

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

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1. Introduction

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

Since it incorporates the relevant provisions of the legal texts respectively ruling the Budget and the EDF, the purpose of this instrument is to provide all users, in an encompassing manner, with all the information necessary to undertake a procurement or a grant procedure from the very first steps to the award of contracts. The annexes cover both the procurement phase and the execution of contracts. The Guide provides the procedures to be used in centralised systems (centralised and indirect centralised¹) and decentralised systems with ex-ante approval or with ex-post controls by the European Commission. The Guide only applies to the contracting part of the implementation of projects. Following the terminology of Financial Regulations, the different degrees of decentralisation can also apply to other aspects, which are not covered by the Guide.

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

Notwithstanding the fact that the procurement procedures applicable to the Budget and to the EDF are quite similar, certain specificities will be flagged throughout this Guide. A number of annexes (mainly the tender dossiers) are provided in two distinct sets, which respectively apply to the Budget and to the EDF. Unless clearly specified, the contents of this Guide cover procedures applicable under both the Budget and the EDF.

Section 8 lists the legal texts and section 9 lists all the annexes to the Guide. Annex A1 contains a glossary of the terms used in the Guide.

What does the Practical Guide not cover?

It does not apply to contracts for which the Commission acts as Contracting Authority on its own account. These come under Title V, Chapters 1 and 2, of the Financial Regulation and Commission services should use in-house public procurement procedures and models (Vade-mecum on Public Procurement) to deal with them.

This Guide does not apply to operations implemented in the context of Humanitarian aid or emergency operations carried out by ECHO³.

Nor does it apply to the Contracting Authorities referred to in Article 167(1)(b) of the Financial Regulation applicable to the Budget where, following the checks referred to in Article 33, the Commission has authorised them to use their own procurement procedures under decentralised management.

Direct labour operations are contracts executed by public or public-private agencies or services of the beneficiary country, where that country's administration possesses qualified managers. The programme estimate is a document laying down the human and material resources required, the budget and the detailed technical and administrative implementing arrangements for execution of a project over a specified period by direct labour and, possibly, by means of public procurement and the award of specific grants. The procedures for direct labour contracts and programme estimates are set out in a separate guide (Practical guide to procedures for programme estimates – project approach)

¹ Centralised indirect approach refers to cases, in which the Commission delegates its prerogatives to entities such as Member States executive agencies.

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

³ 2 OJ L 163, 2.7.1996, p. 1-6. Council Regulation of 20 June 1996 concerning humanitarian aid.

2. Basic rules for service, supply & works contracts

2.1. Overview

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

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

Before initiating any tender procedure, the service, supply or works to be contracted must have been approved in a Financing Agreement and the funds must be available, except in the case of procedures with "suspension clause".

2.2. Centralised and decentralised management

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

- **Centralised:** the European Commission is the Contracting Authority and takes decisions for and on behalf of the beneficiary country. In this case, actions to be performed by the Contracting Authority throughout this Practical Guide should be interpreted as being carried out by the European Commission, acting for and on behalf of the beneficiary country.

Indirect Centralised: the centralised approach applies. In this case, the Contracting Authority will thus be the entity to which the Commission will delegate its prerogatives.

- **Decentralised:**
 - Ex-ante: decisions concerning the procurement and award of contracts are taken by the Contracting Authority and referred for approval to the European Commission.
 - Ex-post: decisions foreseen in the Financing Agreement are taken by the Contracting Authority without prior reference to the European Commission (apart from exceptions to the standard procedures given in this Practical Guide).

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

BUDGET

The European Commission decides for each project which management approach will be used, in conformity with its internal rules and procedures.

EDF

The legal texts ruling the EDF funded projects provide for instances where the financial resources of the 9th EDF are executed by the Commission in a decentralised manner or centrally. Moreover the European Commission can also decide for a project, which management approach will be used.

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

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

They will not, in any case, have as an objective nor as a possible effect, the attempt against the principle by which the decentralised contracts become national contracts that are only prepared, elaborated and concluded by the decentralised Contracting Authority. The tenderers and candidates for these contracts cannot be considered as beneficiaries of the acts carried out by the Commissions' representatives for the implementation and conclusion of the contracts. They must only hold a legal bound with the decentralised Contracting Authority and the Commissions' representatives acts may not cause the substitution of a Contracting Authority's decision by a decision taken by the Community. In all cases, the Contracting Authority assumes full responsibility for its actions and will be accountable for these in any subsequent audit or other investigation.

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

CENTRALISED

Procedures to be followed under a centralised programme. Contracts are concluded directly by the European Commission acting for and on behalf of the beneficiary country. It will draw up shortlists (restricted procedures) and is responsible for issuing invitations to tender, receiving tenders, chairing tender Evaluation Committees, deciding on the results of tender procedures and signing the contracts.

DECENTRALISED: EX-ANTE

Procedures to be followed under a decentralised programme with ex-ante controls. Contracts are concluded by the Contracting Authority designated in a financing agreement, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the financing agreement.

The Contracting Authority will draw up shortlists (restricted procedures). Before the procedure is launched, the Contracting Authority must submit tender dossiers to the European Commission for approval. On the basis of decisions thus approved, the Contracting Authority is responsible for issuing invitations to tender, receiving tenders, chairing tender Evaluation Committees and deciding on the results of tender procedures.

The Contracting Authority then submits the result of the evaluation for approval and at a second step-after having notified the contractor, received and analysed the proofs regarding exclusion and selection criteria (optional for Budget for contracts below international thresholds, see points 2.3.3 and 2.4.12.1.1) the contract award proposal to the European Commission for endorsement. No endorsement by the Delegation is however required in certain cases contemplated in the Practical Guide for Programme Estimates. Once it has received this endorsement, it signs the contracts and awards the contract. As a general rule, the European Commission will be represented when tenders are opened and evaluated and must always be invited. The Contracting Authority must submit procurement notices and award notices to the European Commission for publication.

DECENTRALISED: EX-POST

Procedures to be followed under a decentralised programme with ex-post controls. Contracts are concluded directly by the Contracting Authority designated in a financing agreement, i.e., the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the financing agreement. The Contracting Authority will draw up shortlists (restricted procedures) and is responsible for issuing invitations to tender, receiving tenders, chairing tender Evaluation Committees, deciding on the results of tender procedures and signing the contracts without the prior approval of the European Commission. The Contracting Authority must submit procurement notices and award notices to the European Commission for publication.

2.3. Eligibility criteria and other essentials

2.3.1. The rule on nationality and origin

BUDGET

Nationality

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

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

Participation of natural persons is directly governed by the specific instrument applicable to the programme under which the contract is financed.

Participation is also opened to international organisations.

- 2) Whenever Community funding covers an operation implemented through an international organisation, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible pursuant the above-mentioned rules as well as to all legal persons who are eligible pursuant to the rules of that organisation, care being taken to ensure that equal treatment is afforded to all donors. The same rules shall apply in respect of supplies, materials and experts.
- 3) Whenever Community funding covers an operation co-financed with a third country, subject to reciprocity as defined in the Regulations on access to Community external assistance, or with a regional organisation, or with a Member State, participation in the appropriate contractual procedures shall be open to all legal persons who are eligible pursuant to the rules of that organisation as well as to all legal persons who are eligible under the rules of such third country, regional organisation or Member State. The same rules shall apply in respect of supplies, materials and experts.
- 4) As far as food aid operations are concerned, the application of points (2) and (3) shall be limited to emergency operations.

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

Origin

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

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

EDF

Nationality

- 1/ participation in procedures for the awarding of procurement contracts financed from the Fund shall be open to all natural and legal persons from ACP States and Member States of the Community which actually contribute to the 9th EDF;⁴
- 2/ participation in procedures for the awarding of procurement contracts financed from the Fund shall be open to international organisations;
- 3/ whenever the Fund finances an operation implemented through an international organisation, participation in procedures for the awarding of procurement contracts shall be open to all natural and legal persons who are eligible under point 1, and to all natural and legal persons who are eligible according to the rules of the organisation, care being taken to ensure equal treatment of all donors. The same rules apply for supplies and materials;
- 4/ whenever the Fund finances an operation implemented as part of a regional initiative, participation in procedures for the awarding of procurement contracts shall be open to all natural and legal persons who are eligible under point 1, and to all natural and legal persons from a country participating in the relevant initiative. The same rules apply for supplies and materials;
- 5/ whenever the Fund finances an operation co-financed with a third State, participation in procedures for the awarding of procurement contracts shall be open to all natural and legal persons eligible under point 1, and to all persons eligible under the rules of the above mentioned third State. The same rules apply for supplies and materials.

The nationality rule also applies to the experts proposed by service providers taking part in tender procedures for service contracts financed by the European Community. For the purposes of verifying compliance with the nationality rule, the tender dossier requires tenderers to state the country of which they are nationals by presenting the documents usual under that country's law.

If the Contracting Authority suspects that a candidate/tenderer has only a registered office in an eligible country or state and that the nationality of the candidate/tenderer is ineligible, the candidate/tenderer is responsible for demonstrating effective and continuous links with that country's economy. This is to avoid awarding contracts to firms whose nationalities are ineligible but which have set up 'letter box' companies in an eligible country to circumvent the rules on nationality.

⁴ 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;

Origin

-1/supplies and materials purchased under a procurement contract financed from the EDF must originate in a State that is eligible under point 1, Nationality. In this context, the definition of the concept of "originating products" is assessed by reference to the relevant international agreements⁵ and supplies originating in the Community include supplies originating in the Overseas Countries and Territories.

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

if the transferred amount exceeds €10 million per country or region, those resources must be administered in accordance with the rules of the origin of EDF 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

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

Origin: A product can not originate in a country in which no production process has taken place. On the other hand, the country of production is not necessarily the country of origin but only when the relevant provisions of Council Regulation (EEC) 2913/92 and its implementing regulation are fulfilled.

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

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

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

Where the provision of a Certificate of Origin is not possible (in many countries these are only issued against presentation to the Chamber of Commerce of commercial invoices), the tenderer can in these cases submit its own declaration.

The official Certificates of Origin must then be submitted before provisional acceptance. Failing this, the Contracting Authority cannot release any funds to the contractor.

⁵Especially Protocol 1 to Annex V to the ACP-EC Partnership Agreement.

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

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

2.3.2. Exceptions to the rule on nationality and origin

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

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

BUDGET

In conformity with the Regulations on access to Community external assistance, in duly substantiated exceptional cases, the Commission:

- may extend eligibility to legal persons from a country not eligible.
- may allow the purchase of supplies and materials originating from a country not eligible.

Derogations may be justified on the basis of the unavailability of products and services in the markets of the countries concerned, for reasons of extreme urgency, or if the eligibility rules would make the realisation of a project, a programme or an action impossible or exceedingly difficult.

Note, however, that the frequently used argument that a product of ineligible origin is cheaper than the Community or local product does not constitute grounds for awarding derogation.

Where an agreement on widening the market for procurement of goods, works or services to which the Community is party applies, the contracts for procurement financed by the budget are also open to third-country nationals other than those referred to in the previous two paragraphs, under the conditions laid down in this agreement.

EDF

In exceptional duly substantiated circumstances, natural or legal persons from third countries not eligible in accordance with the rule of origin may be authorised to participate in procedures for the awarding of procurement contracts financed by the Community at the justified request of the ACP States concerned. The ACP States concerned shall, on each occasion, provide the Commission with the information needed to decide on such derogation, 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;
- (e) technology that is the most appropriate and best suited to local conditions;
- (f) cases of extreme urgency;
- (g) the availability of products and services in the relevant markets.

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

- purchases of goods, irrespective of their origin, on the local market up to the superior threshold of the local open procedure i.e. 150 000€
- 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.

2.3.3. Grounds for exclusion

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

BUDGET

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*; (i.e. against which no appeal is possible);
- c) they have been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
- d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Contracting Authority or those of the country where the contract is to be performed;
- e) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- f) following another procurement procedure or grant financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

EDF

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*
- 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; 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;
- h) they are in one of the situations allowing exclusion referred to in point 2.4.15 in connection with the tender or contract.

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

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 sign their applications including the declaration that they do not fall into any of the categories cited above

Tenderers who have been notified the award of a contract must supply the proof usual under the law of the country in which they are established that they do not fall into the categories listed above. The date on the evidence or documents provided must be no earlier than 1 year (BUDGET)/180 days (EDF) before the date of submission of the tender. Tenderers must, in addition, provide a sworn statement that their situations have not altered in the period that has elapsed since the evidence in question was drawn up. If the supporting documents are written in a language other than the language(s) of the call for tenders, a translation into one of those languages must be attached which will apply for the purposes of interpreting the application or the bid.

BUDGET

For the shortlisted candidates in a restricted procedure and for the competitive dialogue the evidence documents for the exclusion criteria are submitted by all the tenderers at the tender phase. For contracts with a value less than the international thresholds (service < €200.000, supply < €150.000, works < €5.000.000) there is no obligation to submit the above mentioned documents. The Contracting Authority may however, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require him to provide the evidence.

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

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

- a) are subject to a conflict of interest;

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

2.3.4. Participation on equal terms (EDF only)

EDF

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. Administrative and financial penalties

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

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

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

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

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

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

- a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995;⁶
- b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997;⁷
- c) cases of participation in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council;⁸
- d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC.⁹

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

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

EDF

The same applies by analogy to contracts financed by the EDF.

2.3.6. Visibility

Unless otherwise requested or agreed by the European Commission, contractors for services, supplies or works must take the necessary measures to ensure the visibility of the EU financing or co-financing. Such measures must be in accordance with the applicable rules on the visibility of external action laid down and published by the Commission. These rules are set out in the EU guidelines on visibility available from the EuropeAid website at:

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

2.3.7. Other essentials points

Conflict of interest: Any firm or expert participating in the preparation of a project must be excluded from participating in tenders based on this preparatory work, unless they can prove to the Contracting Authority that the involvement in previous stages of the project does not constitute unfair competition.

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

⁶ OJ C 316, 27.11.1995, p.48.

⁷ OJ C 195, 25.6.1997, p.1.

⁸ OJ L 351, 29.12.1998, p. 1. Joint Action of 21 December 1998 making it a criminal offence to participate in a criminal organisation in the Member States of the European Union.

⁹ OJ L 166, 28.6.1991, p. 77. Directive of 10 June 1991, as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 (OJ L 344, 28.12.2001, p.76).

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

All contracts must show the true dates of signature of the contracting parties.

Use of standard documents: Standard contracts and document formats must be used.

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

2.4. Procurement procedures

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

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

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

2.4.1. Which procurement procedure to apply?

The rules for applying the standard procurement procedures explained later in this section are summarised in the table below. They are divided between those for services (e.g., technical assistance, studies, provision of know-how and training), supplies (i.e., equipment and materials) and works (i.e., infrastructure and other engineering works). Once approval for an activity has been granted by the European Commission within a financing agreement, the Contracting Authority can proceed with tendering and contracting following these standard procedures. The thresholds given in the table are based on the maximum budget for the contract in question (including any co-financing). Where contracts are subdivided in lots, the value of each lot shall be taken into account when calculating the overall threshold.

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

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

2.4.2. Open procedure

Calls for tender are open where all interested economic operators may submit a tender. The contract is given maximum publicity through the publication of a notice in the Official Journal (S-series) of the European Union, the official journals of all the ACP States (EDF) on the EuropeAid website and in any other appropriate media.

Under the open procedure, any natural or legal person wishing to tender receives upon request the tender dossier (which may have to be paid for), in accordance with the procedures laid down in the procurement notice. When the tenders received are examined, the contract is awarded by conducting the selection procedure (i.e., verification of the eligibility and of the financial, economic, technical and professional capacity of tenderers) and the procurement procedure (i.e., comparison of tenders), in accordance with point 2.4.12. No negotiation is allowed.

2.4.3. Restricted procedure

Calls for tender are restricted where all economic operators may ask to take part but only candidates satisfying the selection criteria may submit a tender.

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

In the second stage of the procedure, the Contracting Authority invites the shortlisted candidates and sends them the tender dossier. In order to ensure fair competition, tenders must be submitted by the same service provider or consortium which has submitted the application form on the basis of which it was short-listed and to which the letter of the invitation to tender is addressed. No change whatsoever in the identity or composition of the tenderer is permitted unless the Contracting Authority has given its prior approval in writing. A situation where such approval could be given is e.g. where a merger has taken place between a shortlisted candidate/member of a consortium with another company and where the new company is found to meet the eligibility and exclusion criteria and does not give rise to any conflict of interest or unfair competition.

The successful tenderer is chosen by the procurement procedure once the tenders have been analysed (see point 2.4.12). No negotiation is allowed.

2.4.4. Competitive negotiated procedure (BUDGET) / Simplified procedure (EDF)

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

2.4.5. Framework contracts

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

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

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

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

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

2.4.6. Dynamic purchasing system (BUDGET only)

BUDGET

A dynamic purchasing system is a completely electronic process for making commonly used purchases which is limited in duration and open throughout its validity to any economic operator who satisfies the selection criteria and has submitted an indicative tender that is found compliant. No specific threshold applies.

For each individual contract, the Contracting Authority publishes a contract notice and invites all of the contractors admitted to the system in accordance with the above paragraph. It then selects the most economically advantageous tender. See point 4.2.4.2 for further details. The legal framework of this procedure is defined for future use, but the IT tools (confidentiality, security) to make it possible are **not yet available** in the Commission.

2.4.7. Competitive dialogue (BUDGET only)

BUDGET

In the case of particularly complex contracts, where the Contracting Authority considers that direct use of the open procedure or the existing arrangements governing the restricted procedure will not allow the contract to be awarded to the tender offering best value for money, it may make use of the competitive dialogue referred to in Article 29 of Directive 2004/18/EC. A contract is considered to be “particularly complex” where the Contracting Authority is not objectively able to define the technical means capable of satisfying the needs or objectives or able to specify the legal or financial makeup of the project. No specific threshold applies.

Contracting authorities shall publish a contract notice setting out their needs and requirements, which they shall define in that notice and/or in a descriptive document. Contracting authorities shall open a dialogue with the candidates satisfying the selection criteria announced in order to identify and define the means best suited to satisfying their needs. The minimum number of candidates invited to tender may not be less than 3, provided that a sufficient number of candidates satisfy the selection criteria. Where the number of candidates meeting the selection criteria is less than 3, the Contracting Authority may continue the procedure only with these. The Contracting Authority may not include other economic operators who did not take part in the procedure or candidates who do not have the required capacities since they do not meet the selection criteria.

During the dialogue, contracting authorities shall ensure the equality of treatment among all tenderers and confidentiality of the solutions proposed or other information communicated by a candidate participating in the dialogue unless he/she agrees to its disclosure. Contracting authorities may provide for the procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria in the contract notice or the descriptive document if provision is made for this possibility in the contract notice or the descriptive document.

After informing the participants that the dialogue is concluded, contracting authorities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. These tenders shall contain all the elements required and necessary for the performance of the project. At the request of the Contracting Authority, these tenders may be clarified, specified and fine-tuned provided this does not have the effect of changing basic aspects of the tender or of the invitation to tender, variations in which could distort competition or have a discriminatory effect. At the request of the Contracting Authority, the tenderer identified as having submitted the tender offering best value for money may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender or of the call for tenders and does not risk distorting competition or causing discrimination.

The Contracting Authorities may specify prices or payments to the participants in the dialogue.

CENTRALISED, DECENTRALISED: EX ANTE

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

DECENTRALISED: EX-POST

No prior approval from the European Commission is required for the use of the competitive dialogue.

2.4.8. Negotiated procedure

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

2.4.9. Emergency aid (EDF only)

EDF

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 EuropeAid Co-operation Office 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.

2.4.10. Fair competition

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

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

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

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

2.4.11. Preferences (EDF only)

EDF

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

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

<p>who offer supplies of at least 50% in contract value of ACP origin, shall be accorded a 15% price preference where tenders of equivalent economic, technical and administrative quality are compared;</p>
<p>(c) in respect of service contracts, where tenders of equivalent economic and technical quality are compared, preference shall be given to:</p> <ul style="list-style-type: none"> (i) experts, institutions or consultancy companies or firms from ACP States with the required competence; (ii) offers submitted by ACP firms, either individually or in a consortium with European partners; and (iii) offers presented by European tenderers with ACP sub-contractors or experts; <p>(d) where subcontracting is envisaged, preference shall be given by the successful tenderer to natural persons, companies and firms of ACP States capable of performing the contract required on similar terms; and</p> <p>(e) the ACP State may, in the invitation to tender, offer prospective tenderers assistance from other ACP States' companies or firms or national experts or consultants selected by mutual agreement. This cooperation may take the form either of a joint venture, or of a subcontract or of on-the-job training of trainees.</p> <p>2. Where two tenders are acknowledged to be equivalent on the basis of the criteria stated above, preference shall be given:</p> <p>(a) to the tenderer of an ACP State; or</p> <p>(b) if no such tender is forthcoming, to the tenderer who:</p> <ul style="list-style-type: none"> (i) allows for the best possible use of the physical and human resources of the ACP States; (ii) offers the greatest subcontracting possibilities for ACP companies, firms or natural persons; or (iii) is a consortium of natural persons, companies and firms from ACP States and the Community. <p>NB: South African bodies cannot benefit from the preference system</p>

2.4.12. Selection and award criteria

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

2.4.12.1. Selection criteria

2.4.12.1.1. General principles

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

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

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

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

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

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

BUDGET

For contracts with a value less than the international thresholds (service <€200.000, supply <€150.000 and works <€5.000.000), the Contracting Authority may, depending on its assessment of the risks, decide not to require these proofs, but then no pre-financing shall be made unless a financial guarantee of an equivalent amount is provided. (However, where the Contractor is a public body, the requirement of a pre-financing guarantee in general may be waived.)

2.4.12.1.2. Verification of the eligibility of tenderer or candidates

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

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

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

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

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

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

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

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

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

a list:

- of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private; Where the services or supplies were provided to Contracting Authorities, evidence of performance must take the form of certificates issued or countersigned by the competent authority;
- of the works carried out in the last five years, with the sums, dates and place. The list of the most important works must be accompanied by certificates of satisfactory execution, specifying whether they have been carried out in a professional manner and have been fully completed;
- a description of the technical equipment, tools and plant to be employed by the firm for performing a service or works contract;
- a description of the technical equipment and measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities; For public works contracts and public service contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.
- an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;
- in respect of supplies: samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products with the specifications or standards in force;
- a statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;
- an indication of the proportion of the contract which the service provider may intend to subcontract.

Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the Contracting Authority or on its behalf by a competent official body of the country in which the service provider or supplier is established, subject to that body's agreement. Such checks will concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures. Where Contracting Authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant European standards series concerning certification. Where Contracting Authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the community Eco-Management and Audit Scheme (EMAS) provided for in Regulation (EC) No 761/2001 of the European Parliament and of the Council or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

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

2.4.12.2. Award criteria

Contracts are awarded in one of the following two ways:

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

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

2.4.13. Tender procedure with “suspension clause”

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

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

2.4.14. Cancellation of procurement procedures

The Contracting Authority may, before the contract is signed, abandon the procurement and cancel the procurement procedure without the candidates or tenderers being entitled to claim any compensation. Cancellation may occur where:

- the tender procedure has been unsuccessful, i.e. no qualitatively or financially worthwhile tender has been received or there is no response at all;

International restricted tender procedures must be cancelled if there are fewer than four eligible candidates.

- the economic or technical data of the project have been fundamentally altered;

- exceptional circumstances or force majeure render normal performance of the contract impossible;
- all technically compliant tenders exceed the financial resources available;
- there have been irregularities in the procedure, in particular where these have prevented fair competition.

If a procurement procedure is cancelled, all tenderers must be notified in writing and as soon as possible of the reasons for the cancellation. A cancellation notice must be published in the event that a tender is cancelled. See template in Annex A5.

After cancelling a tender procedure, the Contracting Authority may decide:

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

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

2.4.15. Ethics clauses

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

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

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

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

Civil servants or other officials of the public administration of the beneficiary country, regardless of their administrative situation, must not be engaged as experts by tenderers unless the prior approval of the Contracting Authority has been obtained.

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

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

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

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

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

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

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

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

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

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

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

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

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

2.4.16. Appeals

Tenderers believing that they have been harmed by an error or irregularity during the award process may petition the Contracting Authority directly. The Contracting Authority must reply within 90 days of receipt of the complaint. If this procedure fails, the tenderer may have recourse to the following:

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

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

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

2.5. Contract size

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

2.6. Terms of reference and technical specifications

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

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

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

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

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

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

Given the technical complexity of many contracts, the preparation of the tender dossier - particularly the Technical Specifications/Terms of Reference - may require the assistance of one or more external technical specialist(s). Each such specialist must sign a Declaration of Objectivity and Confidentiality (see Annex A3).

Once the Tender Dossiers have been finalised the tender procedure should be launched as soon as possible. The Terms of Reference or Technical Specifications contained in a tender dossier - the basis for the project work-plan - must reflect the situation at the time of project start-up so as to avoid considerable effort having to be spent re-designing the project during the inception period.

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

Annex B8 contains a skeleton Terms of Reference which indicates the minimum details to be provided within each of these section headings.

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

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 A9.

2.8. The Evaluation Committee

2.8.1. Composition

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

CENTRALISED, DECENTRALISED: EX-POST

The Evaluation Committee (ie, the Chairperson, the Secretary and the voting members) must be nominated on a personal basis by the relevant services and participation of eventual observers approved.

DECENTRALISED: EX-ANTE

The Evaluation Committee (i.e., the Chairperson, the Secretary and the other voting members) must be nominated on a personal basis by the Contracting Authority. The composition of the Evaluation Committee must be submitted for approval to the European Commission. The composition of the committee is deemed approved if after 5 working days from the receipt of the nomination, the European Commission did not formulate any objection. The European Commission may nominate an observer to follow all or part of the proceedings of the Evaluation Committee. The observer may be an independent expert. Prior approval must be sought from the European Commission for the participation of other observers.

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

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

2.8.2. Impartiality and confidentiality

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

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

No information about the examination, clarification, evaluation or decisions about the contract award can be disclosed before the signature of the contract by the Contracting Authority and the successful tenderer. Any attempt by a tenderer to influence the process in any way (whether by initiating contact with members of the Evaluation Committee or otherwise) may result in the immediate exclusion of its tender from further consideration.

Apart from the tender opening session, the proceedings of the Evaluation Committee are conducted in camera and are confidential for supplies and works tenders, subject to the Contracting Authority's policy on access to documents. For service tenders, the proceedings of the Evaluation Committee, from the opening of tenders to the conclusion of the work of the Evaluation Committee, are conducted in camera and are confidential, subject to the Contracting Authority's policy on access to documents.

In order to maintain the confidentiality of the proceedings, participation in the Evaluation Committee meetings is strictly limited to the members of the Evaluation Committee designated by the Contracting Authority and any authorised observers.

The tenders should not leave the room/building in which the committee meetings take place before the conclusion of the work of the Evaluation Committee. They should be kept in a safe place when not in use.

2.8.3. Responsibilities of the Evaluation Committee members

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

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

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

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

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

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

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

2.8.4. Timetable

The Evaluation Committee should be formed early enough, to ensure the availability of the designated members (and any observer nominated by the European Commission, in the case of decentralised ex-ante control) during the period necessary to prepare and conduct the evaluation process. The tender evaluation should be completed as soon as possible to allow the successful tenderer to be notified by the Contracting Authority (after all necessary approvals) within the tender validity period specified in the tender dossier.

2.8.5. Period of validity

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

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

The successful tenderer must maintain its tender for a further 60 days from the date of notification of award. The further period of 60 days is added to the initial period of 90 days irrespective of the date of notification.

2.9. Award of the contract

2.9.1.1. Notifying the successful tenderer

CENTRALISED, DECENTRALISED: EX-POST

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

DECENTRALISED: EX-ANTE : In addition to the above, the European Commission must give its formal approval of award prior to the submission of the notification letter.

This notification to the successful tenderer implies that the validity of the successful tender is automatically extended for a period of 60 days. The further period is added to the initial period of 90 days irrespective of the date of notification. At the same time, the Contracting Authority requests the successful tenderer i.e. to submit the evidence required by the tender dossier to confirm the declarations made in the tender submission form **within 15 days** of the date of the notification letter. The Contracting Authority must examine the evidence submitted by the successful tenderer before sending the contract to the tenderer for signature. Where a contract is awarded under a financing agreement which had not been concluded at the time the tender procedure was launched, the Contracting Authority must not notify the successful tenderer before the financing agreement has been concluded.

BUDGET

For the restricted procedure and the competitive dialogue, evidence documents for the exclusion criteria are submitted by all the tenderers at the tender phase (see point 2.3.3).

For contracts with a value of less than the international thresholds (service <€200.000, supply <€150.000, works <€5.000.000) there is no obligation to submit the above mentioned documents (see points 2.3.3 and 2.4.12.1.1).

2.9.1.2. Contract preparation and signature

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

Prepare a contract dossier using the following structure:

- a) Explanatory note using the format in Annex A6
- b) Copy of the financing agreement authorising the project
- c) Copy of the tender announcements (contract forecast, procurement notice and shortlist), Shortlist Report, Tender Opening Report, Evaluation Report, and any other relevant information
- d) Three originals of the proposed contract, which is based on the standard contract template

The standard contract annexes for the General conditions and Forms and other relevant documents must be reproduced without modification in every contract. Only the Special Conditions should need to be completed by the Contracting Authority.

In the **DECENTRALISED: EX-ANTE** approach the Contracting Authority sends the contract dossier to the Delegation of the European Commission for endorsement. The Delegation signs all originals of the contract for endorsement (and initials all pages of the Special Conditions) to confirm the Community financing and sends them back to the Contracting Authority. No endorsement by the Delegation is required in certain cases contemplated in the Practical Guide for Programme Estimates.

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

- Send the three signed originals of the contract to the successful tenderer, who must countersign them within 30 days of receipt (and, in any case, before the expiry of the tender validity period) and
- Return two originals to the Contracting Authority together with the eventual financial guarantee(s) required in the contract. If the successful tenderer fails to do this within the specified deadline or indicates at any stage that it is not willing or able to sign the contract, the tenderer cannot be awarded the contract. The contract preparation process must be restarted from step 1 with a new contract dossier prepared using the tender which has achieved the next highest score (provided that that tender passed the technical threshold and is within the maximum budget available for the contract).

CENTRALISED, DECENTRALISED: EX-POST

On receipt of the two signed originals from the successful tenderer, check that they correspond strictly to those sent originally, and send one original to the financial service in charge of payments and the other to the Project Manager.

DECENTRALISED: EX-ANTE

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

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

2.9.1.3. Publicising the award of the contract

The Contracting Authority informs candidates and tenderers of decisions reached concerning the award of the contract as soon as possible, including the grounds for any decision not to award a contract for which there has been competitive tendering or to recommence the procedure.

Once the contract has been signed, the Contracting Authority must prepare contract award notice and send it to the European Commission, which publishes the results of the tender procedure in the Official Journal, on the EuropeAid website and in any other appropriate media. In addition, the Contracting Authority must:

- send the other tenderers a standard letter (Annexes B13, C8, D8) within not more than 15 days from receipt of the countersigned contract;
- record all statistical information concerning the procurement procedure including the contract value, the names of the other tenderers and the successful tenderer.

The Contracting Authority is responsible for preparing the contract award notice using the template in Annexes B14, C9, D9 and for submitting it for publication to the European Commission in electronic form without delay after having received the countersigned contract from the successful tenderer.

2.10. Modifying contracts

Contracts may need to be modified during their duration if the circumstances affecting project implementation have changed since the initial contract was signed. Contract modifications must be formalised through an administrative order or an addendum to the contract in accordance with the provisions of the General Conditions of the contract. Substantial modifications to the contract, including modifications to the total contract amount, must be made by means of an addendum. Such an addendum must be signed by the contracting parties (and, under a decentralised ex-ante system, approved and endorsed by the European Commission). Changes of address, changes of bank account, and changes of auditor (in the case of service contracts) may simply be notified in

writing by the contractor to the Contracting Authority, although this does not affect the right of the Contracting Authority to oppose the contractor's choice of bank account or auditor.

2.10.1. General principles

The following general principles must always be respected:

A contractor's request for contract modifications should not automatically be accepted by the Contracting Authority. There must be justified reasons for modifying a contract. The Contracting Authority must examine the reasons given and reject requests which have little or no substantiation.

Contracts can only be modified within the execution period of the contract. The purpose of the addendum must be closely connected with the nature of the project covered by the initial contract. Major changes, such as a fundamental alteration of the Terms of Reference/Technical Specifications, cannot be made by means of an addendum as the addendum must not alter the competition conditions prevailing at the time the contract was awarded.

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

Where addenda extend activities already under way such cases are considered as negotiated procedures (see points 3.2.3.1, 4.2.4.1, 5.2.4.1 for details).

For complementary services, a new contract should be signed.

For additional services, an addendum should be prepared.

Any modification extending the period of implementation must be such that implementation and final payments can be completed before the expiry of the Financing agreement under which the initial contract was financed.

2.10.2. Preparing an addendum

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

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

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

Any addendum modifying the budget must include a replacement budget showing how the full budget breakdown of the initial contract has been modified by this addendum (and any previous addenda) (see Annex B17, C13, D12).

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

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

2) Prepare a dossier comprising the following items:

- a) Explanatory note (see template in Annex A6) providing a technical and financial justification for making the modifications in the proposed addendum;
- b) Copy of the contractor's request for (or agreement to) the proposed modifications;
- c) Copy of the financing agreement authorising the project;
- d) Copy of the initial contract and any subsequent addenda;
- e) Copy of the initial tender announcements (contract forecast, procurement notice and shortlist), Shortlist Report, Tender Opening Report, Evaluation Report, and any other relevant information;
- f) Three originals of the proposed addendum, which is based on the standard addendum template and includes any revised annexes.

CENTRALISED, DECENTRALISED: EX-POST

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

DECENTRALISED: EX-ANTE

3) The Contracting Authority sends the addendum dossier to the Delegation of the European Commission for endorsement (and initials all pages of the Special Conditions) to confirm the Community financing. No endorsement by the Delegation is required in certain cases contemplated in the Practical Guide for Programme Estimates

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

CENTRALISED, DECENTRALISED: EX-POST

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

DECENTRALISED: EX-ANTE

5) On receipt of the two signed originals from the contractor, the Contracting Authority sends one to the Delegation of the European Commission.

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

3. Service contracts

3.1. Introduction

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

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

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

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

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

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

3.2. Procurement procedures

3.2.1. Contracts of €200,000 or more

3.2.1.1. Restricted procedure

All service contracts worth €200,000 or more must be awarded by restricted tender procedure following the international publication of a contract forecast and a procurement notice as laid down in point 3.3.1.1.

3.2.2. Contracts under €200,000

Contracts of a value of under €200,000 may be awarded either under the Framework Contract procedure or, if the use of an existing framework contract is impossible or has been unsuccessful, under a competitive negotiated procedure involving at least three candidates. This does not apply to cases in which point 3.2.3.1 provides for the negotiated procedure.

3.2.3. Other procedures

3.2.3.1. Negotiated procedure

CENTRALISED, DECENTRALISED: EX ANTE

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

DECENTRALISED: EX-POST

No prior approval from the European Commission is required for the use of the negotiated procedure.

For service contracts, Contracting Authorities may use the negotiated procedure on the basis of one or several tenders in the following cases:

BUDGET

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

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

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

EDF

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 points 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).

a.a) "Emergency assistance" is an additional case of negotiated procedure, distinct from the extreme urgency mentioned in a). The emergency assistance, linked to the application of article 72 and/or 73 of the Cotonou Agreement, should consequently not be mixed up with the extreme urgency, the latter being applicable for "classical" projects;

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

Non-profit institutions or associations cannot automatically be presumed to be contractors with no profit motive, and cannot therefore always be dealt with through a negotiated procedure. The negotiated procedure is admissible only where the aim of the contract is not motivated by economic or commercial considerations, and would include cases in which the operation was institutional in nature or sought, for example, to provide individuals with social assistance.

BUDGET

c) where contracts extend activities already under way; there are two scenarios for this:

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

additional services consisting of the repetition of similar services entrusted to the contractor providing these services under the initial contract, provided that a procurement notice was published for the initial contract and that the possibility of using the negotiated procedure for further services for the project as well as the estimated cost were clearly indicated in the procurement notice published for the initial contract. The contract can be extended once only, with its maximum value and duration not exceeding that of the earlier contract.

EDF

c) where contracts extend activities already under way; there are two scenarios for this:

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

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

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

EDF & BUDGET

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

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

BUDGET

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

BUDGETg)/ EDF f) where one attempt for the use of the competitive negotiated procedure/simplified procedure following the unsuccessful use of a framework contract has failed. In this case, after cancelling the competitive negotiated procedure/simplified procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.

The Contracting Authority must prepare a Negotiation Report justifying the manner in which the negotiations were conducted and the basis for the contract award decision resulting from these negotiations. The procedures given in point 3.3.12 must be followed by analogy, with the Negotiation Report being included in the contract dossier.

3.2.3.2. Competitive dialogue (Budget only)

BUDGET

In the case of particularly complex contracts where the Contracting Authority is not objectively able to define the technical means capable of satisfying the needs or objectives or able to specify the legal or financial make-up of the project and where it considers that direct use of a restricted tender procedure will not allow the contract to be awarded to the tender offering best value for

money, it may make use of this procedure. The procedure should however be used with precaution, in view of its exceptional nature.

The Contracting Authority publishes a contract notice setting out the needs and requirements. It opens a dialogue with a minimum of 3 candidates which meet the published selection criteria. All aspects of the tender can be discussed during the dialogue; however, the dialogue is conducted with each tenderer individually on the basis of their proposed solutions and ideas. The Contracting Authority has to ensure the equal treatment of tenderers as well as the confidentiality of tenders, which means that “cherry-picking” is not allowed. See point 2.4.7 for further details.

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

3.3. Restricted tenders (for contracts of €200,000 or more)

3.3.1. Publicity

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

3.3.1.1. Publication of individual contract forecasts

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

The individual contract forecasts must give a brief indication of the subject, content and value of the contracts concerned. (See template in Annex B1). Given that they are forecasts, publication does not bind the Contracting Authority to finance the contracts proposed, and service providers are not expected to submit application forms at this stage.

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

CENTRALISED, DECENTRALISED: EX-ANTE, DECENTRALISED: EX-POST

Individual contract forecasts must be submitted for publication to the relevant services of the European Commission in electronic form using the template in Annex B1 at least 15 days before the intended date of publication, to allow time for translation.

3.3.1.2. Publication of procurement notices

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

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

CENTRALISED, DECENTRALISED: EX-POST Procurement notices must be submitted for publication to the relevant services of the European Commission in electronic form, using the template in Annex B2, at least 15 days before the intended date of publication, to allow time for

translation.

DECENTRALISED: EX-ANTE

In addition to the above, the finalised Terms of Reference (see point 2.6) must also be submitted to the European Commission either at this time or in advance to demonstrate that the proposed procurement notice corresponds to the objectives of the contract.

The procurement notice must provide would-be service providers with the information they need to determine their capacity to fulfil the contract in question.

The selection criteria identified in the procurement notice must be:

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

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

The time allowed for candidates to submit their applications must be sufficient to permit proper competition. The minimum deadline for submitting applications is 30 days from the date of the notice's publication in the Official Journal of the European Union and on the EuropeAid website. The actual deadline will be determined by the contract's size and complexity.

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

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

3.3.2. Establishment of shortlists

The short-listing of candidates must be carried out by a Shortlist Panel appointed by the Contracting Authority comprising a non-voting Chairperson, a non-voting Secretary and an odd number of voting members (minimum of three) possessing the technical and administrative capacities necessary to give an informed opinion on the applications. Each member must have a reasonable command of the language in which the applications are submitted. All members of the Shortlist Panel are obliged to sign a Declaration of Impartiality and Confidentiality (see Annex A4).

CENTRALISED

The Shortlist Panel (i.e., the Chairperson, the Secretary and the voting members) must be nominated on a personal basis by the relevant services of the European Commission.

DECENTRALISED: EX-ANTE

The Shortlist Panel (i.e., the Chairperson, the Secretary and the voting members) must be nominated on a personal basis by the Contracting Authority. The composition of the Shortlist Panel must be submitted for approval to the European Commission. The composition of the committee is deemed approved if after 5 working days; the European Commission did not formulate any objection. As a general rule, the European Commission nominates an observer to follow all or part of the proceedings of the Shortlist Panel. Prior approval must be sought from the

European Commission for the participation of other observers.

DECENTRALISED: EX-POST

The Shortlist Panel (i.e., the Chairperson, the Secretary and the voting members) must be nominated on a personal basis by the Contracting Authority.

The selection procedure involves:

- establishing a long list (see template in Annex B4) summarising all the applications received;
- eliminating candidates who are ineligible (see point 2.3.1) or fall into one of the situations described in points 2.3.3 and 2.3.4;
- applying the published selection criteria without modification

For the supply of supporting documents for exclusion and selection criteria, see point 2.3.3 and 2.4.12.1.1.

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

The shortlist shall contain between four and eight candidates. If the number of eligible candidates meeting the selection criteria is greater than eight, the additional criteria published in the procurement notice will be applied in order to reduce the number of eligible candidates to eight.

BUDGET

If the number of eligible candidates meeting the selection criteria is less than the minimum of four, the Contracting Authority may invite to submit a tender only those candidates who satisfy the criteria to submit a tender.

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

Candidates not selected will be informed of that fact by the Contracting Authority by means of a standard letter, the format of which is given in Annex B7. Candidates who are selected will receive a letter of invitation to tender and the tender dossier (see template in Annex B8). At the same time, the final shortlist must be published on the EuropeAid website.

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

3.3.3. Drafting and contents of the tender dossier

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

These documents must contain all the provisions and information that candidates invited to tender need to present their tenders: the procedures to follow, the documents to provide, cases of non-compliance, award criteria and their weightings, stipulations regarding subcontracting, etc. It may be desirable for representatives of the final beneficiaries to participate in the tender preparation at an early stage. See point 2.6 for guidelines for preparing Terms of Reference. Given the technical complexity of many contracts, the preparation of the tender dossier may require the assistance of one or more external technical specialist(s). Each such specialist must sign a Declaration of Objectivity and Confidentiality (see Annex A3).

The Contracting Authority is responsible for drawing up these documents.

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

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

DECENTRALISED: EX-POST

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

TENDER DOSSIER CONTENT

In accordance with Annex B8

- A. Instructions to tenderers
- B. Draft Contract Agreement and Special Conditions with annexes
- C. Other information (Shortlist notice, Administrative compliance grid, Evaluation grid)
- D. Tender submission form

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

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

BUDGET

A guarantee will be required to cover any pre-financing payment exceeding €150,000. However, where the contractor is a public body, the responsible authorising officer may, depending on his risk assessment, waive that obligation. The guarantee will be released in one go at the very latest by the time 80% of the amount of the contract have been paid for fee-based contracts. For global price contracts, the financial guarantee must remain in force until the final payment has been made

EDF

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

3.3.4. Award criteria

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

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

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

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

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

There must be no overlap between the selection criteria, which have been used to establish the shortlist and the award criteria which will be used to determine the best tender.

3.3.5. Additional information during the procedure

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

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

3.3.6. Deadline for submission of tenders

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

CENTRALISED, DECENTRALISED: EX-ANTE, DECENTRALISED: EX-POST

The minimum period between the dispatch of the letter of invitation to tender by the Contracting Authority and the deadline for receipt of tenders is 50 days. However, in exceptional cases, (in case of centralised and decentralised ex ante: with prior authorisation from the relevant services of the European Commission), this period may be shorter.

3.3.7. Period of validity

See point 2.8.5

3.3.8. Submission of tenders

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

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

This system enables the technical offer and the financial offer to be evaluated successively and separately: it ensures that the technical quality of a tender is considered independently of the price. The tender must be submitted in accordance with the instructions to tenderers.

3.3.9. The Evaluation Committee

See point 2.8.

3.3.10. Stages in the evaluation process

3.3.10.1. Receipt and registration of tenders

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

3.3.10.2. Tender opening session

Part 1: Preparatory phase

First meeting of Evaluation Committee, which is held before starting the actual evaluation. The tender dossier should have been circulated in advance to the members of the Evaluation Committee. The Chairperson presents the purpose of the tender and explains the procedures to be followed by the Evaluation Committee, including the evaluation grid, award criteria and weightings specified in the tender dossier.

Part 2: Compliance with formal submission requirements

See tender opening checklist in Annex B9.

The Committee must decide whether or not tenders comply with the formal submission requirements at this stage (ie, following the opening of the outer envelope and the opening of the technical offer). The Summary of tenders received, which is attached to the Tender Opening Report (see Annex B10) must be used to record the compliance of each of the tenders with the formal submission requirements.

The Chairperson must check that no member of the Evaluation Committee has a potential conflict of interest with any of the tenderers (on the basis of the shortlist, the tenders received, consortium members and any identified subcontractor). See point 2.8.2

3.3.10.3. Evaluation of offers

Part 1: Administrative compliance

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

Nationality of experts (EDF) and subcontractors: the Evaluation Committee must check at this stage that the nationalities of any experts and/or subcontractors identified in the technical offers satisfy the nationality rule in point 2.3.1. If the service provider is required by the terms of

reference to provide supplies in accordance with detailed technical specifications laid down in the terms of reference, the Evaluation Committee must verify that the proposed supplies satisfy the rule of origin in point 2.3.1.

With the agreement of the other Evaluation Committee members, the Chairperson may communicate in writing with tenderers whose submissions require clarification, offering them the possibility to respond within a reasonable timelimit to be fixed by the Committee.

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

Part 2: Technical compliance

The Committee then examines the technical offers, the financial offers remaining sealed. When evaluating technical offers, each member awards each offer a score out of a maximum 100 points in accordance with the technical evaluation grid (setting out the technical criteria, sub-criteria and weightings) laid down in the tender dossier (see point 3.3.4). Under no circumstances may the Committee or its members change the technical evaluation grid communicated to the tenderers in the tender dossier.

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

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

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

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

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

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

In the case of major discrepancies, a full justification has to be provided by dissenting members during a meeting of the Evaluation Committee.

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

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

evaluation). It is recommended that tenderers which have scored close to the technical threshold also be invited for the interview. In the case of interviews, the experts are interviewed by the Committee, preferably collectively in the case of a team, at intervals close enough to permit comparison. Interviews must follow a standard format agreed beforehand by the Committee and applied to all experts or teams called to interview.

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

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

This procedure entails considerable costs both for tenderers and the Contracting Authority and should therefore be used with restraint. The indicative timetable for these interviews must be given in the tender dossier.

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

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

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

Specimen Tender Evaluation Summary

Part1: Technical Evaluation

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

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

3.3.10.4. Evaluation of financial offers

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

- The Evaluation Committee has to ensure that the financial offer satisfies all formal requirements. A financial offer not meeting these requirements may be rejected. Any rejection on these grounds will have to be fully justified in the Evaluation Report.

- The Evaluation Committee checks that the financial offers contain no arithmetical errors. Any arithmetical errors are corrected without penalty to the tenderer.

The envelopes containing the financial offers of rejected tenderers following the technical evaluation must remain unopened and retained.

BUDGET

The total contract value comprises the fees (including employment-related overheads), the incidental expenditure and the provision for expenditure verification, which are specified in the tender dossier. This total contract value is compared with the maximum budget available for the contract. Tenders exceeding the maximum budget allocated for the contract are eliminated.

The Evaluation Committee then proceeds with the financial comparison of the fees between the different financial offers. The provision for incidental expenditure, as well as the provision for expenditure verification are excluded from the comparison of the financial offers as it was specified in the tender dossier.

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

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

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

EDF

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 and direct costs, 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 (EDF: fees, direct/lump-sum costs etc)		Eliminated following technical evaluation	€951 322	€1 060 452
Financial score (lowest total fees/actual total fees x 100)			100	951 322/1 060 452 x100 = 89.71

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

3.3.10.5. Conclusions of the Evaluation Committee

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

- the scores awarded to the technical offers by 0,80
- the scores awarded to the financial offers by 0,20.

Specimen Tender Evaluation Summary Part 3: Composite Evaluation

	Maximum possible	Tenderer 1	Tenderer 2	Tenderer 3
Technical score x 0.80		Eliminated following technical evaluation	99,22 x 0.80 = 79.38	100.00 x 0.80 = 80.00
Financial score x 0.20			100.00 x 0.20= 20.00	89.71 x 0.20= 17.94
Overall score			79.38 + 20.00= 99.38	80.00 + 17.94= 97.94
Final ranking			1	2

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

EDF

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.

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

- Award the contract to the tenderer which has submitted a tender:
 - which complies with the formal requirements and the eligibility rules;
 - whose total budget is within the maximum budget available for the project;
 - which meets the minimum technical requirements specified in the tender dossier; and
 - which is the most economically advantageous tender (satisfying all of the above conditions).
- Cancel the tender procedure in exceptional circumstances, such as:
 - None of the tenders satisfies the selection/award criteria of the tender procedure;
 - No tenders achieved the minimum threshold during the technical evaluation;
 - The total price (comprising both the fees, the incidental expenditure and the provision for expenditure verification for BUDGET and comprising both the fees, direct/lump-sum costs etc and reimbursables for EDF) of all tenders received exceed the maximum amount available for the contract.

CENTRALISED

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex B11) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee. This must be submitted for approval to the relevant services of the

European Commission, which must decide whether or not to accept its recommendations.

DECENTRALISED: EX-ANTE

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

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

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

DECENTRALISED: EX-POST

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

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

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

Subject to the Contracting Authority's policy on access to documents, the entire tender procedure is confidential until the signature of the contract by both parties. The Evaluation Committee's decisions are collective and its deliberations must remain secret. The Committee members and any observers are bound to secrecy.

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

3.3.11. Cancelling the tender procedure

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

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

EDF

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

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

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

3.3.12. Award of the contract**3.3.12.1. Notifying the successful tenderer**

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

3.3.12.2. Contract preparation and signature

See point 2.9.

The proposed contract must follow Annex B8

3.3.12.3. Publicising the award of the contract

See point 2.9.

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

Where the European Commission concludes a contract (i.e., in a centralised tender procedure) and where the beneficiary has not participated in the Evaluation Committee as evaluator, it is required to notify the beneficiary country, through the Delegation of the European Commission accredited to the country concerned, of the name of the successful tenderer and obtain its approval of the key experts proposed. Such a request is not a request for approval of the European Commission's evaluation. The beneficiary country may not withhold its approval unless it submits duly substantiated and justified objections to the proposed experts in writing to the Delegation of the European Commission within 30 days of the date of the request for approval.

For EDF, the approval of the beneficiary country must be sought in all cases.

3.3.14. Provision and replacement of experts

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

Whatever the form, the key experts to be provided by the contractor must be identified and named in the contract.

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

CENTRALISED, DECENTRALISED: EX-POST

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

DECENTRALISED: EX-ANTE

In addition to the above, the prior approval of the European Commission is required before cancelling the contract.

However, the contract must not only identify the key staff to be provided but specify the qualifications and experience required of them. This is important if the contractor has to replace staff after the contract has been signed and concluded. This situation may arise before performance of the contract has even begun or while it is in progress.

CENTRALISED, DECENTRALISED: EX-POST

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

DECENTRALISED: EX-ANTE

In addition to the above, the prior approval of the European Commission is required.

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

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

CENTRALISED, DECENTRALISED: EX POST

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

DECENTRALISED: EX-ANTE

In addition to the above, the prior approval of the European Commission is required before submitting the request for replacement.

Where a member of staff has to be replaced, the replacement must possess at least equivalent qualifications and experience and his fee-rate may in no circumstances exceed that of the expert replaced. Where the contractor is unable to provide a replacement possessing equivalent qualifications and/or experience, the Contracting Authority may either terminate the contract, if it feels that its performance is jeopardised, or, if it feels that this is not the case, accept the replacement, in which case the latter's fees are to be negotiated downwards to reflect the proper level of remuneration. Any additional expenses resulting from the replacement of staff are borne by the contractor except in the case of replacement resulting from death or where the Contracting Authority requests a replacement not provided for by the contract. Where an expert is not replaced immediately and some time elapses before the new expert takes up his functions, the Contracting

Authority may ask the contractor to assign a temporary expert to the project pending the new expert's arrival or to take other steps to bridge the gap. Whatever the case may be, the Contracting Authority will make no payment for the period of absence of the expert or his replacement (whether temporary or permanent).

3.4. Procedures for the award of contracts under €200,000

3.4.1. Framework contracts

For short-term, technical assistance contracts under €200,000 and with a performance period (ie, duration of actual services to be provided) of under 12 months, the Contracting Authority must use the Framework Contract. The duration of such contracts may not exceed four years, save in exceptional cases justified in particular by the subject of the framework contract. Contracting Authorities may not use framework contracts in such a way that the purpose or effect is to prevent, restrict or distort competition. Detailed information including templates for the Framework Contracts can be found on the EuropeAid website.

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

3.4.2. Competitive negotiated procedure (BUDGET)/ Simplified procedure (EDF)

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

Note that the competitive negotiated procedure/ simplified procedure requires more time than the procedure to initiate an assignment under the Framework Contract.

The Contracting Authority draws up a list of at least three service providers of its choice. The candidates are sent a letter of invitation to tender accompanied by a tender dossier.

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

BUDGET

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

EDF

If the Contracting Authority does not receive at least three valid tenders (ie arrived on time and respecting the formal submission requirements), the procedure must be cancelled and started again. Consequently, it would be prudent to invite tenders from more than three service providers.

In the event of 1 failure of the competitive negotiated procedure/simplified procedure, following the unsuccessful use of a framework contract, the contract may be concluded by negotiated procedure subject to the prior approval of the relevant services of the European Commission. The procedure for evaluating the tenders and awarding the contract is the same as under the restricted procedure (see points 3.3.9 to 3.3.12.2).

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

3.5. Modifying service contracts

See point 2.10.

4. Supply contracts

4.1. Introduction

Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products. A contract for the supply of products and, incidentally, for siting and installation shall be considered a supply contract.

4.2. Procurement procedures

4.2.1. Contracts of €150,000 or more (BUDGET)/contracts of more than €150,000 (EDF)

4.2.1.1. International open procedure

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

4.2.2. Contracts between €30,000 and €150,000 (BUDGET and EDF)

4.2.2.1. Local open procedure

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

4.2.3. Contracts under €30,000 – competitive negotiated procedure(BUDGET)/ simplified procedure (EDF)

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

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

4.2.4. Other procedures

4.2.4.1. Negotiated procedure

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

No prior approval from the European Commission is required.

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

BUDGET

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

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

EDF

a) where unforeseeable events oblige the Contracting Authority to act with an urgency incompatible with the period laid down for the open or simplified procedures. The circumstances invoked to justify extreme urgency must in no way be attributable to the Contracting Authority. In this context, the latter shall enter freely into such discussions as it may consider appropriate with the prospective tenderers whom it has short-listed in agreement with the Head of Delegation and award the contract to the tenderer whom it has selected.

a.a) Emergency assistance is an additional case of negotiated procedure, distinct from the extreme urgency mentioned in a). The emergency assistance, linked to the application of article 72 and/or 73 of the Cotonou Agreement, should consequently not be mixed up with the extreme urgency, the latter being applicable for “classical” projects.

BUDGET & EDF

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

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

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

e) where after two attempts the competitive negotiated tender procedure has been unsuccessful, that is to say, where no administratively and technically valid tender or no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the competitive negotiated procedure, the Contracting Authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.

The Contracting Authority must prepare a Negotiation Report justifying the manner in which the negotiations were conducted and the basis for the contract award decision resulting from these

negotiations. The procedures described in point 4.3.11 must be followed by analogy, with the Negotiation Report being included in the contract dossier.

4.2.4.2. Dynamic purchasing system (BUDGET only)

BUDGET

A dynamic purchasing system is a completely electronic process for making commonly used purchases which is limited in duration (max 4 years). A contract notice is published to invite for indicative tenders which should be evaluated within 15 days. The tenderers that comply with the specifications are admitted to the system. The system is open throughout its validity to any economic operator who satisfies the selection criteria and has submitted an indicative tender that is found compliant.

For each individual contract, a simplified contract notice is published giving tenderers that have not yet been admitted to the system the possibility to submit an indicative tender within 15 days. The Contracting Authority then invites all the tenderers admitted to the system to submit a tender within a reasonable time limit. The contract will be awarded to the tenderer who has submitted the tender offering best value for money on the basis of the award criteria specified in the contract notice for the establishment of the dynamic purchasing system.

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

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

4.2.4.3. Competitive dialogue (BUDGET only)

BUDGET

In the case of particularly complex contracts where the Contracting Authority is not objectively able to define the technical means capable of satisfying the needs or objectives or able to specify the legal or financial make-up of the project and where it considers that direct use of a restricted tender procedure will not allow the contract to be awarded to the tender offering best value for money, it may make use of this procedure. The procedure should however be used with precaution, in view of its exceptional nature.

The Contracting Authority publishes a contract notice setting out the needs and requirements. It opens a dialogue with a minimum of 3 candidates which meet the published selection criteria. All aspects of the tender can be discussed during the dialogue; however, the dialogue is conducted with each tenderer individually on the basis of their proposed solutions and ideas. The Contracting Authority has to ensure the equal treatment of tenderers as well as the confidentiality of tenders, which means that “cherry-picking” is not allowed. See point 2.4.7 for further details.

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

4.3. International open tender (BUDGET- for contracts of €150,000 or more/EDF- 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 contract forecast and a procurement notice must be published for every open tender procedure.

4.3.1.1. Publication of individual contract forecasts

An individual contract forecast setting out the specific characteristics of the planned tender procedure, must be published, save in exceptional circumstances, at least 30 days before the publication of the procurement notice. The individual contract forecasts must give a brief indication of the subject and content of the tenders concerned. (See template in Annex C1). Given that they are forecasts, publication does not bind the Contracting Authority to finance the contracts proposed and prospective suppliers are not expected to submit tenders at this stage.

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

CENTRALISED, DECENTRALISED: EX-ANTE, DECENTRALISED: EX-POST

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

4.3.1.2. Publication of procurement notices

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

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

CENTRALISED, DECENTRALISED: EX-ANTE, DECENTRALISED: EX-POST

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

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

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

4.3.2. Drafting and contents of the tender dossier

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

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

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

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

The Contracting Authority is responsible for drawing up these documents.

CENTRALISED, DECENTRALISED: EX-ANTE, DECENTRALISED: EX-POST

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

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

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

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

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

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

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

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

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

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

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

DECENTRALISED: EX-POST

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

TENDER DOSSIER CONTENT**A. INSTRUCTIONS TO TENDERERS****B. DRAFT CONTRACT, SPECIAL CONDITIONS AND ANNEXES
(INCL TECHNICAL SPECIFICATIONS)****C. FURTHER INFORMATION****D. TENDER FORM FOR A SUPPLY CONTRACT**

See standard format in Annex C4.

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

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

BUDGET

A guarantee is required in return for the payment of pre-financing exceeding €150,000. However, where the contractor is a public body, the responsible authorising officer may, depending on his risk assessment, waive that obligation. The guarantee will be released after provisional acceptance in accordance with the terms of the contract.

EDF

A guarantee is required in return for the payment of pre-financing. It will be released after provisional acceptance in accordance with the terms of the contract.

4.3.3. Selection and award criteria

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

1. eliminating tenderers who are ineligible (see point 2.3.1) or fall into one of the situations described in points 2.3.3 and 2.3.5;
2. checking that the tenderers' financial situation (financial and economic capacity) is sound; as backed up, for example, by balance sheets and turnover for the previous three years (see point 2.4.12.1.3) if specifically required in the Tender Dossier
3. verifying the tenderers' technical and professional capacities, for example by looking at their average annual staffing levels, the size and professional experience of their management and the main services supplied and supplies delivered in the field in question in recent years (see point 2.4.12.1.4).

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

If, for some exceptional reason which the Contracting Authority considers justified, the tenderer is unable to provide the references required by the Contracting Authority, it may prove its economic and financial capacity by any other means which the Contracting Authority considers appropriate. Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the Contracting Authority or on its behalf by a competent official body of the country in which tenderer is established, subject to that body's agreement. Such checks shall concern the tenderer's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

Only successful tenderers have to supply supporting documents for the selection criteria before the award of the contract (optional for Budget for contracts below €50,000, see point 2.4.12.1.1)

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

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

4.3.3.1. Supply contracts not including ancillary services

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

If the selected tender exceeds the maximum budget available for the contract, the provisions of point 4.2.4.1(d) apply.

4.3.3.2. Supply contracts including ancillary services

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

If the selected tender exceeds the maximum budget available for the contract, the provisions of point 4.2.4.1(d) apply.

4.3.3.3. Particularly complex supplies

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

CENTRALISED, DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

4.3.4. Additional information during the procedure

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

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

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

If the tender has a particularly complex technical content, the Contracting Authority may organise an information meeting or site visit. This meeting must be announced in the tender dossier and must take place at least 21 days before the expiry of the deadline. All costs of attending such a meeting must be met by the tenderers. Visits by individual companies during the tender period cannot be permitted unless information meetings and/or site visits have been specifically scheduled for all tenderers.

4.3.5. Deadline for the submission of tenders

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

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

CENTRALISED, DECENTRALISED: EX-ANTE

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

with the prior authorization of the relevant services of the European Commission.

DECENTRALISED: EX-POST

No prior authorization is required from the European Commission in the case of shorter deadline.

4.3.6. Period of validity

See point 2.8.5

4.3.7. Submission of tenders

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

4.3.8. The Evaluation Committee

See point 2.8.

4.3.9. Stages in the evaluation process

4.3.9.1. Receipt and registration of tenders

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

4.3.9.2. Preparatory meeting

First meeting of Evaluation Committee to be held before the tender opening session. The tender dossier should have been distributed in advance to the members of the Evaluation Committee. The Chairperson presents the purpose of the tender, the procedures to be followed by the Evaluation Committee including the evaluation grid and selection and award criteria specified in the tender dossier.

4.3.9.3. Tender opening session

The purpose of the tender-opening session is to check that the tenders are complete, that the requisite tender guarantee has been provided and that the tenders are generally in order.

The tender opening session is a formal, public process. The Evaluation Committee opens the tenders in public at the place and time fixed in the tender dossier. Although it is public, participation in the tender opening session is restricted to representatives of the companies which are tendering for the contract. See tender opening checklist in Annex C5 for the detailed formalities to be carried out by the Chairperson with the assistance of the Secretary.

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

The Chairperson must check that no member of the Evaluation Committee has a potential conflict of interest with any of the tenderers (on the basis of the tenders received, consortium members and any identified subcontractor). See point 2.8.2

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

Eventual tender guarantees must be returned to the tenderers. This implies that any tenders which arrive after the submission deadline must also be opened (after the opening session) so that the guarantees can be returned.

4.3.9.4. Evaluation of technical offers

It is obligatory that the Evaluation Committee uses the administrative compliance grid and the evaluation grid published in the tender dossier.

As part of the technical evaluation, the Evaluation Committee analyses the commercial aspects, and, where applicable, the service component of the tenders to determine whether they satisfy the requirements set in the tender dossier. The results are recorded in a YES/NO grid for all elements specified in the tender dossier. No scoring method should be used. If the tender is divided into lots, the evaluation should be carried out lot-by-lot.

Part 1: Administrative compliance

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

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

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

- the documentation is complete
- the language required by the tender dossier has been used

For consortia: the confirmation of association and designation of a lead company has been signed by all consortium members.

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

With the agreement of the other Evaluation Committee members, the Chairperson may communicate in writing with tenderers whose submissions require clarification, offering them the possibility to respond by fax within a reasonable time limit to be fixed by the Committee.

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

Part 2: Technical compliance of tenders

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

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

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

Rule of origin: All tenders must satisfy the rule that the goods to be supplied fulfil the requirements as mentioned in point 2.3.1. In case of any doubt as to the origin of goods, additional information must be requested. Should doubts persist, the advice of the European Commission should be sought (in the case it is not the Contracting Authority).

The tenderer will be required to provide, if possible prior to the signature of the contract, proof of origin in the form of a Certificate of Origin or other official documentation as prima facie evidence.

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

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

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

Having evaluated the tenders, the Evaluation Committee rules on the technical compliance of each tender, classifying it as technically compliant or not technically compliant. Where contracts include after-sales service and/or training, the technical quality of such services is also assessed during the technical evaluation in accordance with the published criteria. If variants are allowed and if the tenderer submitting the compliant tender with the lowest price also has submitted a variant solution, the variant tender from this tenderer should also be evaluated.

4.3.9.5. Evaluation of financial offers

Once the technical evaluation has been completed, the Committee checks that the financial offers contain no arithmetical errors. Any arithmetical errors are corrected without penalty to the tenderer. If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot, taking into consideration any eventual discounts granted by the tenderers.

Specimen of application of discounts:

Company A offers a discount of 20% if awarded Lots 1 and 3, Company B offers a discount of 10% if awarded all three Lots, Company C offers NO discount

	Company A	Company B	Company C	Ranking without discount
LOT 1	90	80	70	Company C
LOT 2	not bidding	40	50	Company B
LOT 3	60	70	55	Company C

After applying the discount:

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

The 3 combinations possible:

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

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

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

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

4.3.9.6. Choice of contractor

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

If the chosen tender exceeds the maximum budget available for the contract, the provisions set out in point 4.2.4.1(d) apply.

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

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

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

EDF

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: to the tenderer of an ACP State; or

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

offers the best possible use of the physical and human resources of the ACP States;

offers the greatest subcontracting possibilities to ACP companies, firms or natural persons; or

is a consortium of natural persons, companies and firms from ACP States and the European Community.

4.3.9.7. Conclusions of the Evaluation Committee

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

- Award the contract to the tenderer which has submitted a tender:
 - which complies with the formal requirements and the eligibility rules;
 - whose total budget is within the maximum budget available for the project;
 - which meets the minimum technical requirements specified in the tender dossier; and
 - which is the least expensive tender (satisfying all of the above conditions).
- Cancel the tender procedure, for example when:
 - None of the tenders satisfies the selection/award criteria of the tender procedure
 - All tenders received exceed the maximum budget available for the contract.

CENTRALISED

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

DECENTRALISED: EX-ANTE

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex C7) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee. This must be submitted for approval to the relevant services of the Contracting Authority, which must decide whether or not to accept its recommendations. The Contracting Authority must then submit the Evaluation Report together with recommendation of the Contracting Authority to the European Commission for approval. If there is an award proposal and the European Commission has not already received the original tender of the recommended tenderer and copies of the other tenders, these must be submitted.

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

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

DECENTRALISED: EX-POST

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

The report is drawn up. The Contracting Authority will then take its decision. The entire evaluation procedure, including notification of the successful tenderer, must be completed while the tenders

are still valid. It is important to bear in mind that the successful tenderer might be unable to maintain its tender if the evaluation procedure takes too long.

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

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

4.3.10. Cancelling the tender procedure

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

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

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

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

4.3.11. Award of the contract

4.3.11.1. Notifying the successful tenderer

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

4.3.11.2. Contract preparation and signature

See point 2.9

The proposed contract must follow Annex C4.

4.3.11.3. Publicising the award of the contract

See point 2.9

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

In this case, the procurement notice is not published in the Official Journal of the European Union but only in the beneficiary country. The European Commission publishes the references of such tender procedures (dossier number, country, Contracting Authority and type of contract) on the EuropeAid website with the address from which firms can obtain further information. The procurement notice for a local tender must as a minimum be published in the Official Journal of the beneficiary country or any equivalent media. This publication is under the responsibility of the beneficiary country.

As the cost of publishing the full procurement notice in the local media may be high, the template in Annex C3 gives the minimum information, which must be included in a local advertisement. However, the full procurement notice must be available from the address referred to in the advertisement, together with the tender dossier. It is also possible to publish the tender dossier and the procurement notice on the EuropeAid website and indicate this in the Summary Procurement Notice (Annex C3).

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

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

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

If it proves impossible to identify potential tenderers in the case of a local open tender procedure, a corrigendum notice setting out eventual changes to the tender dossier must be published. The deadline for the submission of tenders may be extended to allow tenderers to take account of the changes. Possible clarifications during the tender procedure shall be published locally and on the EuropeAid website and a reference where to find possible clarifications is to be given in the Summary Procurement Notice (Annex C3).

The Contracting Authority may require a tender guarantee.

4.5. Competitive negotiated procedure (BUDGET)/ Simplified procedure (EDF) for contracts under €30,000

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

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

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

BUDGET

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

EDF

If the Contracting Authority receives fewer than three valid tenders (i.e. arrived on time and respecting the formal submission requirements), the procedure must be cancelled and started again. Consequently, it would be prudent to invite tenders from more than three contractors.

In the event of 2 successive failures of the competitive negotiated procedure/ simplified procedure, the contract may be concluded by negotiated procedure subject to the prior approval of the relevant services of the European Commission. The remainder of the procedure (including preparation of the tender dossier, evaluating the tenders and awarding the contract) is the same as under the international open procedure (see points 4.3.2 to 4.3.11.2). No tender guarantee is required in this case.

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

4.6. Modifying supply contracts

See point 2.10.

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

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

5. Works contracts

5.1. Introduction

Works contracts cover either the execution, or both the execution and design, of works or a work related to one of the activities referred to in Annex I to Directive 2004/18/EC of the European Parliament and the Council (BUDGET) or the realisation, by whatever means, of a work corresponding to the requirements specified by the Contracting Authority. A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.

Works contracts are usually concluded by the beneficiary with, which the Commission draws up a financing agreement (decentralised contracts).

5.2. Procurement procedures

5.2.1. Contracts of €5,000,000 or more (BUDGET) / Contracts of more than €5,000,000 (EDF)

5.2.1.1. Open procedure

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

5.2.1.2. Restricted procedure (BUDGET ONLY)

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

5.2.2. Contracts of between €300,000 and €5,000,000

5.2.2.1. Local open procedure

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

5.2.3. Contracts under €300,000 – competitive negotiated procedure(BUDGET)/simplified procedure (EDF)

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

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

5.2.4. Other procedures

5.2.4.1. Negotiated procedure

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

No prior approval from the European Commission is required.

Works contracts may be awarded by negotiated procedure with one or several tenders, after the Commission has given its agreement if it is not the Contracting Authority, in the following cases:

BUDGET

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

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

EDF

a) where unforeseeable events oblige the Contracting Authority to act with an urgency incompatible with the period laid down for the open, restricted or simplified procedures. The circumstances invoked to justify extreme urgency must in no way be attributable to the Contracting Authority. In this context, the latter shall enter freely into such discussions as it may consider appropriate with the prospective tenderers whom it has short-listed in agreement with the Head of Delegation and award the contract to the tenderer whom it has selected.

a.a) Emergency assistance is an additional case of negotiated procedure, distinct from the extreme urgency mentioned in a). The emergency assistance, linked to the application of article 72 and/or 73 of the Cotonou Agreement, should consequently not be mixed up with the extreme urgency, the latter being applicable for “classical” projects

BUDGET & EDF

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

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

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

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

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

d) where after two attempts the competitive negotiated tender procedure has been unsuccessful, that is to say, where no administratively and technically valid tender or no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the competitive negotiated procedure, the Contracting Authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.

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

5.2.4.2. Competitive dialogue (Budget only)

BUDGET

In the case of particularly complex contracts where the Contracting Authority is not objectively able to define the technical means capable of satisfying the needs or objectives or able to specify the legal or financial make-up of the project and where it considers that direct use of a restricted tender procedure will not allow the contract to be awarded to the tender offering best value for money, it may make use of this procedure. The procedure should however be used with precaution, in view of its exceptional nature.

The Contracting Authority publishes a contract notice setting out the needs and requirements. It opens a dialogue with a minimum of 3 candidates which meet the published selection criteria. All aspects of the tenderer can be discussed during the dialogue; however, the dialogue is conducted with each tenderer individually on the basis of their proposed solutions and ideas. The Contracting Authority has to ensure the equal treatment of tenderers as well as the confidentiality of tenders, which means that “cherry-picking” is not allowed. See point 2.4.7 for further details.

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

5.3. International open tender (for contracts of €5,000,000 or more BUDGET/for contracts of more than €5,000,000 EDF)

5.3.1. Publicity

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

5.3.1.1. Publication of individual contract forecasts

An individual contract forecast setting out the specific characteristics of the planned tender procedure, must be published, save in exceptional circumstances, at least 30 days before the publication of the procurement notice. The individual contract forecasts must give a brief indication of the subject and content of the tenders concerned. Contract forecasts are sent as soon as possible

after the decision approving the programme for works contracts. (See template in Annex D1). Given that they are forecasts, publication does not bind the Contracting Authority to finance the contracts proposed and prospective contractors are not expected to submit tenders at this stage.

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

CENTRALISED, DECENTRALISED: EX-ANTE, DECENTRALISED: EX-POST

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

5.3.1.2. Publication of procurement notices

In addition to contract forecasts, all works contracts of €5,000,000 or more (BUDGET) or more than €5,000,000 (EDF) must also be the subject of a procurement notice published in the Official Journal of the European Union, on the EuropeAid website and in any other appropriate media. A minimum of 30 days must be allowed to elapse between the publication of the contract forecast and the procurement notice. The European Commission (acting on behalf of the Contracting Authority) is responsible for publication in the Official Journal of the European Union and on the EuropeAid website, while, if the procurement notice is published locally, the Contracting Authority must arrange local publication directly.

CENTRALISED, DECENTRALISED: EX-POST

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

DECENTRALISED: EX-ANTE

In addition to the above, the finalised tender dossier (see point 5.3.2) must also be submitted to the European Commission either at this time or in advance to demonstrate that the proposed procurement notice corresponds to the objectives of the contract.

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

The Contracting Authority must send tender dossiers to would-be tenderers upon request. Because of their size and printing costs, tender dossiers for works contracts are usually sent out for a fixed fee. The tender dossier will also be available for inspection at the premises of the Contracting Authority and the European Commission.

5.3.2. Drafting and contents of the tender dossier

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

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

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

Those characteristics include:

- a) the quality levels;
- b) environmental performance;
- c) wherever possible, the accessibility criteria for people with disabilities or the design for all users;
- d) the levels and procedures of conformity assessment;
- e) fitness for use;
- f) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production procedures and methods;
- g) the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the Contracting Authority may impose under general or specific regulations in relation to the finished works and to the materials or parts which they involve

The Contracting Authority is responsible for drawing up these documents.

CENTRALISED, DECENTRALISED: EX-ANTE, DECENTRALISED: EX-POST

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

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

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

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

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

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

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

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

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

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

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

DECENTRALISED: EX-POST

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

The tender dossier must contain the following documents:

TENDER DOSSIER CONTENT

Volume 1: Instructions to tenderer and tender forms

Volume 2: Draft contract and conditions

Volume 3: Technical specifications

Volume 4: Model financial bid

Volume 5: Design documents and drawings

See Annex D4 for template.

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

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

BUDGET

A guarantee is required in return for the payment of pre-financing exceeding €150,000. However, when the contractor is a public body, the responsible authorising officer may, depending on his risk assessment, waive that obligation. The guarantee will be released as and when the pre-financing is deducted from interim payments or payments of balances made to the contractor in accordance with the terms of the contract.

EDF

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

5.3.3. Selection and award criteria

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

The selection procedure involves:

1. eliminating tenderers who are ineligible (see point 2.3.1) or fall into one of the situations described in points 2.3.3 and 2.3.5;
2. checking that the tenderers' financial situation (financial and economic capacity) is sound, as backed up, for example, by balance sheets and turnover for the previous three years (see point 2.4.12.1.3) if specifically required in the Tender Dossier;
3. verifying the tenderers' technical and professional capacities, for example by looking at their average annual staffing levels, the size and professional experience of their management and the main services performed, supplies delivered and works carried out in the field in question in recent years (see point 2.4.12.1.4).

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

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

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

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

5.3.4. Additional information during the procedure

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

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

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

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

If the tender has a particularly complex technical content, the Contracting Authority may organise an information meeting or site visit. This meeting must be announced in the tender dossier and must take place at least 21 days before the expiry of the deadline. All costs of attending such a meeting must be met by the tenderers. Visits by individual companies during the tender period are permitted on the condition that the Contracting Authority has given its prior authorization, ensuring transparency and equal treatment.

5.3.5. Deadline for the submission of tenders

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

CENTRALISED, DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

No prior authorization is required from the European Commission in the case of shorter deadline.

5.3.6. Period of validity

See point 2.8.5

5.3.7. Submission of tenders

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

5.3.8. The Evaluation Committee

See point 2.8.

5.3.9. Stages in the evaluation process

5.3.9.1. Receipt and registration of tenders

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

5.3.9.2. Preparatory meeting

First meeting of Evaluation Committee to be held before the tender opening session. The tender dossier should have been distributed in advance to the members of the Evaluation Committee. The Chairperson presents the purpose of the tender and explains the procedures to be followed by the Evaluation Committee including evaluation grids, selection and award criteria specified in the tender dossier.

5.3.9.3. Tender opening session

The purpose of the tender-opening session is to check that the tenders are complete, that the requisite tender guarantee has been provided and that the tenders are generally in order.

The tender opening session is a formal, public process. The Evaluation Committee opens the tenders in public at the place and time fixed in the tender dossier. Although it is public, participation in the tender opening session is restricted to representatives of the companies which are tendering for the contract.

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

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

The Chairperson must check that no member of the Evaluation Committee has a potential conflict of interest with any of the tenderers (on the basis of the eventual shortlist, the tenders received, consortium members and any identified subcontractor). See point 2.8.2

The Committee must decide whether or not tenders comply with the formal requirements. The Summary of tenders received, which is attached to the Tender Opening Report (see Annex D6) must be used to record the compliance of each of the tenders with the formal submission requirements. It may be made available to the tenderers upon request. Eventual tender guarantees must be returned to the tenderers. This implies that any tenders which arrive after the submission deadline must also be opened (after the opening session) so that the guarantees can be returned.

5.3.9.4. Evaluation of offers

It is obligatory that the Evaluation Committee uses the administrative compliance grid and the evaluation grid published in the tender dossier.

As part of the technical evaluation, the Evaluation Committee analyses the commercial aspects, and, where applicable, the service component of the tenders to determine whether they satisfy the requirements set in the tender dossier. The results are recorded in a YES/NO grid for all elements specified in the tender dossier. No scoring method should be used. If the tender is divided into lots, the evaluation should be carried out lot-by-lot.

Part 1: Administrative compliance

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

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

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

With the agreement of the other Evaluation Committee members, the Chairperson may communicate in writing with tenderers whose submissions require clarification, offering them the possibility to respond by fax within a reasonable time limit to be fixed by the Committee.

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

Part 2: Technical compliance of tenders

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

Rule of origin: All tenders must satisfy the rule that the goods to be supplied and the materials to be used for the construction fulfil the requirement as mentioned in point 2.3.1. Tenders which clearly fail to satisfy the rule of origin must be rejected. The rule of origin does not apply to the contractor's equipment which will be used during the construction.

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

Having evaluated the tenders, the Evaluation Committee rules on the technical compliance of each tender, classifying it as technically compliant or not technically compliant. If variants are allowed and if the tenderer submitting the compliant tender with the lowest price has also submitted a variant solution, the variant tender should also be evaluated.

5.3.9.5. Evaluation of financial offers

Once the technical evaluation has been completed, the Committee checks that the financial offers contain no arithmetical errors. Any arithmetical errors are corrected without penalty to the tenderer. If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the best financial offer for each lot, taking due account of any discounts offered.

For a specimen of application of discounts, see point 4.3.9.5

5.3.9.6. Choice of contractor

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

If the chosen tender exceeds the maximum budget available for the contract, the provisions set out in point 5.2.4.1(c) apply. In the case of abnormally low tenders, the Evaluation Committee must request any relevant information concerning the composition of the tender. If, for a given contract, tenders appear to be abnormally low, the Contracting Authority must, before rejecting such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and verify those constituent elements, after due hearing of the parties, taking account of the explanations received. The Contracting Authority may, in particular, take into consideration explanations relating to:

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

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

EDF

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

-to the tenderer of an ACP State; or

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

-offers the best possible use of the physical and human resources of the ACP States;

-offers the greatest subcontracting possibilities to ACP companies, firms or natural persons; or

-is a consortium of natural persons, companies and firms from ACP States and the European Community.

5.3.9.7. Conclusions of the Evaluation Committee

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

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

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

Cancel the tender procedure for example when:

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

CENTRALISED

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

DECENTRALISED: EX-ANTE

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex D7) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee. This must be submitted for approval to the relevant services of the Contracting Authority, which must decide whether or not to accept its recommendations. In addition to the above, the Contracting Authority must then submit the Evaluation Report together with the recommendation of the Contracting Authority to the European Commission for approval. If there is an award proposal and the European Commission has not already received the original tender of the recommended tenderer and copies of the other tenders, these must be submitted.

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

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

DECENTRALISED: EX-POST

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

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

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

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

5.3.10. Cancelling the tender procedure

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

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

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

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

5.3.11. Award of the contract**5.3.11.1. Notifying the successful tenderer**

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

5.3.11.2. Contract signature

See point 2.9

The proposed contract must follow Annex D4

5.3.11.3. Publicising the award of the contract

See point 2.9

5.4. Restricted tender for contracts of €5,000,000 or more (BUDGET only)**CENTRALISED, DECENTRALISED: EX-ANTE**

In exceptional cases justified by the special characteristics of certain projects, a restricted tender procedure may be used. The relevant services of the European Commission must give their prior approval to the use of this approach and will provide technical support on a case-by-case basis.

DECENTRALISED: EX-POST

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

The publication of the procurement notice in the Official Journal of the European Union, on the EuropeAid website and in any other appropriate media remains mandatory.

The restricted procedure begins with a short-listing phase which must be specially designed for each project. On the basis of the outcome of this short-listing phase, the Contracting Authority draws up a list of firms that will be invited to tender (after obtaining the European Commission's approval, in the case of decentralised ex-ante control).

The Contracting Authority sends a letter of invitation to tender accompanied by the tender dossier only to the candidates on the shortlist.

In this procedure, there must be a minimum of 60 days between the date of dispatch of the letters of invitation to tender and the deadline for receipt of tenders.

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

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

In this case, the procurement notice is not published in the Official Journal of the European Union but only in the beneficiary country. The European Commission publishes the references of such tender procedures (dossier number, country, Contracting Authority and type of contract) on the EuropeAid website with the address from which firms can obtain further information. The procurement notice for a local tender must as a minimum be published in the Official Journal of the beneficiary country or any equivalent media. This publication is under the responsibility of the beneficiary country.

As the cost of publishing the full procurement notice in the local media may be high, the template in Annex D3 gives the minimum information which must be included in a local advertisement. However, the full procurement notice must be available from the address referred to in the advertisement, together with the tender dossier.

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

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

If it proves impossible to identify potential tenderers in the case of a local open tender procedure, a corrigendum notice setting out eventual changes to the tender dossier must be published. The deadline for the submission of tenders may be extended to allow tenderers to take account of the changes. Possible clarifications during the tender procedure shall be published locally and on the EuropeAid website and a reference where to find possible clarifications is to be given in the Summary Procurement Notice (Annex D3).

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

EDF

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.

5.6. Competitive negotiated procedure(BUDGET)/ Simplified procedure (EDF) for contracts under €300,000

The Contracting Authority may award contracts under €300,000 by competitive negotiated procedure/ simplified procedure, without publication. The Contracting Authority draws up a list of at least three contractors. The candidates are sent a letter of invitation to tender accompanied by a tender dossier.

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

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

BUDGET

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

EDF

If the Contracting Authority receives fewer than three valid tenders (ie arrived on time and respecting the formal submission requirements) the procedure must be cancelled and started again. Consequently, it would be prudent to invite tenders from more than three contractors.

In the event of 2 successive failures of the competitive negotiated procedure/simplified procedure, the contract may be concluded by negotiated procedure subject to the prior approval of the relevant services of the European Commission. The remainder of the procedure (including preparation of the tender dossier, evaluating the tenders and awarding the contract) is the same as under the international open procedure (see points 5.3.2 to 5.3.11.2). No tender guarantee is required in this case.

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

5.7. Modifying works contracts

See point 2.10

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

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

- where such works cannot be technically or economically separated from the main contract without serious inconvenience for the Contracting Authority;
- where such works, although separable from the performance of the initial contract, are absolutely necessary to its completion.

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

6. Grants

6.1. Introduction

6.1.1. Definition

A grant is a direct financial contribution, by way of donation, from the EU budget or the EDF, in order to finance:

- either an action intended to help achieve an objective forming part of an European Union policy;
- or the functioning of a body which pursues an aim of general European interest or has an objective forming part of an European Union policy.

In other words, it is a payment of a non-commercial nature by the Contracting Authority to a specific beneficiary to implement an action intended to help achieve an objective forming part of a European Union policy or 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.

In certain cases the grant may also finance the operation of a body which pursues an aim of general European interest or has an objective forming part of a European Union policy or an objective of the ACP-EC Agreement or the Overseas Association Decision.

A body pursuing an aim of general European interest is: a European body involved in education, training, information, innovation or research and study on European policies, any activities contributing to the promotion of citizenship or human rights, or a European standards body; or a European network representing non-profit bodies active in the Member States or in the candidate countries and promoting principles and policies consistent with the objectives of the Treaties.

The body signing a grant contract is known as the grant beneficiary and should not be confused with the final beneficiary of the operation¹⁰ nor with the target group¹¹.

Grants should be distinguished from other legal commitments entered into in the external action framework and the correct rules applied accordingly. A grant contract can be distinguished from a procurement contract in a number of ways:

A grant is made for an operation which is proposed to the Contracting Authority by a potential beneficiary (an “applicant”) and falls within the normal framework of the beneficiary's activities. This is in contrast to a procurement contract, in which the Contracting Authority draws up the terms of reference for a project it wants to be carried out.

A contract should be classified as a procurement contract rather than a grant contract if its subject matter relates primarily or broadly to the administrative functions of the Contracting Authority.

A grant beneficiary is responsible for implementing the operation and retains ownership of its results. By contrast, under a procurement contract, it is the Contracting Authority which owns the results of the project and closely supervises its implementation.

A grant beneficiary generally contributes to the financing of the action except in cases where full Community financing is essential for the action to be carried out or 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 whose immediate objective is non-commercial. Under no circumstances may the grant give rise to profits (ie, it must be restricted to the amount required

¹⁰ “Final beneficiaries” are those who will benefit from the project in the long term at the level of the society or sector at large

¹¹ “Target groups” are the groups/entities who will be directly positively affected by the project at the Project Purpose level

to balance income and expenditure for the action, see point 6.2.7). Grant beneficiaries are generally non-profit-making.

The fact that a body is non-profit-making does not necessarily mean that a contract to be concluded with it will be a grant contract; non-profit bodies can also tender for procurement contracts. The action itself must be of a non-commercial nature.

The grant is expressed by ways of a percentage and a maximum amount of the eligible costs of the action actually incurred by the beneficiary. The amount of a procurement contract, on the other hand, represents a price fixed in accordance with competitive tendering rules.

For the purposes of this Guide, joint management with international organisations implies a grant (see 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 e.g. 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 54, 55 and 185 of the Financial Regulation applicable to the Budget and 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 or related agreements, direct-labour contracts and other agreements with the bodies referred to in Articles 54, 55 and 185 of the Financial Regulation applicable to the Budget and 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 about whether an operation should be considered as a grant, the Contracting Authority may refer to the European Commission for advice.

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

An action eligible to receive grant funding must be clearly identified. No action may be split for the purpose of evading compliance with the rules laid down in this Practical Guide.

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

6.1.2. Centralised and decentralised management

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

Centralised:

decisions are taken by the European Commission, acting for and on behalf of the beneficiary country. In this case, actions to be performed by the Contracting Authority throughout this Practical Guide should be interpreted as being carried out by the European Commission (ie, Commission headquarters or the delegation in the beneficiary country), acting for and on behalf of the beneficiary country.

Decentralised:

- **Ex ante:** decisions concerning the award of contracts are taken by the Contracting Authority but referred for prior approval to the European Commission.
- **Ex post:** decisions are taken by the Contracting Authority without prior reference to the European Commission (apart from exceptions to the standard procedures given in this Practical Guide).

The “decentralised ex post” approach does not apply to the EDF.

In all cases, the Contracting Authority assumes full responsibility for its actions and will be accountable for them in any subsequent audit or other investigation. The endorsement, where appropriate, by the Commission of decentralised contracts only implies its agreement to finance the contract. In the event of failure to comply with the procedures foreseen in this Practical Guide, expenditure on the operations in question shall not be eligible for Community financing.

Interventions by Commission representatives in the course of decentralised procedures for the conclusion or implementation of contracts financed in the framework of external actions only aim at ascertaining whether the conditions for Community financing are met. They are not meant to and cannot undermine the principle that the contracts in question remain national contracts, which only the decentralised contracting authorities are responsible for preparing, negotiating and concluding. Applicants or beneficiaries of these contracts cannot be considered as addressees of deeds from Commission representatives during the conclusion or implementation of these contracts. Indeed they only have a legal relationship with the decentralised contracting authorities and the acts of Commission representatives may not substitute a decision by the Contracting Authority by a Community decision with regard to them.

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

CENTRALISED

Procedures to be followed under a centralised programme.

DECENTRALISED:EX-ANTE

Procedures to be followed under a decentralised programme with ex-ante controls.

DECENTRALISED: EX-POST

Procedures to be followed under a decentralised programme with ex-post controls.

CENTRALISED

Grants are awarded by the European Commission acting for and on behalf of the beneficiary country. The Commission is responsible for publishing work programmes, issuing Calls for Proposals, receiving proposals, chairing evaluation sessions, deciding on the results of Calls for Proposals and signing the contracts.

DECENTRALISED: EX-ANTE

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

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

On the basis of decisions thus approved, and in close consultation with the European Commission, the Contracting Authority is responsible for publishing annual work programmes, issuing calls for proposals, receiving proposals, chairing evaluation sessions and deciding on the results of calls for proposals. The Contracting Authority must submit the Evaluation Report, details of the proposed grants and, where appropriate, the draft contracts to the European Commission for endorsement. No endorsement by the Delegation is however needed in certain cases contemplated in the Practical Guide for Programme Estimates.

Once the grant has been approved, the Contracting Authority will sign the contract and notify the European Commission accordingly. As a general rule, the European Commission will be represented as an observer when proposals are opened and evaluated and must always be invited.

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

The application of the derogations specifically provided for by this Practical Guide is subject to the prior approval of the relevant services of the European Commission.

DECENTRALISED: EX-POST

Grants are awarded by the Contracting Authority designated in the financing agreement, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the financing agreement. It is responsible for publishing annual work programmes, issuing Calls for Proposals, receiving proposals, chairing evaluation sessions, deciding on the results of Calls for Proposals and signing the contracts. No prior approval from the European Commission is required.

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

6.1.3. Eligibility criteria

6.1.3.1. Nationality rule

BUDGET

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

1) In particular, participation in the award of grants contracts is open on equal terms to all legal persons who are established in:

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

Participation of natural persons is directly governed by the specific instrument applicable to the programme under which the contract is financed.

Participation is also opened to international organisations.

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

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

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

By way of exception, depending on the nature of the action or the objective pursued by the applicant, natural persons may receive grants if this is provided for in the basic act.

For the purposes of aid channelled directly through NGOs, within the meaning of Council Regulation (EC) No 1658/98 of 17 July 1998 on co-financing operations with European non-governmental development organisations (NGOs) in fields of interest to the developing countries¹², the above-mentioned rules of nationality shall not apply to the eligibility criteria established for the selection of grant beneficiaries. Beneficiaries of these grants shall abide by the rules established in this Regulation where the implementation of the aid channelled directly through NGOs requires the award of procurement contracts.

EDF

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 (all natural and legal persons from ACP States and Member States of the Community¹³) and to international organisations. Whenever the Funds finances an operation implemented through an international organisation, participation in procedures for the awarding of grants shall be open to all natural and legal persons who are eligible the rules mentioned above, and to all natural and legal persons who are eligible according to the rules of the organisation, care being taken to ensure equal treatment of all donors. Furthermore, whenever the Fund finances an operation implemented as part of a regional initiative, participation in procedures for the awarding of grants shall be open to all natural and legal persons who are eligible under the rules mentioned above, and to all natural and legal persons from a country participating in the relevant initiative. Finally, whenever the Fund finances an operation co-financed with a third State, participation in procedures for the awarding of grants shall be open to all natural and legal persons eligible under the rules mentioned above, and to all persons eligible under the rules of the above mentioned third State. By way of exception,

¹²OJ L 213, 30.7.1998, p. 1. Regulation as amended by Regulation (EC) No 1882/2003.

¹³ 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;

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 to circumvent the rules on nationality.

6.1.3.2. Exceptions to the nationality rule

In duly substantiated exceptional cases, where allowed by the basic act, the nationality rule may be waived.

The possibility of waiver must be specifically mentioned in the Guidelines for Applicants and is subject to the specific prior approval of the European Commission.

Moreover, the Regulations on access to Community external assistance specify that in duly substantiated exceptional cases, the Commission may extend eligibility to legal persons from a country not eligible.

6.1.3.3. Grounds for exclusion

Natural or legal persons are **not entitled** to participate in Calls for Proposals or be awarded grants if:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they have been convicted of an offence concerning professional conduct by a judgement which has the force of res judicata (ie, against which no appeal is possible);
- c) they are guilty of grave professional misconduct proven by any means which the Contracting Authority can justify;
- d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Contracting Authority or those of the country where the action is to take place;
- e) they have been the subject of a judgement which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- f) they have been declared to be in serious breach of contract for failure to comply with their contractual obligations following a procurement procedure or another grant award procedure financed by the Community budget.

Natural or legal persons are also excluded from participation in Calls for Proposals or the award of grants if, at the time of the call for proposals, they:

- g) are subject to a conflict of interest;

- h) are guilty of misrepresentation in supplying the information required by the Contracting Authority as a condition of participation in the call for proposals or fail to supply this information;
- i) have attempted to obtain confidential information or influence the Evaluation Committee or the Contracting Authority during the evaluation process of the current or previous Calls for Proposals.

In the cases referred to in points (a), (c), (d), (f), (h) and (i) above, the exclusion applies for a period of two years from the time when the infringement is established. In the cases referred to in points (b) and (e), the exclusion applies for a period of four years from the date of notification of the judgement.

Applicants must sign their applications including the declaration that they do not fall into any of the above categories (a) to (f).

6.2. Basic rules for grants

The award of grants is subject to the principles of programming, transparency and equal treatment. They may not be cumulative or awarded retrospectively and they must involve co-financing. The grant may not have the purpose or effect of producing a profit for the beneficiary. Compliance with rules of sound management is required.

6.2.1. Programming

Grants must be programmed by the Contracting Authority with clearly defined objectives¹⁴.

The annual programme must be published, by budget heading or programme, on the Internet site of the Contracting Authority (or any other appropriate media) and on the grants part of the EuropeAid website: <http://europa.eu.int/comm/europeaid/cgi/frame12.pl> as appropriate, following the work programme template 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 in the work programme during the relevant year must also be adopted and published in the same conditions as the initial work programme.

CENTRALISED

The work programme will be adopted by the Commission and published on the grants part of the EuropeAid website not later than 31 March of each financial year.

DECENTRALISED: EX-ANTE

The work programme will be adopted by the Contracting Authority and published on its Internet site (or any other appropriate media) and on the grants part of the Internet site of EuropeAid Co-operation Office not later than 31 March of each financial year.

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

DECENTRALISED: EX-POST

The work programme will be adopted by the Contracting Authority and published on its Internet site (or any other appropriate media) and on the grants part of the Internet site of EuropeAid Co-operation Office not later than 31 March of each financial year.

6.2.2. Transparency

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

¹⁴ This does not apply to crisis management aid within the meaning of article 168.2 of the Implementing Rules of the Financial Regulation.

The work programme will accordingly be implemented through the publication of calls for proposals save in duly substantiated exceptional cases of urgency or where the characteristics of the beneficiary make it the sole choice for a given action (see point 6.3.2).

All grants awarded in the course of a financial year will be published annually with due observance of the requirements of confidentiality and security (see point 6.4.10.4).

6.2.3. Equal treatment

The grant award process must be completely impartial. This means notably that the proposals must be selected by an Evaluation Committee, with the advice of assessors where appropriate, using the published eligibility and evaluation (selection and award) criteria (see point 6.4.3).

6.2.4. Non-cumulation

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

Under the centralised management system, however, an action may be financed jointly from separate budget lines by a number of authorising officers.

6.2.5. Non-retroactivity

Grants may, as a rule, only cover costs incurred after the date on which the grant contract is signed. A grant may be awarded for an action which has already begun only where the applicant can demonstrate the need to start the action before the contract is signed.

In such cases, expenditure incurred prior to the deadline for submitting proposals or, in the case of direct award, the date of submission of the grant application, and if applicable the date of signature of the relevant financing agreement, will not be eligible for financing. No grant may be awarded retroactively for actions already completed.¹⁵

The contract for an operating grant may not be signed more than four months after the start of the beneficiary's budget year. Expenditure incurred before the grant application was lodged or before the start of the beneficiary's budget year will not be eligible for financing.

6.2.6. Co-financing

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

The beneficiary supplies evidence of the amount of the cofinancing brought either with its own resources either in the form of financial transfers from third parties.

The Contracting Authority may accept co-financing in kind, if considered necessary or appropriate. For grants with a total value of less than or equal to EUR 25 000, the Contracting Authority may, depending on his risk assessment, waive the obligation to provide evidence for co-financing.

BUDGET

The financing of an action in full may be authorised in the following cases, save where prohibited by the basic act:

¹⁵ In the case of crisis situations within the meaning of article 168, paragraph 2 of the Implementing Rules of the Financial Regulation, expenditure incurred by a beneficiary before the date of submission of the application shall be eligible for Community financing solely in the following cases : where the expenditure relates to the constitution of stocks by the applicant for use in connection with the action for which the grant is awarded ; by way of exception and for properly substantiated reasons, where the financing decision and the grant contract explicitly provide for this by setting an eligibility date earlier than the date for submission of the application.

- humanitarian aid, including assistance for refugees, uprooted persons, rehabilitation and mine clearance;
- aid in crisis situations within the meaning of article 168 paragraph 2 of the Implementing Rules of the Financial Regulation;
- actions to protect health or the fundamental rights of peoples;
- actions resulting from the implementation of financing agreements or actions with international organisations.

The Contracting Authority must be in a position to show that financing in full is essential to carry out the action in question and must substantiate its award decision accordingly.

EDF

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 aggregate receipts over costs for the action in question at the time when the request is made for final payment of a grant for an action. However, in the case of actions designed specifically to strengthen the financial capacity of a beneficiary, profit is defined as the distribution of the surplus revenue resulting from its activity to the members making up the beneficiary body, leading to their personal enrichment.
- A surplus balance on the operating budget of a body in receipt of an operating grant.

The above provisions do not apply to study, research or training scholarships paid to natural persons, nor to prizes awarded following contests.

In the case of operating grants to bodies which pursue an aim of general European interest, the Contracting Authority shall be entitled to recover the percentage of the annual profit corresponding to the Community contribution to the operating budget of the bodies concerned where these bodies are also funded by public authorities which are themselves required to recover the percentage of the annual profit corresponding to their contribution. For the purpose of calculating the amount to be recovered, the percentage corresponding to the contributions in kind to the operating budget shall not be taken into account

6.2.8. Rules of sound management

Availability of funds: before initiating any grant award process, the funds must be available. Call for proposals can however be launched with “suspension clause”, after prior approval. The call for proposals is then launched before the Financing Decision or before signature of the Financing Agreement between the European Commission and the beneficiary country. Award of the grants is subject to the availability of funds. The existence of the “suspension clause” must explicitly be mentioned in the Guidelines. The call for proposals shall be cancelled if the Commission Decision is not taken or if the Financing Agreement is not signed.

Use of standard documents: the standard grant contract and other document formats (as provided in the Annexes) must be used according to the rules.

Record keeping: written records of the entire evaluation procedure must be kept confidential and retained by the Contracting Authority for seven years after the grant award decision. These must

include the originals of all proposals submitted, together with the corresponding Call for Proposals and any related correspondence.

Procurement of services, supplies or works for a grant-funded action: if the implementation of an action involves the procurement of services, supplies or works by the grant beneficiary, the contract award procedures specified in point 6.8 of this Guide must be applied for each procurement contract.

Any deviation from the procedures set out in this part 6 requires the prior approval of the European Commission.

6.3. Award procedures

6.3.1. Call for proposals

Grants must be awarded following the publication of a Call for Proposals except in the cases listed in point 6.3.2 below.

6.3.1.1. International or local publication

A call for proposals is always published on the grants part of the EuropeAid website .

A call for proposals must also be published locally where it is not organised by a service of the European Commission headquarters.

6.3.1.2. Open or restricted call for proposals

Calls for proposals are open as a rule and all applicants are free to submit a grant application form in response to the Guidelines for Applicants published on the EuropeAid website (see point 6.4.2).

However, where warranted by the technical nature of the field or the expected number of proposals, the Contracting Authority may organise a restricted call for proposals in accordance with the rules in point 6.6: potential applicants are shortlisted on the basis of a concept note (see **Annex E3b_1**) 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, DECENTRALISED : EX- ANTE

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

DECENTRALISED: EX-POST

No prior approval by the European Commission is required for the use of a restricted call for proposals.

6.3.1.3. Partnerships

Grant contracts may form part of framework partnership agreements with a view to establishing long-term cooperation with the Contracting Authority. Framework agreements specify the common objectives, the nature of actions planned on a one-off basis or as part of an approved annual work programme, the procedure for awarding specific grants, in compliance with the principles and procedural rules in this Guide, and the general rights and obligations of each party under the specific contracts. The duration of framework agreements may not exceed four years. Framework partnership agreements are treated as grants for the purposes of the award procedure.

Partnerships of this nature (between the Contracting Authority and the beneficiary) are rare and not to be confused with the possibility frequently used by beneficiaries of carrying out an action in partnership with one or more other organisations as their "partners".

CENTRALISED, DECENTRALISED : EX-ANTE

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

DECENTRALISED: EX-POST

No prior approval by the European Commission is required for the use of a framework partnership agreement.

6.3.2. Grants awarded without calls for proposals (“Direct award”)

CENTRALISED, DECENTRALISED : EX-ANTE

The prior approval of the relevant services of the European Commission must be sought for use of the direct award procedure

DECENTRALISED: EX-POST

No prior approval by the European Commission is required for the use of the direct award procedure

Only in the following circumstances is it unnecessary to organise a Call for Proposals before awarding grants:

- In duly substantiated exceptional cases of urgency, i.e., where unforeseeable events oblige the Contracting Authority to act with an urgency incompatible with the periods laid down for Call for Proposals procedures described in 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).

Actions carried out in crisis situations as described below are considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in consultation with the other authorising officers by delegation concerned, establishes that a crisis situation exists and reviews his decision regularly having regard to the principle of sound financial management.

Crisis situations shall be understood to mean, for third countries, situations posing a threat to law and order, the security and safety of individuals, threatening to escalate into armed conflict or to destabilise the country, and which could seriously harm:

- (a) the safeguarding of the common values, fundamental interests, independence and integrity of the European Union;
- (b) the security of the European Union, peace-keeping and international security, promotion of international cooperation or development and strengthening of democracy, the rule of law, respect for human rights and fundamental freedoms.

For the EDF, the notion of crisis situation also covers humanitarian and emergency assistance within the meaning of articles 72 and 73 of the ACP-EC Partnership Agreement.

Only the competent services of the European Commission may declare the existence of a crisis situation.

- Where the grant is awarded to a body with a de jure or de facto monopoly, duly substantiated in the award decision.

For these purposes, "de facto" or "de jure" monopoly means that the beneficiary, which may be a consortium:

- has exclusive competence in the field of activity and/or geographical area to which the grant relates pursuant to any applicable law; or
- is the only organisation (i) operating or (ii) capable of operating in the field of activity and/or geographical area to which the grant relates by virtue of all considerations of fact and law.

- Where the grant is to be awarded to a body identified in the relevant basic act as a recipient of a grant.
- Where the grant is to be awarded to an international organisation for the implementation by joint management of a specific action which is in keeping with that organisation's mandate and jointly identified by it and the Contracting Authority.
- in case of grants of a low amount in decentralised management (see point 6.5)

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, with the aforementioned report being included in the contract dossier.

6.4. Call for proposals

6.4.1. Publicity

In order to ensure the widest possible participation and the requisite transparency, Guidelines for applicants must be published for every Call for Proposals. Guidelines for applicants must clearly identify the Contracting Authority and the purpose of the Call for Proposals.

Guidelines are published on the Internet and in any other appropriate media (specialised press, local publications, etc.). They 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.

The European Commission is responsible for publication on the grants part of the EuropeAid website. When the Contracting Authority is not a service of the European Commission headquarters, it must arrange local publication directly at the same time as it is published on the Internet.

Since the publication cost of the entire Guidelines in the local press may be prohibitive, the template in Annex E2 prescribes the minimum information which is required for a local publication. The Guidelines have to be available at the address mentioned in the local publication.

It is also advisable, after the launch of the call for proposals, to organise one or more information sessions which all the potential applicants can attend.

6.4.2. Drafting and contents of the guidelines for applicants

The Guidelines for Applicants (which include an Application Form and other annexes) explain the purpose of the Call for Proposals, the rules regarding the eligibility of applicants and partners, the types of action and costs which are eligible for financing, and the evaluation (selection and award) criteria. They also contain instructions on how to fill in the application form, what to annex to it and what procedures to follow for applying. They give information on the evaluation process that will follow (including an indicative timetable) and the contractual conditions which will apply to successful applicants.

The Guidelines should set out very clearly and in detail the objectives and priorities of the call for proposals, and give particular attention to the eligibility criteria. The information published in this connection will subsequently become binding on the Evaluation Committee. The evaluation grids 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:

- a concept note
- information about the action proposed, including its budget
- information about the applicant

- information about any partners.

The Guidelines should be drafted for each Call for Proposals using the template provided in Annex E3a (E3b for restricted calls).

CENTRALISED

The Guidelines for Applicants must be approved by the relevant services of the European Commission prior to issue.

DECENTRALISED: EX-ANTE

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

Where the European Commission will not make the payments under the contract on behalf of the Contracting Authority, the relevant Commission services will determine and communicate in writing, on the basis of their analysis of management risks, whether the Contracting Authority has to submit the Guidelines for Applicants to the European Commission for approval prior to issue.

DECENTRALISED: EX-POST

No prior approval of the Guidelines for Applicants by the European Commission is required.

6.4.3. Eligibility and evaluation (selection and award) 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 (Rules on nationality) and 6.1.4.3 (Grounds for exclusion).
If a Call for Proposals relates to actions to be implemented in partnership, the minimum number of partners and the eligibility criteria applicable to each of the partners of the lead applicant must be specified. The eligibility criteria applicable to the lead applicant and to the partners may differ.
- Eligibility of the action: this refers to the types of activities, sectors or themes and geographical areas covered by the Call for Proposals.
- Eligibility of costs: this details the types of costs which may be financed. In brief they must be real costs, which will actually be incurred and are necessary for carrying out the project.

6.4.3.2. Evaluation criteria: selection and award

The evaluation criteria consist of selection and award criteria, all of which are defined in the evaluation grids.

- The published selection criteria are designed to assess the applicant's financial and operational capacity to complete the proposed action: the applicant must have stable and sufficient sources of funding to maintain its activity throughout the period during which the action is being carried out and to participate, where appropriate, in its funding. Applicants and their partners must also have the necessary professional competencies and qualifications to complete the proposed action.

The verification of financial capacity based in particular on an analysis of the supporting documents requested from the applicants does not apply to natural persons in receipt of scholarships, public bodies or international organisations.

- The published award criteria are used to assess the quality of proposals against the set objectives and priorities, so that grants are awarded to the actions which maximise the overall effectiveness of the call for proposals. They should enable the Contracting

Authority to select proposals which it can be confident will comply with its objectives and priorities and guarantee the visibility of the Community financing.

The award criteria relate, in particular, to the relevance of the action and its compatibility with the objectives of the grant programme under which the Call for Proposals is being financed, to the quality, expected impact and sustainability of the action, and to its cost-effectiveness.

All eligibility and evaluation criteria specified in the Call for Proposals must be applied as they stand and cannot in any circumstances be changed in the course of the procedure. The criteria should be precise, non-discriminatory and not prejudicial to fair competition. See the templates of evaluation grids given in Annexes E5a and E5b.

6.4.4. Additional information before the deadline for submission of proposals

During the time between publication and the deadline for the submission of proposals, and in addition to the information session mentioned in point 6.4.1, applicants should be able to ask questions to help them fill in the form and put together their applications. The Contracting Authority should therefore provide a contact point to which questions may be addressed. Applicants may submit questions of substance in writing up to 21 days before the deadline for the submission of proposals. The Contracting Authority must reply to all such questions at least 11 days before the deadline for submission of proposals.

In the interests of transparency and equal opportunity, the answer provided to one applicant on points which may be of interest to the other applicants should be made available to all the others. The easiest - and recommended - way to achieve this is to publish on the Internet, where appropriate, a table of questions and answers along with the Guidelines for Applicants. This must be updated regularly until 11 days before the deadline for submission of proposals.

6.4.5. Deadline for submission of proposals

Proposals must **reach** the Contracting Authority at the address and, at the very latest, by the date and time indicated in the Call for Proposals. The deadline for submission must be long enough to allow for high-quality proposals. Experience shows that too short a deadline may prevent would-be applicants from submitting proposals or cause them to submit incomplete or ill-prepared proposals. The deadline for submissions must be at the close of business of a working day in the country in which the Contracting Authority is situated (e.g., 16:00 local time on a Tuesday).

The minimum period between the date of publication of the Guidelines and the deadline for receipt of proposals is 90 days. When the maximum size of each grant to be awarded within the programme is less or equal to €100,000, the minimum period is 60 days. In exceptional cases, a shorter deadline may be allowed as a derogation.

A call for proposals may set more than one deadline for submissions, either to allow for staggered processing or in cases where the actions to be financed cannot by their nature be planned long in advance. In this case, proposals received by the Contracting Authority after one deadline are automatically carried over to the next.

6.4.6. Submission of proposals

Each proposal must be placed in a sealed parcel or envelope bearing:

- the address for submission of proposals indicated in the Call for Proposals;
- the number and title of the Call for Proposals to which the applicant is responding;
- the full name and address of the applicant;

- the words "Not to be opened before the opening session" written in the language of the Call for Proposals **and** in the local language if the call for proposals is not organised by a European Commission headquarters service.

Applications must be sent by registered mail or courier service or delivered by hand. They must contain the original and the number of copies of the completed concept note, application form, budget and logical framework. These documents should also be provided in electronic format where so required in the call for proposals.

The application form consists of a concept note, the application form itself, a checklist and a declaration by which the applicants must declare that:

- they (and their partners as applicable) do not fall into any of the categories mentioned in points (a) to (f) of point 6.1.4.3;
- they (and their partners as applicable) are eligible
- they possess the sources of funding and professional competencies and qualifications referred to in point 6.4.3.2.

The Authorizing Officer responsible for an individual call for proposals has the discretion to decide whether to request the supporting documents from all the applicants with the application form or only from the applicants which have been provisionally selected after the evaluation. Even if this does not change the basic principle that the supporting documents will be examined only for the provisionally selected applicants, the Guidelines for applicants and the Application form should be adapted accordingly. No supporting document will be requested for applications for a grant not exceeding EUR 25 000.

Originals or photocopies of the said originals of the requested supporting documents must be provided. If the supporting documents are not written in one of the official languages of the European Union or if applicable of the country of implementation of the Action, a translation into the language/one of the languages of the call for proposals of the relevant excerpts of these documents showing proof of the applicant's eligibility may be requested for the purposes of interpreting the proposal.

In the case of actions where the cost to be financed exceeds €500,000 and operating grants of over €100,000, the applicant must provide an external audit report produced by an approved auditor. The report must certify the accounts for the last financial year available. The obligation does not extend to international organisations nor to public bodies. Depending on his risk assessment, the Contracting Authority may waive the obligation of audit for secondary and higher education establishments.

6.4.7. The Evaluation Committee

6.4.7.1. Composition

Proposals are evaluated by an Evaluation Committee appointed by the Contracting Authority comprising a non-voting Chairperson, a non-voting Secretary and an odd number of voting members (minimum of three). The voting members must possess the technical and administrative capacities necessary to give an informed opinion on the proposals. They must represent at least two organisational entities of the Contracting Authority with no hierarchical link between them, unless the call for proposals is organised by a delegation of the European Commission. Substitutes to the members can be nominated in the same conditions as the titulars where justified by the size and/or the technical nature of the call for proposals.

CENTRALISED

The Evaluation Committee (i.e., the Chairperson, the Secretary and the voting members) must be nominated by name by the relevant services of the European Commission. The participation of other observers must be authorised in advance by the European Commission.

DECENTRALISED: EX-ANTE

The Evaluation Committee (i.e., the Chairperson, the Secretary and the voting members), must be nominated by name by the Contracting Authority which informs the European Commission. The composition of the Evaluation Committee is considered approved if after 5 working days the European Commission has not raised any objection. The European Commission may nominate an observer to follow all or part of the proceedings of the Evaluation Committee. The participation of other observers must be submitted for prior approval to the European Commission.

DECENTRALISED: EX-POST

The Evaluation Committee (i.e., the Chairperson, the Secretary and the voting members), must be nominated by name by the Contracting Authority. The participation of other observers must be authorised in advance by the Contracting Authority.

The Evaluation Committee members should attend all meetings, except the opening meeting. Any absence must be recorded and explained in the Evaluation Report Evaluation Committee. Member who withdraws from the Evaluation Committee for whatever reason must be replaced by his substitute or following the standard procedure for appointing members of the Evaluation Committee, as explained in this point 6.4.7.1. The Chairperson of the Evaluation Committee determines to what extent the evaluation process must be restarted. Such decision as well as any decision relating to the replacement of a committee member must be recorded and justified in the evaluation report.

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

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

6.4.7.2. Use of assessors

Where the proposals received are particularly numerous or highly technical, it may not always be possible for the Evaluation Committee to examine each one in detail. If necessary, all or part of this detailed examination may be carried out by assessors so that the Evaluation Committee may conduct its deliberations on the basis of their assessments.

Assessors work under the supervision of the Chairperson of the Evaluation Committee. Although the same assessors may be used for the different stages, different types of expertise are required for the different assessments and it is recommended to use different persons wherever possible.

- With respect to the administrative check and the verification of eligibility, the task of assessors consists of carrying out a screening of each proposal on the basis of the Checklist (section V of the application form) and the Declaration by the applicant (section VI of the application form, see Annex E3a_1). Each proposal need only be screened by one assessor. It would be preferable to delegate this work to officials or other staff members of the Contracting Authority. Outside assessors may be recruited as required.
- With respect to the evaluation of the concept notes and of the proposals, the task of assessors consists of carrying out a written assessment on the basis of the published evaluation grids (see Annexes E5a and E5b). At least two assessors must assess each concept note and each proposal, working independently of each other. These two assessors should preferably be chosen internally within the Commission services. Where there are no

sufficient internal resources, external assessors can however also be chosen. The external assessors must have an in-depth knowledge of the issues covered by the grant programme concerned. Their expertise should be verified on the basis of their CVs. A minimum of five years' experience of a particular issue should be expected. **Where the call for proposals is organised by a service of the European Commission headquarters, one of the two assessors will be the delegation of the country where the action is to take place (in case of regional projects it is the leading delegation, which will consult the delegations concerned in the region where appropriate).**

CENTRALISED

The assessors are selected by the competent service of the European Commission. Outside assessors who are not officials or other staff of the Contracting Authority or the public administration of the beneficiary country must be selected using the appropriate framework contract or, failing that, in accordance with the general procurement procedures in the Financial Regulation.

DECENTRALISED: EX-ANTE

The assessors are selected by the Contracting Authority. The list must be submitted for approval to the European Commission. Outside assessors who are not officials or other staff of the Contracting Authority or the public administration of the beneficiary country must be selected using the appropriate framework contract or, failing that, in accordance with the standard procedures in part 3 of this Practical Guide.

DECENTRALISED: EX-POST

The assessors are selected by the Contracting Authority. Outside assessors who are not officials or other staff of the Contracting Authority or the public administration of the beneficiary country must be selected using the appropriate framework contract or, failing that, in accordance with the standard procedures in part 3 of this Practical Guide.

Assessors may attend the meetings of the Evaluation Committee as observers to present the results of their assessments and answer any questions from Committee members.

6.4.7.3. Impartiality and confidentiality

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

There is a conflict of interests where the impartial and objective exercise of the functions of a member or observer of the Evaluation Committee or of an assessor is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with an applicant.

No information about the examination, clarification, evaluation or decisions about the grant award can be disclosed. **Any attempt by an applicant to influence the process in any way (whether by initiating contact with members of the Evaluation Committee/assessors or otherwise) will result in the immediate exclusion of its proposal from further consideration and in its exclusion from participating in calls for proposals for a period of two years.**

The proceedings of the Evaluation Committee, from the opening of proposals to the conclusion of its work, are conducted in camera and are confidential.

In order to maintain the confidentiality of the proceedings, participation in Evaluation Committee meetings is restricted to the members of the Evaluation Committee, any assessors designated by the Contracting Authority and any authorised observers.

Apart from the copies given to any assessor(s), the proposals should not leave the room/building in which the committee meetings take place before the conclusion of the work of the Evaluation Committee. They should be kept in a safe place when not in use.

6.4.7.4. Responsibilities of the Evaluation Committee

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

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

- circulating and collecting the Declarations of Impartiality and Confidentiality;
- supervising the opening session;
- ensuring that evaluation grids are completed and made available in good time to the members of the Evaluation Committee;
- keeping and filing the minutes of all meetings of the Evaluation Committee; and
- registering attendance at meetings and compiling the Evaluation Report and its supporting annexes.

With the agreement of the other Evaluation Committee members, the Chairperson may communicate in writing with applicants whose proposals require clarification, offering them the opportunity to respond within a reasonable deadline to be fixed by the Committee.

Any request for clarification requiring communication with the applicants during the evaluation process must be conducted in writing and signed by both the Chairperson and the Secretary of the Evaluation Committee. Copies of any such communication must be annexed to the Evaluation Report.

6.4.8. Stages in the evaluation process

The evaluation process starts with the receipt of the proposals by the Contracting Authority, and ends with the decision to award grants to the selected applicants. The procedure is set out below.

6.4.8.1. Receipt and registration of proposals

On receiving proposals, the Contracting Authority must register them and provide a receipt for those delivered by hand (see template in Annex E4). The envelopes containing the proposals must remain sealed and be kept in a safe place until they are opened.

6.4.8.2. Opening session and administrative check

All proposals received within the deadline (and, as the case may be, the proposals received after the deadline) should be opened in an opening session at which the registration details will be checked and completed and the proposals numbered.

The secretary to the Evaluation Committee supervises the opening session and requests the assistance of other staff of the Contracting Authority as need be.

The registration of proposals should contain the following information:

- registration number of proposal
- date of arrival
- the applicant's name and address.

For each proposal,

- the original is kept safely in the archives of the Contracting Authority;
- the copies are distributed to the evaluators and, where appropriate, to the assessors.

The proposals having met the deadline are then subject to an administrative check, which will assess whether they satisfy all the criteria mentioned in the checklist (section V of the grant application form). Under no circumstances may assessors or members of the Evaluation Committee change this checklist.

Incomplete dossiers will be disqualified from the evaluation process. However, if some of the criteria are not satisfied, according to the option chosen in the call for proposals, the applicant is rejected or invited to submit a clarification within the deadline fixed by the Evaluation Committee. In the latter, the Evaluation Committee may use its discretion to decide whether or not it should still be considered during the rest of the evaluation process, while ensuring the equal treatment of proposals and in accordance with the principle of proportionality. Whatever the Evaluation Committee decides, this must be fully recorded and justified in the Evaluation Report.

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

- proposal submitted in fewer number of copies than required;
- a proposal that contains a scanned signature (the signature can be requested subsequently);

The Contracting Authority must keep proposals not considered for further evaluation.

The administrative check 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 check themselves, the Evaluation Committee must review the conclusions of the assessors on the basis of their completed grids. In order to facilitate the Evaluation Committee's review of the assessments, the Secretary to the Evaluation Committee must ensure that one list is drawn up containing proposals which did not satisfy the administrative criteria mentioned in the checklist. For each entry on the list, the criteria non satisfied must be identified.

Following the opening session and the administrative check, the Evaluation Committee meets to decide on any contentious case and sign the **Proposal Opening session and administrative check Report**, (see template in Annex E6a). This must state:

- the date, time and place of the session;
- the persons present;
- the names of the applicants who submitted proposals within the stipulated deadline;
- the names of the applicants who submitted proposals after the stipulated deadline;
- the names of applicants to which a request for clarification was sent;
- the list of proposals eliminated from further evaluation and the requirement(s) with which their proposals failed to comply.

CENTRALISED

This report (see template in Annex E6b) is submitted to the relevant services of the European Commission, which have to decide whether or not to accept the recommendations of the Committee.

DECENTRALISED: EX-ANTE

This report (see template in Annex E6a) is submitted to the Contracting Authority, which has to decide whether or not to accept the recommendations of the Committee. The Contracting Authority then has to submit the first part of the evaluation report to the European Commission for approval.

DECENTRALISED: EX-POST

This report (see template in Annex E6a) is submitted to the Contracting Authority, which has to decide whether or not to accept the recommendations of the Committee. No prior approval of the European Commission is required.

Once the required approvals received, the Contracting Authority must send a standard letter to the applicants (see template in Annex E9a) that includes a statement indicating the applicants whether or not their application was received within the deadline, informing them of the reference number they have been allocated, whether their application has satisfied all the criteria mentioned in the checklist and whether their concept note has been recommended for further evaluation.

6.4.8.3. Evaluation of the concept note

The concept notes received within the deadline and having satisfied the administrative criteria mentioned in the checklist will undergo an evaluation of the relevance of the action, its methodology and sustainability, as well as of the operational capacity and expertise of the applicant. This assessment is to be done by at least two different people (who may be either committee members or assessors) on the basis of an evaluation grid (see Annex E5a). A score is given for each subheading. The overall assessment is based on the scores obtained under each subheading, added up by heading. The final score is the arithmetical average of the scores given by those examining each concept note.

Where the call for proposals is organised by a headquarters service of the European Commission, copy of each concept note must be sent to the European Commission delegation in the country where the proposed action is to take place, for assessment on the basis of the same evaluation grid (see format of letter in Annex 8a).

The Secretary will then prepare a list of all the concept notes, ranked by score. The completed evaluation grids for each concept note must be sent to the Evaluation Committee.

CENTRALISED

The evaluation report of the concept note (see template in Annex 6b) is submitted to the relevant services of the European Commission, which have to decide whether or not to accept the recommendations of the Committee.

DECENTRALISED: EX-ANTE

The evaluation report of the concept note (see template in Annex 6b) is submitted to the Contracting Authority, which has to decide whether or not to accept the recommendations of the Committee. The Contracting Authority then has to submit the evaluation report to the European Commission for approval.

DECENTRALISED: EX-POST

The evaluation report of the concept note (see template in Annex 6b) is submitted to the Contracting Authority, which has to decide whether or not to accept the recommendations of the Committee. No prior approval of the European Commission is required

Following the evaluation of the concept notes, the Contracting Authority will send a letter to the applicants whose concept note has been evaluated, indicating whether their full application will be evaluated or not (see format of letter in **Annex E9b**).

6.4.8.4. Evaluation of the application form

The quality of the applications forms 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 5b) containing the selection and award criteria. A score is given for each sub-heading. Comments are made for each heading on the basis of the questions and criteria used for that heading. In particular cases, comments may need to be made for specific subheadings. The overall assessment is based on the scores obtained under each subheading, added up by heading. The final score is the arithmetical average of the scores given by those examining each proposal.

Where the call for proposals is organised by a headquarters service of the European Commission, copy of each application form must be sent to the European Commission delegation in the country where the proposed action is to take place, for assessment on the basis of the same evaluation grid (see format of letter in Annex 8b).

The Secretary will then prepare a list of all the proposals, ranked by score. The completed evaluation grids for each proposal and must be sent to the Evaluation Committee.

CENTRALISED

The evaluation report of the application forms (see template in Annex 6c) is submitted to the relevant services of the European Commission, which have to decide whether or not to accept the recommendations of the Committee.

DECENTRALISED: EX-ANTE

The evaluation report of the application forms (see template in Annex 6c) is submitted to the Contracting Authority, which has to decide whether or not to accept the recommendations of the Committee. The Contracting Authority then has to submit the evaluation report to the European Commission for approval.

DECENTRALISED: EX-POST

The evaluation report of the application forms (see template in Annex 6c) is submitted to the Contracting Authority, which has to decide whether or not to accept the recommendations of the Committee. No prior approval of the European Commission is required

Once the required approvals received, the Contracting Authority must send a standard letter (see Annex E9c) to the applicants, stating whether their proposal has been provisionally selected according to their score, and inviting those whose proposals have been provisionally selected to supply the required supporting documents.

6.4.8.5. Verification of eligibility

This assessment must be carried out using the Declaration by the applicant (section VI of the grant application form) and the criteria set out in the Guidelines for Applicants. **Under no circumstances may assessors or members of the Evaluation Committee change this Declaration.**

- Is the Declaration by the applicant in conformity with the supporting documents requested?

Any missing supporting document or any incoherence between the Declaration and the supporting documents will lead to the rejection of the proposal on that sole basis

- Eligibility: are the applicant, the partners and action eligible?

This is assessed according to the criteria set out in the Guidelines for Applicants.

The verification of 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 grids. In order to facilitate the Evaluation Committee's review of the assessments, the Secretary to the Evaluation Committee must ensure that one list containing the proposals which are ineligible is drawn up. For each entry on a list, the grounds for ineligibility must be identified.

6.4.8.6. Conclusions of the Evaluation Committee

The Evaluation Committee will draw up its recommendations after the assessors have examined all the proposals. The Evaluation Committee must not change the assessors' scores or recommendations and must not alter the evaluation grids completed by the assessors.

The Evaluation Committee may decide to approve the ranking drawn up by the secretary on the basis of the assessors' report. If the Committee does not accept the scores awarded by the assessors to a proposal, for example where there is a significant difference between the scores awarded by the assessors, it must justify this decision in the evaluation report. Subject to the points below, the Committee then has to prepare a new evaluation grid for the proposal concerned. The list will be amended on the basis of the scores from the new evaluation, which replace those completed by the assessors.

All such decisions must be recorded and fully substantiated in the Evaluation Report. The evaluation grids completed by the members of the Evaluation Committee must be kept with those completed by the assessors.

The Evaluation Committee's decisions are taken independently and in an advisory capacity. The Evaluation Committee must ultimately draw up a list of the proposals selected for financing, indicating the score obtained by each proposal, the amount of the proposed grant and the proportion of the eligible costs it is proposed to finance. Subject to the following considerations, this list is made up of the proposals obtaining the best scores, ranked by order, within the limits of the funds available under the call for proposals.

- The Committee may not allocate all the available funds if it finds that there are too few proposals of the quality required to receive a grant.
- The Committee may draw up a list by subject or geographical area specified in the Guidelines for Applicants.
- The Committee may reject a proposal if it has selected another which is of a similar nature but has been awarded a higher score.
- Where several proposals submitted by the same applicant are selected for financing, but the applicant does not have the financial and operational capacity required to implement the actions all together, the Committee may reject the proposal(s) which has (have) been awarded a lower score, and select the proposal(s) that the applicant has the capacity to implement.

The Committee may furthermore draw up, in the same conditions, a reserve list comprising a limited number of proposals having obtained the best scores after those selected for financing. This reserve list is valid during the period mentioned in the evaluation report. The proposals included in that list are likely to receive a grant insofar as funds become available under the call for proposals (decrease of the eligible costs of the selected proposals, impossibility to sign a contract with a selected applicant...)

The final **Evaluation Report**, covering the eligibility verification, is drawn up following the final meeting of the Evaluation Committee. It comprises the evaluation grids, the minutes of the evaluation sessions and must be signed by all members of the Evaluation Committee. It must state:

- the date, time and place of the session;
- the persons present;
- the average score of each proposal;
- the successful applicants, the recommended grant amounts to be awarded to them and the proposed rate of financing of eligible costs;
- the unsuccessful applicants and reasons for non-selection.

CENTRALISED

The entire evaluation procedure is recorded in an Evaluation Report (see template in Annex 6d) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee. This must be submitted for approval to the relevant services of the European Commission, which must decide whether or not to accept its recommendations.

DECENTRALISED: EX-ANTE

The entire evaluation procedure is recorded in an Evaluation Report (see template in Annex 6d) to be signed by the Chairperson, 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 the recommendations of the Contracting Authority to the Delegation of the European Commission for approval.

If the Contracting Authority confirms that there are no derogations (either in the special conditions or in the proposed contract annexes) from the standard contract conditions annexed to the Guidelines for Applicants, the European Commission's approval of the evaluation report including of the list of award proposals counts as a global endorsement of the corresponding contracts when this endorsement is requested. The list must include all the elements necessary to conclude the contracts (including the applicant's details, grant amount and contract duration). No endorsement by the Delegation is required in certain cases contemplated in the Practical Guide for Programme Estimates.

DECENTRALISED: EX-POST

The entire evaluation procedure is recorded in an Evaluation Report (see template in Annex 6d) to be signed by the Chairperson, the Secretary and all voting members of the Evaluation Committee and submitted to the Contracting Authority, which must decide whether or not to accept its recommendations. No prior approval from the European Commission is required.

Once the approvals have been given, the Contracting Authority will commence awarding the grants (see point 6.4.10).

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.

Subject to the Contracting Authority's policy on access to documents, **the entire procedure, from the drawing-up of the Call for Proposals to the selection of successful applicants, is confidential. The Evaluation Committee's decisions are collective and its deliberations must remain secret. The committee members are bound to secrecy.**

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 actions impossible;
- there have been irregularities in the procedure, in particular where these have prevented fair competition.

CENTRALISED

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

In the event of cancellation of a call for proposals, applicants must be notified of the cancellation by the Contracting Authority but will not be entitled to compensation.

6.4.10. Awarding grants

6.4.10.1. Notification of applicants

CENTRALISED

After the relevant services of the European Commission have given their official approval to the final list of grants to be awarded, the European Commission notifies the successful applicants in writing that their applications have been selected (see template in Annex E9d_1).

It must also send the unsuccessful applicants a standard letter (see template in Annex E9d_2) informing them that they have not been selected and specifying the reasons.

Where the call for proposals is organised by a headquarters service of the European Commission, a copy of these letters, as well as, where appropriate, the entire documentation and elements of the evaluation necessary for the preparation and the management of the contract, are sent to the European Commission delegation in the country where the proposed action is or was to take place.

DECENTRALISED: EX-ANTE

After the Contracting Authority and the European Commission have given their official approval to the final list of grants to be awarded, the Contracting Authority notifies the successful applicants in writing that their applications have been selected (see template in Annex E9d_1).

It must also send the unsuccessful applicants a standard letter (see template in Annex E9d_2) informing them that they have not been selected and specifying the reasons.

DECENTRALISED: EX-POST

The Contracting Authority notifies the successful applicants that their applications have been selected (see template in Annex E9d_1). No prior approval from the European Commission is required.

The Contracting Authority must also send the unsuccessful applicants a standard letter (see template in Annex E9d_2) 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 and signature

In preparing grant contracts for each of the successful applicants on the final list, the Contracting Authority must proceed as follows:

1. 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 Guidelines for Applicants, Proposal Opening and administrative check Report, Evaluation Reports, the list of grants to be awarded, the award decision and any other relevant information;
2. 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 E3h):

- Special Conditions (any additions to or derogations from the General Conditions must be specified in Article 7 of the Special Conditions, which is provided for that purpose)
- Description of the action
- General Conditions
- Budget for the action
- Procurement procedures to be used if services, supplies or works need to be procured as part of an action funded by a grant;
- Request for payment and financial identification form;
- Template for a financial and narrative report
- Template for terms of reference for an expenditure verification
- Template for a financial guarantee.

The standard contract annexes containing the General Conditions, procurement procedures and models (see Annex E3h) must be reproduced **without modification** in every grant contract.

The Special Conditions and Budget of the action must be completed by the Contracting Authority.

The financial identification form must be completed by the successful applicant before the contract is signed by either party.

The budget proposed for the action by the successful applicant at the call for proposals stage must be corrected to remove any arithmetical errors or ineligible costs prior to signing the contract. The Description of the action is corrected accordingly if need be. Other clarifications or minor corrections may be brought to the Description of the action or to the budget in so far as they would not call into question the grant award decision or be contrary to the equal treatment of applicants and:

- Relate to aspects clearly identified by the Evaluation Committee; or
- Aim at taking into consideration the changes which have occurred since the date of receipt of the proposal

Those modifications may in any case not lead to an increase of the amount of the grant nor of the percentage of the co-financing fixed by the Evaluation Committee.

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

If the successful applicant is an international organisation, the model Contribution Agreement (see Annex F1) or any other contract template agreed between the international organisation concerned and the Contracting Authority, should be used instead of the standard grant contract.

In DECENTRALISED EX ANTE approach, the Contracting Authority must send the file of the contract to the Delegation of the European Commission for endorsement, except where a global endorsement has been given in accordance with point 6.4.8. In the latter however, a copy of the contract should be sent to the Delegation. The Delegation signs all the copies of the contract for endorsement (and paraphes all the pages of the special conditions) in order to confirm the community financing and sends them back to the Contracting Authority. No endorsement by the Delegation is required in certain cases contemplated in the Practical Guide for Programme Estimates.

3. Sign all copies of the contract and paraph all the pages of the Special Conditions.
4. Send the three signed copies of each contract to the beneficiary, who must countersign them within 30 days of receipt and return two copies to the Contracting Authority together with a payment request and any financial guarantee required in the contract.
5. On receipt of the two signed copies from the grant beneficiary, verify that they strictly correspond to those initially sent, keep one in the relevant service in charge of payments and send the other to the Project Manager.

The Contracting Authority and the grant beneficiary must note on the contract the date on which they sign it. The contract takes effect on the date of the later signature. A contract cannot cover earlier activities except in duly substantiated exceptional cases (see point 6.2.5).

All actions funded by the European Communities are subject to audit at any stage, whether during the award process, during implementation of the action or once it has been completed.

Contracting Authorities must retain all selection and grant documentation for a period of seven years after payment of the balance. These documents must be made available for inspection by the European Commission, OLAF and the Court of Auditors.

6.4.10.3. Characteristics of the standard grant contract

- The standard grant contract recognises the beneficiary's independence of action and lays down simplified management rules accordingly. In particular, it allows the recipient to adapt or modify the action without the prior consent of the Contracting Authority provided

that the modifications are not substantial and do not result in a change of more than 15% to any budget heading.

- The first pre-financing payment, which covers either 80% of the amount of the contract or 80% of the first annual budget, is paid after both parties have signed the contract and the Contracting Authority has received a standard payment request from the beneficiary. Subsequently, in the case of contracts for large amounts, an interim report (technical and financial) and payment request must be sent once a year as soon as 70% of the previous payment (and 100% of earlier ones) has been used up. A new payment of pre-financing is made on that basis. Where the consumption of the previous pre-financing is less than 70%, the amount of the new pre-financing payment shall be reduced by the unused amounts of the previous pre-financing payment. The balance is paid on approval of the final report. The beneficiary must not send documents in support of its request to the Contracting Authority but must keep them in case of inspection or audit for a period of seven years after payment of the balance.
- The Community finances a specific percentage of the total eligible costs rather than a particular part of the action. If at the end of the action, the actual eligible cost is lower than anticipated, the grant will be reduced proportionately.
- An expenditure verification report is attached to the request for payment of the balance where the grant is of more than €100,000, for any request for interim payments per financial year in case of grants of EUR 750 000 or more and in the case of an operating grant to a request for payment of over €100,000 for the financial year.
- A financial guarantee for up to the same amount as the pre-financing is required where pre-financing represents over 80% of the total amount of the grant and provided it exceeds €60,000 or, where the beneficiary is a non-governmental organisation, when it exceeds €1,000,000 or 90% of the total amount of the grant. Instead of asking such a financial guarantee, the Contracting Authority can also decide to split the payments into several instalments
- In awarding any procurement contracts required for the purposes of the action, the beneficiary must comply with the rules set out in Annex IV to the contract.
- Unless otherwise requested or agreed by the European Commission, beneficiaries must take the necessary measures to ensure the visibility of the EU financing or contribution to the financing. Such measures must be in accordance with the applicable rules on the visibility of external actions laid down and published by the Commission. These rules are set out in the EU visibility guidelines for external actions, available from the following Internet address: http://europa.eu.int/comm/europeaid/visibility/index_en.htm.

6.4.10.4. Publicising the award of grants

Once the contracts have been signed, the Contracting Authority prepares a notice of award for each call for proposals (using the template in Annex E11) giving the following minimum details in each case: the name and address of the beneficiary, the subject of the grant, the amount allocated and the proportion of the costs of the action it is funding. It sends this immediately to the European Commission, which publishes the results of the call for proposals on the EuropeAid website. In addition, the Contracting Authority must record all statistical information concerning the contract procurement procedure (including the grant amounts, the names of the applicants, and details of the beneficiaries).

At the end of each year, the Contracting Authority also prepares and submits to the European Commission for publication a summary table based on the format in the annex to the Practical

Guide (Annex E11 including the table of "grants made without a call for proposals"), containing the above particulars for every grant made during the year.

The Contracting Authority is responsible for preparing the grant contract award notice using the template in Annex E11 and for submitting it in electronic form to the European Commission for publication.

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

The European Commission may authorise the Contracting Authority to waive the above obligations if publication of the information may threaten the safety of the beneficiaries or harm their business interests.

6.5. Grants of a low amount in decentralised management

In decentralised management, when:

- the maximum size of each grant to be awarded within the programme is less or equal to € 10,000, and
- the potential beneficiaries of the grants are community based organisations or other local organisations of the country of the Contracting Authority,

the Contracting Authority may award grants without calls for proposals. It implements publicity measures and evaluation procedures which are suitable for this kind of programme in order to ensure the respect of the principle of transparency and equal treatment while avoiding any conflict of interests.

Each grant contract to be concluded has to specify in particular its subject, its beneficiary, its duration, the maximal amount of the grant, the description of the action, the estimated budget, the beneficiary' acceptance of the checks to be carried out by the Commission and the Court of Auditors and the Beneficiary's obligations as regard management and reporting.

When the implementation of such grant contract requires procurement by the beneficiary, the relevant rules of nationality and origin do apply. Subcontracting may only concern a limited portion of the action.

6.6. Restricted call for proposals

The measures applicable to an open 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 Guidelines for Applicants invite applicants to submit a concept note using the format in Annex E3b_1. After the opening session and the administrative check, a report will be established for each of both phases of the restricted call for proposals (Annex E7a and E7c)

The administrative check of the concept notes and afterwards of the full applications is assessed through the relevant checklists (see Annexes E3b_1 and E3b_2 respectively). Specific evaluation reports (see Annexes E7b and E7d) are used for each of both phases of the procedure.

Where the call for proposals is organised by a headquarters service of the European Commission, the concept notes and the full application forms are submitted for evaluation to one assessor and to the delegation in the country where the proposed action is to take place (see format of letter in Annex E8c and E8d)).

The Evaluation Report (see Annex E7b) of the concept notes 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 must be signed by all members of the Evaluation Committee. It must state:

- the date, time and place of the session;

- the persons present;
- the applicants selected for submission of a full proposal;
- the unsuccessful applicants and reasons for non-selection.

The Guidelines for Applicants may indicate that a specific number of applicants will be invited to submit a final proposal. In this case a list restricted to the published number is drawn up consisting of the concept notes with the best scores, ranked in order.

The shortlisted applicants are then invited in writing (see format of letter in Annex E9f_1) to submit a full application form. The eligibility will only be performed for the proposals that have been provisionally selected at the end of the evaluation on the basis of the supporting documents requested by the Contracting Authority and of the Declarations by the Applicant (Annexes E3b and E7e), according to the rules set out in the Guidelines for applicants and within the available financial envelope of the Call. Unsuccessful candidates are notified by letter (see Annex E9f_2 for format) giving the grounds for the decision to refuse their application.

The list of the provisionally selected applicants is published on Internet in the same conditions as will be the awarded grants (see point 6.4.10.3).

The elements assessed on the basis of the concept note may not be modified by the applicant in the full application form. The EC contribution requested for the action may not depart from the initial estimation more than 20%. Should the EC contribution requested vary from the initial estimation, the percentage between the EC contribution and the total cost of the action has to remain within the limits imposed by the Guidelines of the Call for Proposals.

The minimum period between the date of publication of the Guidelines and the deadline for receipt of preliminary proposals is 45 days. The minimum period between the dispatch of the letter of invitation to submit final forms and the deadline for receipt of proposals is 45 days. In exceptional cases, a shorter deadline may be allowed as a derogation.

6.7. Modifying grant contracts

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

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

6.7.1. General principles

- The following general principles must always apply:
- A grant beneficiary's requests for grant contract modifications should not automatically be accepted by the Contracting Authority. Such requests must be properly substantiated. The Contracting Authority must examine the reasons given, and reject requests which have little or no substantiation.
- The modifications must not have the purpose or the effect of making such changes to the contract as would call into question the grant award decision or be contrary to the equal treatment of applicants.
- Grant contracts can only be modified within the lifetime of the contract, modifications cannot be made retroactively.
- The maximum amount of the grant may not be increased.

- Any modification extending the performance period of the contract must be such that implementation and final payments can be completed before the expiry of the financing decision. As the case may be the implementation has to be completed before the expiry of the implementation period of the financing agreement, under which the initial grant contract was financed.
- Requests for contract modifications to grant contracts must be made (by one contracting party to the other) allowing an adequate time-limit for the addendum to be signed before the modifications are intended to enter into force.

6.7.2. Preparing an addendum

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

1. Use the standard template for an addendum (see Annex E10)

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

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

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

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

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

2. Prepare a dossier comprising the following items:
 - explanatory note (see template in Annex A6) setting out the technical and financial grounds for making the modifications in the proposed addendum
 - copy of the grant beneficiary's request for (or agreement to) the proposed modifications
 - copy of the financing agreement authorising the action where necessary
 - copy of the initial contract and any subsequent addenda
 - three copies of the proposed addendum, which is based on the standard addendum template (see Annex E10) and includes any revised annexes.

CENTRALISED

3. Sign all copies of the addendum.

DECENTRALISED: EX-ANTE

3. Sign all copies of the addendum and send the addendum dossier to the Delegation of the European Commission for approval and endorsement, unless the initial contract has been approved through the global endorsement procedure. In the latter case, only a signed copy of the addendum should be sent to the Delegation of the European Commission. No endorsement by the Delegation is required in certain cases contemplated in the Practical Guide for Programme Estimates.

DECENTRALISED: EX-POST

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

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

CENTRALISED

5. On receipt of the two signed copies from the grant beneficiary, one is sent to the relevant services in charge of payments and the other is sent to the manager responsible for the action.

DECENTRALISED: EX-ANTE

5. On receipt of the two signed copies from the grant beneficiary, the Contracting Authority sends one to the relevant services in charge of payments and the other to the European Commission. A copy of the signed addendum must be sent to the manager responsible for the action.

DECENTRALISED: EX-POST

5. On receipt of the two signed copies from the grant beneficiary, the Contracting Authority sends one to the relevant services in charge of payments and the other to the manager responsible for the action.

The Contracting Authority and the grant beneficiary must note on the addendum the date on which they sign it. The addendum takes effect on the date of the later signature. An addendum cannot cover earlier activities or enter into force before this date, except with a derogation.

6.8. Procurement by grant beneficiaries

6.8.1. General principles

If the implementation of an action which is supported by a grant from the Community budget or the EDF in the context of external actions requires procurement by the grant beneficiary, the contract must be awarded to the most economically advantageous tender (i.e., the tender offering the best price-quality ratio), in accordance with the principles of transparency and fair competition for potential contractors and taking care to avoid any conflicts of interest.

To this end, the beneficiary respects the rules prescribed in Annex IV to the grant contract, subject to point 6.8.2.

These rules apply *mutatis mutandis* to the procurements by the partners of the beneficiary. In the event of failure to comply with the rules referred to above, expenditure relating to the operations in question is not eligible for Community financing.

The Commission will carry out ex-post checks on the compliance of grant beneficiaries with these rules. Grant contracts must provide expressly for the Commission, including the European Anti-Fraud Office (OLAF), and the Court of Auditors to exercise their powers of control, on documents and on the spot, over all contractors and subcontractors which have received Community funds.

6.8.2. International organisations

Where the beneficiary of a grant or a partner is an international organisation, it applies its own procurement procedures if they provide guarantees equivalent to internationally accepted standards. If not or in specific cases, the Commission and the beneficiary agree to apply other rules which provide such guarantees.

The international organisations covered by this point are: international public-sector organisations set up by intergovernmental agreements, and specialised agencies set up by such organisations; the International Committee of the Red Cross (ICRC); the International Federation of National Red Cross and Red Crescent Societies.

In all cases, the general principles set out in point 6.8.1 remain applicable.

7. Relations with international organisations and other donors

External aid projects may need to be co-financed with a partner who may be an international organisation, an EU Member State or a non-EU country. The procurement rules and procedures applicable vary from case to case.

There are two types of co-financing: parallel and joint co-financing. Under parallel co-financing, the project is broken down into clearly identifiable sub-projects which are each funded by the different co-financing partners. The rules and procedures included in this Practical Guide are applicable in their entirety and without modification to the EC-funded part of all projects with parallel co-financing.

Under joint co-financing, the total project cost is divided between the co-financing partners and all the funds are pooled such that the source of funding for a specific activity within the project cannot be identified.

Specific cases of joint co-financing are examined in the following sections.

7.1. Relations with international organisations

International organisation means:

- 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;
- the International Committee of the Red Cross (ICRC);
- the International Federation of National Red Cross and Red Crescent Societies.

Within the meaning of the Financial Regulation, there is joint management when co-financing with an international organisation involves an action for which the resources of a number of donors have to be pooled and it is not reasonably possible or appropriate to assign the share contributed by each donor to each type of expenditure. International organisations involved in joint management must apply standards in their accounting, audit, control and procurement procedures which offer guarantees equivalent to **internationally accepted standards**. Provided the Commission is sure of compliance with these conditions, international organisations need not be obliged to follow procedures other than their own (see also point 6.8.2 of this Practical Guide for the relevant procurement procedures). The Commission must also ensure that suitable arrangements exist for the control and audit of the action in its entirety.

For the purposes of this Guide, joint management implies a grant and is subject accordingly to the rules set out in Part 6 above unless otherwise provided for in the Guide and in particular in the model contribution agreement to an international organisation (see Annex F1). Grants to international organisations other than in the case of joint management are wholly subject to the rules in Part 6 of this Guide.

Framework agreements on financial and contractual procedures have been concluded between the Commission and some international organisations, notably the World Bank (Trust Fund and Co-financing Framework Agreement of 8 November 2001, see Annex F2), the United Nations (Financial and Administrative Framework Agreement of 29 April 2003, see Annex F3) and the Council of Europe (Framework Administrative Agreement of 13 August 2004, see Annex F4). These framework agreements take the above rules into account and must be applied. The standard contribution agreement to an international organisation implements notably the framework agreement of 29 April 2003 with the United Nations.

It must be used with all international organisations, both for grants and cases of joint management, unless otherwise agreed with the international organisation concerned (for instance specific standard contracts apply for contributions to the World Bank).

Wherever possible, contracts to be concluded with international organisations should be signed following the centralised management pattern.

7.2. Relations with EU member states

7.2.1. Co-financing

Joint co-financing is possible with EU Member States, candidate countries and the member states of the European Economic Area, or with national public-sector bodies or private-law entities with a public-service mission of these countries. The applicable procurement rules and procedures must be compatible with those of the Commission as set out in this Guide.

7.2.2. Delegation budget implementation tasks

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

7.2.2.1. Basic requirements

In order for a delegation of budget implementation tasks to be possible, all the following conditions must be fulfilled:

The bodies concerned must offer adequate financial guarantees. Such guarantees must be underwritten by a public authority and allow full recovery of amounts owed to the Commission.

Delegation is only possible where provided for in the legal basis.

The delegation must meet the requirements of sound financial management, in particular the principles of economy, efficiency and effectiveness. These requirements must be identified in advance by a prior analysis on which the competent committee provided for in the legal basis must give an opinion. The committee may express an opinion on the proposed application of the selection criteria.

The bodies concerned must be chosen in an objective and transparent manner, following a cost-effectiveness analysis, to match the performance requirements identified by the Commission.

The delegation must comply with the principle of non-discrimination and the choice of the body to which the executive tasks will be delegated may not entail any discrimination between the various Member States or countries concerned.

The delegation must comply with the rules on the visibility of Community action.

Performance of the delegated implementation tasks must not give rise to conflicts of interests.

Bodies performing implementation tasks must conduct regular checks to ensure that actions financed from the EC budget have been implemented correctly.

The bodies concerned must take appropriate measures to prevent irregularities and fraud.

These bodies must be governed by the law of one of the Member States, EEA States, the candidate countries or other States specified in the legal basis.

7.2.2.2. Delegation decision

Before any delegation is issued, a specific Commission decision is required. The delegation decision must meet the following requirements:

No body may be designated without the agreement of the State concerned.

Decisions to delegate implementation tasks must include appropriate provisions to ensure the transparency of the actions carried out.

These decisions must include:

- transparent procurement and grant-procurement procedures which are non-discriminatory and exclude any conflict of interests and which are in accordance with the provisions of Titles V and VI of the Financial Regulation;
- an effective internal control system for management operations;
- accounting arrangements for these operations and procedures for the presentation of the accounts which will enable the correct use of Community funds to be ascertained and the true extent of this use to be reflected in the Community accounts;
- an independent external audit;
- public access to information at the level provided for in Community regulations.

Note, however, that the Commission may recognise audit, accounting and procurement systems as equivalent to its own, taking due account of internationally accepted standards.

The delegation decision must specify that the Commission is responsible for the supervision, evaluation and scrutiny of the delegated tasks.

7.2.2.3. Delegation agreement

The delegation decision must be accompanied by an agreement with the body concerned containing:

- a definition of the delegated tasks;
- the conditions and detailed arrangements for performing the delegated tasks, including appropriate provisions for demarcating responsibilities and organising the controls to be carried out;
- rules for reporting to the Commission on how the delegated tasks are performed;
- the conditions under which performance of the delegated tasks terminates;
- the detailed arrangements for Commission scrutiny;
- conditions governing the use of separate bank accounts, the beneficiary of the interest yielded and the use made of it;
- provisions guaranteeing the visibility of the Community action in relation to the other activities of the body concerned;
- an undertaking by the body concerned to refrain from any act giving rise to a conflict of interests.

Procurement contracts awarded by national bodies granted such a delegation must comply with the eligibility rules contained in this Guide.

7.3. Relations with third countries

Third countries mean countries **other** than:

- EU Member States
- members of the European Economic Area
- candidate countries for accession to the EU
- beneficiary countries.

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

Where the legal basis so provides, and in accordance with the conditions it lays down, eligibility for participation in contracts co-financed with a third country may be extended to natural and legal persons with the nationality of that country.

8. Legal Texts

8.1. Legal framework for the procurement procedures

8.1.1. BUDGET

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

- Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, and in particular Title IV of Part Two thereof, which specifically concerns external action;
- Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended by Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005 and in particular Chapter III of Title III thereof, which specifically concerns procurement aspects of external action;
- The Regulations¹⁶ and other specific basic acts relating to the various cooperation programmes.

The following are also applicable:

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

8.1.2. EDF

8.1.2.1. The general legal framework for contracts for services, supplies and works financed by the European Development Fund is as follows:

- the ACP-EC Partnership Agreement signed at Cotonou on 23 June 2000; as amended by the Agreement amending the ACP-EC Partnership Agreement signed in Luxembourg on 25 June 2005.
- 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; NB: in case of contradiction between the revised Cotonou Agreement and the GR, the revised Cotonou Agreement prevails.

¹⁶ Such as the Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code that defines the rules regarding the origin of the products, and the Regulations on access to Community external assistance.

- 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 as well as Annex V concerning the procedural rules on conciliation and arbitration ;
- the Financial Regulation of 27 March 2003 applicable to the 9th European Development Fund.

8.1.2.2. 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-procurement procedures, setting out the principles and conditions for participation in contracts and the principles and conditions for the award of contracts.

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

- 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;
- in the case of co-financed 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.:
 - i. the general conditions for contracts prescribed by the national legislation of the ACP State concerned or its established practices regarding international contracts; or
 - ii. any other international general conditions for contracts, and
 - iii. 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 following are also applicable:

- The Financing Agreement signed by the EC and the beneficiary country concerned for each EC-funded programme. This sets out the programme objectives and budget
- This Practical Guide and the standard documents and templates in the annexes to it. There are EDF specific tender dossiers templates.

8.2. Legal framework for grant procedures

8.2.1. BUDGET

The following legal framework applies to grant contracts financed by the European Community and concluded in the course of cooperation with third countries:

- Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities and in particular Title VI of Part One, on grants, and Title IV of Part Two, on External Actions;
- Commission Regulation No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the abovementioned Financial Regulation as amended by Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005;
- the regulations or decisions of the Council, referred to as “basic acts” in the Financial Regulation and this Practical Guide, and other specific instruments relating to the various cooperation programmes.

8.2.2. EDF

The following legal framework applies to grant contracts concluded under the 9th EDF:

- The ACP-EC Partnership Agreement signed at Cotonou on 23 June 2000 as amended by the Agreement amending the ACP-EC Partnership Agreement signed in Luxembourg on 25/06/05
- 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 templates in the annexes to this Practical Guide, which include the standard grant contract for external actions (see Annex E3), and standard documents for Calls for Proposals (see Annexes E1, E2 and E3).

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

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

In all matters that are not covered by these general regulations for BUDGET and EDF, the national law of the State of the Contracting Authority applies.)

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