

CONTRACT PROCEDURES
FOR EUROPEAN UNION EXTERNAL ACTION
A practical guide



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNATIONAL PARTNERSHIPS

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1 Introduction

DISCLAIMER

This practical guide on contract procedures for European Union external action (PRAG) provides contracting authorities, on the one hand, and tenderers, candidates, applicants and contractors, on the other hand, with practical assistance in preparing and implementing procurement and grant contracts in the field of external action¹.

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

Please refer to the glossary of terms annexed to this practical guide (Annex a1).

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

It outlines the award procedures to be used in direct management and in indirect management with partner countries.

Although this practical guide provides explanations and information strictly in compliance with the rules and regulations in force, it is not legally binding². The applicable legislation and any clarification provided by the Court of Justice of the European Union take precedence.

This practical guide has been revised in the last years to gradually implement the European Commission programme to have a single electronic data interchange area for all participants or recipients involved in EU grant and procurement actions.

In the area of procurement, the e-procurement process started in 2020 with the management of specific contracts under framework contracts³, followed by the new system for publication of notices in August 2020⁴, and the introduction of e-Submission for certain type of award procedures in 2021⁵. It is reminded that practical information on the functionalities of eSubmission are available on the dedicated Relex Wiki webpage⁶.

This edition of the PRAG introduces the modifications stemming from the entry into force

¹ This practical guide does not cover other award procedures like prizes or non financial donations.

² A practical guide is a working tool, which explains the procedures applicable in a particular area. It cannot derogate from higher-ranking rules: Judgment of the General Court (Seventh Chamber) of 15 September 2011, *CMB Maschinenbau & Handels GmbH and J. Christof GmbH v European Commission*, T-407/07, EU:T:2011:477, paragraph 157.

³ Since January 2020, the specific contracts under Framework contracts (FWC) SIEA 2018, Audit 2018, PSF 2019, Events 2020, Eva 2020 and newly signed ones replacing some of these, are managed in eProcurement.

⁴ Since August 2020 the Public Procurement Management Tool (PPMT) is used to publish notices and procurement documents in Tenders Electronic Daily (TED) and in the Funding and Tender's Portal.

⁵ The PRAG 2021.1 incorporated eSubmission of direct contracts, which allows economic operators to respond electronically to procurement procedures by preparing application documents (i.e. requests to participate or tenders) and submitting them electronically in a structured and secured way. eSubmission is available for the electronic management of international open and restricted procedures and negotiated procedures. eSubmission applies only to the submission of application documents in direct management. For indirect management, the paper submission is still applicable. As a consequence, the annexes in the PRAG provides options differentiating electronic submission and paper submission.

⁶ <https://wikis.ec.europa.eu/display/ExactExternalWiki/Contracts+and+Procurement>.

in 2024 of the Financial Regulation⁷ both in the area of procurement and grants.

In addition, in the area of procurement, it includes:

- changes related to modifications of the Belgian civil code (for example, grounds for suspension of payments or of the contract), new arrangements to process VAT exemption for local purchases in Belgium, developments in the field of abnormally low tenders;
- changes related to digitalisation: information on the F&T Portal Participant Register, on the Participant Identification Code, and on eSubmission functionalities. With a view to their automation with eProcurement, contract models now include main conditions and new corporate letters to successful and unsuccessful participants will be used. Due to the different pace for releasing electronic management modules, it is however possible that parts of this edition will be completed in the future by specific elements in the electronic management guidance available on the dedicated Relex Wiki webpage;
- precisions regarding contract modifications and their limits;
- precisions regarding the negotiated procedure;
- precisions regarding the evaluation report and the verifications to be done with the presumed successful tenderer by the evaluation committee;
- precisions regarding framework contracts and the request for specific contracts;
- precisions regarding professional conflicting interest;
- new provisions in the procurement documents and in the general conditions for service contracts to strengthen the conditions required for replacement of key experts and to clarify the application of related liquidated damages;
- realignment of the period of validity of tenders;
- replacement of CVs of key experts with an expert's profile to facilitate the examination of the evaluation criteria for key experts. This expert's profile is meant to only indicate the elements relevant to the requirements of the terms of reference, which are expressed in the evaluation grid in the form of award criteria;
- revision of the selection criteria to promote the participation of SMEs;
- precision on the delivery mode of the expert's assignment in relation to per diems;
- the application of the Foreign Subsidies Regulation;

Secondly, In the area of grants, the following changes are made:

- introduction of financing not linked to costs in grant contract templates and guidelines for calls for proposals;
- publication of calls for proposals in the Funding & Tenders Portal;
- simplification of the evaluation process;
- clarification of reporting obligations under the grant contract.

In addition to these modifications in terms of content, the practical guide has been restructured reinforcing basic rules in Chapter 2, and focusing the other chapters more on

⁷Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), PE/99/2023/REV/1, OJ L, 2024/2509, 26.9.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>.

the specific elements that distinguish each type of procedure.

This practical guide applies the provisions of the Financial Regulation 2024. For contracts that are still being implemented under the 2018 Financial Regulation, please refer to the 2018 and 2021 practical guides. The 11th EDF Financial Regulation⁸. is aligned with the Financial Regulation 2024.

1.1 Scope of the PRAG

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

Award procedures funded under previous Multiannual Financial Framework (MFF) 2014-2020 and European Development Funds (EDF) will co-exist with award procedures funded under the Multiannual Financial Framework (MFF) 2021-2027 as commitments made under the previous MFF and EDFs will still be implemented in the next years. This co-existence is reflected in the practical guide. It is important to be aware of the relevant source of funding as different legal requirements can apply.

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

- Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), PE/99/2023/REV/1, OJ L, 2024/2509, 26.9.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>;
- Council Regulation (EU, Euratom) No 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027⁹;
- The external financing instruments: NDICI-Global Europe; EINSK; DOAG; IPA III and the Ukraine Facility.

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

This concerns:

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

⁸ Council Regulation (EU) 2018/1877 of 26 November 2018 on the financial regulation applicable to the 11th European Development Fund, and repealing Regulation (EU) 2015/323 OJ L 307, 3.12.2018 p. 1.

⁹ OJ L 433, 22.12.2020, p. 11.

NDICI-Global Europe geographic programmes (Neighbourhood) and NDICI-Global Europe – rapid response actions (resilience component), and the Ukraine Facility.

- Service for Foreign Policy Instruments (FPI) for the NDICI-Global Europe thematic programmes (Peace, Stability and Conflict Prevention; Electoral Observation Missions under Human Rights and Democracy), NDICI-Global Europe rapid response actions (all components except resilience)¹⁰. In addition, this practical guide applies to contracts awarded by FPI in direct management for the implementation of assistance measures funded under the European Peace Facility, unless provided otherwise in the relevant regulatory framework.

Please refer to Section 1.1 of PRAG 2021 for a description of the legal framework applicable to the financing of the EU's external action under MFF 2014-2020 and 11th EDF.

Under MFF 2014-2020 and 11th EDF, the practical guide is used by the European Commission services responsible for the management of projects and programmes financed under the external financing instruments and the EDF in the context of the ACP-EU Partnership Agreement.

This concerns primarily:

- Directorate-General for International Partnerships (DG INTPA) for the EDF, the Development Cooperation Instrument (DCI)¹¹, the European Instrument for Democracy and Human Rights (EIDHR)¹², the Nuclear Safety Co-operation Instrument (NSCI)¹³, the Instrument contributing to Stability and Peace (IcSP)¹⁴, the Overseas Countries and Territories (OCTs)¹⁵ and the Instrument for Greenland (IfG)¹⁶;
- Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) for the implementation of the Instrument for Pre-accession Assistance (IPA II)¹⁷ and the European Neighbourhood Instrument (ENI)¹⁸;
- Service for Foreign Policy Instruments (FPI) for the IcSP, the Partnership Instrument

¹⁰ Furthermore, the Directorate-General for Structural Reform Support (DG REFORM) is in charge of the instrument of financial support for encouraging the economic development of the Turkish Cypriot community (Council Regulation (EC) No 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction (OJ L 65, 7.3.2006, p. 5).

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

¹² Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide (OJ L 77, 15.3.2014, p. 85).

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

¹⁴ Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace (OJ L 77, 15.3.2014, p. 1).

¹⁵ Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (OJ L 344, 19.12.2013, p. 1).

¹⁶ Council Decision 2014/137/EU of 14 March 2014 on relations between the European Union on the one hand, and Greenland and the Kingdom of Denmark on the other (OJ L 76, 15.3.2014, p. 1).

¹⁷ Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) (OJ L 77, 15.3.2014, p. 11).

¹⁸ Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (OJ L 77, 15.3.2014, p. 27).

(PI)¹⁹ and the election observation missions under the EIDHR.

1.2 What the practical guide does not cover

This practical guide does not apply:

- to contracts for which the European Commission acts as contracting authority on its own account or grant contracts in other policy areas. These are covered by separate guides (the Vade-mecum on public procurement in the Commission and the Vade-mecum on grant management or Annotated Grant Agreement) drafted by the Directorate-General for Budget (DG BUDG). The procurement rules for external action continue to contain differences as compared to the procurement rules in internal policies. More specifically, external action procurement rules apply when the European Commission procures for the account of and on behalf of ('for the exclusive benefit of') partner countries or for the mixed interest of the Commission and the partner country;
- to humanitarian crisis management aid, civil protection operations and humanitarian aid operations carried out by the DG ECHO;
- to procurement carried out in indirect management by entities whose procedures have been subject to a positive pillar assessment (please refer to Section 2.2.2.);
- to grant beneficiaries for which Annex IV of the standard grant contract applies (see Annex e3h3);
- to direct labour operations, which are governed by a separate guide²⁰.

Please note that while the award procedures for Twinning grants²¹ are specifically detailed in a separate 'Twinning manual', the procedures and templates therein are based upon those of this practical guide. In particular, the general conditions (Annex II) and rules for procurement by grant beneficiaries (Annex IV) of the PRAG grant contract are used in their entirety in the Twinning grant contract. Moreover, certain aspects of Twinning procedures are regulated by cross-referencing to this practical guide. More information on Twinning, including the Twinning Manual, can be found at: [Twinning \(europa.eu\)](https://twinning.europa.eu).

¹⁹ Regulation (EU) No 234/2014 of the European Parliament and of the Council of 11 March 2014 establishing a Partnership Instrument for cooperation with third countries (OJ L 77, 15.3.2014, p. 77).

²⁰ Direct labour operations are programmes executed by public or public-private agencies or services of the partner country, if that country's administration possesses qualified managers. They use a programme estimate: a document laying down the human and material resources required, the budget and the detailed technical and administrative implementing arrangements for execution of a project over a specified period by direct labour and possibly also by means of public procurement and the award of specific grants. Specific procedures for direct labour contracts and programme estimates are set out in a separate guide (Practical guide to procedures for programme estimates - project approach) although most of the procurement procedures described in this practical guide also apply: https://international-partnerships.ec.europa.eu/funding/guidelines/programme-estimates_en.

²¹ 'Twinning' is a dedicated institution-building tool providing expertise from Member States administrations to the public institutions of partner countries. Twinning is made of grant contracts signed with Member States public institutions.

2 Basic rules

2.1 Overview

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

Procedures established by the European Commission for procurement and award of grants under the relevant European Union external financing programmes are consolidated in this practical guide. Deviations from standard procedures in this practical guide such as exceptions and derogations, as well as prior approvals, events to be reported and non-compliance events have to be adopted in compliance with internal procedures.

Before starting any procurement or grant procedure, the budgetary commitment must have been approved by a financing decision/action plan²² and, where appropriate, reflected in a subsequent financing agreement. The funds must be available, except in the case of procedures with a 'suspensive clause' (see Section 2.5.9.).

2.2 Management modes

Procurement or grant award procedures for projects financed under EU external financing instruments vary according to the different arrangements for implementing the project (referred to as 'management modes')²³.

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

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

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

2.2.1 Direct management

The European Commission is in charge of all EU budget implementation tasks, which are performed directly by its departments either at Headquarters or in the EU delegations or through EU executive agencies²⁴.

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

The contracts are concluded directly by the European Commission, acting on behalf of the partner country. The European Commission is responsible for the entire cycle leading to contract signature (issuing calls for tenders and calls for proposals, publication,

²² Except where no financing decision is necessary according to the Financial Regulation.

²³ Article 62 FR.

²⁴ Article 62(1)(a) FR.

establishing shortlist in restricted procedures, evaluation, award and contract signature, etc.).

2.2.2 Indirect management

Under indirect management the European Commission entrusts budget implementation to²⁵:

- third countries²⁶ (or to bodies designated by them);
- international organisations and their specialised agencies;
- the European Investment Bank or the European Investment Fund;
- EU decentralised agencies;
- public law bodies;
- private law bodies with a public service mission to the extent that they are provided with adequate financial guarantees;
- bodies established in a Member State, governed by the private law of a Member State or Union law and eligible to be entrusted, in accordance with sector-specific rules, with the implementation of Union funds or budgetary guarantees, to the extent that such bodies are controlled by public law bodies or private law bodies with a public service mission and are provided with adequate financial guarantees in the form of joint and several liability by the controlling bodies or equivalent financial guarantees and which may be, for each action, limited to the maximum amount of the Union support.

This practical guide applies to the first case, i.e. when the European Commission entrusts budget implementation to partner countries²⁷. In this case, the contracts are concluded by the contracting authority designated in a financing agreement, i.e. the government or an entity of the partner country with legal personality.

In case of indirect management with other bodies listed above, the rules and procedures of that entity shall apply instead of this practical guide based on the positive outcome of a prior ex ante pillar assessment²⁸ (in relation to its accounting systems, internal control, independent external audit, grants, procurement, exclusion from access to funding, publication of information on recipients, protection of personal data)²⁹.

Under indirect management with partner countries, which is covered by this practical guide, two modalities³⁰ are possible:

Indirect management with ex ante controls

Decisions on the procurement and award of contracts are taken by the partner country, acting as contracting authority, in line with the requirements set out in this practical guide

²⁵ Article 62(1)(c) FR.

²⁶ The term “third country” or “partner country” are used indistinctively in the practical guide.

²⁷ Please note that the European Commission usually undertakes directly activities such as project evaluation and audits even under indirect management with partner countries.

²⁸ Article 157(4) FR.

²⁹ In case of pool funds for sector programmes, the Commission may also authorise the partner country to apply its own rules and procedures subject to that ex ante pillar assessment.

³⁰ Article 157(7)(b) FR. The different *ex ante* and *ex post* control procedures are explained throughout this practical guide.

and subject to the prior approval of the European Commission.

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

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

Prior to the launch of the award procedure, the contracting authority must submit the documents (prior information notice (not compulsory), contract notice, additional information about the contract notice, tender dossier or grant award file) to the European Commission for approval, the European Commission usually being the EU Delegation. The European Commission verifies that these have been drafted in accordance with the procedures and templates laid down in this practical guide. The contracting authority is then responsible for drawing up shortlists (for restricted procedures), issuing the calls for tenders and calls for proposals, receiving application documents, chairing evaluation committees and deciding on the results of the procedure. Before signing contracts, the contracting authority submits the results of the evaluations to the European Commission for prior approval.

No prior approval is required in certain cases referred to in the practical guide to procedures for programme estimates³¹.

Indirect management with *ex post* controls

In indirect management with *ex post control*, the prior approval by the European Commission is not required.

Indirect management with *ex post* controls is used in two instances: (i) programme estimates, for procurement award procedures below the thresholds defined in the programme estimate guide; and (ii) under IPA III where the approach is to progressively transition from *ex-ante* towards *ex-post controls*.

2.2.3 Shared management

The European Commission delegates implementation tasks to the EU Member States³². This mode is rarely used in the implementation of external actions, but there are a few cases such as joint operational programmes on cross-border cooperation implemented by a joint managing authority (for instance, in the 2014-2020 MFF, under the European Neighbourhood Instrument (ENI)³³ or the Instrument for Pre-accession Assistance (IPA II)³⁴. In the 2021-2027 MFF however, under IPA III, shared management is not provided for.

2.2.4 Conclusion

This practical guide applies to direct and indirect management with partner countries.

³¹ See https://international-partnerships.ec.europa.eu/funding/guidelines/programme-estimates_en. A programme estimate is a document containing a work programme to be implemented by a partner country of the European Union. It is drawn up by the partner country and endorsed by the European Commission. The programme estimate is a mixed form of financial implementation that may include activities entailing different levels of delegation. It is the value of the contract to be concluded, as defined in the Programme Estimate Guide, which determines which form of delegation is allowed.

³² Article 62(1)(b) FR.

³³ Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (OJ L 77, 15.3.2014, p. 27).

³⁴ Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) (OJ L 77, 15.3.2014, p. 11).

except for those specific cases where the European Commission allows partner countries to use other procedures depending on a prior positive assessment of such procedures³⁵.

The European Commission's involvement in contracts signed by the partner countries under indirect management is to authorise the financing of the contracts and check, notably with reference to established checklists, that the procedures, the implementation of the contracts and the expenditure are correctly carried out. If the procedures established in this practical guide (or whatever procedure the European Commission decides must be used) are not followed, the expenditure incurred on the related operations may be found ineligible for EU financing. The European Commission's intervention is limited to checking whether the conditions for EU financing have been met.

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

The box below summarises the control procedures that the European Commission must follow for direct and indirect management with the partner country.

DIRECT MANAGEMENT

The contracts are concluded directly by the European Commission, acting on behalf of the partner country. It is responsible for launching award procedures, publishing them, receiving requests to participate, tenders and proposals, chairing evaluation committees, deciding on the results of the procedures, managing complaints and signing the contracts.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

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

Before the procedure is launched, the contracting authority must submit the documents (tender dossier, including relevant notices, or grant award file, including the guidelines) to the European Commission for approval. The European Commission verifies that they have been drafted in accordance with the procedures and templates laid down in this practical guide. The contracting authority is then responsible for drawing up shortlists (restricted procedures), launching the award procedures for procurements or grants, receiving application documents, chairing evaluation committees and deciding on the results of the procedure. Before signing contracts, the contracting authority submits the result of the evaluations to the European Commission for approval. The European Commission verifies conformity with the applicable procedures. The contracting authority also sends the contracts to the European Commission for endorsement before signing them³⁶.

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

³⁵ See footnote n. 29.

³⁶ The European Commission's endorsement of the contracts is not necessary in certain cases, which are specified in this practical guide or in the practical guide to procedures for programme estimates.

European Commission pays particular attention to potential conflicts of interests.

The contracting authority must submit all relevant notices in electronic form to the responsible delegation of the European Union for publication (see Annex a11e), with the exception of the cases referred to in the Practical Guide for Programme Estimates.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

Contracts are concluded directly by the contracting authority designated in a financing agreement. For instance the government or an entity of the partner country with the same legal personality with which the European Commission concludes the financing agreement. The contracting authority launches procedures for procurement and grants, and is responsible for receiving application documents, chairing the evaluation committees, deciding on the results of the procedures and signing the contracts without the prior authorisation of the European Commission. The contracting authority must submit all relevant notices in electronic form to the responsible delegation of the European Union for publication (see publication guidelines in Annex a11e).

2.3 Participation in award procedures

Participation in procurement and grant award procedures financed by any of the external financing instruments described in Chapter 1, is governed by a set of rules and principles intended to ensure the legality and regularity of the procedures as well as the compliance with sound financial management.

Eligibility criteria such as the rule of nationality and origin determine the conditions for participating in award procedures and are essential requirements that each participant must comply with.

2.3.1 The rule of nationality

Participation in procurement and grant award procedures is open to all natural persons who are nationals of, and all legal persons who are effectively established in a Member State of the European Union or in a country or territory eligible according to the external financing instrument under which the specific project is financed. Participation is also open to international organisations. For each external financing instrument, specific rules on nationality apply³⁷.

For award procedures financed by a MFF 2014-2020 external financing instrument or the EDF please refer to Section 2.3.1 of PRAG 2021 and Annex a2a.

The paragraphs below lay down the applicable rules for award procedures financed by a MFF 2021-2027 external financing instrument.

2.3.1.1 General rules

a) For projects financed under the: (i) DOAG; (ii) NDICI-GE geographic programmes; (iii) NDICI-GE Civil Society Organisations thematic programme or (iv) NDICI-GE Global Challenges thematic programme: participation is open to all natural persons who are nationals of and legal persons (participating either individually or in a grouping) which are effectively established in a Member State of the European Union or in an eligible country

³⁷ For procurement award procedures not financed under an external financing instrument please refer to Annex a2c.

or territory as defined under Article 28(1) of NDICI-GE.

b) For projects financed under the: (i) NDICI-GE Human Rights and Democracy thematic programme; (ii) NDICI-GE Peace, Stability and Conflict Prevention thematic programme; or (iii) NDICI-GE rapid response actions: participation is open without limitations without prejudice to the limitations inherent to the nature and objectives of the action.

c) For projects financed under the EINSF participation is open to all natural persons who are nationals of and legal persons (participating either individually or in a grouping) which are effectively established in a Member State of the European Union or in an eligible country or territory as defined under Article 11 of EINSF.

d) For projects financed under IPA III participation is open to all natural persons who are nationals of and legal persons (participating either individually or in a grouping) which are effectively established in a Member State of the European Union or in an eligible country or territory as defined under Article 10 of IPA III.

e) For projects financed under the Ukraine Facility, participation is open to all natural persons who are nationals and legal persons (participating either individually or in a grouping) which are effectively established in a Member State of the European Union or in an eligible country or territory as defined under Article 11 of the Ukraine Facility.

Annex a2a1 contains a list of all eligible countries or territories per each MFF 2021-2027 external financing instrument.

Irrespective of the external financing instrument under which the respective project or programme is to be financed, where an agreement on widening the market for procurement of goods or services to which the Union is party applies, the **procurement procedures** for contracts shall also be open to natural and legal persons established in a third country other than those specified in the basic instruments governing the cooperation sector concerned, under the conditions laid down in that agreement³⁸.

2.3.1.2 Extension of the rule of nationality

In addition to the basic rules explained above, each external financing instrument extends the eligibility to the following projects:

a. For actions financed under the NDICI – GE, the DOAG or IPA III:

- For actions jointly co-financed by an entity, or implemented in direct or indirect management with entities as referred to in points (c)(ii) to (viii) of Article 62(1) of the Financial Regulation, the eligibility rules of those entities shall also apply³⁹.
- Where donors provide financing to a trust fund established by the Commission or through external assigned revenues, the eligibility rules in the constitutive act of the trust fund or, in the case of external assigned revenues, in the agreement with the donor, shall apply⁴⁰.
- For actions financed under the NDICI-GE and under another Union programme, eligible entities under any of those Union programmes shall be considered eligible⁴¹.

³⁸ Article 182 FR.

³⁹ Article 28(5) NDICI-GE.

⁴⁰ Article 28(6) NDICI-GE.

⁴¹ Article 28(7) NDICI-GE.

- For multi-country actions, legal entities who are nationals of and, in the case of legal persons, who are also effectively established in, the countries and territories covered by the action may be considered eligible⁴².
- b. For projects financed under the EINSK:
- For actions jointly co-financed by an entity or implemented under direct management or indirect management with entities listed in points (c)(ii)–(viii) of Article 62(1) of the Financial Regulation, the eligibility rules of those entities shall also apply⁴³.
 - Where donors provide financing to a trust fund established by the Commission or through external assigned revenues, the eligibility rules in the constitutive act of that trust fund or in the agreement with the donor in the case of external assigned revenues shall apply⁴⁴.
 - For actions financed under the European Instrument for International Nuclear Safety Cooperation and under another Union programme, eligible entities under any of those programmes shall be considered eligible⁴⁵.
- c. For projects financed under the Ukraine Facility:
- For activities jointly co-financed by an entity or implemented in direct or indirect management with entities referred to in Article 62(1), first subparagraph, point (c), of the Financial Regulation or for activities implemented by Ukrainian entities under Chapter III of the Ukraine Facility, the eligibility rules of those entities or of Ukraine shall also apply including the rules on restrictions provided for under Article 11(7) of the Ukraine Facility⁴⁶.
 - Where additional contributions are provided in accordance with Article 7 of the Ukraine Facility through external assigned revenues, the eligibility rules in the agreement with the person providing the additional contribution shall apply, including the rules on restrictions provided for under Article 11(7) of the Ukraine Facility⁴⁷.

2.3.2 Rules for experts and international organisations

Nationality of experts and other natural persons employed or legally contracted does not have to follow the nationality rules⁴⁸. Therefore, unless otherwise provided for in the applicable financing agreement, experts recruited or otherwise legally contracted by an eligible contractor/sub-contractor, may be of any nationality.

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

⁴² Article 28(8) NDICI-GE.

⁴³ Article 11(4) EINSK.

⁴⁴ Article 11(5) EINSK.

⁴⁵ Article 11(6) EINSK.

⁴⁶ Article 11(5) Ukraine Facility.

⁴⁷ Article 11(6) Ukraine Facility.

⁴⁸ Article 28(4) NDICI-GE (also applicable to IPA III and DOAG), Article 11(3) EINSK, Article 11(4) Ukraine Facility.

For grants, the nationality rule does not apply to staff working on the action and employed or sub-contracted by the grant beneficiary(ies) (coordinator and co-beneficiaries, including any affiliated entities).

2.3.3 How to verify compliance with the nationality rules

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

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

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

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

- the legal person is established under the law of an eligible State, and
- it is effectively established: its real seat is within an eligible State. 'Real seat' must be understood as the place where its managing board and central administration, or its principal place of business, are located⁴⁹.

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

2.3.4 The rules of origin

Rules of origin determine from which countries goods and materials supplied under a procurement or a grant contract may originate.

In case of procurement contracts, these rules apply to all goods to be delivered under a supply contract as do materials, goods and components to be incorporated or to form part of the permanent works under a works contract.

Goods purchased by the contractor for use during the execution of the contract (such as machinery used by a supply contractor for testing and installing the goods supplied, equipment used by a works contractor for building a road⁵⁰, computer(s) used by a service contractor to draft a study) are not subject to the rule of origin.

It is only when the contract explicitly states that at the end of the contract the ownership of the goods is transferred from the contractor to the contracting authority (in the case of procurement contracts) or transferred by the grant beneficiary to another entity/person or retained by him (in the case of grant contracts), that these goods are subject to the rule of origin.

For projects financed under MFF 2014-2020 external financing instruments or EDF please

⁴⁹ This is to avoid awarding contracts to companies that have established 'letter box' companies in an eligible country to circumvent the nationality rules.

⁵⁰ In a works contract, the option of having equipment vested in the contracting authority, given under Article 43(2) of the general conditions, only applies while the works are being carried out and therefore does not constitute full transfer of the property.

refer to PRAG 2021.

For projects financed under NDICI-GE, DOAG or IPA III supplies and materials may originate from any country. In the case of the EINSC and the Ukraine Facility, goods and materials must originate from an eligible country designated (please refer to Section 2.3.1.).

2.3.5 Definition of ‘origin’

The term ‘origin’ is defined in the relevant EU legislation on rules of origin for customs purposes: [Regulation \(EU\) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code](#)⁵¹, and the Code’s implementing provisions: [Commission Delegated Regulation \(EU\) 2015/2446 of 28 July 2015 supplementing Regulation \(EU\) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code](#)⁵² and [Commission Implementing Regulation \(EU\) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation \(EU\) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code](#)⁵³.

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

- If only one country is involved in the production, the ‘wholly obtained’ concept will be applied. In practice, these goods wholly obtained in a single country must be regarded as having their origin in that country. This will be restricted to mostly products obtained in their natural state and products derived from wholly obtained products.
- If two or more countries are involved in the production of goods, it is necessary to determine which of those countries confers origin on the finished goods. For this purpose, the concept of ‘last substantial transformation’ is applied. In general, the criterion of last substantial transformation is expressed in three ways:
 - by a rule requiring a change of tariff (sub)heading in the HS nomenclature (i.e. the Nomenclature governed by the Convention on the Harmonized Commodity Description and Coding System);
 - by a list of manufacturing or processing operations that do or do not confer on the goods the origin of the country in which these operations were carried out;
 - by a value added rule, where the increase of value due to assembly operations and incorporation of originating materials represents a specified level of the ex-works price of the product.

⁵¹ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269, 10.10.2013, p. 1.

⁵² Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code, OJ L 343, 29.12.2015, p. 1.

⁵³ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, OJ L 343, 29.12.2015, p. 558.

2.3.6 How to verify compliance with the rules of origin

For projects financed under NDICI-GE, DOAG or IPA III supplies and materials may originate from any country and therefore no verification of origin is required: no declaration of origin is required.

However, such verification is required for projects financed under MFF 2014-2020 external financing instruments or EDF; the EINSK and the Ukraine Facility. The following paragraphs apply to these.

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

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

Declarations of origin must be issued by the competent authorities of the goods' or supplier's declared country of origin (for example the chamber of commerce) and comply with the international agreements to which that country is a signatory. However, declarations of origin are not exhaustive proof of origin, and should not be regarded as a legal proof, but as useful element for determination of the origin, which may, in case of doubts, facilitate further checks.

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

For EDF procurement, supplies originating in an OCT are regarded as originating in the European Union.

2.3.7 Derogations from the rules of nationality and origin

External financing instruments or the Financial Regulation provide for the possibility to derogate from the general rules of nationality or origin on a case-by-case basis in order to further (a) extend or (b) limit the eligibility of certain persons/goods on grounds laid down in those instruments.

The decision to derogate is taken by the European Commission before the award procedure is launched. In principle, it is not possible to derogate from the rules of nationality or origin to allow only one or a group of countries to become eligible unless it is duly

motivated in the request for derogation.

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

2.3.7.1 Extension

(i) In duly substantiated cases, the European Commission may extend eligibility to persons or goods from an ineligible country.

For projects financed under MFF 2014-2020 external financing instruments or EDF please refer to PRAG 2021. For projects financed under award procedures under MFF 2021-2027 external financing instruments, extension to the rules of nationality may be granted on the grounds of⁵⁴:

- urgency;
- unavailability of services in the markets of the countries or territories concerned;
- other duly substantiated cases where the application of the eligibility rules would make the realisation of an activity impossible or exceedingly difficult.

As regards rules of origin, it is possible to extend such eligibility for actions under the Ukraine Facility where supplies and materials cannot be sourced under reasonable conditions in any of the eligible countries⁵⁵. No derogation from the rules of origin is possible for actions under EINS.

(ii) Countries for which reciprocal access to external funding is established by the Commission: the Commission may grant access, for a limited period of at least one year, whenever a country grants eligibility on equal terms to entities from the Union and from countries eligible under NDICI- GE, or the EINS, or IPA III. In the case of the Ukraine Facility that reciprocal access is limited to countries which provide a level of support to Ukraine comparable to that provided by the Union taking into account the size of their economy.

2.3.7.2 Limitation

For projects financed under MFF 2014-2020 external financing instruments or EDF please refer to PRAG 2021.

For grants financed under MFF 2021-2027 external financing instruments⁵⁶, it is also possible to limit eligibility rules where this is required by the nature and the objectives of the action and as necessary for its effective implementation.

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

In case of supplies/materials under projects financed under the EINS, it is also possible to restrict the rules of origin, where such restrictions are required on account of the specific nature and the objectives of the action and where they are necessary for its effective implementation⁵⁷.

⁵⁴ Article 28(10) NDICI-GE (applicable to IPA III and the DOAG); Article 11(8) EINS; Article 11(8) Ukraine Facility.

⁵⁵ Article 11(3) Ukraine Facility.

⁵⁶ Article 28(7) NDICI-GE (applicable to IPA III and the DOAG); Article 11(9) EINS; Article 11(4) Ukraine Facility.

⁵⁷ Article 11(9) EINS.

For projects financed under the Ukraine Facility, the rules of nationality and origin may be restricted with regard to the nationality, geographical location or nature of the legal entities participating in procurement procedures as well as with regard to the geographical origin of supplies and materials, in the following cases:

- a. where such restrictions are required on account of the specific nature or objectives of the activity or specific award procedure or where those restrictions are necessary for the effective implementation of the activity;
- b. where the activity or specific award procedures affect security or public order, in particular concerning strategic assets and interests of the Union, its Member States, or Ukraine, including the protection of the integrity of digital infrastructure, communication and information systems, and related supply chains⁵⁸.

The Financial Regulation⁵⁹ also allows, for specific award or public order, in particular concerning strategic assets and interests of the Union and/or its Member States, including the protection of the integrity of digital infrastructure, communication and information systems, and related supply chains, to set specific conditions. Those conditions shall be strictly limited to what is necessary to protect security or public order of the Union and/or its Member States. The financing decision/action plan covering the award procedure shall indicate whether the award procedure affects security or public order⁶⁰.

The specific conditions may apply to participation in award procedures and to the full life cycle of the resulting legal commitment and may concern:

- a. the entity, in particular the criteria for access to the procedure or eligibility based on the country of establishment of the participants, including the contractor or beneficiary and the affiliated entities and any subcontractors, as well as with respect to direct or indirect control of any of those participants by public or private entities of a third country;
- b. the activity, in particular with respect to the country of origin of the equipment, goods, supplies or services, as well as with respect to the place of performance, which may be limited to Member States;
- c. additional security requirements for the entities and activities, in particular conditions based on a security risk assessment of the equipment, goods, supplies or services, manufacturer, contractor, beneficiary, the affiliated entities or any subcontractors.

2.4 EU restrictive measures, exclusion criteria and rule of law conditionality

2.4.1 EU restrictive measures

EU Restrictive measures ('EURMs') are an essential tool in the EU's common foreign and security policy ('CFSP') to prevent conflict or respond to emerging or current crises. EURMs are designed to be proportionate to the objectives they seek to achieve and are targeted

⁵⁸ Article 11(7) Ukraine Facility.

⁵⁹ Article 136 FR.

⁶⁰ Where no financing decision is required this shall be set out by the authorising officer responsible in the documents related to the award procedure.

at governments, individuals, industries or entities that are responsible for actions that undermine international security and stability.

The EU has several sanctions regimes in place at any one time. Some are mandated by the United Nations Security Council, whereas others are adopted autonomously by the EU.

2.4.1.1 Legal Framework and Compliance

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

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

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

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

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

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

Likewise, grant beneficiaries and contractors must ensure that there is no detection of subcontractors, experts, contractors, recipients of financial support to third parties, or any person to whom funds or financial resources would be made available directly or indirectly, in the lists of EU restrictive measures.

2.4.1.2 Exemptions and Derogations

EURMs may contain two types of exception mechanisms to the prohibitions that they establish: exemptions and derogations.

An exemption is a provision carving out certain activities from the scope of application of the general prohibition. Whenever an activity falls within the scope of an exemption, an operator may carry out the exempted activity without any prior authorisation. However, in case of ex post verification, operators must be able to demonstrate that the activity in question did comply with all the conditions required for the exemption to apply.

Similarly, derogations to EURMs may be available in the legal act establishing the prohibition. Derogations mean that a prohibited action can proceed only after a National Competent Authority has granted authorisation. National Competent Authorities can provide the necessary guidance as to how to obtain any available derogation. The details of each National Competent Authority are listed in annex to the relevant EURM legal text.

2.4.1.3 Resources

The European Commission has created tools to assist the uniform implementation of

EURMs, including the EU Sanctions Map (available from <https://sanctionsmap.eu>), their financial sanctions database and their guidance notes and opinions.

The European Commission also provides information upon request for information and oversees the reporting obligations of the Member States regarding implementation issues, numbers of assets freezes and derogations from the sanctions.

The EU Sanctions Map provides comprehensive details of all EU sanctions regimes and their corresponding legal acts, including those regimes adopted by the UN Security Council and transposed at EU level.

Additionally, the European Commission manages a consolidated list (available from <https://webgate.ec.europa.eu/fsd/fsf#!/files>) of persons, groups and entities subject to EU financial sanctions, which is updated whenever necessary.

Please note that the EU Sanctions Map and other resources prepared by the European Commission are IT tools for identifying the sanctions regimes. The source of the sanctions stems from legal acts published in the Official Journal of the EU. In case of discrepancies between the published legal acts and the updates on the EU Sanctions Map website and elsewhere, it is the Official Journal version that prevails.

2.4.2 Exclusion criteria

In the Financial Regulation, the provisions on early detection and exclusion system (EDES), including exclusion criteria, are contained in Articles 137 to Article 148. EDES is a system to facilitate the detection of persons and entities that pose a risk to the European Union's financial interests. It aims at excluding from receiving European Union funds or participating in grant or procurement procedures the entities or persons found in specific exclusion situations (also called 'exclusion grounds').

The EDES applies to the following persons:

- i. participants in award procedures and recipients of Union funds;
- ii. entities on whose capacity the candidate or tenderer intends to rely or subcontractors of a contractor;
- iii. any person or entity receiving Union funds where the budget is implemented in indirect management on the basis of the information provided;
- iv. guarantors;
- v. participants or recipients on which entities implementing the budget in shared management have provided information;
- vi. sponsors⁶¹;
- vii. beneficial owners⁶² and any affiliate of the person or excluded entity as referred to in Article 138(6) FR;
- viii. natural persons as referred to in Article 138(5), points (a) to (c) FR⁶³.

⁶¹ Art. 26 FR 'corporate sponsoring' means an agreement by which a legal person supports in-kind an event or an activity for promotional or corporate social responsibility purposes'.

⁶² According to point (6) of Article 3 of Directive (EU) 2015/849 'beneficial owner' means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted.

⁶³ According to this article, this natural person can be: (a) a natural person who is a member of the administrative, management or supervisory body or has powers of representation, decision or control on the economic operator; (b) a natural person that assumes unlimited liability for the debts of the economic operator; (c) a natural person who is essential for the award or for the implementation of the contract.

Further reference to the term “person” refers to the above-mentioned EDES’ subjects.

The exclusion is decided by the Commission on the basis of a final judgment or a final administrative decision or, in the absence of such a judgment or decision, on the basis of established facts or findings and their preliminary classification in law contained in the recommendation of the EDES panel⁶⁴ referred to in Article 145 FR.

2.4.2.1 Exclusion criteria from participation in procurement and grant procedures

A person will be excluded from participation in procurement and grant procedures if:

- a. it is bankrupt, subject to insolvency or winding-up procedures, where its assets are being administered by a liquidator or by a court, where it is in an arrangement with creditors, where its business activities are suspended, or where it is in any analogous situation arising from a similar procedure provided for under national laws or regulations;
- b. it has been established by a final judgment or a final administrative decision that the person is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;
- c. it has been established by a final judgment or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes a wrongful intent or gross negligence, including, in particular, any of the following:
 - i. fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the performance of a contract;
 - ii. entering into agreement with other persons with the aim of distorting competition;
 - iii. violating intellectual property rights;
 - iv. unduly influence or attempting to unduly influence the decision-making process to obtain Union funds by taking advantage, through misrepresentation, of a conflict of interest involving any financial actors or other persons referred to in Article 61(1) FR;
 - v. attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;
 - vi. incitement to discrimination, hatred or violence against a group of persons or a member of a group or similar activities that are contrary to the values on which the Union is founded enshrined in Article 2 TEU, where such

⁶⁴ The EDES panel must be composed of a standing high-level independent chair (chosen from former members of the Court of Auditors, the Court of Justice or former officials with at least the rank of director general in an EU institution other than the Commission), a standing high-level independent vice-chair appointed by the Commission who shall deputise for the chair, two representatives of the Commission and one representative of the contracting authority. The EDES panel has no investigative powers but bases its preliminary classification in law on established facts and findings presented to it by the competent authorising officers.

- misconduct has an impact on the person or entity's integrity which negatively affects or concretely risks affecting the performance of a contract;
- d. it has been established by a final judgment that the person is guilty of any of the following:
- i. fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law⁶⁵ and Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995⁶⁶;
 - ii. corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 and Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997⁶⁷, and in Article 2(1) of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector⁶⁸, as well as corruption as defined in the law of the country where the contracting authority is located, the country in which the person is established or the country of the performance of the contract;
 - iii. conduct related to a criminal organisation referred to in Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime⁶⁹;
 - iv. money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC⁷⁰;
 - v. terrorist offences or offences related to terrorist activities, as defined in Articles 3 to 12 of Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 14 of that Directive⁷¹;
 - vi. child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision

⁶⁵ OJ L 198, 28.7.2017, p. 29.

⁶⁶ OJ C 316, 27.11.1995, p. 48.

⁶⁷ OJ C 195, 25.6.1997, p. 1.

⁶⁸ OJ L 192, 31.07.2003, p. 54.

⁶⁹ OJ L 300, 11.11.2008, p. 42.

⁷⁰ OJ L 141, 5.6.2015, p. 73.

⁷¹ OJ L 88, 31.3.2017, p. 6.

2002/629/JHA⁷²;

- e. the person has shown significant deficiencies in complying with main obligations in the performance of a contract financed by the EU, which has led to the early termination of a contract or to the application of liquidated damages or other contractual penalties or which has been discovered following checks, audits or investigations by an authorising officer, OLAF the Court of Auditors or the EPPO;
- f. it has been established by a final judgment or final administrative decision that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests⁷³;
- g. it has been established by a final judgment or final administrative decision that the person or entity has created an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations including those related to working rights, employment and labour conditions, in the jurisdiction of its registered office, central administration or principal place of business;
- h. it has been established by a final judgment or final administrative decision that an entity has been created with the intent provided for in point (g);
- i. the person has intentionally and without proper justification resisted an investigation, check or audit carried out by an authorising officer or its representative or auditor, OLAF, the EPPO, or the Court of Auditors. It shall be considered that the person resists an investigation, check or audit when it carries out actions with the goal or effect of preventing, hindering or delaying the conduct of any of the activities needed to perform the investigation, check or audit. Such actions shall include, in particular, refusing to grant the necessary access to its premises or any other areas used for business purposes, concealing or refusing to disclose information or providing false information.

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

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

The contracting authority must exclude the person where:

- a natural or legal person who is member of the administrative, management or supervisory body or has power of representation, decision or control on the person is in a situation listed in points c) to i);

⁷² OJ L 101, 15.4.2011, p. 1.

⁷³ OJ L 312, 23.12.1995, p. 1.

- a natural or legal person that assumes unlimited liability for the debts of that person is in a situation listed in points a) or b);
- a natural or legal person who is essential for the award or for the implementation of the contract and is in a situation referred to in point c) to i).

When a person referred above is excluded, the authorising officer responsible may also exclude or impose a financial penalty on the beneficial owner or any affiliate of the excluded entity. Any decision of the authorising officer responsible or, where applicable, any recommendation of the EDES panel, shall take into consideration whether (i) the excluded person has a functional independence from its affiliate and from the beneficial owner; (ii) the misconduct of the excluded person is not due to a failure to supervise or to maintain adequate controls; (iii) the excluded person has taken a commercial decision without the influence of any affiliate or of the beneficial owner.

The contracting authority must not exclude a person where i) it can demonstrate that adequate measures⁷⁴ have been adopted which ensure its reliability, except in the cases listed in point d); ii) it is indispensable for the continuity of the service for a limited duration and pending the adoption of remedial measures; iii) where the exclusion would be disproportionate.

The exclusion system as regards requirements to promote good tax governance

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

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

For the first case (breach of obligations relating to taxes or social security), a final judgement or final administrative decision is required in order to exclude an entity. For the second (involvement in money laundering or terrorism financing) and the third case (creation of an entity to circumvent tax, social or other legal obligations), the authorising officer can bring the case before the EDES panel (see Section 2.4.2.1.) at any moment, on the basis of established facts and findings brought to its attention.

Evidence to be provided

Participants are obliged to declare that they are not in one of the exclusion grounds mentioned above through a signed declaration on honour (see Section 2.4.2.3.).

Where it is necessary to ensure the proper conduct of the procedure and there is a risk

⁷⁴ These measures may include, in particular: (a) measures to identify the origin of the situations giving rise to exclusion and concrete technical, organisational and personnel measures within the relevant business area of the person, appropriate to correct the conduct and prevent its further occurrence; (b) proof that the person has undertaken measures to compensate or redress the damage or harm caused to the European Union's financial interests by the underlying facts giving rise to the exclusion situation; (c) proof that the person has paid or secured the payment of any fine imposed by the competent authority or of any taxes or social security contributions. The person shall submit remedial measures that have been assessed by an external independent auditor or be considered sufficient by a decision of a national or Union authority. This is without prejudice to the assessment of the panel referred to in Article 145 of the FR.

that the declaration may contain false or distorted data, the authorising officer should verify the reliability of the information provided in the declaration on honour by requesting appropriate evidence. Such verification should in particular be undertaken if the authorising officer becomes aware of concrete signs or indications (such as press reports) that put into question the information provided in the declaration. Authorising officers should notably pay attention in this regard if the participant is incorporated or established in a jurisdiction considered by the EU as non-cooperative for tax purposes⁷⁵.

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

Under the Financial Regulation, participants also have the obligation to disclose their beneficial ownership structure upon request of the contracting authority⁷⁶.

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

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

2.4.2.2 Rejection from a given procedure

The contracting authority must reject from a given award procedure a participant who:

- a. is in one of the exclusion situations established under Section 2.4.2.1.;
- b. has misrepresented the information required by the contracting authority as a condition for participating in the procedure or has failed to supply that information;
- c. was previously involved in the preparation of procurement documents used in the award procedure where this entails a breach of the principle of equality of treatment, including distortion of competition that cannot be remedied otherwise;
- d. has professional conflicting interests which may negatively affect the performance

⁷⁵ The Council of the European Union adopted for the first time a list of non-cooperative jurisdictions for tax purposes on 5 December 2017. It contains two annexes: (i) Annex I includes jurisdictions that are classified as non-cooperative and (ii) Annex II includes further jurisdictions ('Annex II Jurisdictions' or 'Committed Jurisdictions') that have taken sufficient commitments to address their identified deficiencies and as such have not been considered as non-cooperative for the time being. Annexes I and II is updated by the Council as appropriate and the changes become effective once published in the Official Journal of the EU. See <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/>

⁷⁶ Article 139(2)(b) FR.

of the contract in accordance with point 20.6 of Annex I of the FR (only for candidates/tenderers in procurement);

- e. is the addressee of a decision prohibiting the award of the contract for having received foreign subsidies distorting the internal market adopted by the Commission in accordance with Article 143(3) of the Financial Regulation (only for candidates/tenderers in procurement) (see Section 2.6.10.2.).

In cases under (a), if the contracting authority becomes aware of a situation of exclusion where a recommendation of the EDES panel is required in accordance with Section 2.4.2.1., it will immediately seize the EDES panel. The evaluation will not be suspended, except in procurement restricted procedures at shortlisting stage (in this case the establishment of the shortlist must be suspended until a decision on the rejection is taken). If the contract is to be awarded to the person concerned by the situation of exclusion, the award of the contract will be suspended until the EDES panel has issued its recommendation. Where necessary, the contracting authority may ask all tenderers to extend the period of validity of the offers accordingly.

If the situation of exclusion is confirmed in the recommendation of the EDES panel, the relevant person must be rejected from the given procedure according to Section 2.4.2.3. and the procedure can resume with an award to another tenderer on the list or, if necessary, cancellation. In parallel, after the recommendation of the EDES panel, a decision of exclusion must be taken according to Section 2.4.2.1.

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

However, if the excluded entity is a member of consortium, it may be disproportionate to reject the whole request to participate/tender on that basis. Therefore, a withdrawal of the excluded member of the consortium, and thus a change in the composition of the consortium, could only be accepted if all the initial conditions still remain fulfilled by the remaining members, as described in Section 2.5.5 on “Exceptional changes to the composition of the consortium during the award procedure”.

In cases under (b), (c) and (d), before taking the decision to reject a participant from a given procedure, the contracting authority must give the economic operator the opportunity to submit its observations (right to be heard) and to prove, in case of (c) that its involvement in the preparation of documents used in the award procedure does not breach the principle of equal treatment, including distortion of competition. These grounds of rejection may have serious consequences for the economic operator concerned as they may also qualify as grave professional misconduct according to Section 2.4.2.1. and result in a decision of exclusion. In this case, after or in parallel to the decision of rejection, the contracting authority must refer the case to the EDES panel according to Section 2.4.2.1.

In cases under (e), the tenderer is subject of a decision taken by the European Commission (see Section 2.6.10.2.), which prohibits the award of contracts to that tenderer. In the case of such prohibition decision, the contracting authority responsible for an individual award procedure shall notify the rejection from that award procedure by letter addressed to the tenderer concerned, following the prohibition decision.

2.4.2.3 Evidence to be provided

1. Declaration on honour

Participants must sign a declaration together with their application documents, certifying that they do not fall into any of the exclusion or rejection situations cited under Sections 2.4.2.1. and 2.4.2.2. and, where applicable, that they have taken adequate measures to

remedy the situation. For calls for proposals, the obligation to fill and sign the declaration on honour (Annex a14b) applies to all applicants, co-applicants and affiliated entities.

They must also declare whether i) natural and legal persons that are members of the administrative, management or supervisory body or that have powers of representation, decision or control and; ii) beneficial owners as referred to in Article 3 of Directive (EU) No. 2015/849⁷⁷ are in one of the situations under points c) to h) of Section 2.4.2.1.

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

The contracting authority must accept the European single procurement document (ESPD)⁷⁸ as an alternative to the declaration. The declaration must not be requested when it has already been submitted for the purposes of another award procedure, provided the situation has not changed and that the time elapsed does not exceed one year.

For procurement contracts with a value of EUR 15 000 or less, the contracting authority may waive the requirement to submit a declaration depending on its risk assessment. For grants of EUR 15 000 or less, no declaration on honour must be required. The obligation to submit a declaration on honour does not apply to entities implementing European Union funds in indirect management⁷⁹.

2. Documentary evidence

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

- a. appropriate evidence that they are not in a situation of exclusion;
- b. information on natural or legal persons that are members of its administrative, management or supervisory body or that have powers of representation, decision or control and appropriate evidence that one or several of these persons are not in one of the exclusion situations listed in points c) to h);
- c. appropriate evidence that natural or legal persons that assume unlimited liability for the debts of that economic operator is not in a situation listed in points a) or b) of Section 2.4.2.1.

For procurement contracts with a value equal or greater than the international thresholds (services ≥ EUR 300 000, supply ≥ EUR 300 000, works ≥ EUR 5 000 000), the presumed successful tenderer (including consortium members, sub-contractors and capacity providing entities, if any) must supply evidence that they do not fall into the exclusion situations, unless such evidence has already been submitted earlier in the procedure.

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

⁷⁷ According to this provision, 'beneficial owner' means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted.

⁷⁸ Standard electronic declaration for exclusion and selection criteria created under Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance (OJ L 94, 28.3.2014, p. 65).

⁷⁹ This refers in particular to pillar assessed entities and entities designated by third countries.

The contracting authority must waive the obligation to submit documentary evidence:

- i. if it can access it on a national database free of charge; or,
- ii. if such evidence has already been submitted to it for the purposes of another procedure and provided that any submitted documents are still valid and that the time that has elapsed since the issuing date of the documents does not exceed one year; or,
- iii. if it recognises that there is a material impossibility to provide such evidence.

The obligation to submit documentary evidence does not apply to entrusted entities.

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

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

- a), c), d), f), g) or h) of Section 2.4.2.1., the contracting authority may accept a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of establishment showing that the requirements are satisfied;
- a) or b) of Section 2.4.2.1., the contracting authority will accept a recent certificate issued by the competent authority of the State concerned. Where the certificate is not issued in the country concerned it may be replaced by a sworn/solemn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in the country of establishment.

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

3. Check of the EDES database

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

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

The purpose of this system is to facilitate:

- the early detection of risks threatening the European Union's financial interests following information provided by OLAF, EPPO, authorising officers of the Commission, European offices, executive agencies, other Union institutions, a body or person entrusted with implementation of Common Foreign and Security Policy actions or entities implementing the EU budget under indirect and shared management;
- the exclusion of economic operators which are in one of the situations of exclusion listed in point 2.4.2.1.;
- the imposition of a financial penalty on an economic operator in accordance with Article 140 FR.

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

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

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

2.4.2.4 Consequences of an exclusion/rejection situation in an award procedure

When the contracting authority takes the decision to reject a candidate/tenderer or applicant from an award procedure because it is in an exclusion situation established according to Section 2.4.2.1. or because it is in another situation of rejection (Section 2.4.2.2., points b) and e)), it must notify it to the person. Depending on the reason of rejection, the notification will specify that the request to participate/tender/application is unsuitable (for the situations under Section 2.4.2.2., point a)) or irregular (for the situations under Section 2.4.2.2., points b) and e)).

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

2.4.3 Rule of law conditionality

Regulation (EU, Euratom) 2020/2092⁸⁰ ('Conditionality Regulation') establishes rules for the protection of the Union budget, in the case of breaches of the principles of the rule of law in a Member State.

The Conditionality Regulation starts from the premise that breaches of the principles of the rule of law, in particular those that affect the proper functioning of public authorities and

⁸⁰ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020, p. 1–10.

effective judicial review, can seriously harm the financial interests of the Union. This is even more so for breaches that are widespread or due to recurrent practices or omissions by public authorities, or to general measures adopted by such authorities.

In the event of breaches of the principles of the rule of law, the Conditionality Regulation determines the measures to be adopted, and the procedure to be followed to adopt such measures. Measures under the Conditionality Regulation are necessary in particular in cases where other procedures set out in Union legislation would not allow the Union budget to be protected more effectively.

The possible measures under the Conditionality Regulation include the suspension of payments and of commitments, the suspension of the disbursement of instalments or the early repayment of loans, a reduction of funding under existing commitments, and a prohibition on entering into new commitments with recipients or to enter into new agreements on loans or other instruments guaranteed by the Union budget.

In the Communication⁸¹ which accompanied the Conditionality Regulation, the Commission provided non-binding Guidelines on (i) the conditions for the adoption of measures; (ii) the relation between the Conditionality Regulation and other instruments; (iii) the proportionality of the measures to be proposed to the Council; (iv) the procedure and assessment process; and (v) the protection of the rights of final recipients or beneficiaries.

As regards ongoing contracts the European Commission is entitled, in application of the measures taken by the Council, to suspend time-limits of payments, the implementation of a project, or termination of a contract. Contractors and grant beneficiaries shall take similar measures as regards subcontractors or recipients of financial support. Contractor and grant beneficiaries may also have to not enter into legal commitments with concerned entities by a Council decision.

2.5 General principles applying to procurement and grants

There are some fundamental principles that apply to procurement and grant award procedures which the contracting authority has to respect throughout the procedure. These principles are laid down in the Financial Regulation, like the principle of Sound financial management⁸², by which budget appropriations must be used in accordance with the principles of economy, efficiency and effectiveness.

The principle of proportionality also requires that measures adopted by the contracting authority do not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued and that where there is a choice between several appropriate measures recourse must be had to the least onerous⁸³.

The contracting authority must take all necessary measures to ensure full compliance with these principles also by facilitating the detection of unreliable economic operators and the protection of the European Union's financial interests. To this aim, an early detection and exclusion system (EDES) is established by the Financial Regulation⁸⁴ to reinforce the protection of the European Union's financial interests and to ensure sound

⁸¹ Communication from the Commission - Guidelines on the application of the Regulation (EU, EURATOM) 2020/2092 on a general regime of conditionality for the protection of the Union budget (2022/C 123/02) OJ C 123, 18.3.2022, p. 12.

⁸² Article 2(65) FR.

⁸³ Judgment of the Court of First Instance (First Chamber) of 27 September 2002, *Tideland Signal Ltd v Commission of the European Communities*, T-211/02, ECLI:EU:T:2002:232, paragraph 39.

⁸⁴ In place since 1 January 2016 and replacing the early warning system and the central exclusion database.

financial management.

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

2.5.1 Procurement

EU public procurement consists in the acquisition by means of a contract of works, supplies or services, by one or more contracting authorities from economic operators chosen by those contracting authorities⁸⁵.

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

The following principles should be followed⁸⁶:

Transparency

The contracting authority should ensure openness and clarity on procurement policy and its delivery. This obligation consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the market to be opened up to competition and the impartiality of procurement procedures to be reviewed⁸⁷. Transparency is also ensured through the publication of award notices in the cases referred to in Section 2.10.4.1. as well as information about recipients (see Section 2.10.4.2.).

Equal treatment and non-discrimination

All interested parties should be treated in the same way, meaning that all tenderers must be afforded equal opportunities when formulating their tenders, which therefore implies that the tenders of all competitors must be subject to the same conditions⁸⁸.

Competition

Procurement should be carried out by competition, unless there are justified reasons to the contrary. This obligation also means that the estimated value of a contract may not be established in such a way as to avoid the competitive tendering procedure or to circumvent the rules which apply to certain procurement procedures or above a certain threshold, nor may a contract be split for that purpose (a practice known as 'salami-slicing'). Moreover, as pointed out by the Court⁸⁹, the widest possible opening-up to competition is also in the interest of the contracting authority itself, which will have thus greater choice as to the tender that is the most advantageous and the most suited to the needs of the public authority.

⁸⁵ Article 2(54) FR.

⁸⁶ Article 163 FR.

⁸⁷ Judgment of the Court (Sixth Chamber) of 7 December 2000, *Telefonadress GmbH v Telekom Austria AG*, C-324/98, ECLI:EU:C:2000:669, paragraph 62.

⁸⁸ Judgment of the General Court (First Chamber), 13 December 2013, *European Dynamics Luxembourg SA and Evropaiki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission*, T-165/12, ECLI:EU:T:2013:646, paragraph 46.

⁸⁹ Judgment of the Court (Fifth Chamber) of 18 December 2014, *Azienda Ospedaliero-Universitaria di Careggi-Firenze v Data Medical Service srl*, C-568/13, ECLI:EU:C:2014:2466, paragraph 34.

2.5.2 Grants

A grant is a financial contribution made by a contracting authority by way of donation to one or more beneficiaries for the purpose of carrying out an action or implementing a work programme.

Grants are divided in two general categories:

- action grants, financing actions intended to help achieve a European Union policy objective;
- operating grants, financing the functioning of a body which has an objective forming part of, and supporting, a European Union policy.

The following principles should be followed⁹⁰:

Equal treatment

No preferential treatment may be given to any potential beneficiary. This rule applies not only to the process of identifying and selecting beneficiaries⁹¹ but also during the implementation of the action.

Transparency

The contracting authority must publish all relevant information in order to enable the potential beneficiaries to obtain timely and accurate information on the actions being undertaken by the European Union. The financing decision/action plan is implemented by publishing calls for proposals⁹². In addition, transparency is also ensured through the publication of information about recipients (see Section 2.4.10.2.).

Co-financing

The costs are shared between the contracting authority and the beneficiary. This means that a grant awarded for an action cannot fund the entire cost of the action and that an operating grant cannot fund all the operating costs incurred by the beneficiary. For more details on the exceptions to the co-financing principle, see Section 6.2.8.

Non-cumulative award and no double funding

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

Same costs cannot be financed twice by the contracting authority.

Non-retroactivity

Grants cannot finance actions that have already been completed and which have therefore proved achievable without financial support from the European Union. At the same time, the rule prohibits awarding an operating grant for activities carried out in previous budgetary years of the beneficiary. For more details on the non-retroactivity principle and

⁹⁰ Article 191 FR.

⁹¹ See Section 6.5.3.

⁹² Except for duly substantiated and exceptional cases where direct award is justified (see Section 6.4.3.).

crisis situations, see Section 6.2.7.

No-profit

Grants must not have the purpose or effect of producing a profit within the framework of the action or the work programme of the beneficiary. For more details, see Section 6.2.9.

2.5.3 Visibility

Unless the European Commission requests or agrees otherwise, all recipients must acknowledge the support received under EU programmes and contribute to the visibility of the European Union.

For this purpose, recipients must use the EU emblem and short funding statements. The European Commission has elaborated a guidance outlining what is expected of recipients⁹³. Such measures shall be carried out in accordance with the latest Communication and Visibility Requirements for EU-funded external action, published by the European Commission⁹⁴ or with any other guidelines agreed between the European Commission and the recipient.

2.5.4 Conflict of interests

The term 'conflict of interests'⁹⁵ is used with different meanings in different contexts. Four cases can be distinguished:

1. conflict of interest for the contracting authority;
2. grave professional misconduct;
3. involvement in the preparation of documents used in an award procedure;
4. professional conflicting interests;
5. conflict of interest for the contractor or grant beneficiary: Please refer to Section 2.5.6.

2.5.4.1 Conflict of interest for the contracting authority

A conflict of interest⁹⁶ exists where the impartial and objective exercise of the functions of authorising officer (or any financial actor, including national authorities at any level, involved in budget implementation under direct, indirect and shared management) is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.

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

- a. granting oneself or others unjustified direct or indirect advantages;
- b. refusing to a participant or contractor the rights or advantages to which that person or entity is entitled;

⁹³ Available at: https://international-partnerships.ec.europa.eu/knowledge-hub/communicating-and-raising-eu-visibility-guidance-external-actions_en

⁹⁴ Available at website referred to in footnote 93.

⁹⁵ Guidance on the avoidance and management of conflicts of interest under the FR (2021/C 121/01) [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC0409\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC0409(01)&from=EN).

⁹⁶ Article 61 FR.

- c. committing undue or wrongful acts or failing to carry out acts that are mandatory.

In procurement and grant procedures, the situation of conflict of interests applies to persons in charge of the procedure as well as to persons involved in the preparation, opening and evaluation phases.

A conflict of interest may arise where, for instance, a member of the opening and evaluation committee or someone in the contracting authority or others involved in the procedure grant themselves, or others, unjustified direct or indirect advantages by influencing the outcome.

Special care should be taken in cases where external experts are involved in the evaluation committee⁹⁷. Indeed, the authorising officer responsible must ensure that these external experts satisfy the obligations concerning conflict of interests and confidentiality⁹⁸.

As regards evaluation committees, please also refer to Section 2.9.2.

In the potential case of members of staff of the EU delegations (local or contract agents) proposed as experts by tenderers, the European Commission must make sure that the contract with the EU institution is officially terminated before the expert starts to work on an EU financed project under a contract with an external organisation/company. In the case of civil servants or other staff of the public administration of the partner country, or of international/regional organisations based in the country, regardless of their administrative situation, these must only be approved by the European Commission if well justified. The tenderer must in its offer include information on the added value the expert will bring, as well as proof that the expert is seconded or on leave on personal ground (see Section 3.4.10.3.).

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

2.5.4.2 Grave professional misconduct

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

It encompasses the violation of applicable laws or regulations or ethical standards of the profession to which the participant or contractor belongs, and any wrongful conduct that has an impact on the professional credibility of the participant or contractor⁹⁹ (for details, see Section 2.5.6.).

There are specific situations for participants or recipients that qualify as 'grave professional misconduct' and not as conflict of interests¹⁰⁰:

- where the participant or recipient attempts to unduly influence the decision-making of the contracting authority during an award procedure;
- where the participant enters into agreement with other persons or entities in order

⁹⁷ Articles 153(5), 229(4), Annex I point 28(2) and point 29(1) FR.

⁹⁸ For this purpose, each external expert must sign a declaration of absence of conflict of interest and confidentiality (Annex a4). These must be enclosed to the contract concluded for the provision of the services.

⁹⁹ Article 138(1)(c) FR.

¹⁰⁰ Article 138 FR.

- to distort competition;
- where the participant tries to obtain confidential information that may give it undue advantages in the procedure.

Cases where a recipient or participant attempts to obtain information leading to an unfair advantage in subsequent or related procedures or attempts to influence the decision making process of the contracting authority or enters into agreement with other persons or entities with the aim of distorting competition are rather to be treated as grave professional misconduct and are a basis to reject/exclude the participant or recipient concerned (see Section 2.4.2.2.).

A participant commits a grave professional misconduct in the cases where it fails to declare to the Contracting Authority a **potential** situation of conflict of interest. Such failure constitutes a violation of the Ethics Clause in the Instructions to Tenderers or in the Guidelines for grant applicants, preventing the Contracting Authority from assessing the situation by its own means. As such it is tantamount to misrepresenting information required for the verification of the absence of grounds for exclusion or for the fulfilment of selection criteria, and consequently, it meets the conditions of Article 138 1 c) i) FR to be qualified as “grave professional misconduct” since the conduct has an impact on the participant’s professional credibility where it denotes wrongful intent or gross negligence.

2.5.4.3 Involvement in the preparation of documents used in an award procedure and distortion of competition

There are cases where the contracting authority uses a technical assistance contract to help drafting procurement documents (like tender specifications), or documents for a grant award procedure, of a subsequent award procedure. In this case, it is the responsibility of the contracting authority to ensure equality of treatment between the operator involved in the technical assistance and other participants. The contractor can be rejected from the subsequent procedure when the contractor, its personnel or subcontractors were involved in the preparation of procurement documents or documents relating to a grant award procedure and this entails a breach of the principle of equality of treatment, including a distortion of competition that cannot be remedied otherwise¹⁰¹. On this regard, please note the existence of a declaration of objectivity and confidentiality (Annex a3) that should be completed by all persons involved in preparing terms of reference, technical specifications or other documents relating to an award procedure.

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

¹⁰¹ Article 143(c) FR.

2.5.4.4 Professional conflicting interest (procurement only)

A professional conflicting interest arises where the previous or ongoing professional activities of an economic operator affects or risks affecting its capacity to perform a procurement contract in an independent, impartial and objective manner¹⁰².

Examples of such situations are cases where an economic operator could be awarded a contract

- to evaluate a project in which the economic operator has participated or has vested interests;
- to audit accounts that the economic operator has previously certified;
- to evaluate a programme under which the economic operator has previously received subsidies;
- to conduct a study providing input to a Union policy regulating a sector where the economic operator has its business interests;

Such cases tend to arise in evaluation or audit framework contracts, where the contractor might have a professional conflicting interest for a specific contract.

This is treated at the selection stage, under the professional capacity criteria. The contracting authority shall require economic operators, and, where appropriate, entities on whose capacity the economic operator intends to rely, as well as envisaged subcontractors to sign a declaration on honour confirming the absence of professional conflicting interests, and, at the request of the contracting authority, when needed to provide any relevant information.

The contracting authority shall assess the existence of professional conflicting interests on the basis of a declaration of professional conflicting interests and, where relevant, the information provided in response to contracting authority's request for additional information.

Where the contracting authority has established that a candidate/tenderer is in a situation of professional conflicting interest, the latter shall be rejected.

A case-by-case assessment is required to confirm that the situation of professional conflicting interest may negatively affect the performance on the contract in question. The professional conflicting interest does not necessarily have to exist at the time the contracting authority takes its decision to award the contract, but an actual risk of conflicting interest already present at this stage is sufficient to reject a participant. However, the mere possibility of a professional conflicting interest cannot be a ground for rejection and the conflict has to be evidenced and not hypothetical¹⁰³. Please also refer to Section 2.4.2.2.

For the award of a multiple framework contract, the existence of professional conflicting interests has to be established vis-à-vis the majority of potential assignments to be performed under the framework contract. If such a conclusion cannot be reached before the award of the multiple framework contract, the contracting authority may not exclude the tenderer/candidate at this stage and should offer them an opportunity to provide for acceptable solutions to mitigate or avoid such professional conflicting interest. Checks for the possible presence of professional conflicting interests should be carried out again, on a case-by case basis, before the award of each specific contract and if necessary, during the performance of the contract.

¹⁰² Article 2(56) FR.

¹⁰³ See judgment of the Court of First Instance of 18 April 2007, *Deloitte Business Advisory NV v. Commission*, T-195/05, ECLI:EU:T:2007:107.

A professional conflicting interest might occur with regard to on-going contracts (e.g. the contractor is acquired by another economic operator), the contractor must immediately inform the contracting authority and measures must be adopted to prevent or to resolve such a conflict, including terminating the contract if necessary.

2.5.5 Other essential points

Exceptional changes to the composition of the consortium during the award procedure (procurement)

To ensure fair competition, no changes to the identity or composition of the candidate/tenderer are permitted, except in the situations listed below subject to the contracting authority's prior authorisation in writing.

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

- i. where a member of the group is being replaced by a new entity following a merger or takeover (universal succession);
- ii. where the change comes from the contracting authority, i.e. one member (leader or other member) of the consortium is subject to exclusion. Indeed, in this case, exclusion or rejection applies to a legal entity, not to a group, so it may be disproportionate to reject the whole request to participate/tender on that basis. Such situations should be appreciated on a case-by-case basis, as the change may constitute a substantial modification and therefore, withdrawal of the concerned member of the consortium could only be accepted if all the initial conditions still remain fulfilled by the remaining members, as described below. In any case, the replacement of the excluded member is not allowed.

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

The contracting authority must verify the following conditions:

1. in the case (i) above, whether the new entity meets eligibility requirements;
2. in the case (i) above, whether the new entity is not in an exclusion situation and is not subject to restrictive measures;
3. as regards selection criteria:
 - a. in case (i) above: whether the selection criteria are still fulfilled compared to the request to participate/tender originally submitted;
 - b. in case (ii) above: whether the selection criteria are still fulfilled by the remaining members of the consortium, compared to the request to participate/tender originally submitted;
4. in both cases, whether the change in composition of the consortium does not entail any substantial change in the tender as originally submitted. This condition is met as long as:
 - a. all the tasks assigned to the concerned or excluded entity are taken over:
 - (1) by the newly composed consortium (for case (i) above);
 - (2) by the other members of the consortium (for case (ii) above);
 - b. the change does not make the tender non-compliant with the requirements

- set in tender documents;
- c. the change does not put the other tenderers in a competitive disadvantage;
- d. the change does not modify the evaluation of award criteria as originally submitted.

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

As regards changes in consortium composition after contract signature please refer to Section 2.11.2.

Requesting information only once¹⁰⁴

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

Verification of financial guarantees

Financial guarantees have the effect of making the third party stand as irrevocable collateral security, or first-call guarantor of the defaulting contractor's or grant beneficiary's obligations. At the contracting authority's request, the third party will therefore automatically replace the contractor or grant beneficiary if the latter fails to fulfil its obligations towards the contracting authority, up to the amount for which the financial guarantee has been given. A thorough check on the legality, reliability and authenticity of any financial guarantees is therefore essential¹⁰⁵.

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

Record keeping

(i) Record keeping obligations for the contracting authority in direct Management:

Subject to the contracting authority's legislation on access to documents, written records of the entire procurement and grant award procedure must be kept confidential and kept by the contracting authority in accordance with the policy adopted on archiving¹⁰⁶.

Unsuccessful proposals have to be kept for 5 years from the closure of the call for proposal, and unsuccessful tenders have to be kept for 5 years from the closure of the call for tenders.

Contractual and financial documents have to be kept for a minimum of 10 years from closure of the contract and up to the time limitation period (prescription date) of any dispute about the law governing the contract. During and after this period, the contracting authority will treat personal data in conformity with its privacy policy. The documents to be conserved include all the preparatory documents, the corresponding financing agreement, the originals of all requests to participate/tenders/proposals submitted, and any related correspondence.

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

¹⁰⁴ Article 128 FR.

¹⁰⁵ Please refer to INTPA Companion Chapter 9.1.

¹⁰⁶ Please refer to INTPA Companion Chapter 18.

(ii) Record keeping obligations for the contracting authority in indirect management:

The contracting authority shall keep all relevant financial and contractual supporting documents from the date of the entry into force of the financing agreement or as from an earlier date which is stipulated as the start date of the period of execution for 5 years as from the end of the execution period. The financing agreement defines the retention period of the files. If its law conflicts with the confidentiality required, the contracting authority must obtain prior authorisation from the European Commission before disclosing any information.

(iii) Recipients of funds¹⁰⁷:

Any recipient (contractor or grant beneficiary) shall keep records and supporting documents, including statistical records and other records pertaining to the funding, as well as records and documents in electronic format, for 5 years following the payment of the balance or, in absence of such payment, the transaction. This period shall be 3 years where the funding is of an amount lower than or equal to EUR 60 000.

Records and documents pertaining to audits, appeals, litigation, the pursuit of claims relating to legal commitments or pertaining to OLAF investigations shall be retained until such audits, appeals, litigation, pursuit of claims or investigations have been closed.

The documentation referred to above must be made available for inspection by the European Commission, OLAF, the European Public Prosecutor's Office (EPPO) and the Court of Auditors.

Cross-cutting issues

Environmental, climate change, gender equality, accessibility for disabled people concerns need to be taken into account by participants in award procedures. Furthermore, appropriate environmental screening, including for climate change and biodiversity impacts, must be undertaken at project level, in accordance with the applicable legislative acts of the European Union, for both procurements and grants. Where relevant, strategic environmental assessments must be used in the implementation of sectoral programmes.

Joint procurement

In case of joint action between an EU institution and one or more contracting authorities from a Member State, from an EFTA State or from an EU candidate country (if that possibility has been specifically provided for in bilateral or multilateral treaty), or with other third countries (if such possibility is specifically provided for in the applicable basic act), the procurement procedure may be carried out jointly by the EU institution and that contracting authority. In this case, the procedures applicable to the European Union Institutions must apply¹⁰⁸. Where the share pertaining to or managed by the contracting authority of a Member State in the total estimated value of the contract is equal to or above 50 %, or in other duly justified cases, the EU institution may decide that the procedural rules applicable to the contracting authority of a Member State shall apply to the joint procurement, provided that those rules may be considered as equivalent to those of the EU institution.

Per diem

Per diem is a maximum fixed flat rate, covering daily subsistence costs for missions provided for in the terms of reference or the budget of the action, and if required approved by the contracting authority. Per diem include accommodation, meals, local travel within the place of mission and sundry expenses. Any subsistence allowances to be paid for

¹⁰⁷ Article 133 FR.

¹⁰⁸ Article 168(2) FR.

missions undertaken must not exceed published per diem rates¹⁰⁹.

The applicable per diem rate is the per diem rate in force at the time of contract signature and will not be subject to revision.

In case of service contracts, missions are assignments carried out by the contractor's authorised experts away from the expert's place of performance or the home-based location.

Therefore, to define a mission, the contracting authority must indicate in the terms of reference the delivery mode of the expert's assignment:

- On the place of performance: when the contracting authority requests the expert to implement the contract in a defined location. The place of performance must be a city and cannot be a region or a country.
- Home-based: when the contracting authority does not require the expert to implement the assignment in any specific location. In case the assignment requires missions, the contractor must indicate in its offer the home-based location to calculate the mission costs.

An expert may, for the same assignment, work under the two different delivery modes having working days "on the place of performance" and working days "home-based." The place of performance can be the same for the complete team of experts or each expert can have one different place of performance. However, each expert may have maximum one location "on the place of performance" in addition to the "home-based" location (if any).

The contracting authority must identify in the terms of reference, the location(s) where the expert will undertake mission(s) and the working days needed for each mission.

Local travel to and from the airport is therefore covered by the per diem. Travelling time for the purpose of a mission is to be regarded as part of the mission. The contracting authority reserves the right to reject payment of per diem for time spent travelling if the most direct route and the most economical fare criteria have not been applied. Travel undertaken by the expert for mobilisation and demobilisation as well as for leave purposes shall not be considered a mission and will not be subject to payment of per diem.

Per diem are payable on the basis of the number of hours spent on the mission. Per diem may only be paid in full or in half (no other fractions are possible):

- A full per diem shall be paid for each 24-hour period spent on mission.
- Half of a per diem shall be paid in case of a period of at least 12 hours but less than 24 hours spent on mission.
- No per diem shall be paid for missions of less than 12 hours.

In case of grant contracts, beneficiaries should reimburse per diems according to the rules and regulations of the grant beneficiaries, without exceeding the per diem rates published by the European Commission at the time of contract signature. Any person taking part in the action are eligible for the reimbursement of per diems, including staff of the beneficiaries, associates, affiliated entities and the final beneficiary(ies).

Contingency reserve (grants)

A reserve for contingencies and/or possible fluctuations in exchange rates not exceeding 5% of the direct eligible costs (for actions, or part of an action, where the grant takes the

¹⁰⁹ Available at https://international-partnerships.ec.europa.eu/funding/guidelines/managing-project/diem-rates_en.

form of reimbursement of costs) may be included by the applicants in the budget for external actions given the specificity and the higher level of unpredictability of external actions.

2.5.6 Ethics and values

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

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

The contractor as impartial and faithful adviser - absence of conflict of interest: the contractor must at all time act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It must refrain from making public statements about the project or services without the contracting authority's prior authorisation. It may not commit the contracting authority in any way without its prior written consent. The contractor must refrain from any relationship likely to give rise to a conflict of interest compromising its independence or that of its personnel. If the contractor ceases to be independent, the contracting authority may terminate the contract with immediate effect.

The contractor must respect environmental legislation and core labour standards: participants who have been awarded contracts must comply with the environmental legislation including multilateral environmental agreements, and with the core labour standards as applicable and as defined in the relevant International Labour Organisation conventions (such as the conventions on freedom of association and collective bargaining; elimination of forced and compulsory labour; abolition of child labour).

The contractor must commit to and ensure the respect of basic EU values: the contractor and its -personnel must comply with basic EU values such as respect for human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of minorities.

Zero tolerance for sexual exploitation, abuse and harassment

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

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

For grant award procedures, please also refer to Section 6.2.10.

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

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

The contractor and anti-corruption and anti-bribery: the contractor must comply with

all applicable laws and regulations and codes relating to anti-bribery and anti-corruption.

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

For the purposes of this provision, 'corrupt practices' are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the contracting authority.

Corrupt practices may also include unusual commercial expenses that are not mentioned in the contract or not stemming from a properly concluded contract referring to the contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company that looks like a front company. Contractors found to have paid unusual commercial expenses on projects funded by the EU are liable, depending on the seriousness of the facts noted, to have their contracts terminated or to be excluded from receiving EU funds.

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

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

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

A serious breach of the obligations under the code of conduct and ethical rules can amount to grave professional misconduct that may lead to immediate termination of the contract without prejudice to further administrative sanctions and exclusion from future calls for tenders.

A grave professional misconduct is not only constituted by violations of applicable laws or regulations or ethical standards of the profession to which the contractor belongs, but also encompasses any wrongful conduct that has an impact on the professional credibility of the contractor, and refers to conduct that denotes a wrongful intent or gross negligence (see in detail Section 2.4.2.1. on the exclusion criteria).

2.5.7 Anti-fraud strategy

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

The European Commission's current anti-fraud strategy (CAFS) was adopted in 2019. It is an internal policy document binding on the Commission services and executive agencies in their fight against fraud and corruption affecting the EU's financial interests.

The CAFS were updated to enhance the protection of the EU budget, to strengthen the corporate oversight of the European Commission regarding all issues related to fraud and to reinforce the overall anti-fraud system. In 2023, the Commission adopted a new action plan to the CAFS, to promote the use of IT solutions to support the fight against fraud and interoperability of databases used by the Commission and Member States, as well as the strengthening of the culture of ethics and anti-fraud for all Commission staff. In the external action area, the action plan provides for reinforced protection of funds under indirect

management.

In line with the requirements of the CAFS, DG INTPA has an anti-fraud strategy (AFS)¹¹⁰ and a related action plan to enhance the prevention, detection and correction of fraud.

An important factor in combatting fraud is staff awareness and an effective system of reporting indications of fraud and irregularities. While whistleblowing is a right in many legal systems, it is an obligation for EU staff. The EU Staff Regulations¹¹¹ and the Financial Regulation¹¹² set out an obligation to report serious irregularities for any EU official who becomes aware of:

- facts that give rise to a presumption of possible illegal activity, including fraud or corruption, detrimental to the interests of the EU;
- conduct relating to the discharge of professional duties that may constitute a serious failure to comply with the obligations of EU officials.

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

- The European Anti-Fraud Office, commonly known as OLAF, in charge of administrative investigations;
- The European Public Prosecutor's Office, the EPPO, change of criminal investigations and prosecutions within the participating EU member states.

OLAF investigates fraud against the EU budget, corruption and serious misconduct within the EU, and develops anti-fraud policy for the Commission. OLAF must be informed of suspicions of fraud, corruption or other irregularities concerning EU funds¹¹³, and is entitled to conduct:

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

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

Following its investigation, OLAF makes a report indicating its findings and recommendations. The competent responsible authorising officer must ensure the financial or administrative follow-up (the recovery of amounts unduly paid and/or registration of the person in EDES) in cooperation with OLAF.

The EPPO is EU's supranational prosecutorial body with the powers to carry out

¹¹⁰ The AFS and related information is for internal use only and is available for European Commission staff on INTPA's intranet: <https://myintracomm.ec.europa.eu/dg/INTPA/audit-and-control/anti-fraud/Pages/olaf.aspx>

¹¹¹ EEC/EAEC Council: [Regulation No 31 \(EEC\), 11 \(EAEC\)](#), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, Article 22a-c.

¹¹² Article 74(8).

¹¹³ [Regulation \(EU, Euratom\) No 883/2013](#) of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, Article 8.

independently investigations and prosecutions into crimes affecting the financial interests of the EU. The focus of its mandate is fraud and other crimes affecting the EU's financial interest as defined under Directive 2017/1371¹¹⁴. The EPPO can prosecute and bring the suspected perpetrators of such crimes to judgment in the 23 participating Member States¹¹⁵. Under specific conditions, the EPPO is also competent to investigate, prosecute and bring to judgment perpetrators of criminal offences related to EU funds allocated to third countries¹¹⁶.

2.5.8 Consequences of fraud and irregularities in an award procedure

Where the award procedure has been subject to irregularities or fraud, the authorising officer responsible must suspend the procedure and may take any necessary measures, including the cancellation of the procedure. The authorising officer responsible must inform the OLAF immediately of suspected cases of fraud¹¹⁷.

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

- a. refuse to sign the legal commitment;
- b. suspend payments;
- c. suspend the implementation of the legal commitment;
- d. where appropriate, terminate the legal commitment in whole or with regard to one or more recipients¹¹⁸.

2.5.9 Procedure with a suspensive clause

Award procedures (including negotiated/direct award) may be launched with a suspensive clause in any of the three following cases:

- a. in duly exceptional cases, before a financing decision/action plan is adopted;
- b. in duly exceptional cases, after adoption of the financing decision/action plan, but before a financing agreement between the European Commission and the partner country enters into force;

Suspensive clauses are very exceptional because the Financial Regulation generally requires the adoption of a financing decision by the European Commission (or, where relevant, the entry into force of a financing agreement) before a call for tenders or proposals is launched. However, exceptional circumstances may arise that give grounds for departing from the usual decision-making process. As a rule, circumstances justifying the use of a suspensive clause shall be outside the European Commission's control. Note that:

¹¹⁴ [Directive \(EU\) 2017/1371](#) of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017.

¹¹⁵ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain. Sweden expressed its intention to join by the end of 2024 and it is in an advanced stage of preparations for participating in the EPPO.

¹¹⁶ See [EPPO information sheet](#) on [EPPO's public website dedicated to International Cooperation](#).

¹¹⁷ Article 132(1) FR.

¹¹⁸ Article 132(2)(d) FR.

- the use of the suspensive clause after the financing decision is adopted but before the financing agreement enters into force may be considered in most cases as being outside the European Commission's control, as the entry into force of such agreement depends on the will of a third party (i.e. the partner country);
- the use of the suspensive clause before a financing decision is adopted requires good reasons why there are objective circumstances leading to the use of such clause and it is impossible to wait for the decision to be adopted. These reasons must be duly reflected in the request for prior approval.

- c. where the financing decision/action plan has been adopted, but the appropriations are not yet available, like in the case of multi-annual financing decisions/action plans (appropriations for year N are available, but not for subsequent years). In such a case, and for efficiency purposes, an award procedure is launched covering two or more budgetary years, also for years for which appropriations are not yet available.

For the procedures with a suspensive clause, a prior approval is required.

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

Under any of the three scenarios above, the actual award and the signature of a contract following an award procedure (including negotiated procedures or direct awards) cannot take place until:

- i. the financing decision/action plan is adopted;
- ii. the financing agreement enters into force;
- iii. the appropriations are available.

The procedure will be cancelled if the European Commission's decision-making procedure is not completed, the financing agreement does not enter into force, or the appropriations are not made available.

2.6 Procurement procedures

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

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

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

Article 167 FR provides the following list of procedures for awarding public contracts, including framework contracts or concession contracts¹¹⁹:

- a. open procedure;

¹¹⁹ See Article 2(14) FR for the definition of concession contracts.

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

Article 181 FR on external action procurement provides on the one hand that the common provisions on public procurement must be applicable to the external action procurement, subject to special provisions relating to the arrangements for awarding external contracts laid down in its Annex I.

On the other hand, it also adds further conditions to the use of certain common provisions. Accordingly, the publicity measures of Article 166(1) FR and the obligation to respect a standstill period must only apply as from:

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

In addition to the above-mentioned types of procurement procedures, point 39 of Annex I to the FR further indicates that procurement procedures in the field of external actions must be as follows:

- a. the restricted procedure as provided for in Article 167(1)(b);
- b. the open procedure as provided for in Article 167(1)(a);
- c. the local open procedure; and
- d. the simplified procedure¹²⁰.

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

2.6.1 Which procurement procedure to apply?

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

The contracting authority shall estimate, based on the total amount payable, the value of a contract in view of determining the procurement procedure¹²¹. The contracting authority must estimate the value of a purchase on the basis of previous experience, previous similar contracts and/or on the basis of a preliminary market research. Where contracts are subdivided into lots, the value of each lot is taken into account when calculating the overall

¹²⁰ The term “simplified procedure” replaces the former ‘competitive negotiated procedure’ under previous versions of the Financial Regulation.

¹²¹ Annex I point 35 FR.

threshold. This estimate shall be made at the latest when the contracting authority launches the procurement procedure. The calculations underpinning the estimated value of the total amount payable, including the breakdown per budget line, shall be attached as a supporting document to the tender dossier.

The estimated total amount payable may not be established in such a way as to avoid the competitive tendering procedure or to circumvent the rules which apply to certain procurement procedures or above a certain threshold (see Section 2.5.1.). Nor may a contract be split for that purpose.

If there are doubts concerning the estimated total amount payable or if the amount is close to a threshold, it is advised to use the applicable procedure for a higher threshold. If possible contract modifications (see Section 2.11.2) might result in the estimated total amount payable being in a different threshold, it is advised to use the applicable procedure for that threshold.

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

For mixed contracts¹²², covering a combination of works, supplies or services, the contracting authority determines the procurement thresholds and procedure to be used (with the agreement of the European Commission, for indirect management with *ex ante* controls). The estimated value of the particular parts of the contract should be taken into the account and the following rules apply:

- contracts which combine supplies and services are classified on the basis of which of the two accounts for the greater estimated value;
- if the contract combines works and services, it should be awarded according to its main subject: if services are minor, the works threshold will apply; if the works are minor, the service threshold will apply.

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

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

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

	SERVICE CONTRACTS	SUPPLY CONTRACTS	WORKS CONTRACTS
International Open or Restricted Procedure	≥ EUR 300 000		≥ EUR 5 000 000
Local Open Procedure	N/A	< EUR 300 000	< EUR 5 000 000
Simplified Procedure	< EUR 300 000	< EUR 100 000	< EUR 300 000

¹²² Article 165 FR.

Single Tender	≤ EUR 20 000
Payment Against Invoice without prior tender acceptance	≤ EUR 2 500
Framework Contracts	Specific contracts are awarded in line with the thresholds set in each Framework Contract (see e.g. SEA 2023, AUDIT 2023)

Multiple sourcing¹²³

Multiple sourcing procurement may be used for supplies and services. It may be used only where it is necessary to avoid the over-reliance on a single provider for critical supplies or services, or where it is necessary to have identical or quasi-identical services performed in parallel by different contractors.

When multiple sourcing procurement is used, contracts shall be awarded within the same procedure. The total value of all foreseen contracts with identical or quasi-identical subject matter shall be taken into account for the overall evaluation pursuant to the applicable threshold.

Where the total value of all the contracts to be awarded is equal to or greater than EUR 300 000, the publicity measures shall apply to each of the contracts.

The contracting authority shall indicate in the procurement documents the maximum number of contracts to be awarded. Contracts resulting from a multiple sourcing procurement shall be awarded by order of ranking laid down in the evaluation committee report, and shall also be signed in that order unless there are duly justified reasons.

2.6.2 Open procedure

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

See guidelines for publication (Annex a11e).

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

2.6.3 Restricted procedure¹²⁴

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

The contract is given maximum publicity by publishing a notice in the Official Journal of the European Union, in the Official Journal of the partner country, on the F&T Portal, and in

¹²³ Annex I point 34 FR.

¹²⁴ Annex I point 39.3 FR.

any other appropriate media.

See guidelines for publication (Annex a11e).

The selection criteria and the tasks to be undertaken are described in the published additional information about the contract notice (A5f) document. A 'long list' of all the candidates replying to the notice is cut down to a shortlist of the best qualified, on the basis of their requests to participate. At the shortlisting stage, before the list is approved, the contracting authority checks that none of the candidates (including each member of a consortium) is in an exclusion situation in the early detection and exclusion system (see Section 2.4.2.) or detection in the list of EU restrictive measures (see Section 2.4.1.).

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

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

2.6.4 Simplified procedure¹²⁵

Under the simplified procedure, the contracting authority invites at least three candidates of its choice to submit tenders without publishing the contract notice.

The contracting authority draws up a list of at least three economic operators with a justification for its choice. Before selecting them, the contracting authority checks that none is in an exclusion situation in the early detection and exclusion system (see Section 2.4.2.) or listed in EU restrictive measures (see Section 2.4.1.).

The candidates are sent a letter of invitation to tender accompanied by a tender dossier. The contract notice is not published, but it is included in the tender dossier as it contains important information for those companies that are invited to tender.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

Prior approval must be obtained before sending the tender dossier to the three identified economic operators.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior approval is required.

Tenders must be sent to the contracting authority no later than the deadline set in the invitation to tender. The chosen candidates must be allowed at least 30 days from the dispatch of the letter of invitation to tender. Experience shows that too short a period prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders. Therefore, this deadline cannot be shortened. The deadline for submissions must fall on a working day in the country of the contracting authority.

DIRECT MANAGEMENT

Tenders must be submitted exclusively via the electronic submission system (eSubmission) available via a link in Funding and Tenders (F&T) portal. Tenders submitted in any other way (e.g. e-mail or by letter) will be disregarded.

INDIRECT MANAGEMENT

Tenders must be sent or hand delivered to the contracting authority at the address

¹²⁵ Annex I point 39.5 FR.

provided.

The tenders are opened and evaluated by an evaluation committee with the necessary technical and administrative expertise, appointed by the contracting authority.

For paper submission, it is advised to organise the tender-opening session one week after the deadline for submission to allow tenders sent on the last day to arrive at the contracting authority premises.

The standstill period does not apply and no award notice is to be published.

If, following consultation of the tenderers, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met. In the event of one failure of the simplified procedure, the contract may be awarded by negotiated procedure (see Section 2.6.8.).

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

2.6.5 Framework contracts¹²⁶

A framework contract is not a procurement procedure. A framework contract is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing specific contracts which may be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged¹²⁷:

- The framework contract stipulates the subject matter of the purchase, the price list, the parties, the legal setup, the duration and the method of making particular purchases.
- The specific contract defines at a later stage the other necessary elements of the contractual relationship (e.g. number of days and profile of key expert; terms of reference for a report to be drafted). Specific contracts can only be concluded between the contracting authorities and the economic operators originally party to the framework contract.

In this way, the framework contract represents a structure within which subsequent specific contracts are concluded. Framework contracts create no direct obligation for the contracting authority. Only the specific contracts within a framework contract create a direct obligation for the specific contracting authority. Therefore, only the specific contracts concluded under a framework contract must be preceded by a budgetary commitment.

A framework contract is a useful tool for the repetitive acquisition of services or supplies when the contracting authority can define the subject matter of the procurement, but does not know when and what quantity it will need during a certain period of time. When managed properly, a framework contract can deliver many benefits, such as: reduced prices (economy of scale), lower tendering costs, rapid response to particular needs.

Within the European Commission, four types of framework contracts are used:

¹²⁶ Annex I point 1 FR.

¹²⁷ Article 2(33) FR.

- Single framework contract: a framework contract concluded with a single economic operator to whom specific contracts or order forms are awarded. Order forms are a simplified form of specific contract used, whatever the value, when only the quantity ordered and place of delivery needs to be indicated.
- Multiple framework contract in cascade: the contracting authority ranks the tenderers in descending order according to the outcome of the evaluation of the submitted offers. This ranking is done with a view to establish the list of framework contractors and the sequence in which they will be offered orders. The specific contracting authority always contacts the contractor at the top of the list. If that contractor is unavailable or incapable to respond for reasons which do not entail terminating the contract, the second contractor may be contacted, and then, if necessary and under the same conditions, the third, and so on and so forth.
- Multiple framework contract with reopening of competition: the contracting authority concludes contracts on identical terms with several framework contractors. The minimum number of framework contractors is three and it is strongly recommended to have more to ensure that there is sufficient competition in case the framework contract is terminated with one of the framework contractors. There is no priority amongst framework contractors. The contracting authority sends a request for specific contract to all the framework contractors (in a given lot, if applicable) who are put into competition to provide a specific tender within a contractually defined time limit.
- Multiple framework contract with both cascade and reopening of competition: the contracting authority may envisage a framework contract in which some of the specific contracts will be awarded according to the cascade system and others will be awarded by reopening of competition between framework contractors. The tender specifications must explain exactly which services will be subject to one or the other award mechanism. The choice cannot take place during framework contract implementation at the discretion of the contracting authority.

The termination of the multiple framework contract with reopening of competition with one framework contractor may have a negative consequence on the functioning of the whole framework contract: less competition and/or higher risk of collusion between the remaining framework contractors. If there are less than three framework contractors, the contracting authority shall make a risk assessment whether the framework contract can be continued. If there is only one remaining contractor, the multiple framework contract with reopening of competition must be terminated.

In a framework contract with cascade, a minimum of two contractors is sufficient for signing a framework contract. Nevertheless, if there is only one tender satisfying all minimum requirements, the authorising officer shall make a risk assessment, and may decide to cancel the procedure or sign a single framework contract.

The most common framework contract type used by external action services is the multiple framework contract with reopening of competition. Single framework contracts and multiple framework contracts in cascade are used for standard purchases: where the terms laid down in the framework contract are sufficiently precise to cover future purchases. Multiple framework contracts with reopening of competition are used where the technical specifications of the framework contract are not precise or complete enough to cover its assignments.

The duration of a framework contract may not exceed four years, save in exceptional cases

where a longer duration may be justified in particular relating to the subject matter of the framework contract. The duration of the framework contract is followed by a survival period. This period is specified in the framework contract. During the survival period no requests for specific contract can be launched and no specific contract can be concluded. However, specific contracts concluded before the expiry of the framework contract can still be implemented. With the end of the survival period, all remaining specific contracts are automatically terminated.

The value of the framework contract must be estimated over its total duration. A maximum total amount in EUR (the ceiling) must be indicated in the award decision, in the award notice and in the framework contract itself. The framework contract can then be “consumed” up to that ceiling. It is the responsibility of the contracting authority of the framework contract to monitor the actual spending and to ensure that the maximum ceiling of the framework contract is not reached. The ceiling of the framework contract can be increased on the condition that the extent of possible new services has been indicated in the contract notice.

Contracting authorities may not make undue use of framework contracts or use them in such a way that the purpose or effect is to prevent, restrict or distort competition. The award of a framework contract always requires a public procurement procedure. However, once a framework contract has entered into force, the award of specific contracts follows a request for specific contract sent by the contracting authority to the framework contractors. A specific contract or an order form is then concluded. Specific contracts based on framework contracts are thus awarded in accordance with the terms of the framework contract. Hence, when awarding specific contracts under a framework contract, the procedure set out in the framework contract should be followed and not the general PRAG rules applicable to tenders. The principles of transparency, proportionality, equal treatment and non-discrimination also apply to requests for specific contracts.

2.6.6 Dynamic purchasing system¹²⁸

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

For each individual contract, the contracting authority publishes a contract notice and invites all contractors admitted to the system to bid. The contract is awarded to the tenderer who has submitted the most economically advantageous tender on the basis of the award criteria set out in the contract notice. See Section 4.2.6.2. for further details.

2.6.7 Competitive dialogue¹²⁹

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

Contracting authorities must publish a contract notice/additional information about the contract notice setting out or attaching their needs and requirements. They must open a

¹²⁸ Annex I point 9 FR.

¹²⁹ Annex I point 10 FR.

dialogue with the candidates satisfying the selection criteria. The dialogue may cover all aspects of the tender; however, it is conducted separately with each candidate on the basis of their proposed solutions and ideas. The contracting authority must ensure equal treatment of tenderers and keep the tenders confidential. It is therefore not allowed to pick the best solutions from different tenderers (i.e. no 'cherry-picking' is allowed).

The minimum number of candidates invited to tender is three. Before selecting the candidates, the contracting authority checks that none of the candidates or their partners is in an exclusion situation in the EDES system (see Section 2.4.2.) or listed in EU restrictive measures (see Section 2.4.1.). If fewer than three candidates meet the selection criteria, the contracting authority may continue the procedure with the one or two who do meet the criteria. The contracting authority may not make up the number with other economic operators who did not take part in the procedure or candidates who do not meet the selection criteria.

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

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

The contracting authority must inform tenderers who are not in an exclusion situation, whose tender is compliant with the procurement documents and who make a request in writing, of the progress of dialogue. Such information should not prejudice the legitimate commercial interest of tenderers or distort fair competition between them. After informing the participants that the dialogue has been concluded, contracting authorities must ask them to submit their final tenders on the basis of the solutions presented and specified during the dialogue. The tenders must contain all the information required and necessary for the performance of the project. At the request of the contracting authority, these tenders may be clarified, specified and fine-tuned, provided this does not have the effect of changing basic aspects of the tender or of the invitation to tender, variations in which could distort competition or have a discriminatory effect. At the request of the contracting authority, the tenderer offering best value for money may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of amending substantial aspects of the tender or of the call for tenders and does not risk distorting competition or causing discrimination.

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

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

The standard templates must be adapted as required.

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH <i>EX ANTE</i> CONTROLS

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

INDIRECT MANAGEMENT WITH <i>EX POST</i> CONTROLS

No prior authorisation of the European Commission is required.
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2.6.8 Negotiated procedure / single tender procedure

A contract may be awarded directly to an economic operator in the following circumstances:

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

In addition, payments for amounts less than or equal to EUR 2 500 may be made against invoices without prior acceptance of a tender. However, the budgetary commitment against which the invoice is paid, has to be validated before the contracting authority enters into the corresponding 'legal commitment'. In this context, such legal commitment may take the form, inter alia, of an agreement, a pro-forma invoice, a written acceptance of a quotation, a booking confirmation, an order form, etc.

Before selecting the candidates, the contracting authority checks that none of the candidates or their partners is in an exclusion situation in the early detection and exclusion system (see Section 2.4.2.) or listed in EU restrictive measures (see Section 2.4.1.).

2.6.8.1 Negotiated procedure

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

In the case of negotiated procedures, an evaluation committee or a simplified evaluation committee must be nominated prior to proceeding with the negotiation (see Section 2.9.1). However, depending on a risk analysis by the contracting authority, appointing an evaluation committee might not be deemed necessary in the following cases:

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

For all negotiated procedures, even when no evaluation committee is appointed, an evaluation report must be produced (Annex a10a). The evaluation report explains the grounds for the award decision: how participant(s) in the negotiations were chosen, how they met the selection criteria, how the price was set, and if the tender is technically acceptable on the basis of the award criteria.

The negotiation steps shown in the evaluation report template must be followed. Eligibility rules (nationality as well as exclusion situations mentioned in Sections 2.3.1. and 2.4.1. and EU restrictive measures in Section 2.4.2.) and selection criteria must be duly complied with. Documentary evidence for exclusion criteria and selection criteria should be submitted as referred to in Sections 2.4.2.3. and 2.6.11., respectively.

The contracting authority shall negotiate with tenderers the initial and any subsequent tenders or parts thereof, except their final tenders, in order to improve their content. **The minimum requirements and the criteria specified in the procurement documents shall not be subject to negotiation**¹³⁰.

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

- negotiation with one or several economic operators, which, if successful, will result in the award of a new contract.
- negotiation with one economic operator to which the contracting authority awarded an initial contract. The amendment of the initial contract is the outcome of the procedure. This type of negotiated procedure takes place to procure similar services or works or additional supplies (see also Section 2.11.2.1.).

Negotiated procedure resulting in the award of a new contract

The tender dossier, to be drafted and approved by the relevant contracting authority for the negotiated procedure before launching the procedure, shall include at least the invitation letter, contract notice with the selection and award criteria, Instructions to Tenderers, standard draft contract, relevant annexes and terms of reference/technical specifications. It shall also include the administrative compliance grid and the evaluation grid. In case of:

- services and works: the templates of the simplified procedure, with the exception of the contract and its annexes, should be used and adapted on a case-by-case basis.
- supplies: the standard templates shall be used and adapted on a case-by-case basis.

The invitation letter shall specify that it is a negotiated procedure and outline the process.

Negotiated procedure resulting in the amendment of an initial contract¹³¹

The conditions stated in Section 3.3.5.1. point e), 4.2.6.1. point d) or 5.2.5.1. point c) should be met in case a negotiated procedure takes place to procure similar services or works or additional supplies. Annex a8 is the template to be used to invite to tender for an amendment of a contract. The invitation letter describes the scope and the revised terms of reference/technical specifications. The invitation letter also provides the necessary background information, outlines the negotiation process and indicates the deadline to receive the offer. The amendment of the initial contract is the outcome of the procedure. However, in specific and well justified cases, the negotiated procedure can result in the award of a new contract.

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

¹³⁰ Article 167(4) FR.

¹³¹ Annex I point 11(1)(e) FR and Annex I point 11(4) FR.

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

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

After the completion of the evaluation report, the contracting authority shall take the award decision. Moreover, a contract award notice must be published in case the value of the new contract, or the amendment of the initial contract, is equal to or higher than EUR 300 000 for service and supply contracts, or equal to or higher than EUR 5 000 000 for works contracts.

DIRECT MANAGEMENT

Depending on the case, either **a prior approval or an event to be reported**, is required from the European Commission to use the negotiated procedure.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

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

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

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

2.6.8.2 Single tender

The contracting authority chooses one economic operator and justifies its choice.

Priority must be given to local and regional contractors to promote local capacities, markets and purchases (see Section 2.6.9.)¹³².

In case of a single tender, it is not mandatory to appoint an evaluation committee.

An evaluation report must be produced (Annex a10a). The evaluation report explains the grounds for the award decision: how participant(s) in the negotiations were chosen, how they met the selection criteria, how the price was set, and if the tender is technically acceptable on the basis of the award criteria.

E-mail submission shall apply to the single tender procedure, provided the authorising officer, after risk assessment, has established procedures and technical tools for keeping the integrity and confidentiality of tenders. In addition, it is recommended to use a dedicated functional mailbox for the procedure and to verify regularly if new messages have arrived in the functional mailbox.

If the authorising officer cannot establish procedures and technical tools for keeping the integrity and confidentiality of tenders via functional mailboxes, the templates should be adapted to the paper submission option.

¹³² Not applicable for projects under the Ukraine Facility.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

Prior authorisation by the European Commission on the choice of the economic operator.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior authorisation by the European Commission is required.

2.6.9 Preferences

No preference for nationals or entities established in ACP States is possible in procurement procedures under MFF 2021-2027. Nevertheless, in order to promote local capacities, markets and purchases, priority must be given to local and regional contractors when the applicable Financial Regulation provides for an award on the basis of a single tender¹³³. In all other cases, participation of local and regional contractors must be promoted in accordance with the relevant provisions of that regulation.

For procurement award procedures under EDF, please refer to Section 2.6.9. of PRAG 2021.

2.6.10 Abnormally low tenders and foreign subsidies

2.6.10.1 Abnormally low tenders (ALT)¹³⁴

The concept of abnormally low tenders refers to situations where the price of the tender of an economic operator raises doubts as to whether the tender is economically sustainable and compliant with applicable legal obligations and whether it can be performed in accordance with the tender requirements.

The obligations of the contracting authority in such situations are as follows:

- identify suspect tenders (first stage assessment);
- investigate abnormally low tenders (second stage assessment);
- reject abnormally low tenders;
- state reasons in evaluation report where after second stage assessment and investigation of a suspiciously abnormally low tender, it concluded that the tender was not abnormally low or that it was abnormally low.

In the first stage of assessment, the contracting authority has an obligation to **identify** tenders that appear to be abnormally low. During this first stage, the contracting authority does not need to request details in writing by the tenderer, nor does it need to carry out a detailed analysis of the constituent elements of each tender to establish that it is not abnormally low. It only has an obligation to determine whether the tenders submitted contain evidence such as to raise suspicion that they might be abnormally low.

The contracting authority should be careful to identify evidence/indications that could raise suspicion as to the abnormally low character of a tender. Evidence that could raise suspicion that a tender might be abnormally low are in particular the following:

¹³³ Not applicable for projects under the Ukraine Facility.

¹³⁴ Annex I point 23 FR.

- if it does not appear certain whether a tender complies with the legislation of the country in which the services are to be provided regarding: the remuneration of staff, contributions to the social security scheme, compliance with occupational safety and health standards, selling at a loss,
- if it does not appear certain whether the price proposed includes all the costs generated by the technical aspects of the tender;
- where the price proposed in a tender submitted is “considerably”/significantly less than that of the other tenders submitted or the normal market price;
- where there is a considerable difference between the price proposed and the estimated value of the procurement.

If the evidence does not confirm the suspicion, and therefore the tender does not appear to be abnormally low, the contracting authority may continue the evaluation of that tender and the award procedure for the contract. However, the contracting authority needs to be prepared to state reasons on why it concluded that the tender does not appear to be abnormally low.

The obligation to inform the unsuccessful tenderer of the reasons why the successful tender does not appear to be abnormally low, arises only **if an unsuccessful** tenderer that fulfils the criteria under Article 173 FR (Section 2.10.1.1.), has made an express written request to **examine a potentially abnormally tender**. In this case, the contracting authority must proceed to the second stage assessment.

The contracting authority has an obligation to conduct **a second stage detailed examination** of the suspicious tender to check whether the latter is indeed abnormally low when:

- after the first stage assessment, the contracting authority has concluded that there is evidence that could raise suspicion that a tender is abnormally low, or
- the doubts as to the abnormally low character of the successful tenderer were raised in a substantiated manner by the unsuccessful tenderer.

In such a case, the contracting authority would have to suspend contract signature, reopen the evaluation phase and properly conduct a second stage assessment.

During the second stage assessment, **the contracting authority must request in writing details** of the constituent elements of the price or costs which it considers relevant and **shall give the tenderer the opportunity to present its observations**. The contracting authority can never reject a tender automatically without having given the economic operator the opportunity to provide explanations and justify the price, even if a tender is priced at EUR 0.00.

The evidence requested may include detailed information accompanied by appropriate documentation on the production process, facilities, social conditions, certificates, environmental standards etc. In view of the evidence provided by the tenderer, the contracting authority decides on whether to reject the tender or not.

The contracting authority needs to verify that the tender is compliant with applicable obligations in the fields of environmental, social and labour law, and namely with the national legislation of the country in which the services were to be provided in respect of the remuneration of staff, contributions to the social security scheme and compliance with occupational safety and health standards and with rules prohibiting sale at a loss. The contracting authority also needs to verify that the proposed price included all the costs arising from the technical aspects of the successful tender.

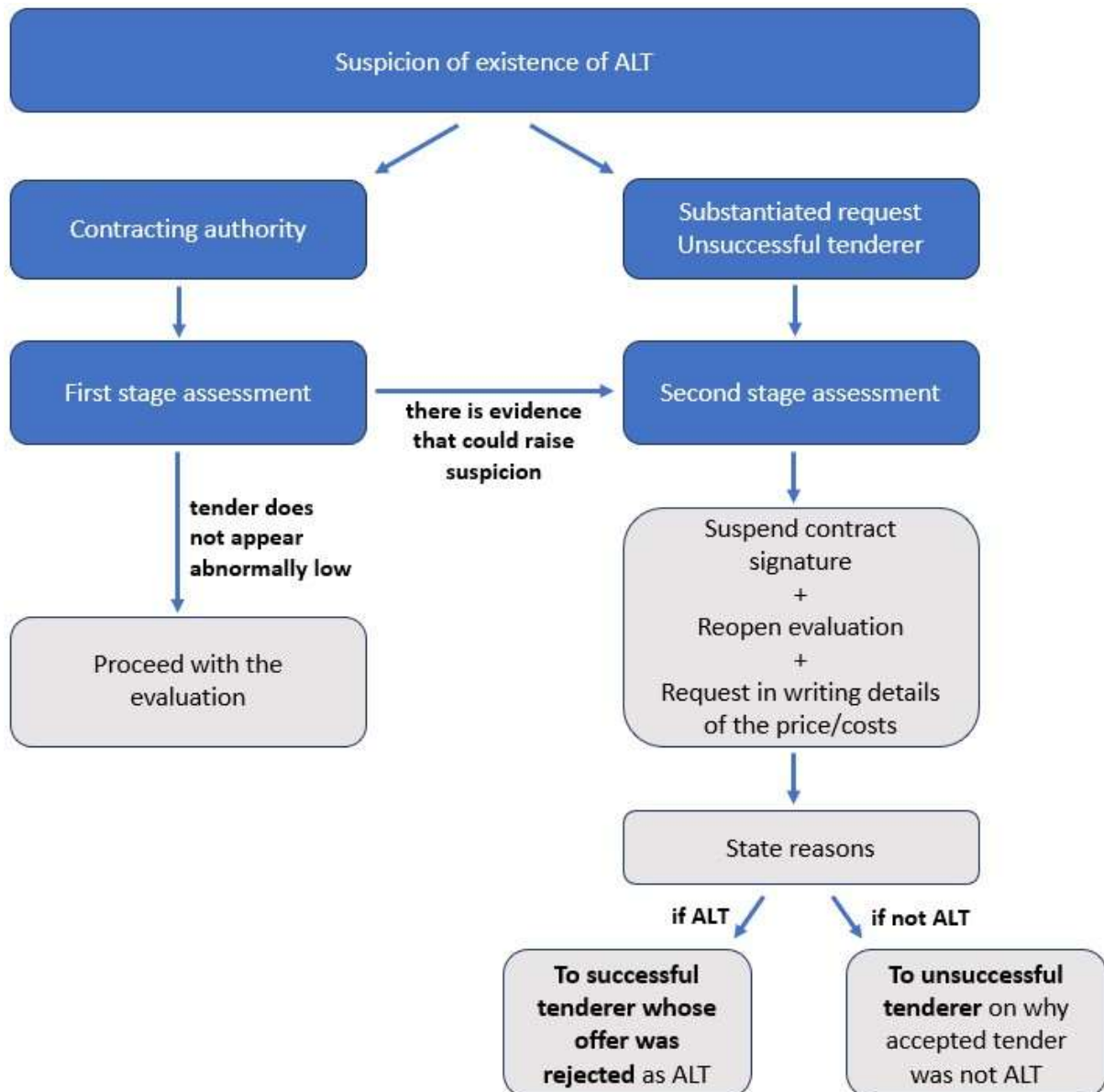
After conducting this second stage assessment, the contracting authority has a duty to

state reasons to:

- the successful tenderer whose offer was rejected as abnormally low (if the tenderer was found abnormally low);
- the unsuccessful tenderers as to why the successful tender was not abnormally low.

As regards the scope of obligation to inform the unsuccessful tenderers, the statement of reasons needs to include such details as to allow the unsuccessful tender to understand how the contracting authority has arrived at the result at issue and enable them to challenge the merits of that assessment.

Both the decision and its justification must be recorded in the evaluation report.



2.6.10.2 Foreign subsidies

The Financial Regulation provides for the application of the Foreign Subsidies Regulation¹³⁵ which aims to address concerns about foreign subsidies distorting

¹³⁵ Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign

competition within the EU internal market.

The application of this regulation implies the right of the European Commission to investigate tenders in public procurement involving financial contributions by non-EU governments. These investigations can be triggered by:

- i. information received from candidates/tenderers in certain award procedures (see below);
- ii. European Commission's own initiative if it suspects the existence of distortive foreign subsidies in all other cases.

1. Obligation to inform the contracting authority

Economic operators must notify the contracting authority about foreign financial contributions of at least EUR 4 million per third country in the last 3 years in public procurement procedures with a contract value of at least EUR 250 million. If the procurement procedure is divided into lots, the obligation to notify will apply where the estimated value of the procurement exceeds EUR 250 million and the value of the lot or the aggregate value of all the lots to which the candidate/tenderer applies is equal to or greater than EUR 125 million.

Economic operators need to submit the simpler declaration instead of a notification if contributions received from a non-EU country are below EUR 4 million in the 3 years prior to the notification.

The obligation to notify applies to economic operators, group of economic operators, as well as to main subcontractors and main suppliers known at the time of submission of the complete notification or declaration, or complete updated notification or declaration. A subcontractor or supplier shall be deemed to be main where their participation ensures key elements of the contract performance and in any case where the economic share of their contribution exceeds 20 % of the value of the submitted request to participate/tender.

In an open procedure, the notification or declaration shall be submitted only once, together with the tender. In a restricted procedure, the notification or declaration shall be submitted twice, first with the request to participate and then as an updated notification or updated declaration with the submitted tender.

Where a notification or declaration is missing from the request to participate or the tender, the contracting authority may request the economic operators concerned to submit the relevant document within 10 working days. If the request is made and the notification/declaration is not submitted, the economic operator shall be declared irregular and rejected from the procurement procedure. The European Commission shall be informed of this rejection procedure.

Where the contracting authority examining tenders suspects the presence of foreign subsidies, although a declaration was submitted, it shall communicate such suspicions to the European Commission without delay.

For the ex officio procedure, where the European Commission suspects that an economic operator may have benefitted from foreign subsidies in the three years prior to the submission of the tender or request to participate in the public procurement procedure, it may before the award of the contract request the notification of the foreign financial contributions in any public procurement procedure where no notifiable foreign financial contribution has been declared.

For additional information on the obligation to notify/declare foreign financial

subsidies distorting the internal market. OJ L 330, 23.12.2022, p.1.

contributions please refer to: https://single-market-economy.ec.europa.eu/single-market/public-procurement/foreign-subsidies-regulation_en.

2. Examination

Once the notification or declaration is submitted, the contracting authority shall transfer the notification or declaration to the European Commission without delay.

First, the European Commission shall examine the content of the notification received without undue delay. Where the Commission finds that the notification is incomplete, it shall communicate its findings to the contracting authority and to the economic operator concerned, and request that the economic operator completes its content within 10 working days. Where a notification accompanying a tender or request to participate remains incomplete despite a request made by the European Commission, the Commission shall adopt a decision declaring that tender irregular. In that decision the European Commission shall also request the contracting authority to adopt a decision rejecting such an irregular tender or request to participate (see Section 2.4.2.2.).

Second, the European Commission shall carry out a preliminary review no later than 20 working days after it receives a complete notification, with a possible extension by 10 working days in exceptional cases. The European Commission may launch an in-depth investigation into an economic operator suspected of receiving unfair foreign subsidies. This happens after a preliminary review finds evidence and involves informing the economic operator, relevant authorities, and interested parties. If the evidence is lacking, the European Commission will adopt a decision to raise non-objection and the investigation will not proceed.

In restricted procedures, the European Commission shall not close the preliminary review or reach a decision on opening an in-depth investigation after the 20 working days from the receipt of that notification. After the deadline of 20 working days elapses, the preliminary review shall be suspended until the submission of the tender. Once the tender containing a complete updated notification is submitted, the preliminary review shall be resumed and the European Commission has 20 working days to finalise it, taking into account any additional information.

Third, the European Commission shall decide whether to initiate an in-depth investigation within the time limit for completing the preliminary review and inform the economic operator concerned and the contracting authority without delay.

If the European Commission conducts an in-depth investigation to assess the impact of a foreign subsidy, the investigation concludes with a decision within 110 working days, with a possible extension by 20 working days in exceptional cases. In restricted procedures, the European Commission shall adopt a decision closing any ensuing in-depth investigation within 90 working days from the submission of the completed updated notification.

The investigated tenderer cannot be awarded the contract (standstill obligation) until the end of the investigation or the time limit elapses. All procedural steps of the procurement process can proceed during preliminary reviews and in-depth investigations, except contract award.

At the end of the in-depth investigation, the European Commission shall take a decision (see Article 31 of the Foreign Subsidy Regulation). In case, the European Commission decides to prohibit the award of the contract, the contracting authority shall reject the tender (see Section 2.4.2.2.).

2.6.11 Selection and award criteria

2.6.11.1 General principles

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

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

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

- requesting disproportionate annual turnover, number of personnel, number of previous projects, etc. as regards the amount of the contract;
- using imprecise terms such as 'sufficient', 'major', 'relevant' as they are too ambiguous;
- requesting a percentage of the personnel working in specific fields as this may be discriminatory for large companies;
- requesting technical experience relating to EU projects only, as this may in general be regarded as discriminatory;
- requesting prior experience in the partner country, unless specific justification is provided, as this could in general be regarded as discriminatory;
- requesting technical experience in an overly prescriptive manner that effectively restricts the number of eligible candidates to one or a few firms.

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

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

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

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

Shortlisting

In case of the international restricted procedure, it is important to seek to enhance the quality of short-listed economic operators rather than merely seeking to shortlist economic

operators that have the biggest project references, e.g. reference to the number of projects presented above the value of the contract being procured should be avoided. Rather, the pertinence of experience should be advantaged, e.g. in the technical area and/or in similar contexts.

The contracting authority must shortlist a maximum of eight candidates (six in case of an international restricted procedure for works). The contracting authority will also publish criteria in addition to economic and financial, professional, and technical ones. These additional criteria will only be used to reduce the shortlist to eight candidates (six for works). These criteria must therefore not be drafted in such a way that they would reduce genuine competition¹³⁶. For example, a criterion such as 'experience in the country' is too restrictive and should be avoided.

Documentary evidence

The documentary evidence of the economic, financial, professional, and technical capacity according to the selection criteria specified in the additional information about the contract notice (Annex a5f) has to be provided:

- for service award procedures: by the presumed successful tenderer at the evaluation stage upon request of the contracting authority;
- for supply award procedures: by the presumed successful tenderers before the award of the contract;
- for works award procedures: in accordance with the tender dossier.

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

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

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

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

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

With the exception of duly justified cases, **no pre-financing must be made** when the contracting authority decides not to require evidence of economic, financial, professional, and technical capacity.

Professional certificates and ISO certifications

A professional certificate is a credential provided to an organisation or to an individual after the completion of a standardised certification or accreditation procedure. In certain business sectors it may also be a legal requirement for exercising a professional activity. Many certification programs are affiliated with professional associations or trade

¹³⁶ Annex I point 39(3) FR.

organisations. Certifications are very common in fields such as aviation, construction, technology, environment, and other industrial sectors, as well as healthcare, business, real estate, and finance.

ISO certifications refer to the provision by an independent and usually accredited body of written assurance (a certificate) that a product, a service or a system meets specific requirements.

These two types of certificates may be required as a professional selection criterion, depending on whether they are required for individuals who will perform the contract, or to certify a company's compliance with established standards.

Capacity-providing entities and subcontractors

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

- For fulfilling the technical or financial capacity criteria: different candidates/tenderers can rely on the same capacity providing entity.
- For fulfilling professional and technical criteria: an economic operator may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required.
- For fulfilling economic and financial capacity criteria, the entities upon whose capacity the economic operator relies become jointly and severally liable for the performance of the contract.

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

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

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

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

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

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

Number of requests to participate or tenders and cross-subcontracting

The contracting authority may define specific rules in the tender documents with a view to

ensuring that tenders are drawn up and submitted in complete independence and autonomously from the other tenders.

More specifically, Annex a5f (additional information on the contract notice) provides in its point 6 'Number of requests to participate or tenders' that no more than one request to participate or tender can be submitted by a natural or legal person whatever the form of participation (as an individual legal entity or as leader or member of a consortium submitting a request to participate or tender). In the event that a natural or legal person submits more than one request to participate or tender, all requests to participate or tenders in which that person has participated will be excluded. In case of lots, the candidates or tenderers may submit only one request to participate or tender per lot. Contracts will be awarded lot by lot and each lot will form a separate contract. If the tenderer is awarded more than one lot, a single contract may be concluded covering all those lots.

The contracting authority can define in addition in the instructions to tenderers that cross-subcontracting among tenderers is forbidden. This means that an entity "A" may participate as tenderer (either as sole tenderer or as member of a group of economic operators) and as subcontractor for another tenderer "B" within the same procurement procedure. However, in this case it is forbidden that tenderer "B" (or any of its participating members in case of a consortium) is at the same time subcontractor for tenderer "A" (or for the group of economic operators in which "A" participates) within the same procurement procedure. In this scenario, cross-subcontracting being prohibited, both tenders A and B shall be rejected.

Rejection of tenders based on the aforementioned reason should be done with caution and be motivated, following a proper assessment by the contracting authority. In case of doubt, if the relationship between the tenderers is not clear to the contracting authority, then the contracting authority should send a request for clarifications to the tenderers before rejecting them.

In addition, the contracting authority should refrain from automatically rejecting tenders submitted by economic operators linked by a relationship of control or of association (e.g. sister companies or parent and subsidiaries). Tenderers in such a situation are allowed to submit different and separate tenders provided that each tenderer is able to demonstrate that its tender was drawn up independently and autonomously.

2.6.11.2 Economic and financial capacity¹³⁷

The objective of the economic and financial capacity criterion is to examine whether the candidate will not be economically dependent on the contracting authority in the event of the award of the contract and that it has sufficient financial stability to handle the proposed contract.

To ensure that economic operators possess the necessary economic and financial capacity to perform the contract, the contracting authority may require in particular that:

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

For the purposes of point (a), the minimum yearly turnover must not exceed two times the

¹³⁷ Annex I point 19 FR.

estimated annual contract value, except in duly justified cases linked to the nature of the purchase, which the contracting authority must explain in the procurement documents.

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

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

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

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

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

2.6.11.3 Technical and professional capacity¹³⁸

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

- a. for works, supplies requiring siting or installation operations or services, the educational and professional qualifications, skills, experience and expertise of the persons responsible for performance;
- b. a list of the following, with a description providing sufficient details on their relevance to the selection criteria:
 - i. of the principal services provided and supplies delivered in the past 4 years, with the nature of the services, the sums, dates and clients, public or private, accompanied upon request by statements issued by the clients; where necessary in order to ensure an adequate level of competition, the contracting authority may indicate that evidence of relevant supplies or services delivered or performed more than 4 years before will be taken into account;
 - ii. of the works carried out in the last 5 years, accompanied by certificates of satisfactory execution for the most important works; where necessary in order to ensure an adequate level of competition, the contracting authority may indicate that evidence of relevant works delivered or performed more than 5 years before will be taken into account;

¹³⁸ Annex I point 20 FR.

- c. a statement of the technical equipment, tools or plant available to the economic operator for performing a service or works contract;
- d. a description of the technical facilities and means available to the economic operator to for ensuring quality, and a description of available study and research facilities;
- e. a reference to the technicians or technical bodies available to the economic operator, whether or not belonging directly to it, especially those responsible for quality control;
- f. in respect of supplies: samples, descriptions or authentic photographs or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products clearly identified by references to technical specifications or standards;
- g. for works or services, a statement of the average annual manpower and the number of managerial personnel of the economic operator for the last 3 years;
- h. an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract;
- i. an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.

The contract the candidate or tenderer refers to could have been implemented at any time during the indicated period, but it does not necessarily have to be completed during that period, nor implemented during the entire period. Candidates or tenderers are allowed to refer either to projects completed within the reference period (although started earlier) or to projects partially implemented during, but not yet completed within the reference period. Only the part completed during the reference period will be taken into consideration. This part will have to be supported by documentary evidence (approval of report or output, proof of payment, statement or certificate from the entity which awarded the contract) also detailing its value.

If a candidate or tenderer has implemented the project in a consortium, the part that the candidate/tenderer has completed must be clear from the documentary evidence (such as consortium agreement and bank transfers between consortium members), together with a description of the nature of the services, supplies or works provided.

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

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

Where the contracting authority requires the provision of certificates drawn up by independent bodies attesting that the economic operator complies with certain

environmental management systems or standards, it must refer to the European Union Eco-Management and Audit Scheme or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC¹³⁹, or other environmental management standards based on the relevant European Union or international standards by accredited bodies. Where an economic operator had demonstrably no access to such certificates, or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority must also accept other evidence of environmental management measures, provided that the economic operator proves that these measures are equivalent to those required under the applicable environmental management system or standard.

The presence of professional conflicting interests (see Section 2.5.4.4.) shall be examined during the evaluation phase based on the statements made through the declarations on honour and, where applicable, the commitment letters signed by identified subcontractors. For contracts where the impartiality of the contractor is of importance due to their subject matter, it is recommended to assess the absence of such interest on the basis of specific information to be provided by the tenderers/candidates in their tender, as requested in the tender documents/specifications.

2.6.11.4 Award criteria¹⁴⁰

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

- **under the best price-quality ratio**, in which case the contracting authority takes into account the price and other quality criteria linked to the subject matter of the contract, and apply a weighting formula;
Quality criteria may include elements such as technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics, production, provision and trading process and any other specific process at any stage of the life cycle of works, supplies or services; organisation, qualification and experience of the staff assigned to performing the contract where the quality of the staff assigned can have a significant impact on the level of the performance of the contract; after-sales service, technical assistance or delivery conditions such as delivery date, delivery process and delivery period or period of completion.
The contracting authority shall specify in the procurement documents the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.
The contracting authority may lay down minimum levels of quality. Tenders below those levels of quality must be rejected.
- **under the lowest price**, provided the tender satisfies the minimum requirements laid down.

¹³⁹ OJ L 342, 22.12.2009, p. 1.

¹⁴⁰ Annex I point 21 FR.

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

2.6.11.5 Distinction between selection and award criteria

To avoid any legal uncertainty with regard to the conditions of the award of the contract, a firm distinction between selection and award criteria should be made. Particular attention should be made to this distinction when preparing the tender specifications and when evaluating the tenders.

Confusing selection and award criteria constitutes a procedural defect that may result in the annulment of the procedure in case of dispute. Indeed, as confirmed by the case law¹⁴¹, this confusion could favour certain economic operators at the detriment of others, regardless of the quality of their technical offer.

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

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

2.6.12 Methods of submission

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WHERE THE EUROPEAN COMMISSION MAKES THE PAYMENTS TO THE CONTRACTOR

As a prerequisite, regardless of the submission method to submit a request to participate or tender, entities must register in the European Commission's Participant Register. The Participant Register is an online register of organisations and economic operators participating in award procedures. In case of consortia, requests to participate will have to be made through a group submission which requires that each member of the consortium registers in the Participant Register.

When registered, each entity obtains a Participant Identification Code (PIC, 9-digit number) which acts as its unique identifier in the above register. Entities already registered in the Participant Register shall reuse their existing PICs when participating in award procedures.

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

¹⁴¹ Judgment of the Court (Fourth Chamber) of 20 September 1988, *Gebroeders Beentjes BV v State of the Netherlands*, C-31/87, ECLI:EU:C:1988:422, paragraphs 15-16; Judgment of the Court (Sixth Chamber) of 19 June 2003, *Gesellschaft für Abfallentsorgungs-Technik GmbH (GAT) v Österreichische Autobahnen und Schnellstraßen AG (ÖSAG)*, C-315/01, ECLI:EU:C:2003:360, paragraphs 65-67; Judgment of the Court (First Chamber) of 24 January 2008, *Emm. G. Lianakis AE, Sima Anonymi Techniki Etaireia Meleton kai Epivlepseon and Nikolaos Vlachopoulos v Dimos Alexandroupolis and Others*, C-532/06, ECLI:EU:C:2008:40, paragraphs 30-32; Judgment of the General Court (Eighth Chamber) of 8 December 2011, *Evropaiki Dynamiki v European Commission*, T-39/08, ECLI:EU:T:2011:721, paragraphs 21-24 and 40-42.

INDIRECT MANAGEMENT WHERE THE PARTNER COUNTRY MAKES THE PAYMENTS TO THE CONTRACTOR

Entities do not have to obtain a Participant Identification Code.

Electronic Submission (eSubmission) has been introduced for the management of procurement award procedures in external actions managed by the European Commission (direct management).

eSubmission is accessible through the Funding & Tenders Portal. eSubmission allows economic operators to electronically submit requests to participate or tenders in a structured and secure way. eSubmission supports the following procurement procedures in direct management:

- Restricted procedures;
- Open Procedures;
- Local open procedures with a contract notice published in the Official Journal;
- Negotiated procedures without prior publication of a contract notice, including all rounds in case the negotiated procedure consists of several rounds;
- Simplified procedures without prior publication of a contract notice.

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

For single tenders, currently not supported on eSubmission, tenders can be submitted by e-mail, provided the contracting authority, after a risk assessment, has established procedures and technical tools for keeping tenders integer and confidential. Functional Mailboxes shall be created to maintain the integrity and confidentiality of tenders in the same way sealed envelopes maintain the integrity and confidentiality of tenders. The date and time of submission will be the date and time the email has arrived in the functional mailbox.

Functional Mailboxes must be created for each single tender procedure and they should remain functional until the completion of the evaluation procedure and the signature of the contract. The contracting authority shall ensure safe storage of the content and the closure of those Functional Mailboxes. Functional Mailboxes that do not have incoming and outgoing emails will be considered as dormant by the relevant IT services. At a certain moment in time, according to the applicable business rules of the IT services, steps will be taken to close those Functional Mailboxes. For these reasons the content of the Functional Mailboxes needs to be stored in a safe place to avoid the losing of tender documents. Once the content has been stored in a safe place, the contracting authority can take the necessary steps to have the Functional Mailboxes closed.

If after a risk assessment, the contracting authority cannot establish procedures and technical tools for keeping tenders integer and confidential via Functional Mailboxes, the templates should be adapted to the paper submission option.

For award procedures managed in indirect management, the requests to participate and tenders will continue to be submitted through paper submission. In case of single tender, it is possible to have an e-mail submission under the same conditions applicable to direct

management (see above).

2.6.13 Cancellation of procurement procedures¹⁴²

The contracting authority may, before the contract is signed, cancel the procedure without the candidates or tenderers being entitled to claim any compensation. In the case of procedures awarded in lots or multiple sourcing procurement the cancellation may be done partially. For example, if the procedure is divided into lots, single lots may be cancelled.

Cancellation may occur, for example, if:

- the tender procedure has been unsuccessful, i.e. no suitable, qualitatively or financially acceptable tender has been received or there is no valid response at all;
- the economic or technical data of the project have fundamentally changed;
- exceptional circumstances or a force majeure render normal performance of the contract impossible;
- all technically acceptable tenders exceed the financial resources available;
- there have been breach of obligations, irregularities or fraud in the procedure, in particular where these have prevented fair competition (see Section 2.5.8);
- the award is not in compliance with sound financial management i.e. does not obey the principles of economy, efficiency and effectiveness (e.g. the price proposed by the tenderer to whom the contract is to be awarded bears no relation to the market price).

If a procurement procedure is cancelled, all candidates/tenderers having submitted a request to participate or a tender must be notified in writing and as soon as possible of the reasons for the cancellation. If a contract notice was published, this information shall be done through the publication of a cancellation notice (non award notice) . See Annex a11e for additional guidance.

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

- to launch a new tender procedure;
- to re-launch the tender procedure using the same reference as the original call;
- to open negotiations with one or more tenderers who participated in the tender procedure and who meet the selection criteria¹⁴³, provided that the original terms of the contract have not been substantially altered (this option is not available if the procedure was cancelled because of irregularities which might have prevented fair competition);
- not to award the contract.

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

¹⁴² Article 174 FR.

¹⁴³ Hence the importance of carefully choosing the selection criteria, which must be clear and non-discriminatory, and may not go beyond the scope of the tasks or budget (see Section 2.8. for further details).

DIRECT MANAGEMENT

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

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

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

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

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

2.7 Contract value

See Section 2.6.1.

2.8 Terms of reference and technical specifications (procurement)

Terms of reference (for service contracts) and technical specifications (for supply and works contracts) give instructions and guidance to contractors to submit a tender that responds to all technical and administrative requirements, and later to serve as the contractor's mandate during project implementation. The terms of reference or technical specifications are included in the tender dossier and will become an annex to the resulting contract.

Thorough preparation of the terms of reference or technical specifications is extremely important for the ultimate success of the project. It is important to ensure that the project has been properly conceived, that the work is carried out on schedule and that resources will not be wasted. Greater effort during project preparation will save time and money at later stages of the project cycle.

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

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

marking and labelling (including environmental labelling, e.g. on energy consumption), production processes and methods.

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

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

Given the technical complexity of many contracts, preparing the tender dossier — particularly the technical specifications / terms of reference — may require the assistance of one or more external technical specialist(s). Each such specialist must sign a declaration of objectivity and confidentiality (see Annex a3).

Once the tender dossiers have been finalised, the tender procedure may be launched as soon as possible. The terms of reference or technical specifications contained in a tender dossier — the basis for the project work-plan — must reflect the situation at the time of project start-up to avoid considerable effort being spent on re-designing the project during the inception period.

The general structure of terms of reference for services reflects the principles of project cycle management. The aim is to ensure that all issues are covered systematically and that key factors related to clarity of objectives and sustainability are thoroughly examined. Annexes b8e and b8f contain skeleton terms of reference that show the minimum details to be provided within each of these section headings.

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

2.9 The evaluation committee

2.9.1 Appointment and composition

Requests to participate/tenders and grant applications are opened and evaluated by an evaluation committee formally appointed by the contracting authority.

Evaluation committees are composed of an odd number of voting members (the evaluators). There must be a minimum of three evaluators for all procedures except for calls for tenders for works with a value exceeding EUR 5 000 000, which require a minimum of five evaluators.

Evaluation committees may comprise, in addition to the voting members (the evaluators), a non-voting chairperson and a non-voting secretary. An evaluation committee limited to the voting members is referred to as “simplified evaluation committee”.

For award procedures in direct management the evaluators must represent at least two organisational entities of the European Commission with no hierarchical link between them, at least one of which does not come under the authorising officer responsible¹⁴⁴. Although EU Delegations are exempted from ensuring a hierarchical separation between members of evaluation committees, the hierarchical separation amongst voting members should in

¹⁴⁴ Article 153 FR.

principle be applied whenever possible. In order to ensure an appropriate segregation of duties, cumulating the role of authorising officer with that of any member of the evaluation committee must be avoided. If appropriate, on a case-by-case basis, the chairperson may also act as secretary, in particular during periods of limited resources in terms of staff and internal expertise.

In grants, the evaluation committee is appointed for the call for proposals as a whole: there must be no different committees, chairpersons, secretaries or voting members for different lots.

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

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

The evaluation committee should be formed early enough to ensure that members (and any observer) can make the necessary arrangements to make themselves available and to have sufficient time to prepare and conduct the evaluation process. The contracting authority must make sure that evaluators are available during the scheduled evaluation period. The contracting authority will appoint substitutes for each procedure to prevent delays in case of unavailability. Substitutes have to comply with same requirements. In case of withdrawal of a member from the evaluation committee, the member shall be replaced by a substitute evaluator. The chairperson determines to which extent the evaluation process must restart. This decision and any other decision relating to the replacement of a member must be recorded and reasons shall be provided in the said report.

Opening and evaluation committee members must attend all meetings. Any absence must be recorded and explained in the evaluation report. The only exceptions are:

- the opening session meeting in case of procurement procedures where submission of application documents is done through eSubmission, where the presence of the whole opening committee is not required during the technical intervention to start the opening session;
- the opening session meeting in case of grant award procedures.

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

DIRECT MANAGEMENT

Members of the evaluation committee (i.e. the chairperson, the secretary, the evaluators and observers) are appointed on a personal basis by the relevant European Commission services.

In procurement procedures where submission of application documents is done through eSubmission, there are two types of committees: opening and evaluation committee for the tender opening sessions and evaluation sessions respectively. It is recommended that the opening committee is made up of the same members as the evaluation committee. In case of lots, it is recommended that for each lot, the composition of both committees is the same.

The opening and evaluation committees must be appointed in PPMT before the start of the opening session and evaluation of requests to participate/tenders.

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

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

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The members of the evaluation committee (i.e. the chairperson, the secretary, the evaluators and observers) are appointed on a personal basis by the contracting authority and the appointments are submitted not less than 15 working days before the start of the evaluation to the European Commission in order to get its approval, together with the CVs of those members who are not staff of the Contracting Authority. If the European Commission does not object within 5 working days, the committee is deemed to be approved. The European Commission must be invited to appoint an observer and is encouraged to attend all or part of the meetings. Independent experts recruited under service contracts may only attend as observers.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

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

All evaluators have equal voting rights.

An evaluation committee must be established for all procurement procedures, with the exception of the single tender one (less than or equal to EUR 20 000) and the cases of negotiated procedure mentioned under Section 2.6.8.

For grants procedures, an evaluation committee must be established for all call for proposals. For direct award, it is not required.

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

Please refer to Section 6.5.7. as regards use of assessors in case of grants.

2.9.2 Absence of conflict of interest and confidentiality

All members of the evaluation committee and any observers must sign a declaration of absence of conflict of interest and confidentiality (see Annex a4) prior to carrying out any tasks related to the evaluation. Any evaluation committee member or observer who has or might have an actual or potential conflict of interest with any participant must declare it and immediately withdraw from the evaluation committee.

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

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

During the award procedure, all contacts between the contracting authority and participants

must be transparent and ensure equal treatment. Those contacts must not lead to any change in the conditions of the contract or the terms of the original tender or call for proposal.

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

Any attempt by a participant to influence the process in any way (whether by making contact with members of the evaluation committee or otherwise), or obtaining confidential information that may confer upon it undue advantages in the award procedure, will result in the immediate exclusion of its tender or proposal from further consideration and might lead to the exclusion from future award procedures according to Section 2.4.2.2.

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

The principle that needs to be applied is *in camera*, meaning in private. Only those appointed by the authorising officer can observe the evaluation process and access the related documents. For this reason, attendance at evaluation committee meetings is strictly limited to the committee members and to any authorised observer (including assessors in the case of call for proposals¹⁴⁵).

In case of paper submission, proceedings can be held through physical meetings in a room. The room where all documents are located shall be locked when no member of the evaluation committee is present.

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

In case of electronic opening through MyWorkplace and in duly justified cases¹⁴⁶, proceedings can be conducted using videoconference tools. The tool to be used must ensure the confidentiality of the communication and should be Sensitive Non Classified (SNC) compliant. Sharing of information should by preference take place through secure collaborative platforms. If files need to be transferred, the tool used must also guarantee its confidentiality¹⁴⁷. Each member of the evaluation committee can use their own electronic device in their office to evaluate electronically submitted documents. The principle of *in camera* and confidentiality shall be respected.

If the national law of the contracting authority in indirect management conflicts with the confidentiality required, then the contracting authority must obtain prior authorisation from the European Commission before disclosing any information.

2.9.3 Responsibilities of evaluation committee members

The chairperson is responsible for coordinating the evaluation process in accordance with the procedures in the practical guide and for ensuring its impartiality and transparency. The

¹⁴⁵ See Section 6.5.7.2.

¹⁴⁶ For instance when the chair/secretary/voting members/assessors/observers are in another country.

¹⁴⁷ Consult the [Digital Workplace Portal](#) on the recommended tools for Video Conferencing, collaborative platforms and the transferring of large files in a secure manner.

voting members of the evaluation committee have collective responsibility for decisions taken by the committee.

The secretary to the evaluation committee is responsible for carrying out all administrative tasks connected with the evaluation procedure. These include:

- circulating and collecting the declarations of absence of conflict of interest and confidentiality;
- keeping the minutes of all meetings of the evaluation committee and the relevant records and documents;
- recording attendance at meetings and compiling the evaluation reports and their supporting annexes.

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

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

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

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

Application documents should not be rejected in the following cases:

- If they are submitted in fewer than the number of copies required.
- If they are submitted in the correct format and provide the requisite information, but the document is organised incorrectly, e.g. information is provided in Section X of the form when it should have been provided in Section Y.
- If they have not been signed or contain a scanned signature (the signature can be requested later — but if it is not obtained or if the original document provided later is not exactly the same as the one received earlier, the tender must be rejected). If a tender guarantee is required, the tender must always contain an original of the tender guarantee. If only a copy of the tender guarantee is provided, the tender must be rejected.
- If a participant can demonstrate that a required document is not available (e.g. under national law, duplicates of a given lost document cannot be obtained from the issuing administration), provided that an acceptable alternative is obtained (e.g. a declaration by the said administration that the document for the candidate, applicant or tenderer is still valid but no duplicate can be issued).

- In a service contract award procedure, candidates/tenderers are not supposed to submit all the documentary evidence regarding the exclusion or the selection criteria together with the tender. However, this information shall be ready in case the contracting authority requests it giving a reasonable time limit. The necessary supporting documentation shall be requested in any case from the presumed successful tenderer.
- If information is made available to the evaluation committee that a key expert in a service tender procedure is no longer available. Instead, the evaluation committee should proceed with the evaluation of the original tender and the presumed successful tenderer will be given a chance to propose a replacement for the key expert, see Section 3.4.10.5.
- The tender was sent in a single envelope rather than the two envelopes required, provided the envelope is sealed (the confidentiality of the tender has been preserved).
- The tender combines the technical part and the financial part or has not used the requested standard presentation.

2.9.4 Timetable

The evaluation committee should be formed early enough to ensure that the members (and any observer) can make the necessary arrangements to make themselves available and to have sufficient time prepare and conduct the evaluation process (see also Section 2.9.1.).

In case of procurement award procedures, the tenders must be evaluated in time to allow the procedure to be completed within the validity period of the tenders. Extending the validity of tenders (see Section 2.9.5.) should be avoided. It is very important that all tenderers, whether successful or unsuccessful, receive information without delay.

2.9.5 Period of validity of tenders (procurement only)

Tenderers are bound by their tenders for the period specified in the letter of invitation to tender or in the tender dossier. This period must be sufficient to allow the contracting authority to examine tenders, decide on the award, notify the successful and unsuccessful tenderers and conclude the contract.

From the deadline for the submission of tenders, the period of validity of tenders is fixed:

- for supply and works award procedures: at 90 days;
- for service award procedures: 110 days.

This deadline can be extended before the period of validity expires, subject to a prior approval granted by the competent authority of the European Commission:

- in exceptional circumstances, the contracting authority may ask the tenderers for a one-off, specific extension, which may not exceed 40 days for supply and works award procedures, and 20 days for service award procedures. Such requests and the responses to them must be made in writing. A tenderer may refuse to comply with such a request without forfeiting its tender guarantee. If the tenderer decides to accept the request, it may not amend its tender and it is bound to extend the validity of its tender guarantee for the revised period of validity of the tender.

- when the contracting authority has referred a potential case of exclusion to the EDES panel referred to in Section 2.4.2.1. and for the duration of the procedure before the EDES panel (if the contract is to be awarded to the entity/person concerned by the situation of exclusion, the award of the contract will be suspended until the EDES panel has issued its recommendation).

The **unsuccessful tenderers** are bound by the tender until the end of the validity period, even if they have received a notification of non-award, and without prejudice to the possibility to extend such period in the cases explained above.

The **successful tenderer** is bound by the tender for a further 60 days, irrespective of the date of notification of the award of the contract. Therefore, for the successful tenderer, the tender validity period may have the following duration:

- for supply and works award procedures: 90 + 40 (one-off extension)+ 60 (successful)= 190 days
- for service award procedures: 110 days + 20 (one-off extension) + 60 (successful)= 190 days

The purpose of the validity period of tenders is to ensure that a tenderer does not vary his tender during the evaluation stage and that compliance with that period is not a condition for the signature of contracts at the end of the award procedure. Therefore this period can be further extended by mutual agreement between the parties¹⁴⁸.

For procedures where a standstill period has to be respected (Section 2.10.1.1.), there might be cases where the contracting authority suspends the signature of the contract. In these cases, all tenderers have to be informed within 3 working days following the suspension decision, which automatically extends the validity of their tender for the appropriate period.

During the tender validity period of the unsuccessful tenderers, the contracting authority may send a notification of award to the next best ranked tenderer. Upon notification of the new award decision, the validity of the next best ranked tender will be extended by 60 days. This 60-day period is added to the validity period irrespective of the date of notification.

If the validity of their tender has expired, the successful tenderer may refuse the award of the contract.

For consultation procedures under a framework contract, the contracting authority may also request a one-off extension of the validity of the offers submitted, before the original validity period has expired. For these extensions, the guidelines of the specific framework contract should be followed.

¹⁴⁸ The value of period of validity of tenders has been explained by the General Court in judgment of 2 December 2015 in case *T-553/13 of European Dynamics Luxembourg and Evropaïki Dynamiki v Joint Undertaking Fusion for Energy*, [EU:T:2015:918](#)). The General Court stresses that the requirement to indicate a minimum tender validity does not impose an obligation on the contracting authority to complete the evaluation of a tender within the validity period of that tender. Whilst it is certainly in the interest of the contracting authority to complete its assessment before the expiry of the tenders' validity period, exceeding that time-limit cannot render the procedure unlawful, nor can it constitute a ground for cancellation of the evaluation of the tenders (para 22).

The General Court further clarifies that 'the purpose of the validity period of tenders is to ensure that a tenderer does not vary his tender during the evaluation stage and that compliance with that period is not a condition sine qua non for the signature of contracts at the end of the award procedure' (para 24).

2.10 Award decision, contract preparation and signature

2.10.1 Award decision

Once the evaluation has been completed, the contracting authority is required to promptly approve the evaluation report and take the award decision (or non award decision, leading to cancellation). The evaluation report shall be annexed to the decision.

Any failure by the contracting authority to approve the content of the evaluation report or to follow any recommendations and conclusions contained in the report must be subject to a detailed and reasoned written explanation.

For award procedures launched with a suspensive clause (see Section 2.5.9.), no award decision may be taken until: (i) the financing decision/action plan is adopted; (ii) the financing agreement is signed; (iii) the appropriations are available.

For procurement award procedures exceeding EUR 250 million, no award decision may be taken if the European Commission has opened an in-depth investigation on foreign subsidies (see Section 2.6.10.2.).

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

Before taking the award decision, the contracting authority ensures:

- In procurement: the submission of the original¹⁴⁹ signed declaration on honour on exclusion criteria and selection criteria.
- In grants: the submission of the declaration on honour on exclusion criteria.
- In procurement: the submission and admissibility of the documentary evidence on compliance with exclusion and selection criteria.
- In procurement and grants: that the pre-selected tenderer, including all consortium members, subcontractors and capacity providing entities, and grant beneficiaries and other co-applicants any, are not recorded in the EDES database as an excluded persons or entities nor in the lists entities subject to EU restrictive measures (see Sections 2.4.2.1. and 2.4.1. respectively).

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

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

2.10.1.1 Notifications to the tenderers, standstill period

Notifications to tenderers

Before the validity of the tenders expires but after the award decision is taken, the contracting authority notifies **the successful tenderer** in writing that its tender has successfully passed the evaluation and informs the tenderer about the contract value. The contracting authority also provides details about the grounds for the decision.

¹⁴⁹ The requirement to submit an original declaration on honour on exclusion criteria and selection criteria is only applicable in case of paper submission.

The notification also informs the successful tenderer that the notification does not constitute a commitment on the part of the contracting authority. Until signature of the contract, the contracting authority may cancel the procurement procedure without this entitling the tenderer to any compensation. The successful tenderer is also informed that on the same date, letters will be sent to the unsuccessful tenderer.

Therefore, **on the same day**, the contracting authority must inform in writing the **unsuccessful tenderers** that their tender has not been successful in the evaluation. The contracting authority will inform the unsuccessful tenderers of the reasons why their tender was not successful and will provide details about the grounds for the decision.

All notification letters must follow the appropriate template and may be sent electronically or by post.

Notification of the award decision to the successful tenderer automatically extends the validity of the successful tender for 60 days. The notification to the unsuccessful tenderers implies that the validity of their tenders is maintained until the end of the validity period (see Section 2.9.5.).

The right to obtain information can be exercised by unsuccessful tenderers who are not rejected and that make a request in writing.

The contracting authority shall inform them about the name of the tenderers to whom the contract is awarded, the characteristics and relative advantages of the successful tender and the contract value. For specific contracts under a framework contract please refer to Section 3.5.1.2.).

However, the contracting authority may decide to withhold certain information where its release would impede law enforcement, would be contrary to the public interest or would prejudice the legitimate commercial interests of economic operators or might distort fair competition between them.

Article 173 FR lays down the content of the **duty to state reasons** pursuant to Article 296 TFEU, which the contracting authority has to discharge towards unsuccessful tenderers in a public procurement procedure.

The General Court ruled in this respect¹⁵⁰ that a contracting authority fulfils its obligation to state reasons if it confines itself first to notify unsuccessful tenderers immediately of the reasons for the non-award of the contract and then subsequently, if expressly requested to do so by an unsuccessful tenderer who has submitted an admissible tender, provides the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer.

The Court has held that these characteristics and advantages include the reasons why the evaluation committee concluded that the tender submitted by the successful tenderer was not abnormally low, if such information is expressly requested by the unsuccessful tenderer¹⁵¹. This does not prevent the contracting authority from proactively providing such information, in order to avoid any challenges on this point at a later stage. This obligation to state reasons - upon an express request – why the successful tender was

¹⁵⁰ Judgment of the General Court (Seventh Chamber) of 15 September 2011, *CMB Maschinenbau & Handels GmbH and J. Christof GmbH v European Commission*, T-407/07, EU:T:2011:477, paragraph 160; Judgment of the General Court (Third Chamber) of 19 March 2010, *Evropaïki Dynamiki - Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission*, T-50/05, ECLI:EU:T:2010:101, paragraph 133ff.

¹⁵¹ Case T-741/17 *Trasys v EASA*, paragraph 50 and Case T-638/11 *European Dynamics Belgium and Others v EMA*, paragraph 63.

not considered abnormally low also arises when the contracting authority did not investigate the tender in detail, as the tender did not appear to it to be abnormally low (first-stage assessment) (see Section 2.6.10.1).

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

Standstill period

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

The standstill period applies to all procurement procedures except:

1. when the value of the contract does not exceed the threshold of EUR 300 000 for service and supply contracts; and EUR 5 000 000 for works contracts;
2. in a procedure where only one tender has been submitted;
3. in the case of specific contracts based on a framework contract;
4. in the case of dynamic purchasing system;
5. in a simplified procedure under Section 2.6.4.;
6. in negotiated procedures without prior publications except for works, supplies or services that can only be provided by a single economic operator (as described in Sections 3.3.5.1.b), 4.2.6.1.b) and 5.2.5.1.i));
7. in the case of modifications of procurement contracts through an addendum with an award procedure consisting in the repetition of similar services or works, or in additional deliveries that are a substantial change and thus require a negotiated procedure (as described in Section 2.11.2.1).

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

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

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The contracting authority drafts the responses to requests or comments made by unsuccessful tenderers during the standstill period. These responses are submitted to the European Commission for prior authorisation.

In case of a suspension following other relevant information that has been received, the contracting authority will assess the information received and will propose a course of action for prior authorisation by the European Commission.

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

During the tender validity period of the unsuccessful tenderers, the contracting authority may send a notification of award to the next best ranked tenderer. However, the tenderer may refuse the award of the contract if, when receiving a notification of award, the validity of their tender has expired (see also Section 2.9.5. on the period of validity a notification of award to the next best ranked tenderer).

2.10.1.2 Notification to grant applicants

See Section 6.5.10.

2.10.2 Contract preparation

When preparing the contract for signature, the contracting authority must prepare a contract dossier with the following structure:

- a. explanatory note, using the format in Annex a6.
The evaluation report describes the award procedure. Therefore, the explanatory note is only required when there are important elements to report between the evaluation and contract signature.
- b. copy of the financing decision/ action plan and financing agreement (if any) authorising the project;
- c. copy of the call announcements (prior information notice (if applicable) and contract notice, additional information about the contract notice, guidelines for applicants,), shortlist/tender opening record, evaluation report, evaluation reports, award decision, and any other relevant information);
- d. the originals of the proposed contract (three originals in indirect management and two in direct management), which is based on the standard contract;
- e. all minutes of pre-tender meetings, questions and answers, clarifications and corrigenda issued during the tender procedure, clarifications requests by the evaluation committee and replies received, and any minutes of negotiation meetings on the contract intended for signature. For grant contracts, include minutes of information sessions and published Q&A, if any.

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

The counterparty provides, if required by the contract, the financial guarantee(s), before the signature.

If the counterparty fails to meet any obligation within the specified deadline or indicates at any stage that it is not willing or able to sign the contract, the contract award will be reviewed.

If it is not possible to sign the contract as envisaged in the award decision, or if the counterparty fails to sign the contract as requested, the contracting authority reserves the right to review its decision and, where appropriate, award the contract to another tenderer/applicant or cancel the procedure.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The contracting authority sends the contract dossier to the European Commission for

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

2.10.3 Signature of the contract

2.10.3.1 General

The European Commission intends to progressively introduce electronic systems for all stages of implementation of contracts, starting with the electronic signature of procurement contracts on the Funding & Tenders Portal (for contracts in direct management).

Until contracts are signed on the Funding & Tenders Portal¹⁵², contracts can be signed in blue ink (also known as ‘blue-ink’) and/or using a digital signature. The only digital signature accepted is the Qualified Electronic Signature (QES). The latter is only possible in contracts in direct management.

QES is a standard for electronic signatures under the eIDAS Regulation (Regulation (EU) No 910/2014¹⁵³) and is recognised as the digital equivalent to the handwritten signature in all EU Member States. QES can only be used by Authorising Officers who have obtained a qualified certificate for electronic signatures. The European Commission promotes the signature with QES.

Until the electronic signature of contracts in the Funding & Tenders Portal, the contracting authority will be the first one to sign the contract¹⁵⁴. Section 2.10.3.2. explains the process for affixing signature depending on the type of signature (blue-ink, QES or a combination).

In the case of grants, the contract must be signed within 3 months from the date of notification of the evaluation results, save in exceptional cases, like complex actions, calls covering more than one budgetary year, calls for proposals launched in the context of facilities, multi-beneficiary contracts, or calls with large number of proposals or where there have been delays attributable to the applicants.

The successful tenderer or grant applicant (referred to as the “counterparty”) shall sign the contract within 30 days of receipt. All contracts must show the actual dates on which the contracting parties signed them.

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

The contract takes effect on the date of the last signature. The contract cannot cover earlier services or costs or enter into force before that date, unless in case of grants, in duly substantiated exceptional cases (see Section 6.2.7.).

¹⁵² Digital signatures embedded into these electronic exchange systems for contract management are equivalent to handwritten signatures.

¹⁵³ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, OJ L 257, 28.8.2014, p. 73.

¹⁵⁴ When electronic signature is introduced, the contracting authority will inform the counterparty on the applicable order of signature.

2.10.3.2 Signature process

For contracts in direct management, before signing the contract the counterparty needs to be contacted to understand the type of signature it intends to affix, as the signature process varies depending on whether QES is used by both parties or only one party. Option 2 to 4 below are not relevant for contracts signed in indirect management by the partner country.

Option 1: Both parties sign blue ink

The next steps are to be followed:

- Step 1: the contracting authority signs and date all originals of the contract. It shall initial all pages of the main conditions (for procurement contracts only), the special conditions and most relevant annexes, including, for grants, the budget.
- Step 2: Send the signed originals of the contract to the counterparty by post.
- Step 3: the counterparty signs and keeps one original and returns the other(s) to the contracting authority.
- Step 4: on receipt of the signed original(s) from counterparty the contracting authority checks that it/they correspond(s) strictly to those sent originally.

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

The contracting authority keeps one original, and the other is sent to the European Commission.

Option 2: Both parties sign with QES

If both parties can sign electronically using QES, both parties will sign the same original. There will be no need to send paper documents by post or keep paper copies of the contract. The contract is exchanged via e-mail. The next steps are to be followed:

- Step 1: the contracting authority, applies a qualified electronic seal on the pdf version of the contract¹⁵⁵. The contracting authority's electronic seal serves as evidence that an electronic document was issued by the Commission. This seal ensures the origin and integrity of the document. If someone tries to modify or compromise the integrity of a 'sealed' document, the seal will no longer be valid.
- Step 2: the contracting authority sends the signed contract in pdf format to the counterparty for signature via e-mail.
- Step 3: the counterparty checks the signature and validity of the certificate.
- Step 4: the counterparty signs the document using QES and sends it back to the contracting authority via email.
- Step 5: upon receipt of the countersigned contract, the contracting authority checks if the content of the document is intact by verifying that the contracting authority's electronic seal has not been compromised and that the signature used is a valid QES.

¹⁵⁵ The qualified electronic seal is automatically applied on all the documents registered in the European Commission digital archiving system (ARES).

Option 3 (hybrid): the Contracting Authority signs with QES, the counterparty signs on paper

In this case the contracting authority signs with QES and the counterparty signs on paper (blue ink). In this case, paper copies are to be kept by each of the parties. The next steps are to be followed:

- Steps 1 to 3 of Option 2 apply.
- Step 4: the counterparty prints two or three copies of the contract;
- Step 5: the counterparty initials each page, affixes its handwritten signature and sends one or two original(s) back to the contracting authority by post. For this purpose, the Contracting Authority should provide the contractor/beneficiary with a postal address.
- Step 6: upon receipt of the countersigned contract, the contracting authority verifies the signature and the initials on the original.
- Step 7: the Contracting Authority scans the signed original, certifies the scan's conformity with the signed original and registers it in the European Commission digital archiving system (ARES). The new document must be linked to the previous registered document in ARES containing the electronically signed version signed by the contracting authority.

Option 4 (hybrid): the Contracting Authority signs on paper, the counterparty signs with QES

In this case the contracting authority signs on paper (blue ink) and the counterparty signs with QES. Like in option 2, paper copies are to be kept by each of the parties. The next steps are to be followed:

- Steps 1 and 2 of Option 1 apply.
- Step 3: the counterparty scans the contract, signs it with QES and sends it back by e-mail to the contracting authority.
- Step 4: upon receipt of the countersigned contract, the contracting authority checks if the document received by e-mail is intact and corresponds exactly to the signed original carrying the handwritten signature. The contracting authority also checks the validity of the QES from the counterparty and registers the document in the European Commission digital archiving system (ARES). The new document must be linked to the previous registered document in ARES signed by the contracting authority.

2.10.4 Publicising the award of the contract

Transparency is ensured through the publication of award notices (for procurement) and information on recipients.

2.10.4.1 Publication of award notices (procurement)¹⁵⁶

Upon countersignature of the contract, the contracting authority has to prepare the award notice without delay. Award notices are published whenever the value of the contract is

¹⁵⁶ Article 166(1)(b) FR.

above international thresholds (services > EUR 300 000, supplies > EUR 300 000, works > EUR 5 000 000). This requirement even applies if there was no contract notice, for instance in case of a negotiated procedure.

The only exceptions to the publication of award notices are the following cases:

- where the contract was declared secret and the secrecy is still relevant at the time of the award;
- where the performance of the contract must be accompanied by special security measures;
- where the protection of the essential interests of the EU or the partner country so requires, and where the publication of the award notice is deemed not to be appropriate;
- specific contracts based on a framework contract.

DIRECT MANAGEMENT

The award notice is recorded directly in PPMT.

INDIRECT MANAGEMENT

The contracting authority shall fill in the award notice template in Annex a5g and shall submit it to the European Commission for publication in the Official Journal of the European Union (see publication guidelines in Annex a11e). If necessary, the contracting authority must arrange simultaneous local publication in any other appropriate media directly.

2.10.4.2 Information about recipients¹⁵⁷

The European Commission must make available in an appropriate and timely manner, information on recipients with due regard for the requirements of confidentiality, security and protection of personal data.

The following information shall be available for contracts in direct management and contracts concluded in indirect management where the Commission makes payments to recipients by 30 June following the financial year in which the contract was concluded¹⁵⁸:

- whether the recipient is a natural or a legal person;
- for recipients which are a legal person: (i) name and VAT identification number or tax identification number where available or another unique identifier established at country level; (ii) address;
- for recipients which are a natural person: (i) first and last name; (ii) region on NUTS 2 level where the natural person is domiciled in the European Union or the country when the recipient is a natural person and is not domiciled in the European Union;
- the contract amount;
- nature and purpose of the contract.

¹⁵⁷ Article 38 FR and Article 11 of the 11th EDF FR.

¹⁵⁸ In case of contracts concluded under programme estimate (imprest component) the contracting authority publishes the same information on a website or by any other appropriate means.

The information above shall not be published in the following cases:

- education supports paid to natural persons and other direct support paid to natural persons most in need;
- procurement contracts not exceeding EUR 15 000;
- where disclosure risks threatening the rights and freedoms of the persons or entities concerned or harming the commercial interests of the recipients.

The information on beneficiaries can be found in the Financial Transparency System¹⁵⁹.

2.11 Modifying contracts

There may be situations where the contracting parties agree to modify one or several clauses of the contract. The following section lays down general principles that must be complied with. For specific provision see Sections 3.6 (service contracts), 4.7 (supply contracts), 5.7 (works contracts) and 6.7 (grants).

As a preliminary point, it is to be highlighted that a request for changes to the contract must not automatically be accepted by the contracting authority. There must be justified reasons for modifying a contract. The contracting authority must examine the reasons given and reject requests that are not fully substantiated.

2.11.1 Until when contracts can be modified

Contracts cannot be amended after the end of the execution period. The execution period is the period from contract signature until final payment for services or grants, or until release of the performance guarantee after final acceptance for supplies and works. This means that during the closure period used for reporting (services; grants), the warranty defects period (supplies) and the liability period (works), which follows the implementation period when activities are implemented, the contract can still be amended.

Requests for contract modifications must be made by one contracting party to the other. They must be made in time to allow the addendum to be signed by both parties before the expiry of the execution period of the contract.

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

In exceptional circumstances, the amendment may have a retroactive effect provided the execution period has not expired. However, the contractor or grant beneficiary will only receive confirmation that the contracting authority has agreed to its request for a retroactive amendment once the addendum has been duly signed or an administrative order has been issued. Since the contracting authority has the right to refuse to sign the addendum or to issue the administrative order, the contractor or grant beneficiary bears the financial risk of any costs incurred or goods and services provided before the addendum or administrative order has been issued. Only once the addendum or administrative order enters into force may the contractor or grant beneficiary claim payment for the costs, goods or services.

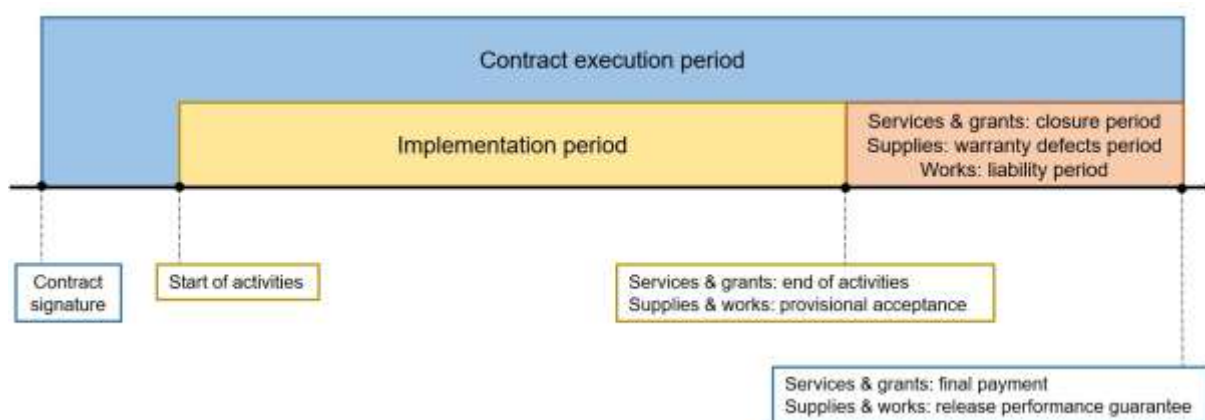
Examples:

- i. A contractor reports an urgent need to replace a key expert in March, which is accepted in an addendum in April. The amendment enters into force in April,

¹⁵⁹ See: <https://ec.europa.eu/budget/financial-transparency-system/index.html>.

acknowledging the change as from March. The contractor is only entitled to ask for payment for the work carried out in March *after* the entry into force of the amendment.

- ii. In a grant, the implementation period expired in May and the grant beneficiary requests a one-month extension in June. If the contracting authority accepts the justification, including for the late request, and issues an addendum in July, the implementation period will be extended by 1 month from May to June. Costs incurred from May to June would only become eligible after the entry into force of the addendum in July.



2.11.2 Type of modifications of procurement contracts¹⁶⁰

In general, an amendment does not modify substantially the conditions of the initial procurement procedure¹⁶¹. Amendments bringing substantial modifications to the contract require a new award procedure. Therefore, a rigorous approach is required when evaluating the necessity and legitimacy of amending the contract.

Amendments shall be processed through an administrative order or an addendum under the conditions provided for in the contract. Some technical amendments are processed through notification. The legal basis of any type of amendment is provided by the Financial Regulation.

Sometimes a modification is made necessary by a failure of the contractor or by a deficiency in implementation that is imputable to it. In this case, all the additional costs created by this modification shall be borne by the contractor.

In indirect management with ex ante controls, amendments must be approved and endorsed by the European Commission.

2.11.2.1 Modification through addendum with award procedure

A modification shall be considered substantial when it alters the subject matter of the contract or framework contract, where it renders the contract or framework contract

¹⁶⁰ In case of transition to an electronic system for all stages of implementation, including, inter alia, management of the contract and payments, modifications may be processed differently.

¹⁶¹ Article 175(3) FR.

materially different in substance from the one initially concluded. Substantial amendments require a new award procedure. In any event, a modification shall be considered to be altering the subject matter of the contract or framework contract where one or more of the following conditions are met¹⁶²:

- a. the modification introduces or suppresses significant conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other tenderers than those initially selected or for the acceptance of a tender other than that originally accepted, or would have attracted additional participants in the procurement procedure, or would not have led to the selection of the successful tenderer;
- b. the modification significantly changes the economic balance of the contract or the framework contract in favour of the contractor in a manner which was not provided for in the initial contract or framework contract;
- c. the modification significantly extends the scope of the contract or framework contract.

Modifications consisting in the **repetition of similar services or works**, or in **additional deliveries** are a substantial change, and thus require a negotiated procedure in the following cases:

- the change is beyond the limits of the 'double de minimis rule' referred to as case c) in Section 2.11.2.2;
- the change is beyond the limits of the modifications brought about by unforeseen circumstances that a diligent contracting authority could not foresee referred to as case b) in Section 2.11.2.2.

The negotiated procedure must comply with:

- the procedural requirements described in Section 2.6.8;
- contract-specific conditions for negotiated procedures. See Sections 3.3.5.1.e (service contracts), 4.2.6.1.d (supply contracts), and 5.2.5.1.c (for works contracts);
- contract-specific conditions on modifications of contract. See Sections 3.6. (service contracts), 4.7 (supply contracts) and 5.7 (works contracts).

In case of service contracts and works contracts, the extent of similar services or works is limited to the ceilings mentioned in the contract notice. A negotiated procedure for similar services or works is not possible in case the possibility has not been announced in a published contract notice¹⁶³. Taking into account the principle of proportionality, the new services or works announced in the contract notice should not account for more than 50% of the initial contract amount. For larger amounts, it would be preferable to launch a new procurement procedure.

The negotiation takes place with one candidate, the incumbent contractor, or all contractors in case of a multiple framework contract. The standstill period does not apply. The contracting authority takes an award decision and being a new award procedure, a contract award notice must be published.

The explanatory note must provide the legal basis of the modifications and

¹⁶² Article 175(4) FR.

¹⁶³ Annex I point 11(4) FR.

demonstrate that the conditions under which a modification is allowed are fulfilled.

Similar services are different from a contract with renewal. In a contract with renewal, the tasks described in the terms of reference for the first period are repeated over the second period, with for instance conditionality on budget availability. The value of the contract and the award criteria must cover the full duration of the contract including all renewals. This renewal is not subject to procurement procedure as it is part of the contract from the outset. The PRAG does not foresee contracts with renewal clauses, since this option is normally used for contracts awarded for multi-annual operations on administrative appropriations.

2.11.2.2 Modification through addendum without award procedure

Modifications can be done which do not require a procurement procedure, but which are subject to the publication of a modification notice if the value of the modification is equal to or greater than the publication threshold. These modifications can be done on the following basis¹⁶⁴:

- a. **for additional works, supplies or services** by the original contractor, if the following **five** cumulative conditions are fulfilled:
 - i. they **have become necessary**;
 - ii. they were not included in the initial procurement (i.e. not similar to the ones which were provided for in the initial contract);
 - iii. a change of contractor cannot be made for technical reasons linked to interchangeability or interoperability requirements with existing equipment, services or installations;
 - iv. a change of contractor would cause substantial duplication of costs for the contracting authority;
 - v. any increase in price, including the net cumulative value of successive modifications, does not exceed 50% of the initial contract value.

It should be noted that for case (a), the maximum rate of increase remains at 50% of the value of the original contract, not 50% of any increased value of the contract resulting from any earlier modification.

- b. where the two following conditions are met:
 - i. the need for modification **has been brought by circumstances which a diligent contracting authority could not foresee**;
 - ii. any increase in price does not exceed 50% of the initial contract value. In case of extreme urgency resulting from a crisis, the contracting authority may, in agreement with the contractor, modify a contract or a framework contract beyond the threshold of 50% and up to 100% of the initial contract value, provided that this is justified as strictly necessary to respond to the evolution of the crisis, and subject to the existence of a crisis declaration¹⁶⁵.

“Circumstances which a diligent contracting authority could not foresee” refers to circumstances that could not have been predicted despite reasonably diligent preparation of the initial award by the contracting authority and should be interpreted strictly. Possible examples of *“circumstances which a diligent contracting authority could not foresee”* could be natural disasters (earthquake,

¹⁶⁴ Article 175(3)(a), (b) and (c) FR.

¹⁶⁵ Article 175(5) FR.

flooding), man-made disasters (conflict, crisis), pandemics, unexpected change of government resulting in radical changes of public policies or unforeseen geological conditions in case of works contracts.

Where more than one modification is made under case (b), the 50% limit applies to each modification, as unforeseen circumstances can happen repeatedly during a contract, provided that the change is not aimed at avoiding the procurement rules. For instance: there could be the situation where a modification within the 50% limit is required due to an earthquake; later on, another modification might be required due to an armed revolt.

- c. where the value of the modifications is below the following thresholds (also known as the double *de minimis* rule):
- i. EUR 300 000 for service and supply contracts, and EUR 5 000 000 for works contracts; and
 - ii. 10% of the initial contract value for service, and supply contracts, and 15% of the initial contract value for works contracts; and
 - iii. the net cumulative value of several successive modifications does not exceed the thresholds under points i) and ii) above.

Unlike case (a) and (b), case (c) has no conditions on the content of the modification. The conditions to be fulfilled for this modification are in terms of financial value only.

Where several successive low-value modifications are made, the value is to be assessed on the basis of the net cumulative value of the successive modifications. This provision means that the financial limitations do not apply to the value of each modification, but to the cumulative value of all of the modifications.

Reference to the initial contract value does not take into account price revisions.

For cases under points (a) and (b), as soon as the modification has been signed, a contract modification notice has to be published if the modification:

- is equal to or higher than EUR 300 000 for services and supply contracts;
- or is equal to or higher than EUR 5 000 000 for works.

Contract modification notices are not published for procedures that were not subject to the publication of contract notices, such as specific contracts of a framework contract.

The explanatory note must provide the legal basis of the modifications and demonstrate that the conditions under which a modification are allowed are fulfilled.

In case of lots:

There is one contract per lot, so the modification of the contract takes place per lot and is calculated by taking into account the amount (ceiling) of the relevant lot. If there is one contract covering several lots, the contract should include separate ceilings per lot and the same reasoning per lot applies. If the contract provides only one global ceiling and does not distinguish the lots, the modification applies to the contract as a whole.

In case of framework contracts:

To increase the ceiling of a framework contract, the contracting authority may use either:

- the double *de minimis* rule (case (c));
- the negotiated procedure for repetition of similar services if all the conditions are

fulfilled (see Section 2.11.2.1.).

For framework contracts, the contracting authority may not use the modification of contract linked to additional services (case (a)), because the services to be repeated are not additional services (different than those initially included in the framework contract) but similar services (same as those initially included in the framework contract). Moreover, the contracting authority should not use the modification of contract linked to unforeseeable circumstances (case (b)), in particular where the need for increase of the ceiling results from erroneous initial estimation of the value of the framework contract.

The procedure to repeat similar services for a framework contract, will consist in sending an invitation letter informing the contractor(s) of the need for increasing the ceiling, indicating that the initial terms of reference remain the same and asking them to confirm their agreement on the repetition of the services under the same conditions.

DIRECT MANAGEMENT

Contract modification information notices must be submitted for publication directly in PPMT.

INDIRECT MANAGEMENT

The contracting authority drafts the contract modification template using the appropriate template (Annex a5c) and submits it to the European Commission for prior authorisation and for publication (see guidelines for publication in Annex a11e). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

For indirect management with *ex post* controls, no prior authorisation by the European Commission is required.

2.11.2.3 Modification through a technical amendment

Technical amendments concern a minor change or a change which does not affect substantial aspects of the contract or the initial procurement procedure, or a change which is part of the economic life of the contractor. Technical amendments can also take place for framework contracts and specific contracts under a framework contract.

A modification through technical amendment can be done on the following basis¹⁶⁶:

- d. where both of the following conditions are fulfilled:
 - i. the minimum requirements of the initial procurement procedure are not altered;
 - ii. any ensuing modification of value complies with the double *de minimis* conditions set out in point (c) of Section 2.11.2.3., unless such modification of value results from the strict application of the procurement documents or contractual provisions.

Most technical amendments take place through administrative orders, except cases of universal succession or change of bank account for which an addendum is required.

Administrative orders

Administrative orders are technical amendments that may take the form of additions,

¹⁶⁶ Article 175(3)(d) FR.

omissions, substitutions, changes in quality, quantity.

Administrative orders have contract-specific conditions which are mentioned in the general conditions. For contract-specific conditions of administrative orders see Sections 3.6. (service contracts), 4.7. (supply contracts) and 5.7. (works contracts). For instance, for works contracts and supply contracts administrative orders may amend the total contract price; while for service contracts, administrative orders cannot modify the total contract price.

The contractor shall be bound the administrative order as if the amendment requested by the administrative order was stated in the contract.

Examples of administrative orders are:

- Change of the contractor's name;
- Correction of clerical errors;
- Modification of the deadlines or in the frequency for submission of documents, such as reports or interim deliverables but without changing the deadline for performance of the contract which reflects the budgetary commitment conditions;
- Modification of place of delivery due to unforeseen circumstances and as long as this has no financial consequences for none of the contracting parties;

Universal succession

This concerns the total or partial transfer of the contract in cases where by law there is a universal succession of the contractor to another entity (eg. merger, acquisitions, split of the company, etc.).

In case of universal succession, the contracting authority must verify the following conditions:

- i. whether the new entity is eligible;
- ii. whether the new entity is not in an exclusion situation and is not subject to restrictive measures;
- iii. whether the selection criteria are still fulfilled. For the selection criteria, the principle of proportionality may be used if the contract implementation is already well advanced when the change occurs (e.g. selection criteria which were only necessary for the start phase do not have to be fulfilled anymore at a later stage of the contract).

If these conditions are fulfilled, the transfer cannot be opposed by the contracting authority and shall be formalised by an addendum signed by both contracting parties. Once the contract is signed by the consortium, as a matter of principle there should be no change, except in the cases of universal succession.

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

2.11.2.4 Modification not requiring an amendment

In a limited number of contract-specific cases which are mentioned in the general conditions, modifications do not require an addendum or administrative order. Instead,

information is exchanged through notices. The cases are:

- change of address
- change of auditor (in case of service contracts only)

In addition, modifications resulting from the strict application of the procurement documents or contractual provisions do not require an amendment (see exception mentioned under case d) in Section 2.11.2.4.). **This type of modification is limited to contract-specific provisions for supply contracts (see Section 4.7.) and works contracts (see Section 5.7.) and is not subject to the financial ceilings listed in cases (a), (b) and (c) (see Section 2.11.2.2. and 2.11.2.3.).**

2.11.2.5 Notices not amending the contract

During the implementation of the contract, frequent exchanges between the contractual parties take place that do not amend any contractual provisions. Some of these exchanges include confirmations from the contracting authority to the contractor on aspects related to the implementation of the contract.

Examples of communications not amending the contracts are:

- Following the completion of a report, the confirmation of the date of a seminar to discuss with key stakeholders the results of the report;
- Following discussions with the partner country, the confirmation of the mission dates for a field mission away from the place of performance;
- Confirmation that the expert can work on a public holiday to prepare the logistical details of a conference taking place the next day.

These examples do not require an addendum since they do not amend the contract. Moreover, they do not require an administrative order since they are not one of the contract-specific forms that an administrative order may take, such as additions, omissions, substitutions, changes in quality, quantity.

These communications not amending the contract, are formalised through a notice in the form of a letter or an email registered in Ares.

2.11.3 Extent of modifications for grants¹⁶⁷

Grant contracts may be amended only by written additional agreements, not by administrative orders. Such additional agreements, including those aiming at adding or removing a beneficiary, must not have the purpose or the effect of making changes to the contract that would call into question the grant award decision or be contrary to the equal treatment of applicants.

When using the standard grant contract, the maximum amount of the grant and the maximum percentage of the European Union contribution must not be increased.

2.11.4 Preparing an addendum

The addendum to the contract shall be prepared as follows:

¹⁶⁷ In case of transition to an electronic system for all stages of implementation, including, inter alia, management of the contract and payments, modifications may be processed differently.

1) The contracting authority shall draft an addendum using the relevant template for an addendum (Annex b16, Annex c12, Annex d11 and Annex e10).

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

Any addendum modifying the budget must include a replacement budget showing how the full budget breakdown of the initial contract has been modified by this (and any previous) addendum (see Annex b17, Annex c13, Annex d12 and Annex e3h7).

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

Modifications to contract amounts (procurement) may entail changes for the financial guarantees linked to the contract. The new financial guarantee shall be provided by the counterparty when sending the contract signed.

2) Prepare a dossier comprising the following items:

- a. an explanatory note (see the model in Annex a6) providing the technical and financial reasons for the modifications in the proposed addendum;
- b. a copy of the request for (or agreement to) the proposed modifications;
- c. the originals of the proposed addendum, which is based on the standard addendum and includes any revised annexes. In case of extension of a fee-based service contract, a statement of exclusivity and availability for the extension period should be included in the dossier.

As regards signature please follow the steps described in Section 2.10.3.2.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The contracting authority sends the addendum dossier to the European Commission for endorsement (initialling all pages of the special conditions and the budget if modified) to confirm the EU financing.

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

3) For the following cases the contracting authority will have to publish a notice:

- a. **a notice for modification of contract**, in the cases referred to in Section 2.11.2.2.;
- b. **an award notice** in the cases referred to in Section 2.11.2.1. and 2.6.8.
For additional information on the publication please refer to publication guidelines in Annex a11e.

2.12 Legal remedies

2.12.1 Complaints to the contracting authority

Without prejudice to other remedies and, in particular, without altering the time-limits for bringing actions set out in paragraphs 2.12.3., where a candidate, tenderer or applicant believes she/he has been adversely affected by an error or irregularity allegedly committed as part of a grant or procurement procedure, or that the procedure was vitiated by any

maladministration, she/he may file a complaint to the contracting authority.

Where the European Commission is the contracting authority, the complaint will be sent to the person who took the contested decision, who will endeavour to investigate the complaint and respond within 15 working days. If the candidate, tenderer or applicant is not satisfied with the answer received, she/he may refer to the relevant geographical director in Headquarters. The complaint shall be substantiated and its sole object shall not be to obtain a second evaluation for no reason other than the complainant disagrees with the final award decision.

2.12.2 Complaints to the European Ombudsman

Without prejudice to other remedies and, in particular, without altering the deadlines laid down for the appeals set out in Section 2.12.3., any citizen of the European Union or any natural or legal person residing or having its registered office in a Member State has the right to complain to the Ombudsman for any instance of maladministration by the European Union institutions (Article 228 TFEU). Ombudsman inquiries do not affect time-limits for appeal in legal proceeding.

Article 2(3) of Regulation (EU, Euratom) 2021/1163 of 24 June 2021 states that a complaint to the European Ombudsman shall be lodged within two years of the date on which the facts on which it is based came to the attention of the complainant. Before the complaint is lodged, the complainant shall have exhausted all available Commission administrative remedies.

More information may be found on the website <https://www.ombudsman.europa.eu/en/home>.

2.12.3 Ordinary actions – litigation

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

Where the European Commission is the contracting authority, the action must be launched in accordance with the rules set out by the TFEU¹⁶⁸.

Where the European Commission is not the contracting authority, the action must be launched in accordance with the conditions and deadlines fixed by the national legislation of the contracting authority.

The Court of Justice of the European Union has the sole jurisdiction in disputes relating to compensation for damages caused by the European Commission in the case of non-contractual liability¹⁶⁹.

National tribunals are competent in case of contractual liability as set out in the general conditions of the contract.

No subcontract can create contractual relations between any subcontractor and the contracting authority. The contracting authority must not be held responsible for any

¹⁶⁸ The General Court has jurisdiction over acts of the European Commission intended to produce legal effects vis-à-vis third parties — pursuant to Articles 256 and 263 TFEU.

¹⁶⁹ Pursuant to Articles 256, 268 and 340 TFEU. The deadline to introduce an action for annulment before the General Court against the European Commission's decisions runs from the moment of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be (pursuant to the TFEU).

failure by the contractor to honour its contract with the subcontractor. In case of disagreement regarding the implementation of that contract, the subcontractor must address itself to the contractor and/or to the respective jurisdiction competent to hear such litigations. The same situation is applicable to experts working under service contracts.

2.12.4 Amicable settlement, conciliation and arbitration procedures

The amicable settlement of disputes is an essential precondition before starting a legal action before the courts or an arbitration procedure (this latter foreseen only for procurement contracts). Therefore, a party to the contract is able to initiate a court proceeding only if this party has attempted to resolve the dispute amicably without being able to reach an agreement. Therefore, if the contracting authority is the initiator of the legal action before the courts, it must provide a proof that it has made firstly an attempt to resolve the dispute amicably. This means that the contracting authority should have a preliminary contact with the beneficiaries or the contractors aiming at resolving the disputes amicably, following which it turned out that the parties could not reach a settlement.

PROGRAMMES FUNDED BY THE EDF

Disputes relating to an EDF-financed contract may be settled by conciliation or, in certain circumstances, by arbitration under the general conditions and the special conditions governing the contract. The procedure to be used is set out in Annex V to Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 adopting the general regulations, general conditions and procedural rules on conciliation and arbitration for works, supply and service contracts financed by the European Development Fund (EDF) and concerning their application¹⁷⁰.

These rules can be found in Annex a12a.

PROGRAMMES FUNDED BY THE EU BUDGET

The rules on dispute settlements are to be found in the general conditions for the relevant contract models (Article 40 for service and supply contracts and Article 68 for works contracts).

Disputes relating to contracts financed by MFF 2021-2027 external financing instruments may be settled by conciliation or – in certain circumstances – by arbitration under the general conditions and the special conditions governing the contract.

In the case of arbitration, in certain circumstances, the procedural rules on conciliation and arbitration of this practical guide (Annex a12b) apply.

The main innovations of these procedural rules on conciliation and arbitration compared to the EDF arbitration rules are:

- the publicity of hearings and of awards;
- a fee schedule for arbitrators and for administrative/secretarial services applies;
- the requirement to exhaust “all internal administrative procedures” does not apply;

¹⁷⁰ OJ L 382, 31.12.1990, p. 1.

- for contracts with a value of less than EUR 5 000 000, the arbitral tribunal consists of a sole arbitrator.

3 Service contracts

3.1 Introduction

A service contract is a contract between a service provider and the contracting authority covering all intellectual and non-intellectual services other than those covered by supply contracts and works contracts. Service contracts are meant for studies, technical assistance and are also used for audits or communication services.

A study contract is a service contract which includes studies for the identification and preparation of projects, feasibility studies, economic and market studies, technical studies and audits.

A technical assistance contract is a service contract where the contractor is called on to play an advisory role, to manage or supervise a project, or to provide the expertise specified in the contract.

3.2 Types of service contracts

A service contract may be concluded in two different ways:

3.2.1 Global price

Global price contracts are lump sum contracts where specified **output(s)** is/are set out. Global price contracts always specify the output(s), i.e. the contractor must provide given output(s). **Deliverables** capture the implementation steps that contribute to the outputs in the form of reports.

Examples of global price activities:

Studies, evaluations, audits, organisation of events such as conferences, training sessions. Studies include a variety of tasks like identification and preparation of projects, feasibility studies, economic and market studies, technical studies, drafting a legal document, evaluations and audits.

The contracting authority must not request in the terms of reference a required number or amount of **inputs** for a global price contract, e.g. minimum number of experts or a fixed list of expenses.

The default option is that no minimum requirements for experts are defined. The contractor will select the best possible staff to deliver the expected output(s). It is up to the contractor to define the precise inputs of the experts. In duly motivated cases, minimum requirements can be requested. In some cases, the team needs to have a certain expertise, for instance expertise in statistics. It is however up to the contractor to define which experts will have this expertise and the role of these experts within the team. In this case “statistics” will be part of the minimum requirements of the team of experts as a whole. The Organisation and Methodology may include the name of an expert and his profile. Compliance (yes/no answer) of the team (as a whole) with the requirements will be checked, but there will be no marks given to the experts. The contracting authority cannot request the Expert's Profile and Statements of Exclusivity and Availability. As a consequence, for a global price contract the same expert may be proposed in more than one offer submitted in reply to the same tender procedure.

The tenderer might be requested to provide an indicative budget breakdown detailing the inputs which compose the global price. The proposed input in the offer relates to the organisation and methodology that will be applied for the successful execution of activities. The indicative budget breakdown detailing the inputs enables the evaluation committee for instance to verify that the tenderer has not forgotten any input in its offer. However, the technical and operational means by which the contractor achieves the specified output(s) are not relevant for the satisfactory implementation of the contract and related payments. Therefore, timesheets for experts or supporting documents for expenses incurred will not be requested to process payments since global price contracts do not entail any reimbursable expenses/incidental expenditure and are not subject to an expenditure verification.

If there is more than one output, and depending on the project, a global price contract with a price breakdown based on outputs makes it possible to make partial payments based on the completion of the outputs (e.g. the outputs could be related to the progress inception report/interim report/final report or to the different parts of a study/report/event). In this case the tenderer might be requested to submit a breakdown indicating the price for each output.

Payments might be totally or partially withheld if the contractual result(s) have not been reached in conformity with the detailed terms of reference. Payment(s) is/are based on the approval of this/these deliverable(s).

3.2.2 Fee-based

Where the output is unpredictable, or where the workload to achieve the specified output is impossible to quantify in advance, fee-based contracts are more appropriate, as it is economically more advantageous to pay the services on the basis of time actually worked.

Examples of fee-based activities

Project supervision, technical assistance, facilitation in a multi-stakeholder process (depending on the complexity of the environment).

For fee-based contracts, invoices shall be accompanied by copies of, or extracts from, the corresponding approved timesheets to verify the amount invoiced for the time input of the experts.

Therefore, in case of fee-based contracts, timesheets recording the days or hours worked by the contractor's personnel shall be maintained by the contractor. The timesheets shall be:

- filled in and signed by the experts;
- shall be approved on a monthly basis by any person authorised by the contractor;
- shall also be approved by the project manager, or any person authorised by the contracting authority or the contracting authority itself.

The timesheets shall include at least the following information: the name and the position of the expert; the contract title and number; the month and the year; the days of the month and the days of the week of that month; the days worked; the per diems requested and a description of the activities performed. A minimum of 7 hours worked are deemed to be equivalent to one day worked. If the expert works less than a day, the time shall be indicated as part of a day. For the purposes of invoicing, the time input for each reporting period shall be rounded to the nearest whole number of days worked for that period.

The fee rates for all experts must include the remuneration paid to the experts, all the

administrative costs of employing the relevant experts, such as equipment, relocation and repatriation expenses (including flights to and from the place of performance upon mobilisation and demobilisation as well as leave), accommodation, expatriation allowances, medical insurance and other employment benefits given to the experts by the contractor. The fee rates should take into account the annual leave entitlement of the expert up to 60 calendar days per year. The fees shall also include any security arrangement except when this is exceptionally included under the incidental expenditure. Furthermore, the fees shall also include the margin, overheads, profit and support facilities.

Lump sum activities

In most cases the whole contract is set out in the form of either a global price contract or a fee-based contract. However, it is possible to include global price activities in a fee-based contract by the inclusion of activities paid under the basis of lump sums. For the payment of lump sums, no supporting documents of the underlying costs must be provided, but evidence of the expected results or deliverables which has been achieved must be presented.

Example 1: training activities, where the trainings would be paid on a fee-based basis, and where the development of the training material would be paid on a lump sum basis. In such cases, each item or each section of the contract should have a clear method of measurement and verification: fee-based or lump sum. It should be clear in the terms of reference and furthermore stipulated in the financial offer template.

Example 2: a design and supervision contract that usually would consist of two distinct sections and terms of reference: 1) the design section is a collection of several global price outputs: geotechnical study, environmental study, socio-economic study, etc.; whereas 2) the supervision section would be fee-based items.

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

Example 3: technical assistance projects may contain a mix of fee-based and global price for projects that are structured into different phases:

- i. A first critical phase may consist of a diagnostic, analysing institutions and stakeholders, assessing capacity, facilitating a joint process for defining precise actions and concrete outcomes. This may be a fee-based activity.
- ii. A second phase would consist of the realisation of those specific actions. The individual output may be contracted on a lump sum basis.

3.2.3 Global price versus fee-based service contracts

The use of fee-based service contracts — where statements of exclusivity and availability (SoEA) are obligatory — is justified where the output of the contract is difficult or impossible to define in advance and/or the main objective of the contract is to give support on a continuous basis to, for instance, the administration of a partner country.

Compared to a fee-based contract, global price contracts do not require key experts. In such cases the terms of reference will describe the expertise required and the tenderer will demonstrate in its tender that he/she has access to this expertise. An example where key

experts are not deemed necessary is a mission that consists in a well-defined technical output, e.g. design documents for an investment project. In that case, provided the contractor has qualified permanent staff, his professional responsibility should lead him/her to select the best possible staff in order to deliver the expected results.

Global price contracts do not imply verification of timesheets and incidental expenditure and therefore are less resource-intensive for the contracting authority.

3.3 Procurement procedures¹⁷¹

3.3.1 Contracts with a value of EUR 300 000 or more

Service contracts worth EUR 300 000 or more may be awarded by **restricted tender procedure** (see Section 3.4.) or under the framework contract procedure laid down in framework contracts depending on the ceiling established in the framework contract (see Section 3.5.1.).

3.3.2 Contracts with a value of less than EUR 300 000

Service contracts worth under EUR 300 000 may be awarded under **a simplified procedure** (see Section 3.5.2.) involving at least three candidates, or under the framework contract procedure laid down in framework contracts (see Section 3.5.1.).

3.3.3 Contracts with a value of EUR 20 000 or less

Service contracts with a value of less than or equal to EUR 20 000 may be awarded on the basis of **a single tender** (see Section 3.5.3.), or under the framework contract procedure laid down in framework contracts (see Section 3.5.1.).

3.3.4 Contracts with a value of EUR 2 500 or less

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

3.3.5 Procedures applicable without ceilings

3.3.5.1 Negotiated procedure

Please see Section 2.6.8. for further details on the use of a negotiated procedure.

The procedures described in Sections 3.4.10. must be followed by analogy and adapted to the context of a negotiated award procedure. The evaluation report for the negotiated procedure (Annex a10a) shall describe the selection of the participant(s), the timetable of the negotiation rounds, and the describe the negotiation process and the result of the negotiation.

The standstill procedure described in 3.4.12.2 shall not apply, with the exception of case b) referred below¹⁷².

¹⁷¹ For thresholds and procedures see Section 2.6.1.

¹⁷² Annex I point 36(2)(d) FR.

DIRECT MANAGEMENT

Depending on the case, **either a prior approval or an event to be reported**, is required from the European Commission to the use of the negotiated procedure.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

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

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

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

The evaluation report for the negotiated procedure must refer to the legal basis of the negotiated procedure and to the applicable case. The evaluation report must demonstrate that the conditions under which a negotiated procedure is allowed are fulfilled. The applicable cases for the negotiated procedure for service contracts are listed below:

- a. Where no tenders, or no suitable tender, or no request to participate or no suitable request to participate have been submitted in response to an open procedure or restricted procedure after this procedure has been completed, provided that the original procurement documents are not substantially altered¹⁷³.

A tender must be considered unsuitable where it does not relate to the subject matter of the contract and a tender or request to participate must be considered unsuitable where the economic operator is not eligible, is in an exclusion situation or does not meet the selection criteria¹⁷⁴.

- b. Where the services can only be provided by a single economic operator and for any of the following reasons¹⁷⁵:
 - i. the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
 - ii. competition is absent for technical reasons;
 - iii. the protection of exclusive rights including intellectual property rights must be ensured.

The exceptions set out in points (ii) and (iii) must only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement¹⁷⁶.

- c. In so far as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events, it is impossible to comply with the applicable time limits and where the justification of such extreme urgency is not attributable to the contracting authority¹⁷⁷.

¹⁷³ Annex I point 11(1)(a) FR.

¹⁷⁴ Annex I point 11(2) FR.

¹⁷⁵ Annex I point 11(1)(b) FR.

¹⁷⁶ Annex I point 11(3) FR.

¹⁷⁷ Annex I point 11(1)(c) FR.

Operations carried out in crisis situations must be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, must establish that a situation of extreme urgency exists and must review his decision regularly with regard to the principle of sound financial management¹⁷⁸.

- d. Where a service contract follows a design contest and is to be awarded to the winner or to one of the winners; in the latter case, all winners must be invited to participate in the negotiations¹⁷⁹.
- e. For new services consisting in the repetition of similar services entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that the original contract was awarded after publication of a contract notice that indicated the extent of possible new services, the conditions under which they will be awarded (i.e. the possible use of the negotiated procedure), and the total estimated amount for these subsequent services. This total amount has to be taken into consideration in applying the applicable thresholds to determine the correct procurement procedure to follow for the original contract¹⁸⁰.
- f. For contracts for any of the following¹⁸¹:
 - i. (i) legal representation by a lawyer within the meaning of Article 1 of Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services¹⁸²;
 - ii. legal advice given in the preparation of the proceedings referred to above or where there is tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;
 - iii. for arbitration and conciliation services.
- g. For contracts declared to be secret or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or when the protection of the essential interests of the European Union so requires, provided the essential interests concerned cannot be guaranteed by other measures; these measures may consist of requirements to protect the confidential nature of information which the contracting authority makes available in the procurement procedure¹⁸³.

¹⁷⁸ For the general budget of the Union: Annex I point 39(2) FR. For the EDF: 'emergency assistance' is another case specific to the EDF and distinct from the 'extreme urgency' referred to here, in which the negotiated procedure may be used for actions that are not governed by Article 19c of Annex IV to the 2000/483/EC: Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ L 317, 15.12.2000, p. 3) (Cotonou Agreement). Emergency assistance is linked to the application of Articles 72 and/or 73 of the Cotonou Agreement. For the overseas countries and territories (OCTs): see Article 79(5) of the Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (OJ L 344, 19.12.2013, p. 1).

¹⁷⁹ Annex I point 11(1)(d) FR.

¹⁸⁰ Annex I point 11(1)(e) FR.

¹⁸¹ Annex I point 11(1)(h) FR.

¹⁸² OJ L 78, 26.3.1977, p. 17.

¹⁸³ Annex I point 11(1)(i) FR.

- h. Loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments¹⁸⁴.
- i. For the purchase of public communication networks and electronic communications services within the meaning of Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code^{185 186}.
- j. Services provided by an international organisation, or a Member State organisation, where it cannot participate in competitive procedures according to its statute or act of establishment¹⁸⁷. A Member State organisation is an entity established in a Member State as a public law body, or as a body governed by private law entrusted with a public service mission provided with adequate financial guarantees from the Member State.
- k. 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 field¹⁸⁸.
- l. Where the tender procedure has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice from among those that took part in the invitation to tender procedure, provided that the original procurement documents are not substantially altered¹⁸⁹.
- m. Where a new contract has to be concluded after early termination of an existing contract¹⁹⁰.

3.3.5.2 Competitive dialogue

See Section 2.6.7. for further details.

3.3.5.3 Framework contract

See Section 2.6.5. for further details.

3.3.5.4 Dynamic purchasing system

See Section 2.6.6. for further details.

3.4 Restricted tenders (for contracts of EUR 300 000 or more)

See Section 2.6.3. on general information about the restricted procedure.

¹⁸⁴ Annex I point 11(1)(j) FR.

¹⁸⁵ OJ L 321, 17.12.2018, p.36.

¹⁸⁶ Annex I point 11(1)(k) FR.

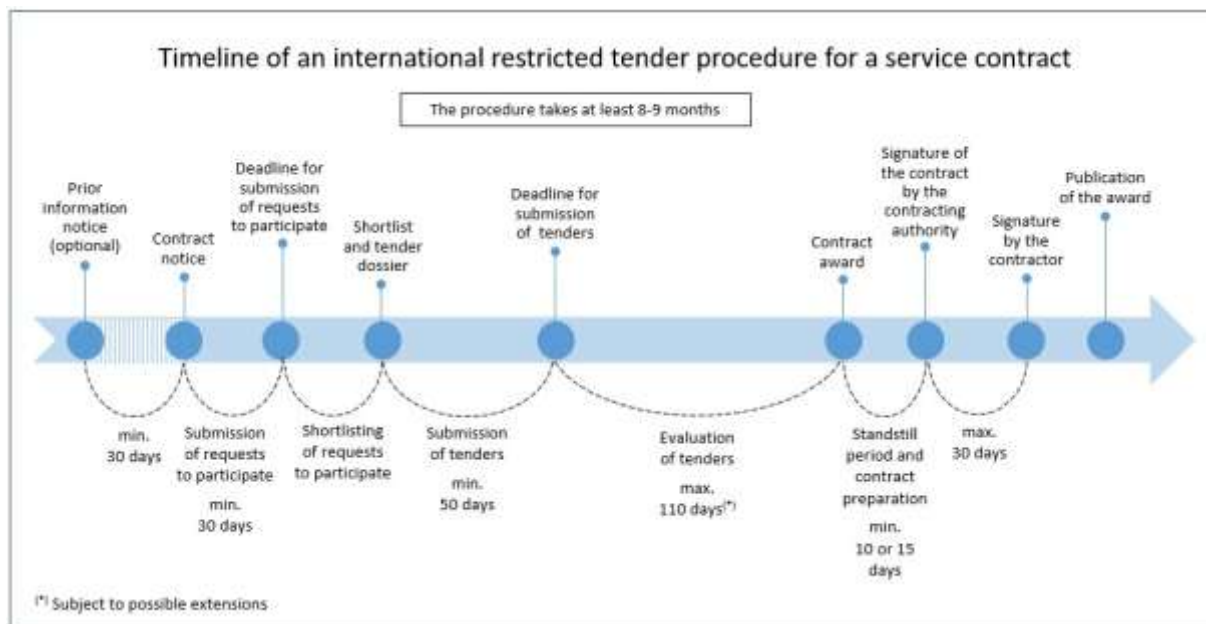
¹⁸⁷ Annex I point 11(1)(e) FR.

¹⁸⁸ Annex I point 40(1)(a) FR and Annex I point 40(3) FR.

¹⁸⁹ Annex I point 40(1)(b) FR.

¹⁹⁰ Annex I point 40(1)(c) FR.

This section will describe the timeline and the different steps of an international restricted tender procedure for a service contract.



3.4.1 Publicity

To ensure the widest possible participation in competitive tendering and the requisite transparency, the contracting authority must publish a contract notice and additional information about the contract notice for all service contracts of **EUR 300 000 or more**. The publication must be done in accordance with the guidelines on publication described in Annex a11e. These publication requirements do not apply to request for specific contracts under a framework contract.

3.4.1.1 Publication of prior information notices¹⁹¹

It is recommended, but not compulsory, to publish a prior information notice setting out the specific characteristics of the planned tender procedure, at least 30 days — but not more than 12 months — before the publication of the contract notice in the Official Journal of European Union and on the F&T Portal.

The purpose of the prior information notice is to provide greater publicity for calls for tenders. It enables economic operators to make preparations (for example, to gather the necessary documentation and plan how to free up sufficient resources) so that they are ready to produce a tender as soon as the contract notice is published. It is especially advisable to use a prior information notice in the case of big projects that, by nature, would probably entail joint tendering: international projects to be implemented in several countries, complex multidisciplinary projects, large-scale contracts, etc.

Prior information notices have an added value when there is a sufficient period between its publication and the planned publication of the contract notice. If due to time constraints a prior information notice can only be published shortly before the contract notice (e.g. 30 days), an alternative option would be to provide tenderers with a longer submission deadline in the contract notice and not to publish a prior information notice. Providing a

¹⁹¹ Annex I point 38.1 FR.

longer submission deadline would then provide economic operators with more time to prepare their offers.

The prior information notice must briefly state the subject, content and value of the contracts in question. Publishing a prior information notice does not oblige the contracting authority to award the contracts proposed, and economic operators are not expected to submit requests to participate at this stage. No financing decision or budgetary commitment is needed at this stage.

DIRECT MANAGEMENT

Prior information notices must be recorded and published through PPMT.

INDIRECT MANAGEMENT

The contracting authority drafts the prior information notice using the appropriate template (Annex a5d) and submits it to the European Commission for prior authorisation and for publication (see guidelines for publication in Annex a11e). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

For indirect management with *ex post* controls, no prior authorisation by the European Commission is required.

3.4.1.2 Publication of contract notices

A minimum of 30 days after publication of the prior information notice, if any, a contract notice and the additional information about the contract notice (Annex a5f) must be published in the Official Journal of the European Union, on the F&T Portal (see publication guidelines in Annex a11e) and in any other appropriate media.

DIRECT MANAGEMENT

Contract notices are recorded and published through PPMT (also Annex A5f is needed).

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The contracting authority drafts the contract notice using the appropriate templates (Annexes a5e and a5f) and submits it to the European Commission for prior authorisation and for publication through PPMT (see guidelines for publication in Annex a11e). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly. In such case, the information published must be identical to the ones published on the Official Journal of the European Union and on the Funding and Tenders Portal and must be published at the same time.

In addition to the above, the finalised terms of reference (see Section 2.8.) must be submitted to the European Commission either at the same time or in advance to demonstrate that the proposed contract notice/additional information about the contract notice corresponds to the objectives of the contract.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

The contracting authority drafts the contract notice using the appropriate template (Annex a5e and a5f) and submits it to the European Commission for publication through PPMT (see guidelines for publication in Annex a11e). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly. In such case, the information published must be identical to the ones published on the Official Journal of the European Union and on the Funding

and Tenders Portal and must be published at the same time.
No prior authorisation by the European Commission is required.

The contract notice and the additional information about the contract notice must provide candidates with the information they need to determine their capacity to fulfil the contract in question.

The amount given in the contract notice as provision for the estimated total value does not include VAT.

The selection criteria (see Section 2.6.11.) set out in the contract notice and in the additional information about the contract notice must be:

- drafted clearly without any ambiguity;
- easy to check on the basis of the information submitted using the standard request to participate form (see Annex b3);
- devised to allow a clear YES/NO assessment to be made as to whether or not the candidate satisfies a particular selection criterion;
- possible to prove by the candidate.

The presentation of the selection criteria in template of the additional information about the contract notice should be followed, and can be adapted to the nature, cost and complexity of the tendered contract where the template allows so.

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

The time allowed for candidates to submit their requests to participate must be sufficient to permit proper competition. The minimum deadline for submitting requests to participate is 30 days from the date of the notice's publication in the Official Journal of the European Union and on the F&T Portal. However, in exceptional cases, this period may be shortened with a **request for derogation**. Under indirect management with *ex ante controls* this is also subject to prior authorisation by the European Commission. The actual deadline will be determined by the contract's size and complexity.

The contract notice, and the additional information about the contract notice, must be clear enough to save candidates from requesting clarification or additional information during the procedure.

Candidates may, however, submit questions should they need to. Any request for clarification must be submitted at the latest **21 days** before the submission deadline. The contracting authority has no obligation to provide clarification on questions received after this date.

If the contracting authority, either on its own initiative or in response to a request for clarification from a candidate, amends information in the contract notice or in the additional information about the contract notice, it must submit a change notice (formerly referred to as "corrigendum") stating the changes made. This change notice will also be published on the Funding and Tenders Portal and on the Official Journal of the European Union.

DIRECT MANAGEMENT

The change notice is recorded and published through PPMT. The change to the additional information about the contract notice is uploaded in PPMT as a new version and published in F&T.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The contracting authority drafts the change notice using the appropriate template (Annex a5b) or the change to the additional information about the contract notice and submits it to the European Commission for prior authorisation and for publication through PPMT (see guidelines for publication in Annex a11e). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

The contracting authority drafts the change notice using the appropriate template (Annex a5b) or the change to the additional information about the contract notice and submits it to the European Commission for publication through PPMT (see guidelines for publication in Annex a11e). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

No prior authorisation by the European Commission is required.

The change notice (or change to the additional information to the contract notice) must be published **no later than 8 days before the original submission deadline**. Notices are published the next working day (Publications Office, Luxembourg) only when sent before 15h00 (CET) of the previous working day.

The change notice may extend the deadline to allow candidates to take the changes into account. Please note that with a clarification, the contracting authority cannot give an opinion on the assessment of the request to participate.

If information in the contract notice/additional information about the contract notice needs to be clarified but does not require an amendment of the contract notice/additional information about the contract notice, the clarification will only be published on the Funding and Tenders Portal, **at the latest 8 days before the submission deadline**. Clarifications are published immediately without publication delay.

DIRECT MANAGEMENT

The clarifications will be recorded directly in PPMT and published on the F&T portal.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The contracting authority drafts the clarifications and submits it to the European Commission for prior authorisation and for publication through PPMT. If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

The contracting authority drafts the clarifications and submits it to the European Commission for publication through PPMT. If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

No prior authorisation by the European Commission is required.

3.4.2 Evaluation of the requests to participate

See Section 2.9. on the evaluation committee.

The first meeting of the (opening or evaluation) committee is held before the actual evaluation starts. The chairperson presents the purpose of the evaluation and explains the procedures to be followed by the committee.

DIRECT MANAGEMENT

In eSubmission, there are two types of committees: opening and evaluation committees. It is recommended that for each lot, the composition of both committees is the same. The opening and evaluation committees must be appointed in PPMT before the start of the opening session and the evaluation of requests to participate.

Candidates are shortlisted by the evaluation committee.

The selection procedure involves:

- compliance with formal submission requirements (see box below);
- drawing up a long list (see template in Annex b4) summarising all the requests to participate received;
- eliminating requests to participate that are inadmissible due to being submitted by candidates not complying with the rule of nationality (see Section 2.3.) or by candidates falling into one of the exclusion situations described in Section 2.4.2.2 or detected in EU Restrictive measures lists¹⁹² (Section 2.4.1.). This is assessed, *inter alia*, on the basis of their declaration on honour;
- applying the selection criteria exactly as published¹⁹³.

COMPLIANCE WITH FORMAL SUBMISSION REQUIREMENTS

To comply with the formal submission requirements, three basic conditions should be fulfilled: compliance with the submission deadline, the integrity and confidentiality of the submissions has been preserved.

DIRECT MANAGEMENT

In **eSubmission**, the electronic system will perform the automated checks on the submission requirements during the opening session. Since the deadline for eSubmission is a hard deadline, no submission can be submitted later than the deadline. Moreover, eSubmission is designed to guarantee the integrity and confidentiality of the submissions. Based on these automated validation checks, the system will then automatically mark the tender submissions as "In order".

eSubmission does not prevent tenderers to submit more than one offer/tender for. In the case several offers/tenders have been submitted by the same tenderer, all submissions

¹⁹² Please note that the EU Official Journal contains the official list of entities subject to restrictive measures and, in case of conflict, it prevails over the list of the [EU Sanctions Map](#).

¹⁹³ Please note that references acquired in implementing grant contracts or by entities listed in Article 62(1)(c) FR in implementing contribution/delegation/financing agreements in indirect management cannot be presented in support of a request to participate for a service contract (in Section 6 of the request to participate, PRAG Annex b3), and that references to implemented service contracts cannot be presented in support of a grant application (in Sections 2.2. and 2.3. of Part B of the grant application form, PRAG Annex e3b).

have to be marked as “In Order”. After closing the opening session, an Opening Record is generated (see specimen Annex b10a), and the Evaluation Session starts so that the members of the Evaluation Committee can access the submissions that are “In Order”. During the evaluation session, the evaluation committee will reject earlier submissions and only the last submission will be considered for evaluation.

INDIRECT MANAGEMENT

In case of **paper submission** the process and verifications described in the opening record (Annex b10) has to be followed. The summary of submissions received, which is attached to the opening record, must be used to record whether each of the submissions complies with the formal submission requirements.

For the supply of supporting documents in relation to the exclusion and selection criteria, see Sections 2.4.2.3. and 2.6.11.

After examining the requests to participate, the evaluation committee shortlists the candidates meeting the selection criteria and complying with the submission requirements.

The shortlist comprises between four and eight candidates.

If the number of eligible candidates meeting the selection criteria is greater than eight, the additional criteria published in the additional information to the contract notice are applied to reduce the number to the eight best candidates. For further details, please see Section 2.6.11. (selection criteria).

If the number of eligible candidates meeting the selection criteria is less than the minimum of four, the contracting authority may invite only those candidates who satisfy the selection criteria to submit a tender, or even the only candidate satisfying the selection criteria. Before accepting a reduced competition of less than four candidates, an event to be reported or a prior authorisation is required depending on the case, as stated in the text box below. Less than the minimum of four candidates may only be invited if all of the following elements are satisfactory:

- sufficient timing has been given for the publication;
- the scope of the services is in line with the budget;
- the selection criteria used and were clear and non-discriminatory and not beyond the scope of the contract satisfactory.

This must be justified in the shortlist report.

DIRECT MANAGEMENT

An event to be reported is required.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

Prior authorisation by the European Commission is required.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior authorisation by the European Commission is required.

The shortlisting process and the final shortlist itself must be fully documented in a shortlist report (see template in Annex b5).

Before the shortlist is approved by the evaluation committee, the contracting authority must

check that no candidate (including partners) is in an exclusion situation in the early detection and exclusion system or subject to European Union restrictive measures¹⁹⁴ (see Section 2.4.1.).

The shortlist report is signed by the chairperson, the secretary and all evaluators.

DIRECT MANAGEMENT

The shortlist report must be submitted to the contracting authority, which must decide whether or not to accept its recommendations, before the shortlisted candidates can be invited to submit a tender.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The shortlist report must be submitted to the contracting authority, which must decide whether or not to accept its recommendations. The contracting authority must then submit for approval the shortlist report together with its recommendations to the European Commission, before the shortlisted candidates can be invited to submit a tender.

If the European Commission does not accept the recommendations of the contracting authority, it must write to the contracting authority stating the reasons for its decision.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

The shortlist report must be submitted to the contracting authority, which must decide whether or not to accept its recommendations.

No authorisation by the European Commission is required before the contracting authority acts on the recommendations of the evaluation committee.

The contracting authority shall notify all candidates whose requests to participate are not shortlisted and of the grounds on which the decision was taken (see Annex b7). If non-shortlisted candidates request further information, they may be given any information that is not confidential, e.g. reasons why a reference does not meet the technical selection criterion, as this may help them to be successful in future tenders.

Shortlisted candidates will receive a letter of invitation to tender and the tender dossier (see Section 3.4.3.).

DIRECT MANAGEMENT

The tender dossier will be published on the Funding and Tenders Portal. The shortlisted candidates will receive a notification granting access to the tender.

INDIRECT MANAGEMENT

The tender dossier will be sent simultaneously to all shortlisted candidates via mail or email.

¹⁹⁴ Please note that the EU Official Journal contains the official list of entities subject to restrictive measures and, in case of conflict, it prevails over the list of the [EU Sanctions Map](#).

3.4.3 The tender dossier

3.4.3.1 Drafting

See Section 2.8. for general guidelines on drafting terms of reference.

The contracting authority is responsible for drawing up the tender documents. Tender documents must be carefully drafted, to ensure that the contract is complete, and that the procurement procedure is carried out correctly.

These documents must contain all the provisions and information that candidates need to submit a tender: the procedures to follow, the documents to provide, cases of non-compliance, award criteria and their weightings, etc.

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

Given the technical complexity of many contracts, the preparation of the tender dossier may require the assistance of one or more external technical specialist(s). Each specialist must sign a declaration of objectivity and confidentiality (see Annex a3).

DIRECT MANAGEMENT

The tender dossier must be agreed upon by the European Commission prior to issue. The standard practice is to consult and obtain the agreement of the partner country, and where appropriate of other parties involved, on the tender dossier.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The contracting authority must submit the tender dossier to the European Commission for authorisation prior to issue.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior authorisation on the tender dossier by the European Commission is required.

3.4.3.2 Content

The tender dossier consists of (see Annex b8):

- A. Instructions to tenderers.
- B. Draft contract agreement: main and special conditions with annexes.
- C. Other information (administrative compliance grid, evaluation grid).
- D. Tender submission form.

The tender dossier must clearly state that the tender must be made with firm, non-revisable prices.

According to the applicable rules, a pre-financing guarantee could be required or not. If required, this must be mentioned in the draft special conditions.

Please find below more background information regarding the following requirements listed in the tender specifications:

Key experts (fee-based contracts)

The minimum requirements for the experts are not selection criteria, but award criteria. Therefore, the purpose of the minimum criteria is not a YES/NO assessment. Instead, the purpose is to evaluate the technical quality of the tenders.

The number of key experts may vary from 1 key expert, which will be typically the team leader, up to a maximum of 4 key experts. The skills required may include professional and technical skills, team management skills, communication and facilitation skills, and/or language skills.

Any minimum requirement should be sufficiently clear, or explained, to avoid any ambiguity and to guarantee a fair technical evaluation. The scores in the evaluation grid should be set accordingly. The precise time inputs of the experts shall be left to the discretion of tenderers as part of their technical proposal. However, it may be useful to identify a minimum time input for the contribution of key experts.

When deciding on the requirements, equal access should be guaranteed and no unjustified obstacles to competitive tendering should be created. The requirements should be clear and non-discriminatory. For example, 'local expertise' may be required but not a 'local expert' (i.e. a national/resident of a country). Participation in tendering procedures must be open on equal terms to all eligible persons.

The criteria should be as broad as possible taking into consideration the real minimum requirements and the availability of such experts on the market. If an expert does not meet the minimum requirements, he/she must be rejected on the basis of non-compliance. This means that the entire tender is rejected and shall not be evaluated further. Therefore, the more demanding and challenging the minimum requirements are, the fewer experts will meet the minimum requirements and the result is that competition will be restricted.

Skills are the specific abilities a person has learned through life and work. Qualifications are the skills that have been taught to a person. Qualifications are gained through studies or training, and can be assessed through formal documents like degrees or certificates. Therefore, the skills of an expert can therefore be demonstrated through formal qualifications and/or professional experience. As a consequence, the minimum requirements should always provide the equivalence between qualifications and skills obtained through experience.

Non-key experts (fee-based contracts)

Non-key experts are experts who are not defined as instrumental in the terms of reference. Therefore, no expert's profile (Annex IV) should be submitted for non-key experts. The tenderer will have to demonstrate in their offer that they have access to experts fulfilling the minimum requirements. During the contract implementation, the contractor must select and hire non-key experts. The selected experts must be subject to approval by the contracting authority before the start of their implementation of tasks.

The terms of reference shall provide a profile of the non-key experts that are required for the implementation of the contract. However, the terms of reference shall not define a minimum time input for the contribution of non-key experts.

Incidental expenditure (fee-based contracts)

The fee rates for all experts must include the remuneration paid to the experts and all the administrative costs of employing the relevant experts (see Section 3.2.2.). Moreover, the contractor must ensure that experts are adequately supported and equipped. In particular, it must ensure that there is sufficient administrative, secretarial and interpreting provision to enable experts to concentrate on their primary responsibilities. In addition, no equipment is to be purchased on behalf of the contracting authority/partner country as part of a service contract or transferred to the contracting authority/partner country at the end of a service contract. Any equipment related to a service contract that is to be acquired by the partner country must be purchased by means of a separate supply tender procedure.

As a consequence, incidental expenditure is exceptional and cannot be used for costs that should be covered by the contractor as part of its fee rates. The general rule is that the items included under the incidental expenditures should be kept at a minimum. The incidental expenditure that is allowed should explicitly be described in the terms of reference. The amount given in the terms of reference as the provision for incidental expenditure is simply an upper limit on the incidental costs. It need not be estimated exactly, and it does not matter that the actual costs are more or less than the estimated amounts of the components, within a reasonable margin of error.

No detailed calculation of the provision for incidental expenditure must appear anywhere in the terms of reference or in the tender dossier, otherwise the amounts identified become legally binding.

The provision for incidental expenditure, including provisions for expenditure verification are excluded from the comparison of the financial offers as they are specified in the tender dossier (see Section 3.4.10.3 on the financial evaluation).

All incidental expenditure incurred in the course of the contract as required by the terms of reference is to be invoiced at actual cost (per-diems are fixed flat rates and are considered actual costs). The reimbursement of actual costs shall include costs related to the payment of an incidental expenditure, such as bank charges.

Travel costs in case of missions are recurrent incidental expenditure in external action service contracts. Therefore, the terms of reference should indicate the delivery mode, which is either on the place of performance or home based, and the mission location(s). On delivery mode, travel and per diems see Section 2.5.5.

Reports

The subject and frequency of the reports must be specified in the terms of reference.

For fee-based contracts with a duration of more than 12 months, interim reports must be provided every 6 months. Every report must have a narrative section and a financial section. The financial section must contain detailed information on the time that experts have spent on the contract, on incidental expenditure, and on the provision for expenditure verification. The terms of reference shall describe the content of report and the expected time of submission of each report.

For global price contracts with duration of more than 24 months for which interim payments are foreseen annually, interim reports must accompany the request for payment. These reports must indicate that specific output that has been achieved, and they must be approved by the contracting authority before the payment is made. If the contract has a duration of less than 24 months, with contracts that can be approved independently by the contracting authority, payments shall be done based on the outputs achieved. The terms of reference should define the outputs that must be achieved, and the implementation period for each of these outputs. Therefore, the financial offer submitted by the tenderer shall include a price breakdown based on the expected output listed in the terms of reference.

3.4.4 Award criteria

See Section 2.6.11.4. on award criteria and 2.6.11.5 on the distinction between selection and award criteria.

The contract award criteria serve to identify the best quality-price ratio. These criteria cover both the technical quality and price of the tender.

The technical criteria allow the quality of technical tenders to be assessed. The two types of technical criteria are:

- Organisation and methodology;
- Profiles of the key experts proposed (fee-based contracts only).

The technical criteria may be divided into sub-criteria. The methodology, for example, may be examined in the light of the terms of reference, the optimum use of the technical and professional resources available in the partner country, the work schedule, the appropriateness of the resources to the tasks, the support proposed for experts in the field, the involvement of the consortium members, etc. Experts' profiles may be awarded points for such criteria as qualifications and skills, general, and professional experience.

The tender evaluation committee is required to ensure that any methodology submitted by the tenderer complies with the requirements of the terms of reference. The methodology may add to the requirements of the terms of reference but must in no way divert from them.

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

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

The tender dossier must contain full details of the technical evaluation grid, with its criteria and sub-criteria and their weightings. The evaluation grid cannot be modified after the deadline for informing potential tenderers of any clarifications.

There must be no overlap between the selection criteria used to draw up the shortlist and the award criteria used to determine the best tender. Particular attention should be paid when defining award criteria for key experts to avoid overlapping and double evaluation with the requirements related to personnel (professional capacity) in the selection criteria.

(see Section 2.6.11.5.)

3.4.5 Additional information before submission of tenders

The tender dossier must be clear enough to save shortlisted candidates from requesting additional information during the procedure.

Shortlisted candidates may submit questions **no later than 21 days** before the deadline for submission of tenders. The contracting authority must reply to all tenderers' questions **no later than 8 days** before the deadline for submission of tenders. The contracting authority has no obligation to provide clarification on questions received after the date referred above.

DIRECT MANAGEMENT

Shortlisted candidates may submit questions via Funding and Tenders Portal. The contracting authority shall publish the answers through the Funding and Tenders Portal.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

Shortlisted candidates may submit questions in writing. The contracting authority drafts the clarifications and submits it to the European Commission for prior authorisation. The contracting authority sends in writing the answers to all the tenderers at the same time

via mail or e-mail.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

Shortlisted candidates may submit questions or in writing. The contracting authority drafts the clarifications and sends in writing the answers to all the tenderers at the same time via mail or e-mail.

Minor changes to the tender dossier must also be published/communicated in the same way. No prior opinion on the assessment of the tender can be given by the contracting authority in reply to a question or a request for clarification.

If the technical content of the tender is complex, the contracting authority may hold an information meeting and/or site visit. This meeting must be announced in the tender dossier and must take place no later than **21 days** before the expiry of the deadline for submission of tenders. All costs of attending such a meeting/visit must be met by the tenderers. Individual visits by companies during the tender period cannot be organised by the contracting authority taking into account transparency and equal treatment of the tenderers. Although they are not compulsory, these information meetings are encouraged since they have proven to be an efficient way to clarify many questions related to the tender dossier. Any presentation/documentation to be delivered in the information meeting, as well as the outcome and the minutes, must also be shared with all shortlisted candidates 8 days before the expiry of the deadline for the submission of tenders.

DIRECT MANAGEMENT

Information meeting documents will be shared via Funding and Tenders Portal.

INDIRECT MANAGEMENT

Information meeting documents will be sent via mail or e-mail.

3.4.6 Deadline for submission of tenders

Tenders must be submitted to the contracting authority no later than the date and time referred to in the invitation to tender. The deadline for submission must be long enough to guarantee the quality of tenders and so permit truly competitive tendering. Experience shows that too short a deadline prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders. Any tender received from an economic operator not invited to tender will be rejected.

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

The minimum period between the dispatch of the letter of invitation to tender by the contracting authority and the deadline for submission of tenders is **50 days**. However, in exceptional cases, this period may be shortened with **a request for derogation**. Under indirect management with *ex ante controls* this is also subject to prior authorisation by the European Commission.

3.4.7 Period of validity

See Section 2.9.5.

3.4.8 Submission of tenders

DIRECT MANAGEMENT

Tenders must be submitted exclusively via the electronic submission system (eSubmission) available via a link in the Funding and Tenders Portal¹⁹⁵. Tenders submitted in any other way (e.g. e-mail or by letter) will be disregarded.

INDIRECT MANAGEMENT

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

The technical offer and the financial offer always have to be evaluated successively and separately: the technical offer is evaluated first and financial offer checked only after the evaluation of technical offer. It ensures that the technical quality of a tender is considered independently of the price. The tender must be submitted in accordance with the instructions to tenderers. See Section 2.9.3. for consequences of infringements to formal requirements in the further evaluation process.

3.4.9 The Evaluation Committee

For the evaluation committee's composition, impartiality and confidentiality, responsibilities and the timetable, see Section 2.9.

DIRECT MANAGEMENT

In eSubmission, there are two types of committees: opening and evaluation committee. It is recommended that for each lot, the composition of both committees is the same. The opening and evaluation committees must be appointed in PPMT before the start of the opening session and the evaluation of tenders.

3.4.10 Stages in the evaluation process

3.4.10.1 Receipt and registration of tenders

DIRECT MANAGEMENT

¹⁹⁵ For detailed instructions on how to submit a tender please consult the eSubmission Quick Guide available at: <https://wikis.ec.europa.eu/display/FTPportal/Quick+guides+eSubmission>. The supported browsers, file types, size of attachments and other system requirements can be consulted at: <https://webgate.ec.europa.eu/fpfis/wikis/x/Oo5kl>. In case of technical problems, please contact the eSubmission Helpdesk (see contact details in the eSubmission Quick Guide) as soon as possible.

The tenders are registered in eSubmission. Since the deadline for submission is a hard deadline, no tender can be submitted later than the submission deadline.

INDIRECT MANAGEMENT

On receiving tenders, the contracting authority must register them, stating the date and time of submission, and provide a receipt for those delivered by hand or submitted electronically.

The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened. The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

3.4.10.2 Tender opening session

Part 1: Preparatory phase

The first meeting of the evaluation committee is held before the actual evaluation starts. The tender dossier should have been circulated in advance to the members of the evaluation committee. The chairperson presents the purpose of the tender and explains the procedures to be followed by the evaluation committee, including the evaluation grid, award criteria and weightings specified in the tender dossier.

Part 2: Tender opening

INDIRECT MANAGEMENT

See tender opening checklist in Annex b9.

Part 3: Compliance with formal submission requirements

At this stage the evaluation committee must decide whether or not tenders comply with the formal submission requirements. The chairperson must check that no member of the evaluation committee has a potential conflict of interest with any of the tenderers (on the basis of the shortlist, the tenders received, consortium members and any identified subcontractor). See also Sections 2.9.2. and 2.9.3.

COMPLIANCE WITH FORMAL SUBMISSION REQUIREMENTS

To comply with the formal submission requirements, three basic conditions should be fulfilled: compliance with the submission deadline, the integrity and confidentiality of the submissions has been preserved.

See text box under Section 3.4.2. on compliance of formal submission requirements in direct and indirect management.

3.4.10.3 Evaluation of offers

If requested by a majority of the evaluation committee voting members, the chairperson may write to tenderers whose submissions require clarification, offering them the chance to reply within a reasonable time limit to be fixed by the evaluation committee.

It is important to remind that financial offers remain sealed/unopened.

DIRECT MANAGEMENT

The financial offers will remain unopened until technical evaluation of all the tenders has been completed.

INDIRECT MANAGEMENT

The envelopes containing the financial offers will remain sealed. All financial offers will be deposited in safe deposit until technical evaluation of all the tenders has been completed.

Part 1: Administrative compliance

The evaluation committee checks that the tenders comply with the instructions given in the tender dossier through the administrative compliance grid (see Annex b8I). Any major formal errors or major restrictions affecting performance of the contract or distorting competition result in the rejection or exclusion of the related tender.

The documentary proof for exclusion and selection criteria as well as for the key experts are not verified during this phase of the evaluation.

Key experts:

The evaluation must check at this stage that any of the key experts identified in the technical offer is not subject to EU Restrictive measures (Section 2.4.1.).

Nationality of subcontractors:

The evaluation committee must check at this stage that any subcontractors identified in the technical offers satisfy the nationality rule (Section 2.3.1.) or are not subject to EU Restrictive measures (Section 2.4.1.).

In this regard, it has to be stressed that according to Article 4.2 of the General Conditions for Service contracts where experts are not directly contracted or employed by the contractor but through a third party, the latter is a subcontractor. The qualification as a subcontractor depends on the existence or not of a legal person acting as an intermediary between the expert and the tenderer/contractor. In the legislation of some Member states, an individual company (also referred to as 'one person company', or 'sole proprietorship') can be set up that has no distinct legal personality from that of its sole founder. In this case, such company, not being distinct from the natural person who established it, is not a subcontractor.

However, where the expert and the tenderer/contractor do not have a direct relationship, and the expert is made available through an intermediary, i.e. another company, including cases where the expert owns (or co-owns) a company (e.g. in France an entreprise unipersonnelle or in Belgium a SPRL Unipersonnelle which have a distinct legal personality), the relationship between the intermediary and the tenderer/contractor is subcontracting.

Part 2: Technical evaluation

The evaluation committee then examines the technical offers, while the financial offers remain sealed/unopened. Under no circumstances may the evaluation committee or its members change the technical evaluation grid communicated to the tenderers in the tender dossier.

Process followed by the evaluation committee

When evaluating technical offers, each member gives each offer a technical score out of a maximum of 100 points in accordance with the technical evaluation grid (setting out the technical criteria, sub-criteria and weightings) laid down in the tender dossier (see Section

3.4.4.). In practice, it is recommended that tenders be given points for a given criterion one after another, rather than scoring each tender for all criteria before moving on to the next tender.

Each evaluator must make an initial assessment of the technical offers and award scores on each sub-criterion according to his/her assessment. To this end, the evaluators should follow the instructions in the evaluator's grid (Annex b12) and the guidance provided on the correlation between scores and qualitative assessment of criteria. All evaluators should independently from each other carry out the evaluation of the technical offers in a consistent manner by applying the same methodology, interpretation and understanding. This does not necessarily mean that the scores of two different evaluators are expected to be identical, but rather that each evaluator applies the same standards and provides a well substantiated opinion supporting his/her individual scores.

Each evaluator completes an evaluator's grid (see Annex b12) to record his/her assessment of each technical offer to establish a general appreciation of strengths and weaknesses of the individual technical offers.

On completion of the technical evaluation, the points given by each member are compared at the evaluation committee's session. Besides giving a numerical score, a member must explain the reasons for his/her assessment and defend his/her scores before the evaluation committee. In case of major discrepancies, full justification has to be provided by dissenting members. Once discussed, each evaluator finalises his/her evaluator's grid (see Annex b12) of the technical offers and signs it before handing it over to the secretary of the evaluation committee.

The secretary then drafts a summary of the comments of the evaluation committee members. The secretary also calculates the average technical score of each technical offer, which is the arithmetical average of the technical scores given by each member for a given offer. For each tender, this information is compiled in the evaluation grid (Annex b8m). The strengths and weaknesses in the evaluation grid must reflect those commonly agreed by the committee amongst all those pointed out by the evaluators in their individual evaluator's grids. The main strengths and weaknesses commonly agreed by the evaluators for each tender will be included in the evaluation report (Annex b11e).

Before the validity of the tenders expires but after the award decision is taken, the contracting authority notifies the successful tenderer and the unsuccessful tenderer (see Section 2.10.1.1.). These notifications provide details about the grounds for the decision to award or not to award the contract. Moreover, unsuccessful tenderers who are not rejected can make a request in writing to be informed about the name of the tenderers to whom the contract is awarded, the characteristics and relative advantages of the successful tender and the contract value. For these reasons, the strengths and weaknesses of each tender should be drafted in a clear and unambiguous manner.

The tenders minimum threshold to be considered technically acceptable and qualify for the financial evaluation is the following:

- an overall total score of at least 75 points
- the key experts fulfil the minimum requirements for each criterion (fee-based contracts only).

If no tender achieves 75 points or more, or if none of the key experts fulfils the minimum requirements for each criterion, the tender procedure is cancelled.

Out of the tenders reaching the 75-point threshold, the weighted technical score of each offer is calculated using the following formula:

Weighted technical score = (average technical score of the offer in question/average technical score of the best technical offer) x 100.

The weighted technical score of the best technical offer must always be 100 points.

The specimen tender evaluation summary below provides a practical example of the process followed by the evaluation committee in scoring tenders:

Part 1: Technical evaluation

	Maximum possible	Offer 1	Offer 2	Offer 3
Evaluator A Technical score	100	55	88	84
Evaluator B Technical score	100	60	84	82
Evaluator C Technical score	100	59	82	90
Total	300	174	254	256
Average technical score (mathematical average)		$174/3 = 58.00$	$254/3 = 84.67^*$	$256/3 = 85.33^*$
Weighted technical score (average technical score of the offer in question / average technical score of the best technical offer x 100)		Eliminated**	$84.67/85.33 \times 100 = 99.22$	$85.33/85.33 \times 100 =$ 100.00

* The score is rounded to two digits after the decimal point.

** Only offers with an average technical score of at least 75 points qualify for the financial evaluation. In addition, for fee-based contracts, the key experts should fulfil the minimum requirements for each criterion.

Evaluation of experts (fee-based contracts)

Civil servants and other staff of the public administration of the partner country shall only be approved to work as experts if well justified. The justification should be submitted with the tender and shall include information on the added value the expert will bring, on any potential interference or conflict of interest of the proposed expert in his/her function as expert and his/her present or previous functions working as civil servant, as well as proof that the expert is seconded or on personal leave.

In the potential case of members of staff of the European Union delegations (local agents) proposed as experts by tenderers, the European Commission must make sure that the contract with the EU institution is officially terminated before the expert starts to work on an EU financed project under a contract with an external organisation/company (see Section 2.5.4.).

Key-experts should be scored against the information provided in the key expert's profile (Annex IV). The information provided in the key expert's profile should match the evaluation criteria for the key expert mentioned in the terms of reference. Other information will not be considered.

The tenderers must provide documentary proof for the key experts proposed. The documentary proof includes copies of the diplomas referred to in the key expert's profiles

and employers' certificates or references proving the professional experience stated in the key expert's profiles. If missing proofs are requested, as a clarification of the technical offer, it should only be for the relevant experience and diplomas which are among the requirements in the terms of reference. Only diplomas and experience supported by documentary proof should be taken into account.

The key experts must fulfil the minimum requirements for all the criteria. If any of the key experts does not fulfil the minimum requirements in any criterion after the revised assessment (that takes place after the interviews, if any) the offer shall not qualify for the technical evaluation.

The evaluators should as a standard practice verify the information provided in the qualifications and skills tab, and the experience tab, of the key expert's profile, and the corresponding supporting documents. For this purpose, the contracting authority reserves the right to contact the reference persons mentioned in the key expert's profile. The evaluation committee must ensure at all times an objective evaluation of the tenders and the principles of equality of treatment and non-discrimination must be respected. For that reason, these verifications will only be used to confirm the accuracy of the information provided by the expert relating to his past experience and will not be used to introduce subjective elements in the evaluation of the experts/tender.

When as a consequence of these verifications, it is proven that the key expert's profiles do not reflect reality and hence these may affect the evaluation of the key expert by the committee, e.g. by deducting points for the concerned award criterion, evidence that these checks have been carried out and its result must be duly substantiated (e.g. minutes of phone conversations and exchange of letters or e-mails; evaluations in database) and reflected in the report of the evaluation committee.

For the non-key experts the aspect to be considered is whether the number of working days estimated for each month for each type of expert proposed in the organisation and methodology is sufficient for the requirements of the terms of reference to be achieved. This is judged on the basis of the profiles identified in the terms of reference. The estimated working days of key experts will be scored in the evaluation grid in the sub-criterion "Timetable of activities" under "organisation and methodology". Moreover, the tenderers will have to demonstrate in their offers that they have access to experts fulfilling the requirements.

For fee-based contracts, the precise time input of the key expert is left to the discretion of the tenderers as it has to be linked with the methodology provided. The methodology should include the time needed for each key expert to achieve the required outputs of the project.

For global price contracts, no minimum requirements for experts are defined and therefore experts will not be evaluated (see Section 3.2.1. on global price contracts).

Interviews of experts (fee-based contracts)

The evaluation committee may interview the key experts proposed in the technically compliant tenders after having written provisional conclusions but before concluding the technical evaluation.

Interviews should be standard practice whenever the expert proposed has no relevant experience of EU projects, as evidenced by the expert's profile, and when this experience is a key element for the position and for the project implementation. It is recommended that tenderers that have scored close to the technical threshold also be invited for interview. When the key expert has experience on EU projects, verification/checks within the European Commission may be more appropriate. Interviews must be well prepared when conducted and shall be based on the evaluation criteria. The interview reports shall be included in the tender dossier. Interviews are usually not conducted in case of a global price contract.

The preferred method of conducting interviews is by videoconference or telephone. Exceptionally and only if duly justified, given the cost both to tenderers and the contracting authority, the expert may be interviewed in person.

Any interviews should be held by the evaluation committee at intervals close enough to allow the experts to be compared. Interviews must follow a standard format agreed beforehand by the committee with questions drafted and applied to all experts or teams called to interview. The indicative timetable for these interviews must be given in the tender dossier. Tenderers must be given at least 10 days' advance notice of the date and time of the interview. If a proposed key expert is prevented from attending an interview by force majeure, a mutually convenient alternative date/time is arranged. If a proposed key expert is unable to attend on this second occasion, its tender may be eliminated.

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

Availability of experts (fee-based contracts)

Where the tender procedure involves the provision of experts, the tender is expected to provide the experts specified in the tender.

The evaluation committee may recommend that a tenderer be rejected from the tender procedure, and its offer considered irregular, if the tenderer and/or proposed experts deliberately conceal the fact that all or some of the team proposed in their tender are unavailable from the date specified in the tender dossier for the start of the assignment, or if it can be established that this tenderer has proposed names of experts which in fact had not given their consent to participate. This may lead to their exclusion from other contracts funded by the European Union (see Section 2.4.2.).

See also Section 3.4.10.5. on the confirmation of the availability of key experts.

Support facilities

The tenderer shall give a description of the support facilities, including back-stopping, that they will provide to their team of experts during the implementation of the contract.

The description of the support facilities should include a list of staff, units, capacity of permanent staff regularly intervening as experts on similar projects, provision of expertise in the region/country of origin as well as partner countries, organisational structure, etc. which are supposed to ensure that function, as well as the available quality systems and knowledge capitalisation methods and tools, within the respective members of the consortium.

A permanent capacity of staff regularly intervening as experts on similar projects should be considered as an advantage for providing support to experts on the ground. By contrast, a service contractor which is exclusively employing free-lance experts (i.e. non-permanent) should be considered to have a less robust backstopping capacity.

If the tenderer is providing expertise in its region/country of origin as well as in partner countries it may be considered as an ability to disseminate innovation.

If the tenderer has design, research, laboratory or even innovation function, or whether it collaborates with academic research centre, it may be considered an advantage.

Consortium members and SME's

The tender shall include a description of the input from each member of the consortium and the distribution and interaction of tasks and responsibilities between them. Furthermore, the involvement of all members of the consortium will be considered added

value in the tender evaluation.

The involvement of Small and medium-sized enterprises (SME's), or economic operators registered in the partner country where the contract will be implemented, will be considered an added value in the tender evaluation. SME's employ fewer than 250 persons and have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

Part 3: Evaluation of financial offers

Upon completion of the technical evaluation, the financial offers that are considered technically acceptable, are opened.

INDIRECT MANAGEMENT

The chairperson and the secretary of the evaluation committee initial the envelopes containing all the originals of the financial offers.

The envelopes containing the financial offers of the tenders considered technically not acceptable must remain unopened and are kept. They must be archived by the contracting authority together with the other tender procedure documents.

The evaluation committee has to ensure that the financial offer satisfies all formal requirements.

A financial offer not meeting these requirements may be considered irregular and be rejected. Any rejection on these grounds must be fully justified in the evaluation report.

The evaluation committee checks that the financial offers contain no obvious arithmetical errors. Any obvious arithmetical errors are corrected without penalty to the tenderer.

The contract value consists of the following:

- Fee-based contracts: the fees, lumps (if applicable) and the provision for incidental expenditure, including provisions for expenditure verification¹⁹⁶.
- Global price contracts: the global price only, with, if required, a breakdown of the global price.

The contract value corresponds to the amount presented in the budget as follows:

- Fee-based contracts: the total maximum contract value including VAT/indirect taxes, when applicable;
- Global price contracts: the global price including VAT/indirect taxes, when applicable.

Only the price without VAT/indirect taxes should be taken into consideration for the financial evaluation. The contract value is compared with the maximum budget available for the contract. The maximum budget available corresponds to the amount specified in the instructions to tenderers, which represents the estimated total value stated in the contract notice, to which VAT/indirect taxes are added, when applicable. Tenders exceeding the maximum budget available for the contract are considered unacceptable and are rejected.

¹⁹⁶ In the exceptional cases where the expenditure is verified by the European Commission, the tender documents, including the proposed contractual template, must be duly amended. A derogation is thus required.

The evaluation committee then proceeds with:

- Fee-based contracts: the financial comparison of **the fees and lump sums** between the different financial offers. The provision for incidental expenditure, including provisions for expenditure verification are excluded from the comparison of the financial offers as they are specified in the tender dossier.
- Global price contracts: the financial comparison of the **global price** offers.

For abnormally low tenders, please refer to Section 2.6.10.1.

The tender with:

- Fee-based contracts:
the lowest total **fees + lump sums** receives 100 points. The others are awarded points by means of the following formula:
Financial score = (lowest total **fees + lump sums** / total **fees + lump sums** of the tender being considered) x 100.
- Global price contracts:
the lowest **global price** receives 100 points. The others are awarded points by means of the following formula:
Financial score = (lowest **global price** / **global price** of the tender being considered) x 100.

The specimen tender evaluation summary below provides a practical example of the process followed by the evaluation committee in the financial evaluation of a fee-based contract:

Part 2: Financial evaluation*

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

* Only tenders that are technically acceptable qualify for the financial evaluation (see part 2 technical evaluation).

3.4.10.4 The evaluation committee preliminary conclusions

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

- the scores awarded to the technical offers by 0.80
- the scores awarded to the financial offers by 0.20.

The specimen tender evaluation summary below provides a practical example of the process followed by the evaluation committee in weighting technical and financial scores:

Part 3: Composite evaluation

	Maximum possible	Tenderer 1	Tenderer 2	Tenderer 3
Weighted technical score x 0.80		Eliminated following technical evaluation	$99.22 \times 0.80 = 79.38$	$100.00 \times 0.80 = 80.00$
Financial score x 0.20			$100.00 \times 0.20 = 20.00$	$89.71 \times 0.20 = 17.94$
Overall score			$79.38 + 20.00 = 99.38$	$80.00 + 17.94 = 97.94$
Final ranking			1	2

The resulting, weighted, technical and financial scores are then added together to determine the tender with the highest score, i.e. the best quality-price ratio. It is essential to make the calculations strictly according to the above instructions.

The evaluation committee's shall identify the presumed successful tender which is the tender achieving the highest overall score.

EDF-FUNDED PROGRAMMES (APPLICABLE ONLY TO TENDERS FINANCED UNDER MFF 2014-2020)

In respect of service contracts, other than the European Commission's Framework contracts, when technical offers are evaluated, a preference must be given to tenders submitted by legal or natural persons of ACP States, either individually or in a consortium among them.

Where two tenders are acknowledged to be equivalent on the basis of the final score, preference is given:

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

(See also Section 2.6.9.)

3.4.10.5 Verifications with the presumed successful tenderer

The contracting authority shall request the presumed successful tender (Annex b11c) to

provide **within 7 days** from the date of the notification¹⁹⁷ the documentary evidence on exclusion criteria; documentary evidence on selection criteria; and where applicable, confirmation of key experts; confirmation of auditor/practitioner for the provision of the expenditure verification and the original signed Declaration on honour on exclusion and selection criteria¹⁹⁸.

Verification of documentary evidence (exclusion and selection criteria)

If upon verification, the evaluation committee considers the submitted evidence not admissible, it will send the notice in Annex b11c to the next best ranked tenderer, the newly successful tenderer.

Confirmation of the auditor/practitioner (where applicable)

The auditor/practitioner shall meet at least one of the conditions listed in Section 4 of the Terms of Reference for expenditure verification (Annex b8k1).

Confirmation of availability of key experts and proposed replacements

The contracting authority requests the presumed successful tenderer to confirm the availability of the key experts. As declared in the statement of exclusivity and availability, should a key expert receive a confirmed engagement he/she must accept the first engagement that is offered chronologically¹⁹⁹.

Should any of the key experts be unavailable, the presumed successful tenderer will be allowed to propose a replacement expert. This may for example happen in case the expert has been successful in another tender procedure. The presumed successful tenderer must give due justification for the change of expert but acceptance by the contracting authority will not be limited to specific cases. The contracting authority will verify that the replacement expert's total score in relation to the evaluation criteria is at minimum the same as the scores given in the evaluation to the expert he/she is proposed to replace.

The contracting authority may consult the original evaluation committee and may interview one or more replacement experts by videoconference or telephone. It must be emphasised that the minimum requirements for each evaluation criteria must be met by the replacement expert, who is bound to submit a statement of exclusivity and availability.

The maximum time limit for proposing a replacement should be **within 7 days** following the date of the notification. Only one time-period to propose replacements will be offered to the successful tenderer, in which they may, if possible, propose up to three candidates for replacement of the same position. The replacement expert cannot be one presented in a bid from another tenderer participating in the same tender. The evaluation committee may choose between these proposed candidates, and the evaluation report shall motivate this choice.

If no replacement expert is proposed or if the proposed replacement expert does not equal or exceed the total scores of the originally proposed expert, the evaluation committee will send the notice in Annex b11c to the next best ranked tenderer, the newly successful tenderer.

Summary of scenarios:

¹⁹⁷ Such notification shall be deemed to have been received on the date upon which the contracting authority sends it to the electronic address.

¹⁹⁸ The requirement to submit an original Declaration on honour on exclusion criteria and selection criteria is only applicable in case of paper submission.

¹⁹⁹ The engagement of an expert is confirmed if the expert is committed to work as a key expert under a signed contract financed by the EU general budget or the EDF or if he/she is a key expert in a tender that has received a notification as presumed successful tender. **The date of confirmation of the engagement in the latter case is that of the notification to the presumed successful tender.**

- a. The key experts are available.
The presumed successful tenderer confirms that all their key experts are available (and the other requested information is acceptable and the partner country agrees, see below), the evaluation committee finalises its evaluation report.
- b. One or more of the key experts are not available but replacements are acceptable.
The presumed successful tenderer confirms that one or more of their key experts are not available. They propose replacement experts within the time limit, submitting the necessary documentary evidence (as requested for the original experts in the tender) and justification for unavailability. The evaluation committee will verify that the replacement fulfils the minimum requirements in the terms of reference and that he/she would have scored minimum the same as the originally proposed expert (total scores). If several experts are proposed for the same position the evaluation committee may choose between the experts. Written justification of the choice is made by the evaluation committee and is part of the evaluation report.
- c. One or more of the key experts are not available and replacements are NOT acceptable (or not proposed within the seven-day time-limit).
If none of the replacements can be accepted (minimum requirements in the terms of reference not fulfilled and/or the expert scores less than the original proposed expert) or no replacements are proposed within the time-limit, the evaluation committee will send the notice in Annex b11c to the next best ranked tenderer, the newly successful tenderer. The contracting authority will send a similar notice, if necessary, following the same procedure, to the next best ranked tenderer.

The evaluation committee shall ensure that there is no record of the presumed successful tenderer, including consortium members, subcontractors or capacity providing entities if any, in exclusion situation in the EDES nor in the lists of EU restrictive measures²⁰⁰ (see Sections 2.4.2.1. and 2.4.1.). The evaluation committee shall verify that key experts are neither subject to EU restrictive measures.

Agreement by the partner country

Where the European Commission is the contracting authority and a representation of the partner country has not been invited to the evaluation committee, the relevant service of the European Union must notify the partner country, if appropriate²⁰¹, of the name of the presumed successful tenderer and ask to approve the confirmed key experts proposed before the contract is awarded.

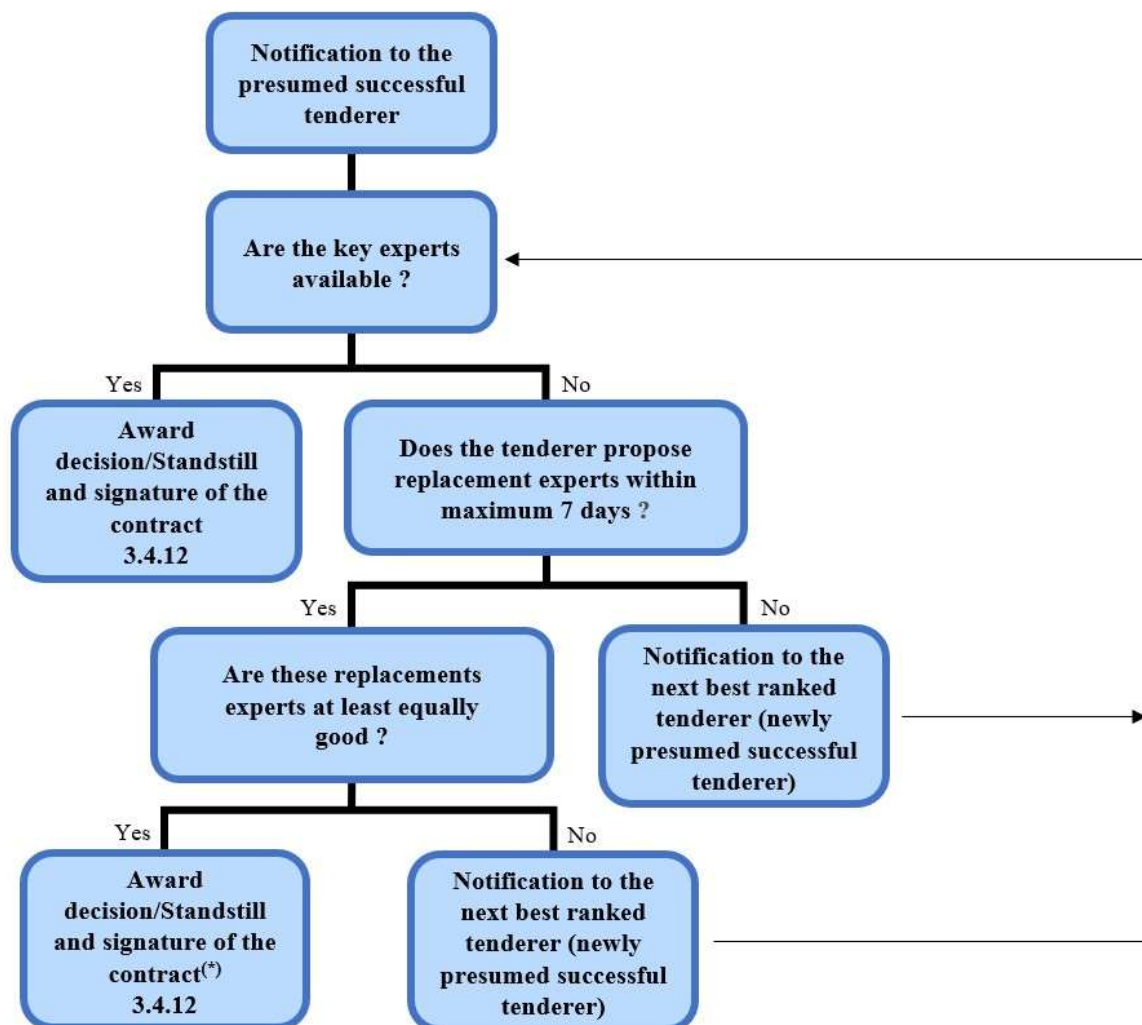
The representative of the partner country must submit duly substantiated and justified objections to reject an expert (e.g. the expert is persona non grata, there are public order issues, or information unknown to the evaluation committee has been disclosed which could have affected the outcome of the evaluation). If the evaluation committee accepts the rejection of the expert, the presumed successful tender is allowed to propose a replacement (following the paragraphs above). If this procedure fails, the evaluation committee will send the notice in Annex b11c to the next best ranked tenderer, the newly successful tenderer. In this case, the representative of the partner country again has the right to approve the experts.

If there is no next best ranked tender or if the experts are rejected again, the evaluation

²⁰⁰ Please note that the EU Official Journal contains the official list of entities subject to restrictive measures and, in case of conflict, it prevails over the list of the [EU Sanctions Map](#).

²⁰¹ An example where it may not be appropriate is a multi-country project where many partner countries are involved and it would be practically difficult to obtain the approvals.

committee shall recommend to cancel the tender. A request for the approval of key experts is not a request for approval of the European Commission's evaluation. The representative of the partner country may only ask for experts to be replaced if duly substantiated and justified objections are given in writing.



(*) Without prejudice to information received during the standstill period

3.4.10.6 Evaluation Committee recommendation

The tender evaluation must be concluded step by step to reach a conclusion. The principle behind requesting separately the technical and financial offers is to ensure that the evaluators do not know the financial offer and thus cannot be influenced by the price when assessing the technical quality of a tender. **Consequently, the technical proposals cannot be re-scored once the financial offers have been opened, except if the contracting authority rejects the proposal of the evaluation report (due to a mistake in the evaluation) and ask the evaluation committee to convene again, or on the basis of examination of information received in the standstill period.**

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

Please see Section 2.9.5.

The evaluation committee finalises the evaluation and makes a recommendation to the contracting authority:

- Award the contract to the tenderer which has submitted a tender:
 - that complies with the formal requirements and the eligibility rules;
 - whose total budget is within the maximum budget available for the project;
 - that meets the minimum technical requirements specified in the tender dossier and experts are confirmed to be available;
 - that provides the best value for money (satisfying all of the above conditions);
 - where no concerned economic operator is in an exclusion situation in the EDES nor in the lists of EU restrictive measures.
- Cancel the tender procedure (see Section 2.6.13.).

The contracting authority will then take its decision (see Section 3.4.11. for cancellation and 3.4.12 for award).

DIRECT MANAGEMENT

The entire procedure (technical, financial evaluation and verifications with the presumed successful tenderer(s)) is recorded in an evaluation report (see template in Annex b11) to be signed by the chairperson, the secretary and all evaluators.

This must be submitted to the competent authority of the European Commission, which must decide whether or not to accept its recommendations.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The entire procedure (technical, financial evaluation and verifications with the presumed successful tenderer(s)) is recorded in an evaluation report (see template in Annex b11) to be signed by the chairperson, the secretary and all voting members of the evaluation committee. This must be submitted to the relevant services of the contracting authority, which must decide whether or not to accept its recommendations. The contracting authority must then submit the evaluation report together with its proposed decision to the European Commission. If there is an award proposal and the European Commission has not already received a copy of the tenders, these must be submitted.

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

If the European Commission accepts the proposed decision, the contracting authority will either commence with the award of the contract (see Section 3.4.12.) or cancel the tender, as decided.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior authorisation by the European Commission is required before the contracting authority acts on the recommendations of the evaluation committee.

Subject to the contracting authority's legislation on access to documents, the entire tender procedure is confidential during the evaluation process. The evaluation committee's

decisions are collective and its deliberations must remain secret. The committee members and any observers are bound to secrecy. If its law conflicts with the confidentiality required, the contracting authority must obtain prior authorisation from the European Commission before disclosing any information.

The evaluation report, in particular, is for official use only and may be divulged neither to tenderers nor to any party outside the authorised services of the contracting authority, the European Commission and the supervisory authorities (e.g. the European Court of Auditors). Extracts from the evaluation report may however be disclosed (see Section 2.12.1.).

3.4.11 Cancelling the tender procedure

See Section 2.6.13 and Annex b11b. A cancellation notice (non award notice) shall be published.

3.4.12 Award decision and signature of the contract

3.4.12.1 Award decision

See Section 2.10.1. See format of letter in Annex b13a) for successful tenderer and in Annex b13c) for unsuccessful tenderers.

The notification letter (Annexes b13a) to the successful tenderer implies that the validity of the successful tender is automatically extended for a period of 60 days irrespective of the date of notification of the award of the contract. This period can be further extended by mutual agreement between the parties.

At the same time the unsuccessful tenderers are informed that their offers could not be retained, but the validity of their tenders is maintained until the end of the validity period, and without prejudice to the possibility to extend such period in the cases explained in Section 2.9.5.

During the tender validity period for the unsuccessful tenderers, the contracting authority reserves the right to send a notification of award to the next best ranked tenderer. The validity of the next best ranked tender will be extended by 60 days, upon notification of the new award decision. This 60-day period is added to the validity period irrespective of the date of notification, which should however be within the validity period.

3.4.12.2 Standstill period

See Section 2.10.1.1.

3.4.12.3 Contract preparation and signature

See Section 2.10.2. The proposed contract must follow Annex b8.

The contract can only be signed upon expiry of the standstill period. Please see Section 2.10.1.1.

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

3.4.12.4 Publicising the award of the contract

An award notice shall be published once the contract has been signed. See Section

2.10.4.1.

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

3.5 Procedures with no publication requirements

3.5.1 Specific contracts of framework contracts

For a description of different types of framework contracts and their use, see Section 2.6.5.

Specific contracts shall be awarded in accordance with the terms of the framework contract. This means that each framework contract shall specify a method for the award of specific contracts. The contract documents might be complemented by framework contract specific user guides. Since specific contracts are managed through eProcurement, additional information about automated business processes can be found in eProcurement user guides. In case there is a contradiction between these documents, the framework contract agreement and its annexes shall prevail above the user guides. The different documents which compose the framework contract shall be read according to the order of precedence listed in the main conditions.

Each framework contract is managed by a lead directorate-general of the European Commission. The framework contracts managed by external action services apply the PRAG templates. Framework contract managed by central services apply the Vade Mecum and the templates found on BUDGpedia. Since each framework contract operates differently, users have to familiarise themselves with the framework contract and related documents prior to its use.

3.5.1.1 Issues to consider before using an existing framework contract

Before using an existing framework contract, the authorising officer should confirm the following:

- are the services required available under the framework contract?
- does the leading directorate-general agree to give access to its framework contract?
- does the estimated budget for the specific contract fall under the maximum amount allowed for a specific contract?
- is the duration of the specific contract within the maximum duration of framework contract?. When considering duration, take into account that the duration of the framework contract is followed by a survival period. During the survival period no requests for specific contract can be launched and no specific contract can be concluded. However, specific contracts concluded before the expiry of the framework contract can still be implemented;
- is the geographical scope of the services within the scope of the framework contract?

If the answer is no to any of the questions above, the authorising officer must launch its own procedure.

If the answer is yes to all the questions above, the authorising officer has to use the existing framework contract. Not using the framework contract would be against the principle of sound financial management.

3.5.1.2 Request for services with reopening of competition

a) Request for Specific Contract

Sending the request

A request for specific contract must be sent to all the framework contractors within the same lot. The contracting authority should award the specific contract to the contractor which has submitted the most economically advantageous tender on the basis of the award criteria set out in the framework contract. There is no scope at the reopening of competition stage to apply selection criteria related to financial or technical capacity, as these aspects have already been addressed as part of the process to establish the framework contract.

Each request for specific contract must indicate in the specific terms of reference the legal basis of the procedure and the eligibility requirements of the external financing instrument. The funding instrument determines the eligible nationalities of the consortium members and the subcontractors (please refer to Section 2.3.1.).

Submissions deadlines are different according to the terms of each framework contract. The deadlines for submission are always a minimum and it is recommended to foresee a longer period according to the complexity of the assignment, the time of the year (holiday period), and/or the contractual value.

Expression of willingness

After receiving the request for specific contract, the framework contractors must acknowledge the invitation to participate and express their willingness to submit an offer. Not participating in the request for specific contract must be duly justified. Not participating in request for specific contract repeatedly can be qualified as a breach of contract. If the acknowledgement is not received within the deadline, the contracting authority must contact the framework contractor concerned.

Unsuccessful procedure

If after sending a request for specific contract, no willingness to participate has been expressed, or no offer was admissible, or no offers were received, the relevant authorising officer may cancel the request for specific contract and:

1. After analysing the cancelled request for specific contract, relaunch a modified request for specific contract.
2. Initiate, depending on the amount, a procurement procedure outside the framework contract.

Clarifications

The framework contractors can ask for clarifications before the following deadlines:

- Submission period ≥ 14 calendar days and ≤ 20 calendar days = submission deadline minus 3 calendar days.
- Submission period > 20 calendar days = submission deadline minus 4 calendar days.

The answers are sent simultaneously to all the framework contractors to whom a request for specific contract has been sent. The deadline for submission must be extended if a substantial change is introduced by a clarification. The deadline can only be extended when the submission deadline has not yet been reached.

b) Evaluation of offers

For the appointment and composition of the evaluation committee, see Section 2.9.1.

Compliance with the submission requirements

eProcurement will perform the following automated validation checks:

- a. The deadline for the submission has been respected.
- b. The offers were received in the same state as they were submitted and therefore the integrity and confidentiality of the offer has been respected.

Since the deadline for submission is a hard deadline, no offer can be submitted later than the submission deadline. Moreover, eProcurement is designed to guarantee the integrity and confidentiality of offers. Based on these automated validation checks, eProcurement will automatically mark the submissions as "In order".

Evaluation

eProcurement applies the double envelope, whereby the technical evaluation is separated from the financial evaluation.

- For the evaluation of the technical quality, the specific contract's contracting authority will define the detailed criteria and their respective weights in the evaluation grid attached to the request for specific contract.
- For the final score of the offer, the best price-quality ratio is established by weighing technical quality against price.

The evaluation committee will only evaluate offers that are admissible. The evaluation committee may consider offers not admissible in case of:

- non-compliance with the eligibility rules of the financing instrument which finances the specific contract (see Section 2.3.). The consortium members involved in the assignment and all subcontractors must respect the eligibility rules of the financing instrument which finances the specific contract. In case a consortium member is not eligible according to the fund source of the specific contract, that member shall not be eligible to participate in any task related to that specific contract. The other members of the consortium which are eligible can participate;
- submission of several offers. In that case the last offer submitted will be considered for evaluation and the other offers will not be considered admissible;
- fees exceeding the maximum global fees indicated in the framework contract;
- an offer exceeding the maximum budget amount communicated in the request for specific contract;
- non-compliance of the experts with the minimum requirements for the requested category defined in the global terms of reference or in the specific terms of reference;
- falling short of the number of points required as a technical threshold defined in the global terms of reference or in the specific terms of reference.

The reasons for rejecting the offers that are not admissible must be indicated in eProcurement.

Non-key experts cannot be requested or proposed in eProcurement. Therefore, all experts under a fee-based contract are considered key experts who have to be evaluated by the evaluation committee.

Professional conflicting interests

The potential existence of a professional conflicting interest shall always be assessed by the evaluation committee as part of the process of evaluating the offers/tenders. Therefore, even if a potential professional conflicting interest was identified by the contracting authority before the launch of a request for specific contract, no assessment shall be made and no decision shall be taken on the presence or absence of such a conflicting interest. As a consequence, the contracting authority shall not modify the shortlist of framework contractors selected by eProcurement, for reasons of professional conflicting interest. Potential professional conflicting interests shall only be established by the evaluation committee after the submission of the offers/tenders. A potential conflicting interest can also arise during the implementation of the specific contract.

If the framework contractor knows at the time of submitting the offer/tender of the existence of a professional conflicting interest, the framework contractor:

- should abstain from participating in a request for specific contract;
- or should declare the professional conflicting interest and propose mitigating measures in the tender/offer.

If the evaluation committee establishes the professional conflicting interest, and the framework contractors provide (in their tender/offer, or after a request for clarification from the evaluation committee to the framework contractor) no acceptable solution to mitigate or avoid such professional conflicting interest, the evaluation committee shall reject the offer. As long as the contractor has not acted in bad faith and misrepresented information on this matter, such professional conflicting interest should not be considered as a contractual fault and shall not be used as a reason to terminate the framework contract. For more on professional conflicting interests see Section 2.5.4.4.

c) Award

The award of each specific contract requires full evaluation of each tender and should be documented in an evaluation report. The authorising officer takes a separate specific award decision further to the initial award decision of the framework contract itself.

All the framework contractors who submitted offers must receive a notification letter with the results of the evaluation and the award decision. The notification is also obligatory in case of cancellation and when a new request for specific contract is relaunched and sent to the same framework contractors. The notifications letters are generated automatically in eProcurement.

The notification letter to unsuccessful framework contractors will have the following elements:

- The name of the successful framework contractor;
- If a technical evaluation took place, their technical scores based on the average technical points awarded by the evaluators;
- In case of rejection, the reasons for the rejection of the offer.

Only upon written request from any of the framework contractors who submitted an admissible offer, the contracting authority will provide their specific scores given for each element of the evaluation grid: organisation and methodology, expert(s), rationale, strategy, etc.

The contracting authority will never provide:

- Any information about the other framework contractors' characteristics and relative

advantages²⁰²;

- The amount of the specific contract;
- The technical score of the other framework contractors;
- The final score of any of the other framework contractors;
- The framework contractor's own final score.

The basis of not providing this information is that the receipt of such information by parties to the same framework contract each time a competition is reopened might prejudice fair competition between them²⁰³.

Specific contracts are not subject to the standstill period regardless of their value and can be signed immediately. A specific contract can only be concluded during the validity of the framework contract.

There should be mobilisation period between the signature of the Specific Contract and the start of the implementation. It is recommended to allow a longer mobilisation timeframe especially for complex assignment of 3/4 years and of high amounts.

There is no publication of an award notice for specific contracts based on a framework contract.

d) Modifying specific contracts

Modifications cannot change the subject matter of the specific contract or change the award conditions prevailing at the time when the specific contract was awarded. For instance, the fees and, in case of framework contracts managed by central services, rates indicated in the price list of the framework contract, cannot be modified.

An increase in value cannot result in a contract value that exceeds the ceilings for specific contracts. An extension in duration cannot go beyond the survival period which ends with date on which specific contracts are automatically terminated.

A specific contract can only be modified for the cases which require no negotiated procedure (see Section 2.11.2.2.). Modifications for the repetition of similar services which require a negotiated procedure (see Section 3.3.5.1.) are not applicable to specific contracts. The latter requires a contract notice which indicates the extent of possible new services, while request for specific contract are launched without the publication of a contract notice.

3.5.2 Simplified procedure

See Section 2.6.4. for guidance on the simplified procedure.

For contacts of a value of less than EUR 300 000, the framework contract procedure (see Section 3.5.1.) is the preferred award procedures where the European Commission is the contracting authority (direct management). However, depending on the context, the management mode of the action, and the needs (for instance the availability of required services in the different lots of the framework contract and or in the partner country, time and budget available, etc.), the contracting authority may use the simplified procedure as an alternative to the framework contract procedure.

As an exception the contracting authorities may use the simplified procedure for legal services according to the common procurement vocabulary (CPV) nomenclature²⁰⁴,

²⁰² Article 173(3)a FR.

²⁰³ Recital 182 FR.

²⁰⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:074:0001:0375:en:PDF>.

regardless of the estimated value of the contract²⁰⁵.

For the simplified procedure for services specific annexes for simplified tenders must be used (administrative compliance grid, contract notice, invitation letter, instructions to tenderers, and tender form). For any other document of the tender dossier and the contract the regular service annexes must be used.

The procedure for preparing and evaluating the tenders, and awarding the contract, is the same as under the restricted procedure (see Sections 3.4.3, 3.4.4, 3.4.7. to 3.4.12.3.). Please note that in case of simplified procedure, the standstill period does not apply and no award notice is to be published.

3.5.3 Single tender

See Section 2.6.8.2. for guidance on the single tender.

Contracts with a value of less than or equal to EUR 20 000 may be awarded on the basis of a single tender.

For the single tender procedure for services the specific annexes for simplified tenders must be used (administrative compliance grid, contract, contract notice, invitation letter, instructions to tenderer and tender form). They can be adjusted to the procedure, including deleting non-relevant options, without this requiring derogation. For any other document of the tender dossier and the contract the regular service annexes must be used.

3.5.4 Payment against invoice

For services with a value of less than or equal EUR 2 500 the contracting authority may simply pay against invoices without prior acceptance of a tender. See Section 2.6.8.

3.6 Modifying service contracts

See Section 2.11. for general information on modifying contracts. See Section 3.3.5.1.e) on negotiated procedures. See also point d) of Section 3.5.1.2. on the modification of specific contracts of framework contracts.

Administrative order

Administrative orders may take the form of additions, omissions, substitutions, changes in quality, quantity, specified sequence, method or timetable of implementation of the services.

Administrative orders cannot modify the contract value. Moreover, in case of global price contracts, administrative orders cannot have an impact on the contractual budget.

The following procedure applies to issuing administrative orders:

- Prior to the issuance of any administrative order, the contracting authority or the contractor shall notify the other party of the contract of the nature and the form of the proposed amendment.
- The contracting parties may review the nature and the form of the proposed amendment.
- Following an agreement between the contracting parties, the contractor shall submit

²⁰⁵ Some legal services may be awarded following a negotiated procedure, see Section 3.3.5.1.

to the project manager a written proposal for an administrative order including all measures required to comply with the requested amendment, an updated timetable for implementation of the tasks, and, if necessary, a proposed financial adjustment to the contract, using the contractual fee rates when the tasks are similar. When the tasks are not similar, the contractual fee rates shall be applied when reasonable.

Following receipt of the contractor's proposal, the project manager shall decide as soon as possible whether or not the amendment shall be carried out.

If the project manager decides that the proposed amendment shall be carried out, it shall notify the contractor through an administrative order stating that the contractor shall carry out the administrative order at the prices and under the conditions given in the contractor's proposal or as modified by the project manager in agreement with the contractor.

Fee-based contracts: budgetary amendment

The budget of fee-based contracts consists of three headings:

- Fees
- Lump sums
- Provision for incidental expenditure, including provisions for expenditure verification

The financial evaluation of the offer is based on the sum of the amounts allocated to fees and to lumps sums. The provision for incidental expenditure is not evaluated and therefore does not constitute an element of the award conditions. A modification of the sum of the amounts allocated to fees and to lumps sums is a modification of one of the elements of the award conditions prevailing at the time the contract was awarded. Therefore, this modification can only be done in the cases explicitly allowed in the Financial Regulation²⁰⁶.

Depending on the case, the budget can be amended through an administrative order or through an addendum. In all cases, the provision for expenditure verification cannot be decreased, but can be increased during execution of the contract.

Fee-based contracts: budgetary amendment through administrative order

Amendments through administrative orders are only possible for the cases where the amendment does not modify the initial award conditions. In the following case an administrative order can be issued:

- changes of non-key experts;
- reallocations within the heading fees;
- reallocations within the heading lump sums;
- reallocations between the heading fees and the heading lumps sums;
- reallocations within the heading incidental expenditure;
- reallocations from the heading fees and/or heading lump sums towards the heading incidental expenditure.

Administrative orders cannot be issued when they result in:

- an increase or reduction in the initial amount of the contract;
- an increase in the sum of the amounts allocated of fees and lump sums;
- the replacement of a key expert;

²⁰⁶ See article 175(3)(a), (b), (c), (d) FR and Annex I art. 11(1)(e) FR (see Section 2.11.2.).

- a change in the implementation period of the contract.

Therefore, reallocations from the heading incidental expenditure towards the heading fees and/or the heading lump sums are not allowed through an administrative order. All these cases require an addendum (see below).

Fee-based contracts: budgetary amendment through addendum

Modifications of the initial award conditions must be formalised by way of an addendum.

In this regard, it is important to keep in mind that an addendum is necessary:

- when the proposed change results in an increase or decrease in the contract value as regards the initial contract price, or in an increase in the sum of the amounts allocated to fees and to lump sums;
- in case of a replacement of a key expert (see below);
- a change in the implementation period of the contract.

An addendum may also be necessary in case of substantial changes that affect the object or scope of the contract, resulting from budgetary reallocations between headings, even if these changes have no financial impact on the contract value.

- In case of a modification of the contract value: the modifications allowed are calculated in relation to the initial contract value.
- In case of reallocating incidental expenditure towards fees and/or lump sums: the reallocations allowed are also to be calculated in relation to the initial value of the sum of the amounts allocated to fees and to lumps sums.

Addenda should comply with either Article 175(3)(a), (b) and (c) or point 11.1, second subparagraph, point (e), of Annex I of the Financial Regulation as described in Section 2.11.2. The explanatory note to the addendum needs to make reference to the case that this is applicable and justify the grounds to use the case to modify the contract.

Replacement of experts

As regards experts, during the implementation of a service contract, where an expert has to be removed or replaced, the replacement must possess equivalent or better qualifications and experience and the fee/rate may in no circumstances exceed that of the expert replaced. Where the contractor is unable to provide a replacement possessing equivalent qualifications and/or experience, the contracting authority may either terminate the contract, if it considers that its performance is jeopardised, or, if it considers that this is not the case, accept the replacement, in which case the expert's fees are to be negotiated downwards to reflect the proper level of remuneration. Except as the contracting authority may otherwise agree, the contractor shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement of any member of staff. Whatever the case may be, the contracting authority will make no payment for the period of absence of the expert.

The replacement of an expert listed in Annex IV must be proposed within 15 calendar days from the first day of the expert's absence. Failure of the contractor to propose a replacement within this time limit may result in the application of liquidated damages from the sixteenth day of absence of the expert and until the day a suitable replacement is accepted by the contracting authority, of up to 10% of the remaining fees of the expert to be replaced. In addition, liquidated damages may also be applied when a replacement of a key expert is submitted during the last year of contract implementation and in this case they shall not exceed a maximum amount that corresponds to 90 working days of the key expert and shall be due from the first day of absence. The liquidated damages shall be

calculated by dividing the remaining amount of the key expert to be replaced, by the remaining number of working days as provided in the budget of the contract for the specific expert's position.

Note that although Article 17(4) of the General conditions for service contracts provide that liquidated damages can be applied without formal notice, PRAG Annex b14 'Pre information on the application of liquidated damages', allowing the contractor to submit observations, shall be used when the contracting authority wishes to apply liquidated damages.

The contracting authority must approve or reject the proposed replacement within 30 calendar days. The partner country's approval must also be obtained for any replacement key expert proposed by the contractor. The representative of the partner country may not withhold its approval unless it submits duly substantiated and justified objections to the proposed experts in writing to the delegation of the European Union. If the representative of the partner country fails to issue or to reject its approval within 15 days of the date of the request, the expert is deemed to be approved.

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

Should the contracting authority learn that a tenderer has confirmed the availability of a key expert and signed the contract although the tenderer has deliberately concealed the fact that the expert is unavailable from the date specified in the tender dossier for the start of the assignment, the contracting authority may decide to terminate the contract using article 36(2)(l) of the general conditions.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

In addition to the above, prior authorisation by the European Commission is required before cancelling the contract.

However, the contract must not only identify the key experts to be provided but specify the qualifications and experience required of them. This is important if the contractor has to replace staff during the implementation of the tasks.

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

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

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

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

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

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

DIRECT MANAGEMENT, AND INDIRECT MANAGEMENT WITH *EX-POST*

CONTROLS

In the course of implementation, the contracting authority may also submit a substantiated written request for a replacement where it considers a member of staff incompetent or unsuitable for the purposes of the contract. **The contractor must be asked to provide his own and the staff member's observations to such request.**

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

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

4 Supply contracts

4.1 Introduction

Supply contracts means a contract covering the purchase, leasing, rental or hire purchase, with or without option to buy, of products, and which may include, as an incidental matter, siting and installation operations²⁰⁷.

For mixed contracts, where supply contracts also cover works or services, see Section 2.6.1.

4.2 Procurement procedures²⁰⁸

4.2.1 Contracts with a value of EUR 300 000 or more

All supply contracts worth EUR 300 000 or more must be awarded through **an international open tender procedure** (see Section 4.3.).

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

Supply contracts worth under EUR 300 000 and more than EUR 100 000 may be awarded through a **local open procedure** (see Section 4.4.).

4.2.3 Contracts with a value of less than EUR 100 000

These supply contracts may be awarded through a **simplified procedure** (see Section 4.5.).

4.2.4 Contracts with a value of less than or equal to EUR 20 000

The contracting authority may award supply contracts of a value of EUR 20 000 or less on the basis of a **single tender** (see Section 4.6.).

4.2.5 Contracts with a value of less than or equal to EUR 2 500

For supplies with a value of less than or equal to EUR 2 500, the contracting authority may pay on the basis of an invoice without prior acceptance of a tender (see section 2.6.8).

4.2.6 Procedures applicable without ceilings

4.2.6.1 Negotiated procedure

Please see Section 2.6.8. for further details on the use of a negotiated procedure.

²⁰⁷ Article 2(69) FR.

²⁰⁸ For thresholds and procedures see Section 2.6.1.

The procedures set out in Sections 4.3.9. must be followed by analogy, and the evaluation report must be included in the contract dossier. The evaluation report for the negotiated procedure (annex a10a) shall describe the selection of the participant(s), the timetable of the negotiation rounds, and the describe the negotiation process and the result of the negotiation.

The standstill procedure described in 3.4.12.2 shall not apply, with the exception of case b) referred below²⁰⁹.

DIRECT MANAGEMENT

Depending on the case, **either a prior approval or an event to be reported**, is required from the European Commission to the use of the negotiated procedure.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

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

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

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

The evaluation report for the negotiated procedure must refer to the legal basis of the negotiated procedure and to the applicable case. The evaluation report must demonstrate that the conditions under which a negotiated procedure is allowed are fulfilled. The applicable cases for the negotiated procedure for supply contracts are listed below:

- a. Where no tenders, or no suitable tender, or no request to participate or no suitable request to participate have been submitted in response to an open procedure or restricted procedure after this procedure has been completed, provided that the original procurement documents are not substantially altered²¹⁰.

A tender must be considered unsuitable where it does not relate to the subject matter of the contract and a request to participate must be considered unsuitable where the economic operator is in an exclusion situation or does not meet the selection criteria²¹¹.

- b. Where the supplies can only be provided by a single economic operator and for any of the following reasons²¹²:
 - i. the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
 - ii. competition is absent for technical reasons;
 - iii. the protection of exclusive rights including intellectual property rights must be ensured.

The exceptions set out in points (ii) and (iii) must only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of

²⁰⁹ Annex I to the FR, point 36.2 d).

²¹⁰ Annex I point 11(1)(a) FR.

²¹¹ Annex I point 11(2) FR.

²¹² Annex I point 11(1)(b) FR.

an artificial narrowing down of the parameters when defining the procurement²¹³.

- c. In so far as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events, it is impossible to comply with the applicable time limits and where the justification of such extreme urgency is not attributable to the contracting authority.

Operations carried out in crisis situations must be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, must establish that a situation of extreme urgency exists and must review his decision regularly with regard to the principle of sound financial management²¹⁴.

- d. For additional deliveries that are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics that would result in incompatibility or disproportionate technical difficulties in operation or maintenance²¹⁵.
- e. Where the products are manufactured purely for the purpose of research, experimentation, study or development; however, such contracts must not include quantity production to establish commercial viability or to recover research and development costs²¹⁶.
- f. For supplies quoted and purchased on a commodity market²¹⁷.
- g. For purchases of supplies on particularly advantageous terms, either from a supplier that is definitively winding up its business activities, or the liquidators in an insolvency procedure, an arrangement with creditors, or a similar procedure under national law²¹⁸.
- h. For the purchase of medicines for human use or medical countermeasures as well as for products allowing the eradication or containment of certain animal diseases, zoonoses and quarantine pests of plants, provided that one of the following conditions is fulfilled: these products are innovative, not readily available on the market or there is a need to adopt a readily available solution²¹⁹.
- i. For contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or where the protection of the essential interests of the European Union or the partner country so requires, provided the essential interests concerned

²¹³ Annex I point 11(3) FR.

²¹⁴ Annex I point 39(2) FR: 'Emergency assistance' is another case specific to the EDF and distinct from the 'extreme urgency' referred to here, in which the negotiated procedure may be used for actions that are not governed by Article 19c of Annex IV to the 2000/483/EC Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (Cotonou Agreement) (OJ L 317, 15.12.2000, p. 3). Emergency assistance is linked to the application of Articles 72 and/or 73 of the Cotonou Agreement. See also Article 79(5) of Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ('Overseas Association Decision').

²¹⁵ Annex I point 11(1)(f)(i) FR.

²¹⁶ Annex I point 11(1)(f)(ii) FR.

²¹⁷ Annex I point 11(1)(f)(iii) FR.

²¹⁸ Annex I point 11(1)(f)(iv) FR.

²¹⁹ Annex I point 11(1)(f)(v) FR.

cannot be guaranteed by other measures; these measures may consist of requirements to protect the confidential nature of information which the contracting authority makes available in the procurement procedure²²⁰.

- j. For the purchase of public communication networks²²¹ and electronic communications services within the meaning of Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code^{222 223}.
- k. Where the tender procedure has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the procurement documents are not substantially altered²²⁴.
- l. Where a new contract has to be concluded after early termination of an existing contract²²⁵.

4.2.6.2 Dynamic purchasing system

A dynamic purchasing system is a completely electronic process for making commonly used purchases for a period of up to 4 years. A contract notice invites indicative tenders, which must be evaluated within 15 days. Tenderers that comply with the specifications are admitted to the system. The system is open to any economic operator who meets the selection criteria and submits an indicative tender that is found compliant.

For each individual contract, a simplified contract notice is published giving tenderers that have not yet been admitted to the system the possibility of submitting an indicative tender within 15 days. The contracting authority shall invite all admitted tenderers to submit a tender. Where the dynamic purchasing system has been divided into categories of works, products or services, the contracting authority shall invite all participants having been admitted to the category corresponding to the specific procurement concerned to submit a tender. The contract will be awarded to the tender offering the best price-quality ratio on the basis of the award criteria specified in the contract notice for the establishment of the dynamic purchasing system.

The contracting authority may not resort to this system to prevent, restrict or distort competition.

²²⁰ Annex I point 11(1)(i) FR.

²²¹ 'Electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.

²²² OJ L 321, 17.12.2018, p.36.

²²³ Annex I point 11(1)(k) FR.

²²⁴ Annex I point 40(1)(b) FR.

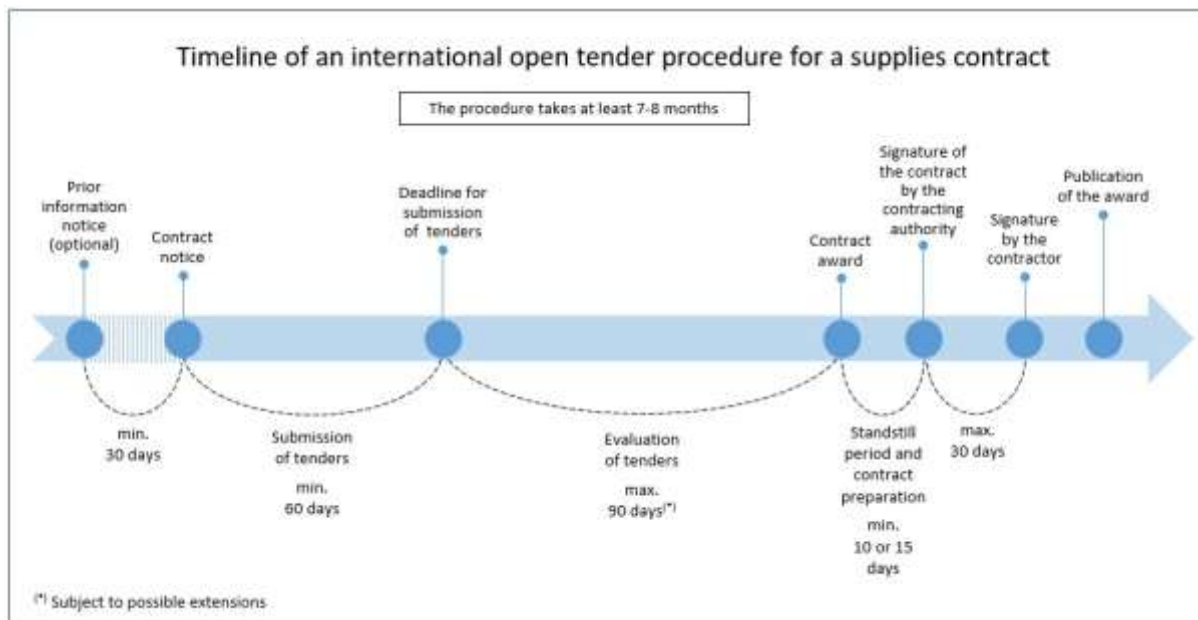
²²⁵ Annex I point 40(1)(c) FR.

4.2.6.3 Competitive dialogue

See Section 2.6.7. for further details.

4.3 International open tender for contracts of EUR 300 000 or more

See Section 2.6.2. on general information about the open procedure.



4.3.1 Publicity

To ensure the widest possible participation in competitive tendering and the requisite transparency, the contracting authority must publish a contract notice and additional information about the contract notice for all supply contracts of **EUR 300 000 or more**.

The open procedure is a one-step procedure. Therefore, the tender dossier is published together with the contract notice and the additional information about the contract notice.

The publication must be done in accordance with the guidelines on publication described in annex a11e.

4.3.1.1 Publication of prior information notice²²⁶

It is recommended, but not compulsory, to publish a prior information notice setting out the specific characteristics of the planned tender procedure, at least 30 days — but not more than 12 months — before the publication of the contract notice in the Official Journal of European Union and on the F&T Portal.

The purpose of the prior information notice is to provide greater publicity for calls for tenders and more preparation time for tenderers. It enables economic operators to make preparations (for example, to gather the necessary documentation and plan how to free up sufficient resources) so that they are ready to produce a tender as soon as the contract notice is published. It is especially advisable to use a prior information notice in the case of big projects that, by nature, would probably entail joint tendering: international projects

²²⁶ Annex I point 38.1 FR.

to be implemented in several countries, complex multidisciplinary projects, large-scale contracts, etc.

Prior information notices have an added value when there is a sufficient period between its publication and the planned publication of the contract notice. If due to time constraints a prior information notice can only be published shortly before the contract notice (e.g. 30 days), an alternative option would be to provide tenderers with a longer submission deadline in the contract notice and not to publish a prior information notice. Providing a longer submission deadline would then provide economic operators with more time to prepare their offers.

The prior information notice must briefly state the subject and the content of the contracts in question. Publishing a prior information notice does not oblige the contracting authority to award the contracts proposed, and economic operators are not expected to submit requests to participate at this stage. No financing decision or budgetary commitment is needed at this stage.

DIRECT MANAGEMENT

Prior information notices must be recorded and published through PPMT.

INDIRECT MANAGEMENT

The contracting authority drafts the prior information notice using the appropriate template (Annex a5d) and submits it to the European Commission for prior authorisation and for publication (see guidelines for publication in Annex a11e). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

For indirect management with *ex post* controls, no prior authorisation by the European Commission is required.

4.3.1.2 Publication of contract notices

A minimum of 30 days after the publication of the prior information notice, if any, a contract notice and the additional information about the contract notice (Annex a5f) must be published in the Official Journal of the European Union, on the F&T Portal (see publication guidelines in Annex a11e) and in any other appropriate media.

DIRECT MANAGEMENT

Contract notices are recorded and published through PPMT (also Annex a5f is needed).

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The contracting authority drafts the contract notice using the appropriate template (Annex a5e and a5f) and submits it to the European Commission for prior authorisation and for publication through PPMT (see guidelines for publication in Annex a11e). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly. In such case, the information published must be identical to the ones published on the Official Journal of the European Union and on the Funding and Tenders Portal and must be published at the same time.

In addition to the above, the finalised tender dossier must be submitted to the European Commission for approval.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

The contracting authority drafts the contract notice using the appropriate template (Annex a5e and a5f) and submits it to the European Commission for publication through PPMT (see guidelines for publication in Annex a11e, including for exceptions). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly. In such case, the information published must be identical to the ones published on the Official Journal of the European Union and on the Funding and Tenders Portal and must be published at the same time. No prior authorisation by the European Commission is required.

The contract notice, and the additional information about the contract notice, must provide tenderers with the information they need to determine their capacity to fulfil the contract in question.

No estimated value or available budget is to be indicated in the contract notice. Instead, the contracting authority will provide an estimation of the volume of the purchase (e.g. number of supply items) as short description in the contract notice, in order to give the necessary elements allowing the economic operators to prepare and submit offers.

The selection criteria (see Section 2.6.11.) set out in the contract notice and in the additional information about the contract notice must be:

- drafted clearly without any ambiguity;
- easy to check on the basis of the information submitted using the standard tender form (see Annex c4I);
- devised to allow a clear YES/NO assessment to be made as to whether or not the tenderer satisfies a particular selection criterion;
- possible to prove by the tenderer.

The presentation of the selection criteria in template of the additional information about the contract notice should be followed, and can be adapted to the nature, cost and complexity of the tendered contract where the template allows so. Only presumed successful tenderers must supply supporting documents for the selection criteria before the award of the contract (optional for contracts below EUR 300 000, see Section 2.6.11.).

Tenderers may, however, submit questions should they need to. Any request for clarification must be submitted at the latest **21 days** before the submission deadline. The contracting authority has no obligation to provide clarification on questions received after this date.

If the contracting authority, either on its own initiative or in response to a request for clarification from a tenderer, amends information in the contract notice or in the additional information about the contract notice, it must submit a change notice (formerly referred to as “corrigendum”) stating the changes made. This change notice will also be published on the Funding and Tenders Portal and on the Official Journal of the European Union.

DIRECT MANAGEMENT

The change notice is recorded and published through PPMT. The change to the additional information about the contract notice is uploaded in PPMT as a new version and published in F&T.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The contracting authority drafts the change notice using the appropriate template (Annex a5b) or the change to the additional information about the contract notice and submits it

to the European Commission for prior authorisation and for publication through PPMT (see guidelines for publication in Annex a11e). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

The contracting authority drafts the change notice using the appropriate template (Annex a5b) or the change to the additional information about the contract notice and submits it to the European Commission for publication through PPMT (see guidelines for publication in Annex a11e). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

No prior authorisation by the European Commission is required.

The change notice (or change to the additional information to the contract notice) must be published **no later than 8 days before the original submission deadline**. Notices are published the next working day (Publications Office, Luxembourg) only when sent before 15h00 (CET) of the previous working day.

The change notice may extend the deadline to allow tenderers to take the changes into account. Please note that with a clarification, the contracting authority cannot give an opinion on the assessment of the tender.

If information in the contract notice/additional information about the contract notice needs to be clarified but does not require an amendment of the contract notice/additional information about the contract notice, the clarification will only be published on the Funding and Tenders Portal, **at the latest 8 days before the submission deadline**. Clarifications are published immediately without publication delay.

DIRECT MANAGEMENT

The clarifications will be recorded directly in PPMT and published on the F&T portal.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The contracting authority drafts the clarifications and submits it to the European Commission for prior authorisation and for publication through PPMT. If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

The contracting authority drafts the clarifications and submits it to the European Commission for publication through PPMT. If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

No prior authorisation by the European Commission is required.

4.3.2 Drafting and content of the tender dossier

See Section 2.8. for guidelines on drafting technical specifications.

The tender dossier is published at the same time as the contract notice and the additional information about the contract notice. The tender documents will be shared via the Funding & tenders portal.

Tender documents must be carefully drafted to ensure that both the contract and the procurement procedure are carried out correctly. The contractor tasks under the contract should be carefully listed and described in the special conditions and reflected in the technical specifications. If executed by a third party they will be considered subcontracted as per article 6 of the General Conditions (manufacture for instance should only be mentioned when it is part of the supply contract).

Tender documents must contain all the provisions and information that tenderers need to submit their tenders: the procedures to follow, the documents to provide, cases of non-compliance, award criteria, etc.

Technical specifications must afford equal access for candidates and tenderers and not have the effect of creating unjustified obstacles to competitive tendering. They specify what is required of a product, service or material or work to achieve the purpose for which they are intended.

The specifications may include as appropriate:

- a. a clear definition of the tasks to be performed;
- b. minimal quality levels;
- c. environmental and climate performance;
- d. for purchases intended for use by natural persons, wherever possible, the accessibility criteria for people with disabilities or the design for all users;
- e. the levels and procedures of conformity assessment;
- f. performance or use of the supply (fitness for use);
- g. safety or dimensions, including the sales name and user instructions, terminology, symbols, testing and test methods, packaging, marking and labelling, production processes and methods.

The contracting authority is responsible for drawing up these documents.

When the contracting authority is the European Commission, it may be desirable to involve representatives of the partner country in preparing the call for tenders at an early stage. Given the technical complexity of many supply contracts, the preparation of the tender dossier — particularly the technical specifications — may require the assistance of one or more external technical specialists. Each such specialist must sign a declaration of objectivity and confidentiality (see Annex a3).

The technical specifications state — where applicable, lot by lot — the exact nature and performance characteristics of the supplies. Where applicable, they also specify conditions for delivery and installation, training and after-sales service.

It is essential that the performance characteristics suit the intended purpose. If there needs to be an information meeting or site visit to clarify technical requirements where the supplies are to be installed, this should be specified in the instructions to tenderers, together with details of the arrangements (see Section 4.3.4.).

The purpose of the technical specifications is to define the required supplies precisely. The minimum quality standards, defined by the technical specifications, will enable the evaluation committee to determine which tenders are technically compliant.

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

DIRECT MANAGEMENT

The tender dossier must be agreed upon by the European Commission prior to issue. The standard practice is to also consult and obtain the agreement of the partner country and, where appropriate, of other parties involved.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The contracting authority must submit the tender dossier to the delegation of the European Union for authorization prior to issue.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior authorization on the tender dossier by the European Commission is required.

TENDER DOSSIER CONTENT

The tender dossier consists of (see annex c4):

- A. Instructions to tenderers
- B. Draft contract agreement: main and special conditions with annexes (including technical specifications)
- C. Further information
- D. Tender form for a supply contract

Price revision

The tender dossier must clearly state whether a firm, non-revisable price.

The contractor is bound by the rates and prices specified in the contract. She/he assumes the risk of cost increases that may occur during the period of implementation of the tasks. Nevertheless, for contracts extending over several years, and/or when the price of goods is subject to heavy inflation it is possible to make recourse to indexation. None of these cases is common in supply contracts and revision of prices is rarely used.

In specific cases a price revision clause might be justified. 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.

If the price revision is justified, the tender dossier must lay down the conditions and/or formulas for revision of prices during the lifetime of the contract (Article 26(9) of the special conditions). The price revision clause must be drawn up by the competent services of the European Commission in accordance with their internal procedures.

Tender guarantee

The tender guarantee is optional. A tender guarantee assures the contracting authority that submitted tenders will not be withdrawn. If the contracting authority deems a tender guarantee to be appropriate and proportionate, it may request one, representing 1% to 2% of the overall value of the contract. The contracting authority must return the tender guarantee as foreseen in Sections 4.3.9.3. and 4.3.10. and release it for all tenderers when the contract is signed.

The contracting authority must call in the tender guarantee if the tender is withdrawn before

contract signature.

Pre-financing guarantee

According to the applicable rules, pre-financing could be required or not. If required, this must be mentioned in the tender dossier.

Performance guarantee

The contractor must provide the contracting authority with a performance guarantee. The guarantee amount is set by the contracting authority between 5% and 10% of the amount of the contract and any riders. The guarantee must be placed, at the latest, on return of the countersigned contract. It is intended to cover the contractor's liability for the full and proper performance of the contract.

The performance guarantee is released within 60 days, starting from the date of issue of the final acceptance certificate.

Insurance requirements to cover transport

Transport insurance will vary depending on the nature of transport (land, air or sea) and the nature of the risks to be covered: loading, intermediate storage, unloading, including stowage and protection, theft, damage, loss, wetting, etc.

Clearance through customs, import and export licenses, port regulations, storage and transport regulations are normally the responsibility of the contractor and the contractor should take all necessary steps in sufficient time to meet the requirements of the contract.

The contracting authority should facilitate the contractor in connection with clearances through customs and tax exemptions where applicable although it is the contractor which is ultimately responsible for fulfilling tax and customs obligations.

Delivery conditions are established in the instructions to tenderers where there are two options:

- delivery duty paid (DDP)
- delivered at place (DAP)

Both are Incoterms established by the International Chamber of Commerce in 2020. In the case of use of Incoterms, the contractor shall provide transport insurance to the extent that it assumes transportation risks:

- **DDP** sets the widest obligation for the seller in respect of transportation and loss risks and damage associated with the goods:

'the seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.'

This means that the seller delivers the goods to the buyer, cleared for import and not unloaded from any arriving means of transport at the named place of destination. The transfer of risks and costs occurs at the place of unloading of the goods at the agreed place of destination.

- **DAP:**
'the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination.'

The seller bears all risks involved in bringing the goods to the named place.'

This means that the buyer bears all risks and costs of import clearance at the port or at the border of the agreed place of destination, whereas customs clearance for export is on the seller, differently from DDP.

DAP proves to be a favoured option when the Financing Agreement foresees an exemption of import duties (usually the case under the EDF), by relieving the seller from often lengthy customs formalities. However, in case there are no exemption of import duties in the Partner Country, DDP is the favoured option.

Unloading is not included in the Incoterms delivery conditions; however it is foreseen in Article 15(1) of the General Conditions for supply contracts. Nevertheless, when it is required, it should also be added in the instructions to tenderers and in the special conditions of the contract. Further requirements for liability and insurance may also be introduced in special conditions Article 12.

In addition to choosing delivery conditions in Article 16 of special conditions, any other element needing to be included or excluded from the tender price can be specified in special conditions Article 15, otherwise Article 15(1) fully applies.

4.3.3 Award criteria

The criteria should be precise, non-discriminatory and not prejudicial to fair competition. All criteria must be applied as specified in the tender dossier and cannot be changed during the procedure.

The technical evaluation will be based on the evaluation grid published in the tender dossier, that must not be changed in any way during the evaluation process. Given the wide variety of supplies and their technical nature, the technical requirements must be tailored to each tender in a yes/no format to allow a clear assessment of whether or not the offer meets the technical specifications set out in the tender dossier.

The award criterion applied to technically compliant tenders is the lowest price or, in exceptional cases mentioned in Section 4.3.3.3., the best price-quality ratio.

4.3.3.1 Supply contracts not including ancillary services

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

Where specified in the technical specifications, the financial evaluation may take into account not only the acquisition costs but, to the extent relevant, costs borne over the life cycle of the supplies (such as maintenance costs and operating costs), in line with the conditions set out in Article 20(4)(c) of the instructions to tenderers. If so, the procurement dossier must in advance indicate the data to be provided by the tenderers and the method that will be used to determine the life-cycle costs on the basis of those data.

If the selected tender exceeds the maximum budget available for the contract, Section 4.2.6.1.(k) applies.

4.3.3.2 Supply contracts including ancillary services

Where a supply contract includes ancillary services (such as after sales services and/or training), the technical evaluation should take into account the quality of such services on a yes/no basis. All non-compliant tenders having been eliminated, the contract is awarded

to the tenderer offering the lowest price for both equipment and ancillary services together. If the selected tender exceeds the maximum budget available for the contract, Section 4.2.6.1.(j) applies.

4.3.3.3 Supply contracts including particularly significant ancillary services

Where a supply contract includes particularly significant ancillary services (such as after sales services and/or training), the evaluation may be carried out either as in Section 4.3.3.2. or, subject to prior approval, according to the best price-quality ratio criterion.

4.3.4 Information meetings and site visits

If the technical content of the tender is complex, the contracting authority may hold an information meeting and/or site visit. This meeting must be announced in the tender dossier and must take place at least **21 days** before the deadline for submission of tenders. All costs of attending such a meeting/visit must be met by the tenderers. Individual visits by companies during the tender period cannot be organised by the contracting authority taking into account transparency and equal treatment of the tenderers. Although they are not compulsory, these information meetings are encouraged since they have proven to be an efficient way to clarify many questions related to the tender dossier.

Any presentation/documentation to be delivered in the information session, as well as the outcome and the minutes, must also be uploaded on F&T portal **8 days** before the expiry of the deadline for the submission of tenders.

4.3.5 Deadline for the submission of tenders

Tenders must be submitted to the contracting authority no later than the date and time referred to in the contract notice. The deadline for submission must be long enough to guarantee the quality of tenders and so permit truly competitive tendering. Experience shows that too short a period prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders.

The deadline for submissions must fall on a working day in the country of the contracting authority. It is advised to organise the tender-opening session one week after the deadline for submission to allow tenders submitted on the last day, in paper submission, and tenders guarantees, if applicable, to arrive at the contracting authority premises.

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

The minimum period between the date of publication of the contract notice and the deadline for submission of tenders is **60 days**. However, in exceptional cases, this period may be shortened with a **request for derogation**. Under indirect management with *ex ante controls* this is also subject to prior authorisation by the European Commission.

4.3.6 Period of validity

See Section 2.9.5.

4.3.7 Submission of tenders

DIRECT MANAGEMENT

Tenders must be submitted exclusively via the electronic submission system (eSubmission) available via a link in the Funding and Tenders Portal²²⁷. Tenders submitted in any other way (e.g. e-mail or by letter) will be disregarded.

INDIRECT MANAGEMENT

The technical and financial offers must be placed together in a sealed envelope. The envelope should then be placed in another single sealed envelope/package, unless their volume requires a separate submission for each lot.

4.3.8 The evaluation committee

For the committee's composition, impartiality and confidentiality, responsibilities and timetable, see Section 2.9.

In eSubmission and only for direct management procedures, there are two types of committees: opening and evaluation committee. It is recommended that for each lot, the composition of both committees is the same. The opening and evaluation committees must be appointed in PPMT before the start of the opening session and the evaluation of tenders.

4.3.9 Stages in the evaluation process

4.3.9.1 Receipt and registration of tenders

DIRECT MANAGEMENT

The tenders are registered in eSubmission. Since the deadline for submission is a hard deadline, no tender can be submitted later than the submission deadline.

INDIRECT MANAGEMENT

On receiving tenders, the contracting authority must register them, stating the date and time of submission, and provide a receipt for those delivered by hand or submitted electronically.

The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened. The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

4.3.9.2 Preparatory meeting

The first meeting of the evaluation committee should be held before the tender opening

²²⁷ For detailed instructions on how to submit a tender please consult the eSubmission Quick Guide available at: <https://wikis.ec.europa.eu/display/FTPportal/Quick+guides+eSubmission>.

The supported browsers, file types, size of attachments and other system requirements can be consulted at: <https://webgate.ec.europa.eu/fpfis/wikis/x/Oo5kl>. In case of technical problems, please contact the eSubmission Helpdesk (see contact details in the eSubmission Quick Guide) as soon as possible.

session. The tender dossier should have been circulated 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

Tender opening session

The purpose of the opening session is to check whether the tenders have been submitted in accordance with the submission requirements of the call for tenders. See the tender opening checklist in Annex c5 for the detailed formalities to be carried out by the chairperson with the assistance of the secretary.

The tender opening session is a formal, public process. The evaluation committee opens the tenders in public at the place and time set in the tender dossier and announces the total financial offer, and if any discounts are applicable. Although it is public, participation in the tender opening session is restricted to representatives of the companies that are tendering for the contract. A maximum of two representatives per tender may attend.

In case of a session requiring physical attendance, tenderers' representatives attending the meeting must sign the presence list which will be attached to the tender opening record, Annex c6. If the tender opening session is organised on-line, the presence list has to be drawn and signed by the secretary after verifying details of the connected representatives (e.g. in chat) and always including the email addresses, in case further correspondence is needed (e.g. discrepancies between information on price in e-submission and Financial offer).

In the case that at the date of the opening session some tenders have not been delivered to the contracting authority, but their representatives can show evidence that it has been sent on time, the contracting authority will allow them to participate in the first opening session and inform all representatives of the tenderers that a second opening session will be organised.

At the tender opening, the tenderers' names, the tender prices, any discount offered, written notifications of alteration and withdrawal, the presence of the requisite tender guarantee (if required) and such other information as the contracting authority may consider appropriate may be announced.

After the public opening of the tenders, no information relating to the examination, clarification, evaluation of tenders, or recommendations concerning the award of the contract can be disclosed until after the contract has been awarded.

DIRECT MANAGEMENT

The opening committee appointed by the European Commission through PPMT, must carry out the tender opening session.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS:

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

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

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

Compliance 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 tenders received, joint tender/consortium members and any identified subcontractor). See Sections 2.9.2. and 2.9.3.

The evaluation committee must decide whether or not tenders comply with the formal requirements.

COMPLIANCE WITH FORMAL SUBMISSION REQUIREMENTS

To comply with the formal submission requirements, three basic conditions should be fulfilled: compliance with the submission deadline, the integrity and confidentiality of the submissions has been preserved.

DIRECT MANAGEMENT

In **eSubmission**, the electronic system will perform the automated checks on the submission requirements during the opening session. Since the deadline for eSubmission is a hard deadline, no submission can be submitted later than the deadline. Moreover, eSubmission is designed to guarantee the integrity and confidentiality of the submissions. Based on these automated validation checks, the system will then automatically mark the tender submissions as "In order".

eSubmission does not prevent tenderers to submit more than one offer/tender for. In the case several offers/tenders have been submitted by the same tenderer, all submissions have to be marked as "In Order". After closing the opening session, an Opening Record is generated (see specimen annex b10a). During the Evaluation Session the members of the Evaluation Committee can access the submissions that are "In Order" and will reject earlier submissions. Only the last submission will be considered for evaluation.

INDIRECT MANAGEMENT

In case of **paper submission** the process and verifications described in the opening record (annex c6) has to be followed. The summary of submissions received, which is attached to the opening record, must be used to record whether each of the submissions complies with the formal submission requirements.

The minutes of this meeting are included in the tender opening record and the tender opening record must be made available to the tenderers on request.

All tenders received after the deadline for submission specified in the contract notice or these instructions will be kept by the contracting authority. However, any tender guarantee must be returned to the tenderers that do not comply with the formal submission requirements. This implies that tenders that have been submitted, in paper submission, after the submission deadline must also be opened (after the opening session) so that the guarantees can be returned.

4.3.9.4 Evaluation of technical offers

The evaluation committee must use the administrative compliance grid and the evaluation grid published in the tender dossier.

During the technical evaluation, the evaluation committee analyses whether the tenders satisfy the requirements set in the tender dossier. If the tender is divided into lots, the evaluation should be carried out lot by lot. The technical evaluation includes any service components included in the technical specifications. No scoring method should be used.

The results are recorded in a yes/no grid for all the items specified in the tender dossier.

In case the tenderer provides documentation, it should clearly indicate the models offered and the options included, if any. Offers that do not permit to identify precisely the models and the specifications may be rejected by the evaluation committee.

If requested by the majority of the evaluation committee voting members, the chairperson may write to tenderers whose submissions require clarification, offering them the chance to reply within a reasonable deadline set by the evaluation committee.

Part 1: administrative compliance

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

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

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

- the documentation is complete;
- the language required by the tender dossier has been used;
- for consortia: the confirmation of association and designation of a lead company has been signed by all joint tender/consortium members;
- for tenderers intending to subcontract tasks: the tenderer has included a statement regarding the content and extent of subcontracting envisaged.

The administrative compliance of each of the tenders must be recorded in the evaluation report (see Annex c7).

Part 2: technical compliance

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

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

The purpose of this evaluation is to assess whether the competing tenders meet the selection criteria.

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

Rule of origin

See from Section 2.3.4 to Section 2.3.7.

The contractor must declare the origin of goods in the offer. The tenderer will be required to provide proof of origin in the form of a certificate of origin or other official documentation as prima facie evidence, before the contract is signed if possible. It is the responsibility of the tenderer to verify that the provided information is correct.

Origin is the 'economic' nationality of goods in international trade. The rule of origin refers to the origin of goods and equipment. The additional information about the contract notice defines the rule of origin. Therefore, it is required to refer additional information about the contract notice and to PRAG Annex a2 in order to assess goods compliance with the rule of origin.

In case of any doubt as to the origin of goods, additional information must be requested. If the European Commission is not the contracting authority and doubts persist, the advice of the European Commission should be sought.

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

Nationality of subcontractors

See Section 2.3.1.

The evaluation committee must check at this stage that the nationalities of any subcontractors identified in the technical offers comply with the nationality rule mentioned in the additional information about the contract notice.

4.3.9.5 Evaluation of financial offers

Arithmetical errors

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

- If the evaluation committee discovers a discrepancy in the total amount of the tender inserted in the e-Submission field "Total amount excl. taxes" and in the amount indicated in the uploaded financial offer, only the amount indicated in the financial offer will be taken into account.
- Where there was a discrepancy between amounts in figures and in words, the amount in words prevailed.
- Where there was a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted prevailed, except where the evaluation committee agreed that there was an obvious error in the unit price, in which case the total amount as quoted prevailed.
- Where unconditional discounts applied to financial offers for individual lots, the discount was applied to the financial offer.

Abnormally low tenders

For abnormally low tenders, please refer to Section 2.6.10.1.

Discounts

In case of lots, a tenderer may include in its tender the overall discount it would grant in the event of some or all of the lots for which it has submitted a tender being awarded. The discount should be clearly indicated for each lot in such a way that it can be announced during the public tender opening session. Contracts will be awarded lot by lot, but the contracting authority may select the most favourable overall solution after taking account of any discounts offered.

An example of how to treat discounts:

Company A offers a discount of 20% if awarded lots 1 and 3, company B offers a discount of 10% if awarded all three lots, company C offers no discount.

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

After applying the discount:

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

The 3 combinations possible:

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

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

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

The contracting authority must choose combination 1, awarding contracts for lots 1 and 3 to company A and lot 2 to company B for the initial price offered.

4.3.9.6 Choice of contractor

The successful tenderer is the one submitting the least expensive tender 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.

For the exceptional cases with the best price-quality ratio, see Section 4.3.3.3.

If the chosen tender exceeds the maximum budget available for the contract, Section 4.2.6.1.(k) applies.

EDF-FUNDED PROGRAMMES
(APPLICABLE ONLY TO TENDERS FINANCED UNDER MFF 2014-2020)

When technical offers are evaluated, a preference must be given to tenders submitted by legal or natural persons of ACP States, either individually or in a joint tender/consortium among them.

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

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

(See also Section 2.6.9.).

4.3.9.7 Evaluation committee's recommendation

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

- Award the contract to the tenderer that has submitted a tender:
 - that complies with the formal requirements and the eligibility rules;
 - whose total budget is within the maximum budget available for the project;
 - is compliant with the technical specifications;
 - that is the least expensive tender (or, in exceptional cases mentioned in Section 4.3.3.3., the tender with the best price-quality ratio (satisfying all of the above conditions)).
- Cancel the tender procedure (see Section 2.6.13.).

At the latest during the evaluation procedure and before taking the award decision, the contracting authority ensures that there is no record of the presumed successful tenderer, including joint tender/consortium members, subcontractors or capacity providing entities, if any, in exclusion situation in the EDES nor in the lists of EU restrictive measures²²⁸ (see sections 2.4.2.1. and 2.4.1.).

During the evaluation procedure and before taking the award decision, the evaluation committee will request copies of documentary evidence for exclusion and selection criteria from the presumed successful tenderer.

INDIRECT MANAGEMENT

During the evaluation procedure and before taking the award decision, the evaluation committee will request the **original** Declaration on honour on exclusion criteria and selection criteria.

²²⁸ Please note that the EU Official Journal contains the official list of entities subject to restrictive measures and, in case of conflict, it prevails over the list of the [EU Sanctions Map](#).

If upon verification, the evaluation committee considers the submitted documentary evidence not admissible, it will request the same evidence from the next best ranked tenderer.

DIRECT MANAGEMENT

The entire procedure (technical and financial evaluation) is recorded in an evaluation report (see template in Annex c7) to be signed by the chairperson, the secretary and all evaluators.

This evaluation report must be submitted to the competent authority of the European Commission, which must decide whether or not to accept its recommendations.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The entire procedure (technical and financial evaluation) is recorded in an evaluation report (see template in Annex c7) to be signed by the chairperson, the secretary and all voting members of the evaluation committee. This evaluation report must be submitted to the relevant services of the contracting authority, which must decide whether or not to accept its recommendations. The contracting authority must then submit the evaluation report together with its proposed decision to the European Commission. If there is an award proposal and the European Commission has not already received a copy of the tenders, these must be submitted.

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

If the European Commission accepts the proposed decision, the contracting authority will either commence awarding the contract (see Section 4.3.11.) or cancel the tender, as decided.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior authorisation from the European Commission is required before the contracting authority acts on the recommendations of the evaluation committee.

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

Subject to the contracting authority's legislation on access to documents, the entire tender procedure is confidential from the end of the tender opening session until both parties have signed the contract. The evaluation committee's decisions are collective and its deliberations must remain secret. The evaluation committee members and any observers are bound to secrecy. If its law conflicts with the confidentiality required, the contracting authority must obtain prior authorisation from the European Commission before disclosing any information.

The evaluation report is for official use only and may be divulged neither to tenderers nor to any party outside the authorised services of the contracting authority, the European Commission and the supervisory authorities (e.g. the Court of Auditors).

4.3.10 Cancelling the tender procedure

See Section 2.6.13.

A cancellation notice must be published following the guidelines for publication (see Annex a11e).

Tenderers must always be informed as soon as possible if it is decided, in the course of the procedure, to cancel it. Tenderers are entitled to the immediate release of their tender guarantee.

If the tender procedure is cancelled before the opening session, in case of paper submission (indirect management), the unopened and sealed envelopes must be returned to the tenderers.

4.3.11 Award of the contract

4.3.11.1 Notifying the successful and unsuccessful tenderers

See section 2.10.1. See format of letter in Annex c8a) for successful tenderer and in Annex c8b) for unsuccessful tenderers.

The notification letter (Annexes c8a) to the successful tenderer implies that the validity of the successful tender is automatically extended for a period of 60 days irrespective of the date of notification of the award of the contract. This period can be further extended by mutual agreement between the parties.

At the same time the unsuccessful tenderers are informed that their offers could not be retained, but the validity of their tenders is maintained until the end of the validity period, and without prejudice to the possibility to extend such period in the cases explained in Section 2.9.5.

During the tender validity period for the unsuccessful tenderers, the contracting authority reserves the right to send a notification of award to the next best ranked tenderer. The validity of the next best ranked tender will be extended by 60 days, upon notification of the new award decision. This 60-day period is added to the validity period irrespective of the date of notification, which should however be within the validity period.

4.3.11.2 Standstill clause (applicable for contracts above EUR 300 000)

See Section 2.10.1.

4.3.11.3 Contract preparation and signature

See Section 2.10.2 and 2.10.3. The proposed contract must follow Annex c4.

The performance guarantee, if applicable, must be placed, at the latest, on return of the countersigned contract (see Section 4.3.2.).

Unless specified otherwise in the special conditions of the contract, contracting authority shall inform the contractor by **delivery order** of the date on which delivery of the goods of the tasks shall begin. See article 18 of the General Conditions.

4.3.11.4 Publicising the award of the contract

An award notice shall be published once the contract has been signed. See Section 2.10.4.1.

4.4 Local open tender for contracts between EUR 100 000 and EUR 300 000²²⁹

In this case, the contract notice is published in the local official journal of the partner country or any equivalent local media, and where necessary in order to ensure an adequate level of competition, in the Official Journal of the European Union, F&T portal. Publication in the local official journal or equivalent media is the responsibility of the partner country.

As the cost of publishing the full contract notice in the local media may be high, the template in Annex c3 gives the minimum information that must be included in a local advertisement. However, the full contract notice must be available from the address referred to in the advertisement, together with the tender dossier.

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

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

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

Prior authorisation by the European Commission must also be sought for a shorter deadline.

Proof of the local publication of the contract notice must be sent to the European Commission.

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

For contracts of EUR 150 000 or below, the contracting authority may decide, on the basis of objective criteria such as the type and value of the contract, not to require a performance guarantee.

DIRECT MANAGEMENT (and only when the contract notice is published in the official Journal of the European Union)

Tenders must be submitted exclusively via the electronic submission system (eSubmission) available via a link in the Funding and Tenders (F&T) Portal. Tenders submitted in any other way (e.g. e-mail or by letter) will be disregarded.

INDIRECT MANAGEMENT

Tenders must be sent or hand delivered to the contracting authority at the address provided. Paper submission instructions should be also followed in direct management when the contract notice is not published in the Official Journal of the European Union.

EDF-FUNDED PROGRAMMES (APPLICABLE ONLY TO TENDERS FINANCED

²²⁹ Annex I point 39(2)(b)(i) FR.

UNDER MFF 2014-2020)

EDF-FUNDED PROGRAMMES

Tenderers from the ACP States, either individually or in a joint tender/consortium with European partners, must be accorded a 15% price preference during the financial evaluation.

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

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

See also Section 2.6.9.

4.5 Simplified procedure for contracts under EUR 100 000²³⁰

See section 2.6.4. for guidance on the simplified procedure.

The contracting authority may award contracts under EUR 100 000 by simplified procedure, without publishing the contract notice. The contracting authority draws up a list of at least three companies with a justification for its choice. The candidates are sent a letter of invitation to tender accompanied by a tender dossier. The contract notice (annex c2) is not published, but it is included in the tender dossier as it contains important information for those companies that are invited to tender.

The remainder of the procedure (preparing the tender dossier, evaluating the tenders, awarding the contract, etc.) is the same as under the international open procedure (see Sections 4.3.2. to 4.3.11.3.).

For contracts under a simplified procedure, the contracting authority may decide, on the basis of objective criteria such as the type and value of the contract, not to require a performance guarantee.

4.6 Single tender procedure for contracts between EUR 20 000 and EUR 2 500

See Section 2.6.8.2. for guidance on the single tender.

Contracts with a value of less than or equal to EUR 20 000 may be awarded on the basis of a single tender.

²³⁰ Annex I point 39(2)(c)(ii) FR.

4.7 Modifying supply contracts

See Section 2.11. for general information on modifying contracts. See section 4.2.6.1.d on negotiated procedures.

Administrative order

Administrative orders may take the form of additions, omissions, substitutions, changes in quality, quantity, form, character, kind, as well as in drawings, designs or specifications where the supplies are to be specifically manufactured for the contracting authority, in method of shipment or packing, place of delivery, and in the specified sequence, method or timing of implementation of the tasks.

In case of supply contracts, administrative orders can modify the total contract amount. Moreover, in addition to the provisions in section 2.11.1, administrative orders can already be issued at the time of contracting, before the implementation has started (see general conditions article 22(2)).

The following ceilings are applicable to administrative orders:

- changes in the quantity per lot or per item can increase or decrease with 100%
- the total value of supplies should follow the double de minimis rule: the value of the successive modifications should be below EUR 300 000 and below 10% of the initial contract value (see General Conditions article 22(2) and case (d) in section 2.11.2.3).

If the modifications exceed these ceilings, a modification through addendum is required.

The following procedure applies to issuing administrative orders:

- the project manager shall notify the contractor of the nature and the form of the proposed amendment;
- the contractor shall submit to the project manager a written proposal for an administrative order including a description of all tasks, if any, to be performed, or the measures to be taken, and a programme of implementation of the tasks. It shall also include, if necessary, a proposed financial adjustment to the contract.

Following receipt of the contractor's proposal, the project manager shall decide as soon as possible whether the amendment shall be carried out.

If the project manager decides that the proposed amendment shall be carried out, it shall notify the contractor through an administrative order stating that the contractor shall carry out the administrative order at the prices and under the conditions given in the contractor's proposal, or as modified by the project manager in accordance with the General Conditions article 22(7).

Where the tasks are not of a similar character or are not implemented under similar conditions, as far as is reasonable, appropriate rates and prices in the budget should be used as a basis for comparison. If that is not possible, the project manager shall make a fair evaluation. The resulting amount should cover the estimated actual cost to the contractor, as well as overheads and profit.

Sometimes a modification is made necessary by a failure of the contractor or by a deficiency in implementation, which is imputable to her/him. In this case, all the additional costs created by this modification are attributable to the contractor (see General Conditions article 22(7)).

There may be urgent situations where it is necessary to issue oral instructions to the

contractor. In such cases, the oral instructions should be promptly confirmed by issuing an administrative order. Alternatively, the contractor may confirm in writing an oral order, which has been given by the project manager or the contracting authority. This is deemed to be an administrative order unless immediately contradicted by the project manager or the contracting authority in writing (see General Conditions article 22(4)(b)).

Modification not requiring an amendment

Modifications resulting from the strict application of the procurement documents or contractual provisions do not constitute a modification of the contract and therefore do not require an administrative order or a contractual addendum (see exception mentioned under case d) in section 2.11.2.4). This type of modifications is not subject to the financial ceilings listed in cases (a), (b) and (c) mentioned in section 2.11.2.2 and 2.11.2.3.

For supply contracts there are two cases where modifications do not therefore require an administrative order or a contractual addendum:

1. Increases or decreases as regards **the quantity of any incidental siting or installation** that are a result of too low or too high estimates in the budget breakdown (General conditions article 22(4)(c)).
2. An **extension of the period of implementation** of the tasks as may be justified, either prospectively or retrospectively (General Conditions article 20). The extension of the period of implementation of the tasks can be done by notice.

5 Works contracts

5.1 Introduction

Works contracts means a contract covering either²³¹:

- a. the execution, or both the execution and design, of a work; or
- b. the execution, or both the execution and design, of a work related to one of the activities referred to in Annex II to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC²³²; or
- c. the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work.

A '**work**' means the outcome of building or civil engineering works taken as a whole that is sufficient in itself to fulfil an economic or technical function²³³.

Works contracts are concluded under indirect management by the partner country with which the European Commission has a financing agreement²³⁴.

5.2 Procurement procedures²³⁵

5.2.1 Contracts with a value of EUR 5 000 000 or more

Open procedure

The standard method of awarding works contracts is by means of an **international open tender procedure** (see Section 5.3).

Restricted procedure

In view of the characteristics of certain works, a **restricted tender procedure** may be used. The templates for Restricted and Design&Build procedures are not maintained in the current list of annexes. Services which, however, want to use these templates will have to adapt them using the archived PRAG version 2018.0 of the Restricted or Design&Build procedures and inserting all provisions of mandatory application that have been incorporated since the 2018.0 PRAG version, notably in the contract notice, additional information about the contract notice, the instructions to tenderers and the draft contract of the international open procedure. The competent authority of the European Commission must authorise the use of this approach and may provide technical support on a case-by-case basis. Publication of the relevant notice as stipulated in the publication guidelines (Annex a11e) remains mandatory to ensure the widest possible participation. For details,

²³¹ Article 2(78) FR.

²³² OJ L 94, 28.3.2014, p. 65.

²³³ Article 2(77) FR.

²³⁴ Works in direct management require a prior approval.

²³⁵ For thresholds and procedures see Section 2.6.1.

see Section 5.4.

5.2.2 Contracts with a value of EUR 300 000 or more but less than EUR 5 000 000

Local open procedure

Work contracts worth under EUR 5 000 000 and more than EUR 300 000 may be awarded through a **local open procedure** (see Section 5.5).

5.2.3 Contracts with a value of less than EUR 300 000

Simplified procedure

Works contracts under EUR 300 000 are awarded by the **simplified procedure** (see Section 5.6.).

5.2.4 Contracts with a value of less than EUR 20 000

The contracting authority may award works contracts of a value of EUR 20 000 or less on the basis of a **single tender** (see Section 2.6.8.2.).

For works with a value of less than or equal to EUR 2 500, the contracting authority may pay on the basis of an invoice without prior acceptance of a tender (see Section 2.6.8).

5.2.5 Procedures applicable without ceilings

Negotiated procedure

Please see Section 2.6.8. for further details on the use of a negotiated procedure.

The procedures set out in Sections 5.3.9. must be followed by analogy, and the evaluation report must be included in the contract dossier. The evaluation report for the negotiated procedure (Annex a10a) shall describe the selection of the participant(s), the timetable of the negotiation rounds, and the describe the negotiation process and the result of the negotiation.

The standstill procedure described in 3.4.12.2 shall not apply, with the exception of case b) referred below²³⁶.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

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

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

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

The evaluation report for the negotiated procedure must refer to the legal basis of the negotiated procedure and to the applicable case. The evaluation report must demonstrate

²³⁶ Annex I point 36(2)(d) FR.

that the conditions under which a negotiated procedure is allowed are fulfilled. The applicable cases for the negotiated procedure for works contracts are listed below:

- a. Where no tenders, or no suitable tender, or no request to participate or no suitable request to participate have been submitted in response to an open procedure or restricted procedure after this procedure has been completed, provided that the original procurement documents are not substantially altered²³⁷.

A tender must be considered unsuitable where it does not relate to the subject matter of the contract and a request to participate must be considered unsuitable where the economic operator is in an exclusion situation or does not meet the selection criteria²³⁸.

- b. Where the works can only be provided by a single economic operator by a single economic operator and for any of the following reasons²³⁹:
 - i. the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
 - ii. competition is absent for technical reasons;
 - iii. the protection of exclusive rights including intellectual property rights must be ensured.

The exceptions set out in points (ii) and (iii) must only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement²⁴⁰.

- c. In so far as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events, it is impossible to comply with the applicable time limits and where the justification of such extreme urgency is not attributable to the contracting authority.

Operations carried out in crisis situations must be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, must establish that a situation of extreme urgency exists and must review his decision regularly with regard to the principle of sound financial management²⁴¹.

- d. For new works consisting in the repetition of similar works entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that these works are in conformity with a basic project for which the original contract was awarded after publication of a contract notice that indicated the extent of possible new works and the conditions under which they will be awarded (i.e. the

²³⁷ Annex I point 11(1)(a) FR.

²³⁸ Annex I point 11(2) FR.

²³⁹ Annex I point 11(1)(b) FR.

²⁴⁰ Annex I point 11(3) FR.

²⁴¹ Annex I point 39(2) FR: 'Emergency assistance' is another case specific to the EDF and distinct from the 'extreme urgency' referred to here, in which the negotiated procedure may be used for actions which are not governed by Article 19c of Annex IV to the 2000/483/EC Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (Cotonou Agreement). Emergency assistance is linked to the application of Articles 72 and/or 73 of the Cotonou Agreement. See also Article 79(5) of Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union ('Overseas Association Decision') (OJ L 344, 19.12.2013, p. 1).

possible use of the negotiated procedure). The total estimated amount for these subsequent works must be taken into consideration in applying the applicable thresholds to determine the correct procurement procedure to follow for the original contract²⁴².

- e. For building contracts, after prospecting the local market²⁴³.
- f. For contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or when the protection of the essential interests of the Union so requires provided the essential interests concerned cannot be guaranteed by other measures; these measures may consist of requirements to protect the confidential nature of information that the contracting authority makes available in the procurement procedure²⁴⁴.
- g. For the purchase of public communication networks²⁴⁵ and electronic communications services within the meaning of Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code^{246 247}.
- h. Where the tender procedure has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the procurement documents are not substantially altered²⁴⁸.
- i. Where a new contract has to be concluded after early termination of an existing contract²⁴⁹.

Competitive dialogue

See Section 2.6.7. for further details.

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

See Section 2.6.2. on general information about the open procedure.

²⁴² Annex I point 11(1)(e) FR.

²⁴³ Annex I point 11(1)(g) FR.

²⁴⁴ Annex I point 11(1)(i) FR.

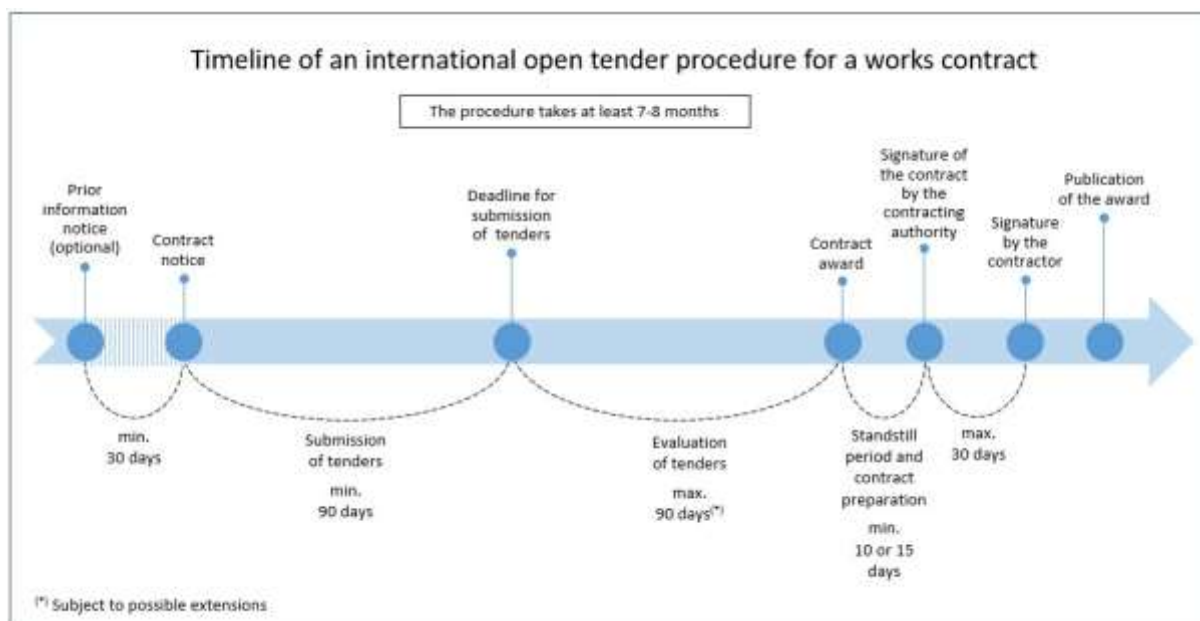
²⁴⁵ 'Electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.

²⁴⁶ OJ L 321, 17.12.2018, p.36.

²⁴⁷ Annex I point 11(1)(k) FR.

²⁴⁸ Annex I point 40(1)(b) FR.

²⁴⁹ Annex I point 40(1)(c) FR.



5.3.1 Publicity

To ensure the widest possible participation in competitive tendering and the requisite transparency, the contracting authority must publish a contract notice and additional information about the contract notice for all work contracts of **EUR 5 000 000 or more**.

The open procedure is a one-step procedure. Therefore, the tender dossier is published together with the contract notice and the additional information about the contract notice.

The publication must be done in accordance with the guidelines on publication described in Annex a11e.

5.3.1.1 Publication of prior information notices²⁵⁰

It is recommended, but not compulsory, to publish a prior information notice setting out the specific characteristics of the planned tender procedure, at least 30 days — but not more than 12 months — before the publication of the contract notice in the Official Journal of European Union and on the F&T portal.

The purpose of the prior information notice is to provide greater publicity for calls for tenders and more preparation time for tenderers. It enables economic operators to make preparations (for example, to gather the necessary documentation and plan how to free up sufficient resources) so that they are ready to produce a tender as soon as the contract notice is published. It is especially advisable to use a prior information notice in the case of big projects that, by nature, would probably entail joint tendering: international projects to be implemented in several countries, complex multidisciplinary projects, large-scale contracts, etc.

Prior information notices have an added value when there is a sufficient period between its publication and the planned publication of the contract notice. If due to time constraints a prior information notice can only be published shortly before the contract notice (e.g. 30 days), an alternative option would be to provide tenderers with a longer submission deadline in the contract notice and not to publish a prior information notice. Providing a

²⁵⁰ Annex I point 38.1 FR.

longer submission deadline would then provide economic operators with more time to prepare their offers.

The prior information notice must briefly state the subject and the content of the contracts in question. Publishing a prior information notice does not oblige the contracting authority to award the contracts proposed, and economic operators are not expected to submit requests to participate at this stage. No financing decision or budgetary commitment is needed at this stage.

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

The contracting authority drafts the prior information notice using the appropriate template (Annex a5d) and submits it to the European Commission for prior authorisation and for publication (see guidelines for publication in Annex a11e). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

For indirect management with *ex post* controls, no prior authorisation by the European Commission is required.

Publication of contract notices

A minimum of 30 days after the publication of the prior information notice, if any, a contract notice and the additional information about the contract notice (Annex a5f) must be published in the Official Journal of the European Union, on the F&T Portal (see publication guidelines in Annex a11e) and in any other appropriate media.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The contracting authority drafts the contract notice using the appropriate template (Annex a5e and a5f) and submits it to the European Commission for prior authorisation and for publication through PPMT (see guidelines for publication in Annex a11e). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly. In such case, the information published must be identical to the ones published on the Official Journal of the European Union and on the Funding and Tenders Portal and must be published at the same time.

In addition to the above, the finalised tender dossier must be submitted to the European Commission for approval.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

The contracting authority drafts the contract notice using the appropriate template (Annex a5e and a5f) and submits it to the European Commission for publication through PPMT (see guidelines for publication in Annex a11e, including for exceptions). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly. In such case, the information published must be identical to the ones published on the Official Journal of the European Union and on the Funding and Tenders Portal and must be published at the same time.

No prior authorisation by the European Commission is required.

The contract notice must state clearly, precisely and completely the subject of the contract and the contracting authority.

No estimated value or available budget is to be indicated in the contract notice.

Instead, the contracting authority will provide an estimation of the volume of the purchase (e.g. number of supply items) as short description in the contract notice, in order to give the necessary elements allowing the economic operators to prepare and submit offers.

In case of works contracts under open procedure, the selection criteria are not described in the additional information about the contract notice, instead they are to be found in Section 12.2 of the instruction to tenderers. See Section 5.3.2. on the content of the tender dossier.

Tenderers may, however, submit questions should they need to. Any request for clarification must be submitted at the latest **21 days** before the submission deadline. The contracting authority has no obligation to provide clarification on questions received after this date.

If the contracting authority, either on its own initiative or in response to a request for clarification from a tenderer, amends information in the contract notice or in the additional information about the contract notice, it must submit a change notice (formerly referred to as “corrigendum”) stating the changes made. This change notice will also be published on the Funding and Tenders Portal and on the Official Journal of the European Union.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The contracting authority drafts the change notice using the appropriate template (Annex a5b) or the change to the additional information about the contract notice and submits it to the European Commission for prior authorisation and for publication through PPMT (see guidelines for publication in Annex a11e). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

The contracting authority drafts the change notice using the appropriate template (Annex a5b) or the change to the additional information about the contract notice and submits it to the European Commission for publication through PPMT (see guidelines for publication in Annex a11e). If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

No prior authorisation by the European Commission is required.

The change notice (or change to the additional information to the contract notice) must be published **no later than 8 days before the original submission deadline**. Notices are published the next working day (Publications Office, Luxembourg) only when sent before 15h00 (CET) of the previous working day.

The change notice may extend the deadline to allow tenderers to take the changes into account. Please note that with a clarification, the contracting authority cannot give an opinion on the assessment of the tender.

If information in the contract notice/additional information about the contract notice needs to be clarified but does not require an amendment of the contract notice/additional information about the contract notice, the clarification will only be published on the Funding and Tenders Portal, **at the latest 8 days before the submission deadline**. Clarifications are published immediately without publication delay.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The contracting authority drafts the clarifications and submits it to the European Commission for prior authorisation and for publication through PPMT. If necessary, the

contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

The contracting authority drafts the clarifications and submits it to the European Commission for publication through PPMT. If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

No prior authorisation by the European Commission is required.

5.3.2 Drafting and content of the tender dossier

See Section 2.8. for guidelines on drafting technical specifications.

The tender dossier is published at the same time as the contract notice and the additional information about the contract notice. The tender documents will be shared via the Funding & tenders portal.

Tender documents must be carefully drafted to ensure that both the contract and the procurement procedure are carried out correctly. Tender documents must contain all the provisions and information that tenderers need to submit their tenders: the procedures to follow, the documents to provide, cases of non-compliance, award criteria, etc.

Technical specifications must afford equal access for candidates and tenderers and not have the effect of creating unjustified obstacles to competitive tendering. They specify what is required of a product, service or material or work to achieve the purpose for which they are intended.

The specifications may include as appropriate:

- a. quality levels;
- b. environmental performance and climate performance;
- c. for purchases intended for use by natural persons, accessibility criteria for people with disabilities or design for all users, except in duly justified cases;
- d. the levels and procedures of conformity assessment;
- e. performance (fitness for use);
- f. safety and measurements, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production processes and methods;
- g. the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions that the contracting authority is in a position to prescribe under general or specific regulations in relation to the finished works and to the constituent materials or parts.

The contracting authority is responsible for drawing up these documents.

When the contracting authority is the European Commission, it may be appropriate for representatives of the partner country to participate in preparing the tender dossier at an early stage. Given the technical complexity of many works contracts, preparation of the tender dossier — particularly the technical specifications — may require the assistance of one or more external technical specialists. Each such specialist must sign a declaration of

objectivity and confidentiality (see Annex a3).

Technical specifications state — where applicable and lot by lot — the exact nature and performance characteristics of the works. Where applicable, they also specify conditions for delivery and installation, training and after-sales service.

It is essential that the performance characteristics suit the intended purpose. If there needs to be an information meeting or a site visit to clarify technical requirements at the site where the works are to be carried out, this should be specified in the instructions to tenderers, together with details of the arrangements (see Section 5.3.4.).

The purpose of the technical specifications is to define the required works precisely. The minimum quality standards, defined by the technical specifications, will enable the evaluation committee to determine which tenders are technically compliant.

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

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The contracting authority must submit the tender dossier to the delegation of the European Union for authorisation prior to issue.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

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

TENDER DOSSIER CONTENT

The tender dossier consists of (see Annex d4):

Volume 1: Instructions to tenderers and tender submission forms

Volume 2: Draft contract and conditions

Volume 3: Technical specifications

Volume 4: Model financial offer

Volume 5: Design documents and drawings

Selection criteria

The selection criteria (see Section 2.6.11.) set out in the instruction to tenderers must be:

- drafted clearly without any ambiguity;
- easy to check on the basis of the information submitted using the standard tender form (see Annex d4c);
- devised to allow a clear YES/NO assessment to be made as to whether or not the tenderer satisfies a particular selection criterion;
- possible to prove by the tenderer.

The presentation of the selection criteria in template of the instruction to tenderers should be followed, and can be adapted to the nature, cost and complexity of the tendered contract where the template allows so. Only the presumed successful tenderers must supply supporting documents for the selection criteria before the award of the contract (see Section 2.6.11.).

Price revision

The tender dossier must clearly state whether a firm, non-revisable price must be quoted.

Prices must be revised for contracts:

- with a total amount above EUR 5 000 000 (excluding VAT) **and/or**
- with a duration above 1 year

Therefore, the international open procedure must always allow a revision of prices and the tender dossier must lay down the conditions and/or formulas for revision of prices during the lifetime of the contract (Article 48 of the special conditions).

Revision of prices refers to changes in the contract price that are due to external factors, beyond the control of the contracting authority and the contractor, and takes account of changes in the prices of significant elements in the contractor's costs such as labour and materials (Article 48(2) of the general conditions and 48(4) of the general conditions). Revision of prices can result in increases or reductions of the contract price.

Revision of prices requires a reference date on which prices are determined. This date is set 30 days prior to the deadline for submission of tenders (Article 48(1) of the special conditions).

The detailed rules for price revision are to be mentioned in the special conditions (article 48(2), which should specify the elements that are subject to price revision. These will normally include the materials to be used in substantial quantities (e.g. cement, aggregates, timber, steel, fuel), often subject of mono-material formulas, and other elements taken into account in the proportional formula, such as labour, grouped in different categories (e.g., office personnel, various trades, plant operators, unskilled). Price revision supposes of course that the basic prices of these elements are clearly mentioned in the contract documents.

If the special conditions refer to the prices effectively paid by the contractor as a basis for price revision, the contractor should supply the invoices. This is not requested where the special conditions refer to price indices as the basis for price revision. This method can only be used for elements for which regular price indices are published in the states concerned. Whilst this method gives only an approximate estimate of the effect of price increases on the contractor's costs, it is much simpler to use. Full details should be included in the special conditions if this method is to be used.

In the case of changes in laws or public regulations or decisions that cause extra cost to the contractor, price revision is, however, possible even when not stated in the special conditions (Article 48(4) of the general conditions). This refers for example to situations where new taxes are introduced.

Where the contractor fails to complete the works on the date that corresponds to the end of the initial period of implementation of tasks or the extended period, prices are 'frozen' in the sense that they cannot be increased. If, however, the prices of the basic elements are reduced after the stated date, appropriate deductions are made from amounts due to the contractor (Article 48(5) of the general conditions).

Tender guarantee

The requirement of a tender guarantee is optional. A tender guarantee assures the contracting authority that submitted tenders will not be withdrawn. If the contracting authority deems a tender guarantee to be appropriate and proportionate, it may request it, representing 1% to 2% of the overall value of the contract. The contracting authority must return the tender guarantee as foreseen in Sections 5.3.9.3. at the end and 5.3.10. and release it for all tenderers when the contract is signed.

The contracting authority must call in the tender guarantee if the tender is withdrawn before

contract signature.

Pre-financing guarantee

According to the applicable rules, pre-financing could be required or not. If required, this must be mentioned in the tender dossier.

Performance guarantee

The contractor must provide the contracting authority with a performance guarantee. The guarantee amount is set by the contracting authority between 5% and 10% of the amount of the contract and any addenda. The guarantee must be placed, at the latest, on return of the countersigned contract. It is intended to cover the contractor's liability for the full and proper performance of the contract.

The performance guarantee is released within 60 days after the final statement of account has been issued by the contracting authority.

Retention sum

The retention sums, which are to be deducted from interim payments, represent further security for the contractor's performance during the defects liability period. The practical arrangements for retention sums should be described in article 47(1) of the special conditions. Although the maximum retention permitted is 10% of the contract price, a lower percentage may be appropriate depending on the risks inherent to the contract and bearing in mind that such deductions must be financed by the contractor, resulting in higher tender prices.

The contractor may offer a retention guarantee as an alternative to retention sums not later than the date agreed for the commencement of the works (Article 47(2) of the general conditions). The contracting authority's prior approval is required. This approval is to ascertain, in the same way as for the performance guarantee, mentioned in Article 15 of the general conditions, whether the guarantee is compliant with contractual obligations.

The sum retained or the retention guarantee should be released within 60 days of the issuing of the signed final statement of account.

Insurance requirements to cover transport

For the delivery conditions are established in the instructions to tenderers where there are two options:

- delivery duty paid (DDP)
- delivered at place (DAP)

Both are Incoterms established by the International Chamber of Commerce in 2020. For more information see Section 4.3.2.

5.3.3 Award criteria

The criteria should be precise, non-discriminatory and not prejudicial to fair competition. All criteria must be applied as specified in the tender dossier and cannot be changed during the procedure.

The technical evaluation will be based on the evaluation grid published in the tender dossier, which must not be changed in any way during the evaluation process.

As a rule, the technical requirements for the works are laid down in the design (including plans, drawings, material-specifications, ...) previously made by a service provider in engineering/architecture that is annexed to the tender dossier and which to the very detail determines how the works must look like. In such cases, in a yes/no format, a clear

assessment can be made of whether or not the offer meets the technical specifications set out in the tender dossier.

Only very exceptionally, subject to derogation²⁵¹, the technical requirements for the works will limit themselves to minima above for which the tenderers can propose its own solutions: only in such cases, the offers that comply with those minimum quality levels, should be technically scored in accordance with the technical evaluation grid (setting out the technical criteria, subcriteria and weightings) laid down in the tender dossier.

Lowest price

As a rule, no technical scoring is given to the offers and the most economically advantageous tender is the technically compliant tender with the lowest price.

Subject to prior approval, the financial evaluation may take into account not only the acquisition costs but, to the extent relevant, costs borne over the life cycle of the works (such as for instance maintenance costs and operating costs): if so, the tender dossier must in advance indicate the data to be provided by the tenderers and the method that will be used to determine the life-cycle costs on the basis of those data.

Best price-quality ratio

Where exceptionally, subject to derogation, a technical scoring is given to the offers, the most economically advantageous tender is the technically compliant tender with the best price-quality ratio, determined by the results of the technical and financial evaluation in accordance with the weightings laid down in the tender dossier.

5.3.4 Information meetings and site visits

If the technical content of the tender is complex, the contracting authority may hold an information meeting and/or site visit. The instructions to tenderers will specify whether the site visit is strongly advised or obligatory.

This meeting must be announced in the tender dossier and must take place at least **21 days** before the deadline for submission of tenders. All costs of attending the meeting must be met by the tenderers. Individual visits by companies during the tender period cannot be organised by the contracting authority taking into account of transparency and equal treatment of the tenderers. As proof of participation, tenderers will receive a certificate of their site visit.

Any presentation/documentation to be delivered in the information session, as well as the outcome and the minutes, must also be uploaded on the F&T portal at least **8 days** before the expiry of the deadline for the submission of tenders.

5.3.5 Deadline for the submission of tenders

Tenders must be submitted to the contracting authority no later than the date and time referred to in the contract notice. The deadline for submission must be long enough to guarantee the quality of tenders and so permit truly competitive tendering. Experience shows that too short a period prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders.

The deadline for submissions must fall on a working day in the country of the contracting authority. It is advised to organise the tender-opening session one week after the deadline for submission to allow tenders submitted on the last day, and tenders guarantees, if

²⁵¹ Such derogation must no longer be required for a design and build (DB) and/or a design, build and operate (DBO) tender dossier if and when such tender dossier templates have been added to the PRAG's annexes.

applicable, to arrive at the contracting authority premises.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The minimum period between the date of publication of the contract notice and the deadline for submission of tenders is **90 days**. However, in exceptional cases, this period may be shortened with a **request for derogation** and subject to prior authorisation by the European Commission.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

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

5.3.6 Period of validity

See Section 2.9.5.

5.3.7 Submission of tenders

INDIRECT MANAGEMENT

The technical and financial offers must be placed together in a sealed envelope. The envelope should then be placed in another single sealed envelope/package, unless their volume requires a separate submission for each lot.

5.3.8 The evaluation committee

The evaluation committee requires a minimum of five evaluators.

For the committee's composition, impartiality and confidentiality and responsibilities, and the timetable, see Section 2.9.

5.3.9 Stages in the evaluation process

5.3.9.1 Receipt and registration of tenders

INDIRECT MANAGEMENT

On receiving tenders, the contracting authority must register them, stating the date and time of submission. It must provide a receipt for tenders.

The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened. The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

5.3.9.2 Preparatory meeting

The first meeting of the evaluation committee should be held before the tender opening session. The tender dossier should have been distributed in advance to the members of

the evaluation committee. The chairperson states the purpose of the tender and explains the procedures to be followed by the evaluation committee, including evaluation grids, and selection and award criteria specified in the tender dossier.

5.3.9.3 Tender opening session

Tender opening session

The purpose of the opening session is to check whether the tenders have been submitted in accordance with the submission requirements of the call for tenders. See the tender opening checklist in Annex d5 for the detailed formalities to be carried out by the chairperson with the assistance of the secretary.

The tender opening session is a formal, public process. The evaluation committee opens the tenders in public at the place and time set in the tender dossier and announces the total financial offer, and if any discounts are applicable. Although it is public, participation in the tender opening session is restricted to representatives of the companies that are tendering for the contract. A maximum of two representatives per tender may attend.

In case of a session requiring physical attendance, tenderers' representatives attending the meeting must sign the presence list which will be attached to the tender opening record, Annex d6. If the tender opening session is organised on-line, the presence list has to be drawn and signed by the secretary after verifying details of the connected representatives (e.g. in chat) and always including the email addresses, in case further correspondence is needed (e.g. discrepancies between information on price in e-submission and Financial offer).

In the case that at the date of the opening session some tenders have not been delivered to the contracting authority, but their representatives can show evidence that it has been sent on time, the contracting authority will allow them to participate in the first opening session and inform all representatives of the tenderers that a second opening session will be organised.

At the tender opening, the tenderers' names, the tender prices, any discount offered, written notifications of alteration and withdrawal, the presence of the requisite tender guarantee (if required) and such other information as the contracting authority may consider appropriate may be announced.

After the public opening of the tenders, no information relating to the examination, clarification, evaluation of tenders, or recommendations concerning the award of the contract can be disclosed until after the contract has been awarded.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

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

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

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

Compliance 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, joint tender/consortium members and any identified subcontractor). See Sections 2.9.2 and 2.9.3.

The evaluation committee must decide whether or not tenders comply with the formal requirements.

INDIRECT MANAGEMENT

In case of paper submission, the summary of tenders received, which is attached to the tender opening record (see Annex d6) has to be followed. The summary of submissions received, which is attached to the opening record, must be used to record whether each of the submissions complies with the formal submission requirements.

The minutes of this meeting are included in the tender opening record and the tender opening record must be made available to the tenderers on request.

All tenders received after the deadline for submission specified in the contract notice or these instructions will be kept by the contracting authority. However, any tender guarantee must be returned to tenderers that do not comply with the formal submission requirements. That implies that any tenders that have been submitted after the submission deadline, must be opened (after the opening session) so that the guarantees can be returned.

5.3.9.4 Evaluation of tenders

The evaluation committee must use the administrative compliance grid and the evaluation grid published in the tender dossier.

As part of the technical evaluation, the evaluation committee analyses the commercial aspects, and, where applicable, the service component of the tenders to determine whether they satisfy the requirements set in the tender dossier. If the tender is divided into lots, the evaluation should be carried out lot by lot. The results are recorded in a yes/no grid for all elements specified in the tender dossier. Only very exceptionally, subject to derogation, a technical scoring method should be used, in accordance with Section 5.3.3. above.

If requested by the majority of the evaluation committee voting members, the chairperson may write to tenderers whose submissions require clarification, asking them to reply within a reasonable deadline set by the evaluation committee.

Part 1: administrative compliance

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

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

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

The administrative compliance of each of the tenders must be recorded in the evaluation report (see Annex d7).

Part 2: technical compliance of tenders

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

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

The purpose of this evaluation is to assess whether or the competing tenders meet the selection criteria.

The evaluation committee rules on the technical compliance of each tender, classifying it as technically compliant or not technically compliant. Only very exceptionally, subject to derogation, the technically compliant offers are subsequently technically scored in accordance with a technical evaluation grid laid down in the tender dossier (see Section 5.3.3. above).

Rule of origin

See from Section 2.3.4 to Section 2.3.7.

The contractor must declare the origin of goods in the offer. The tenderer will be required to provide proof of origin in the form of a certificate of origin or other official documentation as prima facie evidence before the contract is signed if possible. It is the responsibility of the tenderer to verify that the provided information is correct.

Origin is the 'economic' nationality of goods in international trade. The rule of origin refers to the origin of goods and equipment. The additional information about the contract notice defines the rule of origin. Therefore, it is required to refer additional information about the contract notice and to PRAG Annex a2 in order to assess goods compliance with the rule of origin.

In case of any doubt as to the origin of goods, additional information must be requested. If the European Commission is not the contracting authority and doubts persist, the advice of the European Commission should be sought.

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

Nationality of subcontractors

See Section 2.3.1.

The evaluation committee must check at this stage that the nationalities of subcontractors identified in the technical offers comply with the nationality rule mentioned in the additional information about the contract notice.

5.3.9.5 Evaluation of financial offers

Arithmetical errors

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

- Where there was a discrepancy between amounts in figures and in words, the amount in words prevailed;
- Except for lump-sum contracts, where there was a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted prevailed, except where the evaluation committee agreed that there was an obvious error in the unit price, in which case the total

amount as quoted prevailed;

- Where unconditional discounts applied to financial offers for individual lots, the discount was applied to the financial offer.

Abnormally low tenders

For abnormally low tenders, please refer to Section 2.6.10.1.

Discounts

On how to treat discounts, see Section 4.3.9.5.

5.3.9.6 Choice of contractor

The successful tenderer is the one with the most economically advantageous tender determined in accordance with Section 5.3.3. above. It must be declared the successful tender if it is equal to or lower than the maximum budget available for the contract.

If the chosen tender exceeds the maximum budget available for the contract, the provisions set out in Section 5.2.5.1.(h) may apply.

EDF-FUNDED PROGRAMMES

(APPLICABLE ONLY TO TENDERS FINANCED UNDER MFF 2014-2020)

When technical offers are evaluated, a preference must be given to tenders submitted by legal or natural persons of ACP States, either individually or in a joint tender/consortium among them.

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 joint tender/consortium of natural persons, companies and firms from ACP States and the European Union.

(See also Section 2.6.9.)

5.3.9.7 The evaluation committee's conclusions

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

- Award the contract to the tenderer that has submitted a tender:
 - that complies with the formal requirements and the eligibility rules;
 - whose total budget is within the maximum budget available for the project;
 - that meets the minimum technical requirements specified in the tender dossier;
 - that is the most economically advantageous tender (satisfying all of the above conditions).

- Cancel the tender procedure, see Section 2.6.13.

At the latest during the evaluation procedure and before taking the award decision, the contracting authority ensures that there is no record of the presumed successful tenderer, including joint tender/consortium members, subcontractors or capacity providing entities, if any, in exclusion situation in the EDES nor in the lists of EU restrictive measures²⁵² (see Sections 2.4.2.1. and 2.4.1.).

During the evaluation procedure and before taking the award decision, the evaluation committee will request the **original**²⁵³ **Declaration on honour** on exclusion criteria and selection criteria and **copies of documentary evidence** for exclusion and selection criteria from the presumed successful tenderer.

If upon verification, the evaluation committee considers the submitted evidence not admissible, it will request the same evidence from the next best ranked tenderer.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The entire procedure (technical and financial evaluation) is recorded in an evaluation report (see template in Annex d7) to be signed by the chairperson, the secretary and all voting members of the evaluation committee. This evaluation report must be submitted to the relevant services of the contracting authority, which must decide whether or not to accept its recommendations. Consequently, the contracting authority must then submit the evaluation report together with its proposed decision to the European Commission. If there is an award proposal and the European Commission has not already received a copy of the tenders, these must be submitted.

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

If the European Commission accepts the proposed decision, the contracting authority will either commence awarding the contract (see Section 5.3.11.) or cancel the tender, as decided.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior authorisation from the European Commission is required before the contracting authority acts on the recommendations of the evaluation committee.

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

Subject to the contracting authority's legislation on access to documents, the entire tender procedure is confidential from the end of the tender opening session until both parties have signed the contract. The evaluation committee's decisions are collective and its deliberations must remain secret. The evaluation committee members and any observers are bound to secrecy. If the law of the country of the contracting authority conflicts with the

²⁵² Please note that the EU Official Journal contains the official list of entities subject to restrictive measures and, in case of conflict, it prevails over the list of the [EU Sanctions Map](#).

²⁵³ The requirement to submit an original Declaration on honour on exclusion criteria and selection criteria is only applicable in case of paper submission.

confidentiality required, the contracting authority must obtain prior authorisation from the European Commission before disclosing any information.

The evaluation report is for official use only and may be divulged neither to tenderers nor to any party outside the authorised services of the contracting authority, the European Commission and the supervisory authorities (e.g. the Court of Auditors).

5.3.10 Cancelling the tender procedure

See Section 2.6.13.

A cancellation notice must be published following the guidelines for publication (see Annex a11e).

Tenderers must always be informed as soon as possible if it is decided, in the course of the procedure, to cancel it. Tenderers are entitled to the immediate release of their tender guarantee.

If the tender procedure is cancelled before the opening session, the unopened and sealed envelopes must be returned to the tenderers.

5.3.11 Award of the contract

5.3.11.1 Notifying the successful and unsuccessful tenderers

See Section 2.10.1. See format of letter in Annex d8a) for successful tenderer and in Annex d8b) for unsuccessful tenderers.

The notification letter (Annexes d8a) to the successful tenderer implies that the validity of the successful tender is automatically extended for a period of 60 days irrespective of the date of notification of the award of the contract. This period can be further extended by mutual agreement between the parties.

At the same time the unsuccessful tenderers are informed that their offers could not be retained, but the validity of their tenders is maintained until the end of the validity period, and without prejudice to the possibility to extend such period in the cases explained in Section 2.9.5.

During the tender validity period for the unsuccessful tenderers, the contracting authority reserves the right to send a notification of award to the next best ranked tenderer. The validity of the next best ranked tender will be extended by 60 days, upon notification of the new award decision. This 60-day period is added to the validity period irrespective of the date of notification, which should however be within the validity period.

5.3.11.2 Standstill clause (applicable for contracts above EUR 5 000 000)

See Section 2.10.1.

5.3.11.3 Contract preparation and signature

See Section 2.10.2 and 2.10.3. The proposed contract must comply with the template in Annex d4.

The performance guarantee must be placed, at the latest, on return of the countersigned contract (see Section 5.3.2.).

The contracting authority shall inform the contractor by **commencement order** of the date on which the implementation of tasks must start. See article 33 of the General Conditions.

5.3.11.4 Publicising the award of the contract

See Section 2.10.4.1.

5.4 Restricted tender for contracts of EUR 5 000 000 or more

See Section 2.6.3. on general information about the restricted procedure.

In view of the characteristics of certain works, a restricted tender procedure may be used in justified cases. The relevant services of the European Commission may provide technical support on a case-by-case basis. References to PRAG annexes in this section refer to the archived PRAG version 2018.0.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

Prior authorisation by the European Commission is required.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior authorisation by the European Commission is required.

5.4.1 Publicity

In order to ensure the widest possible participation in competitive tendering and the requisite transparency, the contracting authority must publish a contract notice and additional information about the contract notice for all work contracts of **EUR 5 000 000 or more**.

The publication must be done in accordance with the guidelines on publication described in Annex a11e.

5.4.1.1 Publication of prior information notice

See Section 5.3.1.1.

5.4.1.2 Publication of contract notices

Minimum 30 days after publication of the prior information notice, if any, a contract notice and additional information about the contract notice must be published in the Official Journal of the European Union, on the F&T portal and in any other appropriate media.

For the publication of the contract notice and additional information about the contract notice, the request for clarifications from candidates, the publication of a change notice and the publication of clarifications through PPMT, see Section 5.3.1.2.

The contract notice/additional information about the contract notice must provide potential candidates with the information they need to determine their capacity to fulfil the contract in question.

The selection criteria listed in Section 12.2 of the instructions to tenderers should be adapted and inserted in the selection criteria of the additional information about the contract notice.

The selection criteria set out in the contract notice must be:

- clearly formulated, without any ambiguity

- easy to check on the basis of the information submitted using the standard application form (see Annex dr3)
- devised to allow a clear yes/no assessment to be made as to whether or not the candidate satisfies a particular selection criterion
- possible to prove by the tenderer.

Only the presumed successful tenderers must supply supporting documents for the selection criteria before the award of the contract (see Section 2.6.11.).

5.4.2 Drawing up shortlists

Candidates are shortlisted by an evaluation committee appointed by the contracting authority comprising a non-voting chairperson, a non-voting secretary and an odd number of voting members (the evaluators). There must be at least five evaluators.

For the committee's composition, impartiality and confidentiality, responsibilities and timetable, see Section 2.9.

The selection procedure involves:

- drawing up a long list (see template in Annex dr4) summarising all the applications received;
- rejecting applications that are inadmissible because submitted by ineligible candidates (see Section 2.3.1. on nationality rules) or fall into one of the situations described in Sections 2.4.2.1. (exclusion from participation in procurement procedures) and 2.4.2.2. (rejection from a given procedure);
- applying the selection criteria exactly as published.

The shortlist comprises between four and six candidates.

If the number of admissible candidates meeting the selection criteria is greater than six, the additional criteria published in the additional information to the contract notice are applied to reduce the number to the six best candidates. For further details, please see Section 2.6.11.

If the number of eligible candidates meeting the selection criteria is less than the minimum of four, the contracting authority may invite only those candidates who satisfy the selection criteria to submit a tender. Before accepting a reduced competition of less than four candidates, prior authorisation of the European Commission is required save in indirect management with *ex-post* control as stated in the text box below. Less than the minimum of four candidates may only be invited if all of the following elements are satisfactory:

- sufficient timing has been given for the publication;
- the scope of the works is in line with the budget;
- the selection criteria used and were clear and non-discriminatory and not beyond the scope of the contract satisfactory.

This must be justified in the shortlist report.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

Prior authorisation by the European Commission is required.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior authorisation by the European Commission is required.

The shortlisting process and the final shortlist itself must be fully documented in a shortlist report (see template in Annex dr5 of the dr1 tender dossier).

Before the shortlist is approved by the evaluation committee, the contracting authority must check that no candidate (including partners) are in an exclusion situation in the early detection and exclusion system (see Section 2.6.10.1.1.) or are subject to European Union restrictive measures (see section 2.4.).

The shortlist report is signed by the chairperson, the secretary and all the evaluators.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The shortlist report must be submitted to the contracting authority, which must decide whether or not to accept its recommendations. The contracting authority must then submit the shortlist report together with its recommendation to the European Commission before the shortlisted candidates can be invited to submit a tender.

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

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

The shortlist report must be submitted to the contracting authority, which must decide whether or not to accept its recommendations.

No prior authorisation by the European Commission is required before the contracting authority acts on the recommendations of the evaluation committee.

Candidates not selected will be informed of that fact by the contracting authority by means of a standard letter, the format of which is given in Annex dr7. Candidates who are selected will receive a letter of invitation to tender and the tender dossier (see template in Annex dr8a).

If non-shortlisted candidates request further information, they may be given any information that is not confidential, e.g. reasons why a reference does not meet the technical selection criterion, as this may help them to be successful in future tenders.

Tender documents must be carefully drafted, to ensure that the contract is complete and that the procurement procedure is carried out correctly.

Between the date of dispatch of the letters of invitation to tender and the deadline for receipt of tenders there must be a minimum of **60 days**.

INDIRECT MANAGEMENT

The tender dossier will be sent simultaneously to all shortlisted candidates via mail or email.

Any tender received from a legal or natural person not invited to tender will be rejected. Tenders should be submitted in accordance with the double envelope system.

The measures applicable to an international open procedure, apply by analogy to the rest of the restricted procedure for works contracts, with the caveat that the elements related to the selection phase should not be taken into account.

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

In this case, the contract notice is published in the local official journal of the partner country or any equivalent local media, and where necessary in order to ensure an adequate level of competition, in the Official Journal of the European Union, F&T portal. Publication in the local official journal or equivalent local media is the responsibility of the partner country.

As the cost of publishing the full contract notice in the local media may be high, the template in Annex d3 gives the minimum information that must be included in a local advertisement. However, the full contract notice must be available from the address referred to in the advertisement, together with the tender dossier.

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

In this procedure, there must be a minimum of **60 days** between the date of publication of the contract notice in the local press and the deadline for receipt of tenders. However, in exceptional cases, a shorter deadline may be allowed in compliance with internal procedures.

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

Prior authorisation by the European Commission must also be sought for a shorter deadline.

Proof of the local publication of the contract notice must be sent to the European Commission.

The measures applicable to an international open procedure, as described in Section 5.3., apply by analogy to the local open procedure. The principal difference is that the minimum number of evaluators in the evaluation committee is three.

For contracts of EUR 345 000 or below, the contracting authority may decide, on the basis of objective criteria such as type and value of the contract, not to require a performance guarantee.

INDIRECT MANAGEMENT

Tenders must be sent or hand delivered to the contracting authority at the address provided.

EDF-FUNDED PROGRAMMES

(APPLICABLE ONLY TO TENDERS FINANCED UNDER MFF 2014-2020)

For works contracts of a value of less than EUR 5 000 000, tenderers from the ACP States, provided that at least one quarter of the capital stock and management staff originates from one or more ACP States, must be accorded a 10% price preference during the financial evaluation.

In addition, where two tenders for works are acknowledged to be equivalent, preference

must be given:

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

See also Section 2.6.9.

5.6 Simplified procedure

See Section 2.6.4. for guidance on the simplified procedure.

The contracting authority may award contracts under EUR 300 000 by simplified procedure, without publishing the contract notice. The contracting authority draws up a list of at least three contractors with a justification for its choice. The candidates are sent a letter of invitation to tender accompanied by a tender dossier. The contract notice is not published, but it is included in the tender dossier as it contains important information for those companies that are invited to tender.

The remainder of the procedure (including preparation of the tender dossier, evaluating the tenders and awarding the contract) is the same as under the international open procedure (see Sections 5.3.2. to 5.3.11.3.). The only exception are provisions specific to the simplified procedures which can be found in annex ds1 (tender dossier for a simplified procedure):

- Works contracts under a simplified procedure are lump sum contracts (see article 48.1 special conditions).
- Prices are fixed and shall not be revised.
- A performance guarantee is not required.
- The retention sum retained to guarantee implementation of the contractor's obligations during the defects liability period is 10 % of the contract price. By derogation to Article 47.1 of the general conditions, that money is not retained from interim payments. The tranches laid down in Article 49.1 of these special conditions are determined so that the retention sum amounts to 10% of the contract price at the moment of the certificate of provisional acceptance.

INDIRECT MANAGEMENT

Tenders must be sent or hand delivered to the contracting authority at the address provided.

EDF-FUNDED PROGRAMMES

(APPLICABLE ONLY TO TENDERS FINANCED UNDER MFF 2014-2020)

For works contracts of a value of less than EUR 5 000 000, tenderers from the ACP States, provided that at least one quarter of the capital stock and management staff originates from one or more ACP States, must be accorded a 10% price preference during the financial evaluation.

In addition, where two tenders for works are acknowledged to be equivalent, preference must be given:

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

5.7 Modifying works contracts

See Section 2.11. for general information on modifying contracts. See Section 5.2.5.1.c on negotiated procedures.

Administrative order

Administrative orders may take the form of additions, omissions, substitutions, changes in quality, quantity, form, character, kind, position, dimension, level or line and changes in the specified sequence, method or timing of execution of the works.

In case of work contracts, administrative orders can modify the total contract amount. Moreover, in case work contracts it is the supervisor that has the power to issue administrative orders to order any amendment to any part of the works necessary for the proper completion and/or functioning of the works (see general conditions 37.2). Therefore, it is only the supervisor, and not the contracting authority that can issue administrative orders.

The total value of successive administrative orders should be below the double de minimis rule (see General Conditions article 37.8 and case (d) in Section 2.11.2.3):

- EUR 5 000 000;
- 15% of the initial contract

The issuing of administrative orders follows the following process:

- a. Although the supervisor is not obliged to seek the contracting authority's authorisation before asking proposals from the contractor, it is advisable for the contractor to consult with the contracting authority to make sure that the latter does not disagree. This is particularly important in the event of financial consequences to be borne by the contracting authority.
- b. The supervisor notifies the contractor of his intention to order the modification and gives details of its nature and form. The contractor must then, without delay, submit to the supervisor a written proposal containing:

- i. a description of the tasks to be implemented or the measures to be taken and a programme for execution;
 - ii. any necessary amendments to the programme of implementation of tasks or to any of the contractor's obligations resulting from this contract; and
 - iii. any adjustment to the contract price in accordance with the rules set out in Article 37 general conditions.
- c. If the supervisor is satisfied with the contractor's proposal and after due consultation with the contracting authority, the supervisor issues the administrative order that will state the technical details of the works to be undertaken, changes to the contract price, any changes to the programme of implementation and, if necessary, the manner in which the works are to be implemented.
- d. If the supervisor is not satisfied with the contractor's proposal or it falls outside the authorisation given by the contracting authority, the supervisor may either:
 - i. consult further with the contracting authority and the contractor; or
 - ii. issue the administrative order based on his previous consultation with the contracting authority, stating how it is to be valued in accordance with Article 37(6) of the general conditions.
- e. If the contractor disagrees with the changes to the contract price stated in the administrative order, the contractor may claim for additional payment under Article 55 of the general conditions. If the contractor considers that the requirements of an administrative order go beyond the authority of the supervisor or of the scope of the contract, it must give notice, with reasons, to the supervisor (Article 12(4) of the general conditions). If the contractor considers that it is entitled to an extension to the period of implementation greater than any it may have been granted, the contractor may submit a request under Article 35 of the general conditions. In any event, the contractor is required to carry out the variation without waiting for the outcome of his claim or request.

All variations are priced in accordance with the rules set out in Article 37(6) of the general conditions. Wherever possible, appropriate rates and prices in the bill of quantities or price schedule are to be used, at least as a basis. Only when there are no appropriate rate and prices that are applicable, should a reasonable and proper rate be fixed. This consists of an estimate of actual cost together with overheads and profit.

Sometimes a modification is required by a default or a technical breach of contract by the contractor. In such a case, any additional cost attributable to that modification must be borne by the contractor.

There may be urgent situations where it is necessary to issue oral instructions to the contractor. In such cases, the oral instructions should be promptly confirmed by issuing an administrative order. Alternatively, the contractor may confirm in writing to the supervisor an oral order that has been given by the supervisor. This is deemed to be an administrative order unless immediately contradicted by the supervisor in writing (Article 37(3) of the general conditions).

In case of oral instructions, where the cost estimate or the details of the modification could not be fully specified before the order, the contractor must keep records of the costs of undertaking the variation and of time spent on it. These records must be open to inspection by the supervisor at all reasonable times (Article 37(7) of the general conditions).

Modification not requiring an amendment

Modifications resulting from the strict application of the procurement documents or

contractual provisions do not constitute a modification of the contract and therefore do not require an administrative order or a contractual addendum (see exception mentioned under case (d) in Section 2.11.2.4). This type of modifications is not subject to the financial ceilings listed in cases (a), (b) and (c) mentioned in Section 2.11.2.2 and 2.11.2.3.

For works contracts there are three cases where modifications do not therefore require an administrative order or a contractual addendum:

1. In the majority of cases, the contract provides that it is **paid by measurement**: in such a case, the quantities indicated in the bill of quantities are estimates, as is the initial contract price derived from these estimated quantities.
Whenever an application for payment is submitted, the supervisor measures, for the respective items, the actual quantities of the works executed and certifies, by applying the unit rates, the amount due. Increases vis-à-vis the initial contract price, which are the sole result of the measured actual quantity exceeding the stated bill of quantities or price schedule, do not represent a change of the contract and do not require an administrative order for modification nor a contract addendum.
2. The application of the **price revision clause** of the contract will have the same effect. Again, since the price revision formula is already agreed upon by the contracting parties in the initial contract, no modification of the contract is required to allow increases vis-à-vis the initial contract price to deal with their effect.
3. In addition, an **extension of the period of implementation** of the tasks as may be justified, either prospectively or retrospectively (see general conditions article 20). The extension of the period of implementation of the tasks can be done by notice issued by the supervisor. The period(s) of implementation can be extended by administrative order, even after the implementation period specified in the contract has expired.

6 Grants

6.1 What is a grant?

6.1.1 Definition

A grant is a financial donation/non-commercial payment by the contracting authority from the general budget of the European Union or the European Development Fund (EDF) given to a natural or legal person (the grant beneficiary) to finance:

- either an action intended to help achieve a European Union policy objective (action grant);
- or the operation (i.e. the running costs) of a body which has an objective forming part of, and supporting, a European Union policy (operating grant)²⁵⁴.

In the case of an operating grant, the grant must take the form of a financial contribution to the work programme of the entity.

A grant contract differs from a procurement contract in a number of ways:

Procurement “Buying things”		Grants “Giving money”
Purchase of services, supplies or works	Object	Proposal from an applicant to contribute to the achievement of a policy objective through: <ul style="list-style-type: none">• a project (i.e. an action grant); or <ul style="list-style-type: none">• the functioning costs of the applicant (i.e. an operating grant)
Contracting Authority	Owner of Results	Grant beneficiary
100 % of the cost	Financial contribution	The Union finances a part of the costs or the contributions eligible for Union-financing

²⁵⁴ For the 11th EDF and amended 10th EDF Financial Regulation (bridging facility) the relevant objective/interest is defined as: (a) an action intended to help achieve an objective of the 2000/483/EC Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (Cotonou Agreement) or the Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the European Union (OJ L 344, 19.12.2013, p. 1), or of a programme or project adopted in accordance with that agreement or decision; or (b) the functioning of a body which pursues an objective referred to in point (a).

Allowed	Profit	Not allowed
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A grant is made for an action, proposed to the contracting authority by an applicant, which falls within the normal framework of the applicant's activities. This is in contrast to a procurement contract, in which the contracting authority draws up the terms of reference/tender specifications for a project it wants to be carried out. A grant beneficiary is responsible for implementing the action and owns the results. By contrast, under a procurement contract, it is the contracting authority who owns the results of the action.

A grant beneficiary generally contributes to the financing of the action unless exceptions apply (Section 6.2.8.). In the case of procurement contracts, the contractor does not contribute financially. The amount of a procurement contract represents a price fixed in accordance with competitive tendering rules.

No grant may give rise to profits, it must only balance income and expenditure for the action, but there are some exceptions (Section 6.2.9.). It is important to note, that the no-profit rule applies to the action and not necessarily to the grant beneficiary: the fact that a body is non-profit making does not mean that it can only conclude grant contracts; and vice-versa, profit making bodies may also participate in grant award procedures²⁵⁵.

The action must be clearly identified. No action may be split for the purpose of evading compliance with the rules laid down in this practical guide.

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

6.1.2 Actors involved

There are three kinds of actors that may receive funding under a grant contract:

The lead applicant – who will become the beneficiary (coordinator) following the award of the grant

The body(ies) signing a grant contract is known as the grant beneficiary(ies) and should not be confused with the partner country, the final beneficiary of the operation²⁵⁶ nor with the target group²⁵⁷.

If awarded the grant contract, the lead applicant will become the beneficiary identified as the coordinator in the special conditions of the grant contract.

The coordinator is the main interlocutor of the contracting authority. It represents and acts on behalf of the co-beneficiary(ies) (if any) and coordinates the design and implementation of the action.

Co-applicants (if any) – who will become the co-beneficiaries following the award of the grant

²⁵⁵ Please note however that references acquired in implementing grant contracts or by entities listed in Article 62(1)(c) FR in implementing contribution/delegation/financing agreements in indirect management cannot be presented in support of a request to participate for a service contract (in Section 6 of the request to participate, PRAG Annex b3), and that references to implemented service contracts cannot be presented in support of a grant application (in Sections 2.2. and 2.3. of Part B of the grant application form, PRAG Annex e3b).

²⁵⁶ 'Final beneficiaries' are those who will benefit from the project in the long term at the level of the society or sector at large.

²⁵⁷ 'Target groups' are the groups/entities who will be directly positively affected by the project at the project purpose level.

The lead applicant may act individually (“mono-beneficiary grant”)²⁵⁸ or with co-applicant(s) (“multi-beneficiary grant”): however, if awarded the grant contract, both the lead applicant and the co-applicant(s) (if any) become grant beneficiary(ies).

Co-applicant(s) participate in designing and implementing the action, and the costs they incur are eligible in the same way as those incurred by the lead applicant.

For the purpose of this chapter, the term ‘grant beneficiary’ should be understood as (i) the only beneficiary of the grant (in case of mono-beneficiary grants) or as (ii) all beneficiaries of the grant (in case of multi-beneficiaries grants).

Where it is not specified otherwise the lead applicant (i.e. the organisation or individual who submits an application for a grant) and the co-applicant(s) are hereinafter jointly referred as the applicant(s).

and

Affiliated entities (if any)

Only the lead applicant and co-applicants will become parties to the grant contract.

Their affiliated entities²⁵⁹ are neither beneficiaries of the action nor parties to the contract. However, they participate in the design and in the implementation of the action and the costs they incur (including those incurred for implementation contracts and financial support to third parties) may be eligible, provided they comply with all the relevant rules already applicable to the beneficiaries under the grant contract. Affiliated entities must satisfy the same eligibility criteria as the lead applicant or the co-applicant to which they are affiliated.

Only entities having a structural link with the applicants, in particular a legal or capital link, may be considered as affiliated entities to the lead applicant and/or to co-applicant(s).

This structural link encompasses mainly two notions:

- a. Control, as defined in Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC²⁶⁰.

Entities affiliated to a beneficiary may hence be:

- Entities directly or indirectly controlled by the beneficiary (daughter companies or first-tier subsidiaries). They may also be entities controlled by an entity controlled by the beneficiary (granddaughter companies or second-tier subsidiaries) and the same applies to further tiers of control.
- Entities directly or indirectly controlling the beneficiary (parent companies). Likewise, they may be entities controlling an entity controlling the beneficiary.
- Entities under the same direct or indirect control as the beneficiary (sister companies).

²⁵⁸ However, operating grants are always mono-beneficiary (Section 6.6.2.).

²⁵⁹ Article 190 FR.

²⁶⁰ OJ L 182, 29.6.2013, p. 19.

- b. Membership, i.e. the beneficiary is legally defined as an e.g. network, federation, association in which the proposed affiliated entities also participate or the beneficiary participates in the same entity (e.g. network, federation, association) as the proposed affiliated entities.

The structural link must be neither limited to the action nor established for the sole purpose of its implementation. This means that the link would exist independently of the award of the grant; it should exist before the award procedure and remain valid after the end of the action.

By way of exception, an entity may be considered as affiliated to a beneficiary even if it has a structural link specifically established for the sole purpose of the implementation of the action in the case of so-called 'sole applicants' or 'sole beneficiaries'. A sole applicant or a sole beneficiary is a legal entity formed by several entities (a group of entities) which together comply with the criteria for being awarded the grant. For example, an association is formed by its members.

What is not an affiliated entity?

The following are not considered entities affiliated to a beneficiary:

- a. entities that have entered into a (procurement) contract or sub-contract with a beneficiary, act as concessionaires or delegates for public services for a beneficiary;
- b. entities that receive financial support from the beneficiary;
- c. entities that cooperate on a regular basis with the beneficiary on the basis of a memorandum of understanding or share some assets;
- d. entities that have signed a consortium agreement under the grant contract (unless this agreement implies the creation of a sole applicant as described above).

How to verify the existence of the required link with the beneficiary?

The affiliation resulting from control may be proved in particular on the basis of the consolidated accounts of the group of entities the beneficiary and its proposed affiliates belong to.

The affiliation resulting from membership may in particular be proved on the basis of the statutes or equivalent act establishing the entity (network, federation, association) that the beneficiary constitutes or in which the beneficiary participates.

If the analysis of the accounts or of the statutes does not provide for a clear-cut affiliation between the applicant and the entity that it presents as its affiliate, the entity may be treated as separate co- applicant in the same proposal. The change in the treatment of that entity, from an affiliated entity to a co-applicant, is not to be considered substantial and falls within the scope of corrections that may be made during the finalisation phase of the grant contract.

Affiliated entities are only relevant for action grants, not for operating grants.

The following entities are neither applicants nor affiliated entities:

- **Associates**

Other organisations or individuals may be involved in the action. Such associates play a real role in the action but may not receive funding from the grant, with the exception of per diem or travel costs. Associates do not have to meet the eligibility criteria referred to in Section 2.1.1. of the Guidelines for applicants.

- **Contractors**

The grant beneficiaries and their affiliated entities are permitted to award contracts. Associates, beneficiaries, affiliated entities, recipients of financial support cannot be also contractors in the project.

- **Recipients of financial support**

If financial support is allowed under the relevant grant contract, the grant beneficiaries and affiliated entities may award financial support to third parties. These third parties are neither affiliated entities nor associates nor contractors.

Each actor should only participate in a single role in an action. This is to avoid any potential conflicts of interest and ensure clear allocation of rights and obligations as well as certainty on cost eligibility.

6.2 General principles

6.2.1 Management modes

Grants awarded under direct management and indirect management with partner countries are covered by the rules set out in this chapter. See Section 2.2.

6.2.2 Who can participate?

6.2.2.1 Nationality rule

See Section 2.3.1.

Participation in grant award procedures is open on equal terms to all natural and legal persons and to entities that do not have legal personality under the applicable national law, provided that their representatives have the capacity to take on legal obligations on their behalf and that they offer financial and operational guarantees equivalent to those provided by legal persons. Furthermore, applicants must be nationals of, or effectively established in, an eligible country in accordance with the applicable external financing instrument (for more details see Section 2.3.1.).

DIRECT MANAGEMENT

A prior approval must be sought for the participation in grant award procedures of entities that do not have legal personality under the applicable national law.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

Prior authorisation by the European Commission must be sought for the participation in grant award procedures of entities that do not have legal personality under the applicable national law.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior authorisation by the European Commission is required.

6.2.2.2 Exceptions to the nationality rule

See Section 2.3.7.

6.2.2.3 Grounds for exclusion and EU Restrictive Measures

See Section 2.4.

6.2.3 Programming: Financing Decisions/action plan

Grants under direct management are subject to a financing decision, which at the same time constitutes the action plan. The financing decision/action plan indicates the external financing instrument, if any, the objectives pursued, the expected results, the method of implementation, the type of applicants targeted by the grant award procedure and the global budgetary envelope reserved for the grants. The financing decision/action plan is adopted by the European Commission²⁶¹.

6.2.4 Transparency

See Section 2.5.2.

6.2.5 Equal treatment

See Section 2.5.2.

6.2.6 Non-cumulative award and no double funding

See Section 2.5.2.

6.2.7 Non-retroactivity

See Section 2.5.2.

Action grants

The general principle is that actions can only start after signature of the grant contract.

Exceptionally, a grant may be awarded for an action that has already begun where the applicants can demonstrate and justify the need to start the action before the contract is signed. In this case, expenditure incurred before the submission of grant applications is, as a general rule, not eligible for financing²⁶².

The acceptance of costs from an earlier date²⁶³ (i.e. before submission of grant applications) is possible only in duly substantiated exceptional cases²⁶⁴.

- a. in duly justified exceptional cases as provided for in the basic act; or
- b. in the event of extreme urgency where an early engagement by the Union would be

²⁶¹ In case of DG INTPA these are published on its website, on the page of the relevant country or thematic.

²⁶² For direct awards, the financing may go back to the starting date of negotiations as confirmed by administrative evidence.

²⁶³ That could be even an earlier date than that of the financing decision.

²⁶⁴ Under the FR (Article 110), it is no longer necessary to indicate cases of cost-eligibility-retroactivity in the financing decision.

of major importance, for the purposes of humanitarian aid, emergency support operations, civil protection operations or for crisis management aid and in other exceptional and duly substantiated emergencies.

In the cases referred in b), the costs incurred by a beneficiary before the date of submission of the application shall be eligible for Union financing under the following conditions:

- i. the reasons for such derogation have been properly substantiated by the contracting authority;
- ii. the grant agreement explicitly sets the eligibility date earlier than the date for submission of applications.

The relevant eligibility date should also be included in the guidelines for applicants.

No grant may be awarded retroactively for actions already completed.

In case of grants comprising financing not linked to costs, results cannot have been achieved before the agreement is signed.

Operating grants

See Section 6.6.2.

DIRECT MANAGEMENT

Retroactive financing constitutes an event to be reported.

The approval by the AOSD of cost eligibility before the signature of a grant contract, but after submission of a grant application is an event to be reported.

Moreover, retroactive financing to cover costs incurred before the submission of the proposal, for reasons of extreme urgency in crisis management aid or in other exceptional and duly substantiated emergencies also constitutes an event to be reported.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

Prior authorisation by the European Commission must be sought for the retroactive financing.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior authorisation by the European Commission is required.

6.2.8 Co-financing

See Section 2.5.2.

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

When making use of financing not linked to costs, the co-financing rule does not apply to the financing not linked to costs component of the action (Section 6.3.1.5.).

However, the following exceptions apply to the rule of co-financing:

Full Financing is only possible in the following cases:

1. Where it is essential for the action to be carried out.

The contracting authority must be in a position to show that financing in full is essential to carry out the action in question and must substantiate its award decision accordingly. Under direct management, full financing constitutes an event to be reported. Under indirect management with ex-ante controls, the contracting authority must obtain the prior authorisation of the European Commission.

For instance, the financing of an action in full may be authorised in the following cases, save where prohibited by the basic act:

- humanitarian aid, including assistance for refugees, uprooted persons, rehabilitation and mine clearance;
- aid in crisis situations;
- action to protect health or the fundamental rights of people;
- where the relevant financing agreement foresees full financing;
- actions with international organisations;
- where it is in the interests of the European Union to be the sole donor to an action, and in particular to ensure visibility of a European Union action.

2. For actions financed under NDICI-GE, IPA III, DOAG, full financing is also possible for cases (i) and (ii) under f) in Section 6.4.4. For EIDHR financed actions (MFF 2014-2020), please refer to Section 6.3.9. of PRAG 2021.

The co-financing may take the form of the beneficiary's own resources (self-financing), income generated by the action and financial or in kind contributions from third parties. The beneficiary has to declare the co-financing actually provided in the final report. The beneficiary(ies) may at that point replace any planned contribution from its own resources with financial contributions from third parties.

The contracting authority may accept contributions in kind as co-financing, if considered necessary or appropriate. Co-financing in kind means the provision of goods or services to the grant beneficiary free of charge by a third party. Therefore, contributions in kind do not involve any expenditure for the grant beneficiary²⁶⁵. For the purpose of the no-profit rule (see Section 6.2.9.), in kind contributions are not taken into account.

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

Contributions in kind from third parties, with the exception of in kind contributions in the form of volunteers' work²⁶⁶, must be presented separately from the contributions to the eligible costs in the estimated budget (like non eligible taxes, they are presented as accepted costs in the estimated budget for the action). Their approximate value must be indicated in the estimated budget and must not be subject to subsequent changes.

Volunteers' work

Volunteers' work is a type of in-kind contribution.

Where the relevant call for proposals allows for the work performed by volunteers to be considered as acceptable co-financing, beneficiaries may declare personnel costs for

²⁶⁵ Nevertheless, actual costs generated by the acceptance, distribution, warehousing etc. of in kind contributions may be eligible for funding if complying with article 14 of the general conditions.

²⁶⁶ See dedicated box for details on the presentation of volunteer's work in the budget.

the work carried out by volunteers under an action or work programme as eligible cost. Where declared, it shall be done on the basis of unit costs determined by the European Commission at the following address: https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/common/guidance/unit-cost-decision-volunteers_en.pdf.

Contributions in kind from third parties in the form of volunteers' work, valued in accordance with the above paragraph, must be presented in the estimated budget, separately from the other eligible costs, in the dedicated budget line 10.2 of the budget template (PRAG Annex e3c). The value of the volunteer's work must always be excluded from the calculation of indirect costs. Volunteers' work may comprise up to 50% of all sources of financing, that is the Union grant, in-kind contributions and other sources of financing. For the purposes of calculating this percentage, other contributions in kind, if allowed, and other co-financing must be based on estimates provided by the applicant²⁶⁷.

Please note that, for on-going award procedures, the rules on volunteers work in force at the time of publication of the guidelines apply, namely the interpretation of the percentage of 50% as the 50% of the co-financing only.

6.2.9 No-profit rule

See Section 2.5.2.

Grants may not have the purpose or effect of producing a profit within the framework of the action or the work programme, with the exception of some specific cases (see below) as provided for in the special conditions of the standard grant contract.

Profit is defined as a surplus of the receipts over the eligible costs approved by the contracting authority when the request for payment of the balance is made.

The receipts to be taken into account are the consolidated receipts on the date on which the payment request for the balance is made by the coordinator that fall within one of the two following categories:

- a. European Union grant;
- b. income generated by the action; unless otherwise specified in the special conditions.

In case of an operating grant, amounts dedicated to the building up of reserves must not be considered as a receipt.

When a grant takes the form of simplified cost options (total or partially) (see Section 6.3.3.), these amounts shall be established in such a way as to exclude profit *a priori*. Once the amounts are established in the contract, these cannot be challenged by ex post controls, i.e. through comparison with the actual costs they cover (see Section 6.3.3.).

Where a profit is made, the contracting authority has the right to reduce the final amount of the grant by the percentage of the profit corresponding to the final European Union contribution to the eligible costs incurred approved by the contracting authority (without making a difference between costs actually incurred and simplified cost options), except in the cases listed below.

²⁶⁷ Article 193(2) FR.

The no-profit rule does not apply to²⁶⁸:

- a. actions the objective of which is the reinforcement of the financial capacity of a beneficiary. Where applicable, this must be specified in Article 7 of the special conditions;
- b. actions that generate an income to ensure their continuity after the period of Union financing provided for in the grant contract. Where applicable, this must be specified in Article 7 of the special conditions;
- c. study, research, training or education support paid to natural persons or other direct support paid to natural persons most in need, such as unemployed persons and refugees. Where applicable, this must be specified in Article 7 of the special conditions;
- d. actions implemented by non-profit organisations;
- e. grants in the form of financing not linked to costs of the relevant operations;
- f. low value grants (i.e. grants of EUR 60 000 or less).

6.2.10 Ethics and values

See Section 2.5.6.

In addition, for all grant award procedures (calls for proposals or direct award) where the requested grant exceeds EUR 60 000, lead applicants, co-applicants and affiliated entities other than (i) natural persons (ii) pillar-assessed entities and (iii) governments and other public bodies whose application has been awarded a grant, shall assess their internal policy against sexual exploitation, abuse and harassment (SEA-H) through a self-evaluation questionnaire with the aim to inform the contracting authority about the entity's SEA-H policy in place and the measures envisaged in order to improve the SEA-H policy within the relevant organisation²⁶⁹.

6.3 Forms of grants

6.3.1 General

Grants may take any of the following forms²⁷⁰:

- a. financing not linked to costs of the relevant operations based on:
 - i. either the fulfilment of conditions set out in sector specific legislation or European Commission Decisions; or
 - ii. the achievement of results measured by reference to previously set milestones or through performance indicators;
- b. reimbursement of eligible costs that may be based on any or a combination of the following forms:

²⁶⁸ Article 195(3) FR.

²⁶⁹ Please note that in direct management, for calls for proposals where PROSPECT is used, the self-evaluation questionnaire on SEA-H must be submitted via PADOR. In case of direct award of grants, where PROSPECT is not used, all submitted data, including the self-evaluation questionnaire on SEA-H, must be transferred to the contracting authority.

²⁷⁰ Article 125(1) FR.

- i. actual costs incurred by the beneficiary(ies) and affiliated entity(ies);
- ii. one or more simplified cost options, which may take the form of:
 - unit costs: which cover all or certain specific categories of eligible costs that are clearly identified in advance by reference to an amount per unit;
 - lump sums: which cover in global terms all or certain specific categories of eligible costs that are clearly identified in advance;
 - flat-rate financing: which covers specific categories of eligible costs, which are clearly identified in advance, by applying a percentage;
- c. a combination of the forms referred to in points (a) to (b).

6.3.2 Reimbursement of costs

The most common form of grants is the reimbursement of eligible costs (cost-based grants).

Cost based grants can be divided into two categories: reimbursement of actual eligible costs or simplified cost options (unit costs, lump sum or flat rate). On simplified cost options see also Sections 6.3.3. and 6.3.4.

These forms of reimbursement can be combined to cover different categories of eligible costs, provided the limits and conditions stated in the call for proposals are complied with.

A cost based grant is expressed both as:

- a. a maximum amount (absolute value) established on the basis of:
 - i. estimated eligible costs, in the case of reimbursement of eligible costs actually incurred;
 - ii. the overall amount of estimated eligible costs clearly defined in advance in the form of simplified costs options.
- b. a percentage of the estimated eligible costs (for actual costs) or of the simplified cost options.

This means that the contracting authority's contribution covers only a certain percentage of the costs, according to the rules set out in the call for proposals. The call for proposals also establishes the maximum and minimum amounts of the contribution. In any case, the grant shall not exceed the overall ceiling expressed in terms of an absolute value ('maximum grant amount').

6.3.3 Simplified cost options

Where simplified cost options are used, the eligible costs of an action are calculated according to a predefined method based on outputs/results or some other costs clearly identified in advance either by reference to an amount per unit or by applying a percentage.

Simplified cost options are, thus, an alternative method for calculating the eligible costs of an action opposed to the traditional method by which the grant is calculated on the basis of the costs actually incurred and paid. Thus, simplified cost options are amounts or percentages that represent the best possible approximation of actual (real) eligible costs incurred in practice when implementing an action.

Simplified cost options may take the form of unit costs, lump sums and/or flat-rates or a

combination of these forms²⁷¹. They are meant to simplify the management of the grant. It should be noted that there is no limitation (other than the total amount of estimated eligible costs) on the amount of costs that can be declared in the form of simplified cost options.

Only two types of simplified cost options are possible:

(1) determined by the contracting authority that shall apply to all applicants in the award procedure and announced in the guidelines²⁷². For example, unit costs applied to determine the amount of co-financing in the form of volunteer costs, see Section 6.2.8.

These simplified cost options may take the form of:

- **unit costs:** covering all or certain specific categories of eligible costs which are clearly identified in advance by reference to an amount per unit.
- **lump sums:** covering in global terms all or certain specific categories of eligible costs which are clearly identified in advance.
- **flat-rate financing:** covering specific categories of eligible costs which are clearly identified in advance by applying a percentage fixed ex ante.

(2) single lump sum²⁷³: a lump sum may cover the entire eligible costs of an action or a work programme. Single lump sums may be determined on the basis of the estimated budget, which should comply with the principles of economy, efficiency and effectiveness. Compliance with these principles must be verified ex ante at the time of evaluation of the grant application. When using this form of financing, the description of the action must include detailed information on the essential conditions triggering the payment, including, the achievement of outputs and/or results.

Other simplified cost options are not acceptable. Simplified cost options embedded in the accounting practices of the beneficiary are not acceptable, except in the case of direct awarded grants to pillar assessed entities (Section 6.9.1.).

The contracting authority shall check, at the latest before the payment of the balance:

- a. the fulfilment of the conditions triggering the payment of the simplified costs options, including, the achievement of outputs and/or results. The conditions triggering the payment do not require reporting on the costs actually incurred by the beneficiary.
- b. that the simplified costs options were indicated in the estimated overall budget; and
- c. that the conditions referred to in point (a) were fulfilled during the implementation period. On the other hand, there will be no check whether the costs underlying the simplified costs options were incurred during the same period.

In addition, the fulfilment of those conditions may be subject to ex post controls. However, once the amounts have been assessed and approved by the contracting authority (as clearly laid down in the budget of the action), they will not be challenged by ex post controls.

This means that auditors will not check all the supporting documents to establish the actual costs incurred, but they will concentrate on the correct application of the formula used and the related inputs or generating events as established in the contract. Auditors will not check the actual costs to verify the generation of a profit or a loss, even though the auditors

²⁷¹ Article 125(c) to (f) and Article 180(3) FR.

²⁷² Use of this type of simplified cost options shall be authorised prior to the launch of the award procedure by a decision based on Article 50 of the Internal rules.

²⁷³ The use of this type of simplified cost options is authorised by a decision adopted in compliance with Article 50 of the Internal rules, available at https://international-partnerships.ec.europa.eu/funding-and-technical-assistance/guidelines/managing-intervention/single-lump-sum-grants_en.

and/or the European Commission have the right to access the statutory records of the beneficiary, notably its general accounting statements, for statistical, methodological or anti-fraud purposes (as applicable to all forms of grants) according to article 16 of the general conditions. This means that the beneficiary has to keep supporting documents establishing that the grant has been effectively implemented.

6.3.4 Financing not linked to costs

Financing not linked to costs²⁷⁴ (FNLC) aims at increasing the focus on results and simplifying the administrative and financial procedures.

FNLC is a form of reimbursement based on the fulfilment of certain conditions *ex ante* or the achievement of results.

The FNLC amounts are not defined based on an estimation of costs, the reimbursement is not linked to costs (actually incurred or estimated).

DIRECT MANAGEMENT

A prior approval must be sought for the use of financing not linked to costs.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

Prior authorisation by the European Commission must be sought for the use of financing not linked to costs.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior authorisation by the European Commission is required.

Contrary to cost-based grants, a grant in the form of FNLC is only expressed as an absolute amount (no percentage). The final amount is established in accordance with the relevant arrangements set out in the budget and the description of the action.

In addition, the provisions on co-financing, no double funding do not apply to the FNLC component of a grant since they cannot be applied in a case where the amount to be reimbursed is linked to defined conditions or results and is decoupled from the underlying costs²⁷⁵.

The no-profit rule does not apply (see Section 6.2.1.9.) and, given the nature of FNLC, this form of contribution should not be used for results achieved before the agreement is signed (see Section 6.2.7.).

In case of hybrid grant contracts (combining reimbursement of eligible costs and financing not linked to costs), it is important to distinguish each component and the amount of the Union contribution to each, as each of them is subject to different rules, and the final amount of the grant per component will be calculated in a different way.

²⁷⁴ Use of financing not linked to costs shall be authorised prior to the launch of the award procedure, or of the award decision for grants awarded outside of a call for proposals, by a decision based on Article 50 of the Internal rules.

²⁷⁵ Article 183(3) FR.

6.4 Grant award procedures

6.4.1 Call for proposals

Grants must be awarded following the publication of a call for proposals, except in the cases listed in Section 6.4.4. below. Please see Section 6.5.

6.4.2 Types of call for proposals: Open or restricted

Call for proposals are either open or restricted:

- restricted: a two-step procedure where all applicants may ask to take part but only the applicants who have been shortlisted (on the basis of a concept note in response to a call launched through published guidelines for applicants) are invited to submit a full application.
- open: all applicants are free to submit a full application. In this case a concept note must still be submitted together with the full application and the evaluation process is carried out in two steps (shortlisting on the basis of the concept note), in accordance with the published guidelines for applicants (see Section 6.5.2.).

Calls for proposals are by default restricted. A decision to launch an open rather than a restricted call must be justified by the particular technical nature of the call, the limited budget available, the limited number of proposals expected or organisational constraints (e.g. calls by regional European Union delegations).

DIRECT MANAGEMENT

A prior approval must be sought for the launch of an open call for proposals.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

Prior authorisation by the European Commission must be sought for the launch of an open call for proposals.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior authorisation by the European Commission is required.

6.4.3 Financial framework partnership agreements

Grant contracts may take the form of financial framework partnership agreements with a view to establishing a long-term cooperation between the Commission and beneficiaries implementing European Union funds^{276 277}. Financial framework partnership agreements must specify the forms of financial cooperation, including the obligation to set out, in the specific agreements signed arrangements for monitoring the achievement of specific objectives. In addition, in case the financial partnership agreements takes the form of a grant, it must specify the nature of actions planned on a one-off basis or as part of an approved work programme, the procedure for awarding specific grants, in compliance with

²⁷⁶ Article 131 FR.

²⁷⁷ FFPA templates for mono-beneficiary grants under direct management is available in Annex e12a.

the principles and procedural rules in this practical guide and the general rights and obligations of each party under the specific contracts. The duration of the partnership may not exceed 4 years, save in duly justified cases clearly indicated in the annual activity report. Financial framework partnership agreements are treated as grants for the purposes of programming, *ex ante* publication and the award procedure.

Financial framework partnership agreements should only be envisaged if their use has a clear extra value. For example, if only one specific grant is foreseen, financial framework partnership agreements are not the appropriate modality.

DIRECT MANAGEMENT

A prior approval must be sought for the use of a financial framework partnership agreement.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

Prior authorisation by the European Commission must be sought for the use of a financial framework partnership agreement.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior authorisation by the European Commission is required.

6.4.4 Direct award

In the following circumstances, it is not necessary to organise a call for proposals for the award of a grant²⁷⁸:

- a. exceptional and duly substantiated emergencies (urgency);
- b. for the purposes of humanitarian aid and civil protection operations or for crisis management aid;
- c. where the grant is awarded to a body with a *de jure* or *de facto* monopoly, duly substantiated in the award decision. 'De facto' or 'de jure' monopoly means that the grant beneficiary:
 - has exclusive competence in the field of activity and/or geographical area to which the grant relates pursuant to any applicable law; or
 - is the only organisation (i) operating or (ii) capable of operating in the field of activity and/or geographical area to which the grant relates by virtue of all considerations of fact and law.
- d. where the grant is to be awarded to a body identified by the relevant basic act²⁷⁹, as beneficiary of a grant or to bodies designated by the Member States, under their responsibility, where those Member States are identified by a basic act as beneficiaries of a grant.

Note that 'basic act' refers to the external financing instrument. It is not sufficient to identify a body for a direct award in financing decisions/action plan, as these do not constitute basic acts;
- e. in case of research and technological development, to bodies identified in the work

²⁷⁸ Article 198 FR.

²⁷⁹ Article 27(3)(c) NDICI-GE.

- programme, where the basic act expressly provides for that possibility, and on condition that the action does not fall under the scope of a call for proposals;
- f. for actions with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power, on condition that the actions concerned do not fall within the scope of a call for proposals;
 - g. for NDICI-GE, IPA III and DOAG financed actions²⁸⁰:
 - i. low-value grants to human rights defenders to finance urgent protection actions and needs, including through mechanisms for the protection of human rights defenders at risk, as well as to mediators and other civil society actors involved in crisis and armed conflict related dialogue, conflict resolution, reconciliation and peacebuilding, where appropriate without the need for co-financing;
 - ii. grants, where appropriate without the need for co-financing, to finance actions in the most difficult conditions where the publication of a call for proposals would be inappropriate, including situations where there is a serious lack of fundamental freedoms, including violation of human rights, threats to democratic institutions, escalation of crisis or armed conflict, where human security is most at risk or where human rights organisations and defenders, mediators and other civil society actors involved in crisis and armed conflict related dialogue, reconciliation and peacebuilding operate under the most difficult conditions; such grants shall not exceed EUR 1 000 000 and their duration shall not exceed 18 months, which may be extended by a further 12 months in the event of objective and unforeseen obstacles to their implementation;
 - iii. low value grants to civil society organisations using, to the extent possible, simplified forms of financing in accordance with Article 125 of the Financial Regulation.

In the case of grants awarded without a call for proposals, even though an evaluation committee may be useful, it is not compulsory.

In all cases, the contracting authority must prepare a report explaining the manner in which the grant beneficiary was identified and the grant amounts established, and the grounds for the award decision (see template evaluation report — Annex a10a). The contracting authority must follow the steps shown in the evaluation report template and ensure that all the basic principles for grants are respected (including eligibility, operational & financial capacity, and exclusion). Even if the beneficiary is designated in the basic act or it is in a monopoly situation the financial capacity always has to be verified as the financial interests of the European Union have to be protected.

The procedures described in Section 6.5.10. must be followed by analogy, with the evaluation report referred to in the previous paragraph being included in the contract dossier. Application form (Annex e3b) and guidelines for applicants (Annex e3a) can be used and adapted for direct award.

²⁸⁰ For EIDHR financed action (MFF 2014-2020), please refer to Section 6.3.9. of PRAG 2021.

DIRECT MANAGEMENT

Direct awards require a prior approval/constitute an event to be reported.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

Prior authorisation of the European Commission must be sought. The evaluation report (Annex a10a) must be submitted to the relevant services of the European Commission, which must decide whether to accept the negotiation result.

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

No prior authorisation by the European Commission is required for the use of the direct award procedure or for the results of negotiation contained in the evaluation report (Annex a10a).

6.4.5 IT Management Tools

DIRECT MANAGEMENT

Calls for proposals in **direct management** launched by the DG International Partnerships (and other European Commission services) are processed through two online tools: PADOR and PROSPECT²⁸¹.

PADOR (potential applicant data online registration) is the database where lead applicants, co-applicants and affiliated entities should register, update information about their organisation and upload their supporting documents (statutes, audit reports, identification form etc.). The purpose of the on-line registration in PADOR is to provide the European Commission with information about the organisations involved in the action.

By registering on-line in PADOR, lead applicants, co-applicants and their affiliated entities get a unique identifier (EuropeAid ID), which they need to insert in their application form. The organisations are responsible for keeping information in PADOR up to date.

In case on-line registration is impossible because of technical difficulties, the lead applicants, co-applicants and affiliated entities must submit, together with their application, the PADOR registration form (Annex F) following the instructions given in the guidelines for applicants.

For further information, see:

<https://wikis.ec.europa.eu/display/ExactExternalWiki/e-Calls+PADOR> where you can find the PADOR help guides for applicants and co-applicants, the PADOR help guide for affiliated entities and the frequently asked questions.

As PADOR is designed for organisations, natural persons who participate in a call (where the relevant guidelines allow for their participation) do not have to register in PADOR nor submit PADOR registration form. All information necessary for the evaluation of their applications is included in PROSPECT and the application form.

PROSPECT is the single online platform to be used for the management of calls for proposals and it is used for all calls managed by DG International Partnerships (both in

²⁸¹ Exceptions may apply e.g. to twinning projects, where PROSPECT is only used for publication purposes.

headquarters and delegations) and other European Commission services.

PROSPECT consists of four modules:

- Module 1: to be used by the business administrator only, in order to configure the templates in PROSPECT;
- Module 2: to be used by the European Commission services to create and publish calls for proposals;
- Module 3: to be used by lead applicants (including individuals) to submit their application online;
- Module 4: to be used by evaluators and external assessors to conduct the evaluation of proposals.

Online submission is mandatory for applicants. However, by default the guidelines for applicants include an option to submit applications exceptionally offline. Unless applicants are prevented from submitting via PROSPECT due to technical issues in their country or for confidentiality and security concerns, this option will be deleted and applications will only be accepted via PROSPECT. When applicants encode in PROSPECT their EuropeAid ID, PROSPECT retrieves automatically from PADOR all relevant information about the organisation. When applicants encode in PROSPECT a PADOR offline form (Annex F), Commission staff will use this form to create or update their PADOR profile. The functionality of 'Upload PDF' available in PADOR allows European Commission staff to quickly transfer the data from Annex F into PADOR.

For further information, use this link <https://wikis.ec.europa.eu/display/ExactExternalWiki/e-Calls+PROSPECT> where you can find:

- PROSPECT manuals for internal users, external assessors and applicants
- PROSPECT e-learning

Please note that the European Commission intends to migrate to the corporate eGrants IT suite, which will become the contract management tools enabling paperless contract management. In the long run, they will replace the current legacy external action tools PROSPECT and PADOR.

Participant Identification Code (PIC) – Direct management and indirect management where the European Commission makes the payments

To apply for a call for proposal, it is mandatory for the lead and co-applicants to register in the [Participant Register](#).

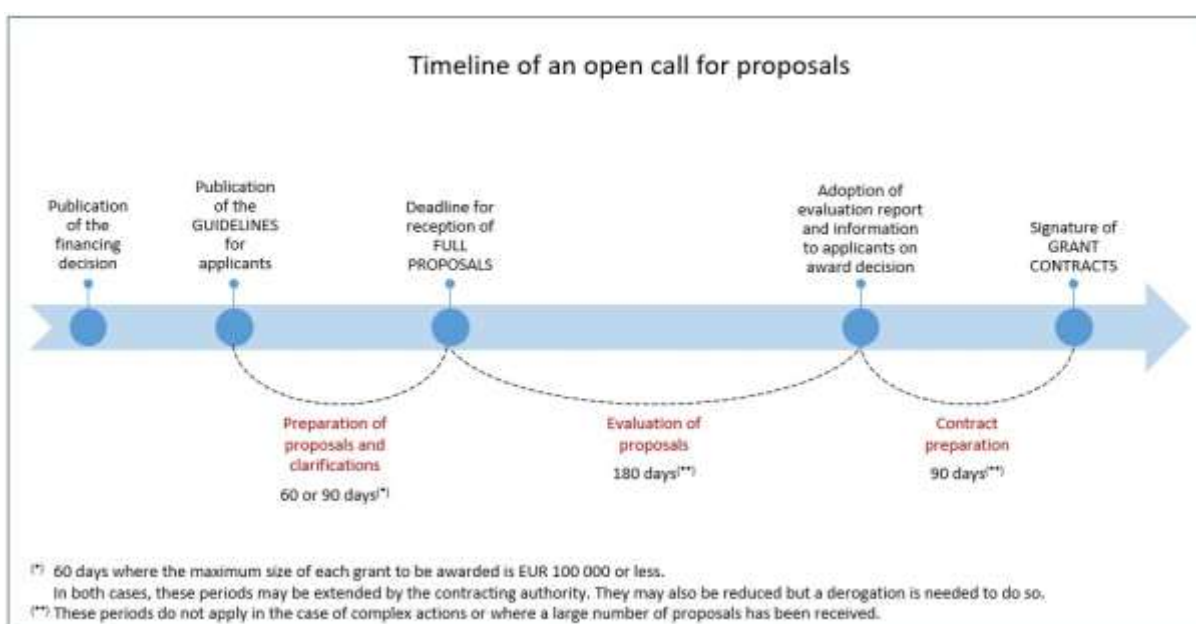
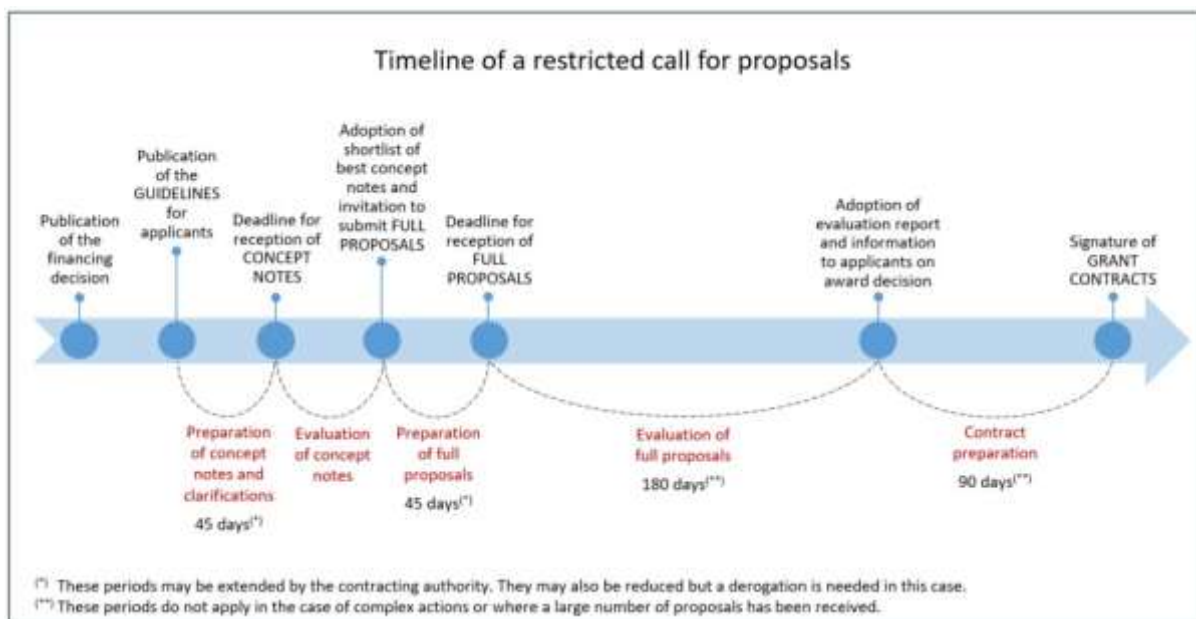
This online register will apply the "once only" principle: data related to an organisation needs to be submitted only once. This Participant Register will act as an entry point to the future call and grant contract management portal (F&T Portal). When registered, each organisation obtains a Participant Identification Code (PIC, 9-digit number) which will act as unique identifier.

Instructions on how to create a [PIC](#) can be found on this page: <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/participant-register>. Organisations already registered in the Participant Register shall reuse their existing PICs when applying for a call for proposals.

6.5 Calls for proposals

N.B. The terms “proposals” and “applications” are used interchangeably in this section to refer to the submission by the applicant of either the concept note, in restricted procedures, or the concept note and full proposal, in open procedures. By contrast, “full applications” is used in restricted and open calls for proposals to refer to the full proposal.

The timeline and the different stages of restricted and open calls for proposals can be summarised as follows:



6.5.1 Publicity

Calls for proposals are published on [the website of DG International Partnerships](#) and/or the [F&T Portal](#)²⁸², and in any other appropriate media (other websites, specialised press, local publications²⁸³, etc.).

To ensure the widest possible participation and the requisite transparency, every call for proposals must include guidelines for applicants.

The guidelines for applicants are published on the websites referred above. They should also be available in hard copy from the contracting authority. They should be available in the language(s) appropriate to the call for proposals.

If the contracting authority is not a service of the European Commission headquarters, it must arrange local publication directly at the same time as they are published on the designated website.

Since the cost of publishing the entire guidelines for applicants in the local press might be prohibitive, the template in Annex e2 prescribes the minimum information that is required for local publication. Those guidelines must be available at the address stated in the local publication.

6.5.2 The guidelines for applicants

The guidelines for applicants explain the purpose of the call for proposals, the rules on eligibility of applicants, the types of action and costs that are eligible for financing, and the evaluation (selection and award) criteria (see template guidelines for applicants, Annex e3a).

In order to make more efficient use of calls for proposals the contracting authority may group calls for proposals for different instruments (it may then be advisable to divide the calls into lots²⁸⁴) and/or use the budget of several successive years. In the latter case, a suspensive clause must be included for the years for which budgetary appropriations are not yet available (see Section 2.5.9). Calls may also cover several countries of one region and group the related budgetary appropriations.

They also contain instructions on how to fill in the application form, which other documents to submit and which procedures to follow for applying. They give information on the evaluation process that will follow (including an indicative timetable) and the contractual conditions applying to successful applicants.

The guidelines include amongst other annexes the application form.

The guidelines for applicants should set out very clearly and in detail the objectives and priorities of the call for proposals, and give particular attention to the eligibility criteria.

It is advisable to clarify and limit the priorities and objectives of calls and to clearly explain the eligibility criteria for applicants (see Section 6.5.3. below) to ensure that only adequate applications will be submitted.

At the discretion of the contracting authority, the guidelines for applicants may be translated into the local language(s) for information purposes. However, in case of discrepancies between two or more language versions, applicants must refer to the language version that

²⁸² With the migration to eGrants IT suite, the publication of call for proposals will move from the [website of DG International Partnerships](#) to the F&T Portal.

²⁸³ Guidelines for grants financed by the imprest component do not have to be published on the DG INTPA website and/or F&T Portal but locally.

²⁸⁴ Note that a division of lots into sub-lots is not possible.

prevails, as indicated by the contracting authority. The guidelines for applicants will specify in which language applications must be submitted, and all further correspondence as well as the contracts should be in the same language.

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

The guidelines for applicants are adopted by the contracting authority.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

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

6.5.3 Eligibility and evaluation criteria

6.5.3.1 Eligibility criteria

The eligibility criteria determine the conditions for participating in a call for proposals. They must be drafted with due regard to the objectives of the action and be transparent and non-discriminatory. The eligibility criteria apply to two different points:

- Eligibility of the applicants: this refers to the applicants' legal and administrative status - see in particular Sections 2.3.1. and 2.4. (rules on nationality, EU Restrictive Measures and grounds for exclusion). If a call for proposals relates to actions that might or need to be implemented by several entities, the minimum, maximum or the recommended number of entities and the eligibility criteria applicable to each entity or to all together must be specified.
- Eligibility of the action: this refers to the types of activities, sectors or themes and geographical areas covered by the call for proposals.

6.5.3.2 Evaluation criteria: selection and award

The evaluation criteria consist of selection and award criteria, all of which are defined in the evaluation grid.

- The selection criteria are used to assess the lead applicant's financial capacity as well as the lead applicant's and the co-applicant(s)'s (and their affiliated entity(ies)) operational capacity to complete the proposed action:
 - the lead applicant must have stable and sufficient sources of funding to keep operating throughout the action implementation period and to participate, where appropriate, in its funding;
 - applicants (and their affiliated entity(ies)) must have altogether the necessary experience, professional competencies and qualifications to complete the proposed action.

The financial capacity has always to be verified²⁸⁵, except where the lead applicant

²⁸⁵ For financial framework partnership agreements, the verification of the financial capacity takes place before entering into the framework agreement.

belongs to one of the following categories²⁸⁶: natural persons in receipt of education support, natural persons most in need and receiving direct support, public bodies (including Member State organisations), international organisations, or persons or entities applying for very low value grants.

The contracting authority may, depending on a risk assessment, waive the obligation to verify the operational capacity of public bodies, Member State organisations or international organisations²⁸⁷.

Assessments are made on the basis of the information and supporting documents submitted in the context of the call for proposals (see Section 6.5.6.). Supporting documents may include an external audit report of the lead applicant, the profit and loss account and the balance sheet for up to the three last financial years for which the accounts were closed. In case of doubts about the capacity of the applicants, the evaluation committee may ask for additional proof.

- The award criteria are used to assess proposals against the set objectives and priorities, so that grants are awarded to actions that maximise the overall effectiveness of the call for proposals. They should enable the contracting authority to select proposals that will comply with its objectives and priorities and guarantee the visibility of the European Union financing.

The award criteria relate, in particular, to the relevance of the action and its compatibility with the objectives of the grant programme under which the call for proposals is being financed; the quality, expected impact and sustainability of the action, and its efficiency.

All eligibility and evaluation criteria specified in the call for proposals must be applied as specified and cannot be changed in the course of the procedure. The criteria should be precise and non-discriminatory (see the evaluation grid templates).

6.5.4 Additional information before the deadline for submission of proposals

It is highly advisable, after the launch of the call for proposals, to hold one or more information sessions that all the potential applicants can attend. Such information sessions must take place at the latest 21 days before the deadline for submission of the concept notes²⁸⁸. Moreover, information sessions can also be organised at the latest 21 days before the deadline for submission of the full application for applicants whose concept notes have been pre-selected.

Any presentation/documentation to be delivered in the information session must also be uploaded at least on the website, where the call was published. In direct management the dates, locations and presentations for information sessions on global calls for proposals must be coordinated with the European Commission headquarters. The information to be disseminated in all targeted regions must be harmonised in a non-discriminatory way.

In addition, during the time between the publication and the deadline for the submission of the concept note/full application²⁸⁹, applicants can ask questions to help them fill in the

²⁸⁶ Article 201(5) FR.

²⁸⁷ Article 201(6) FR.

²⁸⁸ Full application in case of open procedures.

²⁸⁹ For open calls, during the time between the publication and the deadline for the submission of the

form and put together their applications. The contracting authority should therefore provide a contact point to which questions may be addressed. Lead applicants may submit questions in writing up to 21 days before the deadline for the submission of the concept notes/full applications.

In compliance with transparency and equal opportunities requirements, the answers provided to applicants on points that may be of interest to other applicants must be made available to all applicants. The way to achieve this is to publish on the website where the call was published, website of DG International Partnerships or Funding and/or F&T Portal (and other websites, where appropriate) a document containing all the questions and answers provided, there are no individual replies. This document must be updated regularly until 11 days before the deadline for submission of concept notes/full applications. In the interest of equal treatment of applicants, the contracting authority cannot give a prior opinion on the eligibility of an applicant, an affiliated entity, an action or specific activities.

If the contracting authority, either on its own initiative or in response to a request for clarification amends information in the call for proposals, a corrigendum with the changes must be published subject to the same publicity conditions as those for the call for proposals. The corrigendum may extend the deadline to allow applicants to take the changes into account.

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT

For calls for proposals launched in **direct management** as well as for calls for proposals in **indirect management** published in PROSPECT, the publication of all questions received and answers provided on the website of DG International Partnerships/F&T portal, is done via PROSPECT.

6.5.5 Deadline for submission of the concept note and full application

The deadline for submission must be long enough to allow for high-quality proposals. Experience shows that a too short deadline may prevent potential applicants from submitting proposals or cause them to submit incomplete or ill-prepared proposals.

The minimum period for submission of concept notes is 45 days. For open calls, the minimum period between the date of publication of the guidelines for applicants and the deadline for submission of proposals is 90 days.

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

In exceptional cases, the period for submission of concept note may be shortened in compliance with internal procedures. Under indirect management with *ex ante controls* this is also subject to prior authorisation by the European Commission.

For open procedures, where the maximum size of each grant to be awarded within the programme is EUR 100 000 or less, the minimum period is 60 days.

DIRECT MANAGEMENT

Proposals must be submitted online via PROSPECT by the date and time indicated in

application form.

the guidelines for applicants. Lead applicants receive a confirmation of the date and time of their submission in PROSPECT. All dates and times in PROSPECT are expressed in Brussels time (GMT+1).

Where PROSPECT cannot be used because it is technically impossible for the applicant to submit the proposal via PROSPECT²⁹⁰ proposals must be submitted to the contracting authority at the address and, at the very latest, by the date (and time, for hand-delivery) indicated in the guidelines for applicants, as evidenced by the date of dispatch, the postmark or the date of the deposit slip (for hand-delivery, the deadline for receipt is on the date and hour fixed in the guidelines for applicants). However, if accepting concept notes/full applications²⁹¹ that were submitted on time but arrived late would considerably delay the award procedure or jeopardise decisions already taken and notified, the contracting authority may, for reasons of administrative efficiency, reject any application received after the effective date of approval of the concept note evaluation (first stage) or of the evaluation of the full application (second stage)²⁹².

INDIRECT MANAGEMENT

Proposals must be submitted to the contracting authority at the address and, at the very latest, by the date (and time, for hand-delivery) indicated in the guidelines for applicants, as evidenced by the date of dispatch, the postmark or the date of the deposit slip (for hand-delivery, the deadline for receipt is on the date and hour fixed in the guidelines for applicants). However, if accepting concept notes/full applications²⁹³ that were submitted on time but arrived late would considerably delay the award procedure or jeopardise decisions already taken and notified, the contracting authority may, for reasons of administrative efficiency, reject any application received after the effective date of approval of the concept note evaluation (first stage) or of the evaluation of the full application (second stage)²⁹⁴.

6.5.6 Submission of the concept note, full application and supporting documents

Concept notes and full applications²⁹⁵ must be submitted in accordance with the instructions given in the guidelines for applicants (see template guidelines, Annex e3). The applicants must indicate the sources and amounts of European Union funding received or applied for the same action or part of the action or for its functioning during the same financial year as well as any other funding received or applied for the same action.

Lead applicants invited to submit a full application following a pre-selection of their concept note must submit the following documents²⁹⁶ together with the full application form²⁹⁷:

²⁹⁰ This only applies where the option to exceptionally submit applications offline is provided for in the guidelines for applicants.

²⁹¹ For open calls, full application forms.

²⁹² For open calls, this first step is the approval of the concept note evaluation.

²⁹³ For open calls, full application forms.

²⁹⁴ For open calls, this first step is the approval of the concept note evaluation.

²⁹⁵ For open calls, the application form should be submitted in accordance with the instructions given in the guidelines for applicants.

²⁹⁶ No supporting documents are requested for an application for a grant not exceeding EUR 60 000.

²⁹⁷ For open calls, these documents should be submitted together with the application form.

- The statutes or articles of association of the lead applicant, of each co-applicant (if any) and of each affiliated entity (if any);
- The declaration on honour on exclusion criteria duly signed by the lead applicants, co-applicants and affiliated entities;
- Only in indirect management where the Partner Country makes the payments, a completed identification form (see Annex D).

In addition, for the purpose of the evaluation of the financial capacity, the following documents should be submitted:

- For action grants exceeding EUR 750 000 and for operating grants above EUR 100 000, the lead applicant must provide an audit report produced by an approved external auditor where it is available, and always in cases where a statutory audit is required by European Union or national law. That report must certify the accounts of the lead applicant for up to the last three available financial years. In all other cases, the lead applicant must provide a self-declaration signed by its authorised representative certifying the validity of its accounts for up to the last three available financial years²⁹⁸;
- a copy of the lead applicant's profit and loss account and the balance sheet for up to the last three financial years for which the accounts were closed).

Originals, photocopies or scanned versions of originals of the requested supporting documents (as laid down in the guidelines for applicants) must be provided showing legible stamps, signatures and dates of the said originals. If the supporting documents are not written in one of the official languages of the European Union or (if applicable) of the country of implementation of the action, a translation into the language/one of the languages of the call for proposals of the relevant excerpts of these documents showing proof of the applicants' eligibility must be submitted for the purposes of analysing the proposal. Where these documents are in an official language of the European Union other than the language(s) of the call for proposals, it is strongly recommended, in order to facilitate the evaluation, to provide a translation of the relevant parts of the documents, proving the lead applicant's and, where applicable, co-applicants' and affiliated entity(ies)' eligibility, into the language /one of the language(s) of the call for proposals.

Exceptions

- No statutes or articles of association shall be submitted for international organisations that have been pillar assessed or where the contracting authority has recognised the lead applicant's, or the co-applicant(s)'s, or their affiliated entity(ies)'s eligibility for another call for proposals under the same budget line within 2 years before the deadline for receipt of applications. It shall submit instead a copy of the document proving their eligibility in a former call (e.g. a copy of the special conditions of a grant contract received during the reference period), unless a change in legal status has occurred in the meantime;
- If the applicants have already signed a contract with the contracting authority, instead of the legal entity form, the legal entity number may be provided, unless a change in legal status occurred in the meantime.

²⁹⁸ This requirement must apply only to the first application made by a beneficiary to a contracting authority responsible in any one financial year.

- No supporting documents for the evaluation of the financial capacity will have to be submitted for low value grants (not exceeding EUR 60 000) and the following categories of lead applicants: (i) natural persons in receipt of education support (ii) natural persons most in need, such as unemployed and refugees, and in receipt of direct support (iii) public bodies, including Member State organisations (iv) international organisations. No supporting documents for the evaluation of the financial capacity will be requested from co-applicant(s) or affiliated entities (if any). In addition, depending on its risk assessment, the contracting authority may waive the obligation to submit an audit report for secondary and higher education and training establishments.
- No declaration on honour on exclusion criteria shall be required in the case of an application for a very low value grant (not exceeding EUR 15 000).

DIRECT MANAGEMENT

The supporting documents required by a specific call for proposals must be uploaded in PADOR by the time limit given by the European Commission (except for the declaration on honour on exclusion criteria which shall be uploaded in PROSPEC). If it is impossible to access PADOR/PROSPECT on-line, lead applicants must submit the requested supporting documents together with PADOR registration form at the time of the full application.

6.5.7 The Evaluation Committee

6.5.7.1 Appointment and composition

See Section 2.9.

6.5.7.2 Use of assessors

Where the proposals received are particularly numerous or highly technical, it may not always be possible for the evaluation committee to examine each one in detail. If necessary, the assessment of all proposals or part thereof, may be carried out by assessors (external or internal)²⁹⁹ so that the evaluation committee may conduct its deliberations on the basis of their assessments. Usually, the same assessors will be used for the different steps. Different assessors may be appointed for different lots³⁰⁰.

Assessors work under the supervision of the chairperson of the evaluation committee. Assessors may attend the meetings of the evaluation committee as observers to present the results of their assessments and answer any questions from the evaluation committee members.

- For the administrative checks (including the eligibility of the action), the assessors

²⁹⁹ Internal assessors are to be understood as internal to the contracting authority (based in European Union delegations or at Headquarters). External assessors are external experts.

³⁰⁰ Where different types of expertise are required for the different assessments, different assessors may also be appointed for the different steps of the award procedure.

check each proposal against the criteria listed in the checklist³⁰¹ and the declaration by the lead applicant (see the application form). Each proposal needs only to be checked by one assessor.

External assessors may be recruited as required.

- For the evaluation of concept notes and full applications, assessors must use the published evaluation grids (see template evaluation grids) to give scores and provide comments.
- At least two assessors must assess each concept note and each full application, working independently of each other³⁰². The two assessors should preferably be chosen from among European Commission staff. In case of scarcity of internal resources, external assessors may also be chosen. The external assessors must have an in-depth knowledge of the issues covered by the grant programme concerned. Their expertise should be checked against their CVs. A minimum of 5 years of experience of a particular issue should be requested.

6.5.7.3 EU Delegations as internal assessors for European Commission headquarters' calls for proposals

Where the call for proposals is organised by a service of the European Commission headquarters, one of the two assessors for the evaluation of the full application will be from the EU Delegation of the country where the action is to take place³⁰³. For regional actions, it is the lead EU Delegation or, as appropriate, Headquarters that will consult the European Union Delegations in the region concerned.

The assessor coming from the EU Delegation will be nominated in accordance with the applicable instructions on the nomination of evaluation committees by the relevant authorising officer. If assessors are not used, the EU Delegation should nevertheless be duly consulted. If an EU Delegation is not in a position to carry out the evaluation within the deadline, in order to avoid delays, its assessment can be taken over by a voting member from the evaluation committee or other internal or external assessor.

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

The assessors are selected by the contracting authority. External assessors who receive a remuneration for their contribution (i.e. not officials or other staff of the contracting authority or the public administration of the partner country, staff of Member States embassies or of NGOs who participate pro bono) must be selected using the procedure for service contracts, i.e. in accordance with the applicable thresholds.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

The assessors are selected by the contracting authority. The list must be submitted for approval to the European Commission. Outside assessors who receive a remuneration for their contribution (i.e. not officials or other staff of the contracting authority or the

³⁰¹ Please note that the concept note / full application should not be rejected only because the information filled in by the applicant in the checklist is not correct (relevant for indirect management only).

³⁰² It is also possible to have proposals evaluated by one assessor and one voting member of the evaluation committee acting as the second assessor.

³⁰³ In duly justified cases, the European Union delegation may also be involved in the evaluation of the concept notes.

public administration of the partner country, staff of Member States embassies or of NGOs who participate pro bono) must be selected using the relevant procedure for service contracts, i.e. in accordance with the applicable thresholds.

6.5.7.4 Absence of conflict of interest and confidentiality

See Section 2.9.2.

6.5.7.5 Responsibilities of the evaluation committee

See Section 2.9.3.

6.5.8 Stages in the evaluation process

The evaluation process starts with the receipt of the concept notes³⁰⁴ by the contracting authority and ends with the decision to award grants to the selected applicants.

6.5.8.1 Receipt and registration of proposals

6.5.8.1.1 Submission by PROSPECT

Lead applicants must submit their proposals online via PROSPECT following the instructions given in the PROSPECT user manual.

Upon submission of the proposal, the lead applicants will receive an automatic confirmation of receipt in their PROSPECT profile.

6.5.8.1.2 Submission by other means

In indirect management, lead applicants must submit proposals by post, private courier service or by hand delivery.

When receiving proposals, the contracting authority must register them and provide a receipt for those delivered by hand (see Annex a7). The envelopes must remain sealed and be kept in a safe place until they are opened. The outer envelopes of proposals must be numbered in order of receipt (whether or not they are received before the deadline for submission of proposals).

Under direct management in the exceptional cases where for technical reasons is not possible to submit the documents through PROSPECT, lead applicants must submit proposals by post, private courier or by hand delivery. The service in charge of the call must ensure that all applications received are registered in PROSPECT following the opening session. Lead applicants who submitted online will receive an automatic acknowledgement of receipt. Applications received by post, private courier or hand deliveries (including any overdue applications) must be encoded on behalf of the applicants in the system and the original must be kept in the archives. Once an application is encoded, PROSPECT will generate an automatic acknowledgement of receipt to the email address of the organisation and of the contact person. In case of overdue applications, PROSPECT will generate the respective letter. In case the specific call does not allow the submission of proposals by post, private courier or hand deliveries, the applications received by these

³⁰⁴ Full applications and concept notes in case of open calls for proposals.

means will be rejected.

6.5.8.2 Opening session and administrative checks

Members of the evaluation committee and any observers, like assessors, must have signed their declarations of absence of conflict of interest and confidentiality, before they may have access to the applications.

6.5.8.2.1 Opening session

Under indirect management and direct management in cases where some applications are received on paper, all proposals received should be opened in an opening session (after expiry of the submission deadline) at which the registration details are checked and the proposals are numbered.

The secretary to the evaluation committee supervises the opening session and requests the assistance of other member of staff of the contracting authority if need be.

The register of proposals received should contain the following information:

- the registration number of the proposal;
- the date of submission;
- the lead applicant's name and address.

For each proposal:

- the original is kept safely in the archives of the contracting authority;
- copies are distributed to the evaluators and, where applicable, to the assessors.

6.5.8.2.2 Administrative checks

Only those proposals that met the deadline are subject to an administrative check to assess whether the criteria mentioned in the checklist are fulfilled. Under no circumstances may assessors or members of the evaluation committee change the checklist.

Note that the administrative check also includes an assessment of the eligibility of the action. Administrative checks may be carried out by members of the evaluation committee (including the secretary) or by one or more assessors.

If any of the requested information is missing or is incorrect, the application may be rejected on that sole basis and the application will not be evaluated further. However, if due to a clerical error on the part of the applicants, the applicants fail to submit evidence or to give a statement, the evaluation committee may, except in duly justified cases, ask the lead applicant to provide, within a set deadline, the missing information or clarify supporting documents. Such information or clarifications may not substantially change the proposal or alter the terms of the call. Once received, the evaluation committee may use its discretion in deciding whether it should be accepted, while ensuring equal treatment of proposals and proportionality. Any decision taken by the evaluation committee must be fully recorded and the evaluation report(s) shall give reasons (see Section 2.9.3.).

The contracting authority must keep proposals not considered for further evaluation.

If the members of the evaluation committee do not carry out the check themselves, the evaluation committee must review the conclusions of the assessor(s) using the completed grids. To facilitate the evaluation committee's review of the assessments, the secretary must ensure that one list is drawn up containing proposals that did not comply with the administrative checks. Reasons must be given for each entry on the list.

Following the opening session (where relevant), and the administrative checks, the evaluation committee meets to decide on any contentious case (including the eligibility of actions) and proceeds with the evaluation of the concept notes.

6.5.8.3 Evaluation of the concept note

Concept notes submitted within the deadline and that duly passed the administrative checks are then evaluated for the relevance and design of the action, using an evaluation grid (see Annex e5a³⁰⁵). The overall assessment is based on the scores obtained under each subheading, added up by heading. Note that it is also possible to comment and make observations per subheading. If the evaluation committee does not evaluate the concept notes itself, the final score is the arithmetical average of the scores given by the assessors. The completed evaluation grids for each concept note must be sent to the evaluation committee, if assessors are used.

Where the call for proposals is organised by a headquarters service of the European Commission and an European Union Delegation exceptionally participates as assessor in the evaluation of concept notes, each concept note is assessed by the European Union delegation in the country where the proposed action is to take place, for assessment on the basis of the same evaluation grid (see Annex e8). The completed evaluation grids for each full application must be sent to the evaluation committee.

The secretary then draws up a list of all the concept notes, ranked by score. As a first step, only the concept notes that receive a score of at least 30 points in the evaluation are considered for pre-selection. Concept notes that reach the above threshold will then be ranked by score. The highest scoring applications will be pre-selected until at least twice the available budget for the call for proposals is reached.

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

The evaluation report on step 1 (the opening session (where relevant), the administrative checks and the concept notes) is submitted to the contracting authority, which must then decide whether to accept the recommendations of the evaluation committee.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

In addition to the above, the contracting authority must then submit the evaluation report to the European Commission for prior authorisation.

Following the evaluation of the concept notes, the contracting authority informs all lead applicants in writing of the results of the evaluation and whether or not they passed the opening (where applicable) and administrative checks and shall invite the shortlisted lead applicants to submit a full application³⁰⁶. Under direct management, this letter is generated and sent via PROSPECT. In case of hand deliveries or applications received by post, PROSPECT sends the letter to the email addresses encoded. Lead applicants who did not provide an email address will be informed by post.

³⁰⁵ For direct management, the same grid is generated in PROSPECT.

³⁰⁶ For open procedures, following the assessment of the concept note by the evaluation committee, the contracting authority shall inform applicants whether their concept notes have been pre-selected and therefore, the full application will be evaluated.

6.5.8.4 Evaluation of the full applications

The opening session (indirect management and direct management in exceptional cases of paper submission) and administrative checks described above are also undertaken before the full application is evaluated³⁰⁷.

The quality of the full application is assessed using the evaluation grid (see Annex e5b³⁰⁸) containing the selection and award criteria. Comments are made for each subheading on the basis of the questions and criteria used for that heading. In addition, there must always be a check of consistency between budget items and the description of the action, and the eligibility of the costs proposed in the budget is checked by the committee. The overall assessment is based on the scores obtained under each subheading, added up by heading. If the evaluation committee does not evaluate the applications itself, the final score is the arithmetical average of the scores given by the assessors. For indirect management, the completed assessments for each proposal must be sent to the evaluation committee (for direct management they are available in PROSPECT).

Where the call for proposals is organised by a Headquarters service of the European Commission each full application will be allocated via PROSPECT to the European Union Delegation in the country where the proposed action is to take place, for an internal assessment on the basis of the same evaluation grid (see Annex e8)³⁰⁹. The completed evaluation grids for each full application must be sent to the evaluation committee.

Under direct management (members of) the evaluation committee or internal assessors evaluating the full applications may re-evaluate the scores given for the relevance at concept note stage and transferred to the full application. It is up to the evaluation committee to accept this new assessment or not.

Please note that the information assessed on the basis of the concept note may not be changed by the applicants in the full application except for the following: i) the contribution requested from the European Union for the action may not differ from the initial estimate by more than 20%. Should that requested contribution differ from the initial estimate, the difference between the European Union contribution and the total cost of the action must remain within the limits imposed by the guidelines for applicants; ii) the lead applicant may add, remove or replace one or more co-applicant(s) or affiliated entity (ies) only in duly justified cases; iii) the lead applicant may adjust the duration of the action if unforeseen circumstances outside the scope of the applicants have taken place following the submission of the concept note and require such adaptation (risk of action not being carried out). In such cases the duration must remain within the limits imposed by the guidelines for applicants. An explanation/justification of the relevant replacement/adjustment must be included in an accompanying letter or email³¹⁰.

The secretary then draws up a list of all the full applications, ranked by score. The highest scoring applications will be pre-selected until the available budget for this call for proposals is reached.

Under direct management, following the evaluation of the full applications, the contracting authority informs those lead applicants provisionally selected and those placed on the reserve list that the evaluation is ongoing.

³⁰⁷ For open procedures, there is no opening and administrative checks before the evaluation of the full application.

³⁰⁸ For direct management, the same grid is generated in PROSPECT.

³⁰⁹ This means that one of the assessors will be from the relevant European Union delegation.

³¹⁰ In case of direct management when PROSPECT is used in Annex a.2 – Instructions for drafting the Full Application, Section 2.1.1, point viii.

The notification letter is generated and sent via PROSPECT. In case of hand deliveries or applications received by post, PROSPECT sends the notification letter to the email addresses encoded. Lead applicants who did not provide an email address will be informed by post.

6.5.8.5 Final eligibility and supporting documents checks

This assessment is carried out using the declaration by the lead applicant, the required supporting documents and the criteria set out in the guidelines for applicants. Under no circumstances may assessors or members of the evaluation committee change the declaration.

- Is the declaration by the lead applicant in conformity with the supporting documents requested?

Any missing supporting document or any inconsistency between the declaration and the supporting documents is sufficient to reject the proposal. However, the evaluation committee may use its discretion in deciding whether the concerned applicants should be allowed to submit missing documents or correct the relevant information, having regard to the principles of equal treatment and proportionality. Any decision taken by the evaluation committee must be fully recorded and the reasons leading to this decision must be explained in the evaluation report(s) (see Section 2.9.3.).

- Eligibility: are the applicants (and any affiliated entity(ies)) eligible (including exclusion criteria)?

This is assessed according to the criteria set out in the guidelines for applicants.

The eligibility checks may be carried out by members of the evaluation committee or by assessors. Each proposal may be examined by one person only.

While the eligibility checks are usually carried out only for the provisionally selected applicants (including those on placed on the reserve list) at the end of the procedure, the evaluation committee may decide to check eligibility at any previous step in the procedure. In the interest of good administrative practice, the evaluation committee can check and then reject applicants at any stage of the evaluation if it is immediately obvious that the latter do not meet the eligibility criteria.

If the members of the evaluation committee do not carry out the assessment themselves, the evaluation committee must review the conclusions of the assessors using their completed grids. To facilitate the evaluation committee's review of the assessments, the secretary must ensure that one list containing the ineligible proposals is drawn up. Reasons must be given for the ineligibility of each entry on the list.

Finally, the evaluation committee checks that none of the successful applicants, including co-applicants or affiliated entities, are in an exclusion situation in the early detection and exclusion system nor in the lists of European Union restrictive measures (see Sections 2.4. and 2.6.10.) and includes the checklists in the evaluation report (in indirect management this must be checked with the EU delegation).

6.5.8.6 The evaluation committee's recommendations

The evaluation committee drafts its recommendations; in case assessors participate to the evaluation committee, such recommendations are drafted only after the assessors have examined all the applications. In this respect, the evaluation committee must not change the assessors' scores or recommendations and must not alter the evaluation grids

completed by the assessors.

The evaluation committee may decide to approve the ranking drawn up by the secretary on the basis of the assessors' report. If the evaluation committee does not accept the scores awarded by the assessors to an application (where for instance there is a significant difference or clear discrepancies between the scores awarded by the assessors), it must give reasons for this decision in the evaluation report. The committee then has to fill in a new evaluation grid (either collectively or by one of the voting members of the committee) for the proposal concerned. Such a re-evaluation may not be entrusted to external assessors. A new list will be produced on the basis of the scores from the new evaluation, which replace those given by the assessors. The new evaluation may also cover only one or more parts of the evaluation (for example, where the evaluation committee decides to re-evaluate only the relevance of the actions).

All such decisions must be recorded and fully substantiated in the evaluation report. The evaluation grids completed by the members of the evaluation committee must be kept with those completed by the assessors.

The evaluation committee's decisions are taken independently and in an advisory capacity. The evaluation committee must ultimately draw up a list of the applications selected for financing, indicating the score obtained by each application, the requested amount of the proposed grant and the proportion of the eligible costs proposed to be financed. The allocation of the final scores is a joint decision of the evaluation committee. However, the assessment of proposals may be split among the voting members. In this case, each concept note or full application must be assessed independently at least by two voting members³¹¹. The committee reserves the right to perform re-evaluations in duly substantiated cases. However, in the case of substantial discrepancies between the two assessments, the committee must re-evaluate the application concerned.

Subject to the following considerations, the list of the applications selected for financing is made up of the applications obtaining the best scores, ranked by order, within the limits of the funds available under the call for proposals.

- The evaluation committee may recommend the selection of an application under certain conditions that should be met prior to contract signature. Any such conditions, however, should not call into question the grant award decision or be contrary to the equal treatment of applicants (see Sections 6.3.6. and 2.5.2).
- The evaluation committee may decide not to allocate all the available funds if it finds that there are too few applications of the quality required to receive a grant. In other words, the mere availability of funds should not lead to the award of contracts for applications that do not reach the necessary level of quality.
- The evaluation committee may draw up a list by subject or geographical area according to the guidelines for applicants.
- The evaluation committee may reject an application if it has selected another that is of a similar nature but has been awarded a higher score.
- Where several applications submitted by the same lead applicant are selected for financing, but the lead applicant does not have the financial and operational capacity required to implement all the actions together, the committee may reject the applications that have been awarded a lower score, and select the applications

³¹¹ The foregoing is only relevant where no assessors are used. For the avoidance of doubt, neither the chairperson nor the secretary may assess concept notes/full applications.

that the lead applicant has the capacity to implement.

The evaluation committee may also draw up, in the same conditions, a ranked reserve list comprising a limited number of applications that obtained the best scores after those recommended for financing. This reserve list is valid for the period stated in the evaluation report. The applications included in that list are likely to receive a grant if funds become available under the call for proposals (if the eligible costs of the selected applications decrease, or it is impossible to sign a contract with the selected applicants, additional funds become available, etc.).

The final evaluation report, covering the eligibility checks, is drawn up following the final meeting of the evaluation committee. It must be signed by all members of the evaluation committee.

The evaluation committee may also decide not to recommend the award of any grant and thus cancel the procedure (see Section 6.5.9.).

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

The entire evaluation procedure of the full application and final eligibility check (step 2 and step 3) is recorded in an evaluation report to be signed by the chairperson, the secretary and all evaluators. This must be submitted to the contracting authority, which must decide whether or not to accept its recommendations.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

In addition to the above, the contracting authority must then submit the evaluation report and the recommendations of the contracting authority to the European Commission for authorisation.

If the contracting authority confirms that no modifications have been made (either in the special conditions or in the proposed contract annexes) to the standard contract conditions annexed to the guidelines for applicants, the European Commission's authorisation of the evaluation report, including the final list of grants to be awarded counts as a global endorsement of the corresponding contracts if such endorsement is required. The list must include all the information necessary to conclude the contracts (including the applicants' details, the maximum grant amount and the duration of the contract). No endorsement by the EU delegation is required in certain cases referred to in the practical guide to procedures for Programme Estimates.

Subject to the contracting authority's legislation on access to documents, the entire procedure, from the drawing-up of the call for proposals to the selection of successful applicants, is confidential. The evaluation committee's decisions are collective and its deliberations must remain secret. The evaluation committee members and assessors are bound to secrecy. If its law conflicts with the confidentiality required, the contracting authority must obtain prior authorisation from the European Commission before disclosing any information.

The evaluation report, in particular, is for official use only and may be divulged neither to applicants nor to any party outside the authorised services of the contracting authority, the European Commission and the supervisory authorities (e.g. the European Court of Auditors).

6.5.9 Cancelling the call for proposals

The contracting authority may decide not to award any grant, and thus 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 applications;
- the economic or technical data of the programme have been fundamentally altered;
- exceptional circumstances or force majeure render the normal implementation of the planned actions impossible;
- there have been irregularities in the procedure, in particular where these have prevented equal treatment (see Section 2.5.8.).

DIRECT MANAGEMENT

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

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

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

INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

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

In case of cancellation, applicants will not be entitled to compensation.

In case of cancellation, the contracting authority shall publish a cancellation notice (Annex e11b).

Under direct and indirect management when the call was published in PROSPECT, the contracting authority fills and uploads the cancellation notice in PROSPECT, so that the applicants can be automatically notified by the system.

In order to ensure broader publicity, the cancellation notice is also published through PROSPECT on the website where the call was published, website of DG International Partnerships or Funding and Tender opportunities website (F&T portal).

6.5.10 Award decision

See Section 2.10.1.

The award decision states the subject and overall amount of the decision, the approved evaluation report and, where appropriate, the grounds for the decision by the contracting authority to depart from the recommendations made by the evaluation committee in the report in respect of a particular application. The contracting authority shall sign the award decision (Annex e11a).

6.5.10.1 Notification to applicants

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH *EX POST* CONTROLS

The lead applicants will be informed in writing of the contracting authority's decision

concerning their application.

After the contracting authority has adopted the award decision, it notifies all successful lead applicants in writing that their applications have been selected.

Notifications to the successful lead applicants on the outcome of the evaluation of their applications must be provided within 6 months following the submission deadline of the full application. However, for complex actions (such as multi-beneficiaries calls or calls with a large number of proposals) or where there have been delays attributable to the applicants, the 6 months deadline can be extended.

Applicants placed on the reserve list shall also be informed.

Letters to successful lead applicants must be sent within 15 days of the award decision. Unsuccessful lead applicants must be informed that they have not been selected (including the reasons why they were unsuccessful) within 15 days of the above-mentioned notification to the successful lead applicants.

For the avoidance of doubt, please note that for applications rejected for reasons such as non-compliance with the admissibility requirements (for example, if the application was sent after the deadline), with the eligibility (the entity or person is not part of the predefined eligible population of entities or persons), the selection (the entity does not have financial capacity or professional or operational capacity) and the award criteria (the proposal does not comply with the predefined requirements such as quality, cost/efficiency), no prior adversarial procedure is required. Under direct management, this letter is generated and sent via PROSPECT. In case of hand deliveries or applications received by post, PROSPECT sends the letter to the email addresses encoded. Lead applicants who did not provide an email address will be informed by post.

INDIRECT MANAGEMENT WITH *EX ANTE* CONTROLS

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

6.5.10.2 Publicising the award of grants

See Section 2.10.4.2.

6.5.10.3 Contract preparation and signature

In preparing grant contracts for each of the successful applicants, the contracting authority must follow the steps outlined in Sections 2.10.2 and 2.10.3.

If the call for proposals was organised by a headquarters service of the European Commission a copy of all the documentation and information from the evaluation needed to draft and manage the contract, are sent to the European Union delegation in the country where the proposed action is to take place.

The budget proposed for the action by the successful applicants at the call for proposals stage must be corrected to remove any obvious arithmetical errors or ineligible costs prior to signing the contract. The description of the action is corrected accordingly if need be.

The contracting authority may decide that other clarifications or corrections may be made to the description of the action or to the budget in so far as they do not call into question the grant award decision, do not conflict with equal treatment of applicants, and:

- relate to matters clearly identified by the evaluation committee; or
- aim at taking into consideration changes that have occurred since the date of receipt

- of the proposal, or
- aim at removing all direct costs related to headquarters human resources, except for the costs incurred by such staff:
 - when on mission at the place of execution of the action or
 - when, due to the functional organisation of the action, there is no project office at the place of execution of the action, or
 - when they concern tasks necessary to achieve the operational objectives of the action: such tasks must be planned as operational activities in the description of the action.

These amendments cannot lead to an increase in either the amount of the grant or the percentage of the European Union contribution as set in the guidelines of the call for proposals. In this respect, records of the contacts with the applicants must be kept on the file.

In no case the conditions announced in the guidelines can be altered at this stage. Apart from the above-mentioned clarifications and/or corrections, any other alteration of the initial proposal or deviation from the award conditions laid down in the guidelines is strictly prohibited.

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

In direct management, the signing of a grant contract with an applicant must take place within 3 months from the notification of the award decision. However, in exceptional circumstances, in particular in case of complex actions (such as multi-beneficiaries calls or, in case of calls with a large number of proposals) or where there have been delays attributable to the applicants, this rule should not be applied.

6.5.10.4 Use of reserve lists

Once all possible contracts have been signed with successful applicants, it may be the case that some funds remain available under the budget of the call for proposals. It may even be the case that additional funds are added while the reserve list is still valid.

In these cases, the procedure for signing additional contracts from the reserve list will be:

1. If the funds still available suffice to finance the requested European Union contribution from the first runner on the reserve list, the provisions above regarding the notification and contract preparation/signature are followed. In order to verify whether the funds are enough, the arithmetical errors and potential ineligible costs must have been taken into consideration as they may lead to a reduction of the budget.
2. If the funds available do not suffice, this same applicant will be offered the possibility to increase its co-financing in order to bridge the gap. If the applicant is able to do so (please note that, as a result of this exercise, the percentage of eligible costs must remain within the authorised co-financing rules set by the guidelines of the concerned call), the contract will be signed in line with the instructions in this chapter. In the case that no additional funds can be secured by the applicant, or in case that the new percentage of co-financing is not compliant with the guidelines for applicants, no contract will be signed and the second runner in the list will be contacted, and the same approach is followed (availability of funds to finance the action after correction of potential arithmetical errors or ineligible expenditure,

possibility is given to increase their contribution if the remaining funds cannot cover the requested European Union financing, etc.).

In case of proposals making use of both costs-based and financing not linked to costs budgets, since the co-financing rule is not mandatory, the applicant will be offered the possibility to increase its co-financing but the financing not linked to costs component of the proposal will remain unchanged.

In case of proposals making use of full financing not linked to costs (no cost-based component), only the first ranked proposal will be offered the possibility to use the remaining funds and only if their contribution proposal is equal or less than the available funds. Therefore, if there is available budget to finance a proposal ranked lower in the reserve list while this budget is not sufficient to finance a proposal ranked higher in the reserve list, the lower ranked proposal cannot be financed.

If needed, the same will be done with the subsequent applicants on the reserve list (3rd, 4th, etc.).

Under no circumstances will applicants be requested to reduce or amend their actions (apart from the possible corrections and clarifications explained in this chapter) in order to make them fit the available European Union financing, since this would entail a negotiation and an alteration of the proposal.

This procedure may lead to situations where lower ranked proposals are finally awarded a grant instead of higher ranked ones. For the sake of transparency and equal treatment, it is important to keep a record of all communications with the applicants when following the above-described process.

6.5.11 Characteristics of the standard grant contract

Grants are subject to a written agreement (standard grant contract) concluded with the beneficiary³¹².

If awarded the grant contract, the applicants will become the grant beneficiary(ies) and party(ies) to the grant contract. In particular, the lead applicant will become the beneficiary identified in Annex e3h1 (special conditions) as the coordinator.

- i. The coordinator is the main interlocutor of the contracting authority. It represents and acts on behalf of any other beneficiary (if any) and coordinates the design and implementation of the action.
- ii. The costs eligible for financing are the costs incurred by the grant beneficiary (or beneficiaries in case of multi-beneficiary grants) or the amounts agreed for grants making use of financing not linked to costs. Costs incurred by affiliated entities to a beneficiary may also be accepted as eligible costs.
- iii. The standard grant contract recognises the beneficiary's independence of action and lays down simplified management rules accordingly. In particular, it allows the coordinator to adapt or modify the action without the prior consent of the contracting authority provided that the modifications are not substantial (i.e. they do not put into question the conditions of award of the contract) and do not result in a change of

³¹² Please note that legal commitments for grants implementing the budget under the Multiannual Financial Framework 2014-2020 may continue to take form of grant decisions. The provisions of Title VIII of FR applicable to grant contracts shall apply mutatis mutandis to grant decisions (Article 277(4)).

more or less than 25% to any budget heading. Please note that for grant contracts making use of financing not linked to costs, there are restrictions as regards transfers between headings.

- iv. 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.
- v. Unless otherwise requested or agreed by the European Commission, the grant beneficiary must take the necessary measures to ensure the visibility of the Union financing or contribution (see Section 2.5.3.).

For grant contracts with a financing not linked to costs component it is important to note that:

- i. Eligibility and financial verification of costs does not apply. In this case, the grant is paid against fulfilment of conditions or achievement of results measured by reference to previously set performance indicators.
- ii. The budget and the logframe should clearly identify the indicators and their related targets and values. The value assigned to each indicator must be calculated including the risk of changes in the market prices.
- iii. The grant contract will define the modalities for the assessment of the results claimed to be achieved by the beneficiary in the progress and final reports (like a third party assessment). If no third party assessment is required progress and final reports will form the evidence against which payments will be validated, hence it is expected that progress reports will include adequate description of the results achieved. Any relevant data sources that can enable validating the achievement of the results should be provided by the beneficiary.

6.6 Specific cases

6.6.1 Low value grants and very low value grants

Low value grants are those grants that are lower than or equal to EUR 60 000.

In this case, specific simplifications apply:

1. No supporting documents to demonstrate financial capacity are requested.
2. The pre-financing guarantee may not be asked.
3. Record keeping obligations (accounting records and supporting documents) is reduced to 3 years after the payment of the balance.
4. Obligation to inform the contracting authority of any change in their postal and electronic addresses is reduced to 3 years after the payment of the balance.
5. The no-profit rule does not apply.
6. The obligation to submit the SEA-H questionnaire does not apply.

Very low value grants are those grants that are lower or equal to EUR 15 000 the following additional simplifications apply:

1. No evaluation of the financial capacity shall be carried out³¹³.
2. No obligation to submit a declaration on honour on exclusion and selection criteria³¹⁴.

6.6.2 Operating grants

Operating grants finance the functioning of a body which has an objective forming part of, and supporting, a European Union policy.

Considering their nature, operating grants are always mono-beneficiary and each beneficiary may not get more than one operating grant for a given financial year. The duration of an operating grant may not exceed 12 months.

The contract for an operating grant must be awarded within 4 months from the start of the beneficiary's financial year. Costs eligible for financing may not have been incurred before the grant application was submitted nor before the start of the beneficiary's financial year, in compliance with the principle of non-retroactivity.

6.7 Modifying grant contracts

6.7.1 General principles

See Sections 2.11.1. and 2.11.3.

For more detailed information, see section 19.2.9. of the users' guide on the implementation of the grant contracts in the INTPA Companion.

6.7.2 Preparing an addendum

See Section 2.11.4.

6.8 Award of contracts & financial support to third parties by grant beneficiaries

6.8.1 Award of contracts

Where implementation of the action requires the beneficiary(ies) and its affiliated entity(ies) (if any) to award procurement contracts, those contracts must be awarded in accordance with Annex IV to the standard grant contract. Should the grant beneficiary fail to comply with Annex IV, the related expenditures will not be eligible for European Union / EDF financing. Beneficiaries/affiliated entities may not award any procurement contract to other beneficiaries/affiliated entities, or other actors involved (recipients of financial support, associates).

In this context, a distinction should be made between awarding implementation contracts and subcontracting:

- Subcontracting: Subcontracting is the implementation, by a third party with which

³¹³ See Section 6.5.3.2.

³¹⁴ See Section 6.5.8.5.

one or more beneficiaries have concluded a procurement contract, of specific tasks forming part of the action as described in annex to the grant contract (see also the general terms and conditions in the model grant contract). In such a case, part of the action are not implemented by the beneficiaries but by the subcontractors. The beneficiaries remain liable for the subcontracted tasks. Subcontracting cannot cover core tasks of the action.

- Implementation contracts: implementation contracts relate to the acquisition by beneficiaries of routine services and/or necessary goods and equipment as part of their project management; they do not cover any outsourcing of tasks forming part of the action that are described in the proposal, i.e. in the description of the action annexed to the grant contract.

Any procurement (subcontracting or not) must respect the rules specified in Annex IV of the grant contract.

6.8.2 Financial support to third parties by grant beneficiaries

If the action requires financial support to be given to third parties³¹⁵, it may be given on condition that:

- Before awarding the grant, the contracting authority has verified that the grant beneficiary offers appropriate guarantees as regards the recovery of amounts due to the European Commission. This is due to the fact that the grant beneficiaries remain financially responsible vis-à-vis the contracting authority for the correct use of the financial support.
- The following conditions for giving such support are strictly defined in the grant contract to avoid the exercise of discretion by the grant beneficiary. By default, the applicants will include this information in their applications:

- a. The objectives and results to be obtained with the financial support.
- b. The different types of activities eligible for financial support, on the basis of a fixed list.

Where no specific activities are supported (e.g. unconditional cash transfers to refugees to support their living or to human right defenders to support their work in general) this must also be specified. In this case, the grant beneficiary does not have to demonstrate that the financial support has been used by the recipients of financial support for a specific purpose.

- c. The types of persons or categories of persons that may receive financial support.

The contracting authority has to include any restrictions on nationality in the guidelines for applicants.

- d. The criteria for selecting these entities and giving the financial support.

Where the contracting authority wants to ensure that the beneficiary complies with certain principles and/or procedures justified by the specifics of a call (e.g. where large amounts will be redistributed through calls for proposals), this should be set forth in the guidelines for applicants. For

³¹⁵ Article 207 FR.

example, the guidelines could foresee that, when launching calls for proposals for the award of financial support, beneficiaries may use their own procedures provided these procedures comply with the principles of proportionality, sound financial management, equal treatment and non-discrimination, ensure transparency with adequate publication of calls for proposals and prevent conflict of interests throughout the entire award procedure.

- e. The criteria for determining the exact amount of financial support for each third entity.

Where the contracting authority wants to ensure that the financial support should be based e.g. on costs actually incurred or comply with the no-profit-principle this needs to be specified in the guidelines for applicants.

- f. The maximum amount that may be given.

The maximum amount of financial support that can be paid must not exceed EUR 60 000 per third party, except where achieving the objectives of the actions would otherwise be impossible or overly difficult. If the threshold of EUR 60 000 is exceeded, this needs to be registered as an event to be reported. In that case, no limits apply³¹⁶.

Where the contracting authority wants to apply a total ceiling for the giving of financial support (i.e. the available envelope for the applicants in this regard), this needs to be specified in the guidelines for applicants.

Applicants may also be invited in the guidelines for applicants to propose the necessary documents to be kept by third parties to demonstrate that the financial support has been used in accordance with the grant contract.

In the current context where grants of a large amount are encouraged to avoid the multiplication of small contracts, financial support to third parties can be an effective way to fund grass-roots organisations or local authorities, within the above described limits.

For the avoidance of doubt, rules on financial support apply only where a beneficiary provides this support to a third party. The criteria above do not need to be complied with when funds are provided to co-beneficiaries or affiliated entities.

6.9 Grants to organisations whose pillars have been positively assessed, (other) international organisations and national bodies

6.9.1 Grants to organisations whose pillars have been positively assessed by the European Commission

If the beneficiary of a grant (i.e. the coordinator in a multi-beneficiary contract) is an organisation whose pillars have been positively assessed by the European Commission, this organisation will not sign a grant contract but a contribution agreement based on the related template.

However, the template of the contribution agreement will need to take into consideration standard templates published with the call for proposals, i.e. the budget (Annex B) and the

³¹⁶ Under the initial 10th (and previous) EDF Financial Regulation, financial support could not be the primary aim of the action.

logical framework (Annex C)³¹⁷ which is to be included in the description of the action. The description of the action (Annex I to the contribution agreement) will be drawn from the application form submitted by the organisation³¹⁸.

Where the lead applicant is not a pillar assessed organisation but one or more co-applicant are international organisations whose pillars have been positively assessed, the standard grant contract will be signed. In this case, additional provisions of Annex e3h11 will be incorporated under Article 7 of the special conditions.

Please note that in case of direct award of a grant, it is possible to accept simplified cost options embedded in the cost accounting practices of the pillar assessed entity if this has been positively assessed by an independent external auditor (see Section 6.3.3.), in accordance with the methodology adopted by the European Commission and with its prior agreement.

6.9.2 Grants to other international organisations (non - pillar assessed)

An international organisation whose pillars have not been positively assessed by the European Commission will sign a standard grant contract in all cases. However, some provisions of Annex e3h11 (see Annex e3h11 for details) also need to be included in the special conditions.

As per Article 159 FR, 'international organisation' means an international public-sector organisation set up by international agreement, and specialised agencies set up by such organisations — these organisations may have a worldwide or regional scope. Entities created under national law are not international organisations (e.g. a national NGO with several regional or country offices).

Organisations such as the United Nations and its agencies and specialised entities, the World Bank, the Organisation for Economic Cooperation and Development, the World Trade Organisation, the International Monetary Fund, the Organisation for Security and Cooperation in Europe, the European Bank for Reconstruction and Development and the International Organisation for Migration clearly fall under the definition of 'international organisation'. In cases of doubt, to ascertain whether an organisation is covered by the definition, the nature of the organisation must be determined mainly on the basis of its legal founding documents (for instance, its statutes and/or the intergovernmental agreement setting it up).

While the European Commission may assimilate other non-profit organisations to international organisations, this is not relevant for grants. Thus, a non-profit organisation assimilated by the European Commission under Article 159(3) is not regarded as an international organisation under a grant award procedure.

³¹⁷ For direct awards (direct award by contracting authorities from Partner Countries or duly substantiated and exceptional cases where direct award is justified - see Section 6.4.4.), the organisation and the contracting authority may agree to use other budget and financial report templates (e.g. the templates of the organisation) as long as these templates comply with the provisions of the contribution agreement.

³¹⁸ Where the contribution agreement results from a call for proposals, the template for financial reports attached to the practical guide (Annex e3h7) has to be used. Where the contribution agreement results from a direct award (direct award by contracting authorities from Partner Countries or duly substantiated and exceptional cases where direct award is justified -see Section 6.4.4.-), the organisation and the contracting authority may agree to use different budget and financial report templates as long as these templates comply with the provisions of the contribution agreement. For the narrative reports, the organisation may use its own templates as long as these templates comply with the relevant provisions of the contribution agreement.

6.9.3 Grants awarded to (other) national public bodies from Member States or third donor countries

Grants awarded to national public bodies from Member States or third donor countries **whose pillars have not been positively assessed** by the European Commission must follow the normal grant rules and procedures set out in this chapter and the standard grant contract will be signed. However, national public bodies may benefit from special rules applicable to public-sector bodies (for instance, being exempted from submitting a financial guarantee, or in some cases providing supporting evidence for financial capacity).

6.9.4 Grants to national public bodies from a partner country

Where a public body from a partner country successfully participates in a call for proposals, it will implement the action by way of a grant and the standard grant contract will be signed³¹⁹.

Where a public body from a partner country implements an action outside the scope of a call for proposals the applicable modality depends on the concrete action:

1. If the activities to be implemented by the public body with its own resources/staff are envisaged as a stand-alone project (i.e. not involving budget implementation tasks) the public body will sign the standard grant contract. In these cases, a direct award is always justified due to the monopoly situation of the beneficiary³²⁰. Such activities may also include the award of contracts but only to supplement the activities to be implemented by the staff of the public body.
2. It is possible to have grants that take the form of financing not linked to costs (partial or totally).
3. Where the financial contribution of the European Union aims at supporting the running costs of a ministry, such support will be provided by way of an operating grant. Again, the ministry may award contracts in line with the relevant provisions of the grant contract. The aforementioned support to a ministry must not be confused with support to the implementing structure of a project under a programme estimate. In the latter case, the European Union contribution supports the body in managing budget implementation tasks (not the running costs) and will be provided as part of the programme estimate under the financing agreement with the partner country(ies)³²¹.
4. If the activities to be implemented by the public body are part of a larger project or programme involving also budget implementation tasks the public body will implement the activities under a programme estimate³²².

³¹⁹ Note that before the entry into force of the 2015 practical guide, public bodies from partner countries that were part of the national government did in general not implement actions by way of a grant but under a financing agreement with the relevant partner country.

³²⁰ Note that a prior approval must still be requested.

³²¹ Note that the support to the running costs of the ministry will be included in a programme estimate, if the relevant financing agreement foresees also the award and management of procurement contracts and/or grants.

³²² Some of these activities may be performed as direct labour. For further information on programme estimates, please consult the practical guide for programme estimates.

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e3f	Annex E	Not applicable
e3h1	Annex G – Standard grant contract (special conditions)	e3h1_specond_en.docx
e3h2	Annex G – Annex II – General conditions	e3h2_gencond_en.pdf
e3h3	Annex G – Annex IV – Procurement rules for beneficiaries	e3h3_awardproc_en.docx
e3h4	Annex G – Annex V – Standard request for payment	e3h4_requestpay_en.docx
e3h5	Annex G – Annex VI (1) – Model narrative and financial report (Interim narrative report)	e3h5_interreport_en.docx
e3h6	Annex G – Annex VI (2) – Model narrative and financial report (Final	e3h6_finalreport_en.docx

	narrative report)	
e3h7a	Annex G – Annex VI (3) – Model narrative and financial report for cost-based actions (Financial report)	e3h7a_financialreport_costsbased_en.xlsx
e3h7b	Annex G – Annex VI (3) – Model narrative and financial report for hybrid actions (Financial report)	e3h7b_financialreport_hybrid_en.xlsx
e3h7c	Annex G – Annex VI (3) – Model narrative and financial report for FNLC actions (Financial report)	e3h7c_financialreport_FNLC_en.xlsx
e3h8a	Annex G – Annex VII-A – Expenditure verification: terms of reference and report of factual findings (Annex VII)	e3h8a_expendverif_en.docx
e3h8b	Annex G – Annex VII-A – Expenditure verification: table of transactions and table of errors (Annex VII)	e3h8b_expendverif_en.xlsx
e3h8c	Annex G – Annex VII-B – Third party assessment: terms of reference for assessors	e3h8c_torsTPA_en.docx
e3h9	Annex G – Annex VIII – Model financial guarantee	e3h9_finguarantee_en.docx
e3h10	Annex G – Annex IX - Standard template for transfer of ownership of assets	e3h10_transferassetsownership_en.docx
e3h11	Derogations international organisations/pillar assessed entities	e3h11_derogations_ios_PA_entities_en.docx
e4a	Terms of reference for assessors	e4a_torassessors_en.docx
e4b	Guidelines for assessors	e4b_guidelinesassessors_en.docx
e5a	Concept note evaluation grid	e5a_conceptevalgrid_en.docx

e5b	Evaluation grid full application form	e5b_propevalgrid_en.docx
e6a	Evaluation report step 1 — Opening and & administrative checks and concept note evaluation (indirect management)	e6a_opening_conceptevalrep_en.docx
e6b	Evaluation report steps 2 and 3 — Full application evaluation (indirect management)	e6b_aplicevalrep_steps_2_and_3_en.docx
e8	Letter to delegation evaluation	e8_note_delegation_evaluation_en.docx
e9a	Letter step 1 (indirect management)	e9a_letter_step_1_en.docx
e9b	Letter steps 2 and 3 (indirect management)	e9b_letter_steps_2_and_3_indirect_management_en.docx
e10	Addendum to contract	e10_addendum_to_contract_en.docx
e11a	Award decision	e11a_award_decision_en.docx
e11b	Cancellation notice	e11b_cancellation_notice_en.docx
e12a	Financial Framework partnership agreement	e12a_FFPA_en.docx
e13	Annex F – PADOR offline registration form	e13_organisation_data_form_offline_en.pdf
e14	Annex L – Self-evaluation questionnaire on SEA-H	e14_selfevaluation_questionnaire_on_SEAH_en.docx