

Practical Guide
to
contract procedures
financed from the General
Budget of the European
Communities in the context
of external actions



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1 INTRODUCTION

This Practical Guide explains the contracting procedures which apply to EC external aid contracts. It provides the procedures to be used in practice in centralised systems, decentralised systems with ex-ante approval by the European Commission and in decentralised systems with ex-post controls.


It incorporates the relevant provisions of the Financial Regulation and its implementing rules and of the Commission decision on the rules and procedures for service, supply and works contracts financed from the general budget of the European Communities in the context of cooperation with third countries as adopted by the European Commission on 25 March 2003.

The procedures and standard documents for awarding service, supply and works contracts set out in this Practical Guide and its annexes are applicable to all EC external aid programmes other than those operating in the ACP countries as from 31 May 2003.

In the context of the SAPARD¹ programme, the provisions of this Practical Guide apply to decentralised management referred to in Article 164(1) of the Financial Regulation, as specified in the financing agreements established with the beneficiary third countries and in accordance with the principles defined in Article 167(2) of the Financial Regulation.


Parts 2, 3, 4 and 5 concern service, supply and works contract award procedures, while part 6 covers the award of grants. Annex A1 contains a glossary of the terms used in the Guide.

The Guide does not cover contracts awarded by the Commission on its own account. These come under Title V, Chapters 1 and 2, of the Financial Regulation and Commission services should use in-house contract procedures and models to deal with them.

	<ul style="list-style-type: none">❑ All references to days in this Practical Guide should be interpreted as calendar days (unless otherwise specified).❑ Unless the context otherwise requires, words in the masculine gender include the feminine gender and vice versa and words in the singular include the plural and vice versa.❑ The person responsible for monitoring the implementation of a project on behalf of the Contracting Authority is referred to as the Project Manager.
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¹ Regulations 1266/1999, 1268/1999 and 2222/2000

	<p>□ References to the Contracting Authority in this Guide mean:</p> <ul style="list-style-type: none">* the European Commission, acting for and on behalf of the beneficiary country, in the case of centralised programmes* the Contracting Authority appointed by the government of the beneficiary country, in the case of decentralised programmes
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	<p>All projects funded by the European Communities are subject to audit at any stage, whether during the award process, during execution of the project or once the project has been completed.</p> <p>The Contracting Authorities must keep all the documents relating to the award of contracts for a period of seven years from payment of the balance. These documents must be made available for inspection by the European Commission and the European Court of Auditors.</p>
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2 BASIC RULES FOR SERVICE, SUPPLY & WORKS CONTRACTS

2.1 OVERVIEW

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

Where contracts for services, supplies and works financed by the Community and concluded in the course of Community cooperation with third countries financed by the general budget of the European Union are awarded by a Contracting Authority of the beneficiary country or by the Commission for and on behalf of the beneficiary, procurement procedures are governed by the following legal framework:

- Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, and in particular Title IV of Part Two thereof, which specifically concerns external action;
- Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, and in particular Chapter III of Title III thereof, which specifically concerns procurement aspects of external action;
- the Regulations and other specific instruments relating to the various cooperation programmes.

This Guide governs the award of service, supply and works contracts financed by the general budget of the European Communities, with the exception of contracts for which the Commission acts as Contracting Authority on its own account. The award of service, supply and works contracts financed by the European Development Fund is covered by a separate guide.


This Guide does not apply to operations carried out under Council Regulation (EC) No 1257/96². Such operations are governed by the abovementioned Regulation and the resulting special Framework Partnership Contract, in accordance with Article 184 of the implementing rules. Nor do they apply to the Contracting Authorities referred to in Article 167(1)(b) of the Financial Regulation where, following the checks referred to in Article 33, the Commission has authorised them to use their own procurement procedures under decentralised management.

In the context of the SAPARD³ programme, the provisions of this Practical Guide apply to decentralised management referred to in Article 164(1) of the Financial Regulation, as specified in the financing agreements established with the beneficiary third countries and in accordance with the principles defined in Article 167(2) of the Financial Regulation.

The following are also applicable:

- The Framework Agreement signed by the EC and the beneficiary country concerned, if such an agreement exists. This agreement contains the rules for administrative cooperation between the two bodies for the implementation of External Aid.
- The Financing Agreement signed by the EC and the beneficiary country concerned for each EC-funded programme. This sets out the programme objectives and budget.
- The general regulations for service, supply and works contracts financed from the general budget of the European Communities in the course of cooperation with third countries [SEC (2003) 387/2], adopted by the European Commission on March 25, 2003.
- The standard documents and templates in the annexes to this Practical Guide, which include the standard tender documents for service contracts (see Annex B9), supply contracts (see Annex C4) and works contract (see Annex D4).

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

	Before initiating any tender procedure, the service, supply or works to be contracted must have been approved in a Financing Agreement and the funds must be available, except in the case of procedures with "suspension clause".
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² OJ L 163, 2.7.1996, p. 1-6. Council Regulation of 20 June 1996 concerning humanitarian aid.

³ Regulations 1266/1999, 1268/1999 and 2222/2000

2.2 CENTRALISED AND DECENTRALISED CONTROLS

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

- Centralised: the European Commission is the Contracting Authority and takes decisions for and on behalf of the beneficiary country. In this case, actions to be performed by the Contracting Authority throughout this Practical Guide should be interpreted as being carried out by the European Commission, acting for and on behalf of the beneficiary country.
- Decentralised:
 - Ex-ante: decisions concerning the procurement and award of contracts are taken by the Contracting Authority and referred for approval to the European Commission. Details are specified throughout this Practical Guide
 - Ex-post: decisions foreseen in the Financing Agreement are taken by the Contracting Authority without prior reference to the European Commission (apart from exceptions to the standard procedures given in this Practical Guide).

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

The interventions of the Commissions' representatives within the decentralised procedures for the conclusion or implementation of the contracts financed in the context of external actions are only to see whether or not the conditions for the Community financing are met. They will not, in any case, have as an objective nor as a possible effect, the attempt against the principle by which the decentralised contracts become national contracts that are only prepared, elaborated and concluded by the decentralised Contracting Authority. The tenders and candidates for these contracts cannot be considered as beneficiaries of the acts carried out by the Commissions' representatives for the implementation and conclusion of the contracts. They must only hold a legal bound with the decentralised Contracting Authority and the Commissions' representatives acts may not cause the substitution of a Contracting Authority's decision by a decision taken by the Community.


In all cases, the Contracting Authority assumes full responsibility for its actions and will be accountable for these in any subsequent audit or other investigation.

This guide includes the procedures to be observed in all three cases under the following headings:

CENTRALISED
Procedures to be followed under a centralised programme.
DECENTRALISED: EX-ANTE
Procedures to be followed under a decentralised programme with ex-ante controls
DECENTRALISED: EX-POST
Procedures to be followed under a decentralised programme with ex-post controls

2.3 ELIGIBILITY CRITERIA AND OTHER ESSENTIALS

2.3.1 THE RULE ON NATIONALITY AND ORIGIN

	<p><u>Nationality:</u></p> <p>Participation in tendering procedures is open on equal terms to all persons coming within the scope of the Community Treaties and, in accordance with the specific provisions in the basic instruments governing the cooperation sector concerned, to all such natural and legal persons who are nationals of the beneficiary third countries or of any other third country as are expressly mentioned in those instruments. See Annex A2 for the list of countries for each aid programme or instrument.</p> <p>In duly substantiated exceptional cases, it may be decided, on the basis of the specific conditions laid down in the basic acts governing cooperation, to allow third-country nationals other than those referred to in the previous paragraph to tender for contracts. Where an agreement on widening the market for procurement of goods or services to which the Community is party applies, the contracts for procurement financed by the budget are also open to third-country nationals other than those referred to in the previous two paragraphs, under the conditions laid down in this agreement.</p> <p>This nationality rule also applies to the experts proposed by service providers taking part in tender procedures for service contracts financed by the European Community. For the purposes of verifying compliance with the nationality rule, the tender dossier requires tenderers to state the country of which they are nationals by presenting the documents usual under that country's law.</p>
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If the Contracting Authority suspects that a candidate/tenderer has only a registered office in an eligible country or state and that the nationality of the candidate/tenderer is ineligible, the candidate/tenderer is responsible for demonstrating effective and continuous links with that country's economy. This is to avoid awarding contracts to firms whose nationalities are ineligible but which have set up 'letter box' companies in an eligible country to circumvent the rules on nationality.



Rule of origin: All supplies and equipment purchased under a supply contract must originate in the EU or in an eligible country, as defined in the nationality rule above. The same goes for supplies and equipment purchased by a contractor for works or service contracts if the supplies and equipment are destined to become the property of the beneficiary country once the contract is completed.

In its tender, a tenderer must state the origin of supplies. Contractors must present a certificate of origin to the Contracting Authority when bringing supplies into the beneficiary country, when provisional acceptance of the supplies takes place or when the first invoice is presented. The contract will specify which of these options is applicable.

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

It is up to the Contracting Authority to check that there is a certificate of origin. Where there are serious doubts about origin, it will be up to the European Commission's services in Brussels to decide on the course of action.

2.3.2 EXCEPTIONS TO THE RULE ON NATIONALITY AND ORIGIN

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

- (a) With regard to nationality, the European Commission may exceptionally allow nationals of countries other than those stipulated in the applicable Regulation to participate in tenders and contracts, on a case-by-case basis.

- (b) With regard to the origin of supplies, the same exception applies as under (a). Note, however, that the frequently used argument that a product of ineligible origin is cheaper than the Community or local product does not constitute grounds for awarding a derogation.

If the award of contract is preceded by a tender procedure, the derogation must be mentioned in the procurement notice.

2.3.3 GROUNDS FOR EXCLUSION

Candidates or tenderers will be excluded from participation in a procurement procedure if:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

- (b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;

- (c) they have been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;

- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Contracting Authority or those of the country where the contract is to be performed;

- (e) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

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

The Contracting Authority will accept, as satisfactory evidence that the candidate or tenderer is not in one of the situations described in (a), (b) or (e), production of a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The Contracting Authority will accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in (d), a recent certificate issued by the competent authority of the Member State concerned. Where no such certificate is issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in its country of origin or provenance. Depending on the national legislation of the country in which the tenderer or candidate is established, the above documents relate to legal persons and/or natural persons including, where considered necessary by the Contracting Authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.

Candidates or tenderers who have been notified the award of a contract must supply the proof usual under the law of the country in which they are established that they do not fall into the categories listed above. The date on the evidence or documents provided must be no earlier than 180 days before the deadline for submission of tenders. Tenderers must, in addition, provide a sworn statement that their situations have not altered in the period that has elapsed since the evidence in question was drawn up. If the supporting documents are written in a language other than the language(s) of the call for tenders, a faithful translation into one of those languages must be attached which will apply for the purposes of interpreting the application or the bid.

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

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

- (a) are subject to a conflict of interest;
- (b) are guilty of misrepresentation in supplying the information required by the Contracting Authority as a condition of participation in the contract procedure or fail to supply this information.

2.3.4 ADMINISTRATIVE AND FINANCIAL PENALTIES

Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have been guilty of making false declarations or have been found to have seriously failed to meet their contractual obligations in an earlier procurement procedure will be excluded from the award of all contracts and grants financed by

the Community budget for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor. That period may be extended to three years in the event of a repeat offence within five years of the first infringement.

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

In the cases referred to in Article 93(1)(a), (c), (d) and (f) of the Financial Regulation, the candidates or tenderers will be excluded from the award of all contracts and grants for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor.

In the cases referred to in Article 93(1)(b) and (e) of the Financial Regulation, the candidates or tenderers will be excluded from the award of all contracts and grants for a minimum of one year and a maximum of four years from the date of notification of the judgment.

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

The cases referred to in Article 93(1)(e) of the Financial Regulation are the following:

(a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995;⁴

(b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997;⁵

(c) cases of participation in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council;⁶

(d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC.⁷

⁴OJ C 316, 27.11.1995, p.48.

⁵OJ C 195, 25.6.1997, p.1.

⁶OJ L 351, 29.12.1998, p. 1. Joint Action of 21 December 1998 making it a criminal offence to participate in a criminal organisation in the Member States of the European Union.


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


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

2.3.5 VISIBILITY


Unless otherwise requested or agreed by the European Commission, contractors for services, supplies or works must take the necessary measures to ensure the visibility of the EU financing or co-financing. Such measures must be in accordance with the applicable rules on the visibility of external action laid down and published by the Commission. These rules are set out in the EU guidelines on visibility available from the following Internet address: (http://europa.eu.int/comm/europeaid/visibility/index_en.htm).


2.3.6 OTHER ESSENTIALS


	<p><u>Fair competition</u>: To avoid any conflict of interest, any firm (including firms within the same legal group, other members of the same consortium, and subcontractors) or expert participating in the preparation of a project must be excluded from participating in tenders based on this preparatory work.</p>
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	<p><u>Awarding principles</u>:</p> <p>All contract awards, partially or totally financed by the Community Budget, must respect the principles of transparency, proportionality, equal treatment and non-discrimination.</p> <p>The best tender complying with the selection and award criteria must be selected.</p>
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⁷OJ L 166, 28.6.1991, p. 77. Directive of 10 June 1991, as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 (OJ L 344, 28.12.2001, p.76).

	<p><u>No retroactive awards:</u> Contracts are considered to take effect from the date of signature of the last signatory. Contracts or contract addenda cannot be awarded retroactively under any circumstances. This means that no disbursements can be effected and no goods and services provided prior to the signature of the contract and/or addendum.</p> <p>All contracts must show the true dates of signature of the contracting parties.</p>
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	<p><u>Use of standard documents:</u> Standard contracts and document formats (as provided in the Annexes) must be used.</p>
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	<p><u>Record keeping:</u> Written records of the entire tendering and contracting procedure must be kept confidential and retained by the Contracting Authority for a period of seven years from payment of the balance. These must include the originals of all tenders submitted, together with the corresponding tender dossiers and any related correspondence.</p>
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2.4 CONTRACT AWARD PROCEDURES

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

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

The applicable regulations oblige the European Commission and the Contracting Authority to guarantee the widest possible participation, on equal terms, in tender procedures and contracts financed by the Community. There are several different procedures for awarding contracts, each allowing for a different degree of competition.

2.4.1 WHICH AWARD PROCEDURE TO APPLY

The rules for applying the standard procurement procedures explained later in this section are summarised in the table below. They are divided

between those for services (eg, technical assistance, studies, provision of know-how and training), supplies (ie, equipment and materials) and works (ie, infrastructure and other engineering works). Once approval for an activity has been granted by the European Commission within a financing agreement, the Contracting Authority can proceed with tendering and contracting following these standard procedures. The thresholds given in the table are based on the maximum budget for the contract in question (including any co-financing).

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

2.4.2 OPEN PROCEDURE

Calls for tender are open where all interested economic operators may submit a tender. The contract is given maximum publicity through the publication of a notice in the Official Journal of the European Union, on the Internet and in any other appropriate media.

Under the open procedure, any natural or legal person wishing to tender receives, upon request, the tender dossier (which may have to be paid for), in accordance with the procedures laid down in the procurement notice. When the tenders received are examined, the contract is awarded by conducting the selection procedure (ie, verification of the eligibility and of the financial, economic, technical and professional standing of tenderers) and the award procedure (ie, comparison of tenders), in accordance with section 0. No negotiation is allowed.

2.4.3 RESTRICTED PROCEDURE

Calls for tender are restricted where all economic operators may ask to take part but only candidates satisfying the selection criteria and invited simultaneously and in writing by the Contracting Authorities may submit a tender.

Under the restricted procedure, the Contracting Authority invites a limited number of candidates to tender. Before launching a tender procedure, it will draw up a shortlist of candidates selected as a result of their qualifications. The selection procedure, by which the long list (all candidates responding to the published notice) is cut down to a shortlist, involves examining responses to a procurement notice.

In the second stage of the procedure, the Contracting Authority invites tenders from shortlisted candidates, sending them the tender dossier. The successful tenderer is chosen by the award procedure once the tenders have been analysed (see section 2.4.8). No negotiation is allowed.

2.4.4 COMPETITIVE NEGOTIATED PROCEDURE

Under the competitive negotiated procedure, the Contracting Authority invites tenders from candidates of its choice. At the end of the procedure, it selects the most economically advantageous tender. See sections 3.4.2, 4.5 and 5.6 for further details.

2.4.5 FRAMEWORK CONTRACTS

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

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

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

Specific contracts based on the framework contracts referred to in the second paragraph will be awarded in accordance with the terms laid

down in the framework contract. Only specific contracts concluded under framework contracts are preceded by a budget commitment.

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

2.4.6 NEGOTIATED PROCEDURE

To be used in exceptional cases. See sections 3.2.1.2, 4.2 and 5.2.1.3.

2.4.7 FAIR COMPETITION

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

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



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

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

2.4.8 SELECTION AND AWARD CRITERIA

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

2.4.8.1 SELECTION CRITERIA

2.4.8.1.1 General principles

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

(a) the eligibility of the tenderer or candidate to take part in the procedure, checks having been carried out on the possible grounds for exclusion referred to in these general regulations;

(b) criteria for assessing its financial, economic, technical and professional capacity.

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

The Contracting Authorities will specify in the procurement notice or in the call for expressions of interest or the invitation to submit a tender, the references chosen to test the status and the legal capacity of tenderers or candidates.

The information requested by the Contracting Authority as proof of the financial, economic, technical and professional capacity of the candidate or tenderer may not go beyond the subject of the contract and must take account of the legitimate interests of the economic operators as regards in particular the protection of the firm's technical and business secrets.

2.4.8.1.2 Verification of the eligibility of tenderers or candidates

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

2.4.8.1.3 Verification of the financial and economic standing of tenderers or candidates

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

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

If, for some exceptional reason which the Contracting Authority considers justified, the tenderer or candidate is unable to provide the references requested by the Contracting Authority, it may prove its economic and financial capacity by any other means which the Contracting Authority considers appropriate.

An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

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

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

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

- (a) the educational and professional qualifications of the service provider or contractor and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services or carrying out the works;
- (b) a list:
 - i) of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private;

Where the services or supplies were provided to Contracting Authorities, evidence of performance must take the form of certificates issued or countersigned by the competent authority;

- ii) of the works carried out in the last five years, with the sums, dates and place. The list of the most important works must be accompanied by certificates of satisfactory execution, specifying whether they have been carried out in a professional manner and have been fully completed;
- (c) a description of the technical equipment, tools and plant to be employed by the firm for performing a service or works contract;
- (d) a description of the measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;
- (e) an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;
- (f) in respect of supplies: samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products with the specifications or standards in force;
- (g) a statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;
- (h) an indication of the proportion of the contract which the service provider may intend to subcontract.

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

An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Contracting Authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

2.4.8.2 AWARD CRITERIA

Contracts are awarded in one of the following two ways:

- (a) under the automatic award procedure, in which case the contract is awarded to the tender which, while being in order and satisfying the conditions laid down, quotes the lowest price;

- (b) under the best-value-for-money procedure.

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

2.4.9 TENDER PROCEDURE WITH "SUSPENSION CLAUSE"

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

Because of its implications, the existence of a suspension clause must be explicitly mentioned in the procurement notice.


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

2.4.10 CANCELLATION OF AWARD PROCEDURES

The Contracting Authority may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation. If a contract award procedure is cancelled, all tenderers must be notified in writing and as soon as possible of the reasons for the cancellation.

Cancellation may occur where:

- (a) the tender procedure has been unsuccessful, ie, no qualitatively or financially worthwhile tender has been received or there is no response at all;
- (b) the economic or technical data of the project have been fundamentally altered;
- (c) exceptional circumstances or force majeure render normal performance of the contract impossible;
- (d) all technically compliant tenders exceed the financial resources available;
- (e) there have been irregularities in the procedure, in particular where these have prevented fair competition.

	If a contract award procedure is cancelled, all tenderers must be notified in writing and as soon as possible of the reasons for the cancellation. A cancellation notice must be published in the event that a tender is cancelled. See template in Annex A5.
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After cancelling a tender procedure, the Contracting Authority may decide:

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

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

2.4.11 ETHICS CLAUSES

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

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

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

When putting forward a candidacy or tender, the candidate or tenderer must declare that it is affected by no potential conflict of interest, and that it has no particular link with other tenderers or parties involved in the project. Should such a situation arise during performance of the contract, the contractor must immediately inform the Contracting Authority.



	Civil servants or other officials of the public administration of the beneficiary country, regardless of their administrative situation, must not be engaged as experts by tenderers.
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The contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It must refrain from making public statements about the project or services without the Contracting Authority's prior approval. It may not commit the Contracting Authority in any way without its prior written consent.

For the duration of the contract, the contractor and its staff must respect human rights and undertake not to offend the political, cultural and religious mores of the beneficiary state.

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

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

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


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

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

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

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

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


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

Tenderers believing that they have been harmed by an error or irregularity during the award process may petition the Contracting Authority directly. The Contracting Authority must reply within 90 days of receipt of the complaint.

Where informed of such a complaint, the European Commission must communicate its opinion to the Contracting Authority and do all it can to facilitate an amicable solution between the complainant (tenderer) and the Contracting Authority.

If the above procedure fails, the tenderer may have recourse to procedures established under the beneficiary country's national legislation.

	Should a Contracting Authority fail to adhere to the contract award procedures provided for in this Practical Guide, the European Commission reserves the right to refuse to finance the contract or to suspend, withhold or recover funding for the contracts concerned.
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2.5 CONTRACT SIZE

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

- In the procurement of services for contracts of less than €200,000 but more than €5,000, the Framework Contract (see section 3.4) should be used whenever possible.
- Artificially splitting related activities into smaller lot sizes or contracts to circumvent the procurement thresholds mentioned in section 2.4.1 is prohibited.
- Technical assistance and related activities must be grouped where appropriate in large tenders and contracts.

2.6 TERMS OF REFERENCE AND TECHNICAL SPECIFICATIONS

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

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

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

Technical specifications must afford equal access for candidates and tenderers and not have the effect of creating unjustified obstacles to

competitive tendering. They define the characteristics required of a product, service or material or work with regard to the purpose for which they are intended by the Contracting Authority. Those characteristics include:

- (a) the quality levels;
- (b) environmental performance;
- (c) design for all requirements (including accessibility for disabled people);
- (d) the levels and procedures of conformity assessment;
- (e) fitness for use;
- (f) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production procedures and methods;

The Terms of Reference or Technical Specifications are prepared by the Contracting Authority. It is helpful to consult all parties involved in the proposed project in preparing Terms of Reference or Technical Specifications. This should improve both the quality of the project as well as the commitment of the Contracting Authority and beneficiaries.

CENTRALISED
Before the tender is launched, the final version of the Terms of Reference or Technical Specifications for a project must be approved by the relevant services of the European Commission.
DECENTRALISED: EX-ANTE
Before the tender is launched, the final version of the Terms of Reference or Technical Specifications for a project must be approved by the European Commission. An indicative calculation showing the basis for the amount of the provision to be included in the eventual service tender dossier must be submitted to the European Commission for approval at the same time.
DECENTRALISED: EX-POST
Before the tender is launched, the final version of the Terms of Reference or Technical Specifications for a project must be approved in accordance with the internal procedures of the Contracting Authority.

Once the Terms of Reference or Technical Specifications have been finalised, the corresponding tender procedure should be launched as soon as possible. The Terms of Reference or Technical Specifications

contained in a tender dossier - the supposed basis for the project work-plan - must reflect the situation at the time of project start-up so as to avoid considerable effort having to be spent re-designing the project during the inception period.

The following general structure of Terms of Reference for services has been drawn up in accordance with the principles of project cycle management. The aim is to ensure that all issues are covered systematically and that key factors related to clarity of objectives and sustainability are thoroughly examined.

CONTENT: TERMS OF REFERENCE

- 1. BACKGROUND INFORMATION**
- 2. PROJECT OBJECTIVES**
- 3. ASSUMPTIONS & RISKS**
- 4. SCOPE OF THE WORK**
- 5. LOGISTICS AND TIMING**
- 6. REQUIRED OUTPUTS/REPORTING**
- 7. REQUIRED INPUTS**
- 8. MONITORING AND EVALUATION**

Annex B9 contains a skeleton Terms of Reference which indicates the minimum details to be provided within each of these section headings.

3 SERVICE CONTRACTS

3.1 INTRODUCTION

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

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

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

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

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

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

The Contracting Authority, which is always specified in the procurement notice, is the authority empowered to conclude the contract.

CENTRALISED

Service contracts are concluded directly by the European Commission acting for and on behalf of the beneficiary country. It will draw up shortlists and is responsible for issuing invitations to tender, receiving tenders, chairing tender-examination sessions, deciding on the results of tender procedures and signing the contracts.

DECENTRALISED: EX-ANTE

Service contracts are concluded by the Contracting Authority designated in a financing agreement, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the financing agreement.

The Contracting Authority will draw up shortlists, in close consultation with the European Commission. Before the procedure is launched, the Contracting Authority must submit tender dossiers to the European Commission for approval. On the basis of decisions thus approved, and in close consultation with the European Commission, the Contracting Authority is responsible for issuing invitations to tender, receiving tenders, chairing tender evaluation meetings and deciding on the results of tender procedures.

The Contracting Authority then submits the result of this examination and the contract award proposal to the European Commission for approval. Once it has received this approval, it signs the contracts and notifies the European Commission accordingly. As a general rule, the European Commission will be represented when tenders are opened and evaluated and must always be invited.

The Contracting Authority must submit procurement notices and award notices to the European Commission for publication.

DECENTRALISED: EX-POST

Service contracts are concluded directly by the Contracting Authority designated in a financing agreement, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the financing agreement. The Contracting Authority will draw up shortlists and is responsible for issuing invitations to tender, receiving tenders, chairing tender-examination sessions, deciding on the results of tender procedures and signing the contracts without the prior approval of the European Commission. The Contracting Authority must submit procurement notices and award notices to the European Commission for publication.

"Service provider" describes any natural or legal person offering services. A service provider who has applied to take part in a restricted tender procedure is termed a "candidate"; a service provider submitting a tender is termed a "tenderer".

3.2 AWARD PROCEDURES

3.2.1 CONTRACTS OF €200,000 OR MORE

3.2.1.1 RESTRICTED PROCEDURE

All service contracts worth €200,000 or more must be awarded by restricted tender procedure following the international publication of a contract forecast and a procurement notice as laid down in section 0.

3.2.1.2 NEGOTIATED PROCEDURE


CENTRALISED
The prior approval of the relevant services of the European Commission must be sought for the use of the negotiated procedure.
DECENTRALISED: EX-ANTE
The Contracting Authority must seek prior approval from the European Commission for the use of the negotiated procedure.
DECENTRALISED: EX-POST
No prior approval from the European Commission is required for the use of the negotiated procedure.

For service contracts, Contracting Authorities may use the negotiated procedure on the basis of a single tender in the following cases:

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

Operations carried out in crisis situations as referred to in Article 168(2) of the implementing rules are considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate after consulting the other authorising officers by delegation concerned, will establish that a situation of extreme urgency exists and review his decision regularly with regard to the principle of sound financial management;

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

	Non-profit institutions or associations cannot automatically be presumed to be contractors with no profit motive, and cannot therefore always be dealt with through a negotiated procedure. The negotiated procedure is admissible only where the aim of the contract is not motivated by economic or commercial considerations, and would include cases in which the operation was institutional in nature or sought, for example, to provide individuals with social assistance.
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(c) where contracts extend activities already under way; there are two scenarios for this:

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

- additional services consisting of the repetition of similar services entrusted to the contractor providing these services under the initial contract, provided that a procurement notice was published for the initial contract and that the possibility of using the negotiated procedure for further services for the project as well as the estimated cost were clearly indicated in the procurement notice published for the initial contract;

The contract can be extended only once, such that the value and duration of the extension do not exceed the value and duration of the initial contract.

(d) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the Contracting Authority may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, provided that the initial conditions of the tender procedure are not substantially altered and that the principle of fair competition is observed;

(e) where the contract concerned follows a contest and must, under the applicable rules, be awarded to the winner of the contest or to one of the winners, in which case, all winners must be invited to participate in the negotiations;

(f) where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider.

The Contracting Authority must prepare a Negotiation Report justifying the manner in which the negotiations were conducted and the basis for

the contract award decision resulting from these negotiations. The procedures given in sections 3.3.10.6 and 3.3.12 must be followed by analogy, with the Negotiation Report being included in the contract dossier.

3.2.2 CONTRACTS UNDER €200,000

Contracts of a value of under €200,000 may be awarded either under the Framework Contract procedure or under a competitive negotiated procedure involving at least three candidates. This does not apply to cases in which section 3.2.1.2 provides for the negotiated procedure.

3.3 RESTRICTED TENDERS (FOR CONTRACTS OF €200,000 OR MORE)

3.3.1 PUBLICITY

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

3.3.1.1 PUBLICATION OF GLOBAL CONTRACT FORECASTS

An initial, global contract forecast setting out the estimated total value of contracts, by category of service, which the Contracting Authorities intend to award during a financial year must be sent to the Office for Official Publications of the European Union as early as possible in the year, and in any event before 31 March each year, provided the Contracting Authority is planning to invite tenders for more than one service contract and the total value of such contracts is €750,000 or more (see template in Annex B1).

CENTRALISED

The global contract forecast 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.

DECENTRALISED: EX-ANTE

The Contracting Authority must submit the global contract forecast for publication to 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.

DECENTRALISED: EX-POST

The Contracting Authority must submit the global contract forecast for publication to 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 INDIVIDUAL CONTRACT FORECASTS

After publication of the initial global contract forecast, a second, individual contract forecast, setting out the specific characteristics of the planned tender procedure, must be published, save in exceptional circumstances, at least 30 days before the publication of the procurement notice. Where the conditions for publishing a global contract forecast are not met, the Contracting Authority need only publish a individual contract forecast.

The individual contract forecasts must give a brief indication of the subject, content and value of the contracts concerned. (See template in Annex B2). Given that they are forecasts, publication does not bind the Contracting Authority to finance the contracts proposed, and service providers are not expected to submit application forms at this stage.

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

CENTRALISED

Individual contract forecasts 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. They must be published at least 30 days before the corresponding procurement notice.

DECENTRALISED: EX-ANTE

The Contracting Authority must submit the individual contract forecasts for publication to 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. They must be published at least 30 days before the corresponding procurement notice.

DECENTRALISED: EX-POST

The Contracting Authority must submit the individual contract forecasts for publication to 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. They must be published at least 30 days before the corresponding procurement notice.

3.3.1.3 PUBLICATION OF PROCUREMENT NOTICES

In addition to forecasts, all service contracts of €200,000 or more must also be the subject of a restricted procedure procurement notice published in the Official Journal of the European Union, on the Internet (at http://europa.eu.int/comm/europeaid/index_en.htm) and in any other appropriate media. A minimum of 30 days must be allowed to elapse between the publication of the contract forecast and the procurement notice.

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

CENTRALISED

Procurement notices must be submitted for publication to the relevant services of the European Commission in electronic form, using the template in Annex B3, at least 15 days before the intended date of publication, to allow time for translation.

DECENTRALISED: EX-ANTE

The Contracting Authority must submit procurement notices for publication to the European Commission in electronic form, using the template in Annex B3, at least 15 days before the intended date of publication, to allow time for translation. The finalised Terms of Reference (see section 2.6) must also be submitted to the European Commission either at this time or in advance to demonstrate that the proposed procurement notice corresponds to the objectives of the contract.

DECENTRALISED: EX-POST


The Contracting Authority must submit procurement notices for publication to the European Commission in electronic form, using the template in Annex B3, at least 15 days before the intended date of publication, to allow time for translation.

The procurement notice must state clearly, precisely and completely what the subject of the contract is and who the Contracting Authority is. It must specify the maximum budget available for the intended operation and the forecast timetable of activities. It must provide would-be service providers with the information they need to determine their capacity to fulfil the contract in question. (See template in Annex B3)



The selection criteria identified in the procurement notice must be:

	<ul style="list-style-type: none">❑ Clearly formulated, without any ambiguity❑ Easy to verify on the basis of the information submitted using the standard application form (see Annex B4)❑ Devised to allow a clear YES/NO assessment to be made as to whether or not the candidate satisfies a particular selection criterion <p>The criteria specified in the annexes to this guide are given by way of illustration and should be adapted to the nature, cost and complexity of the contract.</p>
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	<p>Candidates are required to use the standard application form available from the following Internet address:</p> <p style="text-align: center;">http://europa.eu.int/comm/europeaid/index_en.htm</p> <p>Its format and instructions must be strictly observed.</p> <ul style="list-style-type: none">❑ Any application which does not observe these provisions will be automatically eliminated.❑ Any additional documentation (brochure, letter, etc.) sent with an application will not be taken into consideration.
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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 Internet. The actual deadline will be determined by the contract's size and complexity.

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

3.3.2 ESTABLISHMENT OF SHORTLISTS

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

Evaluation Committee are obliged to sign a Declaration of Impartiality and Confidentiality (see Annex A4).

CENTRALISED

The Evaluation Committee (ie, the Chairman, the Secretary and the voting members) must be nominated on a personal basis by the relevant services of the European Commission.

DECENTRALISED: EX-ANTE

The Evaluation Committee (ie, the Chairman, the Secretary and the voting members) must be nominated on a personal basis by the Contracting Authority. The composition of the Evaluation Committee must be submitted for approval to the European Commission. As a general rule, the European Commission nominates an observer to follow all or part of the proceedings of the Evaluation Committee. Prior approval must be sought from the European Commission for the participation of other observers.

DECENTRALISED: EX-POST

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


Would-be service providers (individually or as part of a consortium) must include with their applications the information required in the published notice and the standard application form (see Annex B4) so that their capacity to fulfil the contract in question can be assessed. The selection procedure involves:

1. establishing a long list (see template in Annex B5) summarising all the applications received;
2. eliminating candidates who are ineligible (see section 2.3.1) or fall into one of the situations described in sections 2.3.4 and 2.4.11;
3. checking that the candidates' financial situation (financial and economic standing) is sound, as backed up, for example, by balance sheets and turnover for the previous three years (see point 2.4.8.1.3);
4. verifying the candidates' technical and professional capabilities, for instance by reviewing their average annual staffing levels, the size and professional experience of their management and the main services supplied in the field in question in recent years (see point 2.4.8.1.4).



The selection must be carried out by applying the selection criteria specified in the procurement notice without any modification.

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


	<p>The shortlist should contain a minimum of four candidates and a maximum of eight. Every procurement notice must specify this.</p> <p>If the number of eligible candidates meeting the selection criteria is greater than eight, the manner in which the list of eligible candidates is diminished must be duly recorded and justified in the Shortlist Report.</p>
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If the number of eligible candidates meeting the selection criteria is less than the minimum of four, the Contracting Authority must cancel the tender procedure and may republish the procurement notice.

If the number of eligible candidates meeting the selection criteria is greater than the maximum of eight, the relative strengths and weaknesses of the applications of these candidates must be re-examined to identify the eight best applications for the tender procedure. The results of this re-examination must be duly justified in the Shortlist Report. Factors which may be taken into consideration during this re-examination include, for example:

- performance in previous EC contracts
- giving preference to candidates which have previously had a significant involvement in major, international projects relevant to this tender procedure during the previous 3 years
- giving preference to an international consortium over an equivalent individual candidate.

Any such additional criteria must be mentioned in the procurement notice. This should produce a final shortlist of at most 8 candidates.

	<p>The short-listing process and the final shortlist itself must be fully documented in a Shortlist Report (see template in Annex B6). This and all the application forms received must be retained.</p>
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CENTRALISED

Once a shortlist has been established by the European Commission, short-listed service providers or consortia are not allowed to form alliances with any other firms or to subcontract to each other for the contract in question.

DECENTRALISED: EX-ANTE

The Shortlist Report and the tender dossier to be sent to short-listed candidates must be submitted to the European Commission. The European Commission retains the right to reject the shortlist. Once a shortlist has been approved by the Contracting Authority and the European Commission, short-listed service providers or consortia are not allowed to form alliances with any other firms or to subcontract to each other for the contract in question.

DECENTRALISED: EX-POST

Once a shortlist has been established by the Contracting Authority, short-listed service providers or consortia are not allowed to form alliances with any other firms or to subcontract to each other for the contract in question.

The Contracting Authority may allow subcontracting with entities other than those on the shortlist provided that the tenderer's technical offer clearly provides for it, that the subcontractor complies with the eligibility conditions set out in sections 2.3.1 and 2.3.3 and that subcontracting does not account for an excessive proportion of the tender. The tender dossier must stipulate what the proportion is.

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 B8. Candidates who are selected will receive a letter of invitation to tender and the tender dossier (see template in Annex B9). At the same time, the final shortlist will be published on the Internet in the format shown in Annex B7.



The Contracting Authority is responsible for preparing the shortlist notice using the template in Annex B7 and for submitting it in electronic form to the European Commission for publication on the Internet site at http://europa.eu.int/comm/europeaid/index_en.htm within 24 hours of establishing the shortlist.

PROCEDURE FOR ESTABLISHING SHORTLISTS

PUBLISH CONTRACT FORECAST

Must be sent to the European Commission at least 15 days before the intended date of publication
Forewarns interested parties of a forthcoming procurement notice

At least 30 days after publishing contract forecast

PUBLISH PROCUREMENT NOTICE

Must be sent to the European Commission at least 15 days before the intended date of publication

Candidates must be given at least 30 days to submit standard application forms

EVALUATION COMMITTEE MEETS TO:

1) ESTABLISH LONG LIST
Summarises all candidates

2) ELIMINATE ALL CANDIDATES WHICH MUST BE EXCLUDED
Apply the grounds for exclusion in sections 2.3.4 and 2.4.11

3) ELIMINATE ALL INELIGIBLE CANDIDATES
Apply the eligibility criteria in section 2.3.1

4) IDENTIFY ALL ELIGIBLE CANDIDATES MEETING THE SELECTION CRITERIA
If more than 8, identify the best 8
If less than 4, cancel the tender procedure

5) PREPARE SHORTLIST REPORT
Record the entire short-listing process

6) SHORTLIST OF BETWEEN 4 AND 8 CANDIDATES
Send tender dossier to short-listed candidates
Send letters to unsuccessful candidates
Sent shortlist to the European Commission for publication on the Internet

3.3.3 DRAFTING AND CONTENTS OF THE TENDER DOSSIER

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

These documents must contain all the provisions and information that candidates invited to tender need to present their tenders: the procedures to follow, the documents to provide, cases of non-compliance, award criteria and their weightings, stipulations regarding

subcontracting, etc. It may be desirable for representatives of the final beneficiaries to participate in the tender preparation at an early stage. See section 2.6 for guidelines for preparing Terms of Reference.

The Contracting Authority is responsible for drawing up these documents.

CENTRALISED

The tender dossier must be approved by the relevant services of the European Commission.

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

The Contracting Authority will send only the short-listed candidates a letter of invitation to tender (see template in Annex B9) accompanied by the tender dossier comprising the following documents:

TENDER DOSSIER CONTENT

① INSTRUCTIONS TO TENDERERS

which must indicate:

- the type of contract (ie, service)
- the tender evaluation criteria (and any sub-criteria) and their weightings
- the possibility of interviews and the timetable for them
- whether variants are authorised
- the proportion of subcontracting which may be authorised
- the maximum budget available for the contract
- the currency of the tender

- ❑ the sworn statement to be provided by the tenderers.

See Annex B9 for template.

② THE SHORTLIST OF CANDIDATES

This is the notice published on the Internet to announce the names of the short-listed candidates for the tender (stipulating that they cannot form alliances or subcontract to each other). See Annex B7 for template.

③ DRAFT CONTRACT AND ANNEXES

See standard format in Annex B9. This includes:

- ❑ The specific contract conditions which amplify, supplement or derogate from the general conditions, and where they conflict, override them.
- ❑ The Terms of Reference for the project (which will become an annex of the eventual contract), with a forecast timetable for the contract and forecast dates from which the key experts must be available. See section 2.7.
- ❑ An overall structure for the Organisation and Methodology to be provided by the tenderer and which will become an annex of the eventual contract.
- ❑ A standard format for the summary and CVs of key staff, to be included as an annex of the eventual contract.
- ❑ The format of the budget (for completion by the tenderer) which will become an annex of the eventual contract.
- ❑ The General Conditions for service contracts, to be included as an annex of the eventual contract. Changes to the General Conditions are forbidden.
- ❑ The format for a guarantee from a bank or a similar institution to provide a guarantee for the pre-financing payments.

- Any additional contractual information such as special tax arrangements for contracts funded by the European Community.

The tender dossier must clearly state whether or not the tender must be made with firm, non-revisable prices. If not, the tender dossier must state down the conditions and/or formulae for revision of prices in the course of the contract. The Contracting Authority must then take particular account of:

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

A guarantee will be required to cover any pre-financing payment exceeding €150,000. It will be released as and when the pre-financing payment is deducted from interim payments or payments of balances made to the contractor in accordance with the terms of the contract.

④ TENDER SUBMISSION FORMAT

The format in which the tender should be submitted. See Annex B9 for template. If this format is not respected, the tender must be rejected.

3.3.4 AWARD CRITERIA


The criteria for the award of the contract award criteria serve to identify the most economically advantageous tender. These criteria cover both the technical quality and price of the tender.

The technical criteria allow the quality of technical offers to be assessed. The two main types of technical criteria are the methodology and the curriculum vitae (CV) of the experts proposed. The technical criteria may be divided into subcriteria. The methodology, for example, may be examined in the light of the terms of reference, the optimum use of the technical and professional resources available in the beneficiary country, the work schedule, the appropriateness of the resources to the tasks, the support proposed for experts in the field etc. CVs may be awarded points for such criteria as qualifications, professional experience, geographical experience, language skills, etc.

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

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

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

	There should be no overlap between the selection criteria which have been used to establish the shortlist and the award criteria which will be used to determine the best tender.
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3.3.5 ADDITIONAL INFORMATION BEFORE THE DEADLINE FOR SUBMISSION OF TENDERS

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

Tenderers may submit questions in writing up to 21 days before the deadline for submission of tenders. The Contracting Authority must reply (sending a copy to the European Commission, in the case of decentralised ex-ante control) to all tenderers' questions at least 11 days before the deadline for receipt of tenders.

3.3.6 DEADLINE FOR SUBMISSION OF TENDERS

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

CENTRALISED
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, this period may be

shorter.
DECENTRALISED: EX-ANTE
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, with prior authorisation from the European Commission, this period may be shorter.
DECENTRALISED: EX-POST
The minimum period between the dispatch of the letter of invitation to tender by the Contracting Authority and the deadline for receipt of tenders is 50 days. However, in exceptional cases, this period may be shorter.

3.3.7 PERIOD OF VALIDITY

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

In exceptional cases, before the period of validity expires, the Contracting Authority may ask the tenderers to extend the period for a specific number of days, which may not exceed 40.

The successful tenderer must maintain its tender for a further 60 days from the date of notification of award.

3.3.8 SUBMISSION OF TENDERS

Tenders must be submitted in accordance with the double envelope system, ie, 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 (eg, unsealed envelopes or references to price in the technical offer) is to be considered a breach of the rules, and will lead to rejection of the tender.

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

The outer envelope must bear:

- (a) the address for submission of tenders indicated in the tender dossier;
- (b) the reference of the tender procedure to which the tenderer is responding;
- (c) where applicable, the numbers of the lots being tendered for;
- (d) the words "Not to be opened before the tender-opening session" written in the language of the tender dossier and in the local language;
- (e) the name of the tenderer.

3.3.9 THE EVALUATION COMMITTEE

3.3.9.1 COMPOSITION

Tenders are opened and evaluated by an Evaluation Committee appointed by the Contracting Authority comprising a non-voting Chairman, a non-voting Secretary and an odd number of voting members (minimum of three). Every member must have a reasonable command of the language in which the tenders are submitted. The voting members must possess the technical and administrative capacities necessary to give an informed opinion on the tenders.

CENTRALISED

The Evaluation Committee (ie, the Chairman, the Secretary and the voting members) must be nominated on a personal basis by the relevant services of the European Commission. The participation of any observers must be authorised individually by the European Commission.

DECENTRALISED: EX-ANTE

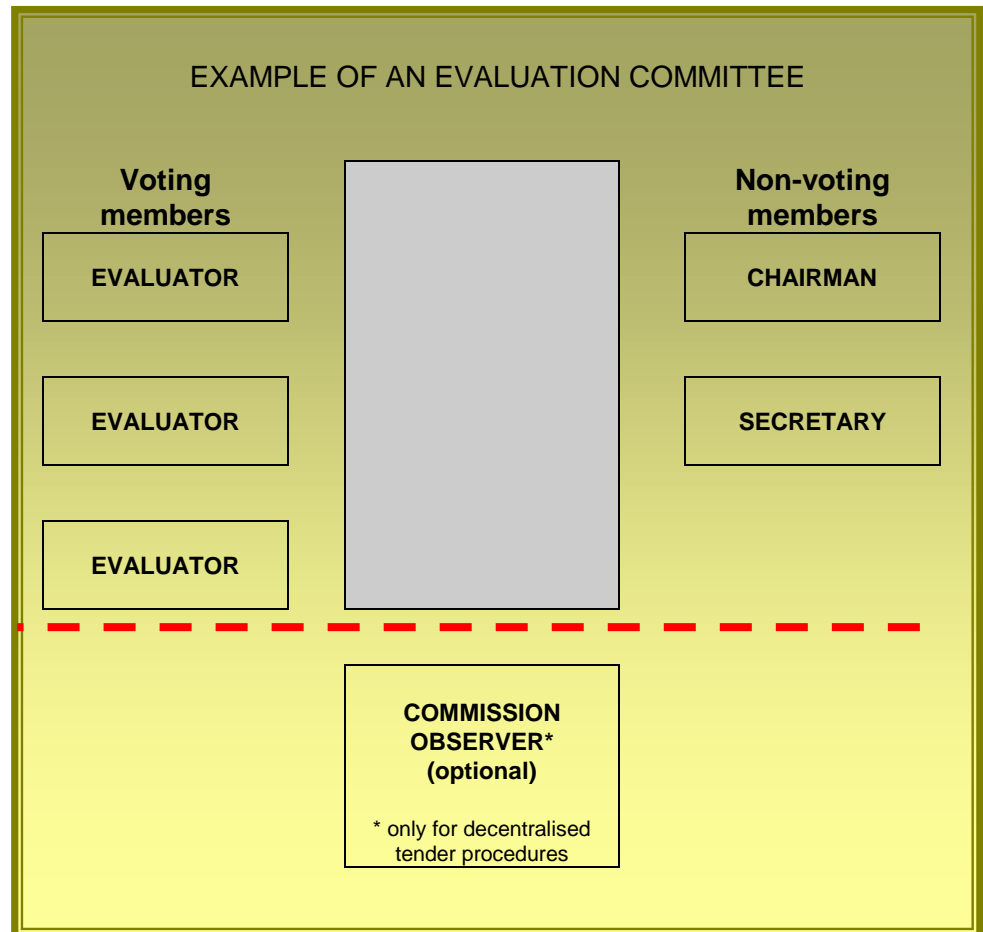
The Evaluation Committee (ie, the Chairman, the Secretary and the voting members) must be nominated on a personal basis by the Contracting Authority. The composition of the Evaluation Committee must be submitted for approval to the European Commission. As a general rule, the European Commission nominates an observer to follow all or part of the proceedings of the Evaluation Committee. Prior approval must be sought from the European Commission for the participation of other observers.

DECENTRALISED: EX-POST

The Evaluation Committee (ie, the Chairman, the Secretary and the voting members) must be nominated on a personal basis by the Contracting Authority. The participation of any observers must be authorised individually by the Contracting Authority.

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


All voting members of the Evaluation Committee have equal voting rights. The names and functions of all those involved in the evaluation process must be recorded in the Evaluation Report.



3.3.9.2 IMPARTIALITY AND CONFIDENTIALITY

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

Any Evaluation Committee member who withdraws from the Evaluation Committee for whatever reason must be replaced (following the standard procedure for appointing members of the Evaluation Committee, as explained in section 3.3.9.1) and the evaluation process must be restarted. Any assessment by a voting member withdrawing from the Committee at whatever stage of the evaluation has to be disregarded.

	No information about the examination, clarification, evaluation or comparison of tenders or decisions about the contract award can be disclosed before the signature of the contract by the Contracting Authority and the successful tenderer. <u>Any attempt by a tenderer to influence the process in any way (whether by initiating contact with members of the Evaluation Committee or otherwise) will result in the immediate exclusion of its tender from further consideration.</u>
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- The proceedings of the Evaluation Committee, from the opening of tenders to the conclusion of the work of the Evaluation Committee, are conducted in camera and are confidential.
- In order to maintain the confidentiality of the proceedings, participation in the Evaluation Committee meetings is limited to the members of the Evaluation Committee designated by the Contracting Authority and any authorised observers.
- The tenders should not leave the room/building in which the committee meetings take place before the conclusion of the work of the Evaluation Committee. They should be kept in a safe place when not in use.

3.3.9.3 RESPONSIBILITIES OF THE EVALUATION COMMITTEE MEMBERS

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

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

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

Any request for clarification requiring communication with the tenderers during the evaluation process must be conducted in writing (by fax or letter) and signed by both the Chairman and the Secretary of the Evaluation Committee. Copies of any such communication must be annexed to the Evaluation Report.

If a tender infringes the formal requirements, the Evaluation Committee may use its discretion to decide whether or not it should still be considered during the rest of the evaluation process. Whatever the Evaluation Committee decides, this must be fully recorded and justified in the Evaluation Report.

3.3.9.4 TIMETABLE

The Evaluation Committee should be formed early enough to ensure the availability of the designated members (and any observer nominated by the European Commission, in the case of decentralised ex-ante control) during the period necessary to prepare and conduct the evaluation process. The tender evaluation should be completed as soon as possible.

The duration of the evaluation process should be agreed between members of the Evaluation Committee and the Contracting Authority. The evaluation process must be completed in time to allow the successful tenderer to be notified by the Contracting Authority (after all necessary approvals) within the tender validity period (ie, 90 days) specified in the tender dossier.

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 and provide a receipt for those delivered by hand. The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened.

The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

3.3.10.2 TENDER OPENING SESSION

Part 1: Preparatory phase

- First meeting of Evaluation Committee:
 - to be held before starting the actual evaluation
 - the tender dossier should have been circulated in advance to the members of the Evaluation Committee.
- The Chairman presents the purpose of the tender procedure in general terms.
- The Chairman reminds the Committee of the award criteria and weightings specified in the tender dossier, stating that these must be respected without modification. (The selection criteria used in the short-listing of candidates should not be used during the tender evaluation).
- The Chairman explains the procedures to be followed by the Evaluation Committee.
- Before the tenders are opened, the Chairman of the Committee checks that all members are familiar with the technical evaluation grid set out in the tender dossier to make sure that the tenders will be evaluated by the different members of the Committee in a consistent manner. See Annex B12 for the format of an evaluation grid.
- The Chairman reminds the Committee that the threshold for acceptance of technical offers is 80 points, that the financial evaluation will be carried out later as per the tender dossier, and that the weightings given to the technical and financial evaluations will be 0.80 and 0.20 respectively.

Part 2: Compliance with formal requirements

- See tender opening checklist in Annex B10.

The following tasks are carried out by the Chairman and Secretary:

- Examine and state the condition of outer envelopes before opening them in order of receipt, announcing the name of the tenderer and whether separate envelopes have been used for technical and financial offers. Only tenders contained in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.
- Require all members of the Evaluation Committee and any observer(s) to read and sign a Declaration of Impartiality and Confidentiality (see Annex A4).
- Open the inner envelope containing the technical offer and mark the tender envelope number on each copy of the technical offer. The front page of each copy of the technical offer must be initialled by the Chairman and the Secretary.
- The Chairman and the Secretary must initial the inner envelope containing the financial offer across the seal, marking the tender envelope number on the envelope. This is not opened and must be locked away in a safe place until the financial evaluation takes place, after completion of the technical evaluation.

The Committee must decide whether or not tenders comply with the formal requirements at this stage (ie, following the opening of the outer envelope and the opening of the technical offer). The Summary of tenders received, which is attached to the Tender Opening Report (see Annex B11) must be used to record the compliance of each of the tenders with the formal requirements. Non-compliant tenders must be rejected.


Part 3: Administrative compliance

The Committee checks the compliance of tenders with the instructions given in the tender dossier. Any formal errors or major restrictions affecting performance of the contract or distorting competition result in the rejection of the tender concerned.


- Copies of the technical offers are distributed to the Committee members. The originals are locked away for safe keeping.
- Each technical 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
 - a declaration of intent, accepting the terms of reference and general conditions, has been signed by the tenderer (ie,

leader and all consortium partners, in the case of a consortium)

- each of the key personnel proposed have signed a statement of availability and exclusivity for this tender (see Annex B9)
 - 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, and the identity of the subcontractor.
- With the agreement of the other Evaluation Committee members, the Chairman may communicate in writing with tenderers whose submissions require clarification, offering them the possibility to respond by fax within a maximum of 48 hours. Any such request for clarification must not seek the correction of formal errors or major restrictions affecting performance of the contract or distorting competition.

	<p>The Chairman 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). Any Evaluation Committee member or observer who has a potential conflict of interest due to a link with any tenderer must declare it and immediately withdraw from the Evaluation Committee. He will be excluded from participating further in any capacity in the evaluation meetings.</p> <p>Any Evaluation Committee member who withdraws from the Evaluation Committee for whatever reason must be replaced (following the standard procedure for appointing members of the Evaluation Committee, as explained in section 3.3.9.1) and the evaluation process must be restarted.</p>
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The table included in the Tender Opening Report (see Annex B11) must be used to record the administrative compliance of each of the tenders.

	<p>The Tender Opening Report, which comprises the summary of tenders received and the minutes of the tender opening session, must be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. The Tender Opening Report must state:</p> <ul style="list-style-type: none"><input type="checkbox"/> the date, time and place of the session;<input type="checkbox"/> the persons present;<input type="checkbox"/> the names of the tenderers who have replied within the deadline;<input type="checkbox"/> whether tenders were submitted using the double-envelope system;<input type="checkbox"/> whether the originals were duly signed, and whether technical offers were sent in the requisite number of copies;<input type="checkbox"/> whether any requests for clarification were sent by the Chairman, including copies of the correspondence<input type="checkbox"/> the names of any tenderers whose tenders were found to be non-compliant at the opening session and the requirement(s) with which their tenders failed to comply;<input type="checkbox"/> the names of any tenderers who withdrew their tenders.
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3.3.10.3 EVALUATION OF TECHNICAL OFFERS

The Committee then examines the technical offers, the financial offers remaining sealed. The Committee members receive copies of the technical offers. 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 section 3.3.4). Under no circumstances may the Committee or its members change the technical evaluation grid communicated to the tenderers in the tender dossier.

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

	<p><u>Nationality of experts and subcontractors:</u> The Evaluation Committee must check at this stage that the nationalities of any experts and subcontractors identified in the technical offers satisfy the nationality rule in section 2.3.1. If the service provider is required by the terms of reference to provide supplies, the Evaluation Committee must verify that the proposed supplies satisfy the Rule of Origin in section 2.3.1.</p>
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If the tender dossier expressly permits variants, such variants are scored separately.

	<p>Each voting member of the Committee completes an evaluation grid (see Annex B9) to record his assessment of each technical offer in order to establish a general appreciation of strengths and weaknesses of the individual technical offers.</p>
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On completion of the technical evaluation, the points awarded by each member are compared at the Committee's session. Besides the numerical score, a member must explain the reasons for his choice and defend his scores before the Committee.

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

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

	<p>In the case of major discrepancies, a full justification has to be provided by dissenting members during a meeting of the Evaluation Committee.</p>
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The example in Annex B12 shows the format of such a summary as part of the Evaluation Report and indicates the level of detail expected. The Secretary calculates the aggregate final score, which is the arithmetical average of the individual final scores.

If interviews were provided for in the tender dossier, the Committee may, after writing up its provisional conclusions and before definitively concluding its evaluation of the technical offers, decide to interview the key members of the team of experts proposed in technically compliant tenders (ie, those which have achieved an average score of 80 points or

more in the technical evaluation). In this case the experts are interviewed by the Committee, preferably collectively in the case of a team, at intervals close enough to permit comparison. Interviews must follow a standard format agreed beforehand by the Committee and applied to all experts or teams called to interview.

Tenderers must be given at least 10 days' advance notice of the date and time of the interview. If a tenderer is prevented from attending an interview by force majeure, a mutually convenient alternative appointment is arranged with the tenderer. If the tenderer is unable to attend this second appointment, its tender will be eliminated from the evaluation process.

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

This procedure entails considerable costs both for tenderers and the Contracting Authority and should therefore be used with restraint. It must be recorded in the Evaluation Report, which may lead to revision of the initial technical evaluation of the tender. The indicative timetable for these interviews must be given in the tender dossier.


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

The Committee considers only tenders that have obtained at least 80 points. Of these tenders, the best technical offer is then 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				
Part 1: Technical Evaluation				
	Maximum possible score	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		174/3 = 58.00	254/3 = 84.67	256/3 = 85.33

The Secretary must record the names of the firms and the results in the Evaluation Report. At this stage, the Chairman may give the Committee members the opportunity to comment, to table objections or to query dissenting opinions. The Chairman should then state for the record the names of those firms which have passed the 80-point threshold and will proceed for financial evaluation.

	Note that all technical offers must be retained by the Contracting Authority, whether or not they achieve this threshold.
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3.3.10.4 EVALUATION OF FINANCIAL OFFERS

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

- ❑ The Evaluation Committee has to ensure that the financial offer satisfies all formal requirements. A financial offer not meeting these requirements may be rejected. Any rejection on these grounds will have to be fully justified in the Evaluation Report.
- ❑ The envelopes containing the financial offers of rejected tenderers must be retained by the Contracting Authority with other documents for the tender. They must remain unopened.
- ❑ The Evaluation Committee checks that the financial offers contain no arithmetical errors. Any arithmetical errors are corrected without prejudice to the tenderer.

- The total contract value comprises the fees (including employment-related overheads) and the provision for actual expenditure which is 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.
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- The Evaluation Committee then proceeds with the financial comparison of the fees (including employment-related overheads) between the different financial offers. The provision is excluded from the comparison of the financial offers as it was specified in the tender dossier.

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

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

☞	When evaluating financial offers, the Evaluation Committee compares only the total fees.
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Specimen Tender Evaluation Summary				
Part 2: Financial Evaluation*				
	Maximum possible score	Tenderer 1	Tenderer 2	Tenderer 3
Total fees		ELIMINATED FOLLOWING TECHNICAL EVALUATION*	€951 322	€1 060 452
Financial score (lowest total fees / actual total fees x 100)			100.00	951 322 / 1 060 452 x 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 CONCLUSIONS OF THE EVALUATION COMMITTEE

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

- 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 score	Tenderer 1	Tenderer 2	Tenderer 3
Technical score x 0.80		ELIMINATED	99.22 x 0.80 = 79.38	100.00 x 0.80 = 80.00
Financial score x 0.20		FOLLOWING	100.00 x 0.20 = 20.00	89.71 x 0.20 = 17.94
Overall score		THE	79.38 + 20.00 = 99.38	80.00 + 17.94 = 97.94
Final ranking		EVALUATION	1	2

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

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

Specimen Tender Evaluation Summary

	Maximum possible score	Tenderer 1	Tenderer 2	Tenderer 3
Technical Evaluation				
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		58.00	84.67	85.33
May 2 Technical score		ELIMINATED*	99.22	100.00
Financial Evaluation				
Total fees		ELIMINATED	€951,322	€1 060 452

	<p>As a result of its deliberations, the Evaluation Committee may make any of the following recommendations:</p> <ul style="list-style-type: none"><input type="checkbox"/> Award the contract to the tenderer which has submitted a tender:<ul style="list-style-type: none"><input type="checkbox"/> which complies with the formal requirements and the eligibility rules;<input type="checkbox"/> whose total budget is within the maximum budget available for the project;<input type="checkbox"/> which meets the minimum technical requirements specified in the tender dossier; and<input type="checkbox"/> which is the most economically advantageous tender (satisfying all of the above conditions).<input type="checkbox"/> Cancel the tender procedure in exceptional
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	<p>circumstances, such as:</p> <ul style="list-style-type: none">❑ None of the tenders satisfies the selection/award criteria of the tender procedure❑ No tenders achieved the minimum threshold during the technical evaluation❑ The total price (comprising both the fees and the provision) of all tenders received exceed the maximum amount available for the contract.
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CENTRALISED

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex B12) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. This must be submitted for approval to the relevant services of the European Commission, which must decide whether or not to accept its recommendations.

DECENTRALISED: EX-ANTE

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex B12) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. This must be submitted to the Contracting Authority, which must decide whether or not to accept its recommendations.

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

At the same time, for any award proposal, a contract dossier including a proposed contract must be prepared on the basis of the recommended tender (see section 3.3.10.6). It must be submitted to the European Commission for endorsement (agreement to finance the proposed contract).

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

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

DECENTRALISED: EX-POST

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex B12) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. This must be submitted to the Contracting Authority, which must decide whether or not to accept the Committee's recommendations. No prior approval from the European Commission is required before the Contracting Authority acts on the recommendations of the Evaluation Committee.

The Evaluation Report is drawn up, dated and kept for future reference. It must contain at least the following:

- (a) the name and address of the Contracting Authority, and the subject and value of the contract or framework contract;
- (b) the names of the candidates or tenderers rejected and the reasons for their rejection;

(c) the names of the candidates or tenderers to be examined and the reasons for their selection;

(d) the names of the candidates or contractor proposed and the reasons for that choice and, if known, the proportion of the contract or framework contract which the contractor intends to subcontract to third parties.

The Contracting Authority will then take its decision giving at least the following:

(a) its name and address, and the subject and value of the contract or framework contract;

(b) the names of the candidates or tenderers rejected and the reasons for their rejection;


(c) the names of the candidates or tenderers to be examined and the reasons for their selection;

(d) the names of the candidates or contractor selected and the reasons for that choice by reference to the selection and award criteria announced in advance and, if known, the proportion of the contract or framework contract which the contractor intends to subcontract to third parties;

(e) in the case of negotiated procedures, the circumstances referred to in these rules which justify their use;

(f) where appropriate, the reasons why the Contracting Authority has decided not to award a contract.

The entire evaluation procedure, including notification of the successful tenderer, must be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer might be unable to maintain its tender (for example, because one or more of the key experts are no longer available) if the evaluation procedure takes too long.

	The entire tender procedure is confidential from the drawing-up of the shortlist to the signature of the contract by both parties. The Evaluation Committee's decisions are collective and its deliberations must remain secret. The Committee members and any observers are bound to secrecy.
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The Evaluation Report, in particular, is for official use only and may be divulged neither to tenderers nor to any party outside the authorised services of the Contracting Authority, the European Commission and the supervisory authorities (eg, the European Court of Auditors).

3.3.10.6 CONTRACT PREPARATION

If the Evaluation Committee recommends the award of a contract to a particular tenderer and the Contracting Authority approves the Evaluation Report, the Contracting Authority must use the standard contract format (see Annex B9) to prepare the proposed contract. All the components of the proposed contract should be available from either the tender dossier or the tender submitted by the recommended tenderer. Only the Special Conditions should need to be completed.

A contract dossier must be prepared using the following structure:

- a) Explanatory note using the format in Annex A6
- b) Copy of the financing agreement authorising the project
- c) Copy of the tender announcements (contract forecast, procurement notice and shortlist), Shortlist Report, Tender Opening Report, Evaluation Report, and any other relevant information
- d) Three copies of the proposed contract, which is based on the standard service contract template (see Annex B9):
 - Special conditions (to be completed by the Contracting Authority)
 - General conditions for service contracts (standard version in tender dossier)
 - Terms of reference (from the tender dossier)
 - Organisation and methodology (from the recommended tender)
 - List of key experts and their CVs (from the recommended tender)
 - Budget breakdown (from the recommended tender)
 - Forms and other relevant documents (from the tender dossier and including the financial identification form, financial guarantee template, audit certificate template, as well as, for example, the formats for progress reports and financial reports to be used by the contractor).

	The standard contract annexes for the General conditions and Forms and other relevant documents (see Annex B9) must be reproduced without modification in every service contract. The Special conditions must be completed by the Contracting Authority.
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3.3.11 CANCELLING THE TENDER PROCEDURE

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

- the tender procedure has been unsuccessful, ie, no qualitatively or financially worthwhile tender has been received or there is no response at all;
- the economic or technical data of the project have been fundamentally altered;
- exceptional circumstances or force majeure render normal performance of the contract impossible;
- all technically compliant tenders exceed the financial resources available;
- there have been irregularities in the procedure, in particular where these have prevented fair competition.

CENTRALISED
The responsibility for cancelling a tender procedure lies with the relevant services of the European Commission.
DECENTRALISED: EX-ANTE
The responsibility for cancelling a tender procedure lies with the Contracting Authority, with the prior approval of the European Commission.
DECENTRALISED: EX-POST
The responsibility for cancelling a tender lies with the Contracting Authority. No prior approval from the European Commission is required.

In the event of cancellation of any tender procedure, tenderers must be notified of the cancellation by the Contracting Authority. Such tenderers shall not be entitled to compensation. When the tender procedure is

cancelled before the outer envelope of any tender has been opened, the unopened and sealed envelopes must be returned to the tenderers.

3.3.12 AWARD OF THE CONTRACT

3.3.12.1 NOTIFYING THE SUCCESSFUL TENDERER

CENTRALISED
Before the period of validity of tenders expires, the European Commission notifies the successful tenderer in writing that its tender has been accepted (see format of letter in Annex A8) and draws attention to any arithmetical errors which were corrected during the evaluation process.
DECENTRALISED: EX-ANTE
After the Contracting Authority and the European Commission have given their formal approval and before the period of validity of tenders expires, the Contracting Authority notifies the successful tenderer in writing that its tender has been accepted (see format of letter in Annex A8) and draws attention to any arithmetical errors which were corrected during the evaluation process.
DECENTRALISED: EX-POST
Before the period of validity of tenders expires, the Contracting Authority notifies the successful tenderer in writing that its tender has been accepted (see format of letter in Annex A8) and draws attention to any arithmetical errors which were corrected during the evaluation process.

This notification to the successful tenderer implies that the validity of the successful tender is automatically extended for a period of 60 days from the date of notification of award of the contract. At the same time, the Contracting Authority requests the successful tenderer to submit the evidence required by the tender dossier to confirm the declarations made in the tender submission form **within 15 days** of the date of the notification letter. The Contracting Authority must examine the evidence submitted by the successful tenderer before sending the contract to the tenderer for signature (see Section 3.3.12.2).

Where a contract is awarded under a financing agreement which had not been concluded at the time the tender procedure was launched, the Contracting Authority must not notify the successful tenderer before the financing agreement has been concluded (see section 2.4.9).

3.3.12.2 CONTRACT SIGNATURE

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

- 1) Use the contract dossier prepared following the recommendation of the Evaluation Committee (see section 3.3.10.6).
- 2) Sign all copies of the contract.
- 3) Send the three signed copies of the contract to the successful tenderer, who must countersign them within 30 days of receipt (and, in any case, before the expiry of the tender validity period) and return three copies to the Contracting Authority together with the advance guarantee required in the contract. If the successful tenderer fails to do this within the specified deadline or indicates at any stage that it is not willing or able to sign the contract, the tenderer cannot be awarded the contract. The contract preparation process must be restarted from step 1 with a new contract dossier prepared using the tender which has achieved the next highest score (provided that that tender passed the technical threshold and is within the maximum budget available for the contract). (In the decentralised ex-ante system, the new proposed contract would need to be sent to the European Commission for endorsement).

CENTRALISED

- 4) On receipt of the two signed copies from the contractor, one copy is sent to the financial service in charge of payments and the other is sent to the Project Manager.

DECENTRALISED: EX-ANTE

- 4) On receipt of the two signed copies from the contractor, the Contracting Authority sends one to the financial service in charge of payments and the other copy is sent to the European Commission. A copy of the signed contract must be sent to the Project Manager.

DECENTRALISED: EX-POST

- 4) On receipt of the two signed copies from the contractor, the Contracting Authority sends one to the financial service in charge of payments and the other to the Project Manager.



The Contracting Authority and the Contractor must note on the contract the date on which they sign it. The contract takes effect on the date of the later signature. The contract cannot cover earlier services or enter into force before this date.


3.3.12.3 PUBLICISING THE AWARD OF THE CONTRACT

The Contracting Authority informs candidates and tenderers of decisions reached concerning the award of the contract as soon as possible,

including the grounds for any decision not to award a contract for which there has been competitive tendering or to recommence the procedure.

Once the contract has been signed, the Contracting Authority must prepare a service contract award notice (using the template in Annex B14) and send it to the European Commission, which publishes the results of the tender procedure in the Official Journal, on the Internet and in any other appropriate media. In addition, the Contracting Authority must:

- send the other tenderers a standard letter (see Annex B13) within not more than 15 days, informing them that their tenders have been unsuccessful. This letter must also state any shortcomings in the addressee's tender, the detailed score achieved by that tender, the characteristics and relative advantages of the successful tender and the aggregate score achieved by the successful tenderer.
- record all statistical information concerning the contract award procedure including the contract value, the names of the other tenderers and the successful tenderer.

	The Contracting Authority is responsible for preparing the service contract award notice using the template in Annex B14 and for submitting it for publication to the European Commission in electronic form within 24 hours of receiving the countersigned contract from the successful tenderer.
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3.3.13 APPROVAL OF KEY EXPERTS (FOR CENTRALISED TENDER PROCEDURES ONLY)

Where the European Commission concludes a contract (ie, in a centralised tender procedure), it is required to notify the beneficiary country, through the Delegation of the European Commission accredited to the country concerned, of the name of the successful tenderer and obtain its approval of the key experts proposed. Such a request is not a request for approval of the European Commission's evaluation.

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 Commission within 30 days of the date of the request for approval.

3.3.14 PROVISION AND REPLACEMENT OF EXPERTS

Where the tender procedure involves the provision of technical assistance staff, the contractor is bound to provide the staff specified in the tender. This specification may take various forms.

Whatever the form, the key staff (head of project, long-term experts, project administrator, accountant, etc.) to be provided by the contractor must be identified and named in the contract.

Should a company and/or proposed experts deliberately conceal the fact that all or some of the team proposed in their tender are unavailable from the date specified in the tender dossier for the start of the assignment, they may be excluded from the tender procedure by the Committee.

CENTRALISED

Should the European Commission learn that such facts have been concealed after the contract has been awarded, it may decide to cancel the contract and either recommence the tender procedure or award the contract to the tender ranked second by the Evaluation Committee (provided that that tender achieved the threshold of 80 points in the technical evaluation and is within the maximum budget available for the contract). Such behaviour may lead to a tenderer's exclusion from other contracts funded by the European Community.

DECENTRALISED: EX-ANTE

Should the Contracting Authority learn that such facts have been concealed after the contract has been awarded, it may decide (with the prior approval of the European Commission) to cancel the contract and either recommence the tender procedure or award the contract to the tender ranked second by the Evaluation Committee (provided that that tender achieved the threshold of 80 points in the technical evaluation and is within the maximum budget available for the contract). Such behaviour may lead to a tenderer's exclusion from other contracts funded by the European Community.

DECENTRALISED: EX-POST

Should the Contracting Authority learn that such facts have been concealed after the contract has been awarded, it may decide to cancel the contract and either recommence the tender procedure or award the contract to the tender ranked second by the Evaluation Committee (provided that that tender achieved the threshold of 80 points in the technical evaluation and is within the maximum budget available for the contract). No prior approval from the European Commission is required. Such behaviour may lead to a tenderer's exclusion from other contracts funded by the European Community.

However, the contract must not only identify the key staff to be provided but specify the qualifications and experience required of them. This is

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

CENTRALISED

In both cases, the contractor must first obtain the European Commission's written approval by substantiating its request for replacement. The European Commission has 30 days from the date of receipt of the request in which to reply.

DECENTRALISED: EX-ANTE

In both cases, 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 in which to seek the approval of the European Commission and reply.

DECENTRALISED: EX-POST

In both cases, 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 in which to reply. No prior approval from the European Commission is required.

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

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

CENTRALISED

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

DECENTRALISED: EX-ANTE

In the course of performance, the Contracting Authority may also submit a substantiated written request for a replacement, having obtained the prior approval of the European Commission, where it considers a member of staff incompetent or unsuitable for the purposes of the contract.

DECENTRALISED: EX-POST

In the course of performance, 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. No prior approval from the European Commission is required.

Where a member of staff has to be replaced, the replacement must possess at least equivalent qualifications and experience and his remuneration may in no circumstances exceed that of the expert replaced. Where the contractor is unable to provide a replacement possessing equivalent qualifications and/or experience, the Contracting Authority may either terminate the contract, if it feels that its performance is jeopardised, or, if it feels that this is not the case, accept the replacement, in which case the latter's fees are to be negotiated downwards to reflect the proper level of remuneration.

Any additional expenses resulting from the replacement of staff are borne by the contractor. Where an expert is not replaced immediately and some time elapses before the new expert takes up his functions, the Contracting Authority may ask the contractor to assign a temporary expert to the project pending the new expert's arrival or to take other steps to bridge the gap. Whatever the case may be, the Contracting Authority will make no payment for the period of absence of the expert or his replacement (whether temporary or permanent).

3.4 PROCEDURES FOR THE AWARD OF CONTRACTS UNDER €200,000


3.4.1 FRAMEWORK CONTRACTS

For short-term, technical assistance contracts under €200,000 and with a performance period (ie, duration of actual services to be provided) of under 12 months, the Contracting Authority should use the Framework Contract. The duration of such contracts may not exceed four years, save in exceptional cases justified in particular by the subject of the framework contract. Contracting Authorities may not 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. For sectors which are not covered by the Framework Contract, the competitive negotiated procedure (see section 3.4.2) must be used.

The Framework Contract offers access to technical assistance in a much shorter period than the competitive negotiated procedure (see section 3.4.2) which is the only alternative for this type of contract.

3.4.2 COMPETITIVE NEGOTIATED PROCEDURE

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


	Note that the competitive negotiated procedure requires more time than the procedure to initiate an assignment under the Framework Contract.
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
The Contracting Authority draws up a list of at least three service providers of its choice, drawing inter alia on data in the Commission's database of experts and consultancy firms. The candidates are sent a letter of invitation to tender accompanied by a tender dossier.

Tenders must reach the Contracting Authority at the address and by no later than the date and time shown 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.

Tenders must be sent in two envelopes, one containing the technical offer and the other the financial offer.

Tenders are opened and evaluated by a committee possessing the requisite technical and administrative capacities. The members of the committee must sign a Declaration of Impartiality and Confidentiality (see Annex A4). After evaluating the tenders, the committee identifies the most economically advantageous tender on the basis of technical quality and price.

	If the Contracting Authority does not receive at least three compliant tenders, the procedure must be cancelled and started again. Consequently, it would be prudent to invite tenders from more than three service providers. The procedure for evaluating the tenders and awarding the contract is the same as under the restricted procedure (see sections 3.3.9 to 3.3.12.3).
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	The Contracting Authority may award service contracts of a
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	value of €5,000 or less on the basis of a single tender.
+	Note that projects must not be split artificially to circumvent the procurement thresholds (see section 2.5).

3.5 MODIFYING SERVICE CONTRACTS

Service contracts may need to be modified during their duration if the circumstances affecting project implementation have changed since the initial contract was signed. Contract modifications must be formalised through an addendum to the contract. Such an addendum must be signed by the contracting parties (and, under a decentralised ex-ante system, approved and endorsed by the European Commission).


Changes of address, changes of bank account, and changes of auditor may simply be notified in writing by the contractor to the Contracting Authority, although this does not affect the right of the Contracting Authority to oppose the contractor's choice of bank account or auditor.


3.5.1 GENERAL PRINCIPLES

The following general principles must always be respected:

- ❑ A contractor's requests for contract modifications should not automatically be accepted by the Contracting Authority. There must be justified reasons for modifying a contract. The Contracting Authority must examine the reasons given and reject requests which have little or no substantiation.
- ❑ Contracts can only be modified within the lifetime of the contract; modifications cannot be made retroactively.
- ❑ The purpose of the addendum must be closely connected with the nature of the project covered by the initial contract.
- ❑ Major changes, such as a fundamental alteration of the Terms of Reference, cannot be made by means of an addendum.
- ❑ The addendum must not alter the competition conditions prevailing at the time the contract was awarded.
- ❑ Unit prices, particularly fee rates, must be identical to those in the initial contract, unless the initial contract stipulates otherwise (ie, there is a price-revision clause).

- Any modification extending the period of execution of the tasks 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.
- Any modifications which require additional funding must have been foreseen in the Terms of Reference of the initial contract and can only be agreed before the expiry of the financing agreement under which the initial contract was financed. The additional funding must come from the same budget line as that used for the initial contract.


	Under no circumstances can modifications be made to contracts such that the budget of the complementary services exceeds 50% of the budget of the initial contract.
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	Requests for contract modifications to service contracts must be made (by one contracting party to the other) allowing at least 30 days for the addendum to be signed before the end of the period of execution of the initial contract.
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3.5.2 PREPARING AN ADDENDUM


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

- 1) Use the standard template for an addendum (see Annex A7):

	All references in the proposed addendum to article numbers and/or annexes to be modified must correspond to those in the initial contract.
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Any addendum modifying the budget must include a replacement budget showing how the full budget breakdown of the initial contract has been modified by this addendum (and any previous addenda). The following column headings should be used:

Budget Item	Initial contract budget	Addendum 1	(Addendum 2 ...)	Revised budget

	<p>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.</p> <p>The payment schedule must not be modified unless either the budget is being modified or the contract is being extended.</p>
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2) Prepare a dossier comprising the following items:

<ul style="list-style-type: none">a) Explanatory note (see template in Annex A6) providing a technical and financial justification for making the modifications in the proposed addendumb) Copy of the contractor's request for (or agreement to) the proposed modificationsc) Copy of the financing agreement authorising the projectd) Copy of the initial contract and any subsequent addendae) Copy of the initial tender announcements (contract forecast, procurement notice and shortlist), Shortlist Report, Tender Opening Report, Evaluation Report, and any other relevant informationf) Three copies of the proposed addendum, which is based on the standard addendum template (see Annex A7) and includes any revised annexes.

CENTRALISED

3) Sign all copies of the addendum.

DECENTRALISED: EX-ANTE

3) Sign all copies of the addendum and send the addendum dossier to the European Commission for approval and endorsement.

DECENTRALISED: EX-POST

3) Sign all copies of the addendum. No prior approval or endorsement by the European Commission is required.

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

DECENTRALISED: EX-ANTE

- 5) On receipt of the two signed copies from the contractor, one is sent to the financial service in charge of payments while the other is sent to the Project Manager.

DECENTRALISED: EX-ANTE

- 5) On receipt of the two signed copies from the contractor, the Contracting Authority sends one to the financial service in charge of payments and the other to the European Commission. A copy of the signed addendum must be sent to the Project Manager.

DECENTRALISED: EX-POST

- 5) On receipt of the two signed copies from the contractor, the Contracting Authority sends one to the financial service in charge of payments and the other to the Project Manager.



The Contracting Authority and the Contractor must note on the addendum the date on which they sign it. The addendum takes effect on the date of the later signature. An addendum cannot cover earlier services or enter into force before this date.

4 SUPPLY CONTRACTS

4.1 INTRODUCTION

Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products. The delivery of products may in addition include siting, installation and maintenance.

"Supplier" describes any natural or legal person furnishing supplies. A supplier submitting a tender is known as a "tenderer".

The Contracting Authority, which is always specified in the procurement notice, is the authority empowered to conclude the contract. Supply contracts are generally concluded by the beneficiary with which the Commission draws up a financing agreement (decentralised contracts).

CENTRALISED

Supply contracts are concluded directly by the European Commission acting for and on behalf of the beneficiary country. It is responsible for launching tender procedures, receiving tenders, chairing tender-examination sessions, deciding on the results of tender procedures and signing the contracts.

DECENTRALISED: EX-ANTE

Supply contracts are concluded by the Contracting Authority designated in a financing agreement, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the financing agreement.

The Contracting Authority must submit the tender dossiers to the European Commission for approval prior to issue. The Contracting Authority must submit procurement notices and award notices to the European Commission for publication.

On the basis of decisions thus approved and in close consultation with the European Commission, the Contracting Authority is responsible for launching tender procedures, receiving tenders, chairing tender-examination sessions and deciding on the results of tender procedures. The Contracting Authority submits the results of the tender examination and the contract award proposal to the European Commission for approval. Once it has received approval, it signs the contracts and notifies the European Commission accordingly. As a general rule, the European Commission will be represented when tenders are opened and evaluated and must always be formally invited.

DECENTRALISED: EX-POST

Supply contracts are concluded by the Contracting Authority

designated in a financing agreement, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the financing agreement. It is responsible for launching tender procedures, receiving tenders, chairing tender-examination sessions, deciding on the results of tender procedures and signing the contracts without the prior approval of the European Commission. The Contracting Authority must submit procurement notices and award notices to the European Commission for publication.

4.2 PROCUREMENT PROCEDURES

4.2.1 CONTRACTS OF €150,000 OR MORE

4.2.1.1 INTERNATIONAL OPEN PROCEDURE

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

4.2.1.2 NEGOTIATED PROCEDURE

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

No prior approval from the European Commission is required.

Supply contracts may be awarded by negotiated procedure on the basis of a single tender in the following cases:

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

Operations carried out in crisis situations as referred to in Article 168(2) of the Implementing Rules are considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate after

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

(b) where warranted by the nature or particular characteristics of the supplies, for example, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents;

(c) for additional deliveries by the original supplier intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the Contracting Authority to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance;

(d) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the Contracting Authority may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, provided that the initial conditions of the tender procedure are not substantially altered and the principle of equal treatment is observed.

The Contracting Authority must prepare a Negotiation Report justifying the manner in which the negotiations were conducted and the basis for the contract award decision resulting from these negotiations. The procedures described in section 4.3.11 must be followed by analogy, with the Negotiation Report being included in the contract dossier.

4.2.2 CONTRACTS BETWEEN €30,000 AND €150,000

4.2.2.1 LOCAL OPEN PROCEDURE

In this case, supply contracts are awarded by an open procedure in which the procurement notice is published only in the beneficiary country. The European Commission publishes the references of such tender procedures (publication reference, country, Contracting Authority and type of contract) on the Internet with the address from which firms can obtain further information.

4.2.2.2 NEGOTIATED PROCEDURE

CENTRALISED

With the prior approval of the relevant services of the European

Commission, supply contracts may be awarded by negotiated procedure in the situations given in section 4.2.1.2.

DECENTRALISED: EX-ANTE

With the European Commission's prior agreement, the Contracting Authority may award supply contracts by negotiated procedure in the situations given in section 4.2.1.2.

DECENTRALISED: EX-POST

The Contracting Authority may award supply contracts by negotiated procedure in the situations given in section 4.2.1.2. No prior approval from the European Commission is required.

4.2.3 CONTRACTS UNDER €30,000 - COMPETITIVE NEGOTIATED PROCEDURE

Supply contracts under €30,000 are awarded by competitive negotiated procedure. Three compliant tenders must be obtained so at least three contractors must be consulted, but no procurement notice need be published.



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

4.3 INTERNATIONAL OPEN TENDER (FOR CONTRACTS OF €150,000 OR MORE)

4.3.1 PUBLICITY

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

4.3.1.1 PUBLICATION OF GLOBAL CONTRACT FORECASTS

An initial, global contract forecast setting out the estimated total value of contracts, by product group, which the Contracting Authorities intend to award during a budgetary year must be sent to the Office for Official Publications of the European Communities as early as possible, and in

any event before 31 March each year, provided the Contracting Authority is planning to invite tenders for more than one supply contract and the total value of such contracts is equal to or greater than €750,000 (see template in Annex C0).

CENTRALISED

The global contract forecast must be submitted for publication to the relevant services of the European Commission in electronic form using the template in Annex C0 at least 15 days before the intended date of publication, to allow time for translation.

DECENTRALISED: EX-ANTE

The Contracting Authority must submit the global contract forecast for publication to the European Commission in electronic form using the template in Annex C0 at least 15 days before the intended date of publication, to allow time for translation.

DECENTRALISED: EX-POST

The Contracting Authority must submit the global contract forecast for publication to the European Commission in electronic form using the template in Annex C0 at least 15 days before the intended date of publication, to allow time for translation.

4.3.1.2 PUBLICATION OF INDIVIDUAL CONTRACT FORECASTS

After publication of the initial global forecast, a second 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 procurement notice. Where the conditions for publishing a global contract forecast are not met, the Contracting Authority need only publish an individual contract forecast.

The global contract forecasts must give a brief indication of the subject and content of the tenders concerned. (See template in Annex C1). Given that they are forecasts, publication does not bind the Contracting Authority to finance the contracts proposed and prospective suppliers are not expected to submit tenders at this stage.

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

CENTRALISED

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

DECENTRALISED: EX-ANTE

The Contracting Authority must submit the individual contract forecasts 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 procurement notice.

DECENTRALISED: EX-POST

The Contracting Authority must submit the individual contract forecasts 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 procurement notice.

4.3.1.3 PUBLICATION OF PROCUREMENT NOTICES

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

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

CENTRALISED

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

DECENTRALISED: EX-ANTE

The Contracting Authority must submit procurement notices 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. The finalised tender dossier (see section 4.3.2) must also be submitted to the European Commission either at this time or in advance to demonstrate that the proposed procurement notice corresponds to the objectives of the contract.

DECENTRALISED: EX-POST

The Contracting Authority must submit procurement notices 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.

The procurement notice must identify clearly, precisely, and completely what the subject of the contract is and who the Contracting Authority is. If the procurement notice is also published locally, it must be identical to the procurement notice published on the Internet and appear at the same time.

The tender dossier for the contract in question is sent to would-be suppliers in the eligible country and in Europe by the Contracting Authority.

4.3.2 DRAFTING AND CONTENTS OF THE TENDER DOSSIER

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

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

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

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

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

The Contracting Authority is responsible for drawing up these documents.

CENTRALISED

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) who must be recruited by the European Commission. Each such specialist must sign a Declaration of Objectivity and Confidentiality (see Annex A3).

DECENTRALISED: EX-ANTE

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) who must be recruited by the Contracting Authority with the prior approval of the European Commission. Each such specialist must sign a Declaration of Objectivity and Confidentiality (see Annex A3).

DECENTRALISED: EX-POST

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) who must be recruited by the Contracting Authority. Each such specialist must sign a Declaration of Objectivity and Confidentiality (see Annex A3).

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

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


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

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

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

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

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

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

The tender dossier must be approved by the relevant services of the European Commission.

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

The tender dossier must contain the following documents:

TENDER DOSSIER CONTENT

① INSTRUCTIONS TO TENDERERS

which must indicate:

- The type of contract (ie, Supply)
- The selection and award criteria
- The grid to be used to evaluate the tenders. Given the wide variety of supplies and their technical nature, the grid must be individually developed for each tender in a YES/NO format to allow clear assessment whether or not the offer responds to the Technical Specifications
- Whether variants are authorised
- The proportion of subcontracting which may be authorised
- The currency of the tender
- The format to be used by a bank or similar institution to provide a tender guarantee (1-2% of the budget available for the contract).

See Annex C4 for template.

② DRAFT CONTRACT AND ANNEXES

See standard format in Annex C4. This includes:

- The specific contract conditions which amplify, supplement or derogate from the general conditions, and where they conflict, override them
- The technical annexes, containing any plans and the Technical Specifications, as well as a provisional timetable for performance
- The format of the budget (for completion by the tenderer)
- The General Conditions for supply contracts, to be included as an annex of the eventual contract. Changes to the General Conditions are forbidden.
- The formats to be used by a bank or similar institution to provide guarantees for:
 - payment of advances, and
 - performance (10% of the contract value)
- Any additional contractual information such as special tax arrangements for contracts funded by the European Community.

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

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

A guarantee is required in return for the payment of pre-financing exceeding €150,000. It will be released as and when the pre-financing is deducted from interim payments or payments of balances made to the contractor in accordance with the terms of the contract.

③ TENDER SUBMISSION FORMAT

The format in which the tender should be submitted. See Annex C4 for template.

The standard content comprises the tender dossier and the actual tender of the tenderer. The technical and financial offers must both be submitted in a single, sealed envelope or packet.

The technical offer must satisfy the Technical Specifications in all respects. Variant solutions can only be considered if a fully responsive technical offer has also been submitted by the tenderer.

The financial offer must be presented in the standard format to facilitate comparison of the financial offers. If this format is not respected, the tender will be rejected.

4.3.3 SELECTION AND AWARD CRITERIA

The selection criteria concern the tenderer's capacity to execute similar contracts. In certain cases, where the contract includes works or installation services, the tender dossier may include selection criteria concerning the tenderer's technical capabilities.

The selection procedure involves:

1. eliminating candidates who are ineligible (see section 2.3.1) or fall into one of the situations described in sections 2.3.4 and 2.4.11;
2. checking that the candidates' financial situation (financial and economic standing) is sound, as backed up, for example, by balance sheets and turnover for the previous three years (see point 2.4.8.1.3);
3. verifying the candidates' technical and professional capabilities, for example by looking at their average annual staffing levels, the size and professional experience of their management and the main services supplied in the field in question in recent years (see point 2.4.8.1.4).

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

If, for some exceptional reason which the Contracting Authority considers justified, the tenderer or candidate is unable to provide the

references required by the Contracting Authority, it may prove its economic and financial capacity by any other means which the Contracting Authority considers appropriate. Where the 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 shall concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.


The award criteria applied to technically compliant tenders are price and, where proposals are requested for after-sales services and/or training, the quality of such proposals.

The criteria should be precise, non-discriminatory and not prejudicial to fair competition. All criteria specified in the tender dossier must be applied as such and cannot in any case be modified during the procedure. The technical evaluation will be based on the evaluation grid published in the tender dossier, which must not be modified in any way during the evaluation process. Given the wide variety of supplies and their technical nature, the grid must be individually developed for each tender in a YES/NO format to allow clear assessment whether or not the offer responds to the technical requirements of the tender dossier. See example in Annex C4.

4.3.4 ADDITIONAL INFORMATION DURING THE PROCEDURE

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

If it proves impossible to identify potential tenderers in the case of an open tender procedure, a notice setting out the changes to the tender dossier must be published as explained in section 4.3.1, taking into account that international notices must be submitted for publication to the European Commission at least 15 days before the intended date of publication. The deadline for the submission of tenders may be extended to allow tenderers to take account of the changes.

	If the tender has a particularly complex technical content, the Contracting Authority may organise a clarification meeting or site visit. This meeting must be announced in the tender dossier and must take place at least 21 days before the expiry of the deadline. All costs of attending such a meeting must be met by the tenderers. Visits by individual companies
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	during the tender period cannot be permitted unless clarification meetings and/or site visits have been specifically scheduled for all tenderers.
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Tenderers may submit questions in writing up to 21 days before the deadline for submission of tenders. The Contracting Authority must reply to all tenderers' questions at least 11 days before the deadline for receipt of tenders.

4.3.5 DEADLINE FOR THE SUBMISSION OF TENDERS

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

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

CENTRALISED
The minimum period between the date of publication of the procurement notice and the deadline for receipt of tenders is 60 days. However, in exceptional cases, a shorter deadline may be allowed.
DECENTRALISED: EX-ANTE
The minimum period between the date of publication of the procurement notice and the deadline for receipt of tenders is 60 days. However, in exceptional cases, and with the prior authorisation of the European Commission, a shorter deadline may be allowed.
DECENTRALISED: EX-POST
The minimum period between the date of publication of the procurement notice and the deadline for receipt of tenders is 60 days. However, in exceptional cases, a shorter deadline may be allowed.

4.3.6 PERIOD OF VALIDITY

Tenderers are bound by their tenders for the period specified in the tender dossier. This period must be sufficient to allow the Contracting Authority to examine the tenders, approve the contract award proposal, notify the successful tenderer and conclude the contract. The period of

validity of tenders is fixed at 90 days from the deadline for the submission of tenders.

In exceptional cases, before the period of validity expires, the Contracting Authority may ask the tenderers to extend the period for a specific number of days, which may not exceed 40.

The successful tenderer must maintain its tender for a further 60 days from the date of notification of award.

4.3.7 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 inner envelope must bear:

- (a) the address indicated in the tender documents for the submission of tenders;
- (b) the reference to the call for tenders to which the tenderer is responding;
- (c) where appropriate, the numbers of the lots for which a tender is being submitted;
- (d) the words "Not to be opened before the tender-opening session" written in the language of the tender dossier and in the local language;
- (e) the name of the tenderer.

4.3.8 THE EVALUATION COMMITTEE

4.3.8.1 COMPOSITION

Tenders are opened and evaluated by an Evaluation Committee appointed by the Contracting Authority comprising a non-voting Chairman, a non-voting Secretary and an odd number of voting members (minimum of three). Every member must have a reasonable command of the language in which the tenders are submitted. The voting members must possess the technical and administrative capacities necessary to give an informed opinion on the tenders.

CENTRALISED

The Evaluation Committee (ie, the Chairman, the Secretary and the voting members) must be nominated on a personal basis by the relevant services of the European Commission. Prior approval must be sought from the European Commission for the participation of

other observers.

DECENTRALISED: EX-ANTE

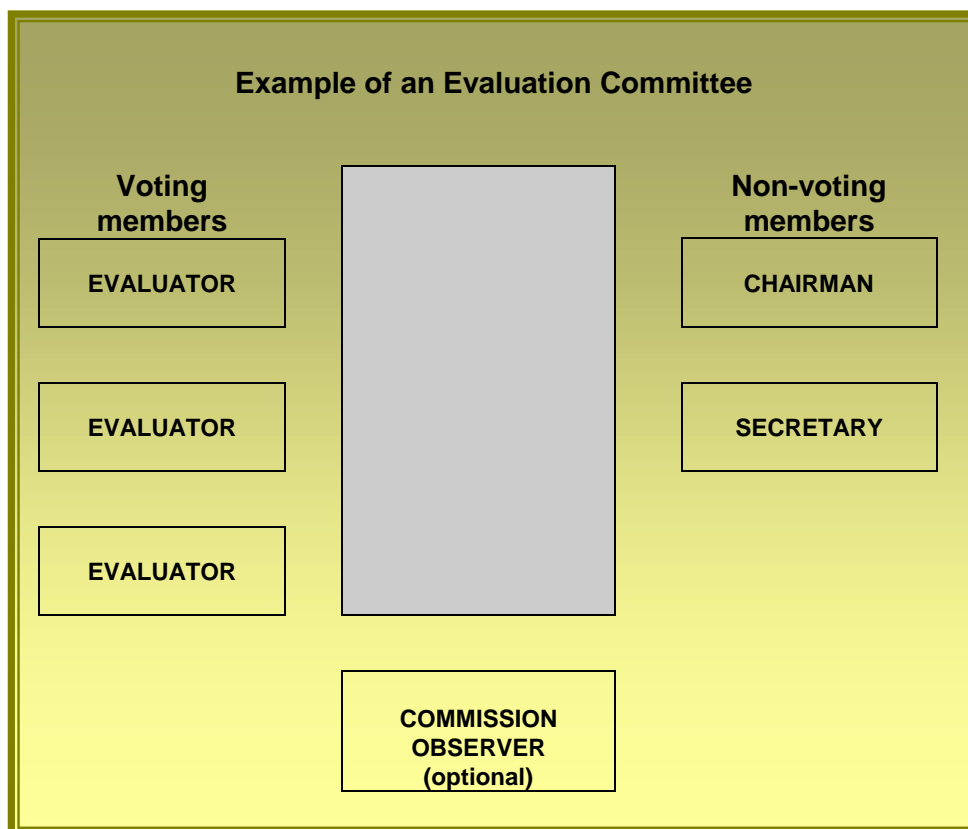
The Evaluation Committee (ie, the Chairman, the Secretary and the other voting members) must be nominated on a personal basis by the Contracting Authority. The composition of the Evaluation Committee must be submitted for approval to the European Commission. The European Commission may nominate an observer to follow all or part of the proceedings of the Evaluation Committee. The observer may be an independent expert. Prior approval must be sought from the European Commission for the participation of other observers.

DECENTRALISED: EX-POST

The Evaluation Committee (ie, the Chairman, the Secretary and the other voting members) must be nominated on a personal basis by the Contracting Authority. The participation of any observers must be authorised individually by the Contracting Authority.

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

All voting members of the Evaluation Committee have equal voting rights. The names and functions of all those involved in the evaluation process must be recorded in the Evaluation Report.




4.3.8.2 IMPARTIALITY AND CONFIDENTIALITY

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

Any Evaluation Committee member who withdraws from the Evaluation Committee for whatever reason must be replaced (following the standard procedure for appointing members of the Evaluation Committee, as explained in section 4.3.8.1) and the evaluation process must be restarted.

Any assessment by a voting member withdrawing from the Committee at whatever stage of the evaluation has to be disregarded.

	No information about the examination, clarification, evaluation or comparison of tenders or decisions about the contract award can be disclosed before the signature of the contract by the Contracting Authority and the successful tenderer. <u>Any attempt by a tenderer to influence the process in any way (whether by initiating contact with members of the Evaluation Committee or otherwise) will result in the immediate exclusion of its tender from further consideration.</u>
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- Apart from the tender opening session, the proceedings of the Evaluation Committee are conducted in camera and are confidential.
- In order to maintain the confidentiality of the proceedings, participation in the Evaluation Committee meetings is strictly limited to the members of the Evaluation Committee designated by the Contracting Authority and any authorised observers.
- The tenders should not leave the room/building in which the committee meetings take place before the conclusion of the work of the Evaluation Committee. They should be kept in a safe place when not in use.

4.3.8.3 RESPONSIBILITIES OF THE EVALUATION COMMITTEE MEMBERS

The Chairman is responsible for co-ordinating the evaluation process and for ensuring its impartiality and transparency. The voting members of the Evaluation Committee have collective responsibility for decisions taken by the Committee.

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

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

Any request for clarification requiring communication with the tenderers during the evaluation process must be conducted in writing (by fax or letter) and signed by both the Chairman and the Secretary of the Evaluation Committee. Copies of any such communication must be annexed to the Evaluation Report.

If a tender infringes the formal requirements, the Evaluation Committee may use its discretion to decide whether or not it should still be considered during the rest of the evaluation process. Whatever the Evaluation Committee decides, this must be fully recorded and justified in the Evaluation Report.

4.3.8.4 TIMETABLE

The Evaluation Committee should be formed early enough to ensure the availability of the designated members (and any observer nominated by the European Commission, in the case of decentralised ex-ante control) during the period necessary to prepare and conduct the evaluation process. The tender evaluation should be completed as soon as possible.

The duration of the evaluation process should be agreed between members of the Evaluation Committee and the Contracting Authority. The evaluation process must be completed in time to allow the successful tenderer to be notified by the Contracting Authority (after all necessary approvals) within the tender validity period (ie, 90 days) specified in the tender dossier.

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 and provide a receipt for those delivered by hand. The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened.


The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

4.3.9.2 PREPARATORY MEETING

- First meeting of Evaluation Committee:
 - to be held before the tender opening session
 - the tender dossier should have been distributed in advance to the members of the Evaluation Committee.
- The Chairman presents the purpose of the tender procedure in general terms.
- The Chairman reminds the Evaluation Committee of the selection and award criteria specified in the tender dossier, stating that these must be respected without modification.
- The Chairman explains the procedures to be followed by the Evaluation Committee.
- Before the tenders are opened, the Chairman of the Committee checks that all members are familiar with the evaluation grid set out in the tender dossier to make sure that the tenders will be evaluated by the different members of the Committee in a consistent manner. See Annex C4 for the format of an evaluation grid.

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, that the documents have been duly signed and that the tenders are generally in order.

	The tender opening session is a formal, public process. The Evaluation Committee opens the tenders in public at the place and time fixed in the tender dossier. The following are announced at the tender-opening session: the names of the tenderers, the tender prices, the provision of the requisite tender guarantee and any other formality which the Contracting Authority thinks appropriate.
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CENTRALISED

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST


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

- ❑ Representatives of the tenderers may attend the session if they wish. The minutes of this meeting must be recorded separately and may be made available to the tenderers on request.
- ❑ All members of the Evaluation Committee and any observers are required to read and sign a Declaration of Impartiality and Confidentiality (see Annex A4).
- ❑ See tender opening checklist in Annex C5 for the detailed formalities to be carried out by the Chairman with the assistance of the Secretary, as summarised below.

The following tasks are carried out by the Chairman and Secretary:

- ❑ Examine and state the condition of outer envelopes before opening them in order of receipt, announcing the name of the tenderer. Only tenders in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.
- ❑ Initial the front page of each document and all pages of the financial offer.

The Committee must decide whether or not tenders comply with the formal requirements. The Summary of tenders received, which is attached to the Tender Opening Report (see Annex C6) must be used to record the compliance of each of the tenders with the formal requirements. The tenders not considered for further evaluation must be kept by the Contracting Authority, together with the other tenders - the associated guarantees may be returned to the tenderers on request.

	<p>The Tender Opening Report, which comprises the Summary of tenders submitted and the minutes of the tender opening session, must be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. It may be made available to the tenderers upon request. The Tender Opening Report must state:</p> <ul style="list-style-type: none"><input type="checkbox"/> the date, time and place of the session;<input type="checkbox"/> the persons present;<input type="checkbox"/> the names of the tenderers who have replied within the deadline;<input type="checkbox"/> whether the originals of the tenders were duly signed, and whether technical offers were sent in the requisite number of copies;<input type="checkbox"/> the names of any tenderers whose tenders were found to be non-compliant at the opening session and the requirement(s) with which their tenders failed to comply;<input type="checkbox"/> the names of any tenderers who withdrew their tenders;<input type="checkbox"/> any declarations made by the tenderers.
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4.3.9.4 EVALUATION OF TECHNICAL OFFERS

It is obligatory that the Evaluation Committee uses 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 training component of the tenders to determine whether they satisfy the requirements set in the tender dossier. The results are recorded in a YES/NO grid for all elements specified in the tender dossier. No scoring method should be used. If the tender is divided into lots, the evaluation should be carried out lot-by-lot.


Part 1: Administrative compliance

Before conducting a detailed evaluation of the tenders, the Contracting Authority checks that they comply with the essential requirements of the tender dossier.

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.

Tenders which do not comply with the tender dossier must be rejected by the Contracting Authority and may not subsequently be made to comply by undergoing corrections or having discrepancies or restrictions removed.

- Copies of the technical offers are distributed to the Committee members. The originals are locked away for safe keeping.
- Each technical 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
 - the tenderer has initialled the front page of both the Technical Specifications and General Conditions
 - for consortia: the confirmation of association and designation of a lead company has been signed by all consortium members
 - for tenderers intending to subcontract tasks (if permitted by the tender dossier): the tenderer has included a statement regarding the content and extent of subcontracting envisaged, which must be within the limit stated in the tender dossier.
- With the agreement of the other Evaluation Committee members, the Chairman may communicate in writing with tenderers whose submissions require clarification, offering them the possibility to respond by fax within a maximum of 48 hours.


	<p>The Chairman 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). Any Evaluation Committee member or observer who has a potential conflict of interest due to a link with any tenderer must declare it and immediately withdraw from the Evaluation Committee. He will be excluded from participating further in any capacity in the evaluation meetings.</p> <p>Any Evaluation Committee member who withdraws from the Evaluation Committee for whatever reason must be replaced (following the standard procedure for appointing members of the Evaluation Committee, as explained in section 4.3.8.1) and the evaluation process must be restarted.</p>
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The administrative compliance of each of the tenders must be recorded in the Evaluation Report (see Annex C7).

Part 2: Technical compliance of tenders

The detailed evaluation of the tenders takes place after checking that the tenders satisfy the formal requirements of tender submission. 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.

	<p><u>Rule of origin:</u> All tenders must satisfy the rule that the goods to be supplied originate in EU Member States and/or the countries and territories of the regions covered and/or allowed by the Regulation or other instruments governing the programme under which the contract is being financed.</p> <p>Evidence to this effect is asked for in the instructions to tenderers. The tenderer must provide a declaration that the goods tendered comply with the origin requirement and specify the respective country of origin. 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.</p> <p>The tenderer will be required to provide, prior to the signature of the contract, proof of origin in the form of a Certificate of Origin or other official documentation as prima facie evidence.</p>
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Where the provision of a Certificate of Origin is not possible (in many countries these are only issued against presentation to the Chamber of Commerce of commercial invoices), the tenderer can in these cases submit its own declaration. The official Certificates of Origin must then be submitted with the first invoice. Failing this, the Contracting Authority cannot release any funds to the contractor.

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


To establish origin, one must determine where the product in question has been obtained or produced. A product cannot originate in a country in which no production process has taken place. On the other hand, the country of production is not necessarily the country of origin but only when the relevant provisions of Regulation (EEC) 2913/92 and its implementing regulation are fulfilled.

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

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



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

	<p><u>Nationality of experts and subcontractors:</u> The Evaluation Committee must check at this stage that the nationalities of any experts and/or subcontractors identified in the technical offers satisfy the nationality rule in section 2.3.1.</p>
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Having evaluated the tenders, the Evaluation Committee rules on the technical compliance of each tender, classifying it as technically compliant or not technically compliant. Where contracts include after-sales service and/or training, the technical quality of such services is also assessed during the technical evaluation. If the tenderer submitting the compliant tender with the lowest price has also submitted a variant solution, the variant tender should also be evaluated.

4.3.9.5 EVALUATION OF FINANCIAL OFFERS

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

If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot.

4.3.9.6 CHOICE OF CONTRACTOR

CENTRALISED

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

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

The justification for accepting or rejecting an abnormally low offer

must be recorded in the Evaluation Report.

DECENTRALISED: EX-ANTE

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

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

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

DECENTRALISED: EX-POST

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

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

The justification for rejecting or accepting an abnormally low offer must be recorded in the Evaluation Report and the Contracting Authority must notify the European Commission of its decision.

4.3.9.6.1 Supply contracts not including after-sales services

Price is the sole criterion for awarding supply contracts not including after-sales services. 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 section 4.2.1.2(d) apply.

4.3.9.6.2 Supply contracts involving ancillary services

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

If the selected tender exceeds the maximum budget available for the contract, the provisions of section 4.2.1.2(d) apply.

4.3.9.6.3 Particularly complex supplies

CENTRALISED

For particularly complex supplies, a combination of quality and price may be used as the basis for awarding the contract to the most economically advantageous tender. This should be limited to products with particular security/production/implementation constraints. The relevant services of the European Commission must give their prior approval to the use of this approach and will provide technical support on a case-by-case basis.

DECENTRALISED: EX-ANTE

For particularly complex supplies, a combination of quality and price may be used as the basis for awarding the contract to the most economically advantageous tender. This should be limited to products with particular security/production/implementation constraints. The European Commission must give its prior approval to the use of this approach and will provide technical support to the Contracting Authority on a case-by-case basis.


DECENTRALISED: EX-POST

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

If the selected tender exceeds the maximum budget available for the contract, the provisions of section 4.2.1.2(d) apply.

4.3.9.7 CONCLUSIONS OF THE EVALUATION COMMITTEE

	<p>As a result of its deliberations, the Evaluation Committee may make any of the following recommendations:</p> <ul style="list-style-type: none"><input type="checkbox"/> Award the contract to the tenderer which has submitted a tender:<ul style="list-style-type: none"><input type="checkbox"/> which complies with the formal requirements and the eligibility rules;<input type="checkbox"/> whose total budget is within the maximum budget available for the project;<input type="checkbox"/> which meets the minimum technical requirements specified in the tender dossier; and<input type="checkbox"/> which is the least expensive tender (satisfying all of the above conditions).<input type="checkbox"/> Cancel the tender procedure in exceptional circumstances, such as:<ul style="list-style-type: none"><input type="checkbox"/> None of the tenders satisfies the selection/award criteria of the tender procedure<input type="checkbox"/> All tenders received exceed the maximum budget available for the contract.
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CENTRALISED

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex C7) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. This must be submitted for approval to the relevant services of the European Commission, which must decide whether or not to accept its recommendations.

DECENTRALISED: EX-ANTE

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex C7) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. This must be submitted to the Contracting Authority, which must decide whether or not to accept the Committee's recommendations.

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

At the same time, for any award proposal, a contract dossier including a proposed contract must be prepared on the basis of the recommended tender (see section 4.3.9.8). It must be submitted to the European Commission for endorsement (agreement to finance the proposed contract).

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

If the European Commission approves the recommendation of the Evaluation Committee, the Contracting Authority will either commence awarding the contract (see section 4.3.11) or cancel the tender, as recommended by the Evaluation Committee.

DECENTRALISED: EX-POST

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex C7) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. This must be submitted to the Contracting Authority, which must decide whether or not to accept the Committee's recommendations. 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, dated and kept for future reference. That written record must contain at least the following:

- (a) the name and address of the Contracting Authority, and the subject and value of the contract or framework contract;
- (b) the names of the candidates or tenderers rejected and the reasons for their rejection;

(c) the names of the candidates or tenderers to be examined and the reasons for their selection;

(d) the names of the candidates or contractor proposed and the reasons for that choice and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties.

The Contracting Authority will then take its decision giving at least the following:

(a) its name and address, and the subject and value of the contract or framework contract;

(b) the names of the candidates or tenderers rejected and the reasons for their rejection;


(c) the names of the candidates or tenderers to be examined and the reasons for their selection;

(d) the names of the candidates or contractor selected and the reasons for that choice by reference to the selection and award criteria announced in advance and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties;

(e) in the case of negotiated procedures, the circumstances referred to in these rules which justify their use;

(f) where appropriate, the reasons why the Contracting Authority has decided not to award a contract.

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.

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

4.3.9.8 CONTRACT PREPARATION

If the Evaluation Committee recommends the award of a contract to a particular tenderer and the Contracting Authority approves the Evaluation Report, the Contracting Authority must use the standard contract format (see Annex C4) to prepare the proposed contract. All the components of the proposed contract should be available from either the tender dossier or the tender submitted by the recommended tenderer. Only the Special conditions should need to be completed.

A contract dossier must be prepared using the following structure:

- e) Explanatory note using the format in Annex A6
- f) Copy of the financing agreement authorising the project
- g) Copy of the tender announcements (contract forecast and procurement notice), Site Visit Report, Tender Opening Report, Evaluation Report, and any other relevant information
- h) Three copies of the proposed contract, which is based on the standard supply contract template (see Annex C4):
 - ❑ Special conditions (to be completed by the Contracting Authority)
 - ❑ General conditions for supply contracts (standard version in the tender dossier)
 - ❑ Technical specifications (from the tender dossier)
 - ❑ Budget (from the recommended tender)
 - ❑ Miscellaneous (from the tender dossier and including, for example, tax and customs arrangements, financial guarantee format, and the standard invoice format to be used by the contractor).



The standard contract annexes for the General conditions and Miscellaneous Information (see Annex C4) must be reproduced without modification in every supply contract. The Special conditions must be completed by the Contracting Authority

4.3.10 CANCELLING THE TENDER PROCEDURE

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

- ❑ the tender procedure has been unsuccessful, ie, no qualitatively or financially worthwhile tender has been received or there is no response at all;
- ❑ the economic or technical data of the project have been fundamentally altered;
- ❑ exceptional circumstances or force majeure render normal performance of the contract impossible;
- ❑ all technically compliant tenders exceed the financial resources available;
- ❑ there have been irregularities in the procedure, in particular where these have prevented fair competition.

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

In the event of cancellation of any tender procedure, tenderers must be notified of the cancellation by the Contracting Authority. Such tenderers are not entitled to compensation. they will be entitled to the immediate release of their tender guarantee. When the tender procedure is cancelled before the outer envelope of any tender has been opened, 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

CENTRALISED

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

DECENTRALISED: EX-ANTE

After the Contracting Authority and the European Commission have given their formal approval and before the period of validity of tenders expires, the Contracting Authority notifies the successful tenderer in writing that its tender has been accepted (see format of letter in Annex A8) and draws attention to any arithmetical errors which were corrected during the evaluation process.

DECENTRALISED: EX-POST

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

The notification implies that the validity of the successful tender is automatically extended for a period of 60 days from the date of dispatch of the notification letter. At the same time, the Contracting Authority requests the successful tenderer to submit the evidence required by the tender dossier to confirm the declarations made in the tender submission form within 15 days of the date of the notification letter. The Contracting Authority must examine the evidence submitted by the successful tenderer before sending the contract to the tenderer for signature (see Section 4.3.11.2).

Where a contract is awarded under a financing agreement which had not been concluded at the time the tender procedure was launched, the Contracting Authority must not notify the successful tenderer before the financing agreement has been concluded (see section 2.4.9).

4.3.11.2 CONTRACT SIGNATURE

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

- 1) Use the contract dossier prepared following the recommendation of the Evaluation Committee (see section 4.3.9.8).

- 2) Sign all copies of the contract.
- 3) Send all three signed copies of the contract to the successful tenderer, who must countersign them within 30 days of receipt (and, in any case, before the expiry of the tender validity period) and return two copies to the Contracting Authority together with the advance guarantee required in the contract. If the successful tenderer fails to do this within the specified deadline or indicates at any stage that it is not willing or able to sign the contract, the tenderer cannot be awarded the contract and forfeits its tender guarantee. The contract preparation process must be restarted from step 1 with a new contract dossier prepared using the tender which has the next lowest price (provided that that tender is technically compliant and is within the maximum budget available for the contract). (In the decentralised ex-ante system, the new contract proposed would need to be sent to the European Commission for endorsement).

CENTRALISED

- 4) On receipt of the two signed copies from the successful tenderer, one copy is sent to the financial service in charge of payments and the other one is sent to the project manager.

DECENTRALISED: EX-ANTE

- 4) On receipt of the two signed copies from the successful tenderer, the Contracting Authority sends one to the financial service in charge of payments and the second copy is sent to the European Commission. A copy of the signed contract must be sent to the Project Manager.

DECENTRALISED: EX-POST

- 4) On receipt of the two signed copies from the successful tenderer, the Contracting Authority sends one to the financial service in charge of payments and the second copy is sent to the Project Manager.



The Contracting Authority and the Contractor must note on the contract the date on which they sign it. The contract takes effect on the date of the later signature. A contract cannot cover earlier supplies/services or enter into force before this date.


4.3.11.3 PUBLICISING THE AWARD OF THE CONTRACT

The Contracting Authority informs candidates and tenderers of decisions reached concerning the award of the contract as soon as possible,

including the grounds for any decision not to award a contract for which there has been competitive tendering or to recommence the procedure.

Once the contract has been signed, the Contracting Authority must prepare a contract award notice (using the template in Annex C09) and send it to the European Commission, which publishes the results of the tender procedure in the Official Journal of the European Union, on the Internet and in any other appropriate media. In addition, the Contracting Authority must:

- send the other tenderers a standard letter (see Annex C8) within not more than 15 days, informing them that their tenders have been unsuccessful. This letter must state whether their tenders were technically compliant and indicate any technical shortcomings and the characteristics and relative advantages of the successful tender.
- record all statistical information concerning the contract award procedure including the contract value, the names of the other tenderers and the successful tenderer.

	The Contracting Authority is responsible for preparing the supply contract award notice using the template in Annex C10 and for submitting it for publication to the European Commission in electronic form within 24 hours of receiving the countersigned contract from the successful tenderer.
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4.4 LOCAL OPEN TENDER (FOR CONTRACTS OF AT LEAST €30,000 AND UNDER €150,000)


In this case, the procurement notice is published only in the beneficiary country. The European Commission publishes the references of such tender procedures (dossier number, country, Contracting Authority and type of contract) on the Internet with the address from which firms can obtain further information.


As the cost of publishing the full procurement notice in the local media may be prohibitive, the template in Annex C3 gives the minimum information which must be included in a local advertisement. However, the full procurement notice must be available from the address referred to in the advertisement, together with the tender dossier.

The procurement notice for a local tender must at a minimum be published in the Official Journal of the beneficiary country or any equivalent media. This publication is under the responsibility of the beneficiary country.

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 (eg, obliging such firms to be registered in the beneficiary country or to have won contracts there in the past).

In this procedure, there must be a minimum of 30 days between the date of publication of the procurement notice in the local press and the deadline for receipt of tenders.

	The measures applicable to an international open procedure, as described in section 4.3, apply by analogy to the local open procedure. The Contracting Authority may require a tender guarantee.
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	The Contracting Authority is responsible for preparing the supply contract award notice using the template in Annex C09 and for submitting it for publication to the European Commission in electronic form within 24 hours of receiving the countersigned contract from the successful tenderer.
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4.5 COMPETITIVE NEGOTIATED PROCEDURE (FOR CONTRACTS UNDER €30,000)

The Contracting Authority may award contracts under €30,000 by competitive negotiated procedure, without publication. The Contracting Authority draws up a list of at least three firms. The candidates are sent a letter of invitation to tender accompanied by a tender dossier.

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

The tenders are evaluated by an Evaluation Committee possessing the requisite technical and administrative capacities appointed by the Contracting Authority. The members of the Committee must each sign a Declaration of Impartiality and Confidentiality (see Annex A4).

	<p>If the Contracting Authority receives fewer than three compliant tenders, the procedure must be cancelled and started again. Consequently, it would be prudent to invite tenders from more than three contractors. The remainder of the procedure (including preparation of the tender dossier, evaluating the tenders and awarding the contract) is the same as under the international open procedure (see sections 4.3.2 to 4.3.11.3). No tender guarantee is required in this case.</p>
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	<p>The Contracting Authority may award supply contracts of a value of €5,000 or less on the basis of a single tender. Note that projects must not be split artificially to circumvent the procurement thresholds (see section 2.5).</p>
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4.6 MODIFYING SUPPLY CONTRACTS

Supply contracts may need to be modified during their duration if the circumstances affecting project implementation have changed since the initial contract was signed. Contract modifications must be formalised through an addendum to the contract. Such an addendum must be signed by the contracting parties (and, under a decentralised ex-ante system, approved and endorsed by the European Commission).

Changes of address, changes of bank account and changes of auditor may simply be notified in writing by the contractor to the Contracting Authority, although this does not affect the right of the Contracting Authority to oppose the contractor's choice of bank account or auditor.

4.6.1 GENERAL PRINCIPLES

The following general principles must always be respected:

- A contractor's requests for contract modifications should not automatically be accepted by the Contracting Authority. Such requests must be properly substantiated. The Contracting Authority must examine the reasons given and reject requests which have little or no substantiation.
- Contracts can only be modified within the lifetime of the contract; modifications cannot be made retroactively.

- The purpose of the addendum must be closely connected with the nature of the project covered by the initial contract.
- Major changes, such as a fundamental alteration of the Technical Specifications, cannot be made by means of an addendum.
- The addendum must not alter the competition conditions prevailing at the time the contract was awarded.
- Unit prices must be identical to those in the initial contract, unless the initial contract stipulates otherwise (ie, there is a price-revision clause).
- Any modification extending the performance period of the contract 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.
- Any modifications which require additional funding must have been foreseen in the Technical Specifications of the initial contract and can only be agreed before the expiry of the financing agreement under which the initial contract was financed. The additional funding must come from the same budget line as that used for the initial contract.



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

The only exception to this rule is for additional deliveries by the original supplier intended either as a partial replacement of supplies or installations included in the original contract, or as an extension of existing supplies or installations where a change of supplier would oblige the Contracting Authority to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance.




Requests for contract modifications to supply contracts must be made (by one contracting party to the other) allowing at least 30 days for the addendum to be signed before the end of the period of execution of the initial contract.

4.6.2 PREPARING AN ADDENDUM


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

- 1) Use the standard template for an addendum (see Annex A7)

	All references in the proposed addendum to article numbers and/or annexes to be modified must correspond to those in the initial contract.
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Any addendum modifying the budget must include a replacement budget showing how the full budget breakdown of the initial contract has been modified by this addendum (and any previous addenda). The following column headings should be used:

Budget Item	Initial contract budget	Addendum 1	(Addendum 2 ...)	Revised budget

	<p>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.</p> <p>The payment schedule must not be modified unless either the budget is being modified or the contract is being extended.</p>
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- 2) Prepare a dossier comprising the following items:

<ol style="list-style-type: none"> a) Explanatory note (see template in Annex A6) providing a technical and financial justification for making the modifications in the proposed addendum b) Copy of the contractor's request for (or agreement to) the proposed modifications c) Copy of the financing agreement authorising the project d) Copy of the initial contract and any subsequent addenda e) Copy of the tender announcements (contract forecast and
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procurement notice), Site Visit Report, Tender Opening Report, Evaluation Report and any other relevant information

- f) Three copies of the proposed addendum, which is based on the standard addendum template (see Annex A7) and includes any revised annexes.

CENTRALISED

- 3) Sign all copies of the addendum.

DECENTRALISED: EX-ANTE

- 3) Sign all copies of the addendum and send the addendum dossier to the European Commission for approval and endorsement.

DECENTRALISED: EX-POST

- 3) Sign all copies of the addendum. No prior approval or endorsement by the European Commission is required.

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

CENTRALISED

- 5) On receipt of the two signed copies from the successful tenderer, one copy is sent to the financial service in charge of payments and the second is sent to the project manager.

DECENTRALISED: EX-ANTE

- 5) On receipt of the two signed copies from the successful tenderer, the Contracting Authority send one to the financial service in charge of payments and the second copy is sent to the European Commission. A copy of the signed addendum must be sent to the Project Manager.

DECENTRALISED: EX-POST

- 5) On receipt of the two signed copies from the successful tenderer, the Contracting Authority sends one to the financial service in charge of payments and the second copy is sent to the Project Manager.



The Contracting Authority and the Contractor must note on the addendum the date on which they sign it. The addendum takes effect on the date of the later signature. An addendum cannot cover earlier supplies/services or enter into force before this date.

5 WORKS CONTRACTS

5.1 INTRODUCTION

Works contracts cover either the execution, or both the execution and design, of works or the realisation, by whatever means, of a work corresponding to the requirements specified by the Contracting Authority. A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.

Works contracts are concluded between a contractor and the Contracting Authority for the execution of works or the building of a structure.

"Contractor" describes any natural or legal person carrying out the works. A contractor submitting a tender is known as a "tenderer" and one invited to take part in a restricted tender procedure or competitive negotiated procedure as a "candidate".

The Contracting Authority, which is always specified in the procurement notice, is the authority empowered to conclude the contract. Works contracts are usually concluded by the beneficiary with which the Commission draws up a financing agreement (decentralised contracts).

CENTRALISED

Works contracts are concluded directly by the European Commission acting for and on behalf of the beneficiary country. It is responsible for launching tender procedures, receiving tenders, chairing tender-examination sessions, deciding on the results of tender procedures and signing the contracts.

DECENTRALISED: EX-ANTE

Works contracts are concluded by the Contracting Authority designated in a financing agreement, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the financing agreement.

The Contracting Authority submits the tender dossiers to the European Commission for approval prior to issue. The Contracting Authority must submit procurement notices and award notices to the European Commission for publication.

On the basis of decisions thus approved and in close consultation with the European Commission, the Contracting Authority is responsible for launching tender procedures, receiving tenders, chairing tender-examination sessions and deciding on the results of tender procedures. The Contracting Authority submits the results of the

tender examination and the contract award proposal to the European Commission for approval. Once it has received approval, it signs the contracts and notifies the European Commission accordingly. As a general rule, the European Commission will be represented when tenders are opened and evaluated and must always be invited.

DECENTRALISED: EX-POST

Works contracts are concluded by the Contracting Authority designated in a financing agreement, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the financing agreement.

It is responsible for launching tender procedures, receiving tenders, chairing tender-examination sessions, deciding on the results of tender procedures and signing the contracts without the prior approval of the European Commission. The Contracting Authority must submit procurement notices and award notices to the European Commission for publication.

5.2 PROCUREMENT PROCEDURES

5.2.1 CONTRACTS OF €5,000,000 OR MORE

5.2.1.1 OPEN PROCEDURE

The standard method of awarding works contracts is by means of an international open tender procedure following publication of a procurement notice.

5.2.1.2 RESTRICTED PROCEDURE

In exceptional cases justified by the special characteristics of certain projects, a restricted tender procedure may be used (with the prior authorisation of the European Commission in the case of decentralised ex-ante control). The publication of the procurement notice remains mandatory to ensure the widest possible participation.

5.2.1.3 NEGOTIATED PROCEDURE

CENTRALISED

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

DECENTRALISED: EX-ANTE

The Contracting Authority must seek prior approval from the

European Commission to use the negotiated procedure.
DECENTRALISED: EX-POST
No prior approval from the European Commission is required.

Works contracts may be awarded by negotiated procedure with a single tender, after the Commission has given its agreement if it is not the contracting authority, in the following cases:

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

Operations carried out in crisis situations as referred to in Article 168(2) of the implementing rules are considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, will establish that a situation of extreme urgency exists and review his decision regularly with regard to the principle of sound financial management;

(b) for additional works not included in the initial contract which have, through unforeseen circumstances, become necessary for carrying out the works described therein and which have been awarded to the contractor already carrying out the work:

- where such works cannot be technically or economically separated from the main contract without serious inconvenience to the beneficiary;

- where such works, although separable from the performance of the original contract, are strictly necessary to its completion;

- where the aggregate value of contracts awarded for additional works does not exceed 50% of the value of the principal contract.

(c) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the Contracting Authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered and the principle of equal treatment is observed.

The Contracting Authority must prepare a Negotiation Report justifying the manner in which the negotiations were conducted and the basis for the contract award decision resulting from these negotiations. The procedures given in section 5.3.11 must be followed by analogy, with the Negotiation Report being included in the contract dossier.

5.2.2 CONTRACTS OF BETWEEN €300,000 AND €5,000,000

5.2.2.1 LOCAL OPEN PROCEDURE

Such contracts are awarded after an open tender procedure published locally, a procedure in which the procurement notice is published only in the beneficiary country. The European Commission publishes the references of such tender procedures (dossier number, country, Contracting Authority and type of contract) on the Internet with the address from which firms can obtain further information.

5.2.2.2 NEGOTIATED PROCEDURE

CENTRALISED

The prior approval of the relevant services of the European Commission is necessary for use of the negotiated procedure in the situations given in section 5.2.1.3.

DECENTRALISED: EX-ANTE

With the European Commission's prior agreement, the Contracting Authority may award works contracts by negotiated procedure in the situations given in section 5.2.1.3.

DECENTRALISED: EX-POST

The Contracting Authority may award works contracts by negotiated procedure in the situations given in section 5.2.1.3. No prior approval from the European Commission is required.

5.2.3 CONTRACTS UNDER €300,000 - COMPETITIVE NEGOTIATED PROCEDURE

Works contracts under €300,000 are awarded by competitive negotiated procedure. Three compliant tenders must be obtained so at least three contractors must be consulted, but no procurement notice need be published.



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

5.3 INTERNATIONAL OPEN TENDER (FOR CONTRACTS OF €5,000,000 OR MORE)

5.3.1 PUBLICITY

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

5.3.1.1 PUBLICATION OF CONTRACT FORECASTS

Contract forecasts are sent as soon as possible after the decision approving the programme for works contracts.

The contract forecasts must give a brief indication of the subject and content of the contracts concerned. (See template in Annex D1). Given that they are forecasts, publication does not bind the Contracting Authority to finance the contracts proposed and prospective contractors are not expected to submit tenders at this stage.

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

CENTRALISED

Contract forecasts must be submitted for publication to the relevant services of the European Commission in electronic form using the template in Annex D1 at least 15 days before the intended date of publication, to allow time for translation. They must be published at least 30 days before the corresponding procurement notice.

DECENTRALISED: EX-ANTE

The Contracting Authority must submit the contract forecasts for publication to the European Commission in electronic form using the template in Annex D1 at least 15 days before the intended date of publication, to allow time for translation. They must be published at least 30 days before the corresponding procurement notice.

DECENTRALISED: EX-POST

The Contracting Authority must submit the contract forecasts for publication to the European Commission in electronic form using the template in Annex D1 at least 15 days before the intended date of publication, to allow time for translation. They must be published at least 30 days before the corresponding procurement notice.

5.3.1.2 PUBLICATION OF PROCUREMENT NOTICES

In addition to contract forecasts, all works contracts of €5,000,000 or more must also be the subject of a procurement notice published in the

Official Journal of the European Union, on the Internet (at http://europa.eu.int/comm/europeaid/index_en.htm) and in any other appropriate media. A minimum of 30 days must be allowed to elapse between the publication of the contract forecast and the procurement notice.

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

CENTRALISED

Procurement notices must be submitted for publication to the relevant services of the European Commission in electronic form using the template in Annex D2 at least 15 days before the intended date of publication, to allow time for translation.

DECENTRALISED: EX-ANTE

The Contracting Authority must submit procurement notices for publication to 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. The finalised tender dossier (see section 5.3.2) must also be submitted to the European Commission either at this time or in advance to demonstrate that the proposed procurement notice corresponds to the objectives of the contract.

DECENTRALISED: EX-POST

The Contracting Authority must submit procurement notices for publication to 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.

The procurement notice must identify clearly, precisely, and completely what the subject of the contract is and who the Contracting Authority is. If the procurement notice is also published locally, it must be identical to the procurement notice published on the Internet and appear at the same time.

The Contracting Authority must send tender dossiers to would-be tenderers. Because of their size and printing costs, tender dossiers for works contracts are usually sent out for a fixed fee. If a contractor is responsible for compiling the tender dossier and/or sending it out, the contractor in question must sign a Declaration of Objectivity and Confidentiality (see Annex A3).

The tender dossier will also be available for inspection at the premises of the Contracting Authority and the European Commission.

5.3.2 DRAFTING AND CONTENTS OF THE TENDER DOSSIER

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

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

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

- (a) the quality levels;
- (b) environmental performance;
- (c) design for all requirements (including accessibility for disabled people);
- (d) the levels and procedures of conformity assessment;
- (e) fitness for use;
- (f) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production procedures and methods.

The Contracting Authority is responsible for drawing up these documents.

CENTRALISED

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

DECENTRALISED: EX-ANTE

Given the technical complexity of many works contracts, the preparation of the tender dossier - particularly the Technical Specifications - may require the assistance of one or more external technical specialist(s) who must be recruited by the Contracting Authority with the prior approval of the European Commission. Each such specialist must sign a Declaration of Objectivity and Confidentiality (see Annex A3).

DECENTRALISED: EX-POST

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

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

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


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

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

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

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

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

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

The tender dossier must be approved by the relevant services of the European Commission.

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

The tender dossier must contain the following documents:

TENDER DOSSIER CONTENT

① INSTRUCTIONS TO TENDERERS

which must indicate:

- the type of contract (ie, Works)
- the selection and award criteria
- the grid to be used to evaluate the tenders. Given the wide variety of works and their technical nature, the grid must be individually developed for each tender in a

YES/NO format to allow clear assessment whether or not the offer responds to the Technical Specifications

- whether variants are authorised
- the proportion of subcontracting which may be authorised
- the currency of the tender
- the format to be used by a bank or similar institution to provide a tender guarantee (1-2% of the budget available for the contract).

See Annex D4 for template.

② DRAFT CONTRACT AND ANNEXES

See standard format in Annex D4. This includes:

- The specific contract conditions which amplify, supplement or derogate from the general conditions, and where they conflict, override them
- The technical annexes, containing any plans and the Technical Specifications, as well as a provisional timetable for performance
- The format of the bill of quantities/budget (for completion by the tenderer)
- The General Conditions for works contracts, to be included as an annex of the eventual contract. Changes to the General Conditions are forbidden.
- The formats to be used by a bank or similar institution to provide guarantees for:
 - payment of advances, and
 - performance (10% of the contract value).
- Any additional contractual information such as special tax arrangements for contracts funded by the European Community.

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

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

A guarantee is required in return for the payment of pre-financing exceeding €150,000. It will be released as and when the pre-financing is deducted from interim payments or payments of balances made to the contractor in accordance with the terms of the contract.

③ TENDER SUBMISSION FORMAT

The format in which the tender should be submitted. See Annex D4 for template.

The technical and financial offers must both be submitted in a single, sealed envelope or packet.

The technical offer must satisfy the Technical Specifications in all respects. Variant solutions can only be considered if a fully responsive technical offer has also been submitted by the tenderer.

The financial offer must be presented in the standard format to facilitate comparison of the financial offers. If this format is not respected, the tender will be rejected.

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 candidates who are ineligible (see section 2.3.1) or fall into one of the situations described in sections 2.3.4 and 2.4.11;
2. checking that the candidates' financial situation (financial and economic standing) is sound, as backed up, for example, by balance sheets and turnover for the previous three years (see point 2.4.8.1.3);
3. verifying the candidates' technical and professional capabilities, for example by looking at their average annual staffing levels, the size and professional experience of their management and the main services supplied in the field in question in recent years (see point 2.4.8.1.4).

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

If, for some exceptional reason which the Contracting Authority considers justified, the tenderer or candidate is unable to provide the references required by the Contracting Authority, it may prove its economic and financial capacity by any other means which the Contracting Authority considers appropriate. Where the 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 shall concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.


The criteria should be precise, non-discriminatory and not prejudicial to fair competition. All criteria specified in the tender dossier must be applied as such and cannot in any case be modified during the procedure. The technical evaluation will be based on the evaluation grid published in the tender dossier, which must not be modified in any way during the evaluation process. Given the wide variety of works and their technical nature, these must be individually developed for each tender in a YES/NO format to allow clear assessment whether or not the offer responds to the technical requirements of the tender dossier. See example in Annex D4.

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

5.3.4 ADDITIONAL INFORMATION DURING THE PROCEDURE

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

If it proves impossible to identify potential tenderers in the case of an open tender procedure, a notice setting out the changes to the tender dossier must be published as explained in section 5.3.1, taking into account that international notices must be submitted for publication to the European Commission at least 15 days before the intended date of publication. The deadline for the submission of tenders may be extended to allow tenderers to take account of the changes.

	<p>If the tender has a particularly complex technical content, the Contracting Authority may organise a clarification meeting or site visit. This meeting must be announced in the tender dossier and must take place at least 21 days before the expiry of the deadline. All costs of attending such a meeting must be met by the tenderers. Visits by individual companies during the tender period cannot be permitted unless clarification meetings and/or site visits have been specifically scheduled for all tenderers.</p>
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Tenderers may submit questions in writing up to 21 days before the deadline for submission of tenders. The Contracting Authority must reply

to all tenderers' questions at least 11 days before the deadline for receipt of tenders.

5.3.5 DEADLINE FOR THE SUBMISSION OF TENDERS

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

CENTRALISED

The minimum period between the date of publication of the procurement notice and the deadline for receipt of tenders is 90 days. However, in exceptional cases, a shorter deadline may be allowed.

DECENTRALISED: EX-ANTE

The minimum period between the date of publication of the procurement notice and the deadline for receipt of tenders is 90 days. However, in exceptional cases, and with the prior authorisation of the European Commission, a shorter deadline may be allowed.

DECENTRALISED: EX-POST

The minimum period between the date of publication of the procurement notice and the deadline for receipt of tenders is 90 days. However, in exceptional cases, a shorter deadline may be allowed.

5.3.6 PERIOD OF VALIDITY

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

In exceptional cases, before the period of validity expires, the Contracting Authority may ask the tenderers to extend the period for a specific number of days, which may not exceed 40.

The successful tenderer must maintain its tender for a further 60 days from the date of notification of award.

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 inner envelope must bear:

- (a) the address indicated in the tender documents for the submission of tenders;
- (b) the reference to the call for tenders to which the tenderer is responding;
- (c) where appropriate, the numbers of the lots for which a tender is being submitted;
- (d) the words "Not to be opened before the tender-opening session" written in the language of the tender dossier and in the local language;
- (e) the name of the tenderer.

5.3.8 THE EVALUATION COMMITTEE

5.3.8.1 COMPOSITION

Tenders are opened and evaluated by an Evaluation Committee appointed by the Contracting Authority comprising a non-voting Chairman, a non-voting Secretary and an odd number of voting members (minimum of five). Every member must have a reasonable command of the language in which the tenders are submitted. The voting members must possess the technical and administrative capacities necessary to give an informed opinion on the tenders.

CENTRALISED

The Evaluation Committee (ie, the Chairman, the Secretary and the voting members) must be nominated on a personal basis by the relevant services of the European Commission. Prior approval must be sought from the European Commission for the participation of other observers.

DECENTRALISED: EX-ANTE

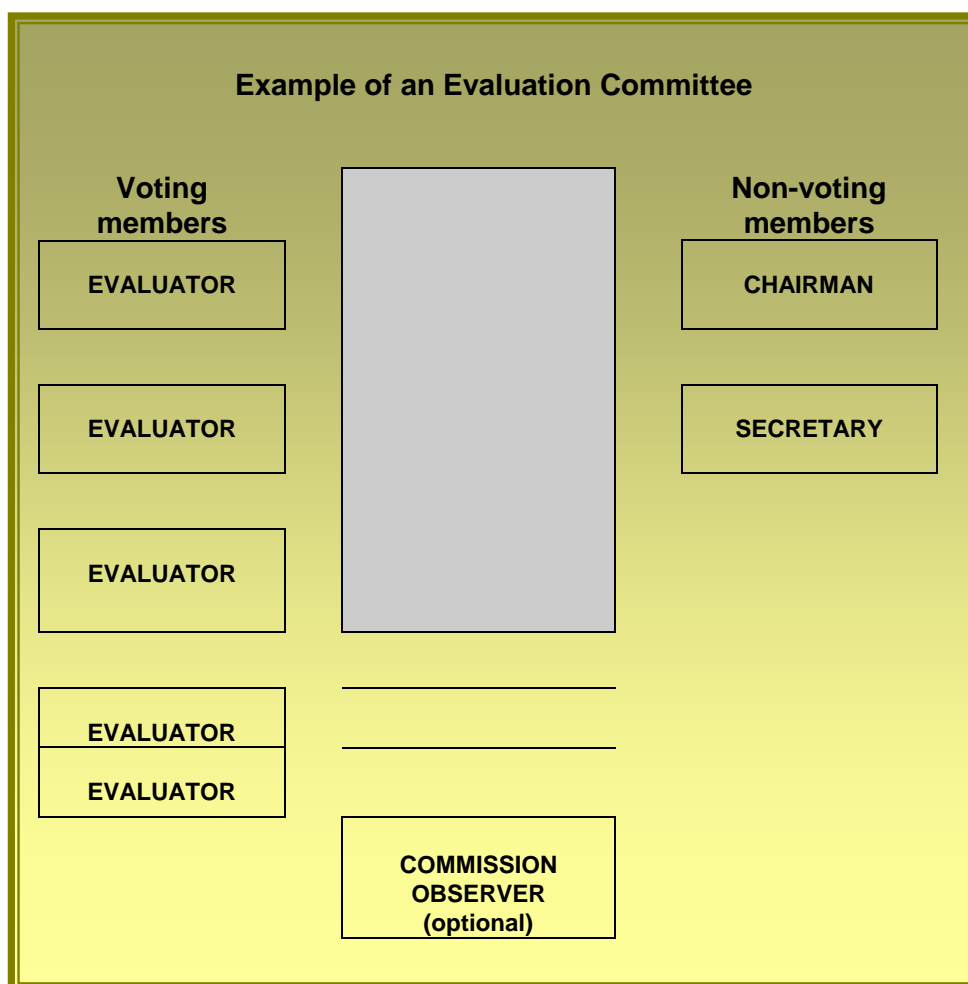
The Evaluation Committee (ie, the Chairman, the Secretary and the other voting members) must be nominated on a personal basis by the Contracting Authority. The composition of the Evaluation Committee must be submitted for approval to the European Commission. The European Commission may nominate an observer to follow all or part of the proceedings of the Evaluation Committee. The observer may be an independent expert. Prior approval must be sought from the European Commission for the participation of other observers.

DECENTRALISED: EX-POST

The Evaluation Committee (ie, the Chairman, the Secretary and the other voting members) must be nominated on a personal basis by the Contracting Authority. The participation of any observers must be authorised individually by the Contracting Authority.

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

All voting members of the Evaluation Committee have equal voting rights. The names and functions of all those involved in the evaluation process must be recorded in the Evaluation Report.




5.3.8.2 IMPARTIALITY AND CONFIDENTIALITY

All members of the Evaluation Committee and any observers must sign a Declaration of Impartiality and Confidentiality (see Annex A4). Any Evaluation Committee member or observer who has a potential conflict of interest due to a link with any tenderer must declare it and immediately withdraw from the Evaluation Committee. He will be

excluded from participating further in any capacity in the evaluation meetings.

Any Evaluation Committee member who withdraws from the Evaluation Committee for whatever reason must be replaced (following the standard procedure for appointing members of the Evaluation Committee, as explained in section 5.3.8.1) and the evaluation process must be restarted. Any assessment by a voting member withdrawing from the Committee at whatever stage of the evaluation has to be disregarded.

	No information about the examination, clarification, evaluation or comparison of tenders or decisions about the contract award can be disclosed before the signature of the contract by the Contracting Authority and the successful tenderer. <u>Any attempt by a tenderer to influence the process in any way (whether by initiating contact with members of the Evaluation Committee or otherwise) will result in the immediate exclusion of its tender from further consideration.</u>
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- Apart from the tender opening session, the proceedings of the Evaluation Committee are conducted in camera and are confidential.
- In order to maintain the confidentiality of the proceedings, participation in the Evaluation Committee meetings is strictly limited to the members of the Evaluation Committee designated by the Contracting Authority and any authorised observers.
- The tenders should not leave the room/building in which the committee meetings take place before the conclusion of the work of the Evaluation Committee. They should be kept in a safe place when not in use.

5.3.8.3 RESPONSIBILITIES OF THE EVALUATION COMMITTEE MEMBERS

The Chairman is responsible for co-ordinating the evaluation process and for ensuring its impartiality and transparency. The voting members of the Evaluation Committee have collective responsibility for decisions taken by the Committee.

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

- circulating and collecting the Declarations of Impartiality and Confidentiality;

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

Any request for clarification requiring communication with the tenderers during the evaluation process must be conducted in writing (by fax or letter) and signed by both the Chairman and the Secretary of the Evaluation Committee. Copies of any such communication must be annexed to the Evaluation Report.

If a tender infringes the formal requirements, the Evaluation Committee may use its discretion to decide whether or not it should still be considered during the rest of the evaluation process. Whatever the Evaluation Committee decides, this must be fully recorded and justified in the Evaluation Report.

5.3.8.4 TIMETABLE

The Evaluation Committee should be formed early enough to ensure the availability of the designated members (and any observer nominated by the European Commission, in the case of decentralised ex-ante control) during the period necessary to prepare and conduct the evaluation process. The tender evaluation should be completed as soon as possible.

The duration of the evaluation process should be agreed between members of the Evaluation Committee and the Contracting Authority. The evaluation process must be completed in time to allow the successful tenderer to be notified by the Contracting Authority (after all necessary approvals) within the tender validity period (ie, 90 days) specified in the tender dossier.

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 and provide a receipt for those delivered by hand. The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened.

The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).


5.3.9.2 PREPARATORY MEETING

- First meeting of Evaluation Committee:

- to be held before the tender opening session
 - the tender dossier should have been distributed in advance to the members of the Evaluation Committee.
- The Chairman presents the purpose of the tender procedure in general terms.
 - The Chairman reminds the Evaluation Committee of the selection and award criteria specified in the tender dossier, stating that these must be respected without modification.
 - The Chairman explains the procedures to be followed by the Evaluation Committee.
 - Before the tenders are opened, the Chairman of the Committee checks that all members are familiar with the evaluation grid set out in the tender dossier to make sure that the tenders will be evaluated by the different members of the Committee in a consistent manner. See Annex D4 for the format of an evaluation grid.

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, that the documents have been duly signed and that the tenders are generally in order.

	The tender opening session is a formal, public process. The Evaluation Committee opens the tenders in public at the place and time fixed in the tender dossier. The following are announced at the tender-opening session: the names of the tenderers, the tender prices, the provision of the requisite tender guarantee and any other formality which the Contracting Authority thinks appropriate.
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CENTRALISED

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST


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

- ❑ Representatives of the tenderers may attend the session if they wish. The minutes of this meeting must be recorded separately and may be made available to the tenderers on request.
- ❑ All members of the Evaluation Committee and any observers are required to read and sign a Declaration of Impartiality and Confidentiality (see Annex A4).
- ❑ See tender opening checklist in Annex D5 for the detailed formalities to be carried out by the Chairman with the assistance of the Secretary, as summarised below.

The following tasks are carried out by the Chairman and Secretary:

- ❑ Examine and state the condition of outer envelopes before opening them in order of receipt, announcing the name of the tenderer. Only tenders in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.
- ❑ Initial the front page of each document and all pages of the financial offer.

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 requirements. The tenders not considered for further evaluation must be kept by the Contracting Authority, together with the other tenders - the associated guarantees may be returned to the tenderers on request.

	<p>The Tender Opening Report, which comprises the Summary of tenders submitted and the minutes of the tender opening session, must be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. It may be made available to the tenderers upon request. The Tender Opening Report must state:</p> <ul style="list-style-type: none">❑ the date, time and place of the session;❑ the persons present;❑ the names of the tenderers who have replied within the deadline;❑ whether the originals of the tenders were duly signed, and whether technical offers were sent in the requisite number of copies;❑ the names of any tenderers whose tenders were found to be non-compliant at the opening session and the
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	<p>requirement(s) with which their tenders failed to comply;</p> <ul style="list-style-type: none"><input type="checkbox"/> the names of any tenderers who withdrew their tenders;<input type="checkbox"/> any declarations made by the tenderers.
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5.3.9.4 EVALUATION OF TECHNICAL OFFERS

It is obligatory that the technical evaluation uses 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 training component of the tenders to determine whether they satisfy the requirements set in the tender dossier. The results are recorded in a YES/NO grid for all elements specified in the tender dossier. No scoring method should be used. If the tender is divided into lots, the evaluation should be carried out lot-by-lot.

Part 1: Administrative compliance


Before conducting a detailed evaluation of the tenders, the Contracting Authority checks that they comply with the essential requirements of the tender dossier.

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.

Tenders which do not comply with the tender dossier must be rejected by the Contracting Authority and may not subsequently be made to comply by undergoing corrections or having discrepancies or restrictions removed.

- Copies of the technical offers are distributed to the Committee members. The originals are locked away for safe keeping.
- Each technical 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
 - the tenderer has initialled the front page of both the Technical Specifications and General Conditions
 - for consortia: the confirmation of association and designation of a lead company has been signed by all consortium members
 - for tenderers intending to subcontract tasks (if permitted by the tender dossier): the tenderer has included a statement regarding the content and extent of subcontracting envisaged, which must be within the limit stated in the tender dossier.
- With the agreement of the other Evaluation Committee members, the Chairman may communicate in writing with tenderers whose submissions require clarification, offering them the possibility to respond by fax within a maximum of 48 hours.

	<p>The Chairman 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). Any Evaluation Committee member or observer who has a potential conflict of interest due to a link with any tenderer must declare it and immediately withdraw from the Evaluation Committee. He will be excluded from participating further in any capacity in the evaluation meetings.</p> <p>Any Evaluation Committee member who withdraws from the Evaluation Committee for whatever reason must be replaced (following the standard procedure for appointing members of the Evaluation Committee, as explained in section 5.3.8.1) and the evaluation process must be restarted.</p>
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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 evaluation of the tenders takes place after checking that the tenders satisfy the formal requirements of tender submission. 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.

	<p><u>Rule of origin:</u> All tenders must satisfy the rule that the goods to be supplied originate in EU Member States and/or the countries and territories of the regions covered and/or allowed by the Regulation or other instruments governing the programme under which the contract is being financed.</p>
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	<p>Tenders which clearly fail to satisfy the rule of origin must be rejected.</p>
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	<p><u>Nationality of experts and subcontractors:</u> The Evaluation Committee must check at this stage that the nationalities of any experts and/or subcontractors identified in the technical offers satisfy the nationality rule in section 2.3.1.</p>
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Having evaluated the tenders, the Evaluation Committee rules on the technical compliance of each tender, classifying it as technically compliant or not technically compliant. If the tenderer submitting the compliant tender with the lowest price has also submitted a variant solution, the variant tender should also be evaluated.

5.3.9.5 EVALUATION OF FINANCIAL OFFERS

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

If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot.

5.3.9.6 CHOICE OF CONTRACTOR

The successful tenderer is the one submitting the "most economically advantageous" tender, ie, the least expensive tender classified as "technically compliant" during the technical evaluation. This must be declared the successful tender if it is equal to or lower than the maximum budget available for the contract.

If the chosen tender exceeds the maximum budget available for the contract, the provisions set out in section 5.2.1.3(c) apply.

CENTRALISED

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

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

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

DECENTRALISED: EX-ANTE

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

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

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

DECENTRALISED: EX-POST


In the case of abnormally low tenders, the Evaluation Committee must request any relevant information concerning the composition of the tender. If, for a given contract, tenders appear to be abnormally low, the Contracting Authority must, before rejecting

such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and verify those constituent elements, after due hearing of the parties, taking account of the explanations received. The Contracting Authority may, in particular, take into consideration explanations relating to:

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

The justification for rejecting or accepting an abnormally low offer must be recorded in the Evaluation Report and the Contracting Authority must notify the European Commission of its decision.

5.3.9.7 CONCLUSIONS OF THE EVALUATION COMMITTEE

	<p>As a result of its deliberations, the Evaluation Committee may make any of the following recommendations:</p> <ul style="list-style-type: none">❑ Award the contract to the tenderer which has submitted a tender:<ul style="list-style-type: none">❑ which complies with the formal requirements and the eligibility rules;❑ whose total budget is within the maximum budget available for the project;❑ which meets the minimum technical requirements specified in the tender dossier; and❑ which is the least expensive tender (satisfying all of the above conditions).❑ Cancel the tender procedure in exceptional circumstances, such as:<ul style="list-style-type: none">❑ None of the tenders satisfies the selection/award criteria of the tender procedure❑ All tenders received exceed the maximum budget available for the contract.
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CENTRALISED

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

DECENTRALISED: EX-ANTE

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex D7) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. This must be submitted to the Contracting Authority, which must decide whether or not to accept its recommendations.

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

At the same time, for any award proposal, a contract dossier including a proposed contract must be prepared on the basis of the recommended tender (see section 5.3.9.8). It must be submitted to the European Commission for endorsement (agreement to finance the proposed contract).

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

If the European Commission approves the recommendation of the Evaluation Committee, the Contracting Authority will either commence awarding the contract (see section 5.3.11) or cancel the tender, as recommended by the Evaluation Committee.

DECENTRALISED: EX-POST

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex D7) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. This must be submitted to the Contracting Authority, which must decide whether or not to accept the Committee's recommendations. 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, dated and kept for future reference. That written record must contain at least the following:

- (a) the name and address of the Contracting Authority, and the subject and value of the contract or framework contract;
- (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
- (d) the names of the candidates or contractor proposed and the reasons for that choice and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties.

The Contracting Authority will then take its decision giving at least the following:

- (a) its name and address, and the subject and value of the contract or framework contract;
- (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
- (d) the names of the candidates or contractor selected and the reasons for that choice by reference to the selection and award criteria announced in advance and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties;
- (e) in the case of negotiated procedures, the circumstances referred to in these rules which justify their use;
- (f) where appropriate, the reasons why the Contracting Authority has decided not to award a contract.

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.

	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.
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The Evaluation Report, in particular, is for official use only and may be divulged neither to tenderers nor to any party outside the authorised


services of the Contracting Authority, the European Commission and the supervisory authorities (eg, the Court of Auditors).

5.3.9.8 CONTRACT PREPARATION

If the Evaluation Committee recommends the award of a contract to a particular tenderer and the Contracting Authority approves the Evaluation Report, the Contracting Authority must use the standard contract format (see Annex D4) to prepare the proposed contract. All the components of the proposed contract should be available from either the tender dossier or the tender submitted by the recommended tenderer. Only the Special conditions should need to be completed.

A contract dossier must be prepared using the following structure:

- a) Explanatory note using the format in Annex A6
- b) Copy of the financing agreement authorising the project
- c) Copy of the tender announcements (contract forecast and procurement notice), Site Visit Report, Tender Opening Report, Evaluation Report and any other relevant information
- d) three copies of the proposed contract, which is based on the standard contract template (see Annex D4):
 - ❑ Special conditions (to be completed by the Contracting Authority)
 - ❑ General conditions for works contracts (standard version in the tender dossier)
 - ❑ Technical specifications (from the tender dossier)
 - ❑ Budget (from the recommended tender)
 - ❑ Miscellaneous (from the tender dossier and including, for example, tax and customs arrangements, financial guarantee format and the standard invoice format to be used by the contractor).

	The standard contract annexes for the General conditions and Miscellaneous Information (see Annex D4) must be reproduced without modification in every works contract. The Special conditions must be completed by the Contracting Authority.
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5.3.10 CANCELLING THE TENDER PROCEDURE

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

- the tender procedure has been unsuccessful, ie, no qualitatively or financially worthwhile tender has been received or there is no response at all;
- the economic or technical data of the project have been fundamentally altered;
- exceptional circumstances or force majeure render normal performance of the contract impossible;
- all technically compliant tenders exceed the financial resources available;
- there have been irregularities in the procedure, in particular where these have prevented fair competition.

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

In the event of cancellation of any tender procedure, tenderers must be notified of the cancellation by the Contracting Authority. Such tenderers are not entitled to compensation. they will be entitled to the immediate release of their tender guarantee. When the tender procedure is cancelled before the outer envelope of any tender has been opened, 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

CENTRALISED

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

DECENTRALISED: EX-ANTE

After the Contracting Authority and the European Commission have given their formal approval and before the period of validity of tenders expires, the Contracting Authority notifies the successful tenderer in writing that its tender has been accepted (see format of letter in Annex A8) and draws attention to any arithmetical errors which were corrected during the evaluation process.

DECENTRALISED: EX-POST

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

The notification implies that the validity of the successful tender is automatically extended for a period of 60 days from the date of dispatch of the notification letter. At the same time, the Contracting Authority requests the successful tenderer to submit the evidence required by the tender dossier to confirm the declarations made in the tender submission form within 15 days of the date of the notification letter. The Contracting Authority must examine the evidence submitted by the successful tenderer before sending the contract to the tenderer for signature (see Section 5.3.11.2).

Where a contract is awarded under a financing agreement which had not been concluded at the time the tender procedure was launched, the Contracting Authority must not notify the successful tenderer before the financing agreement has been concluded (see section 2.4.9).

5.3.11.2 CONTRACT SIGNATURE

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

- 1) use the contract dossier prepared following the recommendation of the Evaluation Committee (see section 5.3.9.8)
- 2) sign all copies of the contract
- 3) send all three signed copies of the contract to the successful tenderer, who must countersign them within 30 days of receipt (and, in any case, before the expiry of the tender validity period) and return two copies to the Contracting Authority together with the advance guarantee required in the contract. If the successful tenderer fails to do this within the specified deadline or indicates at any stage that it is not willing or able to sign the contract, the tenderer cannot be awarded the contract and forfeits its tender guarantee. The contract preparation process must be restarted from step 1 with a new contract dossier prepared using the tender which has the next lowest price (provided that that tender is technically compliant and is within the maximum budget available for the contract). (In the decentralised ex-ante system, the new contract proposed would need to be sent to the European Commission for endorsement).

CENTRALISED

- 4) On receipt of the two signed copies from the successful tenderer, one copy is sent to the financial service in charge of payments and the other to the Project Manager.

DECENTRALISED: EX-ANTE

- 4) On receipt of the two signed copies from the successful tenderer, the Contracting Authority sends one to the financial service in charge of payments and the second copy is sent to the European Commission. A copy of the signed contract must be sent to the Project Manager.

DECENTRALISED: EX-POST

- 4) On receipt of the two signed copies from the successful tenderer, the Contracting Authority keeps one in a secure contracts archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the Project Manager.



The Contracting Authority and the Contractor must note on the contract the date on which they sign it. The contract takes effect on the date of the later signature. A

	contract cannot cover earlier works/supplies/services or enter into force before this date.
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5.3.11.3 PUBLICISING THE AWARD OF THE CONTRACT

The Contracting Authority informs candidates and tenderers of decisions reached concerning the award of the contract as soon as possible, including the grounds for any decision not to award a contract for which there has been competitive tendering or to recommence the procedure.

Once the contract has been signed, the Contracting Authority must prepare a contract award notice (using the template in Annex D09) and send it to the European Commission, which publishes the results of the tender procedure in the Official Journal of the European Union, on the Internet and in any other appropriate media. In addition, the Contracting Authority must:

- send the other tenderers a standard letter (see Annex D8) within 15 days, informing them that their tenders have been unsuccessful. This letter must state whether their tenders were technically compliant and indicate any technical shortcomings and the characteristics and relative advantages of the successful tender.
- record all statistical information concerning the contract award procedure including the contract value, the names of the other tenderers and the successful tenderer.



	The Contracting Authority is responsible for preparing the contract award notice using the template in Annex D09 and for submitting it for publication to the European Commission in electronic form within 24 hours of receiving the countersigned contract from the successful tenderer.
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5.4 RESTRICTED TENDER (FOR CONTRACTS OF €5,000,000 OR MORE)

CENTRALISED

In exceptional cases justified by the special characteristics of certain projects, a restricted tender procedure may be used. The relevant services of the European Commission must give their prior approval to the use of this approach and will provide technical support on a case-by-case basis.

DECENTRALISED: EX-ANTE

In exceptional cases justified by the special characteristics of certain projects, a restricted tender procedure may be used. The European

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

DECENTRALISED: EX-POST

In exceptional cases justified by the special characteristics of certain projects, a restricted tender procedure may be used. If it intends to use this approach, the Contracting Authority must record the justification for this in the Evaluation Report and notify the European Commission.

The publication of the procurement notice in the Official Journal of the European Union, on the Internet and in any other appropriate media remains mandatory.

The restricted procedure begins with a short-listing phase which must be specially designed for each project. On the basis of the outcome of this short-listing phase, the Contracting Authority draws up a list of firms that will be invited to tender (after obtaining the European Commission's approval, in the case of decentralised ex-ante control).

The Contracting Authority sends a letter of invitation to tender accompanied by the tender dossier only to the candidates on the shortlist.

In this procedure, there must be a minimum of 60 days between the date of dispatch of the letters of invitation to tender and the deadline for receipt of tenders.



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

5.5 LOCAL OPEN TENDER (FOR CONTRACTS OF AT LEAST €300,000 AND UNDER €5,000,000)

In this case, the procurement notice is published only in the beneficiary country. The European Commission publishes the references of such tender procedures (dossier number, country, Contracting Authority and type of contract) on the Internet with the address from which firms can obtain further information.


As the cost of publishing the full procurement notice in the local media may be prohibitive, the template in Annex D3 gives the minimum information which must be included in a local advertisement. However,


the full procurement notice must be available from the address referred to in the advertisement, together with the tender dossier.

The procurement notice for a local tender must at a minimum be published in the Official Journal of the beneficiary country or any equivalent media. This publication is under the responsibility of the beneficiary country.

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 (eg, obliging such firms to be registered in the beneficiary country or to have won contracts there in the past).

In this procedure, there must be a minimum of 60 days between the date of publication of the procurement notice in the local press and the deadline for receipt of tenders.

	The measures applicable to an international open procedure, as described in section 5.3, apply by analogy to the local open procedure. The principal difference is that minimum number of voting members in the Evaluation Committee is three. The Contracting Authority may require a tender guarantee.
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	The Contracting Authority is responsible for preparing the works contract award notice using the template in Annex D09 and for submitting it for publication to the European Commission in electronic form within 24 hours of receiving the countersigned contract from the successful tenderer.
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5.6 COMPETITIVE NEGOTIATED PROCEDURE (FOR CONTRACTS UNDER €300,000)

The Contracting Authority may award contracts under €300,000 by competitive negotiated procedure, without publication. The Contracting Authority draws up a list of at least three contractors. The candidates are sent a letter of invitation to tender accompanied by a tender dossier.

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

The tenders are opened and evaluated by an Evaluation Committee possessing the requisite technical and administrative capacities appointed by the Contracting Authority. The members of the Committee must each sign a Declaration of Impartiality and Confidentiality (see Annex A4).

	<p>If the Contracting Authority receives fewer than three compliant tenders, the procedure must be cancelled and started again. Consequently, it would be prudent to invite tenders from more than three contractors. The remainder of the procedure (including preparation of the tender dossier, evaluating the tenders and awarding the contract) is the same as under the international open procedure (see sections 5.3.2 to 5.3.11.3). No tender guarantee is required in this case.</p>
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	<p>The Contracting Authority may award works contracts of a value of €5,000 or less on the basis of a single tender. Note that projects must not be split artificially to circumvent the procurement thresholds (see section 2.5).</p>
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5.7 MODIFYING WORKS CONTRACTS

Works contracts may need to be modified during their duration if the circumstances affecting project implementation have changed since the initial contract was signed. Contract modifications must be formalised through an addendum to the contract. Such an addendum must be signed by the contracting parties (and, under a decentralised ex-ante system, approved and endorsed by the European Commission).

Changes of address, changes of bank account and changes of auditor may simply be notified in writing by the contractor to the Contracting Authority, although this does not affect the right of the Contracting Authority to oppose the contractor's choice of bank account or auditor.


5.7.1 GENERAL PRINCIPLES


The following general principles must always be respected:

- A contractor's requests for contract modifications should not automatically be accepted by the Contracting Authority. Such

requests must be properly substantiated. The Contracting Authority must examine the reasons given and reject requests which have little or no substantiation.

- Contracts can only be modified within the lifetime of the contract; modifications cannot be made retroactively.
- The purpose of the addendum must be closely connected with the nature of the project covered by the initial contract.
- Major changes, such as a fundamental alteration of the Technical Specifications, cannot be made by means of an addendum.
- The addendum must not alter the competition conditions prevailing at the time the contract was awarded.
- Unit prices must be identical to those in the initial contract, unless the initial contract stipulates otherwise (ie, there is a price-revision clause).
- Any modification extending the performance period of the contract 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.
- Any modifications which require additional funding must have been foreseen in the Technical Specifications of the initial contract and can only be agreed before the expiry of the financing agreement under which the initial contract was financed. The additional funding must come from the same budget line as that used for the initial contract.


	<p>Under no circumstances can the Contracting Authority increase the budget of the initial contract or agree to/arrange for the purchase of equipment that was not covered in the Technical Specifications of the initial tender and subsequent contract.</p> <p>The only exception to this rule is for additional works not included in the initial contract but which have, through unforeseen circumstances, become necessary for the works initially foreseen to be carried out, provided that the award is made to the contractor already carrying out such work:</p> <ul style="list-style-type: none">– where such works cannot be technically or economically separated from the main contract without serious inconvenience for the Contracting Authority;– where such works, although separable from the performance of the initial contract, are absolutely necessary to its completion. <p>This should remain exceptional and should not be used to cover deficiencies in the technical specifications of the tender dossier. However, the aggregate cost of contracts awarded for additional works must not exceed 50% of the amount of the main contract.</p>
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	<p>Requests for contract modifications to works contracts must be made (by one contracting party to the other) allowing at least 30 days for the addendum to be signed before the end of the period of execution of the initial contract.</p>
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5.7.2 PREPARING AN ADDENDUM


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

- 1) Use the standard template for an addendum (see Annex A7)

	<p>All references in the proposed addendum to article numbers and/or annexes to be modified must correspond to those in the initial contract.</p>
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Any addendum modifying the budget must include a replacement budget showing how the full budget breakdown of the initial contract has been modified by this addendum (and any previous addenda). The following column headings should be used:

Budget Item	Initial contract budget	Addendum 1	(Addendum 2 ...)	Revised budget

	<p>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.</p> <p>The payment schedule must not be modified unless either the budget is being modified or the contract is being extended.</p>
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2) Prepare a dossier comprising the following items:

<p>g) Explanatory note (see template in Annex A6) providing a technical and financial justification for making the modifications in the proposed addendum</p> <p>h) Copy of the contractor's request for (or agreement to) the proposed modifications</p> <p>i) Copy of the financing agreement authorising the project</p> <p>j) Copy of the initial contract and any subsequent addenda</p> <p>k) Copy of the tender announcements (contract forecast and procurement notice), Site Visit Report, Tender Opening Report, Evaluation Report and any other relevant information</p> <p>l) Three copies of the proposed addendum, which is based on the standard addendum template (see Annex A7) and includes any revised annexes.</p>
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CENTRALISED

3) Sign all copies of the addendum.

DECENTRALISED: EX-ANTE

3) Sign all copies of the addendum and send the addendum dossier to the European Commission for approval and endorsement.

DECENTRALISED: EX-POST

- 3) Sign all copies of the addendum. No prior approval or endorsement by the European Commission is required.
- 4) Send the three signed copies of the addendum to the contractor, who must countersign them within 30 days of receipt and return two copies to the Contracting Authority together with any financial guarantee required in the addendum.

CENTRALISED

- 5) On receipt of the two signed copies from the successful tenderer, one copy is sent to the financial service in charge of payments and the other to the Project Manager.

DECENTRALISED: EX-ANTE

- 5) On receipt of the two signed copies from the successful tenderer, the Contracting Authority sends one to the financial service in charge of payments and the second copy is sent to the European Commission. A copy of the signed addendum must be sent to the Project Manager.

DECENTRALISED: EX-POST

- 5) On receipt of the two signed copies from the successful tenderer, the Contracting Authority sends one to the financial service in charge of payments and the second copy is sent to the Project Manager.



The Contracting Authority and the Contractor must note on the addendum the date on which they sign it. The addendum takes effect on the date of the later signature. An addendum cannot cover earlier works/supplies/services or enter into force before this date.

6 GRANTS

6.1 INTRODUCTION

6.1.1 DEFINITION

A grant is a direct payment of a non-commercial nature by the Contracting Authority to a specific beneficiary to implement an action intended to help achieve an objective forming part of a European Union policy.

In certain cases the grant may also finance the operation of a body which pursues an aim of general European interest or has an objective forming part of a European Union policy.

A body pursuing an aim of general European interest is: a European body involved in education, training, information or research and study in European policies or a European standards body; or a European network representing non-profit bodies active in the Member States or in the candidate countries and promoting principles and policies consistent with the objectives of the Treaties.

The body signing a grant contract is known as the grant beneficiary and should not be confused with the final beneficiary of the operation which is generally the target group or the people living in the country where the operation is taking place.

Grants should be distinguished from other legal commitments entered into in the external action framework and the correct rules applied accordingly. A grant contract can be distinguished from a procurement contract in a number of ways:

- A grant is made for an operation which is proposed to the Contracting Authority by a potential beneficiary (an “applicant”) and falls within the normal framework of the beneficiary's activities. This is in contrast to a procurement contract, in which the Contracting Authority draws up the terms of reference for a project it wants to be carried out.
- A contract should be classified as a public procurement contract rather than a grant contract if its subject matter relates primarily or broadly to the administrative functions of the Contracting Authority.
- A grant beneficiary is responsible for implementing the operation and retains ownership of its results. By contrast, under a procurement contract, it is the Contracting Authority which owns the results of the project and closely supervises its implementation.

- A grant beneficiary generally contributes to the financing of the action except in cases where full Community financing is essential for the action to be carried out (see section 6.2.6). In the case of procurement contracts, however, the contractor does not normally contribute financially.
- A grant can only be made for an operation whose immediate objective is non-commercial. Under no circumstances may the grant give rise to profits (ie, it must be restricted to the amount required to balance income and expenditure for the action, see section 6.2.7). Grant beneficiaries are generally non-profit-making.

The fact that a body is non-profit-making does not necessarily mean that a contract to be concluded with it will be a grant contract; non-profit bodies can also tender for procurement contracts. The action itself must be of a non-commercial nature.

- The amount of a grant is based on the actual eligible cost of the action calculated on the basis of the eligible costs actually incurred by the beneficiary. The amount of a procurement contract, on the other hand, represents a price fixed in accordance with competitive tendering rules.

For the purposes of this Guide, joint management with international organisations implies a grant (see section 7.1 for definitions of international organisations and joint management). Benefit deriving from an interest subsidy and equity holdings, with the exception of those for international financial institutions such as the EBRD, and grants which are reimbursable in certain circumstances, are also considered as grants.

Payments made to the delegatee bodies of the Commission referred to in Articles 54, 55 and 185 of the Financial Regulation are not grants.

Financing agreements concluded with beneficiary States do not constitute grants. If an operation involves an agreement with the beneficiary State (or a ministry or other State central administrative body), this must be in the form of a financing agreement and not a grant contract.

Grants paid under financing or related agreements with the bodies referred to in Articles 54, 55 and 185 of the Financial Regulation are covered by the rules set out below.

If there is any doubt about whether an operation should be considered as a grant, the Contracting Authority may refer to the European Commission for advice.



A grant contract cannot be signed unless the action concerned meets the definition of a grant according to the abovementioned criteria.

An action eligible to receive grant funding must be clearly identified. No action may be split for the purpose of evading compliance with the rules laid down in this Practical Guide.

The Contracting Authority, which is always specified in the Call for Proposals notice, is the authority empowered to conclude the contract.

6.1.2 OVERVIEW

Where grant contracts financed by the European Community are concluded in the course of cooperation with third countries, procedures are governed by the following legal framework:

- the Financial Regulation No 1605/2002 of 25 June 2002 applicable to the general budget of the European Communities and in particular Title VI of Part One, on grants, and Title IV of Part Two, on External Actions;
- Regulation No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the abovementioned Financial Regulation;
- 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.

The following are also applicable:

- The Framework Agreement signed by the EC and the beneficiary country concerned, where such an agreement exists. This agreement contains the rules for administrative cooperation between the two bodies for the implementation of external aid.
- The Financing Agreement⁸ signed by the EC and the beneficiary country concerned for the EC-funded programme, where such an agreement exists. This sets out the programme objectives and budget.
- The standard documents and templates in the annexes to this Practical Guide, which include the standard grant contract for external actions (see Annex E3E), and standard documents for Calls for Proposals (see Annexes E1, E2 & E3).

The rules and procedures established by the European Commission for grant management under the EC external actions programmes are

⁸ known as a Financing Memorandum in Phare and Ispa

consolidated in this Practical Guide and must be applied when implementing all these programmes.⁹

6.1.3 CENTRALISED AND DECENTRALISED CONTROLS

There are three possible approaches to managing the procedures relating to actions financed under the external aid programmes of the EC:

- **Centralised:** decisions are taken by the European Commission, acting for and on behalf of the beneficiary country. In this case, actions to be performed by the Contracting Authority throughout this Practical Guide should be interpreted as being carried out by the European Commission (ie, Commission headquarters or the delegation in the beneficiary country), acting for and on behalf of the beneficiary country.
- **Decentralised:**
 - **Ex ante:** decisions concerning the award of contracts are taken by the Contracting Authority but referred for prior approval to the European Commission.
 - **Ex post:** decisions are taken by the Contracting Authority without prior reference to the European Commission (apart from exceptions to the standard procedures given in this Practical Guide).

In all cases, the Contracting Authority assumes full responsibility for its actions and will be accountable for them in any subsequent audit or other investigation. The endorsement by the Commission of decentralised contracts only implies its agreement to finance the contract. In the event of failure to comply with the procedures foreseen in this Practical Guide, expenditure on the operations in question shall not be eligible for Community financing.

Interventions by Commission representatives in the course of decentralised procedures for the conclusion or implementation of contracts financed in the framework of external actions only aim at ascertaining whether the conditions for Community financing are met. They are not meant to and cannot undermine the principle that the contracts in question remain national contracts, which only the decentralised contracting authorities are responsible for preparing, negotiating and concluding. Applicants or beneficiaries of these

⁹ The Practical Guide does not cover humanitarian aid within the meaning of Regulation 1257/96 of 20 June 1996 (Official Journal No L 163, 2.7.1996, p. 1), for which there are special arrangements managed by the Community's humanitarian office ECHO.

contracts cannot be considered as addressees of deeds from Commission representatives during the conclusion or implementation of these contracts. Indeed they only have a legal relationship with the decentralised contracting authorities and the acts of Commission representatives may not substitute a decision by the contracting authority by a Community decision with regard to them.

This Practical Guide includes the procedures to be observed in all three cases under the following headings:

CENTRALISED

Procedures to be followed under a centralised programme.

DECENTRALISED: EX-ANTE

Procedures to be followed under a decentralised programme with ex-ante controls.

DECENTRALISED: EX-POST

Procedures to be followed under a decentralised programme with ex-post controls.

CENTRALISED

Grants are awarded by the European Commission acting for and on behalf of the beneficiary country. The Commission is responsible for publishing work programmes, issuing Calls for Proposals, receiving proposals, chairing evaluation sessions, deciding on the results of Calls for Proposals and signing the contracts.

DECENTRALISED: EX-ANTE

Grants are awarded by the Contracting Authority designated in the financing agreement, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the financing agreement.

Before launching calls for proposals, the Contracting Authority must submit the annual work programmes, call for proposals notices and Guidelines for Applicants to the European Commission for approval.

On the basis of decisions thus approved, and in close consultation with the European Commission, the Contracting Authority is responsible for publishing annual work programmes, issuing calls for proposals, receiving proposals, chairing evaluation sessions and deciding on the results of calls for proposals. The Contracting Authority must submit the Evaluation Report, details of the proposed grants and, where

appropriate, the draft contracts to the European Commission for endorsement.

Once the grant has been approved, the Contracting Authority will sign the contract and notify the European Commission accordingly. As a general rule, the European Commission will be represented as an observer when proposals are opened and evaluated and must always be invited.

In the case of international calls for proposals, the Contracting Authority must submit the annual work programmes, call for proposals notices, Guidelines for Applicants and grant award notices to the European Commission for publication.

DECENTRALISED: EX-POST

Grants are awarded by the Contracting Authority designated in the financing agreement, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the financing agreement. It is responsible for publishing annual work programmes, issuing Calls for Proposals, receiving proposals, chairing evaluation sessions, deciding on the results of Calls for Proposals and signing the contracts. No prior approval from the European Commission is required.

In the case of international calls for proposals, the Contracting Authority must submit the annual work programmes, call for proposals notices, Guidelines for Applicants and grant award notices to the European Commission for publication.

6.1.4 ELIGIBILITY CRITERIA

6.1.4.1 NATIONALITY RULE

Grant contract procedures are open on equal terms to all legal persons coming within the scope of the Treaty establishing the European Community and, in accordance with the specific provisions in the basic instruments governing the cooperation sector concerned, to all such legal persons of the beneficiary third countries or of any other third country as are expressly mentioned in those instruments. See Annex A2 for the list of countries for each aid programme or instrument.

By way of exception, depending on the nature of the action or the objective pursued by the applicant, natural persons may receive grants if this is provided for in the basic act.

For the purposes of verifying compliance with the nationality rule, the Call for Proposals requires applicants to state the country of which they are nationals by presenting the documents required under that country's law.

If the Contracting Authority suspects that an applicant has only a registered office in an eligible country or state and that the nationality of the applicant is ineligible, the applicant is responsible for demonstrating effective and continuous links with that country's economy. This is to avoid awarding contracts to organisations whose nationalities are ineligible but which have set up 'letter box' organisations in an eligible country to circumvent the rules on nationality.

6.1.4.2 EXCEPTIONS TO THE NATIONALITY RULE

In duly substantiated exceptional cases, the nationality rule may be waived.

The possibility of waiver must be specifically mentioned in the Guidelines for Applicants and is subject to the specific prior approval of the European Commission.

6.1.4.3 GROUNDS FOR EXCLUSION

Natural or legal persons are **not entitled** to participate in Calls for Proposals or be awarded grants if:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they have been convicted of an offence concerning professional conduct by a judgement which has the force of res judicata (ie, against which no appeal is possible);
- c) they are guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
- d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Contracting Authority or those of the country where the action is to take place;
- e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- f) they have been declared to be in serious breach of contract for failure to comply with their contractual obligations following a procurement procedure or another grant award procedure financed by the Community budget.

Natural or legal persons are also excluded from participation in Calls for Proposals or the award of grants if, at the time of the call for proposals, they:

- g) are subject to a conflict of interest;
- h) are guilty of misrepresentation in supplying the information required by the Contracting Authority as a condition of participation in the call for proposals or fail to supply this information;
- i) have attempted to obtain confidential information or influence the Evaluation Committee or the Contracting Authority during the evaluation process of the current or previous Calls for Proposals.

In the cases referred to in points (a), (c), (d), (f), (h) and (i) above, the exclusion applies for a period of two years from the time when the infringement is established. In the cases referred to in points (b) and (e), the exclusion applies for a period of four years from the date of notification of the judgement.

Applicants must supply with their applications a sworn statement that they do not fall into any of the above categories (a) to (f).

6.2 BASIC RULES FOR GRANTS

The award of grants is subject to the principles of programming, transparency and equal treatment. They may not be cumulative or awarded retrospectively and they must involve co-financing.

The grant may not have the purpose or effect of producing a profit for the beneficiary.

Compliance with rules of sound management is required.

6.2.1 PROGRAMMING

Grants must be programmed by the Contracting Authority with clearly defined objectives ¹⁰.

The annual programme must be published, by budget heading or programme, on the Internet site of the Contracting Authority (or any other appropriate media) and of the Commission as appropriate, following the work programme template in Annex E20.

The annual work programme must specify the legal basis, the objectives, the schedule of calls for proposals with the indicative amount and the results expected.

¹⁰ This does not apply to crisis management aid within the meaning of article 168.2 of the Implementing Rules of the Financial Regulation.

Any substantial change in the work programme must also be published in the same conditions as the initial work programme.

CENTRALISED

The work programme will be adopted by the Commission and published on the grants Internet site of the Commission not later than 31 January of each financial year.

DECENTRALISED: EX-ANTE

The work programme will be adopted by the Contracting Authority and published on its Internet site (or any other appropriate media) and, in the case of international calls for proposals, on the grants Internet site of the Commission not later than 31 January of each financial year.

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

DECENTRALISED: EX-POST

The work programme will be adopted by the Contracting Authority and published on its Internet site (or any other appropriate media) and, in the case of international calls for proposals, on the grants Internet site of the Commission not later than 31 January of each financial year.

6.2.2 TRANSPARENCY

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

The work programme will accordingly be implemented through the publication of calls for proposals save in duly substantiated exceptional cases of urgency or where the characteristics of the beneficiary make it the sole choice for a given action (see section 6.3.2).

All grants awarded in the course of a financial year will be published annually with due observance of the requirements of confidentiality and security (see section 6.4.10.3).

6.2.3 EQUAL TREATMENT

The grant award process must be completely impartial. This means notably that the proposals must be selected by an Evaluation Committee, with the advice of assessors where appropriate, using the published eligibility and evaluation (selection and award) criteria (see section 6.4.3).

6.2.4 NON-CUMULATION

No single beneficiary may receive more than one grant financed by the European Community for a given action. A beneficiary may be awarded only one operating grant financed by the European Community per financial year.

Under the centralised management system, however, an action may be financed jointly from separate budget lines by a number of authorising officers.

6.2.5 NON-RETROACTIVITY

Grants may, as a rule, only cover costs incurred after the date on which the grant contract is signed. A grant may be awarded for an action which has already begun only where the applicant can demonstrate the need to start the action before the contract is signed.

In such cases, expenditure incurred prior to the deadline for submitting proposals or, in the case of direct award, the date of submission of the grant application, and if applicable the date of signature of the relevant financing agreement, will not be eligible for financing. No grant may be awarded retroactively for actions already completed ¹¹.

The contract for an operating grant may not be signed more than four months after the start of the beneficiary's budget year. Expenditure incurred before the grant application was lodged or before the start of the beneficiary's budget year will not be eligible for financing.

6.2.6 CO-FINANCING

Grants may not as a rule finance the entire cost of the action, with the following exceptions.

The financing of an action in full may be authorised in the following cases, save where prohibited by the basic act:

- humanitarian aid, including assistance for refugees, uprooted persons, rehabilitation and mine clearance;
- aid in crisis situations within the meaning of article 168 paragraph 2 of the Implementing Rules of the Financial Regulation;

¹¹ In the case of crisis situations within the meaning of article 168, paragraph 2 of the Implementing Rules of the Financial Regulation, expenditure incurred by a beneficiary before the date of submission of the application shall be eligible for Community financing solely in the following cases: where the expenditure relates to the constitution of stocks by the applicant for use in connection with the action for which the grant is awarded; by way of exception and for properly substantiated reasons, where the financing decision and the grant contract explicitly provide for this by setting an eligibility date earlier than the date for submission of the application.

- actions to protect health or the fundamental rights of peoples;
- actions resulting from the implementation of financing agreements or actions with international organisations.

The Contracting Authority must be in a position to show that financing in full is essential to carry out the action in question and must substantiate its award decision accordingly.

Grants may not finance the entire operating expenditure of a beneficiary body. When operating grants are renewed, they will be gradually decreased.

6.2.7 NON-PROFIT

Grants may not have the purpose or effect of producing a profit for the beneficiary. Profit is defined as:

- a surplus of aggregate receipts over costs for the action in question at the time when the request is made for final payment of a grant for an action.

However, in the case of actions designed specifically to strengthen the financial capacity of a beneficiary, profit is defined as the distribution of the surplus revenue resulting from its activity to the members making up the beneficiary body, leading to their personal enrichment.

- A surplus balance on the operating budget of a body in receipt of an operating grant.

The above provisions do not apply to study, research or training scholarships paid to natural persons, nor to prizes awarded following contests.

6.2.8 RULES OF SOUND MANAGEMENT

- Availability of funds: **before initiating any grant award process, the funds must be available.**
- Use of standard documents: the standard grant contract and other document formats (as provided in the Annexes) must be used according to the rules.
- Record keeping: written records of the entire evaluation procedure must be kept confidential and retained by the Contracting Authority for seven years after the grant award decision. These must include the originals of all proposals submitted, together with the corresponding Call for Proposals and any related correspondence.

- Procurement of services, supplies or works for a grant-funded action: if the implementation of an action involves the procurement of services, supplies or works by the grant beneficiary, the contract award procedures specified in section 6.8 of this Guide must be applied for each procurement contract.
- Any deviation from the procedures set out in this part 6 requires the prior approval of the European Commission.

6.3 AWARD PROCEDURES

6.3.1 CALL FOR PROPOSALS

 **Grants must be awarded following the publication of a Call for Proposals except in the cases listed in section 6.3.2 below.**

6.3.1.1 INTERNATIONAL OR LOCAL CALL FOR PROPOSALS

A local call for proposals (see section 6.5) may be launched if at least one of the following criteria is met:

- the overall budget for the programme is under €2,000,000;
- the maximum size of each grant to be awarded within the programme is under or equal to €100,000;
- the grant programme is reserved exclusively for national applicants of the beneficiary country(countries).

In the above cases, the Contracting Authority has the option of an international call for proposals. In all other cases, an international call for proposals is compulsory.

An international call for proposals must also be published locally where it is not organised by a service of the European Commission headquarters.

6.3.1.2 OPEN OR RESTRICTED CALL FOR PROPOSALS

Calls for proposals are open as a rule and all applicants are free to submit a grant application form in response to the Guidelines for Applicants published on the Internet (see section 6.4.2).

However, in the case of an international call for proposals and where warranted by the technical nature of the field or the expected number of proposals, the Contracting Authority may organise a restricted call for proposals in accordance with the rules in section 6.6: potential applicants are shortlisted on the basis of a preliminary proposal (see Annex E3F) in response to Guidelines for Applicants published on the

Internet (see section 6.4.2). Only the shortlisted applicants will be invited to submit a grant application form.

CENTRALISED

The prior approval of the relevant services of the European Commission must be sought for the use of a restricted call for proposals.

DECENTRALISED: EX-ANTE

The Contracting Authority must seek prior approval from the European Commission for the use of a restricted call for proposals.

DECENTRALISED: EX-POST

No prior approval by the European Commission is required for the use of a restricted call for proposals.

6.3.1.3 PARTNERSHIPS

Grant contracts may form part of framework partnership agreements with a view to establishing long-term cooperation with the Contracting Authority. Framework agreements specify the common objectives, the nature of actions planned on a one-off basis or as part of an approved annual work programme, the procedure for awarding specific grants, in compliance with the principles and procedural rules in this Guide, and the general rights and obligations of each party under the specific contracts. The duration of framework agreements may not exceed four years. Framework partnership agreements are treated as grants for the purposes of the award procedure.

Partnerships of this nature (between the Contracting Authority and the beneficiary) are rare and not to be confused with the possibility frequently used by beneficiaries of carrying out an action in partnership with one or more other organisations as their "partners".

CENTRALISED

The prior approval of the relevant services of the European Commission must be sought for the use of a framework partnership agreement.

DECENTRALISED: EX-ANTE

The Contracting Authority must seek prior approval from the European Commission for the use of a framework partnership agreement.

DECENTRALISED: EX-POST

No prior approval by the European Commission is required for the use of a framework partnership agreement.

6.3.2 DIRECT AWARD

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

No prior approval by the European Commission is required for the use of the direct award procedure.

Only in the following circumstances is it unnecessary to organise a Call for Proposals before awarding grants:

- In duly substantiated exceptional cases of urgency, ie, where unforeseeable events oblige the Contracting Authority to act with an urgency incompatible with the periods laid down for Call for Proposals procedures described in section 6.3.1. The circumstances cited as grounds for extreme urgency must in no way be attributable to the Contracting Authority (eg, imminent expiry of the financing agreement).

Actions carried out in crisis situations as referred to in Article 168(2) of the Financial Regulation implementing rules are considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in consultation with the other authorising officers by delegation concerned, establishes that a situation of extreme urgency exists and reviews his decision regularly having regard to the principle of sound financial management.

Only the competent services of the European Commission may declare the existence of a crisis situation.

- Where the grant is awarded to a body with a *de jure* or *de facto* monopoly, duly substantiated in the Contracting Authority's award decision.

For these purposes, "de facto" or "de jure" monopoly means that the beneficiary, which may 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.
- Where the grant is to be awarded to a body identified in the relevant basic act as a recipient of a grant.
- Where the grant is to be awarded to an international organisation for the implementation by joint management of a specific action which is in keeping with that organisation's mandate and jointly identified by it and the Contracting Authority.

In all cases, the Contracting Authority must prepare a report explaining the manner in which the grant beneficiaries were identified and the grant amounts established, and the grounds for the resulting award decision. The procedures described in section 6.4.10 must be followed by analogy, with the aforementioned report being included in the contract dossier.

6.4 INTERNATIONAL CALL FOR PROPOSALS

6.4.1 PUBLICITY

In order to ensure the widest possible participation and the requisite transparency, a Call for Proposals notice must be published for every international Call for Proposals. It must be prepared by the Contracting Authority using the template given in Annex E2.

The notice must clearly identify the Contracting Authority and the purpose of the Call for Proposals.

The Call for Proposals notice is published in the Official Journal of the European Union, C series, on the Internet (at http://europa.eu.int/comm/europeaid/index_en.htm) and in any other appropriate media (specialised press, local publications, etc...).

The European Commission is responsible for publication in the Official Journal of the European Union and on the Internet. When the Contracting Authority is not a service of the European Commission headquarters, it must arrange local publication directly at the same time as the notice is published on the Internet and in the Official Journal.

CENTRALISED

Call for Proposals notices must be submitted for publication to the relevant services of the European Commission in electronic form using the template in Annex E2 **at least 15 days before** the intended date of publication, to allow time for translation.

DECENTRALISED: EX-ANTE

The Contracting Authority must submit Call for Proposals notices for publication to the European Commission in electronic form using the template in Annex E2 **at least 15 days before** the intended date of publication, to allow time for translation.

DECENTRALISED: EX-POST

The Contracting Authority must submit Call for Proposals notices for publication to the European Commission in electronic form using the template in Annex E1 **at least 15 days before** the intended date of publication, to allow time for translation.

6.4.2 DRAFTING AND CONTENTS OF THE GUIDELINES FOR APPLICANTS

The Guidelines for Applicants (which include an Application Form and other annexes) explain the purpose of the Call for Proposals, the rules regarding the eligibility of applicants and partners, the types of action and costs which are eligible for financing, and the evaluation criteria. They also contain instructions on how to fill in the application form, what to annex to it and what procedures to follow for applying. They give information on the evaluation process that will follow (including an indicative timetable) and the contractual conditions which will apply to successful applicants.

The Guidelines should set out very clearly and in detail the objectives and priorities of the call for proposals, and give particular attention to the eligibility criteria. The information published in this connection will subsequently become binding on the Evaluation Committee. The evaluation grid must be included in the Guidelines and cannot be changed.

The Application Form to be completed by the applicants is included with the Guidelines. It comprises the following parts:

- Information about the action proposed, including its budget
- Information about the applicant
- Information about any partners.

The Guidelines should be drafted for each Call for Proposals using the template provided in Annex E3.

CENTRALISED

The Guidelines for Applicants must be approved by the relevant services of the European Commission prior to issue.

DECENTRALISED: EX-ANTE

The Contracting Authority must submit the Guidelines for Applicants to the European Commission for approval prior to issue.

DECENTRALISED: EX-POST

No prior approval of the Guidelines for Applicants by the European Commission is required.

The Guidelines for Applicants are published on the Internet together with the Call for Proposals notice, and are also available in hard copy from the Contracting Authority. They should be available in the languages appropriate to the context of the Call for Proposals.

6.4.3 ELIGIBILITY AND EVALUATION CRITERIA

6.4.3.1 ELIGIBILITY CRITERIA

The eligibility criteria relate to three different aspects:

- Eligibility of the applicant: this refers to the applicant's legal and administrative status - see sections 6.1.4.1 (Rules on nationality) and 6.1.4.3 (Grounds for exclusion).

If a Call for Proposals relates to actions to be implemented in partnership, the minimum number of partners and the eligibility criteria applicable to each of the partners of the lead applicant must be specified. The eligibility criteria applicable to the lead applicant and to the partners may differ.

- Eligibility of the action: this refers to the types of activities, sectors or themes and geographical areas covered by the Call for Proposals.
- Eligibility of costs: this details the types of costs which may be financed. In brief they must be real costs, which will actually be incurred and are necessary for carrying out the project.

6.4.3.2 EVALUATION CRITERIA: SELECTION AND AWARD

The evaluation criteria consist of selection and award criteria, all of which are defined in the evaluation grid.

- The published selection criteria are designed to assess the applicant's financial and operational capacity to complete the proposed action: the applicant must have stable and sufficient sources of funding to maintain its activity throughout the period during which the action is being carried out and to participate, where appropriate, in its funding. Applicants and their partners must also have the necessary professional competencies and qualifications to complete the proposed action.

The verification of financial standing does not apply to natural persons in receipt of scholarships, Member State public authorities or international organisations.

- The published award criteria are used to assess the quality of proposals against the set objectives and priorities, so that grants are awarded to the actions which maximise the overall effectiveness of the call for proposals. They should enable the Contracting Authority to select proposals which it can be confident will comply with its objectives and priorities and guarantee the visibility of the Community financing.

The award criteria relate, in particular, to the relevance of the action and its compatibility with the objectives of the grant programme under which the Call for Proposals is being financed, to the quality, expected impact and sustainability of the action, and to its cost-effectiveness.

All eligibility and evaluation criteria specified in the Call for Proposals must be applied as they stand and cannot in any circumstances be changed in the course of the procedure. The criteria should be precise, non-discriminatory and not prejudicial to fair competition. The evaluation will be based on the standard administrative compliance and eligibility grid and evaluation grid - see the templates given in Annexes E7 and E10.

6.4.4 ADDITIONAL INFORMATION BEFORE THE DEADLINE FOR SUBMISSION OF PROPOSALS

During the time between publication and the deadline for the submission of proposals, 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 of substance 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 transparency and equal opportunity, the answer provided to one applicant on points which may be of interest to the other applicants should be made available to all the others. The easiest - and recommended - way to achieve this is to publish on the Internet, where appropriate, a table of questions and answers along with the Guidelines for Applicants. This must be updated regularly until 11 days before the deadline for submission of proposals.

6.4.5 DEADLINE FOR SUBMISSION OF PROPOSALS

Proposals must **reach** the Contracting Authority at the address and, at the very latest, by the date and time indicated in the Call for Proposals. The deadline for submission must be long enough to allow for high-quality proposals. Experience shows that too short a deadline may prevent would-be applicants from submitting proposals or cause them to submit incomplete or ill-prepared proposals. The deadline for submissions must be at the close of business of a working day in the country in which the Contracting Authority is situated (eg, 16:00 local time on a Tuesday).

CENTRALISED

The minimum period between the date of publication of the Call for Proposals and the deadline for receipt of proposals is 90 days. However, in exceptional cases, a shorter deadline may be allowed.

DECENTRALISED: EX-ANTE

The minimum period between the date of publication of the Call for Proposals and the deadline for receipt of proposals is 90 days. However, in exceptional cases, and with the prior authorisation of the European Commission, a shorter deadline may be allowed.

DECENTRALISED: EX-POST

The minimum period between the date of publication of the Call for Proposals and the deadline for receipt of proposals is 90 days. However, in exceptional cases, a shorter deadline may be allowed.

A call for proposals may set more than one deadline for submissions, either to allow for staggered processing or in cases where the actions to be financed cannot by their nature be planned long in advance. In this case, proposals received by the Contracting Authority after one deadline are automatically carried over to the next.

6.4.6 SUBMISSION OF PROPOSALS

Each proposal must be placed in a sealed parcel or envelope bearing:

- a) the address for submission of proposals indicated in the Call for Proposals;
- b) the reference number of the Call for Proposals to which the applicant is responding;
- c) the full name and address of the applicant;
- d) the words "Not to be opened before the opening session" written in the language of the Call for Proposals **and** in the local language if

the call for proposals is not organised by a European Commission headquarters service;

Applications must be sent by registered mail or courier service or delivered by hand. They must contain the original and the number of copies of the completed application form, budget and logical framework as well as other supporting documents required in the call for proposals. The application form, budget and logical framework should also be provided in electronic format where so required in the call for proposals.

Applicants must provide a sworn statement on the application form that:

- they (and their partners as applicable) do not fall into any of the categories mentioned in points (a) to (f) of section 6.1.4.3;
- they possess the sources of funding and professional competencies and qualifications referred to in section 6.4.3.2.

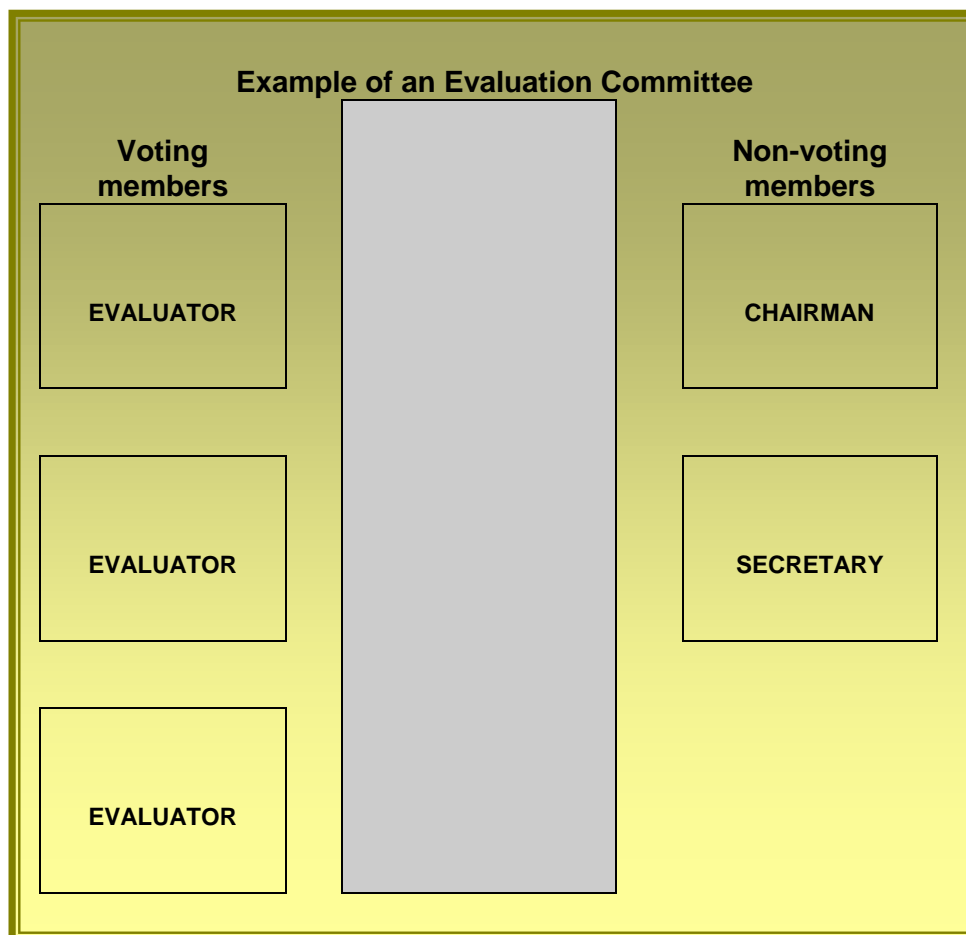
They must also include with their application the profit and loss account, the balance sheet for the last financial year for which the accounts have been closed and any other supporting document requested.

In the case of actions where the cost to be financed exceeds €300,000 and operating grants of over €75,000, the application must be accompanied by an external audit report produced by an approved auditor. The report must certify the accounts for the last financial year available and give an assessment of the financial viability of the applicant within the meaning of section 6.4.3.1. Depending on its analysis of management risks, the Contracting Authority may exempt public bodies from that obligation. The obligation does not extend to international organisations.

Originals of the requested supporting documents must be provided or, if none are available, copies certified true by an approved independent agency. If the supporting documents are written in a language other than the language(s) of the call for proposals, a faithful translation into one of those languages must be attached which will apply for the purposes of interpreting the proposal.

6.4.7 THE EVALUATION COMMITTEE

6.4.7.1 COMPOSITION



Proposals are opened and evaluated by an Evaluation Committee appointed by the Contracting Authority comprising a non-voting Chairman, a non-voting Secretary and an odd number of voting members (minimum of three). The voting members must possess the technical and administrative capacities necessary to give an informed opinion on the proposals. They must represent at least two organisational entities of the Contracting Authority with no hierarchical link between them, unless the call for proposals is organised by a delegation of the European Commission.

CENTRALISED

The Evaluation Committee (ie, the Chairman, the Secretary and the voting members) must be nominated on a personal basis by the relevant services of the European Commission. The participation of other observers must be authorised in advance by the European Commission.

DECENTRALISED: EX-ANTE

The Evaluation Committee (ie, the Chairman, the Secretary and the voting members), must be nominated on a personal basis by the

Contracting Authority. The composition of the Evaluation Committee must be submitted for prior approval to the European Commission. The European Commission may nominate an observer to follow all or part of the proceedings of the Evaluation Committee. The participation of other observers must be authorised in advance by the European Commission.

DECENTRALISED: EX-POST

The Evaluation Committee (ie, the Chairman, the Secretary and the voting members), must be nominated on a personal basis by the Contracting Authority. The participation of other observers must be authorised in advance by the Contracting Authority.

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

Any Evaluation Committee member who withdraws from the Evaluation Committee for whatever reason must be replaced following the standard procedure for appointing members of the Evaluation Committee, as explained in this section 6.4.7.1. The chairman of the evaluation committee determines to what extent the evaluation process must be restarted. Such decision as well as any decision relating to the replacement of a committee member must be recorded and justified in the evaluation report.

All voting members of the Evaluation Committee have equal voting rights. The names and functions of all those involved in the evaluation process must be recorded in the Evaluation Report.

The Evaluation Committee should be formed early enough to ensure the availability of the designated members (and any observer nominated by the European Commission, in the case of decentralised ex-ante control) during the period necessary to prepare and conduct the evaluation process. The evaluation of proposals should be completed as soon as possible.

6.4.7.2 USE OF ASSESSORS

Where the proposals received are particularly numerous or highly technical, it may not always be possible for the Evaluation Committee to examine each one in detail. If necessary, all or part of this detailed examination may be carried out by assessors so that the Evaluation Committee may conduct its deliberations on the basis of their assessments.

Assessors work under the supervision of the chairman of the Evaluation Committee. They may only be used for the stages of the evaluation procedure described in detail in sections 6.4.8.3 (Assessment of Administrative Compliance and Eligibility) and 6.4.8.4 (Assessment of Technical and Financial Quality). Although the same assessors may be used for both stages, different types of expertise are required for the two

assessments and it is recommended to use different persons wherever possible.

- With respect to the assessment of administrative compliance and eligibility, the task of assessors consists of carrying out a screening of each proposal on the basis of the relevant grid (see Annex E7). Each proposal need only be screened by one assessor.

It would be preferable to delegate this work to officials or other staff members of the Contracting Authority. Outside assessors may be recruited as required.

- With respect to the assessment of technical and financial quality, the task of assessors consists of carrying out a written assessment of each proposal on the basis of the published evaluation grid (see Annex E10). At least two assessors must assess each proposal, working independently of each other.

The external assessors must have an in-depth knowledge of the issues covered by the grant programme concerned. Their expertise should be verified on the basis of their CVs. A minimum of five years' experience of a particular issue should be expected.

CENTRALISED

The assessors are selected by the competent service of the European Commission. Outside assessors who are not officials or other staff of the Contracting Authority or the public administration of the beneficiary country must be selected using the appropriate framework contract or, failing that, in accordance with the general procurement procedures in the Financial Regulation.

DECENTRALISED: EX-ANTE

The assessors are selected by the Contracting Authority. The list must be submitted for approval to the European Commission. Outside assessors who are not officials or other staff of the Contracting Authority or the public administration of the beneficiary country must be selected using the appropriate framework contract or, failing that, in accordance with the standard procedures in part 3 of this Practical Guide.

DECENTRALISED: EX-POST

The assessors are selected by the Contracting Authority. Outside assessors who are not officials or other staff of the Contracting Authority or the public administration of the beneficiary country must be selected using the appropriate framework contract or, failing that, in accordance with the standard procedures in part 3 of this Practical Guide.



Assessors are not members of the Evaluation Committee but may attend its meetings as observers to present the results of their assessments and answer any questions from committee members.

6.4.7.3 IMPARTIALITY AND CONFIDENTIALITY

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

There is a conflict of interests where the impartial and objective exercise of the functions of a member or observer of the Evaluation Committee or of an assessor is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with an applicant.

☞ No information about the examination, clarification, evaluation or comparison of proposals or decisions about the grant award can be disclosed. **Any attempt by an applicant to influence the process in any way (whether by initiating contact with members of the Evaluation Committee/assessors or otherwise) will result in the immediate exclusion of its proposal from further consideration and in its exclusion from participating in calls for proposals for a period of two years.**

The proceedings of the Evaluation Committee, from the opening of proposals to the conclusion of its work, are conducted in camera and are confidential.

In order to maintain the confidentiality of the proceedings, participation in Evaluation Committee meetings is restricted to the members of the Evaluation Committee, any assessors designated by the Contracting Authority and any authorised observers.

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

6.4.7.4 RESPONSIBILITIES OF THE EVALUATION COMMITTEE MEMBERS

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

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

- circulating and collecting the Declarations of Impartiality and Confidentiality;
- supervising the opening session;
- ensuring that evaluation grids are completed and made available in good time to the members of the Evaluation Committee;
- keeping and filing the minutes of all meetings of the Evaluation Committee; and
- registering attendance at meetings and compiling the Evaluation Report and its supporting annexes.

With the agreement of the other Evaluation Committee members, the Chairman may communicate in writing with applicants whose proposals require clarification, offering them the opportunity to respond by fax within a deadline to be fixed by the Committee.

Any request for clarification requiring communication with the applicants during the evaluation process must be conducted in writing (by fax or letter) and signed by both the Chairman and the Secretary of the Evaluation Committee. Copies of any such communication must be annexed to the Evaluation Report.

6.4.8 STAGES IN THE EVALUATION PROCESS

The evaluation process starts with the receipt of the proposals by the Contracting Authority, and ends with the decision to award grants to the selected applicants. The procedure is set out below.

6.4.8.1 RECEIPT AND REGISTRATION OF PROPOSALS

On receiving proposals, the Contracting Authority must register them and provide a receipt for those delivered by hand (see template in Annex E4). The envelopes containing the proposals must remain sealed and be kept in a safe place until they are opened.

6.4.8.2 OPENING

All proposals should be opened in an opening session at which the registration details will be checked and completed and the proposals numbered (whether or not they were received before the deadline for submission of proposals).

The secretary to the Evaluation Committee supervises the opening session and requests the assistance of other staff of the Contracting Authority as need be.

The registration of proposals should contain the following information:

- registration number of proposal
- date of arrival
- the applicant's name and address.

For each proposal,

- the original is kept safely in the archives of the Contracting Authority;
- the copies are distributed to the evaluators and, where appropriate, to the assessors.

☞ Following the opening session, the Evaluation Committee meets to decide on any contentious case and sign the **Proposal Opening Report**, which includes the minutes of the Proposal Opening Session (see template in Annex E5). This must state:

- the date, time and place of the session;
- the persons present;
- the names of the applicants who submitted proposals within the stipulated deadline; and
- the names of the applicants who submitted proposals after the stipulated deadline.

The Contracting Authority must send an acknowledgement letter as soon as possible after the end of the opening session. The acknowledgement letter (see template in Annex E6) includes a statement informing the applicant whether or not the application was received within the deadline.

6.4.8.3 ASSESSMENT OF ADMINISTRATIVE COMPLIANCE AND ELIGIBILITY

This assessment must be carried out using the administrative compliance and eligibility grid (see Annex E7) and the criteria set out in the Guidelines for Applicants. **Under no circumstances may assessors or members of the Evaluation Committee change the administrative compliance and eligibility grid.**

- Administrative compliance: is the dossier complete? . Incomplete dossiers will be disqualified from the evaluation process.
- Eligibility: are the applicant, the partners and action eligible? This is assessed according to the criteria set out in the Guidelines for Applicants. Ineligible proposals will not be considered further.

The administrative compliance and eligibility grid (see Annex E7) must be used to record the compliance of each proposal with the

requirements of the Guidelines for Applicants. The Contracting Authority must keep proposals not considered for further evaluation.

The assessment of administrative compliance and eligibility may be carried out by members of the Evaluation Committee or by assessors. Each proposal will be examined by one person.

If the members of the Evaluation Committee do not carry out the assessment themselves, the Evaluation Committee must review the conclusions of the assessors on the basis of their completed administrative compliance and eligibility grids. In order to facilitate the Evaluation Committee's review of the assessments, the Secretary to the Evaluation Committee must ensure that two lists are drawn up: one containing proposals which are ineligible and one containing those deficient in administrative compliance. For each entry on a list, the grounds for ineligibility or administrative non-compliance must be identified.

When the call for proposals is organised by a headquarters service of the European Commission and in case of doubt on the eligibility of a proposal, the Evaluation Committee consults the European Commission delegation in the country where the proposed action is to take place.

☞ The first part of the Evaluation Report covering administrative compliance and eligibility, which comprises the checklists, and the minutes of the session, must be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee (see template in Annex E11). It must state:

- the date, time and place of the session;
- the persons present;
- the names of any applicants whose proposals were found to be ineligible or non-compliant and the requirement(s) with which their proposals failed to comply.

The checklists must specify the missing documents and the eligibility criteria which have not been met and the reasons for this.

As soon as possible after the first part of the evaluation report being signed, the Contracting Authority must send a standard letter (see Annex E9) to those applicants who are ineligible and/or whose proposals have been found to be non-compliant, stating the requirement(s) with which their proposals failed to comply.

6.4.8.4 ASSESSMENT OF TECHNICAL AND FINANCIAL QUALITY

The quality of all eligible proposals must be assessed by at least two different people (who may be either committee members or assessors) on the basis of the evaluation grid (see Annex E10) containing the selection and award criteria. A score is given for each sub-heading. Comments are made for each heading on the basis of the questions and

criteria used for that heading. In particular cases, comments may need to be made for specific subheadings. The overall assessment is based on the scores obtained under each subheading, added up by heading. The final score is the mathematical average of the scores given by those examining each proposal.

Where the call for proposals is organised by a headquarters service of the European Commission, a copy of each eligible proposal must be sent to the European Commission delegation in the country where the proposed action is to take place (see format of letter in Annex E8 or E16 for a restricted call for proposals) to enable it *inter alia* to give its opinion on the relevance of the action.

The Secretary will then prepare a list of all the proposals, ranked by score. The completed evaluation grids for each proposal and any opinions from delegations on the proposals must be sent to the Evaluation Committee.

6.4.8.5 CONCLUSIONS OF THE EVALUATION COMMITTEE

The Evaluation Committee will draw up its recommendations after the assessors have examined all the proposals. The Evaluation Committee must not change the assessors' scores or recommendations and must not alter the evaluation grids completed by the assessors.

The Evaluation Committee may decide to approve the ranking drawn up by the secretary on the basis of the assessors' report. If the Committee does not accept the scores awarded by the assessors to a proposal, for example on account of the opinion of the delegation concerned, it must nominate two of its voting members to prepare two new evaluation grids for the proposal concerned. The list will be amended on the basis of the scores from the new evaluations, which replace those completed by the assessors.

All such decisions must be recorded and fully substantiated in the Evaluation Report. The evaluation grids completed by the members of the Evaluation Committee must be kept with those completed by the assessors.

The Evaluation Committee's decisions are taken independently and in an advisory capacity. The Evaluation Committee must ultimately draw up a list of the proposals selected for financing, indicating the score obtained by each proposal, the amount of the proposed grant and the proportion of the eligible costs it is proposed to finance. Subject to the following considerations, this list is made up of the proposals obtaining the best scores, ranked by order, within the limits of the funds available under the call for proposals.

- The Committee may not allocate all the available funds if it finds that there are too few proposals of the quality required to receive a grant.
- The Committee may draw up a list by subject or geographical area specified in the Guidelines for Applicants.

- The Committee may reject a proposal if it has selected another which is of a similar nature but has been awarded a higher score.



The second part of the **Evaluation Report**, covering the technical and financial quality of proposals, is drawn up following the final meeting of the Evaluation Committee. It comprises the evaluation grids, the minutes of the evaluation sessions and, where applicable, the opinions of the European Commission delegations, and must be signed by all members of the Evaluation Committee. It must state:

- the date, time and place of the session;
- the persons present;
- the average score of each proposal;
- the successful applicants, the recommended grant amounts to be awarded to them and the proposed rate of financing of eligible costs;
- the unsuccessful applicants and reasons for non-selection.

CENTRALISED

The entire evaluation procedure is recorded in an Evaluation Report (see template in Annex E11) to be signed by the Chairman, 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.

Once this approval has been given, the European Commission will commence awarding the grants (see section 6.4.10).

DECENTRALISED: EX-ANTE

The entire evaluation procedure is recorded in an Evaluation Report (see template in Annex E11) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee and submitted to the Contracting Authority, which must decide whether or not to accept its recommendations. The Contracting Authority must then submit the Evaluation Report and any award proposals to the European Commission for approval.

Once this approval has been given, the Contracting Authority will commence awarding the grants (see section 6.4.10).

If the Contracting Authority confirms that there are no derogations (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 and of the list of award proposals counts as a global endorsement of the corresponding contracts. The list must include all the elements

necessary to conclude the contracts (including the applicant's details, grant amount and contract duration).

DECENTRALISED: EX-POST

The entire evaluation procedure is recorded in an Evaluation Report (see template in Annex E11) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee and submitted to the Contracting Authority, which must decide whether or not to accept its recommendations. No prior approval from the European Commission is required.

The award decision contains the subject and overall amount of the decision, the approved evaluation report and, where appropriate, the grounds for the decision by the Contracting Authority to depart from the recommendations made by the Committee in the report in respect of a particular proposal.



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.

The Evaluation Report, in particular, is for official use only and may be divulged neither to applicants nor to any party outside the authorised services of the Contracting Authority, the European Commission, OLAF and the European Court of Auditors.

6.4.9 CANCELLING THE CALL FOR PROPOSALS PROCEDURE

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

- the call for proposals has been unsuccessful, ie, 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 fair competition.

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

In the event of cancellation of a call for proposals, applicants must be notified of the cancellation by the Contracting Authority but will not be entitled to compensation.

6.4.10 AWARDING GRANTS

6.4.10.1 NOTIFICATION OF APPLICANTS

CENTRALISED

After the relevant services of the European Commission have given their official approval to the final list of grants to be awarded, the European Commission notifies the successful applicants in writing that their applications have been selected (see template in Annex E13).

It must also send the unsuccessful applicants a standard letter (see template in Annex E12) informing them that they have not been selected and specifying the reasons.

Where the call for proposals is organised by a headquarters service of the European Commission, a copy of these letters is sent to the European Commission delegation in the country where the proposed action is or was to take place.

DECENTRALISED: EX-ANTE

After the Contracting Authority and the European Commission have given their official approval to the final list of grants to be awarded, the Contracting Authority notifies the successful applicants in writing that their applications have been selected (see template in Annex E13).

It must also send the unsuccessful applicants a standard letter (see template in Annex E12) informing them that they have not been selected and specifying the reasons.

DECENTRALISED: EX-POST

The Contracting Authority notifies the successful applicants that their applications have been selected (see template in Annex E13). No prior approval from the European Commission is required.

The Contracting Authority must also send the unsuccessful applicants a standard letter (see template in Annex E12) informing them that they have not been selected and specifying the reasons.



The letters to the successful applicants must be sent within 15 days of the award decision and letters to the unsuccessful applicants within a further 15 days of that.

6.4.10.2 CONTRACT PREPARATION

In preparing grant contracts for each of the successful applicants on the final list, the Contracting Authority must proceed as follows:

1. Use the modified contract template (see Annex E3E).
2. Prepare a general background dossier containing information applicable to all grant contracts to be concluded as a result of the Call for Proposals, using the following structure:
 - a) Explanatory note using the format in Annex A6;
 - b) Copy of the Call for Proposals notice, Guidelines for Applicants, Proposal Opening Report, Evaluation Report, the list of grants to be awarded, the award decision and any other relevant information;
3. Prepare a dossier for each grant contract to be concluded as a result of the Call for Proposals comprising the following items:

Three copies of the specific parts of the proposed contract prepared using the standard grant contract (see Annex E3E):

- Special Conditions (any additions to or derogations from the General Conditions must be specified in Article 7 of the Special Conditions, which is provided for that purpose)
- Description of the action
- General Conditions
- Budget for the action
- Procurement procedures to be used if services, supplies or works need to be procured as part of an action funded by a grant;
- Request for payment and financial identification form;

- Model audit certificate;
- Model financial guarantee.

☞ **The standard contract annexes containing the General Conditions, procurement procedures and models (see Annex E3E) must be reproduced without modification in every grant contract.** The Special Conditions and Budget of the action must be completed by the Contracting Authority. The financial identification form must be completed by the successful applicant before the contract is signed by either party.

The budget proposed for the action by the successful applicant at the call for proposals stage must be corrected to remove any arithmetical errors or ineligible costs prior to signing the contract. The Description of the action is corrected accordingly if need be. Other clarifications or minor corrections may be brought to the Description of the action in so far as they relate to aspects clearly identified by the Evaluation Committee and would not call into question the grant award decision or be contrary to the equal treatment of applicants.

☞ **Any other alteration to the successful applicant's proposal or negotiation with him is prohibited.**

☞ **If the successful applicant is an international organisation, the model Contribution Agreement (see Annex F1) or any other contract template agreed between the international organisation concerned and the Contracting Authority, should be used instead of the standard grant contract.**

Characteristics of the standard grant contract

- The standard grant contract recognises the beneficiary's independence of action and lays down simplified management rules accordingly. In particular, it allows the recipient to adapt or modify the action without the prior consent of the Contracting Authority provided that the modifications are not substantial and do not result in a change of more than 15% to any budget heading.
- The first pre-financing payment, which covers either 80% of the amount of the contract or 80% of the first annual budget, is paid after both parties have signed the contract and the Contracting Authority has received a standard payment request from the beneficiary. Subsequently, in the case of contracts for large amounts, an interim report (technical and financial) and payment request must be sent once a year as soon as 70% of the previous payment (and 100% of earlier ones) has been used up. A new payment of pre-financing is made on that basis. The balance is paid on approval of the final report. The beneficiary must not send documents in support of its request to the Contracting Authority but must keep them in case of inspection or audit for a period of seven years after payment of the balance.

- The Community finances a specific percentage of the total eligible costs rather than a particular part of the action. If at the end of the action, the actual eligible cost is lower than anticipated, the grant will be reduced proportionately.
- An external audit of the accounts of the action is attached to the request for payment of the balance where the grant is of more than €100,000, to a request for payment of additional pre-financing when the cumulated pre-financing exceeds €750,000, or to any request for payment exceeding €75,000 per financial year in the case of an operating grant. A financial guarantee is required where pre-financing represents over 80% of the total amount of the grant or, where the beneficiary is a non-governmental organisation, when it exceeds €1,000,000 or 90% of the total amount of the grant.
- In awarding any procurement contracts required for the purposes of the action, the beneficiary must comply with the rules set out in section 6.8.
- Unless otherwise requested or agreed by the European Commission, beneficiaries must take the necessary measures to ensure the visibility of the EU financing or contribution to the financing. Such measures must be in accordance with the applicable rules on the visibility of external actions laid down and published by the Commission. These rules are set out in the EU visibility guidelines for external actions, available from the following Internet address: http://europa.eu.int/comm/europeaid/visibility/index_en.htm.

CENTRALISED

- 4) Sign all copies of the contract.

DECENTRALISED: EX-ANTE

- 4) Sign all the copies of each contract and, if no global endorsement has been given in accordance with point 6.4.8.5, send the contract dossier to the European Commission for endorsement.

DECENTRALISED: EX-POST

- 4) Sign all copies of the contract.

- 5) Using the standard letter (see format in Annex A8), send the three signed copies of each contract to the beneficiary, who must countersign them within 30 days of receipt and return two copies to the Contracting Authority together with a payment request and any financial guarantee required in the contract.

CENTRALISED

6) On receipt of the two signed copies from the grant beneficiary, keep one in the relevant service in charge of payments send the other to the Project Manager.

DECENTRALISED: EX-ANTE

6) On receipt of the two signed copies from the grant beneficiary, the Contracting Authority sends one to the relevant service in charge of payments and the other to the European Commission. A copy of the signed contract must be sent to the Project Manager.

DECENTRALISED: EX-POST

6) On receipt of the two signed copies from the grant beneficiary, the Contracting Authority sends one to the relevant service in charge of payments and the other to the Project Manager.

☞ **The Contracting Authority and the grant beneficiary must note on the contract the date on which they sign it. The contract takes effect on the date of the later signature. A contract cannot cover earlier activities except in duly substantiated exceptional cases (see section 6.2.5).**

☞ **All actions funded by the European Communities are subject to audit at any stage, whether during the award process, during implementation of the action or once it has been completed.**

Contracting Authorities must retain all selection and grant documentation for a period of seven years after the completion of an action. These documents must be made available for inspection by the European Commission, OLAF and the Court of Auditors.

6.4.10.3 PUBLICISING THE AWARD OF GRANTS

Once the contracts have been signed, the Contracting Authority prepares a notice of award for each call for proposals (using the template in Annex E14) giving the following minimum details in each case: the name and address of the beneficiary, the subject of the grant, the amount allocated and the proportion of the costs of the action it is funding. It sends this immediately to the European Commission, which publishes the results of the call for proposals on the Internet. In addition, the Contracting Authority must record all statistical information concerning the contract award procedure (including 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 E14, including the table of "grants made without a call for proposals"), containing the above particulars for every grant made during the year.

- ☞ **The Contracting Authority is responsible for preparing the grant contract award notice using the template in Annex E14 and for submitting it in electronic form to the European Commission for publication.**

The Contracting Authority also publishes this information on its own Internet site and/or any other appropriate media.

The European Commission may authorise the Contracting Authority to waive the above obligations if publication of the information may threaten the safety of the beneficiaries or harm their business interests.

6.5 LOCAL CALL FOR PROPOSALS

- ☞ The measures applicable to an international Call for Proposals, as described in section 6.4, apply by analogy to a local Call for Proposals, except as specified below.

In a local Call for Proposals, the Call for Proposals notice and Guidelines for Applicants are published only in the beneficiary country.

A local call for proposals has to be open.

CENTRALISED

The minimum period between the date of publication of the Call for Proposals and the deadline for receipt of proposals is 60 days. However, in exceptional cases, a shorter deadline may be allowed.

DECENTRALISED: EX-ANTE

The minimum period between the date of publication of the Call for Proposals and the deadline for receipt of proposals is 60 days. However, in exceptional cases, and with the prior authorisation of the European Commission, a shorter deadline may be allowed.

DECENTRALISED: EX-POST

The minimum period between the date of publication of the Call for Proposals and the deadline for receipt of proposals is 60 days. However, in exceptional cases, a shorter deadline may be allowed.

6.6 RESTRICTED CALL FOR PROPOSALS

- ☞ The measures applicable to an open international Call for Proposals, as described in section 6.4, apply by analogy to a restricted Call for Proposals, except as specified below.

In a restricted call for proposals, the notice and the Guidelines for Applicants invite applicants to submit a preliminary proposal using the format in Annex E3F. Administrative compliance, eligibility and headings 1 and 2 of the technical and financial evaluation grid are assessed on this basis.

Where the call for proposals is organised by a headquarters service of the European Commission, a copy of each eligible preliminary proposal must be sent to the European Commission delegation in the country where the proposed action is to take place (see format of letter in Annex E15) to enable it inter alia to give its opinion on the relevance of the action.

The second part of the **Evaluation Report** (see Annex E11), covering the technical and financial quality of the preliminary proposals (headings 1 and 2 of the technical and financial evaluation grid), is drawn up following the final meeting of the Evaluation Committee dealing with this stage of the procedure. It comprises the evaluation grids, the minutes of the evaluation sessions and, where applicable, the opinions of the European Commission delegations, and must be signed by all members of the Evaluation Committee. It must state:

- the date, time and place of the session;
- the persons present;
- the applicants selected for submission of a full proposal;
- the unsuccessful applicants and reasons for non-selection.

The Guidelines for Applicants may indicate that a specific number of applicants will be invited to submit a full proposal. In this case a list restricted to the published number is drawn up consisting of the preliminary proposals with the best scores, ranked in order.

The shortlisted applicants are then invited in writing (see format of letter in Annex E16) to submit a full application form on the basis of which the evaluation of the items mentioned under headings 3 to 5 of the technical and financial evaluation grid will be carried out. Unsuccessful candidates are notified by letter (see Annex E17 for format) giving the grounds for the decision to refuse their application.

CENTRALISED

The minimum period between the date of publication of the Call for Proposals and the deadline for receipt of preliminary proposals is 45 days. However, in exceptional cases, a shorter deadline may be allowed.

The minimum period between the dispatch of the letter of invitation to submit full forms and the deadline for receipt of proposals is 45 days. However, in exceptional cases, a shorter deadline may be allowed.

DECENTRALISED: EX-ANTE

The minimum period between the date of publication of the Call for Proposals and the deadline for receipt of preliminary proposals is 45 days. However, in exceptional cases, and with the prior authorisation of the European Commission, a shorter deadline may be allowed.

The minimum period between the dispatch of the letter of invitation to submit full forms and the deadline for receipt of proposals is 45 days. However, in exceptional cases, and with the prior authorisation of the European Commission, a shorter deadline may be allowed.

DECENTRALISED: EX-POST

The minimum period between the date of publication of the Call for Proposals and the deadline for receipt of preliminary proposals is 45 days. However, in exceptional cases, a shorter deadline may be allowed.

The minimum period between the dispatch of the letter of invitation to submit full forms and the deadline for receipt of proposals is 45 days. However, in exceptional cases, a shorter deadline may be allowed.

6.7 MODIFYING GRANT CONTRACTS

Grant contracts may need to be modified during their lifetime if the circumstances in which the action is implemented have changed since the initial contract was signed. Grant contract modifications require a formal addendum to the contract. Such an addendum must be signed by the contracting parties (and, under a decentralised ex-ante system, approved and endorsed by the European Commission).

Minor changes, changes of address, changes of bank account and changes of auditor may simply be notified in writing by the grant beneficiary to the Contracting Authority, although this does not affect the right of the Contracting Authority to oppose the grant beneficiary's choice of bank account or auditor.

6.7.1 GENERAL PRINCIPLES

The following **general principles** must always apply:

- A grant beneficiary's requests for grant contract modifications should not automatically be accepted by the Contracting Authority. Such requests must be properly substantiated. The Contracting Authority must examine the reasons given, and reject requests which have little or no substantiation.

- The modifications must not have the purpose or the effect of making such changes to the contract as would call into question the grant award decision or be contrary to the equal treatment of applicants.
- **Grant contracts can only be modified within the lifetime of the contract; modifications cannot be made retroactively.**
- The maximum amount of the grant may not be increased.
- Any modification extending the performance period of the contract must be such that implementation and final payments can be completed before the expiry of the financing decision, and as the case may be of the execution period of the financing agreement, under which the initial grant contract was financed.



Requests for contract modifications to grant contracts must be made (by one contracting party to the other) allowing at least 30 days for the addendum to be signed before the modifications are intended to enter into force.

6.7.2 PREPARING AN ADDENDUM

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

- 1) Use the standard template for an addendum (see Annex A7)



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

Any addendum modifying the budget must include a replacement budget showing how the full budget breakdown of the initial contract has been modified by this addendum (and any previous addenda). The following column headings should be used:

Budget Item	Initial contract budget	Addendum 1	(Addendum 2 ...)	Revised budget

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

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

- 2) Prepare a dossier comprising the following items:
 - a) Explanatory note (see template in Annex A6) setting out the technical and financial grounds for making the modifications in the proposed addendum
 - b) Copy of the grant beneficiary's request for (or agreement to) the proposed modifications, if available
 - c) Copy of the financing agreement authorising the action where necessary
 - d) Copy of the initial contract and any subsequent addenda
 - e) Three copies of the proposed addendum, which is based on the standard addendum template (see Annex A7) and includes any revised annexes.

CENTRALISED

- 3) Sign all copies of the addendum.

DECENTRALISED: EX-ANTE

- 3) Sign all copies of the addendum and send the addendum dossier to the European Commission for approval and endorsement.

DECENTRALISED: EX-POST

- 3) Sign all copies of the addendum. No prior approval or endorsement by the European Commission is required.

- 4) Using the standard letter (see format in Annex A8), send the three signed copies of the addendum to the grant beneficiary, who must countersign them within 30 days of receipt and return two copies to the Contracting Authority together with any financial guarantee required in the addendum.

CENTRALISED

- 5) On receipt of the two signed copies from the grant beneficiary, one is sent to the relevant service in charge of payments and the other is sent to the manager responsible for the action.

DECENTRALISED: EX-ANTE

- 5) On receipt of the two signed copies from the grant beneficiary, the Contracting Authority sends one to the relevant service in charge of payments and the other to the European Commission. A copy of the signed addendum must be sent to the manager responsible for the action.

DECENTRALISED: EX-POST

5) On receipt of the two signed copies from the grant beneficiary, the Contracting Authority sends one to the relevant service in charge of payments and the other to the manager responsible for the action.



The Contracting Authority and the grant beneficiary must note on the addendum the date on which they sign it. The addendum takes effect on the date of the later signature. An addendum cannot cover earlier activities or enter into force before this date.

6.8 PROCUREMENT BY GRANT BENEFICIARIES

6.8.1 GENERAL PRINCIPLES

If the implementation of an action which is supported by a grant from the Community in the context of external actions requires procurement by the grant beneficiary, the contract must be awarded to the most economically advantageous tender (ie, the tender offering the best price-quality ratio), in accordance with the principles of transparency and fair competition for potential contractors and taking care to avoid any conflicts of interest.

To this end, grant contracts provide for compliance with the rules set out in sections 6.8.2 to 6.8.7 below, subject to section 6.8.8.

Where the grant beneficiary makes use of the services of a central buying office, the buying office must follow the same rules which are to be followed by the beneficiary.

In the event of failure to comply with the rules referred to above, expenditure relating to the operations in question is not eligible for Community financing.

The Commission will carry out ex-post checks on the compliance of grant beneficiaries with these rules. Grant contracts must provide expressly for the Commission, including the European Anti-Fraud Office (OLAF), and the Court of Auditors to exercise their powers of control, on documents and on the spot, over all contractors and subcontractors which have received Community funds.

6.8.2 ELIGIBILITY FOR CONTRACTS

6.8.2.1 THE NATIONALITY RULE

Participation in tender procedures administered by grant beneficiaries is open on equal terms to all natural and legal persons of the Member States and the States and territories of regions expressly covered and/or allowed by the Financial Regulation, the basic legislation or other instruments governing the aid programme under which the grant is being financed.

This rule also applies to the experts proposed by service providers taking part in tender procedures or service contracts financed by the grant. Tenderers must state, in the tender, the country of which they are nationals by presenting the usual proof of nationality under their national legislation.

6.8.2.2 THE RULE OF ORIGIN

If the basic act or the other instruments applicable to the programme under which the grant is financed contain rules of origin for supplies acquired by the grant beneficiary in the context of the grant, the tenderer must state the origin of supplies. Contractors must present a certificate of origin to the grant beneficiary no later than when the first invoice is presented. The certificate of origin must be made out by the competent authorities of the country of origin of the supplies or supplier and must comply with the international agreements to which that country is a signatory or to the relevant Community legislation if it is an EU Member State.

6.8.2.3 EXCEPTIONS TO THE RULES ON NATIONALITY AND ORIGIN

Where an agreement on widening the market for procurement of goods or services applies, the procurement contracts must also be open to nationals of other countries under the conditions laid down in that agreement.

In addition, in duly substantiated exceptional cases, the Commission may allow nationals of countries other than those referred to in section 6.8.2.1 to tender for contracts (or supplies of goods originating in such countries) on the basis of the specific conditions laid down in the basic act or other instrument governing the programme under which the grant is financed.

6.8.2.4 GROUNDS FOR EXCLUSION FROM PARTICIPATION IN CONTRACTS

Candidates or tenderers will be excluded from participation in a procurement procedure if:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;
- c) they have been guilty of grave professional misconduct proven by any means which the beneficiary of the grant can justify;
- d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the grant beneficiary or those of the country where the contract is to be performed;
- e) they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

Candidates or tenderers must certify that they are not in one of the situations listed above.

6.8.2.5 EXCLUSION FROM AWARD OF CONTRACTS

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

- (a) are subject to a conflict of interests;
- (b) are guilty of misrepresentation in supplying the information required by the beneficiary of the grant as a condition of participation in the contract procedure or fail to supply this information.

6.8.3 RULES COMMON TO ALL TENDER PROCEDURES

The tender documents must be drafted in accordance with best international practice. If they do not have their own documents, grant beneficiaries may use the models (in particular the tender dossier) published on the Commission's web site relating to external actions .

The time-limits for receipt of tenders and requests to participate must be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders.

All requests to participate and tenders declared as satisfying the requirements must be evaluated and ranked by an evaluation committee on the basis of the exclusion, selection and award criteria announced in advance. This committee must have an odd number of members, at least three, with all the technical and administrative capacities necessary to give an informed opinion on the tenders.

6.8.4 RULES APPLICABLE TO SERVICE CONTRACTS

6.8.4.1 CONTRACTS OF €200,000 OR MORE

Service contracts worth EUR 200,000 or more must be awarded by means of an international restricted tender procedure following publication of a procurement notice.

The procurement notice is to be published in all appropriate media, in particular on the grant beneficiary's web site, in the international press and the national press of the country in which the action is being carried out, or in other specialist periodicals. It must state the number of candidates which will be invited to submit tenders. This will be within a range of four to eight candidates, and must be sufficient to ensure genuine competition.

All would-be service providers fulfilling the conditions referred to in section 6.8.2 may ask to participate but only candidates satisfying the published selection criteria and invited in writing by the grant beneficiary may submit a tender.

6.8.4.2 CONTRACTS UNDER €200,000

Service contracts worth less than EUR 200,000 must be awarded by means of a negotiated procedure without publication, in which grant beneficiaries consult at least three service providers of their choice and negotiate the terms of the contract with one or more of them.

For services of a value of EUR 5,000 or less, the beneficiary may place orders on the basis of a single tender.

6.8.5 RULES APPLICABLE TO SUPPLY CONTRACTS

6.8.5.1 CONTRACTS OF €150,000 OR MORE

Supply contracts worth EUR 150,000 or more must be awarded by means of an international open tender procedure following publication of a procurement notice.

The procurement notice is to be published in all appropriate media, in particular on the grant beneficiary's web site, in the international press and the national press of the country in which the action is being carried out, or in other specialist periodicals.

Any would-be supplier which fulfils the conditions referred to in section 6.8.2 may submit a tender.

6.8.5.2 CONTRACTS BETWEEN €30,000 AND €150,000

Such contracts are awarded by means of an open tender procedure published locally: the procurement notice is published in all appropriate media but only in the country in which the action is being carried out.

A local open tender procedure must provide other eligible suppliers with the same opportunities as local firms.

6.8.5.3 CONTRACTS UNDER €30,000

Supply contracts worth less than EUR 30,000 must be awarded by means of a negotiated procedure without publication, in which grant beneficiaries consult at least three suppliers of their choice and negotiate the terms of the contract with one or more of them.

For supplies of a value of EUR 5,000 or less, the beneficiary may place orders on the basis of a single tender.

6.8.6 RULES APPLICABLE TO WORKS CONTRACTS

6.8.6.1 CONTRACTS OF €5,000,000 OR MORE

Works contracts worth EUR 5,000,000 or more must be awarded by means of an international open tender procedure following publication of a procurement notice.

The procurement notice is to be published in all appropriate media, in particular on the grant beneficiary's web site, in the international press and the national press of the country in which the action is being carried out, or in other specialist periodicals.

Any contractor which fulfils the conditions referred to in section 6.8.2 may submit a tender.

6.8.6.2 CONTRACTS OF BETWEEN €300,000 AND €5,000,000

Such contracts are awarded by means of an open tender procedure published locally: the procurement notice is published in all appropriate media but only in the country in which the action is being carried out.

A local open tender procedure must provide other eligible contractors with the same opportunities as local firms.

6.8.6.3 CONTRACTS UNDER €300,000

Works contracts worth less than EUR 300,000 must be awarded by means of a negotiated procedure without publication, in which grant beneficiaries consult at least three contractors of their choice and negotiate the terms of the contract with one or more of them.

For works of a value of EUR 5,000 or less, the beneficiary may place orders on the basis of a single tender.

6.8.7 USE OF THE NEGOTIATED PROCEDURE

The beneficiary of the grant may use the negotiated procedure on the basis of a single tender in the following cases:

- (a) where, for reasons of extreme urgency brought about by events which the grant beneficiary could not have foreseen and which can in no way be attributed to him, the time-limit for the procedures referred to in sections 6.8.3 to 6.8.6 cannot be kept. The circumstances invoked to justify extreme urgency must in no way be attributable to the grant beneficiary.

Actions carried out in crisis situations identified by the Commission are considered to satisfy the test of extreme urgency. The Commission will inform the grant beneficiary if a crisis situation exists and when it comes to an end.

- (b) where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field;
- (c) where contracts extend activities already under way which are not included in the main contract but which, because of unforeseen circumstances, have become necessary to perform the contract, or which consist of the repetition of similar services entrusted to the contractor providing services under the initial contract;
- (d) 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 grant beneficiary to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance;
- (e) for additional works not included in the initial contract concluded which have, through unforeseen circumstances, become necessary for carrying out the works;

- (f) 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 grant beneficiary may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, provided that the initial terms of the tender procedure are not substantially altered;
- (g) where the contract concerned follows a contest and must, under the rules applying, be awarded to the winner of the contest or to one of the winners of the contest, in which case, all winners shall be invited to participate in the negotiations;
- (h) 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;
- (i) 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.

6.8.8 SPECIAL CASES

6.8.8.1 CO-FINANCING

Where:

- the action is cofinanced by several donors and
- one of the other donors, whose contribution to the total cost of the action is greater than that of the Commission, imposes procurement rules on the grant beneficiary that differ from those set out in sections 6.8.3 to 6.8.6,

the grant beneficiary may apply the rules imposed by the other donor. In all cases, the general principles and rules on nationality and origin set out in sections 6.8.1 and 6.8.2 still apply.

6.8.8.2 PUBLIC ADMINISTRATIONS OF THE MEMBER STATES

Where the grant beneficiary 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, in preference to the rules set out in sections 6.8.3 to 6.8.7. In all cases, the general principles and rules on nationality and origin set out in sections 6.8.1 and 6.8.2 still apply.

6.8.8.3 INTERNATIONAL ORGANISATIONS

Where the beneficiary of a grant is an international organisation, it applies its own procurement procedures if they provide guarantees equivalent to internationally accepted standards. If not or in specific cases, the Commission and the international organisation agree to apply other rules which provide such guarantees.

The international organisations covered by this section are: international public-sector organisations set up by intergovernmental agreements, and specialised agencies set up by such organisations; the International Committee of the Red Cross (ICRC); the International Federation of National Red Cross and Red Crescent Societies.

In the event of joint management, the rules on nationality and origin of the international organisation apply, if the basic act or other instruments governing the programme under which the grant is financed permit this. In all other cases, the rules on nationality and origin set out in section 6.8.2 apply.

In all cases, the general principles set out in section 6.8.1 remain applicable.

7 RELATIONS WITH INTERNATIONAL ORGANISATIONS AND OTHER DONORS

External aid projects may need to be co-financed with a partner who may be an international organisation, an EU Member State or a non-EU country. The procurement rules and procedures applicable vary from case to case.

There are two types of co-financing : parallel and joint co-financing. Under parallel co-financing, the project is broken down into clearly identifiable sub-projects which are each funded by the different co-financing partners. The rules and procedures included in this Practical Guide are applicable in their entirety and without modification to the EC-funded part of all projects with parallel co-financing.

Under joint co-financing, the total project cost is divided between the co-financing partners and all the funds are pooled such that the source of funding for a specific activity within the project cannot be identified.

Specific cases of joint co-financing are examined in the following sections.

7.1 RELATIONS WITH INTERNATIONAL ORGANISATIONS

International organisation means:

- a) international public-sector organisations set up by intergovernmental agreements, and specialised agencies set up by such organisations - these organisations may have worldwide or regional scope;
- b) the International Committee of the Red Cross (ICRC);
- c) the International Federation of National Red Cross and Red Crescent Societies.

Within the meaning of the Financial Regulation, there is joint management when co-financing with an international organisation involves an action for which the resources of a number of donors have to be pooled and it is not reasonably possible or appropriate to assign the share contributed by each donor to each type of expenditure. International organisations involved in joint management must apply standards in their accounting, audit, control and procurement procedures which offer guarantees equivalent to **internationally accepted standards**. Provided the Commission is sure of compliance with these conditions, international organisations need not be obliged to follow procedures other than their own (see also section 6.8.8.3 of this Practical Guide for the relevant procurement procedures). The

Commission must also ensure that suitable arrangements exist for the control and audit of the action in its entirety.

For the purposes of this Guide, joint management implies a grant and is subject accordingly to the rules set out in Part 6 above unless otherwise provided for in the Guide and in particular in the model contribution agreement to an international organisation (see Annex F1). Grants to international organisations other than in the case of joint management are wholly subject to the rules in Part 6 of this Guide.

Framework agreements on financial and contractual procedures have been concluded between the Commission and some international organisations, notably the World Bank (Trust Fund and Co-financing Framework Agreement of 8 November 2001, see Annex F2) and the United Nations (Financial and Administrative Framework Agreement of 29 April 2003, see Annex F3). These framework agreements take the above rules into account and must be applied. The standard contribution agreement to an international organisation implements notably the framework agreement of 29 April 2003 with the United Nations. It must be used with all international organisations, both for grants and cases of joint management, unless otherwise agreed with the international organisation concerned (for instance specific standard contracts apply for contributions to the World Bank).

Wherever possible, contracts to be concluded with international organisations should be signed following the centralised management pattern.

7.2 RELATIONS WITH EU MEMBER STATES

7.2.1 CO-FINANCING

Joint co-financing is possible with EU Member States, candidate countries and the member states of the European Economic Area, or with national public-sector bodies or private-law entities with a public-service mission of these countries. The applicable procurement rules and procedures must be compatible with those of the Commission as set out in this Guide.

7.2.2 DELEGATION BUDGET IMPLEMENTATION TASKS

Special procedures apply where the Commission delegates tasks of public authority, and in particular budget implementation tasks, to the abovementioned national bodies. Specific procedures apply in this case.

7.2.2.1 BASIC REQUIREMENTS

In order for a delegation of budget implementation tasks to be possible, all the following conditions must be fulfilled:

- The bodies concerned must offer adequate financial guarantees. Such guarantees must be underwritten by a public authority and allow full recovery of amounts owed to the Commission.
- Delegation is only possible where provided for in the legal basis.
- The delegation must meet the requirements of sound financial management, in particular the principles of economy, efficiency and effectiveness. These requirements must be identified in advance by a prior analysis on which the competent committee provided for in the legal basis must give an opinion. The committee may express an opinion on the proposed application of the selection criteria.
- The bodies concerned must be chosen in an objective and transparent manner, following a cost-effectiveness analysis, to match the performance requirements identified by the Commission.
- The delegation must comply with the principle of non-discrimination and the choice of the body to which the executive tasks will be delegated may not entail any discrimination between the various Member States or countries concerned.
- The delegation must comply with the rules on the visibility of Community action.
- Performance of the delegated implementation tasks must not give rise to conflicts of interests.
- Bodies performing implementation tasks must conduct regular checks to ensure that actions financed from the EC budget have been implemented correctly.
- The bodies concerned must take appropriate measures to prevent irregularities and fraud.
- These bodies must be governed by the law of one of the Member States, EEA States, the candidate countries or other States specified in the legal basis.

7.2.2.2 DELEGATION DECISION

Before any delegation is issued, a specific Commission decision is required. The delegation decision must meet the following requirements:

- No body may be designated without the agreement of the State concerned.
- Decisions to delegate implementation tasks must include appropriate provisions to ensure the transparency of the actions carried out.

These decisions must include:

- transparent procurement and grant-award procedures which are non-discriminatory and exclude any conflict of interests and which are in accordance with the provisions of Titles V and VI of the Financial Regulation;
- an effective internal control system for management operations;
- accounting arrangements for these operations and procedures for the presentation of the accounts which will enable the correct use of Community funds to be ascertained and the true extent of this use to be reflected in the Community accounts;
- an independent external audit;
- public access to information at the level provided for in Community regulations.

Note, however, that the Commission may recognise audit, accounting and procurement systems as equivalent to its own, taking due account of internationally accepted standards.

The delegation decision must specify that the Commission is responsible for the supervision, evaluation and scrutiny of the delegated tasks.

7.2.2.3 DELEGATION AGREEMENT

The delegation decision must be accompanied by an agreement with the body concerned containing:

- a definition of the delegated tasks;
- the conditions and detailed arrangements for performing the delegated tasks, including appropriate provisions for demarcating responsibilities and organising the controls to be carried out;
- rules for reporting to the Commission on how the delegated tasks are performed;
- the conditions under which performance of the delegated tasks terminates;
- the detailed arrangements for Commission scrutiny;
- conditions governing the use of separate bank accounts, the beneficiary of the interest yielded and the use made of it;
- provisions guaranteeing the visibility of the Community action in relation to the other activities of the body concerned;
- an undertaking by the body concerned to refrain from any act giving rise to a conflict of interests.

Procurement contracts awarded by national bodies granted such a delegation must comply with the eligibility rules contained in this Guide.

7.3 RELATIONS WITH THIRD COUNTRIES

Third countries means countries other than:

- EU Member States
- members of the European Economic Area
- candidate countries for accession to the EU
- beneficiary countries.

National public law bodies of the above are likewise treated as third countries. Actions may be co-financed with third countries provided that the procurement rules and procedures applicable comply with those of the Commission as set out in this Guide.

Where the legal basis so provides, and in accordance with the conditions it lays down, eligibility for participation in contracts co-financed with a third country may be extended to natural and legal persons with the nationality of that country.