 which are the sole result of the measured actual quantity exceeding the stated bill of quantities or price schedule do not represent a change of the contract and do not require an administrative order 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.

A contract addendum or administrative order cannot be used to obtain additional works which are not necessary for the completion of the initial contract.

Administrative order

In a works contract, the supervisor has the power to issue an administrative order 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 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. For additional works not included in the initial contract which, through unforeseen circumstances, become necessary for carrying out the contracted works, an addendum can be concluded under the conditions given in point 5.2.5.1 b).

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.

DECENTRALISED 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 applicant and the co-applicant(s) are hereinafter jointly referred as the applicants.

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 Union budget or the EDF given to a specific grant beneficiary to finance:

- either an action intended to help achieve a Union policy objective (Action Grant);
- or the operation (i.e. the running costs) of an entity which pursues an aim of general European interest and supports a European Union policy (Operational Grant).

The body(ies) signing a grant contract is known as the grant beneficiary(ies) and should not be confused with the beneficiary country, the final beneficiary of the operation³¹ nor with the target group.³² These could be entities involved in education, training, information, innovation or research and study on European policies, any activities contributing to the promotion of citizenship or human rights, or a European standards body; or a legal entity representing non-profit bodies active in the Member States or in the candidate countries and promoting principles and policies consistent with the objectives of the Treaties.

Grants should be distinguished from other legal commitments in external actions and the correct rules applied accordingly. A grant contract differs from a procurement contract in a number of ways:

31 "Final beneficiaries" are those who will benefit from the project in the long term at the level of the society or sector at large

32 "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	Object	Proposal from an applicant to contribute to the achievement of an policy objective through: - a project (i.e an action grant); or - the functioning costs of the applicant (i.e. an operating grant)
Contracting Authority	Owner of Results	Grant beneficiary
100% of the cost	Financial contribution	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	Profit	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 beneficiary's activities. This is in contrast to a procurement contract, in which the Contracting Authority draws up the terms of reference for a project it wants to be carried out.

The applicant may act individually or with co-applicant(s): however, if awarded the Grant contract, both the 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 which 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 point 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 point 6.3.10), unless the objective is to reinforce the financial capacity of a beneficiary or generate income for external action. The non-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.

No grant contract can be signed unless the action meets the above requirements.

The following, amongst others, are not grants under the Union's financial regulation³³:

- programme estimates;
- procurement contracts³⁴
- macro financial assistance, budgetary and debt relief support
- payments made to bodies to which budget implementation tasks are delegated under Articles 58, 59 and 60 of the Financial Regulation governing the General Budget and Article 25(3) of the 10th EDF Financial Regulation (e.g. International Organisations, National Agencies of the Member States or third countries etc)
- financial instruments within the meaning of articles 139 and 140 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

In principle, grants paid under decentralised, indirect centralised, or under financing agreements, programme estimates and other agreements with the bodies referred to in Articles 25-28 of the 10th EDF Financial Regulation are covered by the rules set out in this chapter.

6.2. Forms of grants

The grant is 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 Proposal. The maximum and minimum amounts of the contribution are also defined in the Call for Proposal.

The contribution of the Contracting Authority is a reimbursement of eligible costs established on the basis of:

- actual costs incurred by the Grant Beneficiary(ies)
- one or more simplified cost options

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 Proposal are respected.

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 6.2.1.)

6.2.1. Simplified cost options

Simplified cost options may take the form of unit costs, lump sums and/or flat-rates. They are fixed during the contracting phase, and are meant to simplify the management of the grant. Please refer to Annex E3a2 Guidelines-Checklist for simplified cost options for more complete information.

At proposal stage the applicants may propose this form of reimbursement for some costs, and the Contracting Authority will decide whether to accept them. Simplified cost options can apply to one or

³³ see art.121-2 Financial Regulation for complete list.

³⁴ Financial Regulation art. 101

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.

As a general rule the total amount of financing on the basis of simplified cost options that can be authorised by the Contracting Authority (excluding the indirect costs) cannot exceed EUR 60 000 per each grant beneficiary (including simplified cost options proposed by its own affiliated entities).

However a European Commission's decision could set different conditions that will be reflected in the Call for Proposal as appropriate³⁵.

Per each of the corresponding budget item or heading the applicants must:

- describe the information and methods used to establish the amounts of unit costs, lump sums and/or flat-rates, to which costs they refer, etc
- clearly explain the formulas for calculation of the final eligible amount
- identify the beneficiary who will use the simplified cost option (in case of affiliated entity, specify first the beneficiary), in order to verify the maximum amount per each beneficiary (which includes if applicable simplified cost options of its affiliated entity(ies))

The amounts have to be based on estimates using objective data such as statistical data or any other objective means or with reference to certified or auditable historical data of the applicants. The methods used to determine the amounts of unit costs, lump sums or flat-rates must comply with the criteria established in Annex E3a2 Guidelines-Checklist for simplified cost options, and especially ensure that they correspond fairly to the actual costs incurred by the Grant Beneficiary (or affiliated entities), are in line with its accounting practices, no profit is made and do not cover costs already covered by other sources of funding (no double funding). The Annex E3a2 Guidelines-Checklist for simplified cost options contains directions and a checklist of controls to assess the minimum necessary conditions that provide reasonable assurance for the acceptance of the proposed amounts.

Once the amounts have been assessed and approved by the Contracting Authority (as clearly laid down in the Budget of the Action³⁶), 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 formulas 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 to 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 art. 16 of the General Conditions. This means that the beneficiary has to keep supporting documents establishing that the grant has been effectively implemented.

If a verification/audit reveals that the formulas used by the beneficiary to determine unit costs, lump sums or flat-rates are not compliant with the conditions established or the generating events have not occurred and therefore an undue payment has been made to the beneficiary, the Contracting Authority may recover up to the amount of the simplified cost options.

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

³⁵ The Applicant may be authorised by the Contracting Authority to use simplified cost options in the Budget for amounts up to EUR 60 000 per each Beneficiary, and by European Commission's decision above EUR 60 000.

³⁶ see example in Annex E3a2 Guidelines-Checklist for simplified cost options

must generally involve co-financing. The amount specified in the grant contract as eligible for financing may not be exceeded.

As a 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 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

See section 2.2.; for an explanation of the different management modes for Union external action.

The differences relating to grants are as follows:

DIRECT CENTRALISED MANAGEMENT

Grants are awarded by the European Commission, which is responsible for publishing work programmes, issuing calls for proposals, receiving proposals, chairing Evaluation Committees, deciding on the results of calls for proposals and signing the contracts.

DECENTRALISED 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 beneficiary country with legal personality with which the European Commission concludes the financing agreement.

Before launching calls for proposals, the Contracting Authority must submit the work programme and, where appropriate, the Guidelines for Applicants to the European Commission for approval.

On the basis of decisions thus approved, the Contracting Authority is responsible for publishing work programmes, issuing calls for proposals, receiving proposals, chairing Evaluation Committees and deciding on the results of calls for proposals. The Contracting Authority must submit the Evaluation Report, details of the proposed grants and, where 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 section 4.2.3. of 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 work programmes, 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.

Any derogations and exceptions specifically provided for by this Practical Guide are subject to prior approval by the European Commission.

DECENTRALISED 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 beneficiary country with legal personality with which the European Commission concludes the financing agreement. It is responsible for publishing the work programme, issuing calls for proposals, receiving proposals, chairing Evaluation Committees, deciding on the results

of calls for proposals and signing the contracts without the prior approval of the European Commission.

The Contracting Authority must submit the work programmes, Guidelines for Applicants and grant award notices to the European Commission for publication.

6.3.2. Management Tools

DIRECT CENTRALISED MANAGEMENT

PADOR (Potential Applicant Data Online Registration) is a database on organisations applying for grants which is also intended to improve service to them. It is aimed at non-state actors and local authorities (not individuals) that apply for Union funding through calls for proposals. These organisations can register and update their generic data (i.e. those not specific to a given Call for Proposals) and to upload their supporting documents (for instance statutes or an equivalent document).

Once registered in PADOR, the applicants do not need to fill in the general sections of the Grant Application Form or submit supporting documents, as the data should be in PADOR but they must ensure that the information in PADOR is up to date.

Each call for proposals needs to specify whether prior registration in PADOR is obligatory or not.

For further information, see http://ec.europa.eu/europeaid/work/onlineservices/pador/index_en.htm, where you can find:

- the PADOR Quick guide for applicants
- the PADOR Quick guide for partners (applicable for affiliated entity(ies))
- Frequently Asked Questions.

In case PADOR on-line registration is impossible because of technical difficulties, the applicants may submit, together with the application, the PADOR off-line form following the instructions given in the guidelines for applicants

For direct centralised management, in CRIS, there is a Call for Proposals Module available to ease the evaluation procedure. The use of this module is obligatory at least for registering applications. This module will also be used to publish general statistics about the calls for proposals.

6.3.3. Eligibility criteria

6.3.3.1 Nationality rule

See point 2.3.1.

Participation in the award of grants contracts is open on equal terms to all natural and legal persons and, after prior approval by the European Commission, to entities which 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. Applicants must furthermore be established in an eligible country in accordance with the basic act governing the programme in question.

6.3.3.2 Exceptions to the nationality rule

See point 2.3.2. Exceptions to the nationality rule must be stated in the Guidelines for Applicants and are subject to prior approval by the European Commission. Restrictions to the nationality rule are not allowed

as such; however, if provided for in the relevant basic act, on the basis of the objectives of the programme, scope and the particular location of the action(s), the eligibility of the applicants may in practice be limited. For example, if the objective of the programme is to establish cooperation between European universities and those from a specific geographical region, by definition only universities from Europe and that specific region may apply.

6.3.3.3 Grounds for exclusion

Natural or legal persons are not entitled to participate in calls for proposals or be awarded grants if they are covered by any of the situations listed in point 2.3.3. A declaration to this fact must be provided for in any grant above €60.000 (i.e. not for "low value grants", see 6.5.).

6.3.4. Programming

Grants must be programmed by the Contracting Authority with clearly defined objectives.

Before starting the implementation of the work programme, it must be published, by budget heading or programme, on the EuropeAid website, the internet site of the Contracting Authority or any other appropriate media, as appropriate, following the template in Annex E1.

Any substantial change in the work programme during the relevant period must also be adopted and published under the same conditions as the initial work programme.

DIRECT CENTRALISED MANAGEMENT

The work programme is adopted by the European Commission and published on the EuropeAid website as soon as possible, and no later than 31 March of each financial year, save in case the annual action plan is not yet adopted at that time.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

The work programme is adopted by the Contracting Authority and published on its Internet site (or any other appropriate media) and on the EuropeAid website as soon as possible, and no later than 31 March of each financial year.

The Contracting Authority must submit the work programme to the European Commission for approval before publishing it.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

The work programme is adopted by the Contracting Authority and published on its Internet site (or any other appropriate media) and on the EuropeAid website as soon as possible, and no later than 31 March of each financial year.

6.3.5. Transparency

The availability of grants must be publicised widely and in an easily accessible way.

The work programme is implemented by publishing calls for proposals save in duly substantiated, exceptional cases of urgency or where the characteristics of the beneficiary make it the sole choice for a given action (see point 6.4.2.).

All grants awarded in the course of a financial year will be published annually with due observance of the requirements of confidentiality and security .

6.3.6. Equal treatment

The grant award process must be completely impartial. This means that the proposals must be evaluated by an Evaluation Committee, with the advice of assessors where appropriate, using published criteria (see point 6.5

.3.).

6.3.7. Non-cumulation

No beneficiary may receive more than one grant from the European Union for the same action, unless otherwise provided in the basic act concerned. Under the direct centralised management system, however, an action may be financed jointly from separate budget lines by a number of authorising officers.

A beneficiary may be awarded only one operating grant financed by the European Union per financial year.

The applicants must specify in the application form of any applications and awarded grants relating to the same action or to the same work programme.

6.3.8. Non-retroactivity

Grants may, as a rule, only cover costs incurred after the date on which the grant contract is signed.

Exceptionally, a grant may be awarded for an action which has already begun only 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 proposals or grant applications (for direct awards) is, as a general rule, not eligible for financing.

The acceptance of costs from an earlier date³⁷ (before submission of proposals) is possible only in duly substantiated exceptional cases, specifically provided for in the basic act concerned and/or in case of extreme urgency for crisis management aid, civil protection operations and for humanitarian aid operations and for prevention of conflicts:

- a) where the expenditure relates to the constitution of stocks by the applicants for use in connection with the action for which the grant is awarded; or
- b) by way of exception and for duly justified reasons. In this case, the financing decision must explicitly provide for this by setting an eligibility date earlier than the date for submission of applications

The contract for an operating grant must be awarded within 6 months from the start of the beneficiary's budget year. Costs eligible for financing may not have been incurred before the grant application was lodged or before the start of the beneficiary's budget year.

No grant may be awarded retroactively for actions already completed.

6.3.9. Co-financing

As a general rule, a grant may not finance the entire cost of the action or the entire operating expenditure of a beneficiary body, with the following exceptions.

³⁷ which could be an even earlier date than the that of the financing decision

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. Prior approval must be sought before any decision is made.

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 peoples;
- Action resulting from the implementation of financing agreements or action with international organisations.
- Where it is in the interests of the Union to be the sole donor to an action, and in particular to ensure visibility of a Union action. Grounds must be provided in the European Commission's financing decision.

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 beneficiary³⁸. For the purpose of the non-profit rule (see 6.3.10.) in kind contribution are not taken into account.

If contributions in kind are accepted as co-financing, the Beneficiary(ies) shall ensure they comply with national tax and social security rules.

The beneficiary has to declare the co-financing actually provided in the final report. The beneficiary(ies) may at that point replace an eventual planned contribution from its own resources by financial contributions from third parties.

For low value grants (i.e. any grant up to € 60.000):

- Proof of co-financing is not required
- Refusal of co-financing in kind – if proposed but not considered appropriate or necessary - should be clearly justified.

6.3.10. Non-profit rule

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.

³⁸ Nevertheless, actual costs generated by the acceptance, distribution, warehousing etc of in kind contributions may be eligible if complying with art.14 of the General Conditions.

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 request for payment of the balance is made by the Coordinator that fall within one of the two following categories:

- (i) income generated by the action, unless otherwise specified in the Special conditions of the Contract;
- (ii) financial contributions specifically assigned by the donors to the financing of the same eligible costs financed by the Grant. Any financial contribution that may be used by the Beneficiary(ies) to cover costs other than those eligible under a contract or that are not due to the donor where unused at the end of the action are not to be considered as a receipt to be taken into account for the purpose of verifying whether the grant produces a profit for the Beneficiary(ies).

In case of an operating grant, amounts dedicated to the building up of reserves shall 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 shall 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-Checklist 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 Union contribution to the eligible costs approved.

The no profit rule does not apply to:

- 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
- b) actions which generate an income to ensure their continuity beyond the end of the Contract. Where applicable, this must be specified in Article 7 of the Special Conditions
- c) other direct support paid to natural persons in most need, such as unemployed persons and refugees. Where applicable, this must be specified in Article 7 of the Special Conditions
- d) study, research or training scholarships paid to natural persons
- e) grants of €60.000 or less

6.3.11. Other essential points

See point 2.3.6.

Contingency reserve :

A reserve for contingencies and/or possible fluctuations in exchange rates not exceeding 5 % of the direct eligible costs may be included in the budget for external Actions given the specificity and the higher level of unpredictability of external actions.

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 point 6.4.2. below.

6.4.1.1 Publication

A call for proposals is always published on the EuropeAid website.

A call for proposals must also be published locally where it is not organised by a service of the European Commission headquarters.

6.4.1.2 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 proposal.

In exceptional cases, and via a prior approval, calls for proposals may be open, i.e. all applicants are free to submit a grant application, where a concept note must be submitted together with the full application but where the evaluation process is still carried out in two steps (shortlisting on the basis of the concept note), in response to the published Guidelines for Applicants (see point 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 Union delegations). In this case, prior approval must be sought.

6.4.1.3 Partnerships

Grant contracts may form part of framework partnership agreements with a view to establishing long-term cooperation with the Contracting Authority. Framework agreements specify the common objectives, the nature of actions planned on a one-off basis or as part of an approved work programme, the procedure for awarding specific grants, in compliance with the principles and procedural rules in this Guide, and the general rights and obligations of each party under the specific contracts. The duration of the partnership may not exceed four years, save in exceptional cases, justified in particular by the subject of the framework partnership. Framework partnership agreements are treated as grants for the purposes of the award procedure.

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

Prior approval by the relevant services of the European Commission must be sought for the use of a framework partnership agreement.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

No prior approval by the European Commission is required for the use of a framework partnership agreement.

6.4.2. Grants awarded without calls for proposals ('Direct award')

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

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

The negotiation report (Annex A10a) must be submitted for approval to the relevant services of the European Commission, which must decide whether or not to accept the negotiation result.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

No prior approval 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).

In the following circumstances it is not necessary to organise a call for proposals before awarding grants:

- for the purposes of humanitarian aid and civil protection operations or for crisis management aid. Actions carried out in crisis situations must follow the procedures and definition provided for in Annex A11a. This provision is *mutatis mutandis* applicable to EDF-funded programmes.
- under emergency assistance provided for in Articles 72 and/or 73 of the Cotonou Agreement (see Annex A11a);
- 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 one of the grant beneficiary, (or it may also be a consortium):
 - 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.
- for actions with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power, on condition that the actions concerned do not fall within the scope of a call for proposals. These cases shall be duly substantiated in the award decision.
- where the grant is to be awarded to a body identified by the relevant basic act, 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.
- 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.

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). 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).

The procedures described in sections 6.5.10. must be followed by analogy, with the report referred to in the previous paragraph being included in the contract dossier.

6.5. Call for proposals

6.5.1. Publicity

In order to ensure the widest possible participation and the requisite transparency, every call for proposals must be accompanied by Guidelines for Applicants.

The Guidelines are published on the EuropeAid website and in any other appropriate media (other websites, specialised press, local publications, etc.). They should also be available in hard copy from the Contracting Authority. They should be available in the languages appropriate to the call for proposals.

The European Commission is responsible for publishing the Guidelines on the EuropeAid website. 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 Internet.

Since the cost of publishing the entire Guidelines in the local press might be prohibitive, the template in Annex E2 prescribes the minimum information which is required for local publication. The Guidelines must be available at the address stated in the local publication.

It is also advisable, after the launch of the call for proposals, to hold one or more information sessions which all the potential applicants can attend. Such information sessions should take place at the latest 21 days before the deadline for submissions of the concept notes. Any presentation/documentation to be delivered in the information session must also be uploaded at least on the EuropeAid website where the call was published. The dates, locations and presentations for information sessions on centralised 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.

6.5.2. Drafting and contents of the Guidelines for Applicants

The Guidelines for Applicants (which include the Application Form and other annexes) explain the purpose of the call for proposals, the rules on eligibility of applicants, the types of action and costs which are eligible for financing, and the evaluation (selection and award) criteria (see template Guidelines). 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 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. The published information becomes binding on the Evaluation Committee after the deadline for submissions.

The Application to be completed by the applicants comprises the following parts:

- a concept note
- information about the action proposed, including the budget
- information about the applicants

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

The Guidelines for Applicants must be approved by the Contracting Authority prior to issue.

DECENTRALISED 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 issue.

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 for 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 points 6.2.3.1. (Rules on Nationality) and 6.2.2.3. (Grounds for Exclusion). If a Call for Proposals relates to actions that might or needs to be implemented by more entities, the minimum, maximum or the recommended number of entities and the eligibility criteria applicable to each entity may be specified. The eligibility criteria applicable to the applicants and to the affiliated entity(ies) may differ.
- Eligibility of the action: this refers to the types of activities, sectors or themes and geographical areas covered by the call for proposals.

6.5.3.2 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 applicant's financial capacity as well as the applicant and the co-applicant(s)'s (if any) operational capacity to complete the proposed action: the applicants must have stable and sufficient sources of funding to keep operating throughout the action period and to participate, where appropriate, in its funding. Applicants and their affiliated entity(ies) must also have the necessary professional competencies and qualifications to complete the proposed action.

Assessments are made on the basis of the supporting documents submitted in the context of the call for proposal. These may include an external audit report of the applicant, the profit and loss account and the balance sheet for the last financial year for which the accounts have been closed. In case of doubts about the capacity of the applicants, the Evaluation Committee may ask for additional proofs.

Natural persons in receipt of scholarships, public bodies and international organisations do not need to submit documentary proof of their financial capacity.

- 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 which it can be confident will comply with its objectives and priorities and guarantee the visibility of the 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 publication and the deadline for the submission of proposals, in addition to any information session held (see point 6.4.1.), applicants should be able to ask questions to help them fill in the form and put together their applications. The Contracting Authority should therefore provide a contact point to which questions may be addressed. Applicants may submit questions in writing up to 21 days before the deadline for the submission of proposals. The Contracting Authority must reply to all such questions at least 11 days before the deadline for submission of proposals. In the interests of equal treatment of applicants, the Contracting Authority cannot give a prior opinion on the eligibility of an applicant(s), an affiliated entity(ies), an action or specific activities.

In the interests of transparency and equal opportunities, the answer provided to applicants on points which may be of interest to other applicants should be made available to all applicants. The way to achieve this is to publish on the Europeaid website a table containing all the questions and answers provided. This table must be updated regularly until 11 days before the deadline for submission of proposals.

6.5.5. Deadline for submission of proposals

Proposals must be submitted to the Contracting Authority at the address and, at the very latest, by the date (and time, for hand-delivery) indicated in the call for proposals, 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 or applications 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 first evaluation step. For an open procedure, this first step is the approval of the concept note evaluation. For a restricted procedure the first step is either the approval of the concept note evaluation (first stage) or the approval of the evaluation of the full application (second stage).

The deadline for submission must be long enough to allow for high-quality proposals. Experience shows that too short a deadline may prevent potential applicants from submitting proposals or cause them to submit incomplete or ill-prepared proposals.

The minimum period between the date of publication of the Guidelines 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 € 100 000 or less, the minimum period is 60 days. In exceptional cases, a shorter deadline may be allowed as a derogation.

6.5.6. Submission of proposals

Proposals must be submitted in accordance with the instructions given in the Guidelines for Applicants (see template Guidelines).

The Authorising Officer responsible for an individual call for proposals has the discretion to decide whether to request supporting documents with the application form from all the applicants or only from applicants which have been provisionally selected after the evaluation (a prior approval should then be requested). Even if this does not change the basic principle that the supporting documents will be examined only for the provisionally selected applicants, the Guidelines for Applicants and the application form should be amended accordingly. No supporting document will be requested for applications for low value grants.

Originals or photocopies of originals of the requested supporting documents must be provided. If the supporting documents are not written in one of the official languages of the European Union or (if

applicable) of the country of implementation of the Action, a translation into the language/one of the languages of the call for proposals of the relevant excerpts of these documents showing proof of the applicants' eligibility may be requested for the purposes of interpreting the proposal.

For actions grants exceeding € 750 000 and for operating grants of over € 100 000, the Coordinator must provide an audit report produced by an approved external auditor certifying its accounts for the last financial year available.

Exceptions:

The 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 and beneficiaries that have accepted joint and several liabilities or who do not bear any financial responsibility, if the agreement is concluded with a number of beneficiaries.

The applicants shall indicate the sources and amounts of 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 unding received or applied for the same action.

DIRECT CENTRALISED MANAGEMENT

The supporting documents required by a specific call for proposals must be uploaded in PADOR by the time limit given by the European Commission.

6.5.7. The Evaluation Committee

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 (minimum of three). In the case of direct award of grants (see section 6.3.2.)³⁹, it is not compulsory to set up an evaluation committee. The voting members 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 an EU delegation). Substitutes for the members can be appointed on the same conditions as the members where the size and/or technical nature of the call for proposals justify this or in order to prevent delays in case of unavailability.

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

The Evaluation Committee (i.e. the Chairperson, the Secretary and the voting members) must be appointed by name by the Contracting Authority. Participation by observers must be authorised in advance by the Contracting Authority.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

39 Including grants to the European Investment Bank, the European Investment Fund or any other subsidiary of that bank

The members of the Evaluation Committee (i.e. the Chairperson, the Secretary and the voting members), are appointed by name by the Contracting Authority, which informs the European Commission at the latest fifteen working days before the start of the evaluation. If the European Commission does not object within five working days, the 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 approval by the European Commission.

The Evaluation Committee members should attend all meetings, except the opening meeting. Any absence must be recorded and explained in the Evaluation Report. A member who withdraws from the Evaluation Committee for whatever reason must be replaced by a replacement 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 given in the Evaluation Report.

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

The Evaluation Committee should be formed early enough to ensure that the members (and any observer appointed by the European Commission, in the case of decentralised management with ex-ante controls) are available in time to prepare and conduct the evaluation process.

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, all or part of the detailed examination may be carried out by assessors so that the Evaluation Committee may conduct its deliberations on the basis of their assessments. Assessors may attend the meetings of the Evaluation Committee as observers to present the results of their assessments and answer any questions from Committee members.

If assessors are not used, the Evaluation Committee completes one collective evaluation grid for each respective step of the procedure.

Assessors work under the supervision of the Chairperson of the Evaluation Committee. Although the same assessors may be used for the different stages, different types of expertise are required for the different assessments and it is recommended to use different persons wherever possible.

Where the call for proposals is organised by a service of the European Commission headquarters, one of the two assessors will be the delegation of the country where the action is to take place (for regional actions it is the lead delegation — or, as appropriate, headquarters — which will consult the EU delegations concerned in the region where appropriate). The person who will carry out the assessment on behalf of the delegation will be nominated in accordance with the applicable instructions on the nomination of Evaluation Committees by the head of delegation. If assessors are not used, the EU delegation should nevertheless be duly consulted.

- For the administrative and eligibility checks, the assessors should check each proposal against the Checklist and the Declaration by the applicant (see the Application Form). Each proposal need only be checked by one assessor.

It is preferable to delegate this work to the Contracting Authority's staff. Outside assessors may be recruited as required.

- For the evaluation of concept notes and proposals, assessors should write an assessment using the published evaluation grids (see template evaluation grids). At least two assessors must assess each concept note and each proposal, working independently of each other. The two assessors should preferably be chosen from among European Commission staff. Where there are not

enough available European Commission staff, 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 five years' experience of a particular issue should be expected.

DIRECT CENTRALISED MANAGEMENT.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

The assessors are selected by the Contracting Authority. Outside assessors who are not officials or other staff of the Contracting Authority or the public administration of the beneficiary country must be selected using the procedure for service contracts, i.e. in accordance with the applicable thresholds.

DECENTRALISED 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 are not officials or other staff of the Contracting Authority or the public administration of the beneficiary country must be selected using the relevant procedure for service contracts.

6.5.7.3 Impartiality and confidentiality

See point 2.8.2.

6.5.7.4 Responsibilities of the Evaluation Committee

See point 2.8.3.

6.5.8. Stages in the evaluation process

The evaluation process starts with the receipt of the concept notes (for restricted calls for proposals) or the full proposals (for open calls for proposals) 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

On receiving proposals, the Contracting Authority must register them and provide a receipt for those delivered by hand (see Annex A7). The envelopes must remain sealed and be kept in a safe place until they are opened.

6.5.8.2 Opening session and administrative checks

All proposals received should be opened in an opening session at which the registration details are checked and the proposals numbered.

The secretary to the Evaluation Committee supervises the opening session and requests the assistance of other staff of the Contracting Authority if need be.

The register of concept notes/proposals should contain the following information:

- the registration number of the concept note/proposal
- the date of submission
- the 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.

The proposals that met the deadline are then subject to an administrative check to assess whether they state ‘yes’ to all the criteria mentioned in the checklist (Part 2.13 of the grant application form). Under no circumstances may assessors or members of the Evaluation Committee change the checklist.

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 an obvious 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 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 tender. If clarification is sent, the Evaluation Committee may use its discretion in deciding whether it should be evaluated, while ensuring equal treatment of proposals and proportionality. Whatever the Evaluation Committee decides, this must be fully recorded and reasons given in the Evaluation Report(s) (see point 2.8.3.).

The Contracting Authority must keep proposals not considered for further evaluation.

The administrative checks may be carried out by members of the Evaluation Committee or by one or more assessors.

If the members of the Evaluation Committee do not carry out the check themselves, the Evaluation Committee must review the conclusions of the assessor(s) using the completed grids. To facilitate the Committee’s review of the assessments, the Secretary must ensure that one list is drawn up containing proposals which did not comply with the administrative checks. Reasons must be given for each entry on the list.

Following the opening session and the administrative checks, the Evaluation Committee meets to decide on any contentious case 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 which duly passed the administrative checks are then evaluated for the relevance and design of the action, using an evaluation grid (see Annex E5_a). 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.

Where the call for proposals is organised by a headquarters service of the European Commission, a copy of each concept note must be sent to the European Union delegation in the country where the proposed action is to take place, for assessment on the basis of the same evaluation grid (see Annex E8).

The Secretary then draws up a list of all the concept notes, ranked by score. As a first step, only the concept notes which receive a score of 30 points in the evaluation are considered for pre-selection. Secondly, the list of concept notes will be reduced according to the ranking to no less than twice the available budget for the call. The completed evaluation grids for each concept note must be sent to the Evaluation Committee, if assessors are used.

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

The Evaluation Report on step 1 (the opening session, the administrative checks and the concept notes) is

submitted to the Contracting Authority, which must then decide whether to accept the recommendations of the Committee.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

In addition to the above, the Contracting Authority must then submit the Evaluation Report to the European Commission for approval.

Following the evaluation of the concept notes, the Contracting Authority sends a letter to the applicant who submitted the application, stating whether it passed the opening and administrative checks and giving the results of the concept note evaluation.

6.5.8.4 Evaluation of the full application form

For restricted procedures, the opening session and administrative checks described in section 6.5.8.2. are undertaken before the full application is evaluated.

The quality of the full applications is assessed using the evaluation grid (see Annex E5_b) containing the selection and award criteria. Comments are made for each subheading on the basis of the questions and criteria used for that heading. 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.

Where the call for proposals is organised by a headquarters service of the European Commission, a copy of each application form must be sent to the European Union delegation in the country where the proposed action is to take place, for assessment on the basis of the same evaluation grid (see Annex 8).

The Secretary then draws up a list of all the proposals, ranked by score. The completed evaluation grids for each proposal and must be sent to the Evaluation Committee.

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

The Evaluation Report on the application forms (Step 2) is submitted to the Contracting Authority, which must decide whether to accept the recommendations of the Committee.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

In addition, the Contracting Authority must then submit the Evaluation Report to the European Commission for approval.

Once the required approvals have been received, the Contracting Authority must send a standard letter to the applicants, stating whether their proposal has passed the opening and administrative checks (in restricted procedures) and whether they have been provisionally selected according to their score, and inviting those whose proposals have been provisionally selected to supply the required supporting documents.

6.5.8.5 Eligibility checks

This assessment is carried out using the Declaration by the Applicant, the required supporting documents and the criteria set out in the Guidelines for Applicants. Under no circumstances may assessors or members of the Evaluation Committee change the Declaration.

- Is the Declaration by the 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 proposal should still be evaluated, in the interests of equal treatment and proportionality. Whatever the Evaluation Committee decides, this must be fully recorded and reasons given in the Evaluation Report (see point 2.8.3.).

- Eligibility: are the applicants' and action 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.

While the eligibility checks are normally carried out only for the provisionally selected applicants at the end of the procedure, the Committee may decide to check eligibility at any previous step in the procedure. In the interests of good administrative practice, the Evaluation Committee can check and then exclude applicants at any stage of the evaluation if it is obvious that the latter does not meet the eligibility criteria.

If the members of the Evaluation Committee do not carry out the assessment themselves, the Evaluation Committee must review the conclusions of the assessors using their completed grids. To facilitate the 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.

6.5.8.6 The Evaluation Committee's conclusions

The Evaluation Committee drafts its recommendations after the assessors have examined all the proposals. It must not change the assessors' scores or recommendations and must not alter the evaluation grids completed by the assessors.

The Evaluation Committee may decide to approve the ranking drawn up by the Secretary on the basis of the assessors' report. If the Committee does not accept the scores awarded by the assessors to a proposal, (being the most justifiable case where 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 prepare a new, collective evaluation grid for the proposal concerned, taking into account the points below. A new list will produced on the basis of the scores from the new evaluation, which replace those given by the assessors.

All such decisions must be recorded and fully substantiated in the Evaluation Report. The evaluation grids completed by the members of the Evaluation Committee must be kept with those completed by the assessors.

The Evaluation Committee's decisions are taken independently and in an advisory capacity. The Evaluation Committee must ultimately draw up a list of the proposals selected for financing, indicating the score obtained by each proposal, the 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 proposals obtaining the best scores, ranked by order, within the limits of the funds available under the call for proposals.

- The Committee may recommend the selection of a proposal under certain conditions that should be met prior to contract signature. Any such conditions, however, should not call into question the grant award decision or be contrary to the equal treatment of applicants (see point 6.4.10.2.)
- The Committee may decide not allocate all the available funds if it finds that there are too few proposals of the quality required to receive a grant. In other words, the mere availability of funds should not lead to the award of proposals that do not reach the necessary level of quality.

- The Committee may draw up a list by subject or geographical area according to the Guidelines for Applicants.
- The Committee may reject a proposal if it has selected another which is of a similar nature but has been awarded a higher score.
- Where several proposals submitted by the same applicant are selected for financing, but the applicant does not have the financial and operational capacity required to implement all the actions together, the Committee may reject the proposals which have been awarded a lower score, and select the proposals that the applicant has the capacity to implement.

The Committee may also draw up, in the same conditions, a ranked reserve list comprising a limited number of proposals that obtained the best scores after those selected for financing. This reserve list is valid for the period stated in the evaluation report. The proposals 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 proposals fall, 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 CENTRALISED MANAGEMENT,

DECENTRALISED 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 voting members of the Evaluation Committee. This must be submitted for approval to the Contracting Authority, which must decide whether or not to accept its recommendations.

DECENTRALISED 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 Delegation of the European Union for approval.

If the Contracting Authority confirms that no modifications have been given (either in the special conditions or in the proposed contract annexes) from the standard contract conditions annexed to the Guidelines for Applicants, the European Commission's approval of the Evaluation Report, including the list of award proposals 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 point 6.4.10.).

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 Committee in the report in respect of a particular proposal.

Subject to the Contracting Authority's legislation on access to documents, the entire procedure, from the drawing-up of the call for proposals to the selection of successful applicants, is confidential. The Evaluation Committee's decisions are collective and its deliberations must remain secret. The committee members are bound to secrecy. 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 conduct of the planned actions impossible;
- there have been irregularities in the procedure, in particular where these have prevented equal treatment.

DIRECT CENTRALISED MANAGEMENT,

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

The responsibility for cancelling a call for proposals procedure lies with the Contracting Authority.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

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

If, after a prior approval, a call for proposals is cancelled, all applicant must be notified of the cancellation by the Contracting Authority but will not be entitled to compensation.

The Contracting Authority must then send a cancellation notice to the relevant services in the European Commission for publication on the EuropeAid website.

6.5.10. Awarding grants

6.5.10.1 Notification of applicant

DIRECT CENTRALISED MANAGEMENT,

Notifications to the successful applicants (for multi-beneficiary actions it is not necessary to inform also the co-applicant(s)) on the outcome of the evaluation of their applications must take place 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 postponed.

DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS

After the Contracting Authority has given its official approval to the final list of grants to be awarded, it notifies all successful applicants (in case of multi-beneficiary Action it is sufficient to inform only the applicant and it is not necessary to also inform the co-applicant(s)) in writing that their applications have been selected.

It must also send the unsuccessful applicants a standard letter informing them that they have not been selected and specifying the reasons.

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.

DECENTRALISED MANAGEMENT WITH EX-ANTE CONTROLS

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

Letters to successful applicants must be sent within 15 days of the award decision: unsuccessful applicants (in case of multi-beneficiary Action it is sufficient to inform only the applicant) must be notified on the outcome of the evaluation of their applications within 15 days of the notification to the successful applicants.

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 point 2.9.2.

The budget proposed for the action by the successful applicant at the call for proposals stage must be corrected to remove any obvious arithmetical errors or ineligible costs prior to signing the contract. The description of the action is corrected accordingly if need be.

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 which 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 co-financing fixed by the Evaluation Committee for the Union contribution. In this respect, records of the contacts with the applicants must be kept on the file.

In direct centralized 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 circumstance, 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 in 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 EU contribution from the first runner in 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 their 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, 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 EU financing, etc.).

If needed, the same will be done with the subsequent applicants on the reserve list (3rd, 4th, 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 EU 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 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. Affiliated entities are:
 - (i) legal entities satisfying the criteria for being awarded a grant eligibility and non-exclusion and together forming one legal entity, including where it is specifically established for the purpose of implementing the action.

In this case, the latter (i.e. the resulting legal entity formed by all other entity) may be considered as a single applicant.
 - (ii) legal entities having a link with the applicant, notably a legal or capital link, which is neither limited to the action nor established for the sole purpose of its implementation on the condition that they satisfy the eligibility and non-exclusion criteria of an applicant.
- 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 question the award of the contract) and do not result in a change of more 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 point 2.3.5.).

6.5.11.1 Publicising the award of grants

Once the contracts have been signed, the Contracting Authority drafts a notice of award for each call for proposals (see award notice, Annex E11). It immediately sends it in electronic form to the European Commission for publication on the EuropeAid website.

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).

At the end of each year, the Contracting Authority also prepares and submits to the European Commission for publication a summary table based on the format in the annex to the Practical Guide (Annex E11 including the table 'Grants made without a call for proposals').

The Contracting Authority also publishes this information on its own Internet site and/or any other appropriate media.

The European Commission may authorise the Contracting Authority to waive the above obligations if publication of the information might threaten the safety of the beneficiaries or harm their business interests.

6.6. Low value grants

Low value grants are those grants which 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 need for the applicant to submit evidence of no exclusion situation.
- 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.
- No proof necessary to show compliance with the no profit rule.

6.7. Restricted call for proposals

The measures applicable to an open call for proposals, as described in section 6.4., apply by analogy to a restricted call for proposals, with the following exceptions.

In a restricted call for proposals, the Guidelines for Applicants ask applicants to submit a concept note.

The administrative checks on the concept notes, and then on the full application forms, are made using the relevant checklists.

The Guidelines for Applicants state that a specific number of applicants, based on the available budget, will be invited to submit a final proposal. A list restricted to the published number is drawn up, consisting of the applicants with the best scores for the concept notes, ranked in order. A report is drafted to document the results of the opening session and administrative checks and the concept note evaluation.

The shortlisted applicants are then invited in writing to submit a full application form. The eligibility checks are only made on the proposals that have been provisionally selected at the end of the evaluation, on the basis of the supporting documents requested by the Contracting Authority and of the Declarations by the Applicant, according to the rules set out in the Guidelines for Applicants and within the available budget for the call.

The information assessed on the basis of the concept note may not be changed by the applicants in the full application form. The Union contribution requested for the action may not differ from the initial estimate by more than 20 %. Should the Union contribution requested differ from the initial estimate, the difference between the Union contribution and the total cost of the action must remain within the limits imposed by the Guidelines for Applicants.

The minimum period from the date of publication of the Guidelines to the deadline for submission of preliminary proposals is 45 days. The minimum period from the dispatch of the letter of invitation to submit final forms to the deadline for submission of proposals is 45 days. In exceptional cases, an exception may be given for a shorter deadline.

6.8. Modifying grant contracts

6.8.1. General principles

See point 2.10.1.

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, shall not have the purpose or the effect of making such changes to the contract that would call into question the grant award decision or be contrary to the equal treatment of applicants.

The maximum amount of the grant and the maximum percentage of the European Union co-financing may not be increased.

6.8.2. Preparing an addendum

See point 2.10.2.

6.9. Award of contracts & financial support to third parties by grant beneficiaries

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 contract award procedures 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 Union/EDF financing.

However, these contracts may only cover a limited portion of the Action.

If the action requires financial support to be given to third parties, it may be given on condition that:

- before awarding the grant, the contracting authority has verified that the grant beneficiary offers adequate guarantees as regards the recovery of amounts due to the European Commission;
- the conditions for giving such support are strictly defined in the grant contract to avoid the exercise of discretion by the grant beneficiary. This would include specifying the types of entities which are eligible for the support, the award criteria (including the criteria for determining the exact amount) and a fixed list of the different types of activity that may receive such financial support;
- the maximum amount of financial support that can be paid does not exceed €60.000 per third party, except where the financial support is the primary aim of the action. In that case, no limits apply.

In the case of EDF, in accordance with art. 116.2.a of the 10th EDF FR, sub-granting cannot be the primary aim of the action.

6.10. Grants to international organisations and national bodies

6.10.1. Grants to international organisations

If, as the result of a call for proposals under direct centralised or decentralised management, the beneficiary of a grant is an international organisation, this Chapter applies in full (including, for instance, the principles referred to in point 6.2.4. and section 6.8. including the restriction on grant redistribution, and the award procedures set out in section 6.3.).

Under Article 43 of the Rules of application of the Union Financial Regulation, ‘international organisation’ means an international public-sector organisation set up by intergovernmental agreement, and specialised agencies set up by such organisations — these organisations may have worldwide or regional scope. Organisations created under national law are not international organisations (e.g. 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 ascertained mainly on the basis of its legal instruments (for instance, its statutes and/or the intergovernmental agreement setting it up).

The following organisations are explicitly stated in Article 43 of the Rules of application of the Financial Regulation, to be international organisations: the International Committee of the Red Cross (ICRC) and the International Federation of National Red Cross and Red Crescent Societies (note that national organisations of the Red Cross or Red Crescent are not regarded as international organisations).

Other non-profit organisations can be assimilated to international organisations by a Commission decision.

➤ *Method of implementation and procedures*

The European Commission (College) is responsible for deciding in the financing decision on the specific implementation mode of the action.

If, as a result of a call for proposals (launched under direct centralised or decentralised management) or as a result of a direct award, an international organisation has been awarded a grant, the financial

contribution provided to it is a grant - and not a contribution under joint management. Therefore the standard grant contract (Annex E3h1) should be signed.

The standard grant contract includes provisions aimed at taking into account existing agreements between the international organisation concerned and the European Union and/or the compliance with the international standards verified in the pillar assessment (internal control system, external audit, procurement procedures and accounting system)⁴⁰.

6.10.2. Grants to national bodies

Grants awarded to national public bodies within the meaning of Articles 58(1)(c) v, vi, of the Union Financial Regulation and 25(3)(b) of the Financial Regulation for the 10th EDF must follow the normal grant rules and procedures set out in this Chapter and the model grant contract.

They may also benefit from other special rules applicable to public-sector bodies (for instance, being allowed to waive financial guarantee or, to apply their own procurement procedures - '*where the Beneficiary or a partner is a contracting authority and/or a contracting entity within the meaning of the Community Directives applicable to procurement procedures, it must apply the relevant provisions of those texts*').

The Delegation Agreement with national bodies, by which the European Commission delegates budget-implementation tasks to these bodies so they act as the Contracting Authority, can only be applied to contributions under indirect centralised management. Likewise the standard contribution agreement with international organisations, the Delegation Agreement does not comply with the rules and principles applicable to grants. Hence, the Delegation Agreement cannot be used to award a grant to national bodies.

⁴⁰ The European Commission recognises that international organisations complying with international standards are different from other entities (e.g. NGOs) and hence, in view of such differences, a different type of contract recognising their particularities may be used (cf. agreements concluded between the European Commission and international organisations, the treatment of international organisations in the Financial Regulations (Budget and EDF), etc.).

7. Legal Texts

7.1. Legal framework for procurement procedures

7.1.1. Budget-funded programmes

The following legal framework applies to contracts for services, supplies and works financed by the general budget of the European Union, concluded in the course of Union cooperation with third countries and awarded by a Contracting Authority of the beneficiary country, or by the European Commission for and on behalf of the beneficiary:

- Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (and in particular Chapter III of Title IV of Part Two, which concerns special provisions on procurement in external action), as amended by Commission Regulation (EC, Euratom) No 1995/2006 of 13 December 2006;
- Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the abovementioned Financial Regulation, (and in particular Chapter III of Title III of Part Two, which concerns special provisions on procurement in external action), as amended by:
 - Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005;
 - Commission Regulation (EC, Euratom) No 1248/2006 of 7 August 2006;
 - Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007;
- The Regulations⁴¹ and other specific basic acts relating to the various cooperation programmes.

The following are also applicable:

- The Framework Agreement signed by the Union and the beneficiary country concerned, if such an agreement exists. This agreement contains the rules for administrative cooperation between the two bodies for the implementation of external aid.
- The Financing Agreement signed by the Union and the beneficiary country concerned for each EU-funded programme. This sets out the programme objectives and budget.
- Rules and procedures for service, supply and works contracts financed from the general budget of the European Communities in the course of cooperation with third countries [C (2007) 2034], adopted by the European Commission on 24 May 2007.
- This Practical Guide together with the standard documents and templates in the annexes to it.

7.1.2. EDF-funded programmes

The following legal framework applies to contracts for services, supplies and works financed by the European Development Fund:

41 Such as Regulation (EC) No 450/2008 of the European Parliament and of the Council 23 April 2008 laying down the Community Customs Code (Modernised Customs Code), which lays down the rules regarding the origin of products.

- the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000, as amended by the Agreement amending the ACP-EC Partnership Agreement signed in Luxembourg on 25 June 2005 and in Ouagadougou on 22 June 2010 and Annex IV;
- Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community (Overseas Association Decision), as amended by Council Decision 2007/249/CE of 19 March 2007;
- Annex V to Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 concerning the procedural rules on conciliation and arbitration;
- Council Regulation (EC) No 215/2008 of 18 February 2008 on the Financial Regulation applicable to the 10th European Development Fund.

The following are also applicable:

- The Financing Agreement signed by the EU and the beneficiary country concerned for each EU-funded programme. This sets out the programme objectives and budget.
- This Practical Guide together with the standard documents and templates in the annexes to it.

7.2. Legal framework for grant procedures

7.2.1. Budget-funded programmes

The following legal framework applies to grant contracts financed by the European Union and concluded in the course of cooperation with third countries:

- Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (and in particular Title VI of Part One, on grants, and Chapter IV of Title IV of Part Two, which concerns special provisions for grants in external action), as amended by Commission Regulation (EC, Euratom) No 1995/2006 of 13 December 2006;
- Commission Regulation No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the Financial Regulation (and in particular Title VI of Part One, on grants, and Chapter IV of Title III of Part Two, which concerns special provisions for grants in external action), as amended by:
 - - Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005;
 - - Commission Regulation (EC, Euratom) No 1248/2006 of 7 August 2006;
 - - Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007;
- the regulations or decisions of the Council, referred to as ‘basic acts’ in the Financial Regulation and this Practical Guide, and other specific instruments relating to the various cooperation programmes.

7.2.2. EDF-funded programmes

The following legal framework applies to grant contracts concluded under the 10th EDF:

- The ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000, as amended by the Agreement amending the ACP-EC Partnership Agreement signed in Luxembourg on 25 June 2005 and in Ouagadougou on 22 June 2010
- Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community (Overseas Association Decision).
- The Council Regulation (EC) No 215/2008 of 18th of February 2008 on the Financial Regulation applicable to the 10th European Development Fund, in particular Title VII of Part One on grants.

The following are also applicable:

- The Financing Agreement signed by the EU and the beneficiary country concerned for the programme, where such an agreement exists. This sets out the programme objectives and budget.
- The Practical Guide together with the standard documents and templates in the annexes , which include the standard grant contract for external action (see Annex E3), and standard documents for calls for proposals (see Annex E1, Annex E2 and Annex E3).

The rules and procedures laid down by the European Commission for grant management under the 10th EDF are consolidated in this Practical Guide and must be applied whenever such grants are concerned.

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C4j	Administrative Compliance Grid	c4j_admingrid_en.doc
C4k	Evaluation Grid	c4k_evalgrid_en.doc
C4l	Tender submission form	c4l_tenderform_en.doc
C4 m	Tax and Custom Arrangements (Annex V)	c4m_taxcustomsarrangements_en.doc
C4n	Tender Guarantee	c4n_tenderguarantee_en.doc
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.doc
C6	Tender opening report	c6_openreport_en.doc
C7	Evaluation report	c7_evalreport_en.doc
C8a	Notification Letter to tenders	c8a_notifletter_supply_en.doc
C8b	Letter to unsuccessful tenderers	c8b_letterunsuccessful_en.doc
C9	Contract award notice	c9_awardnotice_en.pdf
C10	Contractor assessment form	c10_assessment_en.doc
C11	Provisional and Final Acceptance	c11_provfinalaccept_en.doc
C12	Addendum to contract	c12_addendum_en.doc
C13	Budget modification	c13_budgetmodif_en.doc

D	Works	
D1	Individual contract prior information notice	d1_priorinfo_en.pdf
D2	Contract notice	d2_contractnotice_en.doc
D3	Summary Contract notice – Local Advertisement	d3_summarycn_en.doc
D4	Standard tender dossier (including standard contract)	

	VOLUME 1	
	Section 1	
D4a	Letter of invitation to tender	d4a_invit_en.doc
D4b	Instructions to tenderers	d4b_itt_en.doc
	Section 2	
D4c	Tender Form	d4c_tenderform_en.doc
	Section 3	
D4d	Tender Guarantee	d4d_tenderguarantee_en.doc
	Section 4	
D4e	Technical Offer Questionnaire	d4e_techofferquestion_en.doc
D4f	Technical Offer Form 4.1	d4f_techofferform_4.1_en.doc
D4g	Technical Offer Form 4.2	d4g_techofferform_4.2_en.doc
D4h	Technical Offer Form 4.3	d4h_techofferform_4.3_en.doc
D4i	Technical Offer Form 4.4	d4i_techofferform_4.4_en.doc
	Technical Offer Form 4.5	
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_4.6_en.doc
	Section 5	
D4l	Administrative Compliance Grid	d4l_admingrid_en.doc
D4m	Evaluation Grid	d4m_evalgrid_en.doc
	VOLUME 2	
D4n	Draft contract	d4n_contract_en.doc

D4o	Draft contract: Special Conditions	d4o_specialconditions_en.doc
D4p	Draft contract: General Conditions	d4p_annexgc_en.pdf
D4q	Pre-financing Guarantee	d4q_prefinanceguarantee_en.doc
D4r	Performance Guarantee	d4r_perfguarantee_en.doc
D4s	Retention Guarantee	d4s_retentionguarantee_en.doc
D4t	Tax and Custom Arrangements	d4t_taxcustomsarrangements_en.doc
	VOLUME 3	
D4u	Technical Specifications	d4u_techspec_en.doc
	VOLUME 4	
D4v	Financial Interpretative Note	d4v_finoffer_4.1_en.doc
D4w	Financial Offer Lump Sum Contracts	d4w_finoffer_4.2_en.doc
D4x	Financial Offer Unit Price Contracts	d4x_finoffer_4.3_en.doc
	VOLUME 5	
D4y	Design Drawings	d4y_designdrawing_en.doc
D5	Tender opening checklist	d5_openchecklist_en.doc
D6	Tender opening report	d6_openreport_en.doc
D7	Evaluation report	d7_evalreport_en.doc
D8	Letter to unsuccessful tenderers	d8_letterunsuccessful_en.doc
D8a	Notification letter	d8a_notifletter_works_en.doc
D9a	Contract award notice : only for international calls	d9a_awardnotice_en.pdf
D9b	Contract award notice for local calls	d9b_awardnoticemanual_en.doc
D10	Contractor assessment form	d10_assessment_en.doc
D11	Addendum to contract	d11_addendum_en.doc
D12	Budget modification	d12_budgetmodif_en.xls

DR1	Tender dossier for restricted tender procedure	dr1_tender_dossier_restr_en.zip
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E	Grants	
E1	Work programme	e1_workprogr_en.doc
E2	Local publication	e2_localpub_en.doc
E3	Guidelines for grant applicants	
E3a	Guidelines for Applicants	e3a_guidelines_en.doc
E3a1	Information on the tax regime applicable to grant contracts	e3a1_guidelines_annexJ_en.doc
E3a2	Checklist for simplified cost options	e3a2_checklistsimplifiedcostoptions_en.doc
E3b	Application form	e3b_applicform_en.doc
E3c	Budget	e3c_budget_en.xls
E3d	Logical Framework	e3d_logframe_en.doc
E3e1	Legal Entity File (individual)	e3e1_lefind_en.pdf
E3e2	Legal Entity File (private companies)	e3e2_lefcompany_en.pdf
E3e3	Legal Entity File (public bodies)	e3e3_lefpublic_en.pdf
E3f	Financial identification form	e3f_fif_en.pdf
E3h1	Special conditions	e3h1_speccond_en.doc
E3h2	General conditions (annex II)	e3h2_gencond_en.doc
E3h3	Contract-award procedures (annex IV)	e3h3_awardproc_en.doc
E3h4	Request for payment (annex V)	e3h4_requestpay_en.doc
E3h5	Interim narrative report (annex VI)	e3h5_interreport_en.doc
E3h6	Final narrative report (annex VI)	e3h6_finalreport_en.doc
E3h7	Financial report (annex VI)	e3h7_financialreport_en.xls
E3h8	Expenditure verification (annex VII)	e3h8_expendverif_en.doc

E3h9	Financial guarantee (annex VIII)	e3h9_finguarantee_en.doc
E3h10	Transfer of Ownership of Assets	e3h10_transferassetownership_en.doc
E3h11	Derogations International Organisations	e3h11_derogations_ios_en.doc
E4a	Terms of Reference for Assessors	e4a_torassessors_en.doc
E4b	Guidelines for Assessors	e4b_guidelinesassessors_en.doc
E5a	Concept note evaluation grid	e5a_conceptevalgrid_en.doc
E5b	Evaluation grid full application form	e5b_propevalgrid_en.doc
E6a	Evaluation Report Step 1 — Opening and & administrative checks and Concept Note Evaluation	e6a_opening_conceptevalrep_en.doc
E6b	Evaluation report Step 2 — Full application evaluation	e6b_applicevalrep_en.doc
E6c	Evaluation report Step 3 — Final eligibility checks	e6c_finalevalrep_en.doc
E8	Letter to Delegation evaluation	e8_note_delegation_evaluation_en.doc
E9a	Letter Step 1	e9a_letter_step_1_en.doc
E9b	Letter Step 2	e9b_letter_step_2_en.doc
E9c	Letter Step 3	e9c_letter_step_3_en.doc
E10	Addendum to contract	e10_addendum_to_contract_en.doc
E11	Publication of award	e11_publication_of_award_en.doc