

Practical Guide
to contract procedures
financed from the 9th
European Development
Fund



CONTENTS

1.	INTRODUCTION	8
2.	BASIC RULES FOR WORKS, SUPPLY AND SERVICE CONTRACTS	10
2.1.	Overview	10
2.2.	Centralised and decentralised controls	11
2.3.	Eligibility criteria and other essential aspects	14
2.3.1.	The rule on nationality and origin	14
2.3.2.	Exceptions to the rule on nationality and origin	15
2.3.3.	Grounds for exclusion	16
2.3.4.	Participation on equal terms	17
2.3.5.	Visibility	17
2.3.6.	Other essential points	18
2.4.	Contract-award procedures	18
2.4.1.	Which award procedure to apply?	19
2.4.2.	Open procedure	19
2.4.3.	Restricted procedure	20
2.4.4.	Simplified procedure	20
2.4.5.	Framework contracts	20
2.4.6.	Negotiated procedure	20
2.4.7.	Emergency aid	20
2.4.8.	Fair competition	21
2.4.9.	Preferences	21
2.4.10.	Selection and award criteria	22
2.4.11.	Invitation to tender with "suspension clause"	23
2.4.12.	Cancellation of award procedures	23
2.4.13.	Ethics clauses	24
2.4.14.	Appeals	26
2.5.	Contract size	26
2.6.	Terms of reference and technical specifications	26
2.7.	Procedural rules on conciliation and arbitration of contracts financed by the European Development Fund (EDF)	28
3.	SERVICE CONTRACTS	29
3.1.	Introduction	29
3.2.	Procurement procedures	31
3.2.1.	Contracts of €200 000 or more	31
3.2.1.1.	Restricted procedure	31
3.2.1.2.	Negotiated procedure	31
3.2.2.	Contracts of less than €200 000	32
3.3.	International restricted tender procedures (for contracts of €200 000 or more)	32
3.3.1.	Publicity	32
3.3.1.1.	Publication of pre-information notices (forecast notices)	33
3.3.1.2.	Publication of procurement notices	33
3.3.2.	Establishment of shortlists	35

3.3.3.	Drafting and contents of the tender dossier	38
3.3.4.	Award criteria	41
3.3.5.	Additional information before the deadline for submission of tenders	41
3.3.6.	Deadline for the submission of tenders	41
3.3.7.	Period during which tenders are binding	42
3.3.8.	Presentation of tenders.....	42
3.3.9.	The evaluation committee.....	43
3.3.9.1.	Composition.....	43
3.3.9.2.	Impartiality and confidentiality	44
3.3.9.3.	Responsibilities of the evaluation committee members	45
3.3.9.4.	Timetable	46
3.3.10.	Stages in the evaluation process	46
3.3.10.1.	Receipt and registration of tenders	46
3.3.10.2.	Tender opening session.....	46
3.3.10.3.	Evaluation of technical bids.....	49
3.3.10.4.	Evaluation of financial offers	52
3.3.10.5.	Conclusions of the evaluation committee.....	53
3.3.10.6.	Contract preparation	58
3.3.11.	Cancelling the tender procedure	58
3.3.12.	Award of the contract	59
3.3.12.1.	Notifying the successful tenderer	59
3.3.12.2.	Signing the contract	60
3.3.12.3.	Publicising the award of the contract.....	61
3.3.13.	Approval of key experts (for centralised tender procedures only)	61
3.3.14.	Provision and replacement of experts.....	62
3.4.	Procedures for the award of contracts of less than €200 000	64
3.4.1.	Framework contract	64
3.4.2.	Simplified procedure	64
3.5.	Modifying service contracts	65
3.5.1.	General principles	65
3.5.2.	Preparing an addendum	66
4.	SUPPLY CONTRACTS.....	68
4.1.	Introduction.....	68
4.2.	Procurement procedures	69
4.2.1.	Contracts of more than €150 000.....	69
4.2.1.1.	International open procedure	69
4.2.1.2.	Negotiated procedure.....	69
4.2.2.	Contracts of more than €30 000 but less than €150 000.....	70
4.2.2.1.	Local open procedure	70
4.2.2.2.	Negotiated procedure.....	70
4.2.3.	Contracts of less than €30 000 - simplified procedure	70
4.3.	International open tender (for contracts of more than €150 000).....	70
4.3.1.	Publicity.....	70
4.3.1.1.	Publication of pre-information notices	70
4.3.1.2.	Publication of procurement notices	71
4.3.2.	Drafting and contents of the tender dossier	72
4.3.3.	Selection and award criteria.....	74
4.3.4.	Additional information during the procedure	75
4.3.5.	Deadline for the submission of tenders	75

4.3.6.	Period during which tenders are binding	76
4.3.7.	Presentation of tenders.....	76
4.3.8.	The evaluation committee.....	76
4.3.8.1.	Composition.....	76
4.3.8.2.	Impartiality and confidentiality	78
4.3.8.3.	Responsibilities of the evaluation committee members	78
4.3.8.4.	Timetable	79
4.3.9.	Stages in the evaluation process	79
4.3.9.1.	Receipt and registration of tenders	79
4.3.9.2.	Preparatory meeting.....	79
4.3.9.3.	Tender-opening session	80
4.3.9.4.	Evaluation of technical offers	81
4.3.9.5.	Evaluation of financial offers	84
4.3.9.6.	Choice of contractor	84
4.3.9.7.	Conclusions of the evaluation committee.....	86
4.3.9.8.	Contract preparation	88
4.3.10.	Cancelling the tender procedure	89
4.3.11.	Award of the contract	89
4.3.11.1.	Notifying the successful tenderer	89
4.3.11.2.	Signing of the contract.....	90
4.3.11.3.	Publicising the award of the contract.....	90
4.4.	Local open tender (for contracts of €30 000 or more and of €150 000 or less).....	91
4.5.	Simplified procedure (for contracts of less than €30 000)	92
4.6.	Modifying supply contracts	92
4.6.1.	General principles	93
4.6.2.	Drawing up an addendum.....	94
5.	WORKS CONTRACTS	96
5.1.	Introduction.....	96
5.2.	Procurement procedures	97
5.2.1.	Contracts of more than €5 000 000.....	97
5.2.1.1.	Open procedure.....	97
5.2.1.2.	Negotiated procedure.....	97
5.2.2.	Contracts of €300 000 or more but less than €5 000 000	98
5.2.2.1.	Local open procedure	98
5.2.2.2.	Negotiated procedure.....	99
5.2.3.	Contracts of less than €300 000 - simplified procedure	99
5.3.	International open tender (for contracts of €5 000 000 or more)	99
5.3.1.	Publicity	99
5.3.1.1.	Publication of pre-information notices	99
5.3.1.2.	Publication of procurement notices	100
5.3.2.	Drafting and contents of the tender dossier	100
5.3.3.	Selection and award criteria.....	104
5.3.4.	Additional information during the procedure	104
5.3.5.	Deadline for the submission of tenders	105
5.3.6.	Period during which the tenders are binding	105
5.3.7.	Presentation of tenders.....	105
5.3.8.	The evaluation committee.....	106
5.3.8.1.	Composition.....	106
5.3.8.2.	Impartiality and confidentiality	107

5.3.8.3.	Responsibilities of the evaluation committee members	108
5.3.8.4.	Timetable	108
5.3.9.	Stages in the evaluation process	109
5.3.9.1.	Receipt and registration of tenders	109
5.3.9.2.	Preparatory meeting.....	109
5.3.9.3.	Tender-opening session	109
5.3.9.4.	Evaluation of technical offers	111
5.3.9.5.	Evaluation of financial offers	113
5.3.9.6.	Choice of contractor	113
5.3.9.7.	Conclusions of the evaluation committee.....	114
5.3.9.8.	Contract preparation	116
5.3.10.	Cancelling the tender procedure	117
5.3.11.	Award of the contract	117
5.3.11.1.	Notifying the successful tenderer	117
5.3.11.2.	Signing the contract	118
5.3.11.3.	Publicising the award of the contract.....	119
5.4.	Local open tender procedures (for contracts of €300 000 or more but less than €5 000 000)	119
5.5.	Simplified procedure (for contracts of less than €300 000)	120
5.6.	Modifying works contracts	121
5.6.1.	General principles	121
5.6.2.	Drawing up an addendum	122
6.	GRANTS	125
6.1.	Introduction.....	125
6.1.1.	Definition	125
6.1.2.	Overview.....	126
6.1.3.	Centralised and decentralised controls	127
6.1.4.	Eligibility criteria.....	129
6.1.4.1.	Nationality rule	129
6.1.4.2.	Exceptions to the nationality rule	130
6.1.4.3.	Grounds for exclusion.....	130
6.2.	Basic rules for grants	131
6.2.1.	Programming	131
6.2.2.	Transparency.....	132
6.2.3.	Equal treatment.....	132
6.2.4.	Non-cumulation	132
6.2.5.	No retroactivity	132
6.2.6.	Cofinancing.....	133
6.2.7.	Non-profit	133
6.2.8.	Rules of sound management.....	133
6.3.	Award procedures	134
6.3.1.	Call for proposals.....	134
6.3.1.1.	International or local call for proposals	134
6.3.1.2.	Open or restricted call for proposals.....	134
6.3.1.3.	Partnerships.....	135
6.3.2.	Direct award.....	135
6.4.	International call for proposals	136
6.4.1.	Publicity	136
6.4.2.	Drafting and contents of the guidelines for applicants	137
6.4.3.	Eligibility and evaluation criteria	138

6.4.3.1.	Eligibility criteria.....	138
6.4.3.2.	Evaluation criteria: selection and award.....	138
6.4.4.	Additional information before the deadline for submission of proposals	139
6.4.5.	Deadline for the submission of proposals.....	139
6.4.6.	Submission of proposals	140
6.4.7.	The evaluation committee.....	141
6.4.7.1.	Composition.....	141
6.4.7.2.	Use of assessors	143
6.4.7.3.	Impartiality and confidentiality	144
6.4.7.4.	Responsibilities of evaluation committee members	145
6.4.8.	Stages in the evaluation process	146
6.4.8.1.	Receipt and registration of proposals	146
6.4.8.2.	Opening the proposals	146
6.4.8.3.	Assessment of administrative compliance and eligibility ...	147
6.4.8.4.	Evaluation of technical and financial quality	148
6.4.8.5.	Conclusions of the evaluation committee.....	148
6.4.9.	Cancelling the call for proposals procedure	150
6.4.10.	Awarding grants.....	152
6.4.10.1.	Notification of applicants	152
6.4.10.2.	Contract preparation	152
6.4.10.3.	Publicising the award of grants.....	156
6.5.	Local call for proposals	156
6.6.	Restricted call for proposals	157
6.7.	Modifying grant contracts.....	158
6.7.1.	General principles	158
6.7.2.	Preparing an addendum	159
6.8.	Procurement by grant beneficiaries	161
6.8.1.	General principles	161
6.8.2.	Eligibility for contracts	161
6.8.2.1.	The nationality rule.....	161
6.8.2.2.	The origin rule	161
6.8.2.3.	Exceptions to the rules on nationality and origin	162
6.8.2.4.	Grounds for exclusion from participation in procurement ..	162
6.8.2.5.	Exclusion from award of contracts	162
6.8.3.	Rules common to all tender procedures.....	163
6.8.4.	Rules applicable to service contracts	163
6.8.4.1.	Contracts of €200 000 or more	163
6.8.4.2.	Contracts of less than €200 000.....	163
6.8.5.	Rules applicable to supply contracts.....	164
6.8.5.1.	Contracts of €150 000 or more	164
6.8.5.2.	Contracts of €30 000 or more but less than €150 000	164
6.8.5.3.	Contracts of less than €30 000.....	164
6.8.6.	Rules applicable to works contracts	164
6.8.6.1.	Contracts of €5 000 000 or more	164
6.8.6.2.	Contracts of €300 000 or more but less than €5 000 000	164
6.8.6.3.	Contracts of less than €300 000.....	165
6.8.7.	Use of the negotiated procedure	165
6.8.8.	Special cases	166
6.8.8.1.	Cofinancing.....	166

6.8.8.2.	Public administrations of the Member States	166
6.8.8.3.	International organisations.....	166
7.	RELATIONS WITH INTERNATIONAL ORGANISATIONS AND OTHER DONORS	168
7.1.	Relations with international organisations.....	168
7.2.	Relations with EU Member States.....	169
7.2.1.	Cofinancing.....	169
7.2.2.	Delegation of executive tasks	169
7.2.2.1.	Substantive conditions	169
7.2.2.2.	Delegation decisions	170
7.2.2.3.	Delegation agreement	171
7.3.	Relations with third countries	171
8.	ANNEXES TO THE PRACTICAL GUIDE – SUMMARY LIST.....	172

1. INTRODUCTION

This practical guide covers tenders and contracts financed under the 9th European Development Fund (EDF) and has been designed to the attention of all users. It explains how to go about each step of a procedure, from tendering to the award of a service, works or supply contract, plus grant contracts. These procedures are covered by a regulatory framework specific to the 9th EDF, which provides for two approaches. One is the decentralised approach traditionally adopted under the EDF whereby the ACP State or States negotiate, draw up, award and perform contracts in close liaison with the Commission. The other, centralised approach is adopted when the ACP State or States mandate the Commission to act for them or where the rules so dictate. The Guide and its annexes incorporate the relevant provisions of:

- the ACP-EC Partnership Agreement signed at Cotonou on 23 June 2000,
- the General Regulations for works, supply and service contracts financed by the European Development Fund annexed to Decision No 2/2002 of the ACP-EC Council of Ministers published in OJ L 320 of 23.11.2002;
- Council Decision 2001/822/EC of 27 November.2001, on the association of the overseas countries and territories with the European Community (Overseas Association Decision);
- the relevant provisions of Annexes II, III and IV of Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 adopting the general regulations, the general conditions and the rules governing the conciliation and arbitration procedure for works, supply and service contracts financed under the EDF, the general conditions governing the performance of works, supply and service contracts remaining unchanged under the 9th EDF. Note that Annex V of the Decision concerning the procedural rules on conciliation and arbitration also remains applicable;
- the Financial Regulation of 27 March 2003 applicable to the 9th European Development Fund.

Attached to the Guide are model tender dossiers for all types of contract, plus models for calls for proposals and grant contracts. The Guide and the annexed models are immediately applicable to 9th EDF contracts.

Sections 2, 3, 4 and 5 cover procedures for works, supply and service contracts while Section 6 covers the award of grants. Annex A1 contains a glossary of the terms used in the Guide. Section 7 covers relations with international organisations and other donors. Section 8 lists all the annexes to the Guide. Annex A is a glossary of terms.

The procedures for direct-labour contracts and programme-estimates are set out in a separate guide (Practical Guide to management of direct-labour operations and programme-estimates financed by the 9th EDF).

All references to days in this Practical Guide should be interpreted as calendar days (unless otherwise specified).

Where the context so permits, words in the singular are deemed to include the plural and vice versa. Words in the masculine are deemed to include the feminine and vice versa.

The person responsible for monitoring the implementation of a project on behalf of the contracting authority is designated as "project manager" or "project supervisor" in the context of the General Conditions and Special Conditions for works, supply and service contracts.

The terms contracting authority refer to:

- * the Commission, where the procedure is centralised;
- * the contracting authority designated by the government(s) of the ACP State(s), where the procedure is decentralised.

In practice the breakdown of responsibilities between the headquarters of the Commission, the Commission delegations in the ACP States and the National Authorising Officer is governed not only by the corpus of rules referred to above but also by the Commission's internal arrangements, which are evolving as powers are devolved. This is why references to Commission departments are not given in detail.

All projects funded by the European Communities are subject to audit at any stage - during the award process, during execution or on completion.

The contracting authorities and 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 Commission and the European Court of Auditors.

2. BASIC RULES FOR WORKS, SUPPLY AND SERVICE CONTRACTS

2.1. Overview

There are strict rules governing the award of contracts. They 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.

The award of works, supply and service contracts financed from the resources of the EDF is principally governed by the General Regulations for works, supply and service contracts financed by the EDF annexed to Decision No 2/2002 of the ACP-EC Council of Ministers and by this Practical Guide, which consolidates these regulations and gives a step-by-step description of contract-award procedures, setting out the principles and conditions for participation in contracts and the principles and conditions for the award of contracts.

The performance of service, supply and works contracts is principally governed by:

- (a) the General Conditions governing each category of EDF-financed contract, which are found in Annexes II, III and IV to Decision No 3/90 of the ACP-EC Council of Ministers;
- (b) in the case of cofinanced projects and programmes, or where derogation to third parties has been granted or in other appropriate cases, such other general conditions as may be agreed by the ACP States concerned and the Community, i.e.:
 - the general conditions for contracts prescribed by the national legislation of the ACP State concerned or its established practices regarding international contracts; or
 - any other international general conditions for contracts, and
- (c) the Special Conditions that supplement or amend the General Conditions. Note that where there is no specific provision in the Special Conditions, the General Conditions remain fully applicable.

The General Conditions governing a particular category of contract comprise contractual clauses of an administrative, financial, legal and technical nature relating to the performance of contracts.

The Special Conditions applicable to each contract comprise amendments to the General Conditions, special contractual clauses, technical specifications and any other matter related to the contract.

In all matters that are not covered by these general regulations, the national law of the State of the contracting authority applies.

Before any tender procedure is initiated, the service, supply or works for which a contract is to be awarded must have been approved by a financing agreement and the funds made available, unless it is a procedure with a suspension clause.

2.2. Centralised and decentralised controls

There are two main approaches to managing the award and performance of contracts for projects financed under the 9th EDF: centralised and decentralised. You should keep in mind that decentralised management is the very principle of the EDF. Centralisation is thus the exception and is an approach adopted only when the beneficiary country explicitly so requests or the rules of the 9th EDF require it.

CENTRALISED SYSTEM

Decisions are taken by the Commission, acting for and on behalf of the ACP State(s) as contracting authority or for itself. In this case, references in the Guide to actions performed by the contracting authority should be interpreted as referring to the Commission. However, the Guide gives an exhaustive list of the situations where the Commission acts for and on behalf of one or more ACP States (see below).

The Cotonou Agreement, the Internal Agreement between representatives of the governments of the Member States on the financing and administration of Community aid under the financial protocol of the Cotonou Agreement, and the Financial Regulation applicable to the 9th EDF provide for instances where the financial resources of the 9th EDF are executed by the Commission centrally, namely:

- operations to provide budgetary aid,^{1 2} debt relief³ and support for short-term fluctuations in export earnings⁴;
- funding of the budgets of the Centre for the Development of Enterprise (CDE), the Technical Centre for Agricultural and Rural Cooperation (CTA), the Joint Assembly⁵ and the General Secretariat of the ACP Group;
- resources earmarked for the Commission's expenses in administering the Cotonou Agreement;

¹ Budgetary aid is governed by Articles 60, 61 and 67 of the Cotonou Agreement and managed in accordance with the Guide to the programming and implementation of budget support for third countries.

² Mixed management is possible for financing agreements concerning budget support measures: centralised management for the release of tranches and any audit or evaluation contracts, and decentralised management for any technical assistance contracts.

³ Aid for debt relief is governed by Articles 60 and 66 of the Cotonou Agreement.

⁴ Aid for short-term fluctuations in export earnings is governed by Articles 60, 61 and 68 of the Cotonou Agreement.

⁵ See Article 3(1)(a) of Annex I to the Cotonou Agreement.

- operations financed with the proceeds of the interest generated by sums deposited with paying agents in Europe;
- humanitarian and emergency aid operations managed by ECHO; these procedures are not covered here but in a separate ECHO guide;
- contracts concluded and managed by the Commission for and on behalf of one or more ACP States.

The Commission signs contracts for and on behalf of one or more beneficiary ACP States in the following cases:

- all audit and evaluation contracts, framework contracts and letters of contract and corresponding order forms;⁶⁷
- at the request of the National or Regional Authorising Officer, service contracts during project appraisal (in which case the financing proposal and the financing agreement provide for it) or during project implementation;⁸
- where powers are delegated by the National or Regional Authorising Officer, particularly in the case of contracts for grants and with individual experts to carry out long-term technical assistance during project appraisal (in which case the financing proposal and the financing agreement provide for it) or during project implementation;⁹
- where the Chief Authorising Officer temporarily takes the place of the National or Regional Authorising Officer.¹⁰

Most contracts signed by the Commission for and on behalf of one or more beneficiary ACP States are service contracts. The Guide describes in detail both the centralised and decentralised systems for service contracts but not those for works and supplies contracts, which are rarely concluded by the Commission.

For the principles applicable to centralised management of supply and works contracts, refer to service contracts.

DECENTRALISED SYSTEM

Decisions on the procurement and award of contracts are taken by the contracting authority and referred to the Commission for prior approval. **The system is set out in detail in this Guide.**

⁶ See point 9 of the general regulations.

⁷ There is therefore no longer any need to submit a request to the National or Regional Authorising Officer.

⁸ See Article 23(6) of Annex IV to the Cotonou Agreement.

⁹ See Article 35(1) of Annex IV to the Cotonou Agreement.

¹⁰ See Article 23 of the Financial Regulation.

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 Commission's endorsement of decentralised contracts implies its agreement not only to the financing but also to the procedures followed. If the procedures set out in this Guide are not followed, expenditure on the operations in question will become ineligible for Community financing.

The role of Commission representatives in decentralised procedures for concluding and performing contracts in the field of external relations is simply to observe that the conditions for Community financing are met. In no way should the purpose or effect of their activities be to undermine the principle by which such decentralised contracts are contracts that only the contracting authority is entitled to draw up, negotiate and conclude. The acts of Commission representatives during the conclusion and performance of such contracts may not be considered as directed towards tenderers or contractors, whose legal relationship is only with the decentralised contracting authority. The acts of Commission representatives may not have the effect of substituting a Community decision for a decision of the contracting authority.

The Guide sets out the procedures to be followed under the following headings:

CENTRALISED SYSTEM: procedures to be followed for a centralised procedure.

DECENTRALISED SYSTEM: procedures to be followed for a decentralised procedure

2.3. Eligibility criteria and other essential aspects

2.3.1. The rule on nationality and origin

Nationality

Participation in invitations to tender and in the award of the contracts financed by the EDF is open on equal terms to:

- natural persons, companies or firms or public or semi-public agencies of the ACP States and the Member States;
- cooperative societies and other legal persons governed by public or private law, of the Member States and/or the ACP States;
- joint ventures and groupings of companies or firms of ACP States and/or of a Member State. See Annex A2 for the list of countries;

Contracts financed by the unexpended funds transferred to the 9th EDF **are** covered by this Guide.

However, where transfers are made from previous EDFs to national or regional indicative programmes:

- **if the amount exceeds €10 million per country or region, those resources must be administered in accordance with the rules of the EDF of origin as regards eligibility for participation in tenders and the award of contracts;**
- **if the resources transferred are equal to or less than €10 million, the eligibility rules applicable to tenders under the 9th EDF apply.**

This nationality rule also applies to the consultants proposed by service providers tendering 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 required under that country's law.

If the contracting authority suspects that a candidate/tenderer has merely 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 of ineligible nationality but which have set up 'letter box' companies in an eligible country to circumvent the rules on nationality.

Origin

All supplies purchased under a supply contract must originate in the Community and/or the ACP States. 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 project once the contract is completed.

In this context, the definition of the concept of "originating products" is assessed by reference to the relevant international agreements¹¹ and supplies originating in the Community include supplies originating in the Overseas Countries and Territories.

In their tenders, tenderers must state the origin of supplies. Contractors must present a certificate of origin to the contracting authority when bringing supplies into the ACP State, when provisional acceptance of the supplies takes place or when the first invoice is presented. The option applicable will be specified in the contract concerned.

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 of the ACP State to check that there is an origin certificate. Where there are serious doubts about origin, it is up to the Commission's departments in Brussels to decide on the course of action.

2.3.2. Exceptions to the rule on nationality and origin

In order to ensure the optimum cost-effectiveness of the system, natural or legal persons from non-ACP developing countries may be authorised to participate in contracts financed by the Community at the request of the ACP States concerned. The ACP States concerned should, on each occasion, provide the Head of Delegation with the information needed for the Community to decide on such derogations, with particular attention being given to:

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

Participation by third countries in contracts financed by the Community may also be authorised:

- (a) when the Community takes part in the financing of regional or interregional cooperation projects involving third countries;

¹¹Especially Protocol 1 to Annex V to the ACP-EC Partnership Agreement.

- (b) in the event of cofinancing of projects and action programmes;
- (c) in an emergency.

In exceptional cases and in agreement with the Commission, consultancy firms employing experts who are nationals of third countries may participate in service contracts.

Moreover, during the execution of operations and subject to the requirement to inform the Head of Delegation, the contracting authority may decide on:

- (a) purchases of goods, irrespective of their origin, on the local market up to the thresholds of the local open procedure;
- (b) use of construction equipment and machinery not originating in the Member States or ACP States provided there is no production of comparable equipment and machinery in the Community and the ACP States.

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

Natural or legal persons are not entitled to participate in competitive tendering or be awarded contracts 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 or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they are the subject of proceedings for a declaration of bankruptcy, for winding-up, for administration by the courts, for an arrangement with creditors or for any similar procedure provided for in national legislation or regulations;
- (c) they have been convicted of an offence concerning professional conduct by a judgement which has the force of *res judicata* (i.e. against which no appeal is possible);
- (d) they are guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (e) they have not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country where they are established;
- (f) they have not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country where they are established;
- (g) they are guilty of serious misrepresentation in supplying the information required by the contracting authorities as a condition of participation in an invitation to tender or contract;
- (h) they have been declared to be in serious breach of contract for failure to comply with obligations in connection with another contract with

the same contracting authority or another contract financed with Community funds;

- (i) they are in one of the situations allowing exclusion referred to in point 2.4.13 in connection with the tender or contract.

Candidates (first stage of a restricted procedure) and tenderers (second stage of a restricted procedure for service contracts or the single stage of an open procedure for works and supply contracts) must accompany their applications with a sworn statement that they do not fall into any of the categories cited above.

Only successful tenderers have to supply the usual proof required by the law of the country in which they are established that they do not fall into categories (a), (b), (c), (e) or (f) above. The date on the evidence or documents provided must be no earlier than 180 days before the deadline for submission of tenders. A sworn statement must also be provided that the situations described in these documents have not changed since the documents were drawn up. If need be, the contracting authorities engaged in a decentralised procedure may consult the relevant Commission department with a view to assessing successful tenderers. The supporting documents requested must be supplied in the form of originals or photocopies certified by an authorised independent body. Where such documents are in a language other than the language(s) of the tender dossier, a faithful translation into one of the latter must be attached for the purpose of interpreting the proposal.

2.3.4. Participation on equal terms

The ACP States and the Commission must take the necessary measures to ensure the widest possible participation on equal terms in invitations to tender for works, supplies and services contracts, including, as appropriate, measures to:

- (a) ensure publication of invitations to tender in the Official Journal of the European Union, the Internet, the official journals of all the ACP States and any other appropriate information media;
- (b) eliminate discriminatory practices or technical specifications which might stand in the way of widespread participation on equal terms;
- (c) encourage cooperation between the companies and firms of the Member States and of the ACP States;
- (d) ensure that all the award criteria are specified in the tender dossier;
- (e) ensure that the tender selected conforms to the requirements of the tender dossier and meets the award criteria stated therein.

2.3.5. Visibility

Unless otherwise requested or agreed by the Commission, contractors for services, supplies or works must take the necessary measures to ensure the visibility of the EU financing or cofinancing. 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 essential points

Fair competition: 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.

Award criteria:

All contracts financed totally or partially by the EDF must comply with the principles of transparency, proportionality, equal treatment and non-discrimination. The best tender satisfying the selection and award criteria must be chosen.

Retroactive awards are not allowed: contracts are considered to take effect from the date of signing by the last signatory. Contracts or contract addenda cannot be applied retroactively under any circumstances. This means that no disbursements can be effected and no goods and services provided prior to the signing of the contract and/or addendum.

All contracts must show the true dates of signing by the contracting parties.

Use of standard documents: standard contracts and document formats (as provided in the Annexes) must be used.

Record keeping: 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 documents must include the originals of all tenders submitted, together with the corresponding tender dossiers and any related correspondence.

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 rules oblige the Commission and the contracting authority to guarantee the widest possible participation, on equal terms, in tender procedures and contracts financed by the EDF. 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 into three categories: services (i.e. technical assistance, studies), supplies (i.e. equipment and materials) and works (i.e. infrastructure and other engineering works). Once approval for an activity has been granted by the Commission, normally under a duly signed financing agreement, the contracting authority can proceed with tendering and contracting following these standard procedures. The thresholds given in the table are based on the maximum budget for the contract in question (including any cofinancing).

SERVICES	\geq €200 000	$<$ €200 000 but $>$ €5 000		\leq €5 000
	International restricted tender procedure	Framework contract	Simplified procedure	Single quote
SUPPLIES	$>$ €150 000	\leq €150 000 but $>$ €30 000	$<$ €30 000 but $>$ €5 000	\leq €5 000
	Open international tender	Local open tender procedure	Simplified procedure	Single quote
WORKS	$<$ €5 000 000	\leq €5 000 000 but \geq €300 000	$<$ €300 000 but $>$ €5 000	\leq €5 000
	Open international tender	Open local tender	Simplified procedure	Single quote

2.4.2. Open procedure

The open procedure involves an open invitation to take part in competitive tendering. The contract is given maximum publicity through the publication of a notice in the Official Journal of the European Union, in the official journals of all the ACP States, on the Internet and in any other appropriate media.

Under the open procedure, any natural or legal person wishing to tender can obtain or receive, on request, the tender dossier (which may have to be paid for), in accordance with the procedures laid down in the contract notice. When the tenders received are examined, the contract is awarded by conducting the selection procedure (i.e. verification of the eligibility and of the financial,

economic, technical and professional standing of tenderers) and the award procedure (i.e. comparison of tenders), in accordance with point 2.4.10 No negotiation is allowed.

2.4.3. Restricted procedure

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 on the basis 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, in most cases, a contract notice published in the Official Journal of the European Union, on the Internet, in the official journals of all the ACP States and in any other appropriate media.

In the second stage of the procedure, the contracting authority invites tenderers from short-listed candidates, sending them the tender dossier. The successful tenderer is chosen by the award procedure once the tenders have been studied and compared (see point 2.4.10). No negotiation is allowed.

2.4.4. Simplified procedure

Under the simplified procedure, the contracting authority invites tenders from candidates of its choice. At the end of the procedure, the contracting authority selects the tender offering best value for money. See points 3.4.2, 4.5 and 5.5 for further details.

2.4.5. Framework contracts

Under the framework-contract arrangements, the Commission has launched an international restricted tender procedure, selected the candidates, examined the framework proposals made, and drawn up a list of potential contractors on whom it can call to provide experts for specific assignments in the areas of specialisation put out to tender.

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 one offering best value for money. See point 3.4.1 for further details.

2.4.6. Negotiated procedure

To be used in exceptional cases. See points 3.2.1.2, 4.2.2.2 and 5.2.2.2.

2.4.7. Emergency aid

The implementation of contracts for humanitarian and emergency assistance should reflect the urgency of the situation. So an ACP State implementing humanitarian and emergency assistance operations for which AIDCO is responsible may, in agreement with the Head of Delegation, authorise:

- (a) the conclusion of contracts by direct agreement using a negotiated procedure;

- (b) performance of contracts by direct labour;
- (c) implementation through specialised agencies; and
- (d) direct implementation by the Commission.

NB: The practical guide in object does not cover humanitarian aid and emergency operations carried out by ECHO.

2.4.8. Fair competition

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

In the case of mixed contracts covering a combination of works, supplies or services, the contracting authority determines the award procedure to be used (with the agreement of the Commission in the case of decentralised control). This will depend on which of the components (works, supplies or services) predominates, an assessment of 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 Head of Delegation 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 declare that their financial offers cover all their costs, including overheads.

2.4.9. Preferences

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

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

- (b) for supply contracts, irrespective of the value of the supplies, tenderers of the ACP States who offer supplies of at least 50% in contract value of ACP origin, are to be accorded a 15% price preference where tenders of equivalent economic and technical quality are compared;
- (c) in respect of service contracts, preference, where tenders of equivalent economic and technical quality are compared, is given to;
 - experts, institutions or consultancy companies or firms from ACP States,
 - tenders submitted by an ACP firm in a consortium with European partners, and
 - tenders presented by European tenderers with ACP subcontractors or experts.
- (d) where subcontracting is envisaged, preference must be given by the successful tenderer to natural persons, companies and firms of ACP States capable of performing the contract required on similar terms; and
- (e) the ACP State may, in the invitation to tender, propose to the prospective tenderers the assistance of other ACP States' companies or firms or national experts or consultants selected by mutual agreement. This cooperation may take the form either of a joint venture, or of a subcontract or of on-the-job training of staff.

2.4.10. Selection and award criteria

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

- (a) selection procedure based on selection criteria published in the contract notice:
 - verification of the eligibility of tenderers and candidates as laid down in point 2.3;
 - verification of the financial and economic standing of tenderers and candidates;
 - verification of the technical and professional capacities of tenderers, candidates and their managerial staff.

The contract notice/tender dossier must specify the reference criteria for these checks.

- (b) Comparison of tenders on the basis of the award criteria stipulated in the contract notice (works and supply contracts) and in the tender dossier, using price and other pre-established criteria enabling the tender offering best value for money to be identified.

The criteria should be precise, non-discriminatory and not prejudicial to fair competition. Under the open procedure, both (a) and (b) are carried out when tenders are appraised.

Under the restricted procedure, (a) is carried out during the first stage, when candidatures are examined (drawing-up of a shortlist), and at this stage candidates must make a sworn statement that they do not fall into any of the categories cited in point 2.3.3. Operation (b) takes place in the second stage (invitation to tender), when tenders are examined.

The usual proof that the tenderer does not fall into any of the categories for exclusion listed in point 2.3.3 is in both cases supplied by the successful tenderer only.

2.4.11. Invitation to tender with "suspension clause"

In exceptional and duly justified cases, invitations to tender 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 Commission and the ACP State(s) concerned. The award of the 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 contract notice.

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

2.4.12. Cancellation of award procedures

The contracting authority may, before the contract is signed, either call off 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, i.e. no qualitatively or financially worthwhile tender has been received or there is no response at all;

NB. International restricted tender procedures may also be cancelled if there are fewer than four eligible candidates.

- (b) the economic or technical parameters 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 tendering 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 model in Annex A5.

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

- to issue a new invitation to tender;
- 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 cancellation is triggered by 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 agreement of the Commission.

In no event is the contracting authority liable for any damages whatsoever including, without limitation, damages for loss of profits in any way connected with the cancellation of a tender, even if the contracting authority has been advised of the possibility of damages. The publication of a contract notice does not commit the contracting authority to implementing the programme or project announced.

2.4.13. Ethics clauses

Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation 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 and may result in administrative penalties.

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 he is affected by no potential conflict of interest, and that he or she 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.

Contractors must at all times act loyally and impartially in accordance with the code of conduct of their profession. They must refrain from making public statements about the project or services without the contracting authority's prior approval. They may not commit the contracting authority in any way without its prior written consent.

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

Contractors may accept no payment connected with the contract other than that provided for therein. Contractors and their staff must not exercise any activity or receive any advantage inconsistent with their obligations to the contracting authority.

Contractors and their staff are obliged to maintain professional secrecy for the entire duration of the contract, and after its completion. All reports and documents drawn up or received by contractors are confidential.

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

Contractors must refrain from any relationship likely to compromise their independence or that of their 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 extraordinary overheads.

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

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

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

2.4.14. Appeals

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

Where informed of such a complaint, the 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 national legislation of the State of the contracting authority.

European citizens also have the right to complain to the European Ombudsman, who investigates complaints of maladministration by the European Community institutions.

Should a contracting authority fail to adhere to the contract award procedures provided for in this Practical Guide, the Commission reserves the right to refuse to finance the contract or to suspend, withhold or recover funding for the contracts concerned.

2.5. Contract size

In order to achieve economies of scale, to ensure maximum coordination 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 under contracts of €5000 or more but less than €200 000, the framework contract (see point 3.4.1) should be used wherever possible.
- Artificially splitting related activities into smaller lot sizes or contracts to circumvent the procurement thresholds referred to in point 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/technical specifications are part of the tender dossier and will become an annex of the contract awarded as a result of the tender.

Thorough preparation of the terms of reference or technical specifications is extremely important for the ultimate success of the project. It is the best way of ensuring that the project is properly designed, that the work is carried out on schedule and that resources are not wasted. In other words, time spent on project preparation will save time and money in the later stages of the project cycle.

The terms of reference/technical specifications for international invitations to tender are drawn up by the Commission. It is helpful to consult all parties involved in the proposed project in preparing terms of reference/technical specifications. This should improve the quality of the project and increase the commitment of the contracting authority and beneficiaries.

CENTRALISED SYSTEM

Before the invitation to tender is issued, the final version of the terms of reference/technical specifications for a project must be approved by the relevant departments of the Commission, together with the complete tender dossier.

DECENTRALISED SYSTEM

Before the invitation to tender is issued, the final version of the terms of reference/technical specifications for a project must be approved by the contracting authority, if it is an international invitation, and by the Head of Delegation in other cases, together with the complete tender dossier.

Once the terms of reference/technical specifications have been finalised, the corresponding tender should be launched as soon as possible. The terms of reference/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 launch 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 AND RISKS
4. SCOPE OF THE WORK
5. LOGISTICS AND TIMING
6. REQUIRED INPUTS
7. MONITORING AND EVALUATION

Annex B8 contains model terms of reference indicating the minimum details to be provided under each of these section headings.

2.7. *Procedural rules on conciliation and arbitration of contracts financed by the European Development Fund (EDF)*

Disputes relating to a contract financed by the EDF which, pursuant to the provisions of the General Conditions and the Special Conditions governing the contract, may be settled by conciliation or by arbitration, are to be settled in accordance with the procedural rules for the said contracts set out in Annex V to Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 adopting the general regulations, the general conditions and the rules governing the conciliation and arbitration procedure for works, supply and service contracts financed under the EDF. These rules can be found in Annex A10.

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, i.e. the contractor must provide a given product. The technical and operational means by which the specified outcome is achieved are irrelevant. Such contracts are therefore lump-sum contracts: 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, to provide the experts specified in the contract or to procure works, supplies or services for and on behalf of the contracting authority.

Technical assistance contracts often only specify the means, i.e. the contractor is responsible for performing the tasks entrusted to him 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. Contractors do, however, have a duty of care under the contract: they 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 contract notice, is the authority empowered to conclude the contract.

CENTRALISED SYSTEM

Service contracts are concluded by the Commission.. It draw up the pre-information notices (contract forecasts), contract notices and short lists, prepares and issues invitations to tender, receives the tenders, chairs the evaluation meetings, decides on the result of procedures and awards and signs contracts.

DECENTRALISED SYSTEM

Service contracts are concluded by the contracting authority designated in a financing agreement, which the Commission usually draws up in liaison with the contracting authority. The contracting authority may be the NAO or a public body of the ACP State(s) with legal personality designated in the financing agreement.

International invitations to tender: The contracting authority draws up a shortlist in close liaison with the Head of Delegation. It also draws up pre-information notices, procurement notices, and contract award notices and sends them for publication to the Commission. The procurement notice is drawn up by the contracting authority using as a minimum the terms of reference sent by the Commission.

The Commission prepares international tender dossiers and sends them for approval to the contracting authority, which is then responsible for sending them to the firms selected.

In other cases (i.e. not international procedures), the contracting authority submits the tender dossiers to the Head of Delegation for approval before initiating the procedure.

In all cases, on the basis of decisions thus approved and in close consultation with the Head of Delegation, the contracting authority is responsible for launching all tender procedures, receiving tenders, chairing tender-evaluation committees and deciding on the results of tender procedures.

In all cases, the contracting authority then transmits the evaluation report and a contract award proposal to the Head of Delegation for approval. Once the award is approved, the contracting authority signs the contract and notifies the successful tenderer.

The Head of Delegation must be given notification of the tender-opening session. The Head of Delegation or his/her representative must be present at the opening of tenders and generally at their evaluation. In that case he or she receives a copy of each tender. The Commission is present at these sessions merely as an observer. Prior approval must be sought from the Head of Delegation for the participation of other observers.

The contracting authority must submit contract award notices to the 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 or simplified tender procedure is termed a "candidate". A person submitting a tender is termed a "tenderer".

3.2. Procurement procedures

3.2.1. Contracts of €200 000 or more

3.2.1.1. Restricted procedure

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

With the prior agreement of the Commission, service contracts may be awarded using a negotiated procedure in some cases.

3.2.1.2. Negotiated procedure

CENTRALISED SYSTEM

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

DECENTRALISED SYSTEM

The contracting authority must seek prior approval from the Commission for use of the negotiated procedure.

Service contracts may be awarded by the contracting authority using a negotiated procedure in the following situations:

(a) Where unforeseeable events oblige the contracting authority to act with an urgency incompatible with the periods laid down for the restricted or simplified procedures described in sections 3.3 and 3.4.2. The circumstances invoked to justify extreme urgency must in no way be attributable to the contracting authority. (e.g. the financing agreement is about to expire).

(b) Where services are being provided by public entities or non-profit institutions or associations;

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.

(c) In the case of contracts extending activities already under way; there are two scenarios for this:

- *complementary services* not included in the main contract but which, because of unforeseen circumstances, are necessary to perform the contract. This provision is subject to the following conditions:
 - the supplementary services must be technically or economically inseparable from the main contract without causing major inconvenience to the contracting authority, and
 - the estimated cost must not exceed 50% of the value of the main contract;

- *additional services* repeat services performed by the supplier under an earlier contract. This provision is subject to two conditions:
 - the earlier contract must have been awarded after publication of a procurement notice and
 - the possibility of further services being procured by negotiated procedure and their estimated cost must have been clearly indicated in the notice published for the earlier service contract. Such further services could, for example, include the second phase of a study or operation. The contract can be extended only once, with its maximum value and duration not exceeding that of the earlier contract.

(d) Where the tender procedure has remained unsuccessful, i.e. where no qualitatively 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 (see point 3.4.12). The Commission's approval must be sought first. 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.

(e) Where the contract concerned is to be awarded following a competition and must, under the rules applying, be awarded to the successful candidate or one of the successful candidate. In the latter case, all successful candidates must be invited to participate in the negotiations.

The contracting authority must prepare a negotiation report describing how the negotiations were conducted and the grounds for the contract-award decision resulting from these negotiations. It then follows by analogy the procedures described in points 3.3.10.6 and 3.12 and adds the negotiation report to the contract dossier.

3.2.2. Contracts of less than €200 000

Contracts of a value of less than €200 000 may be awarded either under the framework-contract procedure or, if the framework-contract procedure is unsuccessful or not feasible, under a simplified procedure involving at least three candidates. This does not apply to cases in which point 3.2.1.2 provides for the negotiated procedure.

3.3. *International restricted tender procedures (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 Commission must publish pre-information notices (contract forecasts) and procurement notices for all service contracts of €200 000 or more.

3.3.1.1. Publication of pre-information notices (forecast notices)

Once a year, the Commission must publish individual forecasts of service contracts to be put out to tender in the twelve months following publication and, once every three months, any amendments to the above forecasts.

If a contract has not yet been announced by a pre-information notice at any point, the Commission must publish an individual forecast notice before publishing the procurement notice. A procurement notice must always be preceded by a pre-information notice.

A forecast notice must give a brief indication of the subject, content and value of the contracts concerned. (See model in Annex B1) Given that they are forecasts, publication does not bind the contracting authority to finance the contracts proposed therein, and service providers are not expected to submit expressions of interest at this stage. Forecast notices are 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.

CENTRALISED SYSTEM

Individual pre-information notices must be submitted for publication to the relevant departments of the Commission in electronic form using the model in Annex B1 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 SYSTEM

Using the model in Annex B1, the contracting authority must submit the individual pre-information notices to the Commission for publication in electronic form at least 15 days before the intended date of publication, to allow time for translations. They must be published at least 30 days before the corresponding procurement notice.

3.3.1.2. Publication of procurement notices

In addition to forecasts, all service contracts of €200 000 or more must also be the subject of an individual procurement notice published in the Official Journal of the European Union, the official journal of the ACP State(s) concerned, 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 procurement notice published locally must be identical to the one published in the Official Journal of the European Union and on the Internet, and appear at the same time.

The Commission is responsible for publication in the Official Journal of the European Union and on the Internet. The ACP States must see to local publication.

CENTRALISED SYSTEM

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

DECENTRALISED SYSTEM

Using as a minimum the finalised terms of reference sent it by the Commission, the contracting authority, working in liaison with the Commission, draws up the procurement notice. The contracting authority submits the procurement notice to the Commission in electronic form at least 15 days before the intended date of publication, to allow time for translations.

NB. It is advised to send a provisional version of the tender dossier to the contracting authority at this stage, if possible.

The procurement notice must set out clearly, precisely and fully 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 model in Annex B2)

The selection criteria identified in the contract notice must be:

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

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

Candidates are required to use the standard application form available from the following Internet address:

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

Its format and instructions must be strictly observed.

- Any application which does not comply with these provisions will be automatically eliminated.
- Any additional documentation (brochure, letter, etc.) sent with an application will not be taken into consideration.

The time allowed for candidates to submit their tenders must be sufficient to permit proper competition. The minimum deadline for submitting tenders is 30 days from the date of the contract 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.

3.3.2. Establishment of shortlists

The shortlisting of candidates must be carried out 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) possessing the technical and administrative skills 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 and any observers must sign a declaration of impartiality and confidentiality (see Annex A4).

CENTRALISED SYSTEM

The evaluation committee (i.e. the chairman, the secretary and the voting members) must be nominated on a personal basis by the relevant departments of the Commission.

DECENTRALISED SYSTEM

The evaluation committee (i.e. the chairman, the secretary and the voting members) must be nominated on a personal basis by the contracting authority, which informs the Head of Delegation. The composition of the committee is deemed approved if after 5 working days, the Head of Delegation did not formulate any objection. As a general rule, the Commission nominates an observer to follow all or part of the proceedings of the committee. Prior approval must be sought from the Head of Delegation for the participation of other observers.

Would-be service providers must include with their applications (individually or as part of a consortium) the information required in the published notice and the standard application form (see Annex B3) so that their capacity to fulfil the contract in question can be assessed.

The selection procedure involves:

1. establishing a long list (see model in Annex B4) summarising all the applications received;
2. eliminating candidates who are ineligible (see point 2.3.1) or fall into one of the situations described in point 2.3.3;
3. checking that the candidates' financial situation (financial and economic standing) is sound by asking for, for instance:
 - balance sheets and turnover for the previous three years
4. verifying the candidates' technical and professional capabilities, for instance by reviewing
 - the candidates' average annual staffing levels and the size and professional experience of their management team
 - the main services provided in the field in question over the previous years.

The selection is made by applying the selection criteria specified in the contract notice without any modification, plus the criteria specified in the notice for reducing the number of candidates if there are more than eight.

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

The shortlist should contain a minimum of four candidates and a maximum of eight. Every contract notice must include this provision.

If the number of eligible candidates meeting the selection criteria is greater than eight, the manner in which the list of eligible candidates is reduced must be duly recorded and explained in the selection report.

If the number of eligible candidates meeting the selection criteria is less than the minimum of four, the contracting authority must cancel the procedure and may republish the contract 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 and the reasons for excluding candidates on re-examination must be set out in the letter sent to unsuccessful candidates. The factors cited below by way of example may be taken into consideration during the re-examination designed to produce a final shortlist of no more than eight candidates:

- performance of previous EC contracts
- significant involvement in major international projects relevant to this tender procedure over the previous three years
- preference for an international consortium over an equivalent individual candidate

More detailed criteria inspired by these examples or linked to preferences for ACP States, geographical balance or other criteria for reducing the number of eligible candidates are drafted during the preparation of the procurement notice and should be mentioned in the notice itself.

The shortlisting process and the final shortlist itself must be fully documented in a shortlist report (see model in Annex B5). This and all the application forms received must be retained.

CENTRALISED SYSTEM

Once a shortlist has been approved by the Commission, shortlisted service providers or consortia are not allowed to form alliances or subcontract to each other for the contract in question.

DECENTRALISED SYSTEM

The shortlist report must be submitted to the Head of Delegation, who has the right to reject it. Once a shortlist has been approved by the contracting authority and the Head of Delegation, shortlisted service providers or consortia are not allowed to form alliances or 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, the subcontractor complies with the eligibility conditions set out in points 2.3.1 and 2.3.3 and subcontracting does not account for an excessive proportion of the tender (over 30%). 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 model for which is given in Annex B6. Candidates who are selected are sent a letter of invitation to tender and the tender dossier (see model in Annex B8) by the contracting authority. 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 model in Annex B7 and for submitting it to the Commission in electronic form within 24 hours of establishing the shortlist for publication on the website http://europa.eu.int/comm/scr/tender/index_en.htm.

PROCEDURE FOR ESTABLISHING SHORTLISTS

PUBLISH FORECAST NOTICE

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

It gives interested parties prior notification of a forthcoming contract notice

The Commission would have sent at least the final Terms of Reference to the Contracting Authority which prepares the procurement notice.

At least 30 days after publishing the forecast notice.

PUBLISH PROCUREMENT NOTICE

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

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

SHORTLIST PANEL MEETS TO:

1. ESTABLISH LONG LIST

Summarises all candidates

2. ELIMINATE ALL CANDIDATES WHICH MUST BE EXCLUDED

Apply the grounds for exclusion provided for in point 2.3.3

3. ELIMINATE ALL INELIGIBLE CANDIDATES

Apply the eligibility criteria in point 2.3.1

4. IDENTIFY ALL ELIGIBLE CANDIDATES MEETING THE SELECTION CRITERIA

5. PREPARE SHORTLIST REPORT

Record the entire shortlisting process

6. SHORTLIST BETWEEN 4 AND 8 CANDIDATES

Send tender dossier to shortlisted candidates

Send letters to unsuccessful candidates

Send shortlist to the 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 performance 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 tender proposals: the procedures to follow, the documents to provide, cases of inadmissibility, award criteria and their weightings, stipulations regarding subcontracting, etc. It may be desirable for

representatives of the final beneficiaries to participate in the tender preparation at an early stage. See point 2.6 for guidelines for preparing terms of reference. The Commission is responsible for drawing up these documents.

CENTRALISED SYSTEM

The tender dossier must be drawn up and approved by the relevant departments of the Commission.

DECENTRALISED SYSTEM

The Commission draws up and sends the contracting authority the tender dossier for approval and onsending to shortlisted candidates (see model in Annex B8) with the tender dossier.

The tender dossier must contain the following documents:

TENDER DOSSIER CONTENTS

1. INSTRUCTIONS TO TENDERERS

The instructions explain what is required for submission of a tender and how tenders are evaluated right up to the award of the contract. They are a practical digest of the General Regulations annexed to Decision 2/2002. However, the numbering of the instructions is not the same as the General Regulations.

Among other things they must specify:

- the type of services contract (i.e. technical assistance or a study)
- the tender evaluation criteria (and any subcriteria) and their weightings
- whether interviews are possible and when they are likely to be held
- whether variant solutions are authorised and, if so, under what conditions
- the authorised proportion of subcontracting (which may not exceed 30%)
- the maximum budget allocated to the contract
- the currency of the tender, which will also be the currency of the contract and payments
- the language of the tender
- the practical arrangements for submission (i.e. number of copies, date and time of acceptance of tenders and of the tender opening session.
- the sworn statement to be provided by the tenderers

See Annex B8 for model.

2. **THE SHORTLIST OF CANDIDATES:** This is the notice published on the Internet to announce the names of the shortlisted candidates for the tender (stipulating that they cannot form alliances or subcontract to each other). See Annex B6 for model.

3. DRAFT CONTRACT AND ANNEXES

See model in Annex B8. This includes:

The Special Conditions of the contract amplify or supplement the General Conditions and, where they conflict, override them. In the absence of Special Conditions, the General Conditions for service contracts remain applicable. The numbering of the Special Conditions follows that of the articles of the General Conditions but, as the Special Conditions do not concern each and every article, it is not necessarily consecutive.

- The terms of reference for the project (which will be annexed, to the contract): they define the scope of the contract, including the qualifications and experience required of the experts, and set out a provisional timetable for the project and forecast dates on which the key experts should be available. See point 2.6.
- An outline of the organisation and methodology that the tenderer intends to employ, which will be annexed to the contract.
- A standard model for the summary details and CVs of key staff, to be annexed to the contract.
- The model budget breakdown (for completion by the tenderer), which will be annexed to the contract.
- The General Conditions for service contracts, to be annexed to the contract. Changes to the General Conditions are forbidden.
- The model to be used by a bank or similar institution to provide a guarantee for any advance payment under the contract.
- Tax and customs arrangements.
- The contract form.
- Evaluation grid.
- Bank identification form.

Any further information concerning the contract.

4 . MODEL FOR TENDER SUBMISSION

This shows how the tender should be submitted.

See Annex B8 for model. Failure to comply with this format will lead to rejection of the tender.

3.3.4. Award criteria

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

The technical criteria are used to assess the quality of the technical bids. The two main types of technical criteria are organisation/methodology and the curriculum vitae (CVs) 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 to be found in the beneficiary country, the work schedule, the matching of resources to 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 distributed between the different subcriteria (the total number of points awarded for all the criteria is 100). Their respective weightings depend on the nature of the services required and are established on a case-by-case basis in the tender dossier. For instance, expertise may be given a high weighting for a technical assistance contract, whereas methodology may be given more weight in the case of a study.

The points must reflect as closely as possible 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 subcriteria 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.

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 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 shortlisted candidate, provides additional information on the tender dossier, it must send such information in writing to all other shortlisted 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 to all tenderers' questions at least 11 days before the deadline for receipt of tenders, sending a copy to the Head of Delegation where the control system is decentralised.

3.3.6. 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 letter of 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 country of the contracting authority. The date and the time-limit laid down for submission of tenders must be strictly adhered to.

CENTRALISED SYSTEM

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 urgent situations a shorter deadline may be authorised. A request to shorten the time-limit for tendering must be submitted to the relevant Commission department.

DECENTRALISED SYSTEM

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 urgent cases, with prior authorisation from the Commission, a shorter deadline may be authorised. A request to shorten the time-limit for tendering must be submitted to the relevant Commission department.

3.3.7. Period during which tenders are binding

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 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. Presentation of tenders

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

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

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

The outer envelope should carry:

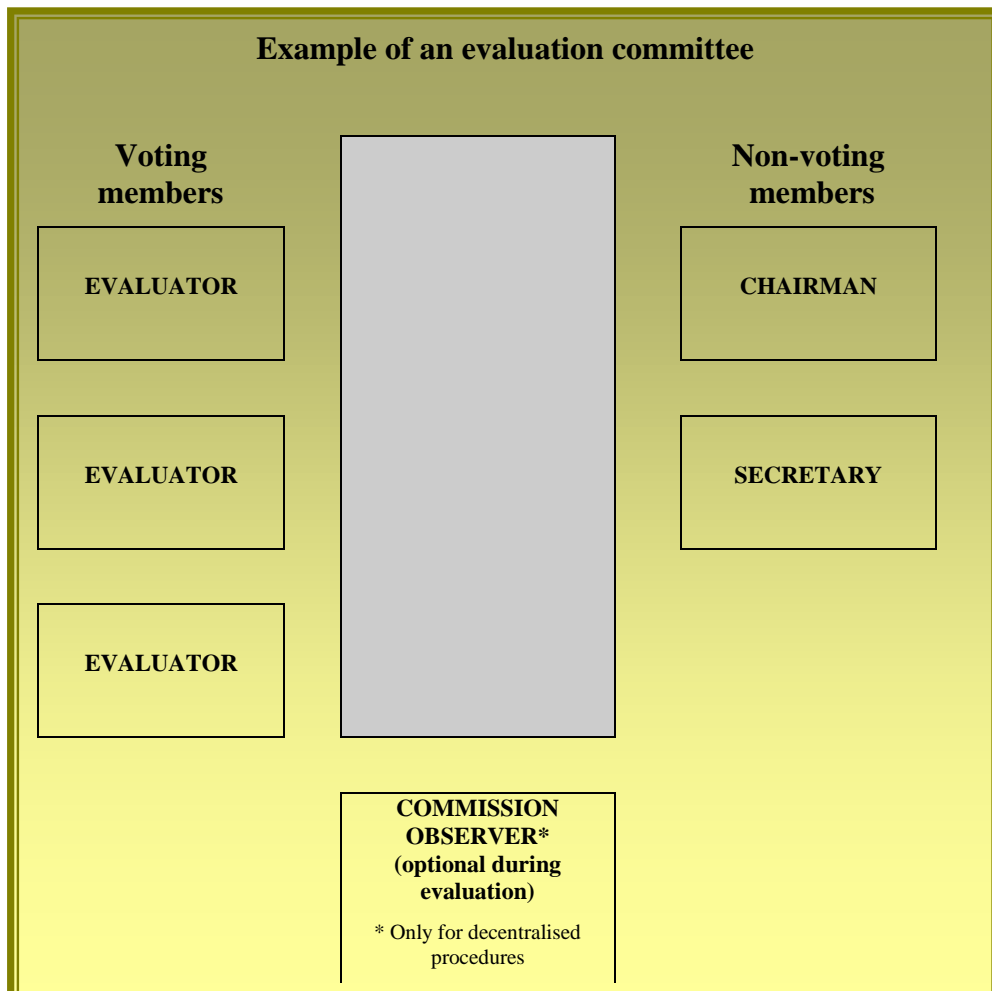
- (a) the address indicated in the tender documents for the submission of tenders;

- (b) the reference of the tender procedure to which the tenderer is responding;
- (c) where applicable, the numbers of the lots 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 if different;

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 SYSTEM

The evaluation committee (i.e. the chairman, the secretary and the voting members) must be nominated on a personal basis by the relevant departments of the Commission. Prior approval for the participation of observers must be sought from the Commission, which will decide on a case-by-case basis.

DECENTRALISED SYSTEM

The evaluation committee (i.e. the chairman, the secretary and the voting members) must be nominated on a personal basis by the contracting authority, which informs the Head of Delegation. The composition of the committee is deemed approved if after 5 working days, the Head of Delegation did not formulate any objection. The Head of Delegation must be given notification of the tender opening session. **The Head of Delegation or his/her representative must be present at the opening of tenders and possibly at their evaluation. Where possible he or she receives a copy of each tender.** The Commission is present at these sessions merely as an observer. Prior approval must be sought from the Head of Delegation for the participation of other observers.

The members of the evaluation committee 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 or she 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 point 3.3.9, and the composition of the committee must be resubmitted for approval) 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 may be disclosed before the contract is signed by the contracting authority and the successful tenderer. Any attempt by a tenderer to influence the process in any way (whether by initiating contact with members of the evaluation committee or otherwise) will result in the immediate exclusion of its tender from further consideration.

- 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 be taken out of the room/building in which the committee meetings are held 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 coordinating 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;
- 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 set up early enough to ensure the availability of the designated members (and any other observer nominated by the Commission where controls are decentralised) 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 (i.e. 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 tender proposals, the contracting authority must register them and provide a receipt for those delivered by hand. Envelopes 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).

NB. Only tenders in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.

3.3.10.2. Tender opening session

Part 1: Preparatory phase

- First meeting of the evaluation committee:
 - to be held before starting the actual evaluation
 - the tender dossier should have been distributed in advance to the members of the evaluation committee.
- The chairman presents the purpose of the tender in general terms.
- The chairman reminds the committee of the award criteria and weightings specified in the tender dossier, stressing that they must be adhered to and not modified in any way. (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 contained 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 B8 for the model 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 B9.

The chairman and secretary must:

- 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.
- 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;
- 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 (i.e. following the opening of the outer envelope and the opening of the technical offer). The summary of tenders received, which is attached to the tender opening report (see Annex B10), must be used to record the compliance of each of the tenders with the formal requirements. Non-compliant tenders must be rejected. However, the evaluation committee, acting collectively, may use its discretion as to whether or not to exclude the tender if it finds that there was only a minor breach of the formal rules (the words “Not to be opened before ...” are missing, for example). Whatever the evaluation committee's decision, it must be duly recorded and explained in the evaluation report.

Part 3: Administrative compliance

The committee checks the compliance of tenders with the instructions given in the tender dossier. Any formal errors or major omissions affecting performance of the contract or distorting competition must lead to rejection of the tender concerned.

- Copies of the technical offers are distributed to the committee members, and to the Head of Delegation if the procedure is decentralised. 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 tender submission form is duly completed;
- 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 (i.e. lead firm and all consortium partners, in the case of a consortium);
- each of the staff members proposed has signed a statement of availability and exclusivity for this tender (see Annex B8);
- 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 nature and extent of subcontracting envisaged, which must be within the limit stated in the tender dossier, and the identity of the subcontractor;
- the period during which tenders are binding complies with the tender specifications;
- a sworn statement confirming that the tenderer is not in any of the situations for exclusion referred to in point 2.3.3 has been provided and the eligibility criteria in point 2.3.1 are met.

Nationality of experts and subcontractors: the evaluation committee must check at this stage that the nationalities of any experts and/or subcontractors identified in the technical offers satisfy the nationality rule in 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 point 2.3.1.

NB. The evaluation committee must take care to check at this point that all the documents the instructions specify must be supplied have indeed been duly drawn up and attached; an omission will lead to rejection.

However, some departures or restrictions may be accepted as long as they do not affect the scope, quality or implementation of the contract, differ widely from the terms of the tender dossier or limit the rights of the contracting authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply.

These rules are designed to ensure the best possible comparison of tenders on an equal footing.

- 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.

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 or she 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 point 3.3.9) and the evaluation process must be restarted.

The table included in the tender opening report (see Annex B10) must be used to record the administrative compliance of each of the tenders.

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:

- the date, time and place of the session;
- the persons present;
- the names of the tenderers who submitted tender proposals within the stipulated deadline;
- whether tenders were submitted using the double-envelope system;
- whether the originals of the tenders were duly signed, and whether technical bids were sent in the requisite number of copies;
- whether any requests for clarification were sent by the chairman, including copies of the correspondence;
- the names of any tenderers whose tender proposals were found to be non-compliant at the opening session and the requirement(s) with which their tender proposals failed to comply;
- the names of any tenderers who withdrew their tender proposals.

3.3.10.3. Evaluation of technical bids

The committee then examines the technical offers; the financial offers remain sealed. When evaluating technical offers, each member awards each offer a score out of a maximum 100 points in accordance with the technical evaluation grid (setting out the technical criteria, subcriteria and weightings) in the tender dossier (see point 3.3.3). 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).

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

Each voting member of the committee completes an evaluation grid (see Annex B8) to record their assessment of each technical offer in order to establish a general appreciation of strengths and weaknesses of the individual technical offers.

On completion of the technical evaluation, the points awarded by each member are compared at a meeting of the committee. Besides giving a numerical score, members must explain the reasons for their choices and scoring 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 their 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.

Where there are major differences, dissenting members must fully explain their position at a meeting of the evaluation committee.

The example in Annex B11 shows how to draw up such a summary for the evaluation report and indicates the level of detail expected. The secretary calculates the aggregate final score, which is the arithmetical average of the individual final scores.

If interviews were provided for in the tender dossier, the committee may, after writing up its provisional conclusions and before definitively concluding its evaluation of the technical offers, decide to interview the key members of the team of experts proposed in technically compliant tenders (i.e. those which have not been automatically eliminated for failure to comply with the required technical criteria). 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 ten 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 proposal 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, will decide 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 need for interviews must be accepted by the Head of Delegation when the tender dossier is prepared. 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 arithmetical 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 proposal achieves 80 points or more, the invitation to tender 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 are awarded points by means of 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 score (mathematical average)		174/3 = 58.00	254/3 = 84.67	256/3 = 85.33
Technical score (actual final score / highest final score)		ELIMINATED*	84.67/85.33 x 100 = 99.22	100.00

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

The secretary must record the names of the tenderers and the results in the evaluation report. The chairman should then state for the record the names of those tenderers which have passed the 80-point threshold before proceeding to financial evaluation.

Note that all technical offers must be retained by the contracting authority, whether or not they achieve this threshold.

3.3.10.4. Evaluation of financial offers

On completion of the technical evaluation, the envelopes containing the financial offers for tenders which were not eliminated during the technical evaluation (i.e. those which have achieved an average score of 80 points or more) are opened and all copies of these financial offers are initialled by the chairman and the secretary of the evaluation committee.

- The evaluation committee has to ensure that the financial offer satisfies all formal requirements, in particular that the budget breakdown follows the model in the tender dossier. 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.
- Comparison of the financial proposals takes account of all contract expenses (fees, direct or lump-sum costs, etc.) with the exception of expenses repayable on presentation of proof of payment (i.e. reimbursable costs). The tender dossier, which includes a budget breakdown, requires the tenderer to classify these costs. The committee must nevertheless check the conformity of this classification and correct it where necessary. Fees are set by the tenderer alone.

Financial offers exceeding the maximum budget allocated for the contract are eliminated.

The lowest financial offer receives 100 points. The others are awarded points by means of the following formula:

Financial score = lowest financial proposal (excluding reimbursables)/the price of the bid under consideration (excluding reimbursables) x 100.

When evaluating financial offers, the evaluation committee compares only the total fees, i.e. excluding expenses reimbursable on presentation of proof of payment.

**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 tender offering best value for money is established by weighing technical quality against price on an 80/20 basis. To this end:

- the scores awarded to the technical offers are multiplied by 0.80
- the scores awarded to the financial offers are multiplied 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	$99.22 \times 0.80 = 79.38$	$100.00 \times 0.80 = 80.00$
Financial score x 0.20		FOLLOWING THE	$100.00 \times 0.20 = 20.00$	$89.71 \times 0.20 = 17.94$
Overall score		TECHNICAL EVALUATION	$79.38 + 20.00 =$ 99.38	$80.00 + 17.94 =$ 97.94
Final ranking			1	2

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

The resulting 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.

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

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

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

- offers the best possible use of the physical and human resources of the ACP States;
- offers the greatest subcontracting possibilities to ACP companies, firms or natural persons; or
- is a consortium of natural persons, companies and firms from ACP States and the European Community.

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
Technical score		ELIMINATED*	99.22	100.00
Financial Evaluation				
Cost fees		ELIMINATED	€951.322	€1 060 452
Financial score		FOLLOWING TECHNICAL EVALUATION	100.00	89.71
Composite Evaluation				
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 TECHNICAL EVALUATION	100.00 x 0.20 = 20.00	89.71 x 0.20 = 17.94
Overall score		EVALUATION	79.38 + 20.00 = 99.38	80.00% + 17.94 = 97.94
Overall ranking			1	2

As a result of its deliberations, the evaluation committee may make any of the following recommendations:

Award the contract to the tenderer which has submitted a tender:

- which complies with the formal requirements and the eligibility rules;
- whose total budget is within the maximum budget available for the project;
- which meets the minimum technical requirements specified in the tender dossier;
- and offers the best value for money (satisfying all of the above conditions).

Cancel the tender procedure in exceptional circumstances, such as:

- none of the tenders satisfies the selection/award criteria of the tender procedure;
- no tenders achieved the minimum threshold during the technical evaluation;
- the total price (comprising both the fees and reimbursables) of all tenders received exceed the maximum amount available for the contract.

CENTRALISED SYSTEM

The entire procedure (technical and financial evaluation) is recorded in an evaluation report (see model in Annex B11) 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 departments of the Commission, which must decide whether or not to accept its recommendations.

DECENTRALISED SYSTEM

The entire procedure (technical and financial evaluation) is recorded in an evaluation report (see model in Annex B11) 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 Head of Delegation for approval. If there is an award proposal and the Head of Delegation 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, any award proposal must be accompanied by dossier including a proposed contract drawn up on the basis of the recommended tender (see point 3.3.10.6). It must be submitted to the Head of Delegation for endorsement (act which constitutes formal agreement to finance the proposed contract and vouches for the fact that the procedures have been complied with).

If the Head of Delegation does not accept the recommendation of the evaluation committee and the contracting authority, he or she must write to the contracting authority stating the reasons for his decision. The Head of Delegation may also suggest how the contracting authority should proceed and the conditions under which he may endorse a proposed contract on the basis of the tender procedure.

If the Head of Delegation approves the recommendation of the evaluation committee, the contracting authority notifies the successful tenderer in writing that its tender has been accepted and the other tenderers that theirs has not (see point 3.3.12.1), or cancels the tender procedure if the committee so recommends.

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 and exceeds the period during which the tender is binding.

The entire tender procedure is confidential from the end of the tender opening session to the signing of the contract by both parties. The evaluation committee's decisions are collective and its deliberations must remain secret. The evaluation committee's members and any observers are bound to secrecy.

The evaluation report, in particular, is for official use only and may be divulged neither to tenderers nor to any party outside the authorised departments of the

contracting authority, the Commission and the supervisory authorities (e.g. 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 form (see Annex B8) to draw up the proposed contract. All elements of the proposed contract should be taken from either the tender dossier or the tender submitted by the recommended tenderer. Only the Special Conditions should need fleshing out.

A contract dossier must be prepared using the following structure:

Explanatory note using the format in Annex A6
Copy of the financing agreement authorising the project
Copy of the tender-related announcements (contract forecast, procurement notice and shortlist), shortlist report, tender-opening report, evaluation report and any other relevant information
Three copies of the proposed contract, which is based on the standard service contract model (see Annex B8)
Special Conditions (to be completed by the contracting authority)
General Conditions for service contracts (standard version included in the tender dossier)
Terms of reference (from the tender dossier)
Organisation and methodology (from the recommended tender)
List of experts who were evaluated and their CVs (from the recommended tender)
Budget breakdown (from the recommended tender)
Miscellaneous documents (from the tender dossier and including, for example, the financial identification form, tax and customs arrangements, the model financial guarantee for any advance and the standard invoice format to be used by the contractor).

The standard contract annexes for the General Conditions and miscellaneous information (see Annex B8) must be reproduced without modification in every service contract. The Special Conditions must be completed by the contracting authority

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, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all;

NB. The procedure may be cancelled at the call for candidates stage if there are fewer than four eligible candidates

- the economic or technical parameters of the project have been radically 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 SYSTEM

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

DECENTRALISED SYSTEM

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

In the event of cancellation of any tender procedure, tenderers must be notified in writing of the cancellation by the contracting authority. Such tenderers are not entitled to compensation. If 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 SYSTEM

Before the period of validity of tenders expires, the 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 or budget classification errors which were corrected during the evaluation process.

DECENTRALISED SYSTEM

After formal approval by contracting authority, endorsement by the Head of Delegation and signing of the contract by the contracting authority - 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 standard letter in Annex A8) and draws attention to any arithmetical or budget breakdown errors which were corrected during the evaluation process.

This notification to the successful tenderer automatically extends the validity of the selected tender for a period of 60 days from the date of the letter of notification.

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 and the CVs of the key experts **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 signing.

After checks to ensure that the supporting documents are valid and compliant and then obtaining the Head of Delegation's endorsement, the contracting authority sends the contract to the successful tenderer for signing (see point 3.3.12.3). The successful tenderer becomes the contractor on signing the contract.

Where a contract is awarded under a financing agreement that had not been concluded at the time the tender procedure was launched, the contracting authority must not notify the successful tenderer before concluding the financing agreement (see point 2.4.11).

3.3.12.2. Signing the contract

In preparing the contract for signing, the contracting authority has to go through the following steps:

1. Use the contract dossier prepared following the recommendations of the evaluation committee (see point 3.3.10.6).
2. Submit the dossier to the Head of Delegation for endorsement.
3. Once the Head of Delegation's endorsement is obtained, sign all copies of the contract.
4. Notify the successful tenderer and ask them to supply the supporting documents within 15 days of the date of the notification letter.
5. Send all three signed copies of the contract to the successful tenderer, who must countersign them within 30 days of receipt and return two copies to the contracting authority together with the financial guarantee to cover any advance provided for in the contract. If the successful tenderer fails to do this within the specified deadline or indicates at any stage that it is unwilling or unable to sign the contract, the tenderer cannot be awarded the contract. The contract preparation process then restarts from stage 1 with preparation of a new contract dossier for the tender which has achieved the next highest score (provided that that tender achieved the minimum technical score and is within the maximum budget available for the contract). In the decentralised control system, the new contract proposal would have to be sent to the Head of Delegation for endorsement.

CENTRALISED SYSTEM

on receipt of the two signed copies from the contractor, one is kept by the relevant finance department in charge of payments and the other is sent to the project manager.

DECENTRALISED SYSTEM

On receipt of the two signed copies from the contractor, the contracting authority keeps one and sends the other to the Head of Delegation.

The contracting authority and the contractor must note on the contract the date of signing. The contract takes effect on the date of signing by the last signatory. A 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 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 put out to 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 model in Annex B13) and send it to the Commission, where it goes to the relevant department 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 B12) 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 and the aggregate score achieved by the successful tenderer

The contracting authority is responsible for preparing the notice of award of the service contract using the model in Annex B13 and for submitting it for publication to the Commission in electronic form within 24 hours of receiving the countersigned contract from the successful tenderer.

3.3.13. Approval of key experts (for centralised tender procedures only)

Where the Commission concludes a contract under a centralised tender procedure for and on behalf of an ACP State(s), it must notify the beneficiary State(s) concerned through the competent Delegation of the name of the successful tenderer and obtain its approval of the key experts proposed following the evaluation. Such a request is not a request for approval of the Commission's evaluation.

The ACP State may not withhold its approval unless it submits duly substantiated and justified objections to the proposed experts in writing to the Commission Delegation 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 evaluation committee.

CENTRALISED SYSTEM

Should the 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, as long as 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 SYSTEM

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 Commission) to cancel the contract and either recommence the tender procedure or award the contract to the tender ranked second by the evaluation committee (as long as 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.

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

CENTRALISED SYSTEM

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

DECENTRALISED SYSTEM

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 Head of Delegation and reply.

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

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

CENTRALISED SYSTEM

In the course of performance, the 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 SYSTEM

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 Head of Delegation, where it considers a member of staff incompetent or unsuitable for the purposes of the contract.

Where a member of staff has to be replaced, the replacement must possess at least equivalent qualifications and experience and their 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 a consultant is not replaced immediately and some time elapses before the new consultant takes up his/her functions, the contracting authority may ask the contractor to assign a temporary consultant to the project pending the new consultant's arrival or to take other steps to bridge the gap. Whatever the case, the contracting authority will make no payment for the period of absence of the expert or his/her replacement (whether temporary or permanent).

3.4. Procedures for the award of contracts of less than €200 000

3.4.1. Framework contract

For service contracts of less than €200,000 and with a performance period (i.e. 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 this possibility or where recourse to the framework contract is unsuccessful, the simplified procedure must be used (see point 3.4.2).

The framework contract offers access to services in a much shorter period than the simplified procedure (see point 3.4.2), which is the only alternative for this type of contract.

3.4.2. Simplified procedure

If the contracting authority cannot use the framework contract or its use is unsuccessful (e.g. the technical expertise required is not available via the framework contract), it may award a contract of less than €200 000 by simplified procedure, without publication.

Note that the simplified procedure requires more time than the framework-contract procedure.

The contracting authority draws up a list of at least three service providers of its choice, drawing *inter alia* on 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 given in the letter of invitation to tender and by the date and time specified. The chosen candidates must be allowed at least 30 days from the dispatch of the letter of invitation to tender to submit their tenders.

Tenders must be 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 expertise. The members of the committee must sign a declaration of impartiality and confidentiality (see Annex A4). After evaluating the tenders, the committee identifies the tender offering the best value for money on the basis of technical quality and price.

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 service providers. The procedure for evaluating the tenders and awarding the contract is the same as under the restricted procedure (see point 3.3.10)

The contracting authority may award service 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 award thresholds (see point 2.5).

3.5. *Modifying service contracts*

Service contracts may need to be modified in the course of performance 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, where the system is decentralised, approved and endorsed in advance by the Head of Delegation.

Changes of address or changes of bank account 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.

3.5.1. *General principles*

The following general principles are always applicable:

- A contractor's requests for contract modifications should not automatically be accepted by the contracting authority. There must be grounds for modifying a contract. The contracting authority must examine the reasons given and reject requests with little or no substance.
- Contracts may be modified only in the course of performance; 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 (i.e. there is a price-revision clause).
- Any modification extending the performance period of the contract must be done in such a way 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.

Under no circumstances may modifications to a contract entail a budget for additional services exceeding 50% of the budget of the initial contract.

Requests for modifications to service contracts must be made (by one contracting party to the other) in such a way as to allow at least 30 days for the addendum to be signed before the end of the performance period of the initial contract.

3.5.2. Preparing an addendum

In preparing the addendum, the contracting authority has to go through the following steps:

1. Use the standard model 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 etc.)	Revised budget

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

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

2. Prepare a dossier comprising the following:

Explanatory note (see model in Annex A6) providing technical and financial grounds for the modifications in the proposed addendum

Copy of the contractor's request for the proposed modifications

Copy of the financing agreement authorising the project

Copy of the initial contract and any subsequent addenda

Copy of the initial tender announcements (forecast notice, procurement notice and shortlist), shortlist report, tender opening report, evaluation report, and any other relevant information

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

CENTRALISED SYSTEM

3. Sign all copies of the addendum.

DECENTRALISED SYSTEM

3. Send the addendum dossier to the Head of Delegation for approval and endorsement, then sign all copies of the addendum.

4. Send all 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.

CENTRALISED SYSTEM

5. On receipt of the two signed copies from the contractor, one is kept by the relevant finance department in charge of payments and the other is sent to the project manager.

5. DECENTRALISED SYSTEM

5. On receipt of the two signed copies from the contractor, the contracting authority keeps one and sends the other to the Head of Delegation.

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 signing by the last signatory, which must take place before expiry of the initial contract. An addendum cannot cover earlier services or enter into force before this date.

4. SUPPLY CONTRACTS

4.1. Introduction

Supply contracts involve the design, manufacture, delivery to place of destination, assembly and commissioning of goods together with any other tasks specified in the contract, e.g. maintenance, repairs, installation, and after-sales services.

“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 contract notice, is the authority empowered to conclude the contract. Supply contracts are usually concluded by the beneficiary, with which the Commission normally draws up a financing agreement (decentralised contracts).

DECENTRALISED SYSTEM: Supply contracts are concluded by the contracting authority designated in a financing agreement, i.e. the government or an entity of the beneficiary country with legal personality with which the Commission normally establishes the financing agreement.

The contracting authority must submit tender dossiers to the Commission before dispatching them; **international tender dossiers, however, are prepared by the Commission and approved by the contracting authority;** The contracting authority must submit forecast notices, procurement notices and award notices to the Commission for publication.

In all cases, on the basis of decisions thus approved and in close consultation with the Head of Delegation, the contracting authority is responsible for initiating tender procedures, receiving tenders, chairing tender-examination sessions and deciding on the results of tender procedures.

In all cases, the contracting authority then transmits the evaluation report and a contract award proposal to the Head of Delegation for approval. Once the award is approved, the contracting authority signs the contracts and notifies the successful tenderer.

The Head of Delegation must be notified of the tender-opening session. The Head of Delegation or his/her representative is present at the opening of tenders and generally at their evaluation. In that cases, he or she receives a copy of each tender. The Commission is present at these sessions merely as an observer. Prior approval must be sought from the Head of Delegation for the participation of other observers. The evaluation committee opens the tenders in public.

The contracting authority must submit contract-award notices to the Commission for publication

4.2. Procurement procedures

4.2.1. Contracts of more than €150 000

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 contract notice as laid down in point 4.3.

4.2.1.2. Negotiated procedure

DECENTRALISED SYSTEM

The contracting authority must seek prior approval from the Commission for use of the negotiated procedure.

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

- (a) where the extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them is not compatible with the time-limits for the open or simplified procedures described in points 4.3, 4.4 and 4.5. The circumstances invoked to justify extreme urgency must in no way be attributable to the contracting authority (e.g. imminent expiry of the financing agreement).
- (b) Where the nature or particular characteristics of the supplies warrant, e.g. 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 a tender procedure has been unsuccessful, i.e. where no qualitatively or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the contracting authority may (with the prior approval of the Commission where control is decentralised) negotiate directly with one or more suppliers chosen by it from among those that took part in the tender procedure, provided that the initial requirements of the tender dossier are not substantially altered (see point 2.4.12). 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.

The contracting authority must prepare a negotiation report describing how the negotiations were conducted and the grounds for the contract-award decision resulting from these negotiations. The procedures described in point 4.3.11 must be followed by analogy, and the negotiation report included in the contract dossier.

4.2.2. Contracts of more than €30 000 but less than €150 000

4.2.2.1. Local open procedure

Such contracts are awarded by means of an open invitation to tender published locally, a procedure whereby the contract notice is published only in the beneficiary country. The 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

DECENTRALISED SYSTEM: With the Commission's prior agreement, the contracting authority may award works contracts by negotiated procedure in the situations referred to in point 4.2.1.2.

4.2.3. Contracts of less than €30 000 - simplified procedure

Supply contracts of less than €30 000 are awarded by simplified procedure. Three compliant tenders are required and so at least three contractors must be consulted; no contract 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 more than €150 000)*

4.3.1. Publicity

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

4.3.1.1. Publication of pre-information notices

Once a year the Commission must publish individual forecasts of supply contracts to be put out to tender for the twelve months following publication and update

them every three months. A procurement notice must always be preceded by a forecast notice.

The forecast notices must give a brief indication of the subject and content of the contracts concerned. (See model in Annex C1). Given that they are forecasts, publication does not bind the contracting authority to finance the contracts proposed, and prospective contractors should not submit tenders at this stage.

Forecast notices are 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.

DECENTRALISED SYSTEM

The contracting authority must submit to the Commission annual contract forecasts and quarterly updates for publication in electronic form using the model in Annex C1 at least 15 days before the intended date of publication, to allow time for translations. They must be published at least 30 days before the corresponding contract notice.

4.3.1.2. Publication of procurement notices

In addition to forecasts, all supply contracts of more than €150 000 must also be the subject of a procurement notice published in the Official Journal of the European Union, the official journal of the ACP State(s) concerned, 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 forecast notice and the procurement notice.

The Commission is responsible for publication in the Official Journal and on the Internet. The ACP States must see to local publication.

DECENTRALISED SYSTEM

On the basis of the approved tender dossier, the contracting authority must draw up and submit the procurement notice for publication to the Commission in electronic form using the model in Annex C2 at least 15 days before the intended date of publication, to allow time for translations.

The procurement notice must explain clearly, precisely and completely the nature of the contract and identify the contracting authority. The procurement notice published locally must be identical to the one published on the Internet and appear at the same time.

The tender dossier for the contract in question is sent to would-be suppliers by the ACP State or the Commission. The tender dossier is generally available from the following Internet address:
http://europa.eu.int/comm/europeaid/tender/index_en.htm.

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 tender proposals: the procedures to follow, the documents to provide, cases of non-compliance, award criteria, etc. It may be desirable for representatives of the final beneficiaries to participate in the tender preparation at an early stage. See point 2.6 for guidelines on drawing up technical specifications.

The Commission is responsible for drawing up these documents.

DECENTRALISED SYSTEM

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 Commission. Each such specialist must sign a declaration of objectivity and confidentiality (see Annex A3).

As with the terms of reference for service contracts, particular attention must be paid to the preparation of the technical specifications for supplies put out to tender. These are the key to successful procurement and the proper execution of the 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 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.

Contract 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 Commission 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".

DECENTRALISED SYSTEM

The Commission must submit the tender dossier to the contracting authority for approval prior to launching.

The tender dossier must contain the following documents:

TENDER DOSSIER CONTENTS

1 INSTRUCTIONS TO TENDERERS

must indicate:

- the type of contract (i.e. 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 allowed;
- whether, and in what proportion, subcontracting is permitted;
- the currency of the tender, which will also be the currency of the contract and payments;
- the model to be used by a bank or similar institution to provide a tender guarantee (1 to 2% of the budget available for the contract).

See Annex C4 for model.

2 DRAFT CONTRACT AND ANNEXES

See standard model in Annex C4. This includes:

- The Special Conditions of the contract, which amplify, supplement or derogate from the General Conditions and, where they conflict, override them. In the absence of Special Conditions, the General Conditions for supply contracts remain applicable. The numbering of the Special Conditions follows that of the articles of the General Conditions but, as they do not concern each and every article, it is not necessarily consecutive.
- 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 strictly forbidden.**
- The models to be used by a bank or similar institution to provide guarantees for:
advance payments
performance (10% of the amount of the contract).
Any further information concerning the contract, such as tax and customs arrangements.

3 TENDER SUBMISSION FORMAT

- This shows how the tender should be set out. See Annex C4 for model.
- 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 compliant 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. Failure to do so will lead to rejection of the offer.

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 award criteria applied to technically admissible 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 specimen 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 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 the other tenderers at the same time.**

If an open procedure fails to identify potential tenderers, this information must be published in a notice that also indicates changes to the tender dossier, as explained in point 4.3.1; account must be taken of the fact that international notices must be submitted for publication to the Commission at least 15 days before the intended date of publication. The deadline for the submission of tenders may be extended to give tenderers time to take account of the change.

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 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.

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 given in the letter of invitation to tender no later than the date and time specified therein. Tenderers must be given a reasonable amount of time to make their submission in the interests both of the quality of tenders and of ensuring truly competitive tendering.

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

The deadline for submissions, which must be strictly observed, should be set a bit before the close of business of a working day in the country in which the contracting authority is situated.

DECENTRALISED SYSTEM

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

4.3.6. Period during which tenders are binding

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 tenders, approve the contract-award proposal, notify the successful tenderer and conclude the contract. **In practice, the period of validity of tenders is generally 90 days from the deadline for the submission of tenders.**

In exceptional cases, before the period of validity expires, the contracting authority may ask 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. Presentation of tenders

Each technical and financial bid 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 applicable, the numbers of the lots tendered for;
- (d) the words "Not to be opened before the tender-opening session" written in the language of the tender dossier and, if different, in the local language.

4.3.8. The evaluation committee

4.3.8.1. Composition

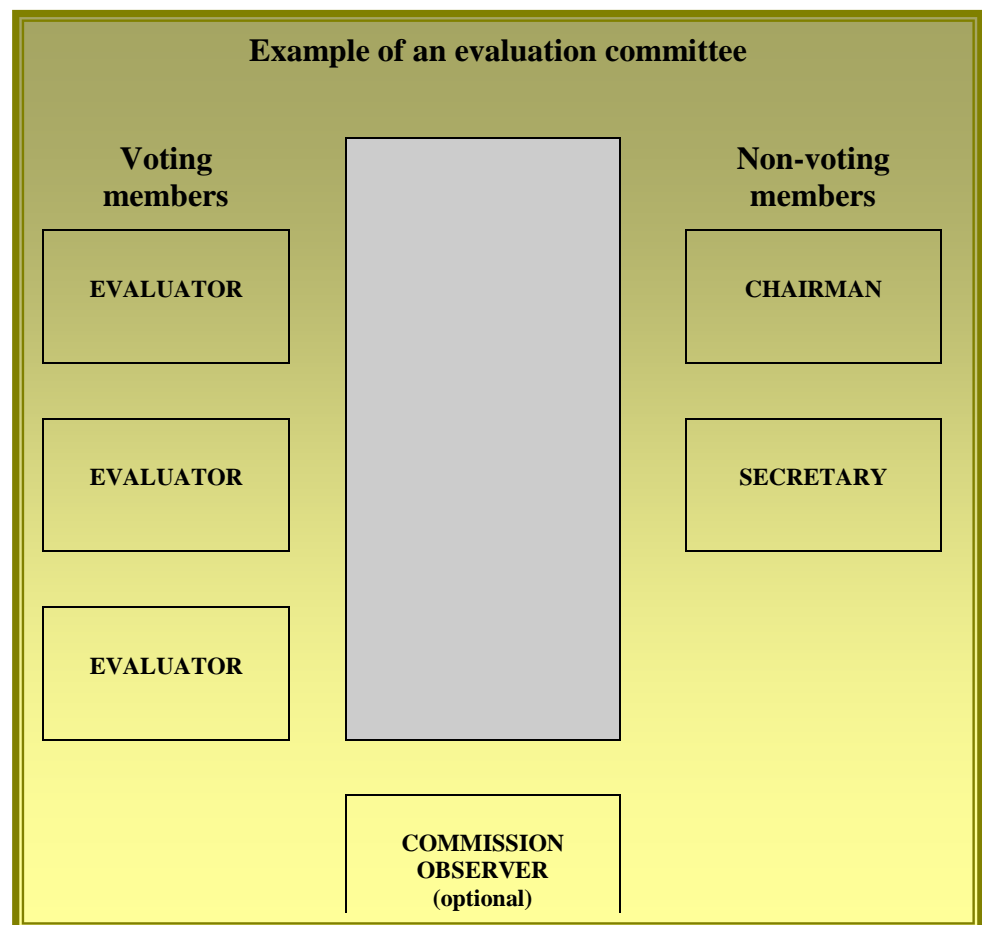
Tenders are opened and evaluated by an evaluation committee appointed by the contracting authority comprising a non-voting chairman, a non-voting secretary and an odd number of voting members (minimum of three). Every member must have a reasonable command of the language in which the tenders are submitted. The voting members must possess the technical and administrative skills necessary to give an informed opinion on the tenders.

DECENTRALISED SYSTEM

The evaluation committee (i.e. the chairman, the secretary and the voting members) are nominated on a personal basis by the contracting authority, which informs the Head of Delegation. The composition of the committee is deemed approved if after 5 working days, the Head of Delegation did not formulate any objection. **The Head of Delegation must be notified of the tender-opening session. The Head of Delegation or his/her representative is present at the opening of tenders and possibly at their evaluation. In that case, he or she receives a copy of each tender.** The Commission is present at these sessions merely as an observer. Prior approval must be sought from the Head of Delegation for the participation of other observers.

The evaluation committee members should attend all meetings. Any absence must be recorded and explained in the evaluation report.

All voting members of the evaluation committee have equal voting rights. 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 or she 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 point 4.3.8.1) and the evaluation 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 signing of the contract by the contracting authority and the successful tenderer. Any attempt by a tenderer to influence the process in any way (whether by initiating contact with members of the evaluation committee or otherwise) will result in the immediate exclusion of its tender from further consideration.

- Apart from the tender-opening session, the proceedings of the evaluation committee are conducted in camera and are confidential.
- In order to maintain the confidentiality of the proceedings, participation in the evaluation committee meetings is limited to the members of the committee designated by the contracting authority and any authorised observers
- The tenders should not be taken out of the room/building in which the committee meetings are held 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 coordinating the evaluation process in accordance with the procedures set out 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;
- writing and keeping the minutes of all evaluation meetings and the required records thereof;

- 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 must be fully recorded and explained in the evaluation report.

4.3.8.4. Timetable

The evaluation committee should be set up early enough to ensure the availability of the designated members and any observer nominated by the Commission during the period necessary to prepare and conduct the evaluation process. The evaluation of tenders 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 for the contracting authority to notify the successful tenderer after all necessary approvals within the tender validity period (i.e. 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 tender proposals, the contracting authority must register them and provide a receipt for those delivered by hand. Envelopes 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).

NB. Only tenders in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.

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 describes the nature of the tender in general terms
- The chairman reminds the evaluation committee of the selection and award criteria specified in the tender dossier, stressing that they must be complied with to the letter.
- The chairman explains the procedures to be followed by the evaluation committee.

- Before the tenders are opened, the chairman of the committee should check 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 in a consistent manner. See Annex C4 for the model 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.

- 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 it accepts tenders, which do not 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 tender proposals not considered for further evaluation must be kept by the contracting authority, together with the other tender documents. Guarantees may be returned to the unsuccessful tenderers on request.

The tender-opening report, which comprises the statement of conformity 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 on request. The tender-opening report must state:

- the date, time and place of the session;
- the persons present;
- the names of the tenderers who submitted tender proposals within the stipulated deadline;
- whether the originals of the tenders were duly signed, and whether technical proposals 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 requirement(s) with which their tenders failed to comply;
- the names of any tenderers who withdrew their tender proposals;
- any declarations made by the tenderers.

4.3.9.4. Evaluation of technical offers

The evaluation grid in the tender dossier must be used for the technical evaluation.

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 laid down in the tender dossier. The results are recorded in a YES/NO grid for all elements specified in the tender dossier. No form of scoring should be used. If the tender is divided into lots, the technical evaluation should be carried out lot by lot

Part 1: Administrative compliance

Before conducting a detailed evaluation of the tenders, the evaluation committee should check 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 execution 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 and may not subsequently be rendered compliant by correction or removal of discrepancies and restrictions.

- 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 tender submission form is duly completed;
 - 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.
 - the period during which tenders are binding complies with the tender specifications;
 - a sworn statement confirming that the tenderer is not in any of the situations for exclusion referred to in point 2.3.3 has been provided and the eligibility criteria in point 2.3.1 are met.
- 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 of replying by fax within no more than 48 hours.

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 or she 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 set out in point 4.3.8.1) and the evaluation process restarted.

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

Part 2: Technical conformity of tender proposals

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 technical evaluation grid communicated to the tenderers in the tender dossier.

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

Rule of origin: all tenders must satisfy the rule that the goods to be supplied must originate in EU Member States and/or the countries and territories of the regions covered and/or authorised by the 9th EDF.

Evidence 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 their 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 Commission should be sought.

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

To establish origin, one must determine where the product in question has been obtained or produced. In this context, the concept of "originating products" is defined by reference to the relevant international agreements; ¹² supplies originating in the Community include supplies originating in the Overseas Countries and Territories.

Tenderers must indicate the origin of supplies in their tenders. Contractors must present a certificate of origin to the contracting authority when bringing supplies into the ACP State, when provisional acceptance of the supplies takes place or when the first invoice is presented. Where it is not possible to supply a certificate of origin (in many countries they are only issued against presentation of commercial invoices to the Chamber of Commerce), tenderers can submit their own declaration. The choice of such an option will be stipulated in the individual contracts.

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

Nationality of experts and subcontractors: the evaluation committee must check at this stage that the nationalities of any experts and/or subcontractors identified in the technical offers satisfy the nationality rule in point 2.3.1.

Having evaluated the tenders, the evaluation committee rules on the technical compliance of each tender, classifying it as technically compliant or not. 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 lowest compliant tender has also submitted a variant solution, the variant tender should also be evaluated.

¹² Especially Protocol 1 to Annex V to the ACP-EC Partnership Agreement.

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 such errors or errors in the budget breakdown are corrected without prejudice to the tenderer.

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

4.3.9.6. Choice of contractor

DECENTRALISED SYSTEM

If the tenders are abnormally low, the evaluation committee should request any relevant information concerning the composition of the tender. If, for a given contract, tenders appear to be abnormally low, the contracting authority should, 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 a 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 reasons for accepting or rejecting an abnormally low offer must be recorded in the evaluation report.

4.3.9.6.1. Supply contracts not involving after-sales services

Price is the sole criterion for awarding supply contracts not including after-sales services. All non-compliant proposals having already been eliminated, the contract is awarded to the tenderer submitting the lowest compliant financial bid.

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

4.3.9.6.2. Supply contracts including ancillary services

Where a supply contract includes ancillary services, such as after-sales services and/or training which account for 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.

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

4.3.9.6.3. Particularly complex supplies

DECENTRALISED SYSTEM

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

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

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

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

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

4.3.9.7. Conclusions of the evaluation committee

To conclude its deliberations the evaluation committee may make any of the following recommendations:

Award the contract to the tenderer who has submitted a proposal:

- 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;
- which is the least expensive tender (satisfying all of the above conditions).

Cancel the tender procedure in exceptional circumstances, such as:

- none of the tenders satisfies the selection/award criteria of the tender procedure;
- all tenders received exceed the maximum budget available for the contract.

DECENTRALISED SYSTEM

The entire procedure (technical and financial evaluation) is recorded in an evaluation report (see model in Annex C7) to be signed by the chairman, the secretary and all voting members of the evaluation committee. The report is 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 recommendations to the Head of Delegation for approval. If there is an award proposal and the Head of Delegation has not already received the original tender of the recommended tenderer and copies of the other tenders, these must be submitted to him/her.

Any award proposal must be accompanied by a dossier with a proposed contract drawn up on the basis of the recommended tender (see point 4.3.9.8). It must be submitted to the Head of Delegation for endorsement (act which constitutes formal agreement to finance the proposed contract and vouches for the fact that the procedures have been complied with).

If the Head of Delegation 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 Head of Delegation may also suggest how the contracting authority should proceed and the conditions under which the Head of Delegation may endorse a proposed contract on the basis of the tender procedure.

If the Head of Delegation approves the recommendation of the evaluation committee, the contracting authority notifies the successful tenderer in writing that its tender has been accepted and the other tenderers that theirs has not (see point 4.3.11), or cancels the tender procedure if the committee so recommends.

The Head of Delegation has 30 days to approve the contracting authority's proposal for the placing of direct agreement contracts, emergency assistance contracts and all other supply contracts of a value less than €1 000 000.

For all other supply contracts not covered by the above, the Head of Delegation must approve within 30 days the contracting authority's proposal for the placing of the contract wherever the following conditions are fulfilled:

- the tender selected is the lowest of those conforming to the requirements of the tender dossier;
- the tender selected meets all the selection criteria set out in the tender dossier;
- the tender selected does not exceed the sum earmarked for the contract.

Where the conditions are not fulfilled, the Head of Delegation forwards the proposal to the Commission, which take a decision within 60 days of its receipt by the Head of Delegation. Where the price of the selected tender exceeds the sum earmarked for the contract, the Commission, on approving the award, makes the necessary financial commitment.

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 and exceeds the tender validity period.

The entire tender procedure is confidential from the end of the tender-opening session to the signing of the contract by both parties. The evaluation committee's decisions are collective and its deliberations must remain secret. The committee members and any observers are bound to secrecy.

The evaluation report, in particular, is for official use only and may be divulged neither to tenderers nor to any party outside the authorised departments of contracting authority, the Commission and the supervisory authorities (e.g. the European 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 model (see Annex C4) to draw up the proposed contract. All elements of the proposed contract should be taken from either the tender dossier or the tender submitted by the recommended tenderer. Only the Special Conditions should need fleshing out.

A contract dossier must be prepared containing the following documents:

Explanatory note using the format in Annex A6

Copy of the financing agreement authorising the project

Copy of the tender announcements (contract forecast and contract notice), site-visit report, tender-opening report, evaluation report and any other relevant information

Three copies of the proposed contract based on the standard supply contract model (see Annex C4)

Special Conditions (to be completed by the contracting authority)

General Conditions for supply contracts (standard version included in the tender dossier)

Technical specifications (from the tender dossier)

Budget (from the recommended tender)

Miscellaneous documents (from the tender dossier and including, for example, tax and customs arrangements, the financial guarantee model and the standard invoice model to be used by the contractor).

The standard contract annexes (see Annex C4) must be included 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 invitation to tender has been unsuccessful, i.e. no qualitatively or financially worthwhile tender has been received or there is no response at all;
- the economic or technical parameters of the project have radically altered;
- exceptional circumstances or force majeure render normal performance of the contract impossible;
- all technically admissible tenders exceed the financial resources available;
- there have been irregularities in the procedure, in particular where these have prevented fair competition.

DECENTRALISED SYSTEM

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

If a tender procedure is cancelled, tenderers must be notified of the cancellation by the contracting authority. Such tenderers are not entitled to compensation. They are entitled to the immediate release of their tender guarantee. If 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

DECENTRALISED SYSTEM

After formal approval by contracting authority, endorsement by the Head of Delegation and signing of the contract by the contracting authority - 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 or budget breakdown errors which were corrected during the evaluation process.

The notification implies that the validity of the successful tender automatically extends the validity of the tender for a period of 60 days from the date of dispatch of the notification letter.

At the same time, the contracting authority should ask the successful tenderer to submit the evidence required by the tender dossier to confirm the declaration made in the sworn statement 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 signing.

After checks to ensure that the supporting documents are valid and compliant and then obtaining the Head of Delegation's endorsement, the contracting authority

sends the contract to the successful tenderer for signing (see point 4.3.11.2), The successful tenderer becomes the contractor on signing the contract.

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 point 2.4.11).

4.3.11.2. Signing of the contract

In preparing the contract for signing, the contracting authority has to go through the following steps:

- 1) Use the contract dossier prepared following the recommendations of the evaluation committee (see point 4.3.9.8).
- 2) Submit the dossier to the Head of Delegation for endorsement.
- 3) Once the Head of Delegation's endorsement is obtained, sign all copies of the contract.
- 4) Notify the successful tenderer and ask them to supply the supporting documents within 15 days of the date of the notification letter.
- 5) 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 performance guarantee. If the successful tenderer fails to do this by 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 scratch with a new contract dossier prepared using the tender which has the next lowest price (provided that the tender is technically compliant and is within the maximum budget available for the contract). (In the decentralised control system the new contract proposal must be sent to the Head of Delegation for endorsement).

DECENTRALISED SYSTEM

On receipt of the two signed copies from the contractor, the contracting authority keeps one and sends the other to the Head of Delegation.

The contracting authority and the contractor must note on the contract the date of signing. The contract enters into force on the date of signing by the last signatory. 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 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 put out to competitive tendering or to recommence the procedure.

Once the contract has been signed, the contracting authority must prepare a supply contract award notice (using the model in Annex C09) and send it to the 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 model in Annex C8) informing them that their tenders have been unsuccessful. This letter must say whether their tenders were technically compliant and specify any technical shortcomings:
- 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 notice of award of the supply contract using the model in Annex C9 and for submitting it for publication to the Commission in electronic form within 24 hours of receiving the countersigned contract from the successful tenderer.

4.4. Local open tender (for contracts of €30 000 or more and of €150 000 or less)

In this case, the contract notice is published only in the ACP State or States concerned. The 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 contract notice in the local media may be prohibitive, the model in Annex C3 gives the minimum information which must be included in a local advertisement. However, the full contract notice must be available from the address referred to in the advertisement, together with the tender dossier.

The contract notice should be published at a minimum in the official journal of the beneficiary country or in any equivalent media for local tenders. Local publication is the responsibility of the beneficiary.

Note that a local open tender procedure must provide other eligible contractors with the same opportunities as local firms. No conditions seeking to restrict the participation of other eligible contractors are allowed (e.g. obliging such firms to be registered in the beneficiary country or to have won local contracts there in the past).

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

The measures applicable to international open procedures described in point 4.3 apply by analogy to local open procedures. The contracting authority may require a tender guarantee.

The contracting authority is responsible for preparing the notice of award of the supply contract using the model in Annex C9 and for submitting it for publication to the Commission in electronic form within 24 hours of receiving the countersigned contract from the successful tenderer.

4.5. Simplified procedure (for contracts of less than €30 000)

The contracting authority may award contracts of less than €30 000 by simplified procedure without publication. The contracting authority draws up a list of at least three firms. The candidates are sent a letter of invitation to tender accompanied by a tender dossier.

Tenders must reach the contracting authority at the address given in the tender dossier by the date and time specified. The chosen candidates must be given at least 30 days from the dispatch of the letter of invitation to tender to submit their tenders.

The tenders are evaluated by an evaluation committee possessing the requisite technical and administrative skills appointed by the contracting authority. The committee members must each sign a declaration of impartiality and confidentiality (see Annex A4).

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 candidates. The remainder of the procedure (including preparation of the tender dossier, evaluating the tenders and awarding the contract) is the same as the international open procedure (see points 4.3.2 to 4.3.11.3). No tender guarantee is required in this case.

The contracting authority may award supply contracts of a value of €5 000 or less on the basis of a single tender. Note that projects must not be split artificially to circumvent the procurement thresholds (see point 2.5).

4.6. Modifying supply contracts

Supply contracts may need to be modified in the course of performance 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, where the system is decentralised, approved and endorsed in advance by the Head of Delegation.

Contractors may simply notify the contracting authority in writing of changes of address or bank account, although this does not affect the right of the contracting authority to oppose the contractor's choice of bank account.

4.6.1. General principles

The following general principles always apply:

- A contractor's requests for contract modifications should not automatically be accepted by the contracting authority. There must be substantiated reasons for modifying a contract. The contracting authority must examine the reasons given and reject requests with little or no substance.
- Contract modifications can be made only during the life of the contract; they cannot be effected 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, may not be made by means of an addendum.
- The addendum must not alter the conditions of competition 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 (i.e. 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 requiring additional funding must have been provided for 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.

Under no circumstances may 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 normal supplies or installations, 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 expiry of the initial contract.

4.6.2. Drawing up an addendum

In drawing up an addendum, the contracting authority has to go through the following steps:

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

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

Any addendum modifying the budget must include a replacement budget showing how the full budget breakdown of the initial contract has been modified by this addendum (and any previous addenda). The following column headings should be used:

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

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

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

2. Prepare a dossier containing the following:

Explanatory note (see model in Annex A6) setting out the technical and financial reasons for making the modifications to be introduced by the proposed addendum
Copy of the contractor's request for (or agreement to) the proposed modifications
Copy of the financing agreement authorising the project
Copy of the initial contract and any subsequent addenda
Copy of the tender announcements (contract forecast and contract notice), site-visit report, tender-opening report, evaluation report and any other relevant information
Three copies of the proposed addendum, which is based on the standard addendum model (see Annex A7) and includes any revised annexes.

DECENTRALISED SYSTEM

3. Send the addendum dossier to the Head of Delegation for approval and endorsement, and sign all copies of the addendum.

4. Send all 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.

DECENTRALISED SYSTEM

5. On receipt of the two signed copies from the contractor, the contracting authority keeps one and sends the other to the Head of Delegation.

The contracting authority and the contractor must note on the addendum the date on which they sign. The addendum takes effect on the date of signing by the last signatory, which must take place before expiry of the initial contract. In no circumstances may an addendum cover earlier supplies/services or enter into force before this date.

5. WORKS CONTRACTS

5.1. Introduction

Works contracts are concluded for the execution of works or a work. A "work" is the outcome of building or civil engineering, works taken as a whole that is sufficient of itself to fulfil an economic and technical function.

Works contracts are concluded between a contractor and a contracting authority for the execution of works or a work.

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

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

DECENTRALISED SYSTEM

Works contracts are concluded by the contracting authority designated in a financing agreement, i.e. the government or an entity of the beneficiary country with legal personality with which the Commission establishes the financing agreement.

The contracting authority submits tender dossiers to the Commission before dispatching them; international tender dossiers, however, are prepared by the Commission and approved by the contracting authority; The contracting authority must submit forecast notices, procurement notices and contract-award notices to the Commission for publication.

In all cases, on the basis of decisions thus approved and in close consultation with the Head of Delegation, the contracting authority is responsible for initiating tender procedures, receiving tenders, chairing tender-examination sessions and deciding on the results of tender procedures.

In all cases, the contracting authority then transmits the evaluation report and a contract award proposal to the Head of Delegation for approval. Once the award is approved, the contracting authority signs the contracts and notifies the successful tenderer. The Head of Delegation must be notified of the tender-opening session. The Head of Delegation or his/her representative is present at the opening of tenders and generally at their evaluation. In that case, he or she receives a copy of each tender. The Commission is present at these sessions merely as an observer. Prior approval must be sought from the Head of Delegation for the participation of other observers. The evaluation committee opens the tenders in public.

The contracting authority must submit contract-award notices to the Commission for publication.

5.2. Procurement procedures

5.2.1. Contracts of more than €5 000 000

5.2.1.1. Open procedure

The general rule for the award of works contracts is an international open invitation to tender following publication of a contract notice.

5.2.1.2. Negotiated procedure

DECENTRALISED SYSTEM

The contracting authority must seek prior approval from the Commission for use of the negotiated procedure.

Works contracts may be awarded by negotiated procedure with a single tender – with the Commission's approval – in the following cases:

- (a) where the extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them is not compatible with the

periods laid down for the open or simplified procedures described in points 5.3, 5.4 and 5.5. The circumstances invoked to justify extreme urgency must in no way be attributable to the contracting authority (e.g. the financing agreement is about to expire).

- (b) For additional works not included in the first contract but which have, through unforeseen circumstances, become necessary for the carrying-out of the works described therein, provided that the award is made to the contractor already carrying out such work:
 - where such works cannot be technically or economically separated from the main contract without major inconvenience to the contracting authority;
 - where such works, although separable from the execution of the initial contract, are absolutely necessary to its completion.

However, the aggregate cost of contracts awarded for additional works must not exceed 50% of the value of the main contract.

- (c) Where the tender procedure has been unsuccessful, i.e. where no qualitatively or financially worthwhile tender has been received. In such cases, after cancelling the invitation to tender, the contracting authority may, with the prior approval of the Commission, negotiate directly with one or more tenderers chosen by the contracting authority from among those that took part in the invitation to tender, provided that the initial terms of the contract are not substantially altered (see point 2.4.12). 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.

The contracting authority must prepare a negotiation report describing how the negotiations were conducted and the grounds for the contract-award decision resulting from these negotiations. The procedures described in point 5.3.11 must be followed by analogy, and the negotiation report included in the contract dossier.

5.2.2. Contracts of €300 000 or more but less than €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 contract notice is published only in the ACP State(s) concerned. The 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

DECENTRALISED SYSTEM: With the Commission's prior agreement, the contracting authority may award works contracts by the negotiated procedure in the situations referred to in point 5.2.1.2.

5.2.3. Contracts of less than €300 000 - simplified procedure

Works contracts of less than €300 000 are awarded by simplified procedure. Three compliant tenders must be obtained so at least three contractors must be consulted, but no contract 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 pre-information notice and a contract notice must be published for every open tender procedure.

5.3.1.1. Publication of pre-information notices

Once a year, the contracting authority must publish forecasts of works contracts to be put out to tender for the twelve months following publication and, once every three months, update these forecasts. A procurement notice must always be preceded by a forecast notice.

The forecast notices must give a brief indication of the nature and content of the contracts concerned. (See model 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.

DECENTRALISED SYSTEM

The contracting authority must submit contract notices for publication to the European Commission in electronic form using the model in Annex D1 at least 15 days before the intended date of publication, to allow time for translations. They must be published at least 30 days before the corresponding contract notice.

5.3.1.2. Publication of procurement notices

In addition to forecasts, all works contracts of €5 000 000 or more must also be the subject of an individual restricted procurement notice published in the Official Journal of the European Union, the official journal of the ACP State(s) concerned, 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 forecast notice and the procurement notice.

The Commission is responsible for publication in the Official Journal of the European Union and on the Internet, while the ACP States must see to local publication.

DECENTRALISED SYSTEM

On the basis of the approved tender dossier, the contracting authority must draw up and submit procurement notices for publication to the European Commission in electronic form using the model in Annex D2 at least 15 days before the intended date of local and international publication, to allow time for translations.

The procurement notice must identify clearly, precisely, and completely the nature of the contract and the contracting authority. The procurement notice published locally must be identical to that 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 consultation at the premises of the contracting authority and the Commission (delegation, offices in the Member States and headquarters).

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 tender proposals: the procedures to follow, the documents to provide, cases of inadmissibility, award criteria, etc. It may be desirable for representatives of the final beneficiaries to participate in the tender preparation at an early stage. See point 2.6 for guidelines on preparing the technical specifications.

The Commission is responsible for drawing up these documents.

DECENTRALISED SYSTEM

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 contracting authority with the prior approval of the Commission. Each must sign a declaration of objectivity and confidentiality (see Annex A3).

As with the terms of reference for service contracts, particular attention must be paid to the preparation of the technical specifications for the works put out to tender. These are the key to successful procurement and the proper execution of the 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 a clarification meeting or site visit is needed 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.

Contract 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 at least the minimum specifications as to quality and performance laid down in the tender dossier.

The Commission must clearly state in the tender dossier the minimum specifications to be adhered to 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".

DECENTRALISED SYSTEM

The Commission must submit the tender dossier to the contracting authority for approval prior to initiating the procedure.

The tender dossier must contain the following:

TENDER DOSSIER CONTENTS

1 INSTRUCTIONS TO TENDERERS

must indicate:

- the type of contract (i.e. 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 designed 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 allowed
- whether, and in what proportion, subcontracting is permitted
- the currency of the tender, which will be the currency of the contract and payments
- the model to be used by a bank or similar institution to provide a tender guarantee (1 to 2% of the budget available for the contract).

See Annex D4 for model.

2 DRAFT CONTRACT AND ANNEXES

See standard model in Annex D4. This includes:

- the Special Conditions of the contract, which amplify, supplement or derogate from the General Conditions and, where they conflict, override them
- the technical annexes, which contain any plans and the technical specifications, plus a provisional timetable for performance
- the model budget breakdown (for completion by the tenderer)
- the General Conditions for works contracts, to be annexed to the contract
- changes to the General Conditions are strictly forbidden
- the models to be used by a bank or similar institution to provide guarantees for:
 - advance payments
 - performance (10% of the value of the contract)
- any further information concerning the contract, such as tax and customs arrangements

3 TENDER SUBMISSION FORM

This shows how the tender should be set out. See Annex D4 for model.

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 compliant 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. Failure to do so will lead to rejection of the offer.

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 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 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 the other tenderers at the same time.**

If an open procedure fails to identify potential tenderers, a notice setting out the changes to the tender dossier must be published as explained in point 5.3.1, taking into account that international notices must be submitted for publication to the 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 change.

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 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.

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 given in the tender dossier no later than the date and time specified therein. Tenderers must be given a reasonable amount of time to make their submission in the interests both of the quality of tenders and of ensuring truly competitive tendering. Experience shows that too short a period discourages would-be applicants from submitting proposals or causes them to submit incomplete or ill-prepared ones. The deadline for submissions must be a bit before the close of business of a working day in the country of the contracting authority. The date and the time of the deadline for submission of tenders must be strictly adhered to.

DECENTRALISED SYSTEM: The minimum period between the date of publication of the contract notice and the deadline for receipt of tenders is 90 days. However, in exceptional cases, and with the prior authorisation of the Commission, a shorter deadline may be authorised.

5.3.6. Period during which the tenders are binding

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 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, and before the period of validity expires, the contracting authority may ask 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. Presentation of tenders

Each technical and financial bid 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 applicable, the numbers of the lots tendered for;
- (d) the words "Not to be opened before the tender-opening session" written in the language of the tender dossier and, if different, in the local language.

5.3.8. The evaluation committee

5.3.8.1. Composition

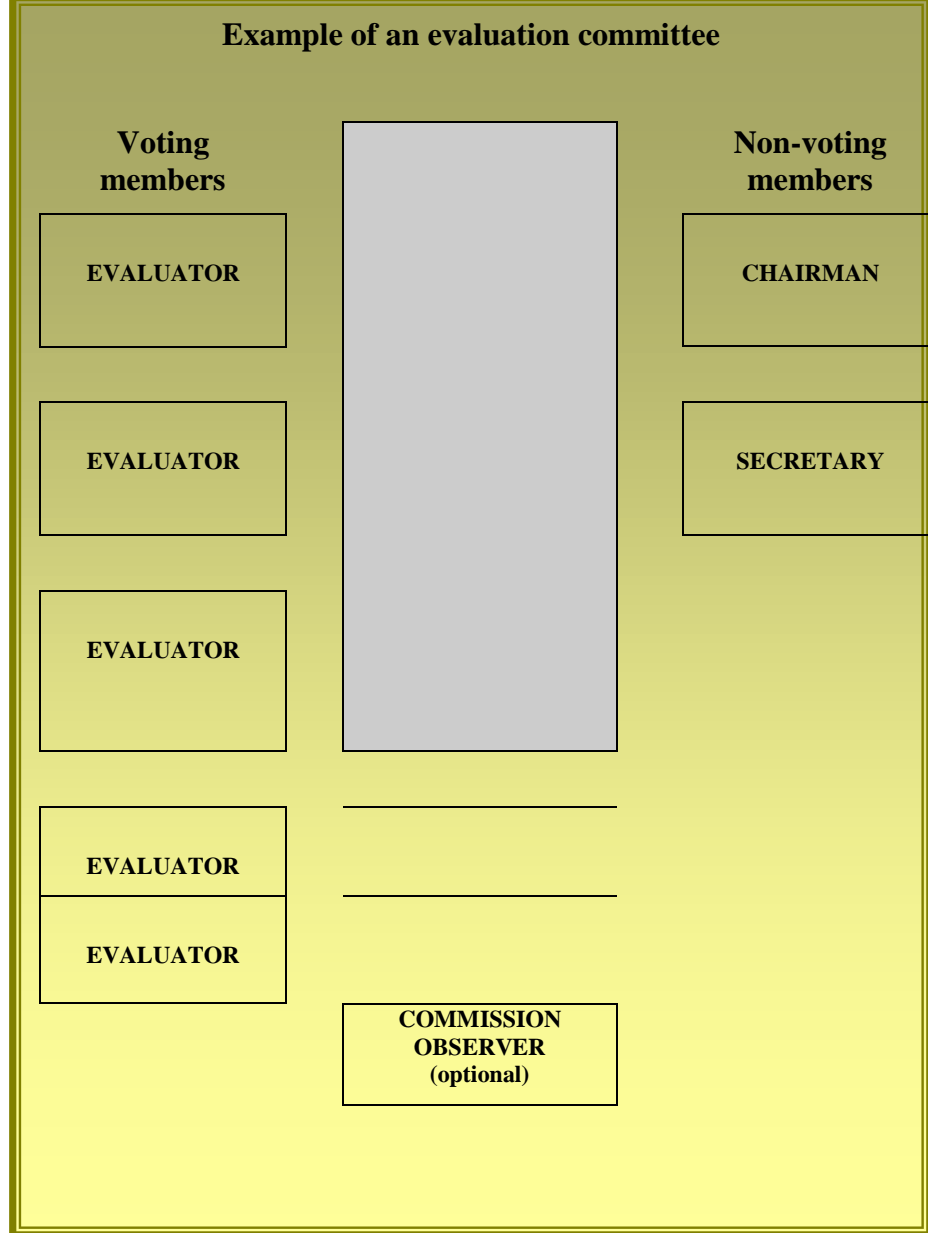
Tenders are opened and evaluated by an evaluation committee appointed by the contracting authority comprising a non-voting chairman, a non-voting secretary and an odd number of voting members (minimum of five). Every member must have a reasonable command of the language in which the tenders are submitted. The voting members must possess the technical and administrative skills necessary to give an informed opinion on the tenders.

DECENTRALISED SYSTEM

The evaluation committee (i.e. the chairman, the secretary and the voting members) must be nominated on a personal basis by the contracting authority, which informs the Head of Delegation. The composition of the committee is deemed approved if after 5 working days, the Head of Delegation did not formulate any objection. **The Head of Delegation must be notified of the tender-opening session. The Head of Delegation or his/her representative is present at the opening of tenders and generally at their evaluation. In that case, he or she receives a copy of each tender.** The Commission is present at these sessions **merely as an observer**. Prior approval must be sought from the Head of Delegation for the participation of other observers.

The evaluation committee members should attend all meetings. Any absence must be recorded and explained in the evaluation report.

All voting members of the evaluation committee have equal voting rights. 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 or she 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 point 5.3.8.1) and the evaluation restarted. Any assessment by a voting member withdrawing from the committee at whatever stage of the evaluation must be disregarded.

No information about the examination, clarification, evaluation or comparison of tenders or decisions about the contract award can be disclosed before the signing of the contract by the contracting authority and the successful tenderer. Any attempt by a tenderer to influence the process in any way (whether by initiating contact with members of the evaluation committee or otherwise) will result in the immediate exclusion of its tender from further consideration.

- Apart from the tender-opening session, the proceedings of the evaluation committee are conducted in camera and are confidential.
- In order to maintain the confidentiality of the proceedings, participation in the evaluation committee meetings is limited to the members of the committee and any authorised observers.
- The tenders should not be taken out of the room/building in which the committee meetings are held 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 coordinating the evaluation process in accordance with the procedures set out 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, including:

- sending out and collecting the declarations of impartiality and confidentiality;
- keeping the minutes of all evaluation meetings and the required records thereof;
- 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 must be fully recorded and explained in the evaluation report.

5.3.8.4. Timetable

The evaluation committee should be set up early enough to ensure the availability of the designated members (and any observer nominated by the Commission) during the period necessary to prepare and conduct the evaluation process. The evaluation of tenders 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 for the contracting authority to notify the successful tenderer (after all necessary approvals) within the tender validity period (i.e. 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 tender proposals, the contracting authority must register them and provide a receipt for those delivered by hand. Envelopes 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).

NB. Only tenders in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.

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 describes the nature of the tender in general terms.
- The chairman reminds the evaluation committee of the selection and award criteria specified in the tender dossier, stressing that they must be complied with to the letter.
- The chairman explains the procedures to be followed by the evaluation committee.
- Before the tenders are opened, the chairman of the committee should check 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 in a consistent manner. See Annex D4 for the model 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.

- 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 chairman and secretary must:

- 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 proposal.

The committee must decide whether he accepts tenders, which do not comply with the formal requirements. The statement of conformity 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 tender proposals not considered for further evaluation must be kept by the contracting authority, together with the other tender documents. Guarantees may be returned to the unsuccessful tenderers on request.

The tender-opening report, which comprises the statement of conformity 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 sent to tenderers on request. The tender-opening report must state:

- the date, time and place of the session;
- the persons present;
- the names of the tenderers who submitted tender proposals within the stipulated deadline;
- whether the originals of the tenders were duly signed, and whether technical proposals 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 requirement(s) with which their tenders failed to comply;
- the names of any tenderers who withdrew;
- any declarations made by the tenderers.

5.3.9.4. Evaluation of technical offers

The evaluation grid in the tender dossier must be used for the technical evaluation.

As part of its technical evaluation the evaluation committee looks at the commercial aspects, and, where applicable, the training component of the tenders to determine whether they satisfy the requirements laid down in the tender dossier. The results are recorded in a YES/NO grid for all elements specified in the tender dossier. No form of scoring should be used. If the tender is divided into lots, the technical evaluation should be carried out lot by lot.

Part 1: Administrative compliance

Before conducting a detailed evaluation of the tenders, the evaluation committee should check 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 execution 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 and may not subsequently be rendered compliant by correction or removal of discrepancies and restrictions.

- 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 tender submission form is duly completed;
 - 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 laid down in the tender dossier;
 - the period during which tenders are binding complies with the tender specifications;
 - a sworn statement confirming that the tenderer is not in any of the situations for exclusion referred to in point 2.3.3 has been provided and the eligibility criteria in point 2.3.1 are met.

- 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 of replying by fax within no more than 48 hours.

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 or she 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 set out in point 5.3.8.1) and the evaluation process restarted.

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

Part 2: Technical conformity 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 technical evaluation grid communicated to the tenderers in the tender dossier.

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

Rule of origin: all tenders must satisfy the rule that the goods to be supplied must originate in EU Member States and/or the countries and territories of the regions covered and/or authorised under the 9th EDF. Tenders which clearly fail to satisfy the rule of origin must be rejected.

Nationality of experts and subcontractors: the evaluation committee must check at this stage that the nationalities of key experts and/or subcontractors identified in the technical offers satisfy the nationality rule in point 2.3.1.

Having evaluated the tenders, the evaluation committee rules on the technical compliance of each tender, classifying it as technically compliant or not. If the tenderer submitting the lowest compliant tender 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 contains several lots, financial proposals 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 tender offering "best value for money" i.e. the least expensive tender classified as "technically compliant" after the technical evaluation. This must be declared the successful tender if it does not exceed 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 5.2.1.2(c) apply.

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

- (a) to the tenderer of an ACP State; or
- (b) if no such tender is forthcoming, to the tenderer who:
 - offers the best possible use of the physical and human resources of the ACP States;

- offers the greatest subcontracting possibilities to ACP companies, firms or natural persons; or
- is a consortium of natural persons, companies and firms from ACP States and the European Community.

DECENTRALISED SYSTEM

If the tenders are abnormally low the evaluation committee should request any relevant information concerning the composition of the tender. If, for a given contract, tenders appear to be abnormally low, the contracting authority should, 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 a 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 reasons for accepting or rejecting an abnormally low offer must be recorded in the evaluation report.

5.3.9.7. Conclusions of the evaluation committee

To conclude its deliberations the evaluation committee may make any of the following recommendations:

Award the contract to the tenderer, who did submit the offer:

- 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;
- which is the least expensive tender (satisfying all of the above conditions).

Cancel the tender procedure in exceptional circumstances, such as:

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

DECENTRALISED SYSTEM

The entire procedure (technical and financial evaluation) is recorded in an evaluation report (see model in Annex D7) to be signed by the chairman, the secretary and all voting members of the evaluation committee. The report is 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 recommendations to the Head of Delegation for approval. If there is an award proposal and the Head of Delegation has not already received the original tender of the recommended tenderer and copies of the other tenders, they must be submitted to him/her.

Any award proposal must be accompanied by a dossier with a proposed contract drawn up on the basis of the recommended tender (see point 5.3.9.8). It must be submitted to the Head of Delegation for endorsement (act which constitutes formal agreement to finance the proposed contract and vouches for the fact that the procedures have been complied with).

If the Head of Delegation 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 Head of Delegation may also suggest how the contracting authority should proceed and the conditions under which the Commission may endorse a proposed contract on the basis of the tender procedure.

If the Head of Delegation approves the recommendation of the evaluation committee, the contracting authority notifies the successful tenderer in writing that its tender has been accepted and the other tenderers that theirs has not (see point 5.3.11), or cancels the tender procedure if the committee so recommends.

The Head of Delegation has 30 days to approve the contracting authority's proposal for the placing of direct agreement contracts, emergency assistance contracts and all other works contracts of a value of less than €5 000 000.

For all other works contracts not covered by the above, the Head of Delegation must approve within 30 days the contracting authority's proposal for the placing of the contract wherever the following conditions are fulfilled:

- the tender selected is the lowest of those conforming to the requirements of the tender dossier;
- the tender selected meets all the selection criteria set out in the tender dossier;
- the tender selected does not exceed the sum earmarked for the contract.

Where the conditions are not fulfilled, the Head of Delegation forwards the proposal to the Commission, which must take a decision within 60 days of its receipt by the Head of Delegation. Where the price of the selected tender exceeds the sum earmarked for the contract, the Commission, on approving the award, makes the necessary financial commitment.

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 and exceeds the tender validity period.

The entire tender procedure is confidential from the end of the tender-opening session to the signing of the contract by both parties. The evaluation committee's decisions are collective and its deliberations must remain secret. The committee members and any observers are bound to secrecy.

The evaluation report, in particular, is for official use only and may be divulged neither to tenderers nor to any party outside the authorised departments of contracting authority, the Commission and the supervisory authorities (e.g. the European 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 form (see Annex D4) to draw up the proposed contract. All elements of the proposed contract should be taken from either the tender dossier or the tender submitted by the recommended tenderer. Only the Special Conditions should need fleshing out.

A contract dossier must be prepared containing the following documents:

- (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 contract 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 works contract model (see Annex D4)

Special Conditions (to be completed by the contracting authority)

General Conditions for works contracts (standard version included in the tender dossier)

Technical specifications (from the tender dossier)

Budget (from the recommended tender)

Miscellaneous documents (from the tender dossier and including, for example, tax and customs arrangements, the financial guarantee model and the standard invoice format model 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

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 invitation to tender has been unsuccessful, i.e. no qualitatively or financially worthwhile tender has been received or there is no response at all;
- the economic or technical parameters of the project have radically 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 they have prevented fair competition.

DECENTRALISED SYSTEM

The responsibility for cancelling a tender procedure lies with the contracting authority, with the prior approval of the Commission. If a tender procedure is cancelled, tenderers must be notified of the cancellation by the contracting authority. Such tenderers are not entitled to compensation. They are entitled to the immediate release of their tender guarantee. If 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

DECENTRALISED SYSTEM

After formal approval by contracting authority, endorsement by the Head of Delegation and signing of the contract by the contracting authority - 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 or budget breakdown errors which were corrected during the evaluation process.

This notification to the successful tenderer automatically extends the validity of the selected tender for a period of 60 days from the date of dispatch of the notification letter.

At the same time, the contracting authority should ask the successful tenderer to submit the evidence required by the tender dossier to confirm the declaration made in the sworn statement 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 signing.

After checks to ensure that the supporting documents are valid and compliant and then obtaining the Head of Delegation's endorsement, the contracting authority sends the contract to the successful tenderer for signing (see point 5.3.11.2). The successful tenderer becomes the contractor on signing the contract.

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 may not notify the successful tenderer before the financing agreement is concluded (see point 2.4.11).

5.3.11.2. Signing the contract

In preparing the contract for signing, the contracting authority has to go through the following steps:

- 1) Use the contract dossier prepared following the recommendation of the evaluation committee (see section 5.3.9.8)
- 2) Submit the dossier to the Head of Delegation for endorsement.
- 3) Once the Head of Delegation's endorsement is obtained, sign all copies of the contract.
- 4) Notify the successful tenderer and ask it to supply the supporting documents within 15 days of the date of the notification letter.
- 5) 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 performance guarantee. If the successful tenderer fails to do this by 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 scratch 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). The new contract proposal must be sent to the Head of Delegation for endorsement.

DECENTRALISED SYSTEM

On receipt of the two signed copies from the contractor, the contracting authority keeps one and sends the other to the Head of Delegation.

The contracting authority and the contractor must note on the contract the date of signing. The contract enters into force on the date of signing by the last signatory. A contract cannot cover earlier works/supplies/services or enter into force before this date.

5.3.11.3. Publicising the award of the contract

The contracting authority informs tenderers of decisions reached concerning the award of the contract as soon as possible, including the grounds for any decision not to award a contract put out to competitive tendering or to recommence the procedure.

Once the contract has been signed, the contracting authority must prepare a works contract award notice (using the model in Annex D9) and send it to the 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 model in Annex D8) informing them that their tenders have been unsuccessful. This letter must say whether their tenders were technically compliant and specify any technical shortcomings;
- 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 works contract award notice using the model in Annex D9 and for submitting it to the Commission for publication in electronic form within 24 hours of receiving the countersigned contract from the successful tenderer.

5.4. Local open tender procedures (for contracts of €300 000 or more but less than €5 000 000)

The contract notice for local invitations to tender is published only in the recipient country. The 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 contract notice in the local media may be prohibitive, the model in Annex D3 gives the minimum information which must be included in a local advertisement. However, the full contract notice must be available from the address referred to in the advertisement, together with the tender dossier.

The contract notice should be published at a minimum in the official journal of the country and in any equivalent media for tender notices. The ACP States must see to local publication.

Note that a local open tender procedure must provide other eligible contractors with the same opportunities as local firms. No conditions seeking to restrict the

participation of other eligible contractors are allowed (e.g. obliging such firms to be registered in the beneficiary country or to have won contracts there in the past).

In this procedure, there must be a minimum of 60 days between the date of publication of the contract notice in the local press and the deadline for receipt of tenders.

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

The measures applicable to an international open procedure described in point 5.3 apply by analogy to the local open procedure. The principal difference is that minimum number of voting members on the evaluation committee is three. The contracting authority may require a tender guarantee.

The contracting authority is responsible for preparing the works contract award notice using the model in Annex D9 and for submitting an electronic version to the Commission for publication within 24 hours of receiving the countersigned contract from the successful tenderer.

5.5. Simplified procedure (for contracts of less than €300 000)

The contracting authority may award contracts of less than €300 000 by simplified procedure, without publication. The contracting authority draws up a list of at least three potential 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 given in the letter of invitation to tender and by the date and time specified. The chosen candidates must be given at least 30 days from the dispatch of the letter of invitation to tender to submit their tenders.

Tenders are opened and evaluated by an evaluation committee possessing the requisite technical and administrative skills appointed by the contracting authority. The committee members must each sign a declaration of impartiality and confidentiality (see Annex A4).

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 candidates. The remainder of the procedure (including preparation of the tender dossier, evaluating the tenders and awarding the contract) is the same as under the international open procedure (see points 5.3.2 to 5.3.11.3). No tender guarantee is required in this case.

The contracting authority may award works contracts of a value of 5 000 or less on the basis of a single tender. Note that projects must not be split artificially to circumvent the award thresholds (see point 2.5).

5.6. *Modifying works contracts*

Works contracts may need to be modified in the course of performance 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, where the system is decentralised, approved and endorsed in advance by the Head of Delegation.

Changes of address or changes of bank account 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.

5.6.1. General principles

The following general principles are always applicable:

- A contractor's requests for contract modifications should not automatically be accepted by the contracting authority. The reasons for doing so must be substantiated. The contracting authority must examine the reasons given and reject requests with little or no substance.
- Contract modifications must be made before expiry of the contract and cannot be effected 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, may not be made by means of an addendum.
- The addendum must not alter the conditions of competition 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 (i.e. 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 provided for in the technical specifications of the initial contract and must 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 may 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 works not included in the initial contract but which have, through unforeseen circumstances, become necessary for the works as initially planned, provided that the award is made to the contractor already carrying out such work:

where such works cannot be technically or economically separated from the main contract without major inconvenience to the contracting authority;

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

This option should remain exceptional and 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 value of the main contract.

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.

5.6.2. Drawing up an addendum

In drawing up an addendum, the contracting authority has to go through the following steps:

- 1) Use the model 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 etc.)	Revised budget

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

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

2) Prepare a dossier comprising the following items:

Explanatory note (see model in Annex A6) setting out the technical and financial reasons for making the modifications to be introduced by the proposed addendum

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

Copy of the financing agreement authorising the project

Copy of the initial contract and any subsequent addenda

Copy of the tender announcements (contract forecast and contract notice), site-visit report, tender-opening report, evaluation report and any other relevant information

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

DECENTRALISED SYSTEM3

Send the addendum dossier to the Head of Delegation for approval and endorsement, and sign all copies of the addendum.

4) 4. Send all 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

DECENTRALISED SYSTEM

5. On receipt of the two signed copies from the contractor, the contracting authority keeps one and sends the other to the Head of Delegation.

The contracting authority and the contractor must note on the addendum the date on which they sign. The addendum takes effect on the date of signing by the last signatory, which must take place before expiry of the initial contract. 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 made by the contracting authority by way of a donation to a beneficiary to implement action designed to help achieve an objective of the ACP-EC Agreement or the Overseas Association Decision or of a programme or project adopted in accordance with that Agreement or Decision.

The grant may in certain cases finance the functioning of a body which pursues such an objective.

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 EDF framework and the appropriate 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 project except in cases where full EDF financing is required (see point 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 of a non-commercial nature. Under no circumstances may the grant give rise to profits (i.e. it must be restricted to the amount required to balance income and expenditure for the operation, see point 6.2.7). Grant beneficiaries are generally non-commercial by nature.
- The fact that a body is non-profit-making does not necessarily mean that all its contracts will be grant contracts; non-profit bodies can also tender for procurement contracts. The operation itself must be of a non-commercial nature.

- The amount of a grant is based on the actual eligible cost of the operation 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 is considered as a grant (see point 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.

The following do not constitute grants within the meaning of this Practical Guide:

- direct-labour contracts;
- loans, guarantees, contributions, interest-rate subsidies or any other financial operation managed by the EIB;
- direct or indirect budgetary assistance, or aid to help relieve debt or support export earnings in the event of short-term fluctuations;
- payments to bodies whose powers are delegated by the Commission as provided for in Articles 14 and 15 of the 9th EDF Financial Regulation.

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 agreements, direct-labour contracts and other agreements with the bodies referred to in Articles 14 and 15 of the 9th EDF Financial Regulation are covered by the rules set out below (Section 6).

If there is any doubt whether an operation should be considered as a grant, the contracting authority may refer to the Commission for advice.

A grant contract cannot be signed unless the operation concerned meets the definition of a grant according to the above criteria.

An operation eligible to receive grant funding must be clearly identified. No operation 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 notice of the call for proposals, is the authority empowered to conclude the contract.

6.1.2. Overview

When grant contracts are concluded under the 9th EDF, procedures are governed by the following legal framework:

- The ACP-EC Partnership Agreement signed at Cotonou on 23 June 2000.
- Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community (Overseas Association Decision).

- The **Financial Regulation** of 27 March 2003 applicable to the 9th European Development Fund, in particular Title VI of Part One on grants.

The following are also applicable:

- The Financing Agreement signed by the EC and the beneficiary country concerned for the programme, where such an agreement exists. This sets out the programme objectives and budget.
- The standard documents and models in the annexes to this Practical Guide, which include the standard grant contract for external action (see Annex E3E), and standard documents for calls for proposals (see Annexes E1, E2 and E3).

The rules and procedures established by the Commission for grant management under the 9th EDF are consolidated in this Practical Guide and should be applied whenever such grants are concerned.¹³

The Guide also applies to grants funded by previous EDFs, provided that there is no conflict with the relevant financing agreements.

6.1.3. Centralised and decentralised controls

There are two possible approaches to managing procedures relating to operations financed under the 9th EDF:

- **Centralised system:**
Decisions are taken by the Commission, acting for and on behalf of the beneficiary country. In this case, throughout this Practical Guide, actions to be performed by the contracting authority should be interpreted as being carried out by the Commission (i.e. Commission headquarters or the delegation in the beneficiary country), acting for and on behalf of the beneficiary country.
- **Decentralised system:**
Decisions concerning contract procedures and the award of contracts are taken by the contracting authority and referred for approval to the Commission.

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 Commission's endorsement of decentralised contracts merely indicates its agreement to the financing of the contract. If the procedures set out in this Guide are not followed, expenditure on the operations in question will become ineligible for Community financing.

The role of Commission representatives in decentralised procedures for concluding and performing contracts financed under the 9th EDF is simply to observe whether the conditions for Community financing are met. In no way should the purpose or effect of their activities be to undermine the principle by which such contracts are national contracts that only the decentralised contracting

¹³ This Guide does not cover humanitarian and emergency assistance within the meaning of Articles 72 and 73 of the ACP-EC Partnership Agreement financed from the Community budget, for which there are special arrangements managed by the Community's humanitarian office ECHO.

authorities are entitled to draw up, negotiate and conclude. The acts of Commission representatives during the conclusion and performance of such contracts may not be considered as directed towards applicants or beneficiaries, who have a legal relationship only with the decentralised contracting authority. The acts of Commission representatives may not have the effect of substituting a Community decision for a decision of the contracting authority.

The Guide sets out the procedures to be followed under the following headings:

CENTRALISED SYSTEM

Procedures to be followed for a centralised operation.

DECENTRALISED SYSTEM

Procedures to be followed for a decentralised operation.

CENTRALISED SYSTEM

Grants are awarded by the 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 SYSTEM

Grants are awarded by the contracting authority designated in the financing agreement, i.e. the government or an entity of the beneficiary country with legal personality with which the Commission establishes the financing agreement.

Before launching calls for proposals, the contracting authority must submit the annual work programmes, notices and guidelines for applicants to the Commission for approval.

On the basis of decisions thus approved, and in close consultation with the 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 Commission for endorsement.

Once the grant has been approved, the contracting authority will sign the contract and notify the Commission accordingly. The Commission is always invited as an observer, and usually sends a representative, to the opening and evaluation of proposals.

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 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 or mentioned in the ACP-EC Partnership Agreement or the Overseas Association Decision.

By way of exception, depending on the nature of the operation or the objective pursued by the applicant, natural persons may receive grants subject to the conditions laid down in the ACP-EC Partnership Agreement or the Overseas Association Decision. 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 usually 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 with the sole purpose of circumventing 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 such a waiver must be specifically mentioned in the guidelines for applicants and is subject to the specific prior approval of the 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 (i.e. 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 operation is to take place;
- 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. they have been declared to be in serious breach of contract for failure to comply with their contractual obligations in connection with a procurement procedure or other 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. they have attempted to obtain confidential information or influence the evaluation committee or the contracting authority during the evaluation process of 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 judgment.

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 cofinancing.

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 should be programmed by the contracting authority with clearly defined objectives, except in the case of crisis management aid or humanitarian aid operations

The annual programme must be published, by project or programme, on the Internet site of the contracting authority (or any other appropriate media) or the Commission, as appropriate, following the work programme model in Annex E1.

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.

Any substantial change to the work programme must also be published on the same basis as the initial work programme.

CENTRALISED SYSTEM

The work programme is adopted by the Commission and published on the grants Internet site of the Commission not later than 31 January of each financial year.

DECENTRALISED SYSTEM

The work programme is adopted by the contracting authority and published on its Internet site (or in any other appropriate media) or, 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 Commission for approval before publishing it.

6.2.2. Transparency

The availability of grants must be publicised widely 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 operation (see point 6.3.2).

All grants awarded in the course of a financial year will be published annually during the first six months following the closure of that year with due observance of the requirements of confidentiality and security (see point 6.4.10.3).

6.2.3. Equal treatment

The grant-award process must be completely impartial. This means 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 point 6.4.3).

6.2.4. Non-cumulation

No single beneficiary may receive more than one grant financed by the EDF or European Community for a given operation. A beneficiary may be awarded only one operating grant financed by the EDF or European Community per financial year.

6.2.5. No 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 operation which has already begun only where the applicant can demonstrate the need to start the operation before the contract is signed.

In such cases, expenditure incurred prior to the deadline for submission of proposals or, in the event of direct award, before the grant application was lodged or the relevant financing agreement signed between the Commission and the beneficiary country, as appropriate, will not be eligible for financing except in duly substantiated exceptional cases. No grant may be awarded retroactively for operations already completed.¹⁴

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.

¹⁴ Expenditure incurred by a beneficiary in crisis situations and for humanitarian aid operations before the date of submission of the application is eligible for Community financing if it is essential to the proper conduct of the aid operation.

6.2.6. Cofinancing

Grants may not as a rule finance the entire cost of the operation, with the following exceptions.

The financing of an operation in full may be authorised if the contracting authority is in a position to show that financing in full is essential in order to carry out the operation in question and substantiates its award decision accordingly.

Grants may not finance the entire operating expenditure of a beneficiary body. When operating grants are renewed, they will be gradually decreased. This paragraph does not apply to the CTA and the CDE whose financing is provided for by the ACP-EC Partnership Agreement.

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 receipts over costs for the operation in question when the request is made for final payment of a grant for an operation.

However, in the case of operations 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 model documents (as provided in the annexes) must be used according to the rules.
- Record-keeping: documentary 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 text of the call for proposals and any related correspondence.
- Procurement of services, supplies or works for a grant-funded operation: if the implementation of an operation involves the procurement of services, supplies or works by the grant beneficiary, the contract-award procedures specified in point 6.8 of this Guide must be applied for each procurement contract.
- Any deviation from the procedures set out in this section requires the prior approval of the 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 point 6.3.2.

6.3.1.1. International or local call for proposals

A local call for proposals (see point 6.5) may be issued if at least one of the following criteria is met:

- the overall budget for the grant programme is under €2 000 000;
- the maximum size of each grant to be awarded within the grant programme is €100 000 or less,
- 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.

If it is not organised by a Commission headquarters department, an international call for proposals must also be published locally.

6.3.1.2. Open or restricted call for proposals

Calls for proposals are open as a rule and all applicants meeting the published eligibility criteria are free to submit a grant application form in response to the guidelines for applicants published on the Internet (see point 6.4.2).

However, where warranted by the technical nature of the field or the expected number of proposals for an international call for proposals, the contracting authority may organise a restricted call for proposals in accordance with the rules in point 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 point 6.4.2). Only the shortlisted applicants will be invited to submit a grant application form.

CENTRALISED SYSTEM

The prior approval of the relevant departments of the Commission must be sought for the use of a restricted call for proposals.

DECENTRALISED SYSTEM

The contracting authority must seek prior approval from the Commission for the use of a restricted call for proposals.

6.3.1.3. Partnerships

Grant contracts may be incorporated in framework partnership agreements with a view to establishing long-term cooperation with the contracting authority. Framework agreements specify the common objectives, the nature of operations 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 operation in partnership with one or more other organisations as their "partners".

CENTRALISED SYSTEM

The prior approval of the relevant departments of the Commission must be sought for the use of a framework partnership agreement.

DECENTRALISED SYSTEM

The contracting authority must seek prior approval from the Commission for the use of a framework partnership agreement.

6.3.2. Direct award

CENTRALISED SYSTEM

The prior approval of the relevant departments of the Commission must be sought for use of the direct award procedure.

DECENTRALISED SYSTEM

The contracting authority must seek prior approval from the Commission 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 extreme **urgency** brought about by events which the contracting administration could not have foreseen, obliging it to act with an urgency incompatible with the time limits for call-for-proposals procedures described in point 6.3.1. The circumstances

cited as grounds for extreme urgency must in no way be attributable to the contracting authority (e.g. imminent expiry of the financing agreement).

Operations carried out in crisis situations 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, must establish that a situation of extreme urgency exists and review his/her decision regularly having regard to the principle of sound financial management.

Only the competent departments of the 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 and/or geographical region 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 legal basis 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 operation 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 point 6.4.10 must be followed by analogy and the report referred to above 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 model 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 Commission is responsible for publication in the Official Journal of the European Union and on the Internet. If the contracting authority is not a headquarters department of the Commission, it must arrange local publication directly and ensure that it appears at the same time as the notice is published on the Internet and in the Official Journal.

CENTRALISED SYSTEM

Calls for proposals notices must be submitted for publication to the relevant departments of the Commission in electronic form using the model in Annex E2 **at least 15 days before** the intended date of publication, to allow time for translation.

DECENTRALISED SYSTEM

The contracting authority must submit calls for proposals notices for publication to the Commission in electronic form using the model in Annex E2 **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 operation and costs which are eligible for financing, and the evaluation criteria. They also provide instructions on how to fill in the application form, what to annex to it and what procedures to follow for submitting an application. Finally, they give information on the evaluation process that will follow (including an indicative timetable) and on the contractual conditions which will apply to those selected.

The guidelines should set out very clearly and in detail the objectives and priorities of the call for proposals, with 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 operation proposed, including its budget
- Information about the applicant
- Information about any partners

The guidelines should be drafted for each call for proposals using the model in Annex E3.

CENTRALISED SYSTEM

The guidelines for applicants must be approved by the relevant departments of the Commission prior to issue.

DECENTRALISED SYSTEM

The contracting authority must submit the guidelines for applicants to the Commission for approval prior to issue.

The guidelines for applicants are published on the Internet at the same time as the calls 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 points 6.1.4.1 (nationality rule) and 6.1.4.3 (grounds for exclusion).

If a call for proposals relates to operations 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 operation: 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 operation: the

applicant must have adequate and stable sources of finance to maintain its activity throughout the period during which the operation is in progress and to contribute, where appropriate, to its financing. Applicants and their partners must also have the necessary professional skills and qualifications to complete the proposed operation.

The verification of financial standing does not apply to natural persons in receipt of scholarships, EU 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 operations 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 operation 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 operation, 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 models in Annexes E7 and E10.

6.4.4. Additional information before the deadline for submission of proposals

During the time between the publication and the deadline for submission of the 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 the 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 period prevents would-be applicants from submitting proposals or causes 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 (e.g. 16:00 local time on a Tuesday).

CENTRALISED SYSTEM

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

DECENTRALISED SYSTEM

The minimum period between the date of publication of the call for proposals notice and the deadline for receipt of proposals is 90 days. In certain exceptional cases, and with the prior authorisation of the Commission, 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 eligible activities 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 has not been organised by a Commission headquarters department.

Applications must be sent by registered mail or express messenger or by hand-delivery. They must contain the original and the number of copies of the completed application form, budget, logical framework and other supporting documents required in the call for proposals. The application form, budget and logical framework must also be provided in electronic form, if required by the call for proposals.

Applicants must provide a sworn statement on the application form that:

- they (and any partners) are not in any of the situations mentioned in points (a) to (f) of point 6.1.4.3;

- they possess the sources of funding and professional skills and qualifications referred to in point 6.4.3.2.

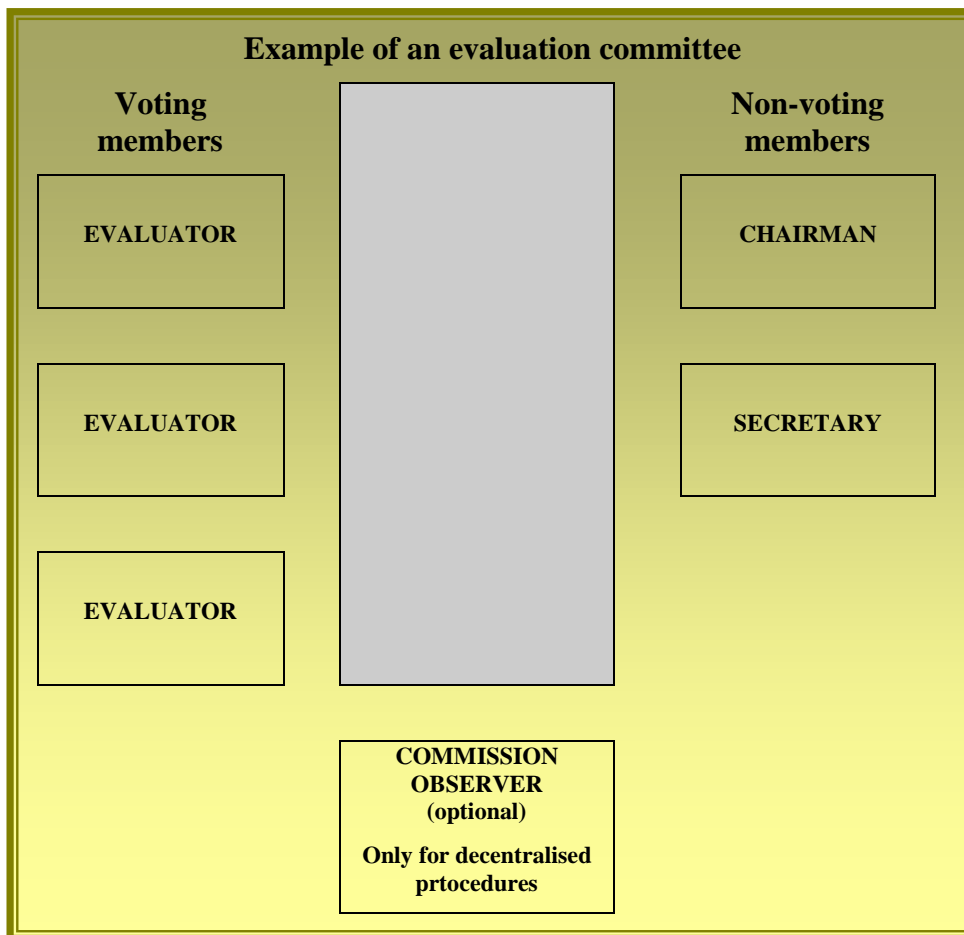
They must also include with their application the profit and loss account, the balance sheet for the last financial year for which the accounts have been closed and any other supporting document requested.

In the case of operations 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 point 6.4.3.2. 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 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 assessed 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 skills 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 has been organised by a Commission delegation.

CENTRALISED SYSTEM

The evaluation committee (i.e. the chairman, the secretary and the voting members) must be nominated on a personal basis by the relevant departments of the Commission. Prior approval must be sought from the Commission for the participation of observers.

DECENTRALISED SYSTEM

The evaluation committee (i.e., 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 Commission. The Commission may nominate an observer to follow all or part of the proceedings of the evaluation committee. Prior approval must be sought from the Commission for the participation of other observers.

The evaluation committee members should attend all meetings. Any absence must be recorded and explained in the evaluation report.

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 point 6.4.7.1. The chairman of the evaluation committee must decide whether the evaluation procedure needs to be restarted. That decision and 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 Commission, in the case of decentralised 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, part or all of the detailed examination may be carried out by assessors so that the evaluation committee may conduct its deliberations on the basis of their assessments.

Assessors may only be used for the stages of the evaluation procedure described in detail in points 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 must be examined by one person.

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.

Outside 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 is expected.

<p>CENTRALISED SYSTEM</p> <p>The assessors are selected by the relevant Commission departments.</p> <p>DECENTRALISED SYSTEM</p> <p>The assessors are selected by the contracting authority. The list of assessors must be submitted for approval to the Commission.</p>

Assessors work under the supervision of the chairman of the evaluation committee. Assessors who are not officials or other staff of the contracting authority or the public administration of the beneficiary country must be selected either using the appropriate framework contract or in accordance with the standard procedures in Section 3 of this 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 interest due to a link with any applicant must declare it and immediately withdraw from the evaluation. He or she 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, assessment 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 the proposal from further consideration and the applicant's exclusion from participation 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) and to the delegations, 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 evaluation committee members

The chairman is responsible for supervising the work of assessors, coordinating the evaluation process in accordance with the procedures in this 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 the minutes of all evaluation meetings and the required records thereof;
- 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 time-limit agreed 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 model 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 the proposals

All proposals should be opened in an opening session at which the registration details will be checked and the proposals numbered (whether or not received before the deadline for receipt of proposals).

The secretary of the evaluation committee supervises the opening session and, if need be, calls on other members of staff of the contracting authority.

The registration of the proposals must include the following details :

- 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.

At the end of the opening session, the evaluation committee rules on any points of dispute and signs the **proposal-opening report**, which must include the minutes of the opening session (see model at Annex E5). The minutes must indicate:

- 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 model in Annex E6) must include 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 operation 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 included in the guidelines for applicants (see Annex E7) must be used to record the compliance of each proposal with the requirements of the guidelines for applicants. Proposals not considered for further evaluation must be kept by the contracting authority.

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.

In the event of doubt concerning the eligibility of a proposal in a call for proposals organised by a Commission headquarters department, the evaluation committee must consult the Commission delegation in the country where the proposed operation is due to take place.

The first part of the evaluation report covering administrative compliance and eligibility, which comprises the checklists, and the record of the session, must be signed by the chairman, the secretary and all voting members of the evaluation committee (see model 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.

The contracting authority must send a standard letter (see Annex E9) as soon as possible after the first part of the evaluation report is signed 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. Evaluation 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 subheading. 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 and added up by heading. The final score is the arithmetical average of the scores given by those examining each proposal.

Where the call for proposals is organised by a headquarters department of the Commission, a copy of each eligible proposal must be sent to the Commission delegation in the country where the proposed operation is to take place (see model letter in Annex E8 or in E16 for the second letter in a restricted call for proposals) to enable it to give its opinion on the relevance of the operation.

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, on account of the opinion of the delegation concerned, for example, 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 the scores awarded 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 conclude by drawing 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 similar proposal which 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 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 awarded to each proposal;
- the successful applicants, the recommended grant amounts to be awarded to them and the proportion of the eligible costs it is proposed to finance;
- the unsuccessful applicants and reasons for their non-selection.

CENTRALISED SYSTEM

The entire evaluation procedure is recorded in an evaluation report (see model 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 departments of the Commission, which must decide whether or not to accept its recommendations.

Once this approval has been given, the Commission will commence awarding the grants (see point 6.4.10).

DECENTRALISED SYSTEM

The entire evaluation procedure is recorded in an evaluation report (see model 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 award proposals to the Commission for approval.

Once this approval has been given, the contracting authority will commence awarding the grants (see point 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 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).

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 departments 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, i.e. no worthwhile proposal has been received or there were no replies;
- the economic or technical data of the programme have been fundamentally altered;
- exceptional circumstances or force majeure render the normal conduct of the planned activities impossible;
- there have been irregularities in the procedure, in particular where these have prevented fair competition.

CENTRALISED SYSTEM

The responsibility for cancelling a call for proposals procedure lies with the relevant departments of the Commission.

DECENTRALISED SYSTEM

The responsibility for cancelling a call for proposals procedure lies with the contracting authority, with the prior approval of the Commission.

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 SYSTEM

After the relevant departments of the Commission have given their official approval to the final list of grants to be awarded, the Commission notifies the successful applicants that their applications have been selected (see model in Annex E13).

It must also send the unsuccessful applicants a standard letter (see model in Annex E12) informing them that they have not been selected and specifying the reasons.

If the call for proposals is organised by a Commission headquarters department, a copy of these letters is sent to the Commission delegation in the country where the proposed operation is to be implemented.

DECENTRALISED SYSTEM

After the contracting authority and the Commission have given their official approval to the final list of grants to be awarded, the contracting authority notifies the successful applicants that their applications have been selected (see model in Annex E13).

It must also send the unsuccessful applicants a standard letter (see model 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 model (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 operation
- General Conditions
- Budget for the operation
- Procurement procedures to be used if services, supplies or works need to be procured as part of an activity funded by a grant
- Standard request for payment and financial identification form
- Model audit certificate
- Model financial guarantee.

The standard contract annexes dealing with 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 operation 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 operation 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 operation must be corrected accordingly, if necessary. Other clarifications or minor corrections may be made to the description of the operation provided that they relate to points clearly identified by the evaluation committee, do not call into question the grant award decision and are not contrary to the equal treatment of applicants.

Any other alteration to the successful applicant's proposal or negotiation with the successful applicant is prohibited.

If the successful applicant is an international organisation, the model contribution agreement with an international organisation (see Annex F1) or any other contract model agreed between the international organisation concerned and the contracting authority will 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 operation 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 prefinancing 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. Further prefinancing payments are made on the above basis. The balance is paid on approval of the final report. Beneficiaries must not send documents in support of their 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 operation. If at the end of the operation, the actual eligible costs are lower than anticipated, the grant will be reduced proportionately.
- An external audit of the accounts of the operation must be attached to the request for payment of the balance if the grant is for an amount of more than €100 000, to the request for a further prefinancing payment once the sum of prefinancing payments exceeds €750 000, and to any request for payments exceeding €75 000 in the case of operating grants. A financial guarantee is required where the amount prefinanced is more than 80% of the amount of the contract (or, if the beneficiary is a non-governmental organisation, €1 000 000 or 90% of the amount of the contract).
- In awarding any procurement contracts required for the purposes of the operation, the beneficiary must comply with the rules set out in point 6.8.
- Unless otherwise requested or agreed by the 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 action laid down and published by the Commission. These rules are set out in the EU visibility guidelines for external action, available from the following Internet address:
http://europa.eu.int/comm/europeaid/visibility/index_en.htm.

CENTRALISED SYSTEM

- 4) Sign all copies of the contract

DECENTRALISED SYSTEM

- 4) Sign all 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 Commission for endorsement.

- 5) Using the standard letter (see format in Annex A8), send the three signed copies of each contract to the grant beneficiary concerned, who must countersign them within 30 days of receipt and return two copies to the contracting authority together with a request for payment and any financial guarantee required in the contract.

CENTRALISED SYSTEM

- 6) On receipt of the two signed copies from the grant beneficiary, one is kept by the finance unit in charge of payments and the other is sent to the operations manager.

DECENTRALISED SYSTEM

- 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 Commission. A copy of the signed contract should be sent to the operations manager.

The contracting authority and the grant beneficiary must note on the contract the date on which they are signing it. The contract will become effective on the date of the later signature. A contract cannot cover earlier activities except in duly substantiated exceptional cases (see point 6.2.5).

All operations funded by the European Community are subject to audit at any stage, whether during the award process, during execution of the operation or once it has been completed.

The contracting authority must retain all selection and grant documentation for a period of seven years after the completion of an operation. 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 model 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 operation it is funding. It sends this immediately to the 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 grant beneficiaries).

At the end of each year, the contracting authority also prepares and submits to the Commission for publication a summary table based on the model 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 model in Annex E14 and for submitting it in electronic form to the Commission for publication.

The contracting authority also publishes this information on its own Internet site and/or any other appropriate media.

The 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 point 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 SYSTEM

The minimum period between the date of publication of the call for proposals notice and the deadline for receipt of proposals is 60 days. However, in exceptional cases, a shorter deadline may be allowed.

DECENTRALISED SYSTEM

The minimum period between the date of publication of the call for proposals notice and the deadline for receipt of proposals is 60 days. In certain exceptional cases, and with the prior authorisation of the Commission, 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 point 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 model 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 department of the Commission, a copy of each eligible preliminary proposal must be sent to the Commission delegation in the country where the proposed operation is to take place (see model letter in Annex E15) to enable it to give its opinion on the relevance of the operation.

The second part of the **evaluation report** (see Annex E11), covering the technical and financial quality of the preliminary proposals (headings 1 and 2 in the 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 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 their 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 model letter in Annex E16) to submit a full application form, on which basis the points mentioned in headings 3 to 5 of the technical and financial evaluation grid will be assessed,

whilst unsuccessful candidates are notified by letter (see Annex E17 for model) giving the grounds for the decision to refuse their application.

CENTRALISED SYSTEM

The minimum period between the date of publication of the call for proposals notice 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 completed forms and the deadline for receipt of proposals is 45 days. However, in exceptional cases, a shorter deadline may be allowed.

DECENTRALISED SYSTEM

The minimum period between the date of publication of the call for proposals notice and the deadline for receipt of preliminary proposals is 45 days. In certain exceptional cases, and with the prior authorisation of the Commission, a shorter deadline may be allowed.

The minimum period between the dispatch of the letter of invitation to submit completed forms and the deadline for receipt of proposals is 45 days. In certain exceptional cases, and with the prior authorisation of the Commission, 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 operation 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 system, approved and endorsed by the 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** always apply:

- A grant beneficiary's requests for grant contract modifications should not automatically be accepted by the contracting authority. There must be substantiated reasons for modifying a grant contract. The contracting authority must examine the reasons given, and reject requests with little or no substance.
- 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 contract modifications can only be made within the duration of the contract and cannot be effected 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 budgetary commitment covering the contract. Implementation must be completed before the expiry of the performance period of the financing agreement under which the 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

When preparing an addendum, the contracting authority must proceed as follows:

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

All references in the proposed addendum to articles 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 etc.)	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 model 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 operation 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 model (see Annex A7) and includes any revised annexes.

CENTRALISED SYSTEM

- 3) Sign all copies of the addendum.

DECENTRALISED SYSTEM

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

- 4) Using the standard letter (see model 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 SYSTEM

- 5) On receipt of the two signed copies from the grant beneficiary, one is kept by the financial service in charge of payments and the other is sent to the operations manager.

DECENTRALISED SYSTEM

- 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 Commission. A copy of the signed addendum must be sent to the operations manager.

The contracting authority and the grant beneficiary must note on the addendum the date on which they sign it. The addendum becomes effective on the date of the later signature, which must be before the expiry of the initial contract. An addendum cannot cover earlier activities or enter into force before this date.

6.8. Procurement by grant beneficiaries

6.8.1. General principles

Where implementation of Community-grant funded operations under the 9th EDF requires grant beneficiaries to award procurement contracts, they must award the contract to the tender offering the best value for money, i.e. the best price-quality ratio, in compliance with the principles of transparency and equal treatment for potential contractors, care being taken to avoid any conflict of interests.

To this end, grant contracts provide for compliance with the rules set out in points 6.8.2 to 6.8.7 below, subject to point 6.8.8.

Where the beneficiary makes use of the services of a central buying office, the buying office must obey the same rules as the beneficiary.

In the event of failure to comply with the rules referred to above, expenditure on the operations in question is not eligible for Community financing.

The Commission will carry out ex post checks on the beneficiaries' compliance with the rules. Grant contracts must provide expressly for the Commission, OLAF and the Court of Auditors to exercise their powers of control, on documents and on the spot, over all contractors and subcontractors who have received Community funds.

6.8.2. Eligibility for contracts

6.8.2.1. The nationality rule

Participation in procurement contracts awarded 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 authorised by the ACP-EC Partnership Agreement and the Overseas Association Decision.

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 and submit the usual proof under their national legislation.

6.8.2.2. The origin rule

All supplies acquired by the grant beneficiary under the grant must originate in the Community and/or the ACP States. Tenderers must indicate the origin of the supplies in their offer and suppliers must present the certificate of origin of the goods concerned to the grant beneficiary no later than when the first invoice is presented. Origin certificates 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 or with the relevant Community legislation in the case of a Member State of the Community.

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 point 6.8.2.1 to tender for contracts (or supplies of goods originating in such countries to be included in the tender) on the basis of the specific conditions laid down in the ACP-EC Partnership Agreement or the Overseas Association Decision.

6.8.2.4. Grounds for exclusion from participation in procurement

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 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 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 relating to the EDF published on the Commission's Internet site, for example the model tender dossier.

The time-limit 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 will be evaluated and ranked by an evaluation committee on the basis of the exclusion, selection and award criteria announced in advance. This committee will have an odd number of members, at least three, with all the necessary technical and administrative expertise to assess the tenders.

6.8.4. Rules applicable to service contracts

6.8.4.1. Contracts of €200 000 or more

Service contracts worth €200 000 or more must be awarded by means of an international restricted tender procedure following publication of a contract notice.

The contract notice is to be published in all appropriate media, in particular on the grant beneficiary's Internet site, in the international press and the national press of the country in which the operation is being carried out, or in other specialist periodicals. It must state the number of candidates who 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 point 6.8.2 may ask to take part 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 of less than €200 000

Service contracts worth less than €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 €5 000 or less, the beneficiary may place orders on the basis of a single quote.

6.8.5. Rules applicable to supply contracts

6.8.5.1. Contracts of €150 000 or more

Supply contracts worth €150 000 or more must be awarded by means of an international open tender procedure following publication of a contract notice.

The contract notice is to be published in all appropriate media, in particular on the grant beneficiary's Internet site, in the international press and the national press of the country in which the operation is being carried out, or in other specialist periodicals.

Any would-be supplier who fulfils the conditions referred to in point 6.8.2 may submit a tender.

6.8.5.2. Contracts of €30 000 or more but less than €150 000

Such contracts are awarded by means of an open tender procedure published locally: the contract notice is published in all appropriate media but only in the country in which the operation 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 of less than €30 000

Supply contracts worth less than €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 €5 000 or less, the beneficiary may place orders directly on the basis of a single quote.

6.8.6. Rules applicable to works contracts

6.8.6.1. Contracts of €5 000 000 or more

Works contracts worth €5 000 000 or more must be awarded by means of an international open tender procedure following publication of a contract notice.

The contract notice is to be published in all appropriate media, in particular on the grant beneficiary's Internet site, in the international press and the national press of the country in which the operation is being carried out, or in other specialist periodicals.

Any would-be contractor who fulfils the conditions referred to in point 6.8.2 may submit a tender.

6.8.6.2. Contracts of €300 000 or more but less than €5 000 000

Such contracts are awarded by means of an open tender procedure published locally: the contract notice is published in all appropriate media but only in the country in which the operation 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 of less than €300 000

Works contracts worth less than €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 €5 000 or less, the beneficiary may place orders on the basis of a single quote.

6.8.7. Use of the negotiated procedure

Grant beneficiaries may use the negotiated procedure on the basis of a single quote 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 it, the time-limit for the procedures referred to in sections 6.8.2.5 to 6.8.6 cannot be met. The circumstances invoked to justify extreme urgency must in no way be attributable to the grant beneficiary.

Operations 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 that 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 social assistance to communities;
- c. where contracts extend activities already under way which are not included in the main contract but which, because of unforeseen circumstances, are necessary to perform the contract, or which consist in the repetition of similar services entrusted to the contractor providing services under a first 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 work;
- 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 invitation to tender, provided that the original terms of the contract are not substantially altered;

- g. where the contract concerned follows a contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates, in which case, all successful candidates will 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. Cofinancing

Where:

- the operation is cofinanced by several donors and
- one of the other donors, whose contribution to the total cost of the operation is greater than that of the Commission, imposes procurement rules on the grant beneficiary that differ from those set out in points 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 points 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 procedures for awarding contracts, it must apply the relevant provisions of those texts, in preference to the rules set out in points 6.8.3 to 6.8.7 above. 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 should apply its own procedures for awarding contracts if they provide guarantees equivalent to internationally accepted standards. If not, or in special cases, the Commission and the international organisation should 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.

If they are joint-managed, the nationality and origin rules of the international organisation apply.

In all other cases, the nationality and origin rules set out in point 6.8.2 apply.

In all cases, the general principles set out in point 6.8.1 still apply.

7. RELATIONS WITH INTERNATIONAL ORGANISATIONS AND OTHER DONORS

Projects financed under the 9th EDF may need to be cofinanced with a partner which 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 cofinancing: parallel and joint cofinancing. Under parallel cofinancing, the project is broken down into clearly identifiable subprojects which are each funded by the different cofinancing partners. The rules and procedures included in this Guide are applicable in their entirety and without modification to the part funded by the 9th EDF of all projects with parallel cofinancing.

Under joint cofinancing, the total project cost is divided between the cofinancing 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 cofinancing 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 9th EDF Financial Regulation, there is joint management when cofinancing with an international organisation involves an operation 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 point 6.8.8.3 of the Practical Guide for the relevant procurement procedures). The Commission must also ensure that suitable arrangements exist for the control and audit of the operation in its entirety.

For the purposes of this Guide, joint management is considered a grant and is subject accordingly to the rules set out in Section 6 above unless otherwise provided for in the Guide and in particular in the model agreement on contributions to an international organisation (see Annex F1). Apart from the case of joint management, grants to international organisations are wholly subject to the rules in Section 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 Cofinancing Framework Agreement of 8 November 2001, see Annex F2) and the United Nations (framework administrative and financial agreement of 29 April 2003, see Annex F3). These framework agreements take the above rules into account and must be applied. The standard contract for contributions to an international organisation in particular implements the framework agreement with the United Nations of 29 April 2003. It must be used with all international organisations both for grants and cases of joint management unless otherwise agreed with the international organisation concerned (specific standard contracts apply for contributions to the World Bank).

Contracts to be concluded with international organisations should be concluded as far as possible under centralised management.

7.2. Relations with EU Member States

7.2.1. Cofinancing

Operations may be cofinanced 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. The applicable procurement rules and procedures must be compatible with those of the Commission as set out in this Guide.

7.2.2. Delegation of executive tasks

Special procedures apply where the Commission delegates tasks of public authority, and in particular financial implementation tasks, to the abovementioned national bodies.

7.2.2.1. Substantive conditions

All the following conditions must be fulfilled to allow financial implementation tasks to be delegated:

- Financial implementation tasks may only be delegated under centralised management.
- 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 executive tasks must not give rise to conflicts of interest.
- Bodies performing executive tasks must conduct regular checks to ensure that operations financed from the EDF 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 decisions

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 Member State concerned.
- Decisions to delegate executive tasks must include appropriate provisions to ensure the transparency of the operations carried out.

These decisions must include:

- transparent procurement and grant-award procedures which are non-discriminatory and exclude any conflict of interest and which are in accordance with the provisions of Titles IV 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 for 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 tasks, including appropriate provisions for demarcating responsibilities and organising the controls to be carried out;
- rules for reporting to the Commission on performance of the delegated tasks;
- rules governing completion of the delegated tasks;
- the detailed arrangements for Commission scrutiny;
- rules governing the use of separate bank accounts, the beneficiary of the interest yielded and the use made of it;
- rules for ensuring the visibility of 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
- ACP States.

National public law bodies of the above are likewise treated as third countries. Operations may be cofinanced with third countries provided that the procurement rules and procedures applicable comply with those of the Commission as set out in this Guide.

Eligibility for participation in contracts cofinanced with a third country may be extended to natural and legal persons with the nationality of that country.

8. ANNEXES TO THE PRACTICAL GUIDE – SUMMARY LIST

GENERAL ANNEXES

- A1 Glossary
- A2 Eligibility for the 9th EDF
- A3 Declaration of Objectivity and Confidentiality
- A4 Declaration of Impartiality and Confidentiality
- A5 Cancellation notice
- A6 Explanatory note
- A7 Standard addendum
- A8 Contract notification letter
- A9 Tax and Custom arrangements
- A10 Procedural rules on conciliation and arbitration

SERVICES ANNEXES

- B1 Individual forecast notice
- B2 Procurement notice
- B3 Application form
- B4 Long list
- B5 Shortlist report
- B6 Shortlist notice
- B7 Letter to non-shortlisted candidates
- B8 Tender dossier (incl. standard contract)
 - Instructions to tenderers
 - Letter of invitation to tender
 - Instructions to tenderers
 - Shortlist notice
 - Tender form
 - Administrative compliance grid
 - Evaluation Grid
 - General Regulations
 - Contract
 - Special Conditions

General Conditions (Annex I)
Terms of reference (Annex II)
Organisation and methodology (Annex III)
Key experts (Annex IV)
Budget breakdown (Annex V)
Explanatory note (Annex V)
Financial identification form (Annex VI)
Tax and Custom arrangements (Annex VII)
Financial guarantee (Annex VIII)

- B9 Opening session checklist
- B10 Opening session report
- B11 Evaluation report
- B12 Letter to non-shortlisted candidates
- B13 Contract award notice
- B14 Contractor evaluation form

SUPPLIES ANNEXES

- C1 Forecast notice
- C2 Procurement notice
- C3 Local publication
- C4 Tender dossier (incl. standard contract)
- C5 Opening session checklist
- C6 Opening session report
- C7 Evaluation report
- C8 Letter to non-shortlisted candidates
- C9 Contract award notice
- C10 Contractor evaluation form

WORKS ANNEXES

- D1 Forecast notice
- D2 Procurement notice
- D3 Local publication
- D4 Tender dossier (incl. standard contract)
- D5 Opening session checklist

- D6 Opening session report
- D7 Evaluation report
- D8 Letter to non-shortlisted candidates
- D9 Contract award notice
- D10 Contractor evaluation form

GRANTS ANNEXES

- E1 Annual work programme
- E2 Call-for-proposals notice
- E3 Guidelines for applicants (incl. application form and standard contract)
- E4 Acknowledgement of receipt - hand delivery
- E5 Opening session report
- E6 Acknowledgement of receipt
- E7 Grid for administrative compliance and eligibility
- E8 Headquarters memo to delegations (open calls)
- E9 Rejection letter for ineligible applicants
- E10 Evaluation grid
- E11 Evaluation report
- E12 Letter to unsuccessful applicants
- E13 Letter to successful applicants
- E14 Contract-award notice
- E15 Headquarters memo to delegations (restricted calls)
- E16 Letter of invitation to submit a full proposal
- E17 Letter to non-shortlisted applicants

INTERNATIONAL ORGANISATIONS ANNEXES

- F1 Model Contribution Agreement with an international organisation
- F2 Trust Fund and Cofinancing Framework Agreement between the Commission and the World Bank
- F3 Framework administrative and financial agreement between the Commission and the United Nations