

European Commission
Directorate-General for Development
and Cooperation - EuropeAid

PRocurement And Grants
for European Union external actions
A Practical Guide

TABLE OF CONTENTS

2. BASIC RULES.....	4
2.1. Overview	4
2.2. Management modes#Direct management;Indirect management;Ex-ante control;Ex-post control;Management modes – general;Shared management	4
2.3. Participation in award procedures, exclusion criteria and other essentials.....	9
2.3.1. The rules on nationality and origin#Nationality of experts;Nationality of subcontractors;Rule on nationality – general;Rule on origin of supplies and material	9
2.3.2. Derogations from the rules on nationality and origin	16
2.3.3. Exclusion criteria#Exclusion criteria.....	17
2.3.4. Regulatory penalties: administrative and financial penalties	22
2.3.5. Visibility#Visibility	24
2.3.6. Other essential points#Retroactivity;Conflict of Interest;Addendum - retroactivity	24
2.4. Procurement procedures#Call for tender	27
2.4.1. Which procurement procedure to apply?#Procurement procedures – general;Procurement thresholds	27
2.4.2. Open procedure#Open procedure - general	28
2.4.3. Restricted procedure#International restricted procedure – general;Restricted procedure - general	28
2.4.4. Competitive negotiated procedure#Competitive negotiated procedure - general..	29
2.4.5. Framework contracts#Framework contracts - general	29
2.4.6. Dynamic purchasing system#Dynamic purchasing system - general.....	30
2.4.7. Competitive dialogue#Competitive Dialogue - general	30
2.4.8. Negotiated procedure/single tender procedure#Negotiated procedure – general;Single tender - general	31
2.4.9. Fair and transparent competition	33
2.4.10. Preferences (EDF only) #Preference rules - general	33
2.4.11. Selection and award criteria	34
2.4.11.1. Selection criteria.....	34
2.4.11.1.1. General principles.....	34
2.4.11.1.2. Verifying the financial and economic capacity of candidates or tenderers	36
2.4.11.1.3. Verifying the technical and professional capacity of candidates or tenderers	36
2.4.11.2. Award criteria	38
2.4.12. Procedure with a ‘suspension clause’#Suspensive clause	38
2.4.13. Cancellation of procurement procedures#Cancellation of procedures	39
2.4.14. Ethics clauses#Ethic clauses.....	40
2.4.15. Legal remedies#Appeals;European Ombudsman.....	43
2.4.15.1. Complaints to the contracting authority	43
2.4.15.2. Complaints to the European Ombudsman	44

Deleted: 998

Deleted: 171716

Deleted: 222120

Deleted: 242220

Deleted: 242221

Deleted: 272423

Deleted: 272423

Deleted: 282524

Deleted: 282624

Deleted: 292725

Deleted: 302725

Deleted: 302726

Deleted: 302826

Deleted: 312927

Deleted: 333028

Deleted: 333028

Deleted: 343129

Deleted: 343230

Deleted: 343230

Deleted: 363431

Deleted: 363432

Deleted: 383633

Deleted: 383634

Deleted: 393735

Deleted: 413836

Deleted: 434139

Deleted: 434139

Deleted: 444239

Deleted: July

Deleted: 2015

Deleted: 59

2.4.15.3. Ordinary Actions	44	Deleted: 444239
2.5. Contract value.....	45	Deleted: 454340
2.6. Terms of reference and technical specifications#Technical specifications – general;Terms of Reference – general;Expenditure verification report - services	45	Deleted: 454340
2.7. Conciliation and arbitration procedures	46	Deleted: 464441
2.8. The Evaluation Committee#Evaluation committee - general.....	47	Deleted: 474542
2.8.1. Appointment and Composition#Observers	47	Deleted: 474542
2.8.2. Impartiality and confidentiality#Statement of impartiality and confidentiality	48	Deleted: 484643
2.8.3. Responsibilities of Evaluation Committee members.....	49	Deleted: 494744
2.8.4. Timetable.....	50	Deleted: 504845
2.8.5. Period of validity of tenders	50	Deleted: 504845
2.9. Award of the contract (except for service contracts, see chapter 3).....	51	Deleted: 514946
2.9.1. Notifying the successful tenderer	51	Deleted: 514946
2.9.2. Contract preparation and signature	51	Deleted: 514946
2.9.3. Publicising the award of the contract#Award notice - general	53	Deleted: 535148
2.9.3.1. Procurements	53	Deleted: 535148
2.9.3.2. Grants	54	Deleted: 545249
2.10. Modifying contracts	54	Deleted: 545249
2.10.1. General principles.....	54	Deleted: 545249
2.10.2. Preparing an addendum#Addendum - general	57	Deleted: 565451
2.11. List of Annexes	58	Deleted: 585653

Deleted: July

Deleted: 2015

Deleted: 59

2. Basic rules

2.1. Overview

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

Deleted: value for money

Procedures established by the European Commission for procurement and award of grants under the relevant EU external aid programmes are consolidated in this Practical Guide. Any deviation from this Practical Guide and its annexes requires either a derogation or an exception from the relevant European Commission services in accordance with internal rules.

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

2.2. Management modes#Direct management;Indirect management;Ex-ante control;Ex-post control;Management modes – general;Shared management

Procurement or grant award procedures for projects financed under EU external aid programmes vary according to the different arrangements for managing the project (referred to as 'management modes').

The EU Financial Regulation¹ and its Rules of Application² in force since 01/01/2013 introduced important changes in the existing management modes. The changes entered into force on 01/01/2014. They also apply to the EDF.

The notion of management modes remains the same. They are different ways to implement the EU budget or the EDF funds, depending on the variable level of implication of the European Commission in its implementation. This is attained through the delegation of a number of budget implementation tasks (such as conclusion of contracts, their operational and financial management, audit, evaluation, etc.).

¹ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25/10/2012, as amended by Regulation (EU, Euratom) No 2015/1929 of 28 October 2015.

² Commission Delegated Regulation (EU) No 1268/2012 of 29/10/2012, as amended by Commission Delegated Regulation (EU) No 2462/2015 of 30 October 2015.

Deleted: July

Deleted: 2015

Deleted: 59

The former management modes (centralised³, decentralised, joint and shared) have been streamlined to just three:

- 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 European executive agencies.

Therefore, the European Commission or the European executive agency is the contracting authority and takes decisions on behalf and for the account of the partner countries. In such cases, references in this Practical Guide to the ‘contracting authority’ refer actually to the European Commission (or where the case may be to an EU executive agency), acting on behalf and for the account of the partner countries.

Deviations from standard procedures (exceptions/derogations) and prior approvals/events to be reported laid down in the Practical Guide are allowed in compliance with internal procedures.

- Indirect management:

Under indirect management, the European Commission entrusts budget implementation tasks to:

- partner countries (or to bodies designated by them)
- international organisations
- development agencies of EU Member States
- other bodies⁴.

This Practical Guide focuses on the first case, when the European Commission entrusts the budget implementation tasks to partner countries⁵.

It applies mutatis mutandis in those rare cases where international organisations, development agencies or other bodies must use EU contracting procedures.

Two modalities are possible under indirect management with partner countries:

- *Indirect management with ex-ante controls:* Decisions on the procurement and award of contracts are taken by the partner country, which acts as the contracting authority, following prior authorisation of the European Commission. This prior authorisation can encompass in some cases and only for specific commitments, a deviation from standard procedures (exception/derogation) or prior approval/event to be reported. Deviations, prior approvals and events to be reported are processed internally by the European Commission.
- *Indirect management with ex-post controls:* decisions provided for in the financing agreement

³ Centralised management had two variants, direct centralised (where the European Commission was the contracting authority and took decisions for the partner country and EU delegations) and indirect centralised (where some budget implementation tasks were delegated to a national body, usually development agencies, which thus became the contracting authority).

⁴ Please refer to Article 58.1.(c) of the FR for a detailed list of cases.

⁵ Please note that the European Commission usually undertakes directly activities such as evaluation and audits even under indirect management with partner countries.

are taken by the partner country, which acts as the contracting authority without prior authorisation by the European Commission. However, deviations from the standard procedures laid down in the PRAG require an authorisation by the European Commission. The different ex-ante and ex-post control procedures are explained throughout this Practical Guide.

- **Shared management :**

The European Commission delegates implementation tasks to the EU Member States. 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 under the European Neighbourhood Instrument, ENI, or the Pre-accession Assistance, IPA II).

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

Important: For some time there will be an overlap between the new management modes and the former ones (as it will be the case for Financing Agreements signed before 2014 making reference to the former management modes). For the sake of clarity, in this Practical Guide reference is made solely to the management modes in force as from 01/01/2014 described above in this chapter. However, in the case of on-going actions under the former management modes, the explanations in this Practical Guide remain valid using the following equivalences (just for the management modes described in this Practical Guide):

FORMER MANAGEMENT MODES

NEW MANAGEMENT MODES

(in force as from 01/01/2014)

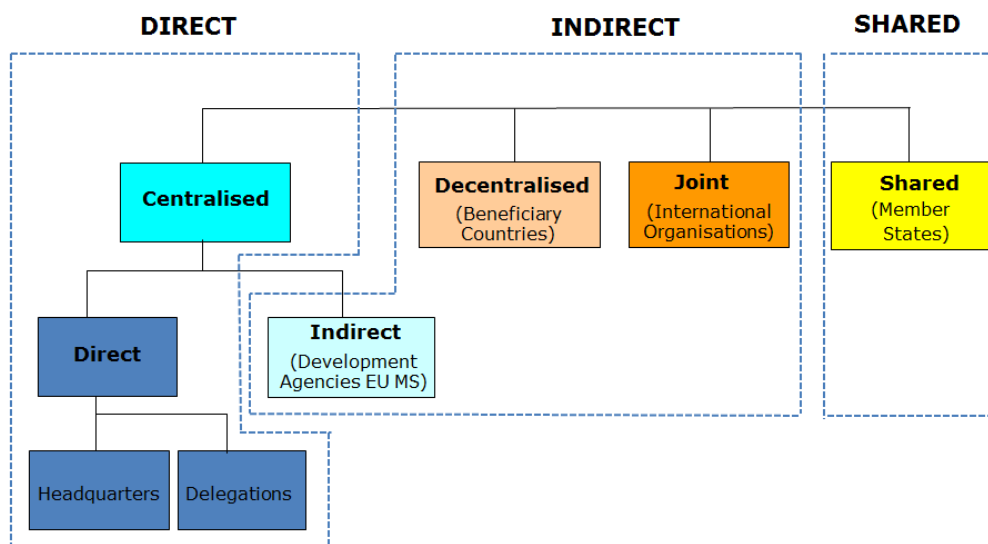
DIRECT CENTRALISED MANAGEMENT	DIRECT MANAGEMENT
DECENTRALISED MANAGEMENT with EX-ANTE CONTROLS	INDIRECT MANAGEMENT with EX-ANTE CONTROL
DECENTRALISED MANAGEMENT WITH EX-POST CONTROLS	INDIRECT MANAGEMENT with EX-POST CONTROL

Deleted: July

Deleted: 2015

Deleted: 59

Management Modes (previous vs 2014 ones)



----- Management modes in force from 01/01/2014

Important points with regard to indirect management:

In most cases, this Practical Guide applies in (i) direct and (ii) indirect management with partner countries⁶. Note, however, that the European Commission may, in some specific cases, allow partner countries to use other procedures depending on prior positive assessment of such procedures.

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 is ineligible for EU financing. The European Commission's intervention is limited to checking whether the conditions for EU financing have been met.

In no case will intervention aim at compromising the principle according to which these contracts are national contracts drafted and concluded only by the contracting authority from the partner country. Tenderers, candidates and applicants for these contracts 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

Deleted: U

⁶ Financial procedures under indirect management with partner countries (i.e. payments) are set out in the Practical Guide to procedures for Programme Estimates.

Deleted: July

Deleted: 2015

Deleted: 59

full responsibility for its actions and will be accountable for those actions in any subsequent audit or other investigation.

The box below summarises the control procedures that the European Commission must follow for each management mode.

DIRECT MANAGEMENT:

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

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 or call for proposal file) to the European Commission for approval. The European Commission verifies that they have been drafted in accordance with the procedures and templates laid down in this Practical Guide (or whatever procedure the European Commission decides must be used). The contracting authority is then responsible for drawing up shortlists (restricted procedures), issuing the calls for tenders and calls for proposals, receiving applications, tenders and proposals, chairing evaluation committees and deciding on the results of the procedure. Before signing contracts, the contracting authority submits the result of the evaluations 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 them⁷.

The European Commission must always be invited when applications and tenders are opened and evaluated and a European Commission representative should, as a rule, attend as an observer in all or part of the evaluation committee meetings. The European Commission pays particular attention to potential conflicts of interests.

The contracting authority must submit all relevant notices in electronic form to the European Commission for publication (See annex A11e), with the exception of the cases referred to in the Practical Guide for Programme Estimates.

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

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 draws up shortlists (restricted procedures) and is responsible for issuing invitations to tender, receiving tenders, chairing the evaluation committees, deciding on the results of the procedures and signing the contracts

Deleted: a

⁷ 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.

Deleted: July

Deleted: 2015

Deleted: 59

without the prior authorisation of the European Commission. The contracting authority must submit all relevant notices in electronic form to the European Commission for publication (See annex A11e).

SHARED MANAGEMENT AND INDIRECT MANAGEMENT WITH ENTITIES OTHER THAN PARTNER COUNTRIES:

In these cases, the delegated entity (e.g. a national agency or international organisation) concludes contracts with third parties.

The delegated entity procedures generally apply.

That delegated entity is responsible for publishing the relevant notices. Therefore those notices are published neither on the EU Official Journal nor on the EuropeAid Website.

The European Commission may verify the procedure ex post, regardless of whether the European Commission has carried out a prior 'pillar assessment' of the delegated entity.

2.3. Participation in award procedures, exclusion criteria and other essentials

Participation in procedures awarding grants and contracts financed under EU external assistance (including EDF) is governed by rules on nationality and origin, as well as non-exclusion.

2.3.1. The rules on nationality and origin#Nationality of experts;Nationality of subcontractors;Rule on nationality – general;Rule on origin of supplies and material

For each external financial instrument (including EDF), specific rules on nationality and origin may apply. These rules can be found in the following legal acts:

External financial instruments financed from the Budget: As from 15 March 2014, the rules on nationality and origin laid down in the CIR apply to all calls for proposals and tenders launched under these instruments. This includes also award procedures launched after 15 March 2014 under the previous external financial instruments, with the exception of calls for proposals and tenders under IPA I or procedures launched under financing decisions or financing agreements expressly setting out different rules (ie.: other than the standard reference to the basic act). In the latter case, the different rules can be reconstructed by using the previous versions of the PRAG applicable at the time of adopting the financing decisions or of signing the financing agreement.

EDF: As from 20 June 2014, the rules on nationality and origin laid down in Decision No 1/2014 regarding the revision of Annex IV to the Cotonou Agreement apply to all calls for proposals and tenders launched under the EDF.

OCTs: Regarding OCTs, from the entering into force of Decision 2013/755/EU of 25 November 2013, specific rules on nationality and origin apply to grant and procurement procedures.

For each external financing instrument, the countries corresponding to the rules on nationality and origin are listed in [Annex A2a](#) to this Practical Guide.

- Rule on nationality

BUDGET-FUNDED PROGRAMMES

Subject to other specific rules set out in the applicable financing decisions or financing agreements, for all EU budget-funded programmes, except IPA I, the CIR applies. This regulation aligned nationality rules to a very large extent for DCI, ENI and PI. The same eligibility rules apply to INSC via reference made by the latter regulation, while IPA II remains more restrictive and EIDHR and I₂SP are fully untied. Common core rules and particularities introduced in the CIR are presented in detail below:

Participation in procedures for the awarding of contracts or grants is open to international organisations and to all natural persons who are nationals of, and legal persons which are effectively established in:

- a Member State of the European Union;
- a Member State of the European Economic Area;
- a beneficiary of the Instrument for Pre-Accession Assistance II,
- overseas countries and territories covered by Council Decision 2001/822/EC, as amended
- Developing countries and territories as included in the OECD-DAC list of ODA recipients, which are not members of the G-20 group;
- Developing countries, as included in the OECD-DAC list of ODA recipients, which are members of the G20 group, and any other countries and territories, when they are beneficiaries of the action financed by the Union under the Instruments concerned;
- another third country, based on a European Commission decision establishing reciprocal access to external aid.
- OECD members in case of activities implemented in the Least Developed Countries (LDC) and in Heavily Indebted Poor Countries (HIPC) . This applies for the entirety of regional or global programmes which include at least one LDC or HIPC.

For each external financing instrument, Annex A2a to this Practical Guide contains the list of countries which correspond to rules on nationality and origin.

The CIR also includes provisions which further extend the rules on nationality in certain cases. Therefore, in addition to entities eligible according to the rules above:

- In the context of actions jointly co-financed: whether implemented through direct or indirect management,⁸ where actions are co-financed jointly with a partner or other donor, all persons that are eligible under the rules of that partner or other donor are also eligible. (NB: Where actions are co-financed in parallel with a partner or other donor, the respective rules on nationality apply, ie. EU rules apply to the part of the action financed by EU instruments (without extension) and the rules of the partner or other donor apply to the part financed by it.)
- In the context of actions implemented under shared management with a Member State, all persons that are eligible under the rules of that Member State are also eligible.

⁸ In indirect management, this can result in using the eligibility rules of the EU, the entrusted body and the other donor, if the joint co-financing comes from an entity other than the one entrusted with the implementation.

Deleted: July

Deleted: 2015

Deleted: 59

- In the context of actions implemented through indirect management, all persons that are eligible under the rules of the entrusted body are also eligible, except when the management is entrusted to partner countries (as per article 58 c (i) of the FR). In the latter case, only the rules of the EU instrument apply. In the case of actions implemented through a Union Trust Fund established by the Commission, all persons that are eligible under the rules determined in the trust fund's constitutive act are also eligible.
- In the case of actions financed by more than one instrument for external action, including the EDF, the natural persons who are nationals of, and legal persons which are effectively established in countries identified under any of these Instruments are eligible for the purpose of those actions.
- In the case of actions of a global, regional or cross-border nature financed by one of the EU Instruments for external action, eligibility can be extended to natural persons who are nationals of, and legal persons which are effectively established in the countries, territories and regions covered by the actions.

EDF-FUNDED PROGRAMMES

The revised Annex IV to the Cotonou Agreement harmonised to the extent possible the rules on nationality and origin with those of the CIR. Participation is open to international organisations and to all natural persons who are nationals of, or legal persons who are established in :

- an ACP State.
- an EU Member State,
- Member States of the European Economic Area
- Beneficiaries of the EU Instrument for pre-accession assistance (IPA II),
- Overseas countries and territories covered by Council Decision 2013/755/EU of 25 November 2013;
- developing countries and territories, as included in the OECD-DAC list of ODA recipients, which are not members of the G-20 group, without prejudice to the status of the Republic of South Africa, as governed by Protocol 3 to the Cotonou Agreement;
- another third country, based on a European Commission decision establishing reciprocal access to external aid in agreement with ACP countries;
- OECD members in case of activities implemented in the Least Developed Countries (LDC) and in Heavily Indebted Poor Countries (HIPC). This applies for the entirety of regional or global programmes as well which include at least one LDC or HIPC.

For the complete list of eligible countries please refer to Annex A2a to this Practical Guide. Annex IV to the Cotonou Agreement includes provisions which further extend the rules on nationality in certain cases. Therefore, in addition to entities eligible according to the rules above:

When an operation is implemented as part of a regional initiative, natural and legal persons from a country participating in the relevant initiative are also eligible;

- In the context of actions implemented through direct management and where actions are co-financed jointly with a partner or other donor, all persons that are eligible under the rules of that

Deleted: July

Deleted: 2015

Deleted: 59

partner or other donor are also eligible. (NB: Where actions are co-financed in parallel with a partner or other donor, the respective rules on nationality apply, ie. EU rules apply to the part of the action financed by EU instruments (without extension) and the rules of the partner or other donor apply to the part financed by it.)

When an operation is implemented through a Trust Fund established by the Commission, participation is also open to all persons eligible under the rules determined in the Trust Fund constitutive act;

- In the case of actions implemented in indirect management through entrusted bodies, which are Member States or their agencies, the European Investment Bank and international organisations or their agencies, natural and legal persons who are eligible under the rules of that entrusted body as identified in the agreements concluded with the co-financing or implementing body are also eligible; In addition, where actions are co-financed jointly with a partner or other donor, all persons that are eligible under the rules of that partner or other donor are also eligible.
- In the case of projects financed under another EU financial Instrument, participation is also open to all persons eligible under that EU financial Instrument.

Programmes for OCTs

Rules on nationality and origin for public procurement, grants and other award procedures for OCTs are established by Article 89 of Decision 2013/755/EU of 25 November 2013.

Participation in the award of procurement contracts, grants and other award procedures for actions financed under this Decision for the benefit of third parties shall be open to all natural persons who are nationals of, and legal persons which are effectively established in:

- (a) Member States,
- (b) candidate countries and potential candidates as recognised by the Union, and
- (c) members of the European Economic Area;
- (d) OCTs;
- (e) developing countries and territories, as included in the OECD-DAC list of ODA Recipients, which are not members of the G-20 group;
- (f) countries for which reciprocal access to external assistance is established by the Commission;
- (g) Member States of the OECD, in the case of contracts implemented in a Least Developed Country;

For the complete list of eligible countries please refer to Annex A2a to this Practical Guide.

The Decisions includes provisions which further extend the rules on nationality in certain cases. Therefore, in addition to entities eligible according to the rules above, the following ones are also eligible:

- In the case of actions jointly co-financed with a partner or other donor countries entities which are eligible under the rules of that partner, other donor
- In the case of actions implemented through a Member State in shared management, entities which are eligible under the rules of that Member State

Deleted: July

Deleted: 2015

Deleted: 59

- In the case of actions implemented through a Trust Fund established by the Commission, entities which are eligible under the constitutive act of the trust fund, shall also be eligible.
- In the case of actions implemented through entrusted bodies, which are Member States or their agencies, the European Investment Bank or through International Organisations or their agencies, entities that are eligible under the rules of that entrusted body, as identified in the agreements concluded with the co-financing or implementing body, shall also be eligible.
- In the case of actions financed under this Decision and, in addition, under another Instrument for external action, including the 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 (1), as last amended in Ouagadougou on 22 June 2010 (2), entities identified under any of these Instruments as eligible, shall be so as well for the purpose of that action.
- In the case of actions of a global, regional or cross-border nature financed under this Decision, natural and legal persons from countries, territories and regions covered by the action may participate in the procedures implementing such actions.

- **Rules for experts and international organisations:**

Both for the EDF (including OCTs) and BUDGET-funded programmes, the nationality of experts and other natural persons employed or legally contracted does not have to follow the nationality rules. Therefore, unless otherwise provided for in the applicable financing decision/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.

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 tenderers and applicants:

- 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 candidate, tenderer or applicant does not comply with the nationality rules, it must ask the candidate/tenderer/applicant 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 formed under the law of an eligible State, and
- its real seat is within an eligible State. "Real seat" must be understood as the place where its

Deleted: July

Deleted: 2015

Deleted: 59

managing board and central administration are located or its principal place of business.

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

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

Sanctions: When verifying compliance with the nationality rules, careful attention has to be made regarding entities which are nationals of or effectively established in countries against which the EU has adopted restrictive measures⁹. Notably, a case-by-case analysis of the scope of the restrictive measures is necessary in order to establish their exact impact on eligibility rules in a specific procedure.

Origin of goods

- **Rules of origin:**

In principle, products¹⁰ supplied under a procurement contract, or in accordance with a grant contract, financed under the EU budget or the EDF (including OCTs) must originate from an eligible country as designated by the relevant Instrument(s). (See above, ‘Rule on nationality’, and below, ‘2.3.2. Derogations from the rule on nationality and origin’).

However, these products can originate from any origin (full untying) if their value is below the threshold of the competitive negotiated procedure - EUR 100 000.

The amount of any ancillary works and services is not taken into account.

This provision for full untying below the threshold of the competitive negotiated procedure must be stated in the contract notice.

Where the contract is divided into lots, the rule applies per lot (only applicable to lots of less than EUR 100 000). The division into lots must be legitimate. This rule must not lead to sub-dividing artificially contracts into smaller lots to circumvent the threshold of 100 000 euros.

This rule applies also to procurement done by grant beneficiaries and procurement of works involving the supply of products. In case of works contracts which involve multiple purchases, the 100.000 EUR threshold applies by type of supply. Where the contract has a fixed price, the threshold has to be applied to the unit price of the supply. Rules of origin do not apply to supplies purchased in order to carry out a works contract, where the Contractor keeps the purchased items at the end of the project.

The above rules have to be clearly stated in the instructions for tenderers and applicants.

- **The scope of the rule:**

Subject to derogation (granted on a case by case basis), all goods to be delivered under a supply contract fall under the rules of origin, as do materials, goods and components to be incorporated or to

⁹ The updated list of sanctions is available at http://eeas.europa.eu/cfsp/sanctions/index_en.htm.

¹⁰ Supplies and materials under Cotonou, Annex IV.

Deleted: .

Deleted: July

Deleted: 2015

Deleted: 59

form part of the permanent works under a works contract.

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

Goods purchased by the contractor 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 road¹¹, computer(s) used by a service contractor to draft a study) are not subject to the rule of origin. It is only if the contract explicitly states that at the end of the contract the ownership of the goods is transferred from the contractor to the contracting authority (in the case of procurement contracts) or transferred by the contractor to the grant beneficiary or another entity/person (in the case of grant contracts), that these goods are subject to the rule of origin.

- **Definition of "origin":**

The term 'origin' is defined in the relevant EU legislation on rules of origin for customs purposes: the Customs Code ([Council Regulation \(EEC\) No 2913/92](#)), and in particular its Articles 22 to 24, and the Code's implementing provisions ([Commission Regulation \(EEC\) No 2454/93](#)).¹²

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 shall be regarded as having their origin in that country. This will be restricted to mostly products obtained in their natural state and products derived from wholly obtained products.

If two or more countries are involved in the production of goods, it is necessary to determine which of those countries confers origin on the finished goods. For this purpose the concept of "last, substantial transformation" is applied. 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 (ie. 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.

How to verify compliance with the origin rules?

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

¹¹ In a works contract, the option of having equipment vested in the contracting authority, given under Article 43.3 of the General Conditions, only applies while the works are being carried out and therefore does not constitute full transfer of the property.

¹² [As of May 1st, 2016 these references should be read as reference to Article 60 of Regulation \(EU\) no. 952/2013 and its implementing act.](#)

tendering for systems comprising more than one item, the origin of each item in the system must be specified. The tenderer may be requested to provide documents supporting the stated origin. In this case, the tenderer must provide a certificate of origin or additional information considering that the issuing authority may refuse to issue at tendering stage a certificate of origin without presentation of commercial invoices.

The certificates 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 certificates if the contractor justifies that it is impossible to provide certificates of origin.

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

It is up to the contracting authority to **verify compliance with the rules of origin**. Where there are serious doubts about the authenticity of a certificate of origin or the information it contains (e.g. because of discrepancies in the document, spelling errors, etc.), the contracting authority should contact the issuing authority to have the authenticity of the documents submitted and/or the information it contains confirmed. For EDF procurement, supplies originating in the Overseas Countries and Territories are regarded as originating in the EU.

Sanctions: When verifying compliance with the nationality rules, careful attention has to be made regarding entities which are nationals of or effectively established in countries against which the EU has adopted restrictive measures. Notably, a case-by-case analysis of the scope of the restrictive measures is necessary in order to establish their exact impact on eligibility rules in a specific procedure¹³.

2.3.2. Derogations from the rules on nationality and origin

Basic acts provide for the possibility of adopting derogations from the general rules on a case-by-case basis. The derogation can further extend or limit the eligibility of certain entities on grounds foreseen in the basic acts.

The decision on derogations is taken by the European Commission before the procedure is launched. In principle, it is not possible to derogate from the rules on nationality and origin to allow only one or a group of countries to become eligible unless it is duly motivated in the request for derogation. Where actions are implemented in shared management, the relevant Member State to which the Commission has delegated implementation tasks is entitled can also take such decisions.

If a contract notice is published, the derogation must be mentioned.

a.) Extension

In duly substantiated cases, the European Commission may extend eligibility to natural and legal persons from an ineligible country and allow the purchase of goods and materials originating in an ineligible country.

¹³ The updated list of measures in force can be found at http://eeas.europa.eu/cfsp/sanctions/index_en.htm.

Deleted: July

Deleted: 2015

Deleted: 59

Derogations may be granted on the grounds of

- economic, traditional, trade or geographical links with neighbouring countries,
- unavailability of products and services in the markets of the related countries concerned;
- extreme urgency/crisis situation¹⁴; or
- extreme difficulties to carry out a project, programme or other action with the general rules on eligibility. The argument that a product of ineligible origin is cheaper than the EU or local product would not alone constitute grounds for awarding a derogation.¹⁵

Where the EU is a party to an agreement **on** widening the market for the procurement of supplies, works or services, eligibility can be extended, as required by that agreement.

b.) Limitation

In the context of grants, the basic acts also allow to limit eligibility on certain grounds, notably where this is required by the nature and the objectives of the action and as necessary for its effective implementation.¹⁶

The limitation can be made with respect to the nationality, localisation or nature of applicants.

2.3.3. Exclusion criteria#Exclusion criteria

2.3.3.1. Exclusion criteria from participation in procurement and grant procedures:

An economic operator 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 economic operator is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the law of the country in which it is established, with those of the country in which the contracting authority is located or those of the country of the performance of the contract;

(c) it has been established by a final judgment or a final administrative decision that the economic operator is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the economic operator belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes

Deleted: I

Deleted: -

Deleted: applicable for

Deleted: Candidates, tenderers or applicants

¹⁴ When a declaration of crisis situation has been adopted by the authorising officer by delegation, and it explicitly includes derogations from the rules of nationality and origin, no further authorisation is needed. However, the use of these derogations has to be recorded as event to be reported.

¹⁵ CIR – Article 9 (2) ; Annex IV – Article 22 (1) ; Decision 2013/755/EU of 25 November 2013 – Article 89 (2) f.)

¹⁶ CIR – Article 8 (7) ; Annex IV – Article 20 (9) ; Decision 2013/755/EU of 25 November 2013 – Article 89 (1) f.)

Deleted: July

Deleted: 2015

Deleted: 59

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 selection criteria or in the performance of a contract;

(ii) entering into agreement with other economic operators with the aim of distorting competition;

(iii) violating intellectual property rights;

(iv) attempting to influence the decision-making process of the contracting authority during the procurement procedure;

(v) attempting to obtain confidential information that may confer upon it undue advantages in the procurement procedure;

(d) it has been established by a final judgment that the economic operator is guilty of any of the following:

(i) fraud, within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995¹⁷;

(ii) corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997¹⁸, and in Article 2(1) of Council Framework Decision 2003/568/JHA¹⁹, as well as corruption as defined in the law of the country where the contracting authority is located, the country in which the economic operator is established or the country of the performance of the contract;

(iii) participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA²⁰;

(iv) money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council²¹;

(v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA²², respectively, or inciting or aiding or abetting or attempting to commit such offences, as referred to in Article 4 of that Framework Decision;

(vi) child labour or other forms of trafficking in human beings as defined in Article 2 of

¹⁷ OJ C 316, 27.11.1995, p.48.

¹⁸ OJ C 195, 25.6.1997, p. 1.

¹⁹ OJ L 192, 31.07.2003, p. 54.

²⁰ OJ L 300, 11.11.2008, p. 42.

²¹ OJ L 309, 25.11.2005, p. 15.

²² OJ L 164, 22.6.2002, p. 3.

Deleted: July

Deleted: 2015

Deleted: 59

Directive 2011/36/EU of the European Parliament and of the Council²³.

(e) the economic operator has shown significant deficiencies in complying with main obligations in the performance of a contract financed by the EU, which has led to its early termination 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 or the Court of Auditors;

(f) it has been established by a final judgment or final administrative decision that the economic operator has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95²⁴.

In cases referred to in points (c), (d) and (f) in the absence of a final judgment or a final administrative decision, or in the case referred to in point (e), when the contracting authority disposes of established facts or other findings, it shall exclude an economic operator on the basis of a preliminary classification in law having regard to the recommendation of an independent panel²⁵ in order to ensure a centralised assessment of those situations. In indirect management, where applicable according to the correspondent financing or delegation agreement, the contracting authority will transmit the information to the Commission and the Commission shall refer the case to the panel.

The contracting authority shall exclude the economic operator where a person who is member of the administrative, management or supervisory body or has power of representation, decision or control on the economic operator is in a situation listed in points (c), (d), (e) or (f). This applies also where a natural or legal person that assumes unlimited liability for the debts of that economic operator is in a situation listed in points (a) or (b).

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

The contracting authority shall not exclude an economic operator where it can demonstrate that adequate measures²⁶ have been adopted which ensure its reliability, except in the cases listed in point (d), where it is indispensable for the continuity of the service for a limited duration and pending the adoption of remedial measures, where the exclusion would be disproportionate.

2.3.3.2. Rejection from a given procedure

The contracting authority shall not award a contract for a given procurement procedure to an economic operator who:

²³ OJ L 101, 15.4.2011, p. 1.

²⁴ OJ L 312, 23.12.1995, p. 1

²⁵ The panel shall 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), two representatives of the Commission and one representative of the contracting authority.

²⁶ 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 economic operator, appropriate to correct the conduct and prevent its further occurrence; (b) proof that the economic operator has undertaken measures to compensate or redress the damage or harm caused to the Union's financial interests by the underlying facts giving rise to the exclusion situation; (c) proof that the economic operator has paid or secured the payment of any fine imposed by the competent authority or of any taxes or social security contributions;

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

Deleted: s

Deleted: to (d)

Deleted: the receivers or

Deleted: Points (b) and (e)

Deleted: do not apply when the candidates, tenderers or applicants

Deleted: against the persons having powers of representation, decision making or control over them who are subject to the judgement referred to in points (b) or (e)

Deleted: ¶
Points (a), (c) and (d) do not apply if duly justified by the contracting authority in negotiated procedures where it is ...

Deleted: The cases referred to in point (e) are the following:¶
<#>cases of fraud as referred to in Article 1 of the Convention on the ...

Deleted: Exclusion criteria applicable during the procurement and grant procedures

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

Deleted: July

Deleted: 2015

Deleted: 59

- a) is in one of the exclusion situations under section 2.3.3.1;
- 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 where this entails a distortion of competition that cannot be remedied otherwise;

Before taking the decision to reject an economic operator from a given procedure, the contracting authority shall give the economic operator the opportunity to submit its observations. This does not apply when the rejection is justified by an exclusion decision already taken according to section 2.3.3.1.

If the contracting authority becomes aware of a situation of exclusion where a recommendation of the panel is required in accordance with section 2.3.3.1, it will immediately seize the panel. The evaluation will not be suspended. If the contract is to be awarded to the entity/person concerned, the award of the contract will be suspended until the panel has issued its recommendation and the decision to exclude the entity/person concerned has been taken. If the situation of exclusion is confirmed, the relevant entity/person will be rejected from the procedure and the contract will be awarded to the second tenderer on the list. Where necessary, the contracting authority may ask all tenderers to extend the period of validity of the offers accordingly. For grants, see section 6.3.3.

2.3.3.3 Evidence to be provided

A) Declaration on honour

Candidates, tenderers and applicants must sign a declaration together with their applications, certifying that they do not fall into any of the exclusion situations cited under sections 2.3.3.1 and 2.3.3.2 and, where applicable, that it has taken adequate measures to remedy the situation. The entity on whose capacity they intend to rely and, where requested by the contracting authority, subcontractors shall provide the same declaration. The contracting authority shall accept the European Single Procurement Document (ESPD)³² as an alternative to the declaration.

For procurement contracts with a value of EUR 20 000 or less, the contracting authority may refrain from requiring a declaration depending on its risk assessment. For grants of EUR 60 000 or less, no declaration on honour shall be required.

B) 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 as well as entity on whose capacity they intend to rely shall provide:

- a) appropriate evidence that they are not in a situation of exclusion;
- b) information on 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 do not fall into the relevant exclusion situations;
- c) appropriate evidence that natural or legal persons that assume unlimited liability for the debts of that

³² 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. The ESPD is not yet in place. Meanwhile a declaration on honour shall be used.

Deleted: ,
Deleted:
Deleted: or applicants
Deleted: other than those in a restricted procedure, competitive dialogues, competitive negotiated procedure
Deleted: or competitive dialogue
Deleted: and innovative partnerships,
Deleted: entity does not
Deleted: points
Deleted: I
Deleted: II
Deleted: Information on the ownership/management, control and power of representation of the entity and a certification that they do not fall into the relevant exclusion situations must be provided where specifically requested by the contracting authority. This may be the case where there are doubts about the personal situation and in consideration of the national legislation of the country in which the tenderer, candidate or applicant is established.¶ However, for procurement contracts with a value of EUR 20 000 or less, the contracting authority may refrain from requiring a declaration depending on its risk assessment. For grants, no declaration shall be required for contributions of EUR 60 000 or less.¶
Deleted: July
Deleted: 2015
Deleted: 59

economic operator is not in a situation listed in points (a) or (b) of section 2.3.3.1.

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), following the notification of award, tenderer(s) to which the contract is to be awarded (including consortium members), must supply evidence that they do not fall into the exclusion situations, unless such evidence has already been submitted earlier in the procedure.

In restricted procedures for services and for the competitive dialogue, these supporting documents must be sent together with the tender and verified by the contracting authority before signature of the contract with the successful tenderer(s). In restricted procedures for works, these supporting documents must be sent together with the application. Evidence of non-exclusion must be verified for all candidates invited to tender. In addition, the tenderers and candidates must certify that the situation has not altered since the date of issue of the evidence.

Where specifically requested by the contracting authority, the successful tenderers must submit documentary evidence that the subcontractor is not in one of the exclusion situations.

The contracting authority shall waive the obligation to submit documentary evidence: (i) in the case of international organisations; (ii) if it can access it on a national database free of charge; or, (iii) if such evidence has been submitted to the contracting authority for another procedure, provided that the issuing date of the documents does not exceed one year and they are still valid.

For grants, no documentary evidence is required.

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

- (a), (c), (d) or (f) of section 2.3.3.1 (Exclusion criteria from participation in procurement procedures), the contracting authority will accept a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of establishment showing that the requirements are satisfied;

- (a) or (b) of section 2.3.3.1 (Exclusion criteria from participation in procurement procedures), 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 concerned³³ 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. It is, however, strongly recommended that a translation into the language of the procedure be provided, in order to facilitate the evaluation of the documents.

³³ Information from the 28 Member States, one Candidate Country (Turkey) and EEA countries on the different forms of documentary evidence issued/acceptable in each of the countries is available via the eCERTIS tool, which is managed by the Directorate-General for Internal Market and Services: <http://ec.europa.eu/markt/ecertis/login.do>;

Deleted: F

Deleted:

Deleted: provided by

Deleted: As regards subcontractors and experts, w

Deleted: a declaration from the intended subcontractor/expert, and/or

Deleted: /expert

Deleted: For procurement contracts with a value of less than the international thresholds (services <EUR 300 000, supply <EUR 300 000, works <EUR 5 000 000) t

Deleted: may

Deleted: , depending on its risk assessment. Furthermore, a waiver may be granted where documentary evidence

Deleted: in the past 12 months

Deleted: this evidence is s

Deleted: In all cases, evidence may still be required in case of doubts.

Deleted: generally

Deleted: b

Deleted:

Deleted: e

Deleted: point

Deleted: I

Deleted: applicable for

Deleted: origin or provenance

Deleted: .

Deleted: For (d), the contracting authority will accept a recent certificate issued by the competent authority of the State concerned.

Deleted: no such document or

Deleted: and for the other exclusion criteria listed in point I,

Deleted: or administrative

Deleted: ,

Deleted: a

Deleted: of origin or provenance

Deleted: Whenever one candidate, tenderer or applicant, due to its nature (for instance, national public administrations and international organisations), cannot fall into some of the categories above and/or cannot provide the documents indicated ...

Deleted: some

Deleted: Countries

Deleted: , Industry, Entrepreneurship & ...

Deleted: -

Deleted: July

Deleted: 2015

Deleted: 59

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

Note that, before excluding a candidate, tenderer or applicant from a procurement or grant procedure, principles such as the right of defence and proportionality must be considered. To that end, a contradictory procedure with the candidate, tenderer or applicant should be ensured.

Before taking the award decision at the very latest, the contracting authority must check whether any of the parties involved (i.e. applicants and co-applicants, candidates or tenderers, including joint venture members, affiliated entity/ies, indicated subcontractors and individual experts) have been recorded in the Early Detection and Exclusion System. Where the contracting authority limits the number of candidates invited to submit a tender or full proposal, e.g. in a restricted procedure, such checks must be conducted before the candidates are selected.

The Early Detection and Exclusion System (EDES) is a database, containing restricted information concerning third parties likely to represent a threat to the EU financial interests. The Early Detection and Exclusion System replaces 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 Union's financial interests following information provided by OLAF, authorising officers of the Commission, European offices, executive agencies, other institutions 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 2.3.3.1;
- the imposition of a financial penalty on an economic operator in accordance with point 2.3.4.

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 which are recorded in EDES at exclusion level. If any of the parties involved are recorded at the early detection level, measures to strengthen monitoring should be applied during the execution of the contract and payments.

The third party in question has the right to be informed of the data contained in the database, upon its request to the accounting officer of the Commission.

Where the contracting authority takes the decision to exclude a tenderer or applicant, it shall notify it to the economic operator, specifying that its tender/application is unsuitable (for the situations under section 2.3.3.1) or irregular (for the situations under section 2.3.3.2, points (b) and (c)). If a subcontractor or an entity on whose capacity the candidate or tenderer intends to rely is in an exclusion situation, the contracting authority shall require their replacement.

2.3.4. Regulatory penalties: administrative sanctions

An economic operator which is in a situation of exclusion under section 2.3.3.1 (Exclusion criteria from participation in procurement and grant procedures), having regard where applicable to the recommendation of the panel mentioned in point 2.3.3.1, may be excluded from participation in all

Deleted: unless the evidence is such that no further investigation is necessary (for example in case of a judgement of a competent authority of a Member State which has the force of *res judicata*),

Deleted: (

Deleted:)

Deleted: by the Early Warning System (EWS)

Deleted: The contracting authority cannot conclude a contract with entities which are recorded at exclusion level of the EWS³⁴. If any of the parties involved are recorded in the EWS at other level, measures to strengthen monitoring should be applied during the execution of the contract and payments.

Deleted: and financial penalties

Deleted: Candidates, tenderers and applicants, who have made false declarations, made substantial errors, committed irregularities or fraud

Deleted: July

Deleted: 2015

Deleted: 59

procurement and grant procedures financed by the EU. The duration of exclusion shall not exceed the following:

Deleted: call for proposal

Deleted: for a maximum of five years from the date on which the infringement is established, following an adversarial procedure with the contractor or beneficiary

(a) the duration, if any, set by the final judgement or the final administrative decision of a Member State. If the final judgement or the final administrative decision does not set the duration of the exclusion, the contracting authority shall set the duration on the basis of established facts and findings and having regard to the recommendation of the panel mentioned in point 2.3.3.1;

(b) five years for the cases referred to in point (d) of section 2.3.3.1;

(c) three years for the cases referred to in points (c), (e) and (f) of section 2.3.3.1.

An economic operator shall be excluded as long as it is in one of the situations referred to in points (a) and (b) of section 2.3.3.1.

Deleted: . That period may be extended to 10 years in the event of a repeated offence within five years of that date. The decision is adopted by the relevant Authorising Officer following an adversarial procedure.

In order to ensure a deterrent effect, the contracting authority may, having regard where applicable to the recommendation of the panel mentioned in section 2.3.3.1., impose a financial penalty on an economic operator who is in one of the following exclusion situations:

(a) regarding the situations referred to in points (c), (d), (e) and (f) of section 2.3.3.1 as an alternative to a decision to exclude the economic operator, where such an exclusion would be disproportionate;

(b) regarding the situations referred to in points (c), (d) and (e) of section 2.3.3.1, in addition to an exclusion where the economic operator has adopted a systemic and recurrent conduct with the intention to unduly obtain Union funds.

The amount of the financial penalties represents between 2 % and 10 % of the total value of the contract being awarded.

Deleted: Tenderers, candidates or applicants who have made false declarations, or who have committed substantial errors, or irregularities, or fraud, may also be subject to financial

Deleted: representing

Deleted: to

Deleted: estimated

Deleted: The percentage is decided

Any decision to exclude and/or impose financial penalties on an economic operator shall be adopted in accordance with the principle of proportionality.

The limitation period to exclude and/or impose financial penalties on an economic operator shall be five years from the date on which the behaviour is committed or, in case of repeated acts, the date on which the behaviour ceases or from the date of the final judgement of a national jurisdiction or of the final administrative decision³⁵.

For the case referred to in point (f) of section 2.3.3.1 (irregularity) the limitation period shall be four years as from the time when the irregularity was committed.

In order to reinforce the deterrent effect of the exclusion and/or financial penalty in cases referred to in points (c), (d), (e) and (f) of section 2.3.3.1, the contracting authority may decide to publish on the Commission internet site the name of the economic operator concerned, the situation of exclusion and the duration of exclusion and/or the amount of the financial penalty. The decision is taken either following the relevant final judgment or administrative decision or following the recommendation of the panel, as the case may be. It shall take effect 3 months after notifying the economic operator of the decision to publish the information concerned. The information shall be removed as soon as the exclusion has come to an end or, in case of financial penalties, 6 months after the payment of the penalty.

³⁵ The limitation period shall be interrupted by an act of the Commission, OLAF, the panel or of any entity involved in the implementation of the budget, notified to the economic operator and relating to investigations or judicial proceedings.

Deleted: July

Deleted: 2015

Deleted: 59

Where the decision on the exclusion and/or financial penalty has been taken on the basis of a preliminary classification, the publication shall indicate that there is no final judgment or, where applicable, final administrative decision. In those cases, information about any appeals, their status and their outcome, as well as any revised decision of the contracting authority, shall be published without delay. Where a financial penalty has been imposed, the publication shall also indicate whether that penalty has been paid.

Without prejudice to the imposition of administrative sanctions, where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the contracting authority must suspend the procedure and may take whatever measures are necessary, including cancellation. Where, after the signature of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the contracting authority may, suspend performance of the contract or, where appropriate, terminate the contract. Where such errors, irregularities or fraud are attributable to the contractor or beneficiary, the contracting authority may, in addition, refuse to make payments, or recover amounts unduly paid to an extent proportionate to the seriousness of the substantial errors, irregularities or fraud.

Performance of the contracts may also be suspended to verify whether presumed substantial errors, irregularities or fraud have actually occurred. If they are not confirmed, performance of the contract will resume as soon as possible. A substantial error is an infringement of a provision of the contract resulting from an act or an omission which causes or might cause a loss to the EU budget or to the EDF.

2.3.5. Visibility#Visibility

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

2.3.6. Other essential points#Retroactivity;Conflict of Interest;Addendum - retroactivity

Conflicts of interest:

The term "conflict of interest" 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 drafting tender specifications and distortion of competition,
- (4) professional conflicting interests.

(1) A conflict of interest occurs when the impartial and objective exercise of the functions of the contracting authority, or observance of the principles of competition, non-discrimination against or equality of treatment of candidates, tenderers, applicants and contractors, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a beneficiary of EU-funded programmes. A conflict of interest may arise where, for instance, a member of the evaluation committee or someone in the contracting authority or others involved in the procedure grant themselves, or others, unjustified direct or indirect advantages by influencing the outcome. If this situation happens or if there is a risk that this situation may happen,

Deleted: w

Deleted: award

Deleted: , depending on the stage reached in the procedure, refrain from concluding the contract or

Deleted: European Commission

Deleted: also

Deleted: , may

Deleted: already

Deleted: or may terminate all the contracts concluded with this contractor or beneficiary, in proportion to the seriousness of the errors, irregularities or fraud

Deleted: The purpose of suspending

Deleted: the contract is to check

Deleted: the

Deleted:

Deleted: and

Deleted: or irregularity

Deleted: or EU Regulations through

Deleted: To avoid confusion, f

Deleted: main

Deleted: July

Deleted: 2015

Deleted: 59

the person has the obligation to inform its hierarchy in writing and the hierarchy will decide the appropriate action.

In the potential case of members of staff of the EU Delegations (local agents) proposed as experts by tenderers, the European Commission shall 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 shall only be approved by the European Commission if well justified. The tenderer shall 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 3.3.10.3. of the Practical Guide).

The term "conflict of interests" does not apply to economic operators and should not be used with reference to them. It can only refer to the contracting authority.

(2) Cases where an expert or company 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 economic operators with the aim of distorting competition are rather to be treated as grave professional misconduct and are a basis to reject/exclude the economic operator concerned (see sections 2.3.3.1 and 2.3.3.2).

(3) There are cases where the contracting authority used a technical assistance contract to help drafting the tender specifications of a subsequent procurement 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 economic operators. The contractor involved in the preparation of procurement documents can be rejected from the subsequent procedure only if its participation entails a distortion of competition and that this cannot be remedied otherwise (see section 2.3.3.2).

It is up 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 shall include the communication to the other candidates / tenderers of the relevant information exchanged in the context of or resulting from the involvement of the candidate / tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. The rejection is subject to a contradictory procedure, so the tenderer must be given the opportunity to prove that its prior involvement cannot distort competition.

(4) Finally, there are specific cases where the operator has a professional conflicting interest which negatively affects its capacity to perform a contract. This is treated at the selection stage. This is meant to avoid cases where an operator is awarded a contract to evaluate a project in which it has participated or to audit accounts which it has previously certified.

If the operator is in such a situation, the corresponding tender is rejected. These cases often arise in evaluation or audit framework contracts, where the contractor can have a professional conflicting interest for a specific contract.

Where a conflict of interest might occur with regard to on-going contracts, 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.

Awarding principles:

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

Deleted: A conflict of interest occurs when the impartial and objective exercise of the functions of the contracting authority, or observance of the principles of competition, non-discrimination against or equality of treatment of candidates, tenderers, applicants and contractors, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a beneficiary of EU-funded programmes. A conflict of interest may arise where, for instance, a member of the evaluation committee or someone in the contracting authority or others involved in the procedure grant themselves, or others, unjustified direct or indirect advantages by influencing the outcome. ¶
In the potential case of members of staff of the EU Delegations (local agents) proposed as experts by tenderers, the European Commission shall 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 shall only be approved by the European Commission if well justified. The tenderer shall 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. ¶
, or allow Cases where an expert or company attempts to obtain information leading to an unfair advantage in subsequent or related procedures are rather to be treated as grave professional misconduct. ¶

For instance In addition, any firm or expert involved in preparing a project (e.g. drafting the terms of reference) must, as a rule, be excluded from being awarded a services contract that are based on those preparations, unless they can prove to the contracting authority that their initial involvement does not constitute unfair competition or that the distortion of competition can be remedied otherwise. In particular the measures taken to remedy the situation shall include the communication to the other candidates / tenderers of the relevant information exchanged in the context of or resulting from the involvement of the candidate / tenderer in the preparation of the procurement procedure and the fixing of adequate time limits for the receipt of tenders. ¶

In the potential case of members of staff of the EU Delegations (local agents) proposed as experts by tenderers, the European Commission shall make sure that the contract with the EU institution is officially terminated before the expert starts to wo ...

Deleted: cancelling

Deleted: July

Deleted: 2015

Deleted: 59

Non-retroactivity:

Contracts take effect from the date of signature of the last signatory. All contracts must show the true dates on which the contracting parties signed them. Exceptionally, they are applicable from an earlier date (in cases of retroactive financing for instance).

Use of standard documents:

Standard contracts and document formats must be used.

Record keeping:

Subject to the contracting authority's legislation on access to documents, written records of the entire procurement and grant award procedure must be kept confidential and kept by the contracting authority in accordance with the policy adopted on archiving. If its law conflicts with the confidentiality required, the contracting authority must obtain prior authorisation from the European Commission before disclosing any information.

Unsuccessful proposals have to be kept for three years from the submission deadline of the call, while unsuccessful tenders have to be kept for five years from the submission deadline of the tender. Contractual and financial documents have to be kept for a minimum of seven years from payment of the balance and up to the prescription date of any dispute about the law governing the contract. During and after this period, the contracting authority will treat personal data in conformity with its privacy policy. The documents to be conserved include all the preparatory documents, the corresponding financing agreement, the originals of all applications/tenders/proposals submitted, and any related correspondence.

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

Availability of funds:

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

Environmental issues:

Environmental matters must be duly considered, to the possible extent, subject to the principles governing the award of procurement contracts and grants such as competition and non-discrimination. This might result in more environment-friendly terms of reference/guidelines/specifications, increased use of information technology, and less paper consumption (with double-sided printing, degradable material for folders, presentations, etc.).

For instance, when drafting the technical specifications, consideration should be given to the greener products available on the market, provided this does not lead to a reduction of the competition.

Accessibility for disabled people:

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

Deleted: July

Deleted: 2015

Deleted: 59

Joint procurement with an EU Member State, an EFTA State or an EU candidate country:

In case of joint action between a EU institution and a contracting authority from a Member State, from an EFTA State or from an EU candidate country, the procurement procedure may be carried out jointly by the EU institution and that contracting authority. In this case, European Commission procedures apply³⁶.

Nevertheless, in some specific cases, it may be decided that the procedural rules of that contracting authority apply, provided that they can be considered equivalent to those of the institution.

Ex post publication of beneficiaries:

In addition to the publicity rules applicable to each type of procedure, the European Commission provides information on the beneficiary of EU funds (both grants beneficiaries and procurement contractors) on an annual basis, regardless of the management mode used. The information is available at the following site: http://ec.europa.eu/europeaid/funding/about-funding-and-procedures/funding-recipients_en.

2.4. Procurement procedures#Call for tender

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.

2.4.1. Which procurement procedure to apply?#Procurement procedures – general;Procurement thresholds

The applicable standard procedures explained later 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 activity by adopting a financing decision and, where appropriate, a financing agreement, the contracting authority can proceed with tendering and contracting following these standard procedures. The thresholds given in the table are based on the maximum budget for the contract in question (including any co-financing). Where contracts are subdivided in lots, the value of each lot is taken into account when calculating the overall threshold.

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

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 shall be favoured.

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

Other procedures can be applied regardless of the thresholds, for instance negotiated

³⁶ See Article 133 of the Rules of Application.

Deleted: ,

Deleted: July

Deleted: 2015

Deleted: 59

procedures on the basis of a single tender - as long as the relevant conditions are met (see points 2.4.5., 2.4.6., 2.4.7. and 2.4.8.).

SERVICE CONTRACTS	<p>≥ EUR 300 000</p> <p>International restricted tender procedure</p>	<p>< EUR 300 000 but > EUR 20 000</p> <p>- Framework contract BENEF 2013</p> <p>or</p> <p>- Competitive negotiated procedure</p>	<p>≤ EUR 20 000</p> <p>Single tender</p>
SUPPLY CONTRACTS	<p>≥ EUR 300 000</p> <p>International open tender procedure</p>	<p>< EUR 300 000 but ≥ EUR 100 000</p> <p>- Local open tender procedure</p>	<p>< EUR 100 000 but > EUR 20 000</p> <p>- Competitive negotiated procedure</p>
WORKS CONTRACTS	<p>≥ EUR 5 000 000</p> <p>- International open tender procedure</p> <p>or</p> <p>- International restricted tender procedure</p>	<p>< EUR 5 000 000 but ≥ EUR 300 000</p> <p>Local open tender procedure</p>	<p>< EUR 300 000 but > EUR 20 000</p> <p>Competitive negotiated procedure</p>

Deleted: s

Deleted: For service and supply contracts, a

Deleted: ¶
or ¶
Frame work contract

Deleted: ¶
or ¶
Frame work contract

2.4.2. Open procedure#Open procedure - general

In 'open' calls for tender (international or local), all economic operators may submit a tender. The contract is given maximum publicity by publishing a notice in the Official Journal of the European Union (S series) (for international open procedure only), the official journals of all the ACP States (for EDF programmes), on the EuropeAid website, and in any other appropriate media. See guidelines for publication (Annex A11e).

Any natural or legal person wishing to tender may ask to receive the tender dossier (which may have to be paid for), in accordance with the procedures specified in the contract notice. The tenders are examined, the eligibility and the financial, economic, technical and professional capacity of the tenderers are checked to arrive at a selection, the tenders are compared and the contract is awarded (see point 2.4.11.). No negotiation is allowed.

2.4.3. Restricted procedure#International restricted procedure – general;Restricted procedure - general

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

The selection criteria and the tasks to be undertaken are described in the published contract notice. A 'long list' of all the candidates replying to the notice is cut down to a shortlist of the best qualified, on

SERVICE CONTRACTS	<p>≥ EUR</p> <p>Inte</p> <p>restri</p> <p>pr</p>
SUPPLY CONTRACTS	<p>≥ EUR</p> <p>Interna</p> <p>tender</p>
WORKS CONTRACTS	<p>≥ EUR</p> <p>- Intern</p> <p>tende</p> <p>or</p> <p>- Intern</p> <p>restri</p> <p>proce</p>

Deleted:

Deleted: July

Deleted: 2015

Deleted: 59

the basis of their replies. At the shortlisting stage, before the list is approved by the evaluation committee, the contracting authority checks that none of the candidates or their partners is in exclusion situation in the Early [Detection and Exclusion](#) System.

Deleted: Warning

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

The contracting authority prepares the shortlist notice using the appropriate template and sends it in due time, in electronic form to the European Commission for publication on the EuropeAid website (See guidelines for publication in annex A11e).

The contracting authority also sends the tender dossier to the shortlisted candidates.

To ensure fair competition, tenders must be submitted by the same service provider or consortium which requested to tender, which was shortlisted and to which the invitation to tender was addressed. No changes to the identity or composition of the tenderer are permitted, unless good reasons have been given and the contracting authority has given its approval in writing. If deemed necessary the evaluation committee may be consulted. Examples of situations where such approval could be given, based on the details of the case and provided that they do not change the conditions of competition, are:

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

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

2.4.4. Competitive negotiated procedure#Competitive negotiated procedure - general

Under the competitive negotiated procedure, the contracting authority invites candidates of its choice to submit tenders. From the technically compliant tenderers, it selects the one that offers the [most economically advantageous tender](#).

Deleted: best value for money in the case of tenders for services, and the cheapest, in the case of tenders for supplies or works

The evaluation (including the use of an evaluation committee) and the award of the contract follow the rules of the restricted procedure.

For further details regarding competitive negotiated procedure in services see point 3.4.2., for supplies see point 4.5. and point 5.6. for works.

2.4.5. Framework contracts#Framework contracts - general

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

Deleted: July

Deleted: 2015

Deleted: 59

may be awarded during a given period, particularly as regards the duration, subject, price, maximum value, implementation rules and the quantities envisaged.

Framework contracts with several economic operators are called ‘multiple’ framework contracts; they take the form of separate contracts but they are all concluded on identical terms. The specifications must state both the minimum and the maximum number of operators with which the contracting authority intends to conclude contracts. The minimum may not be less than three.

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

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

2.4.6. Dynamic purchasing system#Dynamic purchasing system - general

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

For each individual contract, the contracting authority publishes a contract notice and invites all contractors admitted to the system to bid. The contract is awarded to the most economically advantageous tender (i.e. the sole award criterion is the best value for money).

See point 4.2.4.2. for further details. A legal framework for this procedure has been devised for future use, but the IT tools to make it possible (ensuring confidentiality and security) are not yet available in the European Commission.

2.4.7. Competitive dialogue#Competitive Dialogue - general

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

Contracting authorities must publish a contract notice setting out or attaching their needs and requirements. They must open a dialogue with the candidates satisfying the selection criteria in the contract notice. The dialogue may cover all aspects of the tender; however, it is conducted separately with each candidate on the basis of their proposed solutions and ideas. The contracting authority must ensure equal treatment of tenderers and keep the tenders confidential. It is therefore not allowed to pick the best solutions from different tenderers (i.e. no “cherry-picking” is allowed).

The minimum number of candidates invited to tender is three. 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](#). 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

Deleted: Early Warning System

Deleted: July

Deleted: 2015

Deleted: 59

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).

Deleted: value for money

The standard templates must be adapted as required.

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

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

Deleted: ¶

INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

No prior authorisation of the European Commission is required.

2.4.8. Negotiated procedure/single tender procedure#Negotiated procedure – general;Single tender - general

A contract may be awarded directly in the following circumstances:

- using the ‘single tender procedure’ when the contract does not exceed EUR 20 000;
- using the ‘negotiated procedure’ whatever the value of the contract in exceptional and duly justified cases, provided the factual or legal circumstances described in points 3.2.4.1., 4.2.5.1. and 5.2.5.1. are met. No specific threshold applies in such cases.

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.

Before selecting the candidates, the contracting authority checks that none of the candidates or their

Deleted: July

Deleted: 2015

Deleted: 59

partners is in an exclusion situation in the [Early Detection and Exclusion System](#).

Deleted: Early Warning System

In the case of negotiated procedures, an evaluation committee must be nominated in order to proceed with the negotiation. 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;

- extension of service and work contracts with the repetition of similar activities as in the original contracts, provided the conditions laid down in Sections 3.2.4.1 point c) and 5.2.5.1 point c) are met;

- additional supplies, provided the conditions laid down in Section 4.2.5.1 point c) are met;

Deleted: s

- supplies quoted and purchased on a commodity market;

- legal services which do not have mandatorily to be awarded through a competitive negotiated procedure (see Section 3.2.4.1. point i));

Deleted: (Not applicable therefore for the single tender procedure).

When the contract does not exceed EUR 20 000 appointing an evaluation committee is never mandatory.

For all procedures, a negotiation report (Annex A10a for negotiated procedures and Annex A10b for single tender procedures) must be produced, explaining how participant(s) in the negotiations were chosen, how the price was set and the grounds for the award decision.

Deleted: In

Deleted: cases

The negotiation steps shown in the negotiation report template must be followed. Eligibility rules (nationality as well as exclusion situations mentioned in Sections 2.3.3.1. and 2.3.3.2.) and selection criteria must be duly complied with. Documentary evidence for exclusion criteria and selection criteria should be submitted as referred to in Sections 2.3.3.3 and 2.4.11.1.1 respectively. The minimum requirements included in the terms of reference/technical specifications and the very final tenders are not negotiable. 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.

Deleted: and

Deleted: non-

The negotiation report must be approved by the contracting authority.

DIRECT MANAGEMENT

Prior approval/event to be reported as the case may be 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 negotiation 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 negotiation report does not need to be endorsed by the European Commission.

Deleted: for services and supplies,

Deleted: July

Deleted: 2015

Deleted: 59

If applicable, payments for amounts less than or equal to EUR 2 500 may be made against invoices without prior acceptance of a tender.

2.4.9. Fair and transparent competition

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

For mixed contracts, covering a combination of works, supplies or services, the contracting authority determines the procurement thresholds and procedure to be used (with the agreement of the European Commission, for indirect management with ex-ante controls). This determination is made on the basis of which is the main component (works, supplies or services) in terms of value.

Deleted: and operational significance

No contract may be split in order to evade compliance with the rules. If there are any doubts as to how to estimate the value of the contract, the contracting authority must consult the European Commission on the matter before starting the procurement procedure.

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

2.4.10. Preferences (EDF only) #Preference rules - general

EDF-FUNDED PROGRAMMES

See Article 26 of Annex IV to the Cotonou Agreement:

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

1. a) for works contracts of a value of less than EUR 5 000 000, tenderers of the ACP States, provided that at least one quarter of the capital stock and management staff originates from one or more ACP States, shall be accorded a 10 % price preference during the financial evaluation;
- b) for supply contracts of a value of less than EUR 300 000, tenderers of the ACP States, either individually or in a consortium with European partners, shall be accorded a 15 % price preference during the financial evaluation;
- c) in respect of service contracts other than the European Commission's Framework contracts, when technical offers are evaluated, a preference shall be given to tenders submitted by legal or natural persons of ACP States, either individually or in a consortium among them;
- d) where subcontracting is envisaged, preference shall be given by the successful tenderer to natural persons, companies and firms of ACP States capable of performing the contract required on similar terms; and
- e) the ACP State may, in the invitation to tender, propose to the prospective tenderers the assistance of other ACP States' companies or firms or national experts or consultants selected by mutual agreement. This cooperation may take the form either of a joint

Deleted: July

Deleted: 2015

Deleted: 59

venture, or of a subcontract or of on the job training of trainees.

2. Without prejudice to the provisions in paragraph 1, where two tenders for works, supplies or service contracts are acknowledged to be equivalent, preference shall be given:

- (a) to the tenderer of 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 possibilities for ACP companies, firms or natural persons; or
 - is a consortium of natural persons, companies and firms from ACP States and the EU.

NB: South African natural or legal persons cannot benefit from the preference system.

2.4.11. Selection and award criteria

Regardless of the type of procurement procedure used, the capacity of the candidate or tenderer to implement the contract is always assessed on the basis of objective criteria set out below.

2.4.11.1. Selection criteria

2.4.11.1.1. General principles

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

It is of interest to have as recent information as possible to verify the minimum required capacity of the entity. In case of 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. For the economic and financial capacity the reference period may be no more than the last three years for which accounts have been closed. For the professional and technical capacity the reference period depends on the type of contract. In order to ensure an adequate level of competition, for service and supply contracts it is usually referred to what has been carried out/implemented/completed in the past five years and for works contracts in the last eight years. However, for economic sectors subject to rapid evolution a shorter reference period may be chosen, i.e. respectively three and five years.

It is important to seek to enhance the quality of shortlisted organisations/consortia rather than merely seeking to shortlist organisations/consortia that have the biggest project references, e.g. reference to the number of projects presented above the value of the contract being procured should be avoided. Rather, the pertinence of experience should be advantaged, e.g. in the technical area and/or in similar environments.

If appropriate for the project, subject to the principle of equal treatment, separate criteria for natural and legal persons may be published and applied.

Deleted: ¶

¶
¶
¶
¶
¶
¶

Deleted:

Deleted: and must take account of the legitimate interests of the candidate/tenderer, in particular the firm's right to protection of its technical and business secrets

Deleted: and the legal basis is clear on the timelines in this respect

Deleted: this

Deleted: timeline

Deleted: F

Deleted: shall be

Deleted: three

Deleted: it shall be for

Deleted: five

Deleted: July

Deleted: 2015

Deleted: 59

For the international restricted procedure the contracting authority shall shortlist a maximum of 8 candidates (6 in case of an international restricted procedure for works). The contracting authority will also publish criteria in addition to the financial, professional and technical ones. These additional criteria will only be used to reduce the shortlist to 8 candidates (6 for works). These criteria shall therefore not be drafted in such a way that they would reduce the shortlist to less than 8 candidates (6 for works) fulfilling that criterion. For example, a criterion such as "experience in the country" could reduce a shortlist to 5 candidates only. This type of criteria should be avoided.

Deleted: a

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

- Requesting disproportionate annual turnover, number of staff, number of previous projects etc. as regards the amount of the contract;
- Using imprecise terms such as 'sufficient', 'major', 'relevant' as it is not absolutely clear what these words mean in the context, or whether a proposed experience fulfils the criterion;
- Requesting a percentage of the staff working in specific fields as this may be discriminatory for large companies;
- Requesting technical experience relating to EU projects only, as this may in general be regarded as discriminatory;
- Requesting prior experience in the partner country, unless specific justification is provided, as this could in general be regarded as discriminatory;
- Requesting technical experience in an overly prescriptive manner which effectively restricts the number of eligible candidates to one or a few firms.

Deleted: <#>Requesting information which dates further back in time than three years (this is regulated in the Rules of application of the EU Financial Regulation). The only exception is technical experience for works contracts which may go back five years in time;¶

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/instructions to tenderers and applied by the contracting authority without modification unless a corrigendum has been published.

The contract notice shall 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 financial and economic capacity might not be checked on the basis of aggregate values but are rather to be met by each member of a consortium.

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

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

Deleted: is

For service procedures, the documents supporting the information in response to the selection criteria shall be submitted by all the tenderers together with the tender.

For supply procedures, only successful tenderers have to supply proof documents to support the information submitted in the tender before the award of the contract.

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

Deleted: July

Deleted: 2015

Deleted: 59

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

For contracts with a value less than the international thresholds (services < EUR 300 000, supplies < EUR 300 000 and works < EUR 5 000 000), the contracting authority may limit the evidence requested to some of the selection criteria or, depending on its assessment of the risks, decide not to require any proof, but in the latter case **no pre-financing will be granted**.

Deleted: ,

Deleted: at

Deleted: unless a financial guarantee of an equivalent amount is provided

A candidate/tenderer may, where appropriate and for a particular contract, rely on the capacity of other entities, regardless of the legal nature of the links which it has with them. With regard to technical and professional 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. Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial capacity, the economic operator and those entities are jointly 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, for example by producing a commitment by those entities to place such resources at its disposal. Such entities, for instance the parent company of the candidate/tenderer, must obey the same eligibility rules as the candidate/tenderer, e.g. the nationality rule. The data for the other entities for the relevant selection criterion should be included in the application/tender in a separate document. Proof of capacity will also have to be furnished at the contracting authority's request.

Deleted: Some examples of when it may not be considered appropriate by the contracting authority are when the candidate/tenderer relies mainly on the capacity of other entities or when it relies on them for key criteria.

Deleted: an undertaking

2.4.11.2. Verifying the financial and economic capacity of candidates or tenderers

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

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

Deleted: at most

2.4.11.2.1. Verifying the technical and professional capacity of candidates or tenderers

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

- the educational and professional qualifications of the service provider or contractor;
- a list:
 - of the principal services provided and supplies delivered in the past five/three years, with the sums, dates and recipients, public or private. In the case of framework contracts, only specific contracts corresponding to assignments implemented under such framework contracts will be considered. Evidence of successful implementation must take the form of certificates issued or countersigned by the contracting authority or entity who ordered or purchased the execution of the service or supply;

Deleted: July

Deleted: 2015

Deleted: 59

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

Candidates/tenderers are allowed to refer either to projects completed within the reference period (although started earlier) or to projects not yet completed. In the first case the project will be considered in its whole if proper evidence of performance is provided (statement or certificate from the entity which awarded the contract or proof of final payment for services or final acceptance for supplies and works). In case of projects still on-going only the portion satisfactorily completed during the reference period (although started earlier) will be taken into consideration. This portion will have to be supported by documentary evidence (similarly to projects completed) also detailing its value.

If a candidate/tenderer has implemented the project in a consortium, the percentage that the candidate/tenderer has completed must be clear from the documentary evidence, together with a description of the nature of the services, supplies or works provided if the selection criteria relating to the pertinence of the experience have been used.

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

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

Deleted: July

Deleted: 2015

Deleted: 59

Where contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the candidate/tenderer with certain environmental management standards, they must refer to the Eco-Management and Audit Scheme (EMAS)³⁷ or to environmental management standards based on the relevant European or international standards certified by bodies conforming to EU law or to the relevant European or international standards regarding certification.

Contracting authorities must recognise equivalent certificates from bodies established in other Member States. They must also accept other evidence of equivalent environmental management measures from the candidate/tenderer. The contracting authority may check the authenticity of certificates provided.

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

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

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

2.4.11.3. Award criteria

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;
- under the lowest price, provided the tender satisfies the minimum requirements laid down,

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

Abnormally low tenders: see points 3.3.4. for services, 4.3.11. for supplies and 5.3.11. for works.

2.4.12. Procedure with a ‘suspension clause’#Suspensive clause

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

- (a) before a financing decision is adopted or
- (b) before a financing agreement between the European Commission and the partner country is signed.

³⁷ Regulation (EC) No 761/2001 of the European Parliament and of the Council.

Deleted: award criteria

Deleted: automatic procurement procedure, in which case the contract is awarded to

Deleted: which, while being in order and

Deleted: ying

Deleted: conditions

Deleted: , quotes the lowest price;¶

Deleted: <#>under the best-value-for-money procedure (i.e. the most economically advantageous tender).¶

Deleted: July

Deleted: 2015

Deleted: 59

PROGRAMMES FUNDED BY THE EU BUDGET:

Suspension clauses are rarely used because the EU financial rules generally require the adoption of a financing decision by the European Commission (or, where relevant, conclusion of a financing agreement) before a call for tenders or proposals is launched. However, exceptional circumstances may arise that give grounds for departing from the usual decision-making process. As a rule, circumstances justifying the use of a suspension clause are outside the European Commission's control. Note that:

- the use of the suspension clause after the financing decision is adopted but before the financing agreement is signed may be considered in most cases as being outside the European Commission's control, as the entry into force of such agreement depends on the will of a third party (i.e. the partner country);
- the use of the suspension clause before a financing decision is adopted requires good reasons why there are objective circumstances leading to the use of such clause and it is impossible to wait for the decision to be adopted. These reasons must be duly reflected in the request for prior approval and in the relevant financing decision. There are some cases where a suspension clause is justified in order to make efficient use of procedures, e.g. by having the option of launching a call for proposals covering two budgetary years.

PROGRAMMES FUNDED BY THE EDF:

Note that the use of this clause before the adoption of the financing decision is expressly authorised for the EDF (see Article 19b of Annex IV of the Cotonou Agreement) in all duly substantiated cases in order to ensure early project start-up.

The actual award and signing of contracts following a call launched with a suspension clause depends on the adoption of the financing decision and/or, where applicable, the conclusion of the financing agreement.

Because of its implications, the contract notice or the guidelines for grant applicants must explicitly state that there is a suspension clause.

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

2.4.13. Cancellation of procurement procedures#Cancellation of procedures

The contracting authority may, before the contract is signed, cancel the procedure without the candidates or tenderers being entitled to claim any compensation. If the procedure is divided into lots, single 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 substantial errors, irregularities or frauds in the procedure, in particular where these have prevented fair competition;

Deleted: worthwhile

Deleted: compliant

Deleted: July

Deleted: 2015

Deleted: 59

- 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 tenderers must be notified in writing and as soon as possible of the reasons for the cancellation. A cancellation notice must be published. See the template in Annex A5.

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

- to launch a new tender procedure;
- to re-launch the tender procedure using the same reference as the original call. In that case, the publication of a new prior information notice is not compulsory;
- to open negotiations with one or more tenderers who participated in the tender procedure and who meet the selection criteria,³⁸ provided that the original terms of the contract have not been substantially altered (this option is not available if the procedure was cancelled because of irregularities which might have prevented fair competition);
- not to award the contract.

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

DIRECT 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.

2.4.14. Ethics clauses#Ethic clauses

Any attempt by a candidate, applicant or tenderer to obtain confidential information, enter into unlawful agreements with competitors whose aim or effect is to impede, restrain or distort competition in a given market, or influence the evaluation committee or the contracting authority during the process of examining, clarifying, evaluating and comparing tenders and applications will lead to the

³⁸ Hence the importance of carefully choosing the selection criteria, which must be clear and non-discriminatory, and may not go beyond the scope of the tasks or budget (see point 2.4.11.1. for further details).

rejection of its candidacy, proposal or tender.

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

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

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

The contractor and its staff must comply with human rights and undertake not to offend the political, cultural and religious mores of the country(ies) where the action is implemented. In particular and in accordance with the applicable basic act, tenderers and applicants who have been awarded contracts must comply with core labour standards as applicable and as defined in the relevant International Labour Organisation conventions (such as the Conventions on freedom of association and collective bargaining; Elimination of forced and compulsory labour; Abolition of child labour).

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

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

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

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

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

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

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

Deleted: When putting forward an application or a tender, the applicant or the tenderer must declare that it has no potential conflict of interest (see definition and applicable principles in point 2.3.6. above) and no equivalent relation in that respect with other tenderers or parties involved in the project. Should such a situation arise during performance of the contract, the contractor must immediately inform the contracting authority.¶
The exclusion of a candidate, tenderer or applicant for the above reasons will be done in accordance with the rules and procedures mentioned in point 2.3.3. above.¶
Civil servants or other staff of the public administration of the partner country, or of international/regional organisations based in the country, shall only be proposed as experts by tenderers if they comply with the requirements in section 3.3.10.3. of the Practical Guide. Same applies to local staff from EU Delegations. ¶

Deleted: July

Deleted: 2015

Deleted: 59

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

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

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

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

Fight against fraud

The European Commission is utterly 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.

On 24 June 2011, the Commission adopted its new Anti-Fraud Strategy (CAFS)³⁹, its overall objective being to improve prevention, detection and the conditions for investigations of fraud and to achieve appropriate reparation and deterrence, especially by introducing anti-fraud strategies at Commission Service level.

DEVCO's anti-fraud strategy⁴⁰ and a related action plan came into effect in January 2014.

On the basis of CAFS, the Directorates-General and Services working in the field of external actions have further developed their specific anti-fraud strategies.

An important factor in combatting fraud is staff awareness and an effective system of reporting indications of fraud and irregularities.

The EU Staff Regulations⁴¹ set out an obligation to report serious irregularities for any official who becomes aware of:

- facts which 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 which may constitute a serious failure

³⁹ http://ec.europa.eu/anti_fraud/documents/preventing-fraud-documents/ec_antifraud_strategy_en.pdf

⁴⁰ https://myintracomm.ec.europa.eu/dg/devco/finance-contracts-legal/audit/fraud-irregularities/Documents/devco_anti_fraud_strategy.pdf.

⁴¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1962R0031:20140101:EN:PDF> See article 22(a), p 24.

Deleted: July

Deleted: 2015

Deleted: 59

to comply with the obligations of EU officials.

A pivotal role in the Commission's anti-fraud approach is foreseen for the European Anti-Fraud Office (OLAF)⁴². While fraud prevention and detection is primarily the responsibility of each Head of a Commission Service (as appropriate in each management mode), OLAF plays an important role throughout the process. Where fraud, corruption or other irregularities concerning EU funds is suspected, the anti-fraud office of the European Commission (i.e. OLAF) has to be informed⁴³.

Set up in 1999 with a view to expanding the scope and enhancing the effectiveness of action to combat fraud and other illegal activities detrimental to the EU's interests, OLAF achieves its mission by conducting:

- external investigations relating to expenditure and revenue under the 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 by sub-delegation shall ensure the financial follow-up, vis-à-vis the recovery of amounts wrongly paid, in cooperation with OLAF.

2.4.15. Legal remedies#Appeals;European Ombudsman

2.4.15.1. Complaints to the contracting authority

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

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

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

⁴² http://ec.europa.eu/anti_fraud/index_en.htm.

⁴³ As per Article 8 of 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.

Deleted: July

Deleted: 2015

Deleted: 59

2.4.15.2. 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 paragraphs 2.4.15.3, any citizen of the European Union or any natural or legal person residing or having its registered office in a Member State has the right to complain to the Ombudsman for any instance of maladministration by the European Union institutions (Article 228 of the Treaty on the Functioning of the European Union (TFEU)). More information may be found on the website <http://www.ombudsman.europa.eu/en/home.faces>.

2.4.15.3. Ordinary Actions

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

Where the European Commission is the contracting authority, the action shall be launched in accordance with the rules set out by the TFEU⁴⁴.

Where the European Commission is not the contracting authority, the action shall be launched in accordance with the conditions and deadlines fixed by the national legislation of the contracting authority.

No subcontract can create contractual relations between any subcontractor and the contracting authority. The contracting authority shall not be held responsible for any failure by the contractor to honour its contract with the subcontractor. In case of disagreement regarding the implementation of that contract, the subcontractor shall address itself to the contractor and/or to the respective jurisdiction competent to hear such litigations. The same situation is applicable to experts working under service contracts.

⁴⁴ The EU 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 of the Treaty on the Functioning of the European Union (TFEU).

The EU General Court has jurisdiction in disputes relating to compensation for damages caused by the European Commission in the case of non-contractual liability pursuant to Articles 256, 268 and 340 of the TFEU.

The deadline to introduce an action for annulment before the EU General Court against the European Commission's decisions runs from the moment of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be, pursuant to the TFEU.

Deleted: [

Deleted:]

Deleted: [

Deleted:]

Deleted: [

Deleted:]

Deleted: July

Deleted: 2015

Deleted: 59

2.5. Contract value

Care must be taken to design projects to allow for maximum value of the contract.

This is to avoid splitting programmes unnecessarily into a series of small contracts while ensuring maximum coordination between related activities and simplifying programme administration.

2.6. Terms of reference and technical specifications#Technical specifications – general;Terms of Reference – general;Expenditure verification report - services

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

Deleted: afford

- 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 (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.

Deleted: fitness for

Deleted: measurements

Deleted: dur

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

The terms of reference or technical specifications are drafted by the contracting authority. Where the European Commission is the contracting authority, the standard practice is to consult and obtain the approval of the 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.

Deleted: Terms

Deleted: July

Deleted: 2015

Deleted: 59

Given the technical complexity of many contracts, preparing the tender dossier — particularly the technical specifications/terms of reference — may require the assistance of one or more external technical specialist(s). Each such specialist must sign a Declaration of Objectivity and Confidentiality (see Annex A3).

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

The general structure of terms of reference for services reflects the principles of project cycle management. The aim is to ensure that all issues are covered systematically and that key factors related to clarity of objectives and sustainability are thoroughly examined. Annex B8 contains skeleton Terms of Reference which show the minimum details to be provided within each of these section headings.

For fee-based service contracts, the sections in the terms of reference include the allocated budget headings. They consist of the fees, which are the only part of the budget that is subject to competition (except if a component with global price is planned, which is also subject to competition). The services are provided on the basis of a fixed daily fee rate for the days the experts work under the contract. The budget also contains a fixed provision for incidental expenditure which covers all current expenses incurred by the contractor which are not included in the fees. The section on incidental expenditure must specify the type of expenditure which can be included in the expenditure verification of the contract. The terms of reference also make provision for expenditure verification. The budgets for incidental expenditure and expenditure verification are fixed by the contracting authority. They must meet the requirements of the terms of reference and must be carefully estimated. Unless exceptionally specified in the terms of reference, the use of the allocated provision for incidental expenditures does not require a prior authorisation by the contracting authority.

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

Deleted: ¶

2.7. Conciliation and arbitration procedures

PROGRAMMES FUNDED BY THE EDF:

Disputes relating to an EDF-financed contract may be settled by conciliation or by arbitration under the general conditions and the special conditions governing the contract. The procedure to be used is set out in Annex V to Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 adopting the general regulations, the general conditions and the rules governing the conciliation and arbitration procedure for works, supply and service contracts financed under the EDF.

These rules can be found in Annex A12.

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).

Deleted: July

Deleted: 2015

Deleted: 59

2.8. The Evaluation Committee#Evaluation committee - general

2.8.1. Appointment and Composition#Observers

Tenders are opened and evaluated by an evaluation committee formally and promptly appointed by the contracting authority comprising a non-voting chairperson, a non-voting secretary and an odd number of voting members (the evaluators).

There must be a minimum of three evaluators for all procedures except for calls for tenders for works above EUR 5 000 000, which require a minimum of five of them.

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

The contracting authority shall make sure that evaluators are available during the scheduled evaluation period. The contracting authority will appoint a replacement evaluator for each procedure to prevent delays in case of unavailability.

Every member must have reasonable command of the language in which the tenders are submitted. Evaluators must have the technical and administrative ability to give an informed opinion on the tenders. Their identity is confidential.

DIRECT MANAGEMENT:

Members of the evaluation committee (i.e. the chairperson, the secretary and the evaluators) are appointed on a personal basis by the relevant European Commission services which also approve any observer. 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 and the evaluators) are appointed on a personal basis by the contracting authority and the appointments are submitted in due time to the European Commission in order to get its approval, together with the CVs of those members who are not staff of the Contracting Authority. If the European Commission does not object within five working days, the committee is deemed to be approved. The European Commission must be invited to appoint an observer and is encouraged to attend all or part of the meetings. Independent experts recruited under service contracts may only attend as observers. Attendance by other observers requires prior authorisation by the European Commission.

INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

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

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

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 2.4.8. For grants procedures, see Section 6.5.7. and Section 6.4.2.

Deleted: s

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 3.4.1. apply.

Deleted: s

2.8.2. Impartiality and confidentiality#Statement of impartiality and confidentiality

All members of the evaluation committee and any observers must sign a Declaration of Impartiality and Confidentiality (see Annex A4). Any evaluation committee member or observer who has or might have an actual or potential conflict of interest with any tenderer or applicant must declare it and immediately withdraw from the evaluation committee.

There is a conflict of interests where the impartial and objective exercise of the functions of a financial actor or other person, as referred in the previous paragraph, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary. Should the conflict of interests be proven, the member or observer will be excluded from participating further in any capacity in the evaluation meetings.

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

- (a) granting oneself or others unjustified direct or indirect advantages;
- (b) refusing to grant a beneficiary the rights or advantages to which that beneficiary is entitled;
- (c) committing undue or wrongful acts or failing to carry out acts that are mandatory.

A conflict of interest shall be presumed to exist if an applicant, candidate or tenderer is a member of staff covered by the Staff Regulations, unless his participation in the procedure has been authorised in advance by his superior.

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

During the grant award procedure or during the procurement procedure, all contacts between the contracting authority and candidates, applicants or tenderers must be transparent and ensure equal treatment. Those contacts must not lead to any amendment to 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 tenderer, candidate or applicant to influence the process in any way (whether by making contact with members of the evaluation committee or otherwise) will result in the immediate exclusion of its tender or proposal from further consideration.

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. 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.

Deleted: July

Deleted: 2015

Deleted: 59

In duly justified cases⁴⁵, proceedings can be done using videoconference systems. The system to be used must ensure the confidentiality of the communication⁴⁶. Any electronic transfer of information needed under this modality must also guarantee its confidentiality⁴⁷.

If its law conflicts with the confidentiality required, then the contracting authority must obtain prior authorisation from the European Commission before disclosing any information.

In order to keep the proceedings confidential, attendance at evaluation committee meetings is strictly limited to the committee members and to any authorised observer (including assessors in the case of call for proposals see 6.5.7.2.).

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.

2.8.3. Responsibilities of Evaluation Committee members

The chairperson is responsible for coordinating the evaluation process in accordance with the procedures in the Practical Guide and for ensuring its impartiality and transparency. The voting members of the evaluation committee have collective responsibility for decisions taken by the committee.

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

- circulating and collecting the Declarations of Impartiality and Confidentiality;
- keeping the minutes of all meetings of the evaluation committee and the relevant records and documents;
- recording attendance at meetings and compiling the evaluation reports and their supporting annexes.

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

If a tender or proposal infringes the formal requirements, the evaluation committee may use its discretion to decide whether or not it will still be considered during the rest of the evaluation process, while ensuring equal treatment of tenderers and applicants and upholding the principle of proportionality. Whatever the evaluation committee decides, this must be fully recorded and reasons given in the evaluation report.

Tenders or proposals should not be rejected in the following cases:

⁴⁵ For instance when the voting members/assessors/observers are in another country.

⁴⁶ The system to be used has to support encryption and this option has to be enabled. It also has to support protocol H.323 and /or SIP.

⁴⁷ Encryption must be used (using S/MIME V3 standard or equivalent).

- if they are submitted in fewer than the number of copies required;
- if they are submitted in the correct format and provide the requisite information, but the document is organised incorrectly, e.g. information is provided in section X of the form when it should have been provided in section Y;
- if they have not been signed or contain a scanned signature (the signature can be requested later - but if it is not obtained or if the original document provided later is not exactly the same as the one received earlier, the tender must be rejected). The possibility to provide copies cannot be accepted for tender guarantees.
- If candidates, applicants or tenderers can demonstrate that a required document is not available (e.g. under national law, duplicates of a given lost document cannot be obtained from the issuing administration), provided that an acceptable alternative is obtained (e.g. a declaration by the said administration that the document for the candidate, applicant or tenderer is still valid but no duplicate can be issued);
- in a service contract procedure, tenderers who have not submitted all the documentary evidence regarding the exclusion or the selection criteria together with the tender. The necessary supporting documentation may be requested from the successful tenderer giving a reasonable time limit.
- If information is made available to the evaluation committee that a key expert in a service tender procedure is no longer available. Instead the evaluation committee should proceed with the evaluation of the original tender and the awarded tenderer will be given a chance to replace the key expert, see 3.3.12.1.

2.8.4. Timetable

The evaluation committee must be formed early enough to ensure that the members (and any observer appointed by the European Commission) are available in time to prepare and conduct the evaluation process. The tenders must be evaluated in time to allow the procedure to be completed within the validity period of the tenders. Extending the validity of tenders (see point 2.8.5.) should be avoided. It is very important that all tenderers, whether successful or unsuccessful, receive information without delay.

Once the evaluation has been completed, the contracting authority is required to promptly approve the evaluation report and take the award decision in annex to the evaluation report. Any failure of the contracting authority to approve the evaluation report or to follow any recommendations and conclusions contained in the report must be subject to a detailed and reasoned written explanation.

Deleted: by

Deleted: approving the evaluation report

2.8.5. Period of validity of tenders

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, approve the contract award proposal, notify the successful and unsuccessful tenderers and conclude the contract. The period of validity of tenders is fixed at 90 days from the deadline for the submission of tenders.

In exceptional cases with prior approval by the competent authority of the European Commission, before this period of validity expires, the contracting authority may ask the tenderers for a one-off, specific extension, which may not exceed 40 days.

The successful tenderer is bound by the tender for a further 60 days, irrespective of the date of

Deleted: July

Deleted: 2015

Deleted: 59

notification (i.e. 90 (+40) + 60 days) of the award of the contract. This period can be further extended when the contracting authority has referred a potential case of exclusion to the independent panel mentioned in Section 2.3.3. and for the duration of the procedure before the panel.

Deleted: ¶

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

2.9.1. Notifying the successful tenderer

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

At the latest before taking the award decision, the contracting authority / delegate body ensures that there is no record of the successful tenderer, including partners, in exclusion situation in the [Early Detection and Exclusion System](#).

Deleted: Early Warning System

Before the tenders expire but after the award decision is taken and approved by the European Commission, the contracting authority notifies the successful tenderer in writing that its tender has been accepted (see the model in Annex A8) and draws attention to any obvious arithmetical errors which were corrected as part of the evaluation.

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.

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

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

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

For grants, see point 6.5.10.1.

2.9.2. Contract preparation and signature

When preparing the contract for signature, the contracting authority must proceed as follows:

- Prepare a contract dossier (if possible printed in double-sided copies) with the following structure:
 - a) Explanatory note, using the format in Annex A6
 - b) Copy of the financing agreement authorising the project

Deleted: July

Deleted: 2015

Deleted: 59

- c) Copy of the call (prior information notice and contract notice, tender opening report, evaluation report, work programme, guidelines for applicants, evaluation reports, list of grants to be awarded, and any other relevant information)
- d) The originals of the proposed contract, which is based on the standard contract
- e) Special care should be taken to incorporate all minutes of pre-tender meetings, questions and answers during tender period, clarification requests by the evaluation committee and any minutes of negotiation meetings into the contract intended for signature.

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

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

The contracting authority sends the contract dossier to the Delegation of the European Union for endorsement. The Delegation signs all originals of the contract (and initials all pages of the special conditions and the budget) to endorse the EU financing and sends them back to the contracting authority. No endorsement by the Delegation is required in certain cases referred to in the Practical Guide to procedures for Programme Estimates.

- Sign and date all originals of the contract and initial all pages of the special conditions. In the case of grants, the contracts must be signed within 3 months from the date of notification of the evaluation results, save in exceptional cases, in particular for complex actions, calls using 2 budgetary years, calls for proposals launched in the context of facilities, multi-beneficiary contracts, or large number of proposals or where there have been delays attributable to the applicants.
- Send the signed originals of the contract to the successful tenderer/applicant, who must countersign them within 30 days of receipt.
- The tenderer or grant applicant keeps one original and returns the other(s) to the contracting authority together with any financial guarantee(s) required in the contract. If the successful tenderer/applicant fails to do this within the specified deadline or indicates at any stage that it is not willing or able to sign the contract, the tenderer/applicant cannot be awarded the contract. The contract preparation process must be restarted from step 1 with a new contract dossier prepared using the second-best tender (provided that that tender passed the technical threshold and is within the maximum budget available for the contract). In the case of grants, the contract will be offered to the highest ranking applicant on the reserve list (see point 6.5.10.2.).

DIRECT MANAGEMENT:

On receipt of the signed original(s) from the successful tenderer/applicant, 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:

On receipt of the signed originals from the successful tenderer/applicant, the contracting authority checks that they correspond strictly to those sent originally. One original is kept and the other is sent to the Delegation of the European Union.

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

Deleted: July

Deleted: 2015

Deleted: 59

The contract takes effect on the date of the last signature. The contract cannot cover earlier services or costs or enter into force before that date, unless in duly substantiated exceptional cases (see point 6.3.8.).

Contracting authorities must retain all documentation relating to the award and execution of the contract for a minimum period of seven years after payment of the balance and up to the date of prescription of any dispute under the law governing the contract.

During and after this period, the contracting authorities will treat personal data in accordance with their privacy policy. The documentation referred to above must be made available for inspection by the European Commission, OLAF and the Court of Auditors.

2.9.3. Publicising the award of the contract#Award notice - general

Publishing award notices is an important legal obligation so as to comply with the principle of transparency.

2.9.3.1. Procurements

In the case of procurement, after having received the countersigned contract from the successful tenderer, the contracting authority fills in the appropriate award notice template and sends it in electronic form to the European Commission for publication (see Annex A11e).

The European Commission publishes the results of the tender procedure in the Official Journal (where applicable), and on the EuropeAid website.

If the award notice is also published locally, the contracting authority must arrange local publication directly.

An award notice is published if the value of the contract is above international thresholds (services > EUR 300 000, supplies > EUR 300 000, works > EUR 5 000 000), unless the contract was declared secret (and the secrecy is still relevant at the time of the award), or where the performance of the contract must be accompanied by special security measures, or 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.

Deleted: if the contract notice was published or

In addition, regardless of the type of procedure, the contracting authority must:

- Inform in writing the unsuccessful tenderers using the appropriate template (Annexes C8B or D8) within not more than 15 days from receipt of the countersigned contract;
- record all statistical information regarding the procurement procedure including the contract value, the names of the other tenderers and the successful tenderer.

Deleted: B13b, B13c,

The information submitted to the unsuccessful tenderers must follow the template referred to above. If unsuccessful tenderers (i) meet the exclusion and selection criteria, and (ii) request further information in writing, they may be given any information which is not confidential⁴⁸, e.g. comments regarding

⁴⁸ Information is confidential where its disclosure would e.g. hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between those undertakings. See Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

Deleted: July

Deleted: 2015

Deleted: 59

their and the successful tenderer's strengths and weaknesses (within the limits on the rules governing access to documents), as this may assist them to be successful in future tenders. The information should be provided within 15 days of receipt of a request in writing.

Deleted: Access

Deleted: Documents

For specific provisions on service contracts see Section 3.3.12.1.

2.9.3.2. Grants

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

Unsuccessful applicants should be informed without delay, and in any event no later than 15 calendar days after information has been sent to the successful applicants, in writing using the appropriate template (Annex E9).

They may receive, at their request, further information regarding the evaluation of their own proposal (any weakness, poor or insufficient description of the action, budget not matching the proposed activities, overall lack of consistency, etc.)

As a rule, all applicants should be notified the outcome of the evaluation of their applications within 6 months following the submission deadline of the full application.

2.10. Modifying contracts

For modifications of grant contracts, please refer also to section 6.8.

Contracts may need to be modified if the circumstances of project implementation have changed since the contract was signed. However, the subject matter of the contract cannot be altered. Contracts can only be modified during their execution period. Any changes to the contract must be made officially by means of an administrative order or an addendum in accordance with the General Conditions. Substantial changes to the contract must be made by means of an addendum. Such an addendum must be signed by the contracting parties (and, under an indirect ex-ante management, approved and endorsed by the European Commission). The contractor may simply notify the contracting authority of changes of address, changes of bank account, and changes of auditor (in the case of service contracts); this does not affect the contracting authority's right to oppose the contractor's/beneficiary's choice of bank account or auditor.

2.10.1. General principles

The following general principles must always be complied with:

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

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.

A contract can be amended through an administrative order or addendum under the conditions provided for in the contract itself. In exceptional circumstances, the amendment may have a

Deleted: July

Deleted: 2015

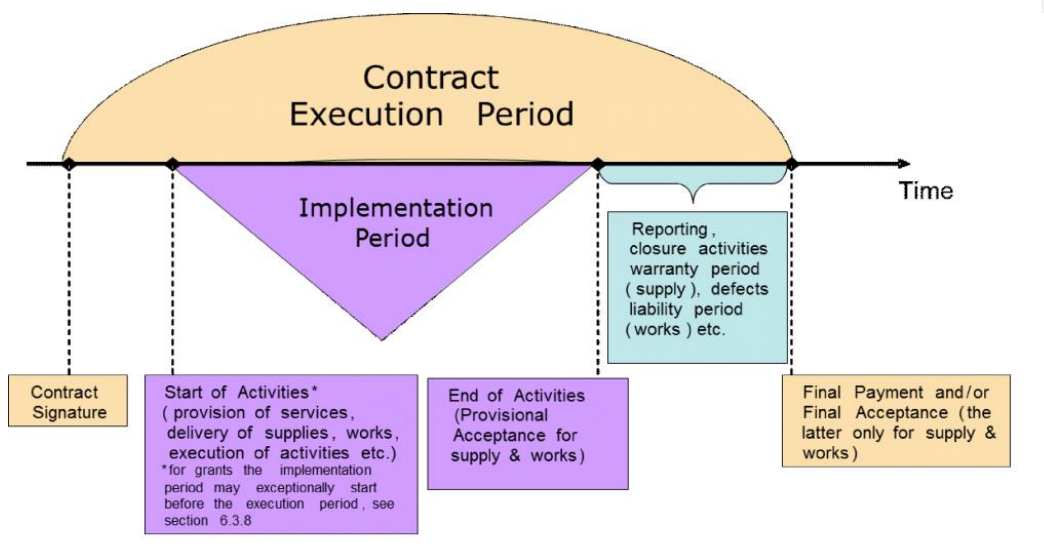
Deleted: 59

retroactive effect provided the execution period has not expired, but the **contractor or grant beneficiary** will only receive confirmation that the contracting authority has agreed to its request once the addendum has been duly signed or an administrative order has been issued. The contractor or grant beneficiary bears the financial risk of any costs incurred or goods and services provided before the addendum or administrative order has been issued, because the contracting authority has the right to refuse to sign the addendum or issue the order. Only once the addendum or order enters into force may the contractor or grant beneficiary claim payment for the costs, goods or services.

Deleted: ,

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, 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 1 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.



No changes to the contract may alter the award conditions prevailing at the time the contract was awarded.

Following this logic, major changes, such as a fundamental change to the terms of reference or to the technical specifications, cannot be made by means of an addendum or an administrative order.

A request for changes to the contract must not automatically be accepted by the contracting authority. There must be justified reasons for modifying a contract. The contracting authority must examine the reasons given and reject requests which are not fully substantiated.

Modifications to contract amounts may entail changes for the financial guarantees linked to the contract.

Deleted: July

Deleted: 2015

Deleted: 59

The purpose of the addendum or administrative order must be closely connected with the nature of the project covered by the initial contract.

Requests for contract modifications must be made (by one contracting party to the other) in time to allow the addendum to be signed by both parties before the expiry of the execution period of the contract.

Where the change to the contract extends activities already under way, it requires a negotiated procedure and compliance with some conditions (see points 3.2 4.1.c), 4.2 5.1.c), and 5.2.5.1.c) for contract-specific information about negotiated procedures and sections 3.5., 4.6., and 5.7. for contract-specific information on changes to contracts).

Deleted: 3

Deleted: 4

In other circumstances the change can be processed by means of simple addendum, with no need to undertake a negotiated procedure. The relevant modifications are the following:

a) additional works, supplies or services by the original contractor that have become necessary and that were not included in the initial procurement, when changing contractor is not feasible for technical reasons (eg. compatibility with existing equipment, services or installations) or changing contractor would cause substantial duplication of costs for the contracting authority. Any increase in price, including the net cumulative value of successive modifications, cannot exceed 50 % of the initial contract value;

b) modifications needed because of circumstances which a diligent contracting authority could not foresee, provided that any increase in price does not exceed 50 % of the initial contract value;

c) modifications meeting the following cumulative conditions:

i) the value of the modification is below EUR 300 000 for service and supply contracts, and EUR 5 000 000 for works contracts; and

ii) the value of the modification is limited to 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;

d) all other modifications which do not alter the minimum requirements of the initial procurement irrespective of their value when the resulting modification in the value is the outcome of the strict application of the procurement documents or contractual provisions.

Cases such as administrative changes, universal succession and application of revision clauses or options are considered not to alter the minimum requirements of the initial procedure. Modifications which are the result of the application of contractual provisions (eg. price revision clauses, measurement of works) or concern administrative details (eg. change of address, replacement of auditor) do not need an addendum or administrative order.

Reference to the initial contract value does not take into account price revisions.

All kind of modifications listed above apply also to specific contracts under framework contracts. Moreover, cases under points a), c) and d) also apply to the framework contract itself.

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

Deleted: July

Deleted: 2015

Deleted: 59

2.10.2. Preparing an addendum#Addendum - general

The contracting authority drafts an addendum as follows:

- 1) Use the templates for an addendum provided in 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 not be modified unless either the budget is being modified or the contract is being extended.

- 2) Prepare a dossier comprising the following items:

- a) An explanatory note (see the model in Annex A6) providing the technical and financial reasons for the modifications in the proposed addendum;
- b) A copy of the request for (or agreement to) the proposed modifications;
- c) The originals of the proposed addendum, which is based on the standard addendum and includes any revised annexes.

DIRECT MANAGEMENT,

INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

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

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

- 3) Send the addendum dossier to the Delegation of the European Union for endorsement (initialling all pages of the Special Conditions) to confirm the EU financing. No endorsement by the Delegation is required in certain cases referred to in the Practical Guide to procedures for Programme Estimates

- 4) Send the signed originals of the addendum to the contractor, who must countersign them within 30 days of receipt and return two originals to the contracting authority together with the possible financial guarantee required in the addendum.

DIRECT MANAGEMENT:

- 5) On receipt of the signed originals from the contractor, the contracting authority checks that it/they correspond(s) strictly to those sent originally.

INDIRECT MANAGEMENT WITH EX-POST CONTROLS AND INDIRECT

Deleted: July

Deleted: 2015

Deleted: 59

MANAGEMENT WITH EX-ANTE CONTROLS:

- 5) On receipt of the signed originals from the contractor, the contracting authority checks that they correspond strictly to those sent originally. One original is kept and the other is sent to the Delegation of the European Union.

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

6) Publish a notice for modification of contract in the Official Journal of the European Union and on EuropeAid website, when the addendum concerns the addition of activities that were not included in the original contract or have become necessary due to unforeseeable circumstances (ie. cases of modification through simple addendum under points (a) and (b) of Section 2.10.1.). However, the publication of such notice is not requested when the value of the modification is lower than EUR 300 000 for service and supply contracts, or lower than EUR 5 000 000 for works contracts.

2.11.List of Annexes

A	General	
A1a	Glossary of terms	a1a_glossary_en.doc
A1b	Glossary of Terms (multi)	a1b_glossarymulti_en.doc
A2a	Eligibility programmes 2014-2020	a2a_ecprogrammes_eligibility2014_2020_en.doc
A2b1	EU external aid programmes	a2b1_ecprogrammes_en.doc
A2b2	Eligibility programmes 2007-2013	a2b2_eligibilityprogrammes2007_2013_en.doc
A2c	Eligibility programmes before 2007	a2c_eligibilityprogrammesbefore2007_en.doc
A3	Declaration of objectivity and confidentiality	a3_decl_ob_conf_en.doc
A4	Declaration of impartiality and confidentiality	a4_decl_imp_conf_en.doc
A5	Notices	
A5a	Cancellation notice	a5a_cancnotice_en.doc
A5a1	Cancellation notice (e-notices)	a5a1_cancnotice_enotices_en.doc

Deleted: A5

Deleted: July

Deleted: 2015

Deleted: 59

A5b	Corrigendum of contract notice	a5b_corrcontractnotice_en.doc
<u>A5c</u>	<u>Notice for modification of contract</u>	<u>a5c_contractmodificationnotice_en.doc</u>
<u>A5d</u>	<u>Prior information notice (e-notices)</u>	<u>a5d_priorinfonotice_enotices_en.doc</u>
<u>A5e</u>	<u>Contract notice (e-notices)</u>	<u>a5e_contractnotice_enotices_en.doc</u>
<u>A5f</u>	<u>Information to candidates and tenderers (e-notices)</u>	<u>a5f_info_candidates_tenderers_enotices_en.docx</u>
<u>A5g</u>	<u>Award notice (e-notices)</u>	<u>a5g_awardnotice_enotices_en.doc</u>
A6	Explanatory note	a6_explnote_en.doc
A7	Receipt for hand delivered applications/ tenders/ proposals	a7_receipt_en.doc
A8	Notification Letter for Supply and Works	a8_notifletter_supplyworks_en.doc
A9	Cover letter for submission of contract/addendum	a9_coverletter_en.doc
A10a	Negotiation report for negotiated procedures (procurement) and direct award (grants)	a10a_negotiationreport_en.doc
A10b	Negotiation report for single tenders	a10b_singletenderreport_en.doc
<u>A11</u>	<u>Guidelines</u>	
A11b	Guidelines for the drafting of IT tenders' technical specifications in the field of external actions	a11b_it_guidelines_en.doc
A11c	Guidelines for the drafting of technical specifications for office furniture tenders in the field of external actions	a11c_guidelines_furniture_en.doc
A11d	Guidelines for the drafting of technical	a11d_guidelines_vehicles_en.doc

Deleted: A11

Deleted: July

Deleted: 2015

Deleted: 59

	specifications for vehicle tenders in the field of external actions	
A11e	Guidelines publication	a11e_publication_guidelines_en.doc
A12	Annex V to Decision No 3/90 of the ACP-EEC Council of Ministers of 29 March 1990 adopting the general regulations, the general conditions and the rules governing the conciliation and arbitration procedure for contracts financed under the EDF	a12_conciliationandarbitration_en.pdf
A13	Privacy statement	a13_privacy_statement_en.doc
<u>A14</u>	<u>Declaration of honour on exclusion and selection criteria</u>	<u>a14_declaration_honour_en.docx</u>

Deleted: July

Deleted: 2015

Deleted: 59