

European Commission
Directorate-General for Development
and Cooperation - EuropeAid

PROCUREMENT AND GRANTS
FOR EUROPEAN UNION EXTERNAL ACTIONS
A Practical Guide

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3. Service contracts#Services

3.1. Introduction

Service contracts shall comprise study and technical assistance contracts. Service contracts are sometimes initiated to gain from exterior knowledge.

A study contract is a service contract concluded between a contractor and the Contracting Authority, which includes studies for the identification and preparation of projects, feasibility studies, economic and market studies, technical studies and audits.

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A technical assistance contract is a service contract where the contractor is called on to play an advisory role, to manage or supervise a project, or to provide the expertise specified in the contract.

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3.1.1. Type of service contract

A service contract may be concluded in two different ways:

- Global price - where specified outputs are set out. The service will be paid on the basis of the delivery of the specified outputs. Payments might be totally or partially withheld if the contractual results have not been reached. Partial payments have to be determined according to the partial implementation of the outputs, and are subject to:
 - o several budget lines per output, which may be required but are not compulsory
 - o negotiations with the service provider;
- Fee-based - where the output is unpredictable, or where the workload to achieve the specified output is impossible to quantify in advance. Therefore it is economically more advantageous to pay the services on the basis of time actually worked.

Examples of global price activities:

Studies, evaluations, audits, organisation of events such as conferences, trainings. Studies include a variety of tasks like identification and preparation of projects, feasibility studies, economic and market studies, technical studies, drafting a legal document, evaluations and audits. Global price always specify the output, i.e. the contractor must provide a given product.

The tenderer must announce his intentions in terms of mobilisation of means in its tender. However, during the implementation, the technical and operational means by which the contractor achieves the specified output are not relevant for the method of measurement.

Examples of fee-based activities:

Project supervision, resident technical assistance, facilitation in a multi-stakeholder process (depending of the complexity of the environment).

Technical assistance contracts often only specify the means. For instance the contractor is responsible for implementing the tasks entrusted to it in the Terms of Reference and ensuring the quality of the services provided. The contractor should, however, contribute to improve the performance of the institution he is seconded to. A service consultant also has a duty of care under the contract: it must

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warn the Contracting Authority in good time of anything that might affect the proper implementation of the project.

Fee-based contracts may also include activities paid on the basis of lump sums. An example could be a fee-based contract for training, where the trainings would be paid on a fee-based basis, and where the development of the training material would be paid on a lump sum basis.

In most cases the whole contract is set out in the form of either a global price contract or a fee-based contract.

However some contracts may combine global price and fee based. In such cases, each item or each section of the contract should have a clear method of measurement and verification: global price or fee-based. It should be clear in the terms of reference and furthermore stipulated in the financial offer template.

Finally, an example of a combined contract is a design and supervision contract which usually would consist of two sections: The design section is a collection of several global prices (geotechnical study, environmental study, economic study, etc.) whereas the supervision section would be fee-based.

A road supervision contract does indeed mainly consist of fee-based items, since the supervising engineer is affected by many factors which are beyond his control, like additional works, delays of various stakeholders including the contractor himself, the public authority and the donor. However, before the tender launch it is possible to single out tasks within the supervision duties, which may be treated as a global price: for example, studies on technical alternatives which have to be studied by specialists outside the resident team. Once the number of expert days is agreed for the task the item will be accounted for as a global price.

Moreover, technical assistance projects may contain a mix of fee-based and global price for projects which are structured into different phases:

- A first critical phase may consist of a diagnostic, analysing institutions and stakeholders, assessing capacity, facilitating a joint process for defining precise actions and concrete outcomes. This may be a fee-based activity.
- A second phase would consist of the realisation of those specific actions. The individual output may be contracted as global price.

Useful indications are available in the Technical Cooperation Reform guidelines. See page 99 of the "The Guidelines on Making Technical Cooperation More Effective"¹.

Increasing the use of global price contracts:

The use of fee-based service contracts where Statements of Exclusivity and Availability (SoEA) are obligatory is justified where the output of the contract is difficult or impossible to define in advance and/or the main objective of the contract is to give support on a continuous basis to e.g. the administration of a partner country.

In other cases the use of global price service contracts is encouraged as more appropriate.

The following features are comparative advantages of global price contracts:

¹ https://ec.europa.eu/europeaid/tools-and-methods-series-guidelines-no-3-making-technical-cooperation-more-effective_en

Global price contracts may include where relevant a price breakdown based on outputs/deliverables against which partial payments can be made (e.g. the deliverables could be related to the progress inception report/interim report/final report or to the different parts of a study/report/event) depending on the project in question.

It is possible to have incidental expenditures also under a global price contract in exceptional circumstances, which would make it possible to use a global price contract for the organisation of seminars where the number of participants and its financial implications are difficult to estimate for the tenderers to give an example. The tender dossier may be modified accordingly to plan incidental expenditures.

Global price contracts generally do not require key experts. In such cases the Terms of Reference could include profiles which the tenderer will have to demonstrate in their offer that they have access to. An example where key experts are not deemed necessary is a mission which consists in a well-defined technical output, e.g. design documents for an investment project. In that case, provided the contractor has got internal capacities, the professional responsibility should lead the contractor to select the best possible staff in order to deliver the expected results. However, depending on the particularities of the project, the contract may need key experts.

Those key experts must sign a SoEA.

An example of a project where key experts could be useful is a project which obliges soft skills and a good understanding of the local context, e.g. drafting a piece of legislation or a reform proposal, which demands talking to various stakeholders, building trust and listening to them. In such a case, facilitation and communication skills should be an asset.

Tender procedures for global-price contracts could include a "certification" process by which the experts proposed by the successful tenderer will be interviewed to check whether they are able to deliver as announced in the offer. As such a contract may include many experts; this "certification" may also take place during implementation of the contract.

The methodologies contained in the offers must include a work plan indicating the envisaged resources to be mobilised, allowing a better comparison of offers, and offering a basis for negotiation in case of amendment to the contract.

Global price contracts generate less micromanagement and verification of time sheets and incidental expenditures and therefore will free more time for working on operational and sector issues.

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3.2. Procurement procedures

3.2.1. Contracts with a value of EUR 300 000 or more

3.2.1.1. Restricted procedure

All service contracts worth EUR 300 000 or more must be awarded by restricted tender procedure following international publication of a prior information notice and a contract notice (see point 3.3.1.).

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3.2.2. Contracts with a value of less than EUR 300 000

Contracts worth under EUR 300 000 may be awarded either under the framework contract procedure laid down for BENEf 2013 (see point 3.4.1.) or under a competitive negotiated procedure (see point 3.4.2.) involving at least three candidates.

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3.2.3. Contracts with a value of less than EUR 20 000

The Contracting Authority may award service contracts of a value of EUR 20 000 or less on the basis of a single tender.

The specific annexes for simplified tenders must be used (administrative compliance grid, contract, contract notice, invitation letter, instructions to tenderers, and tender form) for this procedure. They can be adjusted to the procedure, including deleting non relevant sections, without this requiring derogation.

For services with a value of less than or equal EUR 2 500 the contracting authority may simply pay against invoices without prior acceptance of a tender.

3.2.4. Procedures applicable without ceilings

3.2.4.1. Negotiated procedure

DIRECT MANAGEMENT:

Prior approval/event to be reported as the case may be is required from the European Commission for the use of the negotiated procedure.

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

Prior authorisation by the European Commission is required for the use of the negotiated procedure.

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INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

No prior authorisation by the European Commission is required for the use of the negotiated procedure.

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See also text box in section 2.4.8.

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

- a) Where strictly necessary, for reasons of extreme urgency brought about by events which the Contracting Authorities could not have foreseen and which can in no way be attributed to them, the ordinary time limits for the procedures cannot be respected.

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Operations carried out in crisis situations as referred to in Article 190(2) of the Rules of

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Application of the EU Financial Regulations satisfy the test of extreme urgency².

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- b) Where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature (ie. services directly linked to the statutory mission of the body) or designed to provide assistance to peoples in the social field.
- c) For the extension of an ongoing contract through the repetition of similar services entrusted to the original contractor, provided that the initial contract had been awarded following publication of a contract notice, and the latter announced the possibility of using the negotiated procedure for new services for the project as well as the relevant estimated cost³.
- d) Where the tender procedure has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the Contracting Authority may negotiate with one or more tenderers of its choice from among those that took part in the invitation to tender procedure, if they comply with the selection criteria, provided that the original procurement documents are not substantially altered and that the principle of fair competition is observed.
- e) Where the contract consists in the acquisition of a plan or design selected by a jury following a design contest and must, under the rules applying, be awarded to the winner or to one of the winners, in which case, all successful candidates shall be invited to participate in the negotiations.
- f) Where, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider, with no reasonable alternative or substitute existing, and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement.
- g) For contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the partner country so requires, provided the essential interests concerned cannot be guaranteed by other measures (eg. requirements to protect confidential information in the procurement procedure).
- h) Where a new contract has to be concluded after early termination of an existing contract.
- i) For legal services such as: representation and advice related to arbitration, conciliation or judicial proceedings; arbitration and conciliation services; document certification and authentication services which must be provided by notaries⁴.
- j) For financial services and loans.
- k) For the purchase of electronic communication services in the meaning of art. 2(c) of Directive

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<#>complementary services not covered by the initial contract but which, as a result of unforeseen circumstances, have become necessary for the performance of the contract, provided that the complementary services cannot be technically and economically separated from the initial contract without serious inconvenience for the Contracting Authority and the aggregate amount of complementary services does not exceed 50 % of the value of the principal contract;
additional services consisting of

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Deleted: If no offer was received, or if none of the tenderers meets the selection criteria, no negotiation procedure can be allowed on the basis of this Article.

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² 'Emergency assistance' is another case specific to the EDF and distinct from the 'extreme urgency' referred to here, in which the negotiated procedure may be used for actions which are not governed by Article 19c of Annex IV to the Cotonou Agreement. Emergency assistance is linked to the application of Articles 72 and/or 73 of the Cotonou Agreement. See also Article 79(5) of the [Council Decision 2013/755/EU of 25 November 2013](#).

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³ This case is therefore only applicable after a restricted call for tender.

⁴ Legal services other than those mentioned under point i) may be awarded following a competitive negotiated procedure regardless of the estimated contract value, see point 3.4.2.

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[2002/21/EC⁵](#).

- 1) [Where a service contract is to be implemented by an international organisation which cannot participate in competitive procedures according to its statute or act of establishment.](#)

In all cases, a negotiation report must be prepared (see template in Annex A10) justifying the manner in which the negotiations were conducted and the basis for the resulting contract award decision. The procedures described in sections 3.3.12.1. and section 3.3.12.2. must be followed by analogy. The negotiation report must be included in the contract dossier and the contracting authority must approve it.

3.2.4.2. Competitive dialogue

See point 2.4.7. for further details.

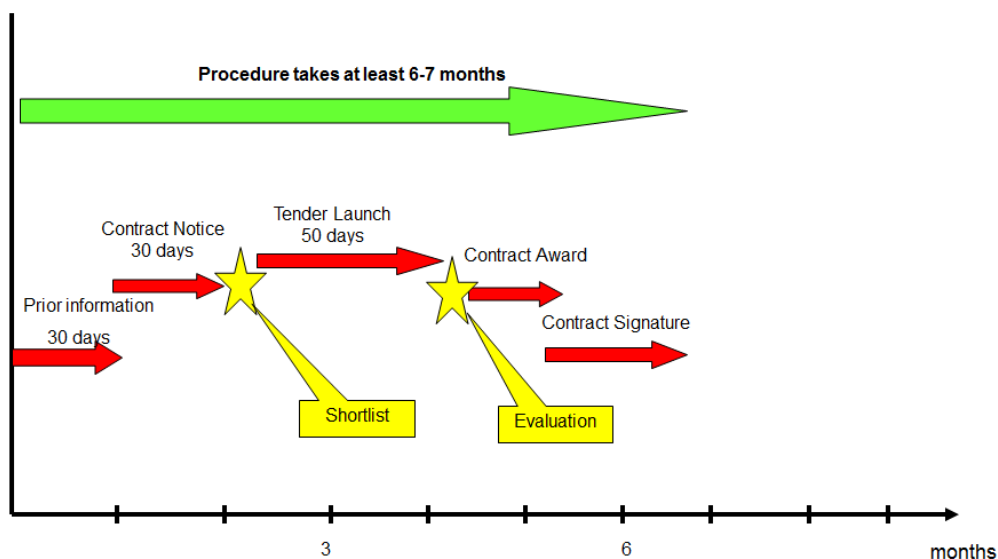
3.2.4.3. Framework contract

[See point 2.4.5. for further details.](#)

⁵ [‘Electronic communications service’ means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks.](#)

3.3. Restricted tenders (for contracts of EUR 300 000 or more) #International restricted procedure – services; Restricted procedure - services

Timeline of an international restricted tender procedure for a service contract



3.3.1. Publicity

In order to ensure the widest possible participation in competitive tendering and the requisite transparency, the contracting authority must publish prior information notices and contract notices for all service contracts of EUR 300 000 or more, in accordance with the guidelines on publication (see annex A11e).

3.3.1.1. Publication of prior information notices

A prior information notice setting out the specific characteristics of the planned tender procedure must be published, at least 30 days before the publication of the contract notice.

The prior information notice must briefly state the subject, content and value of the contracts in question. Publishing a prior information notice does not oblige the contracting authority to award the contracts proposed, and service providers are not expected to submit applications at this stage.

Regardless of the management mode, the contracting authority drafts the prior information notice using the appropriate template (Annex B1) and sends it in electronic form to the relevant service of the European Commission at least 15 days before the intended date of publication, to allow time for translation (See guidelines for publication in annex A11e).

If necessary, the contracting authority arranges simultaneous local publication and publication in any other appropriate media directly.

3.3.1.2. Publication of contract notices

A minimum of 30 days after publication of the prior information notice, a contract notice must be published in the Official Journal of the European Union, on the EuropeAid website⁷ (see publication guidelines in Annex A11e) and in any other appropriate media.

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The European Commission (acting on behalf of the contracting authority) is responsible for publication in the Official Journal of the European Union and on the EuropeAid website. If the contract notice is published locally, the contracting authority must arrange local publication directly.

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

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

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

In addition to the above, the finalised terms of reference (see section 2.6.) must be submitted to the European Commission either at the same time or in advance to demonstrate that the proposed contract notice corresponds to the objectives of the contract.

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

The selection criteria set out in the contract notice must be:

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

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

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

If the contract notice is also published locally by the contracting authority, that notice must be identical to the contract notice published in the European Union Official Journal and on EuropeAid

⁷ <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome>

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website and must be published at the same time.

The contract notice must be clear enough to save candidates from requesting clarification or additional information during the procedure.

Candidates may, however, submit questions should they need to.

If the contracting authority, either on its own initiative or in response to the request of a tenderer, amends information in the contract notice, it must send a corrigendum using the appropriate template (Annex A5b) and complying with the deadlines set up in the publication guidelines (see Annex A11e) to the relevant services of the European Commission for publication.

The corrigendum may extend the deadline to allow candidates to take the changes into account.

The corrigendum will be published before the original submission deadline and no later than 10 days after the request for publication was sent to the relevant service of the European Commission.

The submission deadline may be extended to allow candidates to take the changes into account. Please note that with a clarification, the contracting authority cannot give an opinion on the assessment of the application.

If information in the contract notice needs to be clarified but does not require an amendment of the contract notice, this clarification must be published on the EuropeAid Website, not in the EUOJ.

3.3.2. Drawing up shortlists#Long list – services;Shortlist – services

Candidates are shortlisted by the evaluation committee.

The selection procedure involves:

- drawing up a long list (see template in Annex B4) summarising all the applications received;
- eliminating applications that are inadmissible due to being submitted by ineligible candidates (see point 2.3.1.) or by candidates falling into one of the situations described in sections 2.3.3.1. and 2.3.3.2. on the basis of their declaration of honour;
- applying the selection criteria exactly as published.

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For the supply of supporting documents in relation to the exclusion and selection criteria, see points 2.3.3. and 2.4.11.

After examining the responses to the contract notice, the Evaluation Committee shortlists the service providers offering the best guarantee of satisfactory performance of the contract.

The shortlist comprises between four and eight candidates.

If the number of eligible candidates meeting the selection criteria is greater than eight, the additional criteria published in the contract notice are applied in order to reduce the number to the eight best candidates. For further details please see section 2.4.11. "Selection criteria".

If the number of eligible candidates meeting the selection criteria is less than the minimum of four, the contracting authority may invite only those candidates who satisfy the selection criteria to submit a tender. Before accepting a reduced competition of less than four candidates, a prior authorisation is required, save in indirect management with ex post control as stated in the text box below. This prior

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authorisation may be granted based on a verification showing that the timing of the publication, the selection criteria used and the scope of the services in relation to the budget were satisfactory. This shall be justified in the evaluation report.

DIRECT MANAGEMENT:

An event to be reported is required.

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

Prior authorisation by the European Commission is required.

INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

No prior authorisation by the European Commission is required.

The shortlisting process and the final shortlist itself must be fully documented in a shortlist report (see template in Annex B5).

Before the shortlist is approved by the evaluation committee, the contracting authority must check that no candidate (including partners) is in an exclusion situation in the [Early Detection and Exclusion System](#).

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The shortlist report is signed by the chairperson, the secretary and all evaluators.

DIRECT MANAGEMENT:

The shortlist report must be submitted to the contracting authority, which must decide whether or not to accept its recommendations, before the shortlisted candidates can be invited to submit a tender.

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

The shortlist report must be submitted to the contracting authority, which must decide whether or not to accept its recommendations. The contracting authority must then submit the shortlist report together with its recommendation to the European Commission, before the shortlisted candidates can be invited to submit a tender.

If the European Commission does not accept the recommendation of the contracting authority, it must write to the contracting authority stating the reasons for its decision.

INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

No authorisation by the European Commission is required before the contracting authority acts on the recommendations of the evaluation committee.

Candidates not selected will be informed in writing by the contracting authority (see Annex B7).

Selected candidates will receive a letter of invitation to tender and the tender dossier (see template in Annex B8). At the same time, the final shortlist must be published on the EuropeAid website.

The contracting authority prepares the shortlist notice using the appropriate template (Annex B6) and sends it in due time and in electronic form to the European Commission for publication on the EuropeAid website ([see guidelines for publication in Annex A11e](#)).

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If unsuccessful candidates request further information, they may be given any information which is

not confidential, e.g. reasons why a reference does not meet the technical selection criterion, as this may help them to be successful in future tenders.

3.3.3. Drafting and content of the tender dossier#Tender Specifications – services;Tender dossier – services;Financial Guarantee – services;Pre-financing - services

Tender documents must be carefully drafted, to ensure that the contract is complete and that the procurement procedure is carried out correctly.

These documents must contain all the provisions and information that candidates need to submit a tender: the procedures to follow, the documents to provide, cases of non-compliance, award criteria and their weightings, etc. When the contracting authority is the European Commission, it may be desirable to involve representatives of the final beneficiaries in preparing the tender at an early stage. See section 2.6. for guidelines on drafting terms of reference. Given the technical complexity of many contracts, the preparation of the tender dossier may require the assistance of one or more external technical specialist(s). Each specialist must sign a Declaration of Objectivity and Confidentiality (see Annex A3).

The contracting authority is responsible for drawing up these documents.

DIRECT MANAGEMENT:

The tender dossier must be agreed upon by the European Commission prior to issue. The standard practice is to consult and obtain the agreement of the partner country, and where appropriate of other parties involved, on the tender dossier.

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

The contracting authority must submit the tender dossier to the Delegation of the European Union for authorisation prior to issue.

INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

No prior authorisation on the tender dossier by the European Commission is required.

TENDER DOSSIER CONTENT

See Annex B8.

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

The tender dossier must clearly state that the tender must be made with firm, non-revisable prices.

According to the applicable rules, a pre-financing guarantee could be required or not. If so, this must be mentioned in the tender dossier.

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Deleted: The prices are usually fixed and not subject to revision, but in specific cases a price revision clause might be justified. If that is the case, the tender dossier must lay down the conditions and/or formulae for the revision of prices in the course of the contract. The contracting authority must then take particular account of:¶ the nature of the contract and the economic situation in which it is taking place;¶ the type of tasks and contract and their duration;¶ its financial interests.

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3.3.4. Award criteria#Award criteria - services

The contract award criteria serve to identify the best quality-price ratio. These criteria cover both the technical quality and price of the tender.

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The technical criteria allow the quality of technical tenders to be assessed. The two main types of technical criteria are the methodology, and for fee-based contracts, the curriculum vitae (CV) of the key experts proposed. The technical criteria may be divided into sub-criteria. The methodology, for example, may be examined in the light of the terms of reference, the optimum use of the technical and professional resources available in the partner country, the work schedule, the appropriateness of the resources to the tasks, the support proposed for experts in the field, etc. CVs may be awarded points for such criteria as qualifications, professional experience, geographical experience, language skills, etc. The tender evaluation committee is required to ensure that any methodology submitted by the tenderer complies with the requirements of the terms of reference. The methodology may add to the requirements of the terms of reference but must in no way detract from them.

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

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

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

There must be no overlap between the selection criteria used to draw up the shortlist and the award criteria used to determine the best tender.

Abnormally low tenders

Contracting authorities can reject tenders that appear to be abnormally low in relation to services concerned.

However rejection on that ground alone is not automatic.

The concerned tenderer must be asked, in writing, to provide details of the constituent elements of its tender, notably those relating to compliance with employment protection legislation and working conditions in the location of the contract, such as the service provision process, the technical solutions chosen or any exceptionally favourable condition available to the tenderer, the originality of the tender.

In view of the evidence provided by the tenderer, the contracting authority decides on whether the tender is to be considered irregular and has consequently to be rejected.

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

3.3.5. Additional information during the procedure

The tender dossier must be clear enough to save shortlisted candidates from requesting additional information during the procedure. If the Contracting Authority provides additional information on the tender dossier, either on its own initiative or in response to a request from a shortlisted candidate, it must send such information in writing to all other shortlisted candidates at the same time.

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Tenderers may submit questions in writing no later than 21 days before the deadline for submission of tenders. The Contracting Authority must reply to all tenderers' questions (sending a copy to the European Commission, in the case of indirect management with ex-ante controls) no later than 11 days before the deadline for receipt of tenders. Please note that the contracting authority cannot give a prior opinion on the assessment of the tender. In the interest of transparency, all questions and answers should be sent simultaneously to all tenderers.

If the technical content of the tender is complex, the contracting authority may hold an information meeting and/or site visit. This meeting must be announced in the tender dossier and must take place no later than 21 days before the expiry of the deadline for submission of tenders. All costs of attending such a meeting must be met by the tenderers. Individual visits by companies during the tender period cannot be organised by the contracting authority taking into account transparency and equal treatment of the tenderers. Although they are not compulsory, these information meetings are encouraged since they have proven to be an efficient way to clarify many questions related to the tender dossier. Any presentation/documentation to be delivered in the information session, as well as the outcome and the minutes, must also be uploaded at least on the EuropeAid website where the call was published.

3.3.6. Deadline for submission of tenders

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

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DIRECT MANAGEMENT, INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS AND INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

The minimum period between the dispatch of the letter of invitation to tender by the Contracting Authority and the deadline for receipt of tenders is 50 days. However, in exceptional cases, this period may be shortened in compliance with internal procedures. Under indirect management this is also subject to prior authorisation by the European Commission.

3.3.7. Period of validity

See point 2.8.5.

3.3.8. Submission of tenders

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

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Any tender that infringes these rules (e.g. by reason of unsealed envelopes or references to price in the technical offer) will be deemed irregular, and will therefore be rejected.

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

The tender must be submitted in accordance with the instructions to tenderers.

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3.3.9. The Evaluation Committee#Evaluation committee - services

For the Committee's composition, impartiality and confidentiality, responsibilities and the timetable, see section 2.8.

3.3.10. Stages in the evaluation process

3.3.10.1. Receipt and registration of tenders

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

3.3.10.2. Tender opening session

Part 1: Preparatory phase

The first meeting of the evaluation committee is held before the actual evaluation starts. The tender dossier should have been circulated in advance to the members of the evaluation committee. The chairperson presents the purpose of the tender and explains the procedures to be followed by the evaluation committee, including the evaluation grid, award criteria and weightings specified in the tender dossier.

Part 2: Tender Opening

See tender opening checklist in Annex B9.

Part 3: Compliance with formal submission requirements

See Annex B10.

At this stage, the evaluation committee must decide whether or not tenders comply with the formal submission requirements. The summary of tenders received, which is attached to the tender opening report (see Annex B10), must be used to record whether each of the tenders complies with the formal submission requirements.

The chairperson must check that no member of the evaluation committee has a potential conflict of interest with any of the tenderers (on the basis of the shortlist, the tenders received, consortium members and any identified subcontractor). See also points 2.8.2. and 2.8.3.

Part 4: Financial Offers

The envelopes containing the financial offers will remain sealed. All financial offers will be deposited in safe deposit until technical assessment of all the tenders has been completed.

3.3.10.3. Evaluation of offers

If requested by a majority of the evaluation committee voting members, the chairperson may write to tenderers whose submissions require clarification, offering them the chance to reply within a

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reasonable time limit to be fixed by the evaluation committee.

Part 1: Administrative compliance (regularity)

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

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

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

Please note that the documentary proof for exclusion and selection criteria as well as for the key experts are not verified during this phase of the evaluation.

Part 2: Technical acceptance

The evaluation committee then examines the technical offers, while the financial offers remaining sealed. When evaluating technical offers, each member awards each offer a score out of a maximum 100 points in accordance with the technical evaluation grid (setting out the technical criteria, sub-criteria and weightings) laid down in the tender dossier (see point 3.3.4.). Only offers which achieve a score of 75 or more are declared "technically accepted". Under no circumstances may the evaluation committee or its members change the technical evaluation grid communicated to the tenderers in the tender dossier.

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In practice, it is recommended that tenders be scored for a given criterion one after another, rather than scoring each tender for all criteria before moving on to the next. Where the content of a tender is incomplete or deviates substantially from one or more of the technical award criteria laid down in the tender dossier (e.g. if an expert does not meet the minimum requirements in the profile), the tender will be automatically rejected, without being given a score, but this must be justified in the evaluation report.

For instructions and guidelines how to allocate points and score in the evaluation for fee-based and global-price contract, please see the evaluator's grid (Annexes B12a and B12b respectively). Experts must be evaluated against the requirements stated in the terms of reference. The key experts must fulfil the minimum requirements for all the criteria. If it is not the case, the offer should be considered inadmissible and be rejected.

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The tenderers must provide documentary proof for the key experts proposed. This includes copies of the diplomas referred to in the CV and employers' certificates or references proving the professional experience stated in the CV. If missing proofs are requested it will only be for the relevant experience and diplomas which are among the requirements in the terms of reference. Only diplomas and experience supported by documentary proof will be taken into account.

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, shall only be accepted 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.

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

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officially terminated before the expert starts to work on an EU financed project under a contract with an external organisation/company.

For fee-based contracts, the precise time input of the key expert is left to the discretion of the tenderers as it has to be linked with the methodology provided. The methodology should include the time needed for each key expert in order to achieve the required outputs of the project.

If the tender dossier expressly permits variants, such variants are scored separately. Where variants are allowed, the Contracting Authority may take them into account if:

- they are submitted by the tenderer submitting the offer which gives best value for money in the evaluation; and
- they meet the requirements specified by the tender dossier, attaining at least the minimum quality and performance required.

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

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

The evaluation committee discusses each technical offer and each member awards it a final score. Evaluators may change their individual evaluation as a result of the general discussion on the merits of each offer.

In case of major discrepancies, full justification has to be provided by dissenting members. Once discussed, each evaluator finalises his/her evaluation grid on each of the technical offers and signs it before handing it over to the secretary of the evaluation committee. The secretary must then compile a summary of the comments of the evaluation committee members as part of the evaluation report.

The secretary calculates the aggregate final score, which is the arithmetical average of the individual final scores.

Interviews should be standard practice whenever the expert proposed has no relevant experience of EU projects, as evidenced by the CV, and when this experience is a key element for the position and for the project implementation. In other cases (e.g. under direct management) verification/checks within the European Commission may be more appropriate. Interviews should therefore be provided for in the tender dossier and must be well prepared if conducted.

The preferred method of conducting interviews is by telephone (or equivalent). Exceptionally and only if duly justified, given the cost both to tenderers and the contracting authority, the expert may be interviewed in person.

Before definitively concluding its evaluation of the technical offers, the evaluation committee may decide to interview the key experts proposed in technically accepted tenders (i.e. those which have achieved an average score of 75 points or more in the technical evaluation). It is recommended that tenderers which have scored close to the technical threshold also be invited for interview. Any interviews should be held by the evaluation committee at intervals close enough to allow the experts to be compared. Interviews must follow a standard format agreed beforehand by the Committee with questions drafted and applied to all experts or teams called to interview. The indicative timetable for these interviews must be given in the tender dossier.

Tenderers must be given at least 10 days' advance notice of the date and time of the interview. If a

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tenderer is prevented from attending an interview by force majeure, a mutually convenient alternative date/time is arranged. If the tenderer is unable to attend on this second occasion, its tender may be eliminated.

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

Once the evaluation committee has established each technical offer's average score (the mathematical average of the final scores awarded by each voting member), any tender falling short of the 75-points threshold is automatically rejected. If no tender achieves 75 points or more, the tender procedure is cancelled.

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Out of the tenders reaching the 75-point threshold, the best technical offer is awarded 100 points. The others receive points calculated using the following formula:

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

Specimen Tender Evaluation Summary:

Part1: Technical Evaluation

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

* Only tenderers with an average score of at least 75 points qualify for the financial evaluation.

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3.3.10.4. Evaluation of financial offers

Upon completion of the technical evaluation, the envelopes containing the financial offers for tenders that were not eliminated (i.e. those that scored an average score of 75 points or more) are opened and all the originals of these financial offers are initialled by the chairperson and the secretary of the evaluation committee.

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The evaluation committee has to ensure that the financial offer satisfies all formal requirements.

A financial offer not meeting these requirements may be considered inadmissible and be rejected. Any

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rejection on these grounds must be fully justified in the evaluation report.

The evaluation committee checks that the financial offers contain no obvious arithmetical errors. Any obvious arithmetical errors are corrected without penalty to the tenderer.

The envelopes containing the financial offers of rejected tenderers following the technical evaluation must remain unopened and be kept. They must be archived by the contracting authority together with the other tender procedure documents.

The total contract value comprises the fees (including employment-related overheads), the incidental expenditure, lump sums (if applicable), and the provision for expenditure verification⁸ that are specified in the tender dossier. This total contract value is compared with the maximum budget available for the contract. Tenders exceeding the maximum budget allocated for the contract are **considered unacceptable and are** eliminated.

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The Evaluation Committee then proceeds with the financial comparison of the fees and lump sums between the different financial offers. Both the provision for incidental expenditure and the provision for expenditure verification are excluded from the comparison of the financial offers as they are specified in the tender dossier.

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

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

When evaluating financial offers, the evaluation committee compares only the total fees and lump sums.

Specimen Tender Evaluation Summary:

Part 2: Financial Evaluation *

	Maximum possible score	Tenderer 1	Tenderer 2	Tenderer 3
Total fees			EUR 951 322	EUR 1 060 452
Financial score (lowest total fees + lump sums/actual total fees + lump sums x 100)		Eliminated following technical evaluation	100	$951\,322/1\,060\,452 \times 100 = 89.71$

* Only tenderers with average scores of at least **75** points in the technical evaluation qualify for the financial evaluation.

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3.3.10.5. The evaluation committee's conclusions

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The best value for money is established by weighing technical quality against price on an 80/20 basis.

⁸ In the exceptional cases where the expenditure is verified by the European Commission, the tender documents, including the proposed contractual template, must be duly amended. A derogation is thus required.

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This is done by multiplying:

- the scores awarded to the technical offers by 0.80
- the scores awarded to the financial offers by 0.20.

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Specimen Tender Evaluation Summary:

Part 3: Composite Evaluation

	Maximum possible	Tenderer 1	Tenderer 2	Tenderer 3
Technical score x 0.80		Eliminated following technical evaluation	$99.22 \times 0.80 = 79.38$	$100.00 \times 0.80 = 80.00$
Financial score x 0.20			$100.00 \times 0.20 = 20.00$	$89.71 \times 0.20 = 17.94$
Overall score			$79.38 + 20.00 = 99.38$	$80.00 + 17.94 = 97.94$
Final ranking			1	2

The resulting, weighted, technical and financial scores are then added together to find the tender with the highest score, i.e. the best quality-price ratio. It is essential to make the calculations strictly according to the above instructions. The Evaluation Committee's recommendation shall be to award the contract to the tender achieving the highest overall score on the condition that the documentary evidence submitted by the tenderer for the exclusion and selection criteria are verified and admitted.

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EDF-FUNDED PROGRAMMES

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.

Where two tenders are acknowledged to be equivalent on the basis of the final score, preference is given:

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

(See also point 2.4.10.)

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

- Award the contract to the tenderer which has submitted a tender:
 - which complies with the formal requirements and the eligibility rules;
 - whose total budget is within the maximum budget available for the project;
 - which meets the minimum technical requirements specified in the tender dossier; and

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- which is the best value for money (satisfying all of the above conditions).

- Cancel the tender procedure

(See point 2.4.13.).

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

DIRECT MANAGEMENT:

The entire procedure (technical and financial evaluation) is recorded in an evaluation report (see template in Annex B11) to be signed by the chairperson, the secretary and all evaluators. This must be submitted to the competent authority of the European Commission, which must decide whether or not to accept its recommendations.

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

The entire procedure (technical and financial evaluation) is recorded in an evaluation report (see template in Annex B11) to be signed by the chairperson, the secretary and all voting members of the evaluation committee. This must be submitted to the relevant services of the contracting authority, which must decide whether or not to accept its recommendations. The contracting authority must then submit the evaluation report together with its proposed decision to the European Commission. If there is an award proposal and the European Commission has not already received a copy of the tenders, these must be submitted.

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

If the European Commission accepts the proposed decision, the contracting authority will either commence with the award of the contract (see point 3.3.12.) or cancel the tender, as decided.

INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

No prior authorisation by the European Commission is required before the contracting authority acts on the recommendations of the evaluation committee.

The tender evaluation shall be concluded step by step to reach a conclusion. The principle behind requesting the technical and financial offer in separate envelopes is to ensure that the evaluators do not know the financial offer and thus cannot be influenced by the price when assessing the technical quality of a tender. Any deviation from the sequence of the evaluation would lead to the cancellation of the tender. **For instance, the technical proposals cannot be re-scored once the financial envelopes are open.**

The entire evaluation procedure, including notification of the successful tenderer, must be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer might be unable to maintain its tender if the evaluation procedure takes too long. Please see section 2.8.5.

Subject to the contracting authority's legislation on access to documents, the entire tender procedure is confidential during the evaluation process. The evaluation committee's decisions are collective and its deliberations must remain secret. The committee members and any observers are bound to secrecy. If its law conflicts with the confidentiality required, the contracting authority must obtain prior authorisation from the European Commission before disclosing any information.

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The evaluation report, in particular, is for official use only and may be divulged neither to tenderers nor to any party outside the authorised services of the contracting authority, the European Commission and the supervisory authorities (e.g. the European Court of Auditors). Extracts from the evaluation report may however be disclosed (see point 3.3.12.1.)

3.3.11. Cancelling the tender procedure

See point 2.4.13.

3.3.12. Award of the contract#Award of contract – services

3.3.12.1. Notifying the award decision

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH EX-POST CONTROL:

Before the period of validity of tenders expires, and on the basis of the accepted evaluation report, the contracting authority notifies the successful tenderer in writing that its tender has been retained (see format of letter in Annex B13a) and draws attention to any obvious arithmetical errors which were corrected during the evaluation process.

At the latest before taking the award decision, the contracting authority has ensured that the relevant third party (i.e. tenderer including partners) is not detected in the [Early Detection and Exclusion System](#).

At the same time the result is notified to the second best tenderer (Annex B13b) and the other unsuccessful tenderers (Annex B13c).

All notification letters may be also sent by e-mail or fax.

INDIRECT MANAGEMENT WITH EX-ANTE CONTROL:

In addition to the above, the European Commission must give its formal endorsement of the award prior to the submission of the notification letters.

The notification letter (Annex B13a) to the successful tenderer implies that the validity of the successful tender is automatically extended for a period of 60 days. [If the contracting authority is required to obtain the recommendation of the panel referred to in Section 2.3.3.1., the tender validity period can be further extended up to the adoption of that recommendation.](#)

At the same time the second best tenderer is informed about the result (Annex B13b). The contracting authority reserves the right to send a notification of award to the second best tenderer in case of inability to sign the contract with the first ranked tenderer. The validity of the second best tender will therefore be kept and will only be extended with the 60 days in case of notification of award.

The contracting authority will furthermore, at the same time, also inform the remaining tenderers (Annex B13c). The consequence of these letters will be that the validity of their offers must not be retained. In case of request, for further information from the non-successful tenderers, any information which is not confidential may be disclosed to them. An example may be comments regarding their strengths and weaknesses as this may assist them to be successful in future tenders.

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Deleted: The Early Warning SystemEarly Detection and Exclusion System (EWSEDES) is an internal alert toola database, containing restricted information concerning third parties likely to represent a threat to the EU financial interests in the form of warnings (often called flags), inserted in the LEF (Legal Entity File). The Early Detection and Exclusion System replaces as from 1st of January 2016 the Early Warning SystemEWS was, created by the European Commission in 1997 and is currently ruled by the European Commission's EWS Decision of 16.12.2008 (footnote 12) and the Central Exclusion Database (see point 2.3.3.). ¶ The purpose of these this system is warnings is to inform the various services of the European Commission that those third partiesfacilitate:¶ are suspected of having committed or have committed fraud or serious administrative errorsthe 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; ¶ are subject to an attachment order ("saisie-arrêt" in French) which prevents the European Commission to pay directly the third parties 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 2.3.4are subject to significant recovery orders issued by the European Commission on which payment is significantly overdue, i.e. are "very bad debtors"; ¶ or are excluded in accordance with the EU Financial Regulation or Council regulations imposing CFSP related financial restrictions.; ¶ and to encourage them 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 information contained in the EWS EDES is confidential and may only be disclosed to the third party in question, upon its request as provided for in Article 8 of the EWS Decisionto the accounting officer of the Commission.

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As soon as the contract is signed by the successful tenderer, the contracting authority must inform the second best tenderer that he will not be awarded the contract.

Availability of key experts and proposed replacements

In the notification of award the contracting authority requests the successful tenderer to confirm the availability/unavailability of the key experts **within 5 days** of the date of the notification letter. As declared in the Statement of Exclusivity and Availability, should a key expert receive a confirmed engagement he/she must accept the first engagement which is offered chronologically.

Should any of the key experts be unavailable the successful tenderer will be allowed to propose a replacement expert. This may for example happen in case the expert has been successful in another tender procedure. The successful tenderer shall give due justification for the exchange of expert but acceptance by the contracting authority will not be limited to specific cases. The contracting authority will verify that the replacement expert's total score in relation to the evaluation criteria is at minimum the same as the scores given in the evaluation to the expert he/she is proposed to replace. The contracting authority may consult the original evaluation committee and may interview one or more replacement experts by videoconference or telephone. It shall be emphasised that the minimum requirements for each evaluation criteria must be met by the replacement expert.

The maximum time limit for proposing a replacement should be **within 15 days** of the date of the notification letter. Only one time-period to propose replacements will be offered to the successful tenderer, in which they may, if possible, propose several candidates for replacement of the same position. The replacement expert cannot be one presented in a bid from an unsuccessful tenderer participating in the same tender. The contracting authority may choose between these proposed candidates. If the contracting authority accepts the proposed replacements the contract dossier shall contain the justification for the acceptance.

If no replacement expert is proposed or if the proposed replacement expert does not either meet or exceed the total scores of the originally proposed expert, the contracting authority will decide either to award the contract to the second best tenderer (also giving them a chance to replace an expert in case of unavailability) or to cancel the procedure.

Summary of scenarios:

- a) The key experts are available.

The awarded tenderer confirms that all their key experts are available. When the contracting authority receives the information they proceed with contract preparation and signature, see point 3.3.12.2.

- b) One or more of the key experts are not available but replacements are acceptable.

The awarded tenderer confirms that one or more of their key experts are not available. They propose replacement experts within the time limit, submitting the necessary documentary evidence (as requested for the original experts in the tender) and justification for unavailability. The contracting authority will verify that the replacement fulfils the minimum requirements in the Terms of Reference and that he/she would have scored minimum the same as the originally proposed expert (total scores). If several experts are proposed for the same position the contracting authority may choose between the experts. Written justification of the choice is made by the authorising officer and will be part of the contract dossier, see point 3.3.12.2.

- c) One or more of the key experts are not available and replacements are NOT acceptable.

The awarded tenderer confirms that one or more of their key experts are not available. They

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propose replacement experts within the time limit, submitting the necessary documentary evidence (as requested for the original experts in the tender) and justification of unavailability. The contracting authority will verify that the expert fulfils the minimum requirements in the terms of reference and that the expert would have scored minimum the same as the originally proposed expert (total scores). If none of the replacements are accepted, the contract may either be awarded to the second best tenderer or the procedure may be cancelled. If the second best tenderer will be notified of the award they shall also be given the same possibility to confirm availability/unavailability and to propose replacements of their key experts. The same time limit applies to the replies (i.e. 5 and 15 days).

DIRECT MANAGEMENT:

The justification for non-acceptance of a replacement expert shall be recorded in writing and the decision shall be taken by the authorising officer. At the same time the authorising officer will take the decision to either award the contract to the second best tender or to cancel the procedure.

INDIRECT MANAGEMENT WITH EX-ANTE CONTROL:

The decision to accept the replacement experts or not and to award to the second best tenderer, or to cancel the procedure must be submitted to the relevant services of the European Commission, which must decide whether or not to accept the recommendations. If the European Commission does not accept the proposed decision, it must write to the contracting authority stating the reasons for its decision. The European Commission may also suggest how the contracting authority should proceed and give the conditions under which the European Commission might endorse the proposed recommendations.

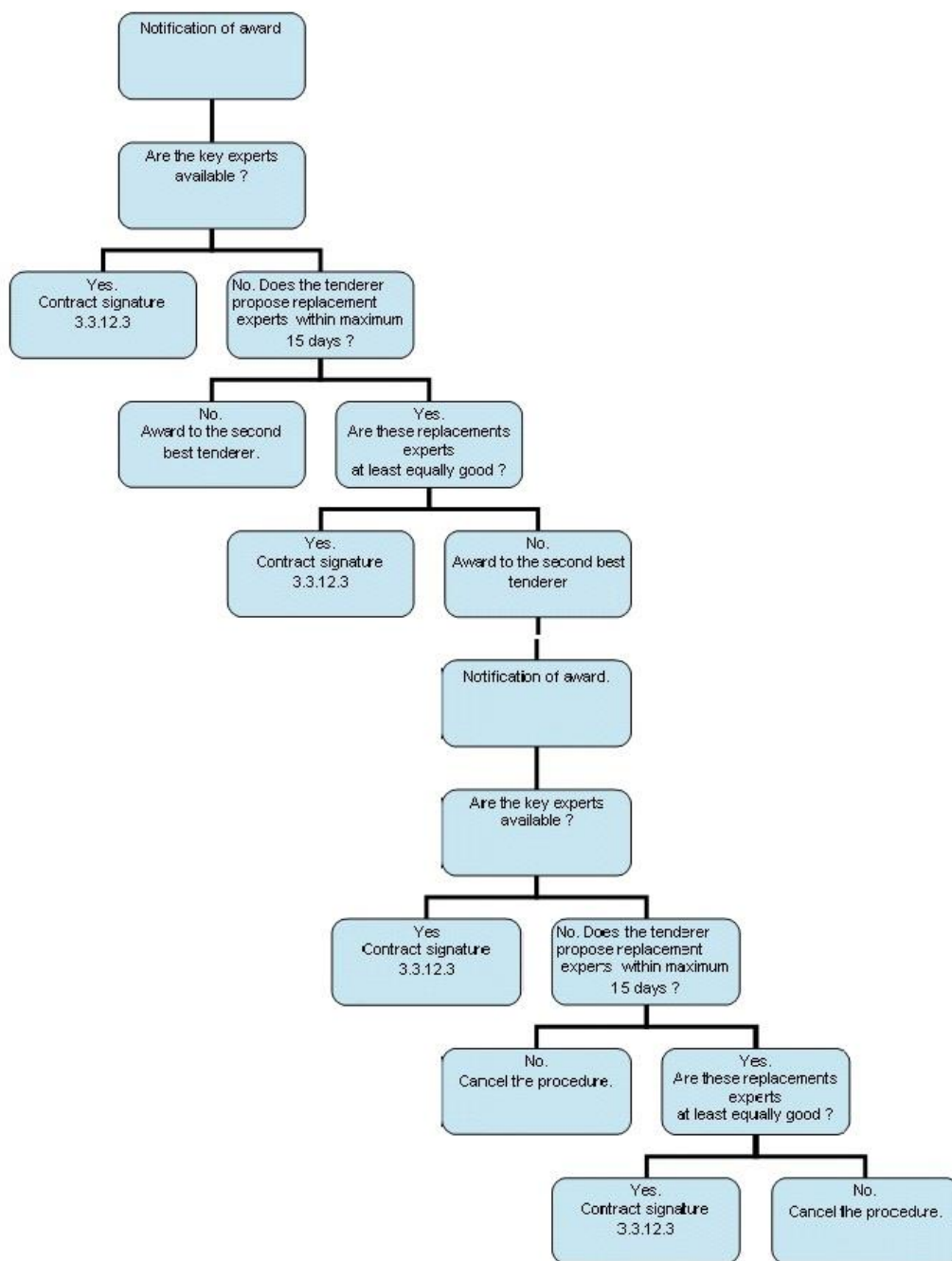
INDIRECT MANAGEMENT WITH EX-POST CONTROL:

No prior authorisation from the European Commission is required before the contracting authority takes a decision.

Where a contract is awarded under a financing agreement which had not been concluded at the time the tender procedure was launched, the contracting authority must not notify the tenderers before the financing agreement has been concluded.

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3.3.12.2. Approval of key experts

Where the European Commission is the Contracting Authority and a representation of the partner country has not been invited to the Evaluation Committee as an evaluator, the relevant Delegation of

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the European Union must notify the partner country, if appropriate⁹, of the name of the successful tenderer and ask to approve the available key experts proposed before the contract is signed.

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The representative of the partner country must submit duly substantiated and justified objections to reject an expert (e.g. the expert is persona non grata, there are public order issues, or information unknown to the evaluation committee has been disclosed which could have affected the outcome of the evaluation). If the authorising officer accepts the rejection of the expert, the successful tender is allowed to propose a replacement (see section 3.3.12.1.1.). If this procedure fails, the award may go to the second best tender, if any. In this case, the representative of the partner country again has the right to approve the experts. If there is no second best tender or if the experts are rejected again, the tender is cancelled. A request for the approval of key experts is not a request for approval of the European Commission's evaluation.

The partner country's approval must also be obtained for any replacement key expert proposed by the contractor. The representative of the partner country may not withhold its approval unless it submits duly substantiated and justified objections to the proposed experts in writing to the Delegation of the European Union. If the representative of the partner country fails to issue or to reject its approval within 15 days of the date of the request, the expert is deemed to be approved.

The representative of the partner country may only ask for experts to be replaced if duly substantiated and justified objections are given in writing.

3.3.12.3. Contract preparation and signature

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

Prepare a contract dossier (if possible printed recto/verso) using the following structure:

- a) Explanatory note using the format in Annex A6 (if applicable including the justification for acceptance of replacement key experts)
- b) Copy of the financing agreement authorising the project
- c) Copy of the call announcements (prior information notice, contract notice and shortlist), Shortlist Report, Tender Opening Report, Evaluation Report with award decision, and any other relevant information)
- d) Three originals in indirect management; two originals in direct management, of the proposed contract, which is based on the standard contract template

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

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 for endorsement (and initials all pages of the Special Conditions and the budget) to confirm the EU financing and sends them back to the contracting authority. No endorsement by the Delegation is required in certain cases contemplated in

⁹ An example where it may not be appropriate is a multi-country project where many beneficiary countries are involved and it would be practically difficult to obtain the approvals.

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the Practical Guide to procedures for Programme Estimates.

- Sign and date all originals of the contract and initial all pages of the Special Conditions and the budget.
- Send the signed originals of the contract to the successful tenderer who must countersign them within 30 days of receipt. The contractor keeps one original, and returns the remaining original(s) to the contracting authority. If the successful tenderer fails to do this within the specified deadline or indicates at any stage that it is not willing or able to sign the contract, the tenderer cannot be awarded the contract. The contract preparation process must be restarted from step 1 with a new contract dossier prepared using the second best tender (provided that that tender is still valid).

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DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

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

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

On receipt of the two signed originals from the successful tenderer, the contracting authority sends one to the Delegation of the European Union.

The contracting authority shall verify the power of representation of the natural person who signs the contract for the legal entity to which the contract has been awarded.

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

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

During and after this period, the contracting authorities will treat the personal data in conformity with their privacy policy. These documents must be made available for inspection by the European Commission, OLAF and the Court of Auditors.

The proposed contract must follow Annex B8.

3.3.12.4. Publicising the award of the contract

Regardless of the type of procedure, the Contracting Authority informs candidates and tenderers of decisions reached concerning the award of the contract as soon as possible, including the grounds for any decision not to award a contract.

Once the contract has been signed the Contracting Authority is responsible for drafting the award notice without delay using the template in Annex B14 and for submitting it for publication on the EuropeAid website and in the Official Journal to the European Commission in electronic form (see publication guidelines in Annex A11e). If necessary, the contracting authority must arrange simultaneous local publication in any other appropriate media directly.

The award notice shall be published if the value of the contract is above international thresholds (> EUR 300.000), 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

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measures, or when the protection of the essential interests of the European Union, or the partner country so requires, and where the publication of the award notice is deemed not to be appropriate.

In addition the contracting authority must record all statistical information concerning the procurement procedure including the contract value, the names of the other tenderers and the successful tenderer.

See section 2.9.

3.3.13. Provision and replacement of experts #Replacement of expert

Where the tender procedure involves the provision of experts, the contractor is expected to provide the experts specified in the tender. This specification may take various forms.

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

The evaluation committee may recommend that a tenderer be excluded from the tender procedure, and its offer considered irregular, if this company and/or proposed experts *deliberately* conceal the fact that all or some of the team proposed in their tender are unavailable from the date specified in the tender dossier for the start of the assignment, or if it can be established that this company has proposed names of experts which in fact had not given their consent to participate. Note that in such case, the tenderer may also be subject to administrative and financial penalties imposed by the European Commission (see point 2.3.4.) and this may furthermore lead to their exclusion from other contracts funded by the European Union.

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

Should the contracting authority learn that a tenderer has confirmed the availability of a key expert and signed the contract although the tenderer has deliberately concealed the fact that the expert is unavailable from the date specified in the tender dossier for the start of the assignment, the contracting authority may decide to terminate the contract using article 36.3 (m) of the General Conditions.

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

In addition to the above, prior authorisation by the European Commission is required before cancelling the contract.

However, the contract must not only identify the key staff to be provided but specify the qualifications and experience required of them. This is important if the contractor has to replace staff during the implementation of the tasks.

DIRECT MANAGEMENT AND INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

The contractor must first obtain the Contracting Authority's written agreement by substantiating its request for replacement. The contracting authority has 30 days from the date of receipt of the request to reply.

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

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

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

- a member of staff dies, falls seriously ill or suffers an accident;
- it becomes necessary to replace a member of staff for any other reasons beyond the contractor's

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control (e.g. resignation etc).

DIRECT MANAGEMENT, AND INDIRECT MANAGEMENT WITH EX POST CONTROLS:

In the course of implementation, the contracting authority may also submit a substantiated written request for a replacement where it considers a member of staff incompetent or unsuitable for the purposes of the contract. **The contractor must be asked to provide his own and the staff member's observations to such request.**

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

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

During the implementation of a service contract, where a member of staff has to be replaced, the replacement must possess at least equivalent qualifications and experience and the fee/rate may in no circumstances exceed that of the expert replaced. Where the contractor is unable to provide a replacement possessing equivalent qualifications and/or experience, the contracting authority may either terminate the contract, if it considers that its performance is jeopardised, or, if it considers that this is not the case, accept the replacement, in which case the latter's fees are to be negotiated downwards to reflect the proper level of remuneration. Any additional expenses resulting from the replacement of staff are borne by the contractor except in the case of replacement resulting from death or where the contracting authority requests a replacement not provided for by the contract. Where an expert is not replaced immediately and sometime elapses before the new expert takes up his functions, the contracting authority may ask the contractor to assign a temporary expert to the project pending the new expert's arrival or to take other steps to bridge the gap. Whatever the case may be, the contracting authority will make no payment for the period of absence of the expert or his replacement (whether temporary or permanent).

3.4. Procedures for the award of contracts under EUR 300 000

3.4.1. Framework contracts#Framework contracts BENEF 2013,

Services worth more than EUR 20 000 and less than EUR 300 000¹⁰ may be contracted using the framework contract Beneficiaries 2013 (FWC BENEF 2013). FWC BENEF 2013 entered into force on January 1st 2014 and is valid until December 31st 2017. It is a multiple framework contract 'with reopening of competition'. Detailed information on how to use FWC BENEF 2013 can be found on the EuropeAid framework contract webpages. The information given in this section applies only to FWC BENEF 2013.

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3.4.1.1. Conditions of use

The framework contract may be used for all operations within its scope where the contracting authority is the European Commission acting on behalf of the partner countries or in mixed interest.

¹⁰ The recourse to framework contracts for services worth more than EUR 300 000 might be allowed by instruction note of the Director General.

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There are 5 main conditions of use:

- a) Operations have to be in the exclusive interest of ~~third countries benefiting from EU external aid~~ or in the interest of the European Commission together with third countries benefiting from EU external aid;
- b) Operations have therefore to be financed by external aid funds (Heading IV of the MFF);
- c) The maximum amount for each Specific Contract, addenda included, must not exceed ~~EUR 300,000~~;
- d) ~~The~~ requested input per expert may not exceed 260 working days and the total duration of a Specific Contract may not exceed 730 calendar days, addenda included;
- e) The use of the CRIS FWC module for the award of the Specific Contract is compulsory ~~for all~~ Commission services (headquarters and Delegations).

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FWC BENEf 2013 can be used by other entities managing external aid funds, if authorised by EuropeAid, for operations meeting these conditions.

Whereas specific contracts based on the framework contract shall be preceded by a budgetary commitment and must always have the funds necessary to cover the services, the framework contract as such is an empty shell and service contracts are formed only when services are procured under the specific contracts. The framework contract itself was therefore not preceded by a budgetary commitment. However, an estimation of use per lot is registered in the accounting system.

It provides quick and transparent means of recruiting experts for all activities within the project cycle. It is divided into a number of thematic lots, with several contractors selected for each lot (6, 4 or 3 contractors according to the lot). These contractors are consortia represented by a lead firm that has been designated by the other partners to act on their behalf for the purposes of the contract. The lead firm is the only one authorised to commit the consortium, hence the lead firm is the only contact point between the Contracting Authority and the consortium.

3.4.1.2. Procedure

As this is a multiple framework contract with re-opening of competition for each request for services, the specific contract award is based on the procedure described below. A specific contract can only be concluded during the validity of the framework contract.

All the documents for the different steps of the procedure must follow the forms designed for FWC BENEf 2013.

a) Consultation

A request for services shall be sent to three framework contractors within the same lot. For lots with only three framework contractors, if one or two of them cannot bid (because of a situation of conflict of interest, an exclusion situation or a duly justified reason of unavailability), it is still possible to consult the remaining framework contractor(s) and to evaluate their offer(s). Providing that at least one offer satisfies the selection and award criteria, the project manager can award the contract on this basis.

If, however, there is no qualitatively and/or financially satisfactory tender received, the relevant Authorising Officer may simply cancel the consultation, or cancel and either:

1. Re-launch with different Framework Contractors (for lots with more than 3 Framework contractors) under unchanged terms of reference.

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2. Re-launch a request for services after analysing/redrafting the specific Terms of Reference.
3. Initiate a negotiated procedure with one or more tenderers of its choice, from among those that took part in the request for services with a view to obtain improved offers within the terms of the specific request (N.B. the terms of the specific request cannot be substantially altered).
4. Initiate a competitive negotiated procedure outside from the framework contract.

The consultation must comply with the principles of transparency, proportionality, equal treatment, non-discrimination and of sound competition and with the terms of the framework contract.

Offers should be submitted by e-mail to a functional mailbox specified in the request, which is accessible only to those persons authorised by the Authorising Officer. If the offer is sent to another address, the offer may be rejected. The specific ToR (Terms of Reference) for the proposed specific contract is attached to the request in order to give the framework contractors all the information they need to submit an offer. The ToR must be clear on how the outputs obtained will conform to the outputs requested. Their quality, in particular their clarity, is critical for the quality of the offer and the success of the assignment. The contractual deadline for submission of offers is at least 14 days from the sending of the request. It is always possible to extend this period if needed. For lot 5 “Conferences”, the submission period can be reduced to 7 days for events with 15 participants or less.

The framework contractors can ask for clarification. The answers are sent simultaneously to all the framework contractors consulted. If amendments made during the consultation period may have an impact on the selection of experts, the date for submission of offers must be adapted accordingly.

b) Evaluation of offers

Offers are valid for 14 calendar days after the deadline for submission. The offers received, whatever their number, must be evaluated.

There must be at least three evaluators. As appropriate, one of them may be a representative of the partner country. However, depending on a risk analysis by the contracting authority, a formal evaluation committee might be appointed.

Only offers fulfilling the following criteria of admissibility will be evaluated:

- the deadline for the submission of offers has been respected; the offer complies with the eligibility rules of the EU External Aid Instrument which finances the specific contract;
- the fee rates, including those in the budget breakdown of a global price specific contract (for lot 5 the proposed Flat Rates /and possible Fees), do not exceed the contractual maxima;
- not exceeding the maximum budget (if applicable),
- for lot 5 the minimum required skill specified as such in the specific ToR are respected.

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The Contracting Authority chooses the most economically advantageous offer.¹¹

For the evaluation of the technical quality, the specific contract's contracting authority will define the detailed criteria and their respective weights in the evaluation grid attached to the request for services.

Unless clearly stated to the contrary in the request for services, if one of the experts does not comply with any minimum requirement set out in the tender specifications, his/her score will be 0 and the whole offer must be rejected. Therefore, it is recommended to pay careful attention to minimum

¹¹ Using 80/20 ratio between technical quality and price, being 50/50 weighting for Lot 5, Conferences.

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requirements and to the use of terms that imply a minimum requirement e.g. 'experience in at least 3 developing countries', 'minimum C1 level of English' etc.

Unless otherwise indicated in the evaluation grid, any offer falling short of the technical threshold of **75** out of 100 points, is automatically rejected. Out of the offers reaching the **75** point evaluation threshold, the best technical offer is given 100 technical scores (using the automatic formula in the IT system, equivalent to the one explained in point 3.3.10.3.).

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For the financial evaluation of a fee-based specific contract, the provision for incidental expenditure and the provision for expenditure verification will not be taken into account in comparison of the financial offers. For lot 5 however, the financial evaluation will be based upon the total price. For the financial evaluation of a global price based specific contract the total price will be taken into account in the comparison of the financial offers. The offer with the lowest total price (taking above into consideration) receives 100 financial scores (using the automatic formula in the IT system, equivalent to the one explained in point 3.3.10.4.).

For the final score of the offer, the best **price-quality ratio** is established by weighing technical quality against price (using the automatic formula in the IT system, equivalent to the one explained in point 3.3.10.5.).

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If no offer is selected, the project manager may, after analysing the specific ToRs, change and relaunch the request with the same framework contractors.

Within 14 days of the deadline for receipt of offers, all the framework contractors who submitted offers must be notified of the results of the evaluation and the award decision. The notification is also obligatory when a new request for services is sent to the same framework contractors (relaunch). The contracting authority can sign the contract as soon as notification has taken place. There is no standstill period between notification and signature.

c) Signature of the specific contract

The specific contract comprises the assignment letter, the specific ToRs, any methodology used, and the financial offer. It enters into force upon notification that the Contracting Authority has signed the specific contract. A copy of the signed contract must be sent by fax to the selected framework contractor and then the latter can start to provide the services. Two sets of the specific contract are sent by courier for counter signature.

d) Assessment of the framework contractor's performance

The performance assessment form for the framework contractor must be filled in after the end of the assignment. This assessment covers the standard to which the framework contractor has executed the contract and must be sent to the latter for comments.

3.4.2. Competitive negotiated procedure#Competitive negotiated procedure – services

For contacts of a value of less than EUR 300 000, depending on the context and the needs (for instance the availability of required services in the different lots of the FWC and or in the partner country, time and budget available, etc.), the contracting authority may use a competitive negotiated procedure as an alternative to the framework contract without publishing the contract notice.

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Note that the competitive negotiated procedure requires more time than the procedure to start an assignment under the framework contract.

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The contracting authority draws up a list of at least three service providers and justifies its choice. The candidates are sent a letter of invitation to tender accompanied by a tender dossier. The specific annexes for simplified tenders must be used (administrative compliance grid, contract, contract notice, invitation letter, instructions to tenderers, list of invited tenderers and tender form) for this procedure. For any other document of the tender dossier the regular service annexes shall be used. The contract notice is not published, but it is included in the tender dossier as it contains important information for those service providers which are invited to tender. Tenders must reach the contracting authority at the address and by no later than the date and time shown in the invitation to tender. The chosen candidates must be allowed at least 30 days from the dispatch of the letter of invitation to tender to submit their tenders. Tenders must be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise, appointed by the contracting authority.

Tenderers for the competitive negotiated procedure may also be chosen from a list of vendors. The list shall be drawn up following a call for expression of interest and shall be valid for no more than four years from the date of advertisement. A legal framework for this procedure will be developed for future use.

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

In the event of a failure of the competitive negotiated procedure the contract may be concluded by negotiated procedure (see point 3.2.4.1.). The procedure for evaluating the tenders and awarding the contract is the same as under the restricted procedure (see points 3.3.9. to 3.3.12.2.).

As an exception the contracting authorities may use the competitive negotiated procedure for legal services according to the Common Procurement Vocabulary (CPV) nomenclature¹², regardless of the estimated value of the contract¹³.

3.5. **Modifying service contracts#Addendum - services;Contract modification - services**

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See section 2.10. for general information on modifying contracts.

Any justified modification which involves a change in the total value of the contract must be made by means of an addendum.

The purchase of additional services which consist in the repetition of similar services as those foreseen in the original contract is regarded as a negotiated procedure, (see point 3.2.4.1.c), and either an addendum or a new contract may be signed.

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3.6. List of Annexes

B	Service contracts	
B1	Prior information notice	b1_priorinfo_en.doc

¹² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:074:0001:0375:en:PDF>

¹³ Some legal services may be awarded following a negotiated procedure, see point 3.2.4.1.

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B2a	Contract notice	b2a_contractnotice_en.doc
B2b	Summary Contract notice – Local Publication	b2b_summarycn_en.doc
B3	Standard application form	b3_applform_en.doc
B4	Long list	b4_longlist_en.doc
B5	Shortlist Report	b5_shortreport_en.doc
B6	Shortlist notice	b6_shortnotice_en.doc
B7	Letter to candidates who have not been short-listed	b7_lettershort_en.doc
B8	Standard tender dossier (including standard contract)	
B8a	Letter of invitation to tender	b8a_invit_en.doc
B8b	Instructions to tenderers	b8b_itt_en.doc
B8c	Draft contract : Special conditions	b8c_contract_en.doc
B8d	Draft contract : General conditions (Annex I)	b8d_annexigc_en.pdf
B8e	Draft contract: Terms of reference Fee-based (Annex II)	b8e_annexiitorfee_en.doc
B8f	Draft contract: Terms of reference Global (Annex II)	b8f_annexiitorglobal_en.doc
B8g	Draft contract: Organisation & methodology (Annex III)	b8g_annexiiiom_en.doc
B8h	Draft contract: List and CVs of key experts (Annex IV)	b8h_annexivexperts_en.doc
B8i	<u>Draft contract: Budget (Annex V)</u>	
B8i1	Budget for a global-price contract	b8i1_annexvbudgetglobal_en.doc
B8i2	Budget breakdown for a fee-based contract	b8i2_annexvbudgetfee_en.xls
B8j	<u>Draft contract: Forms and other relevant documents (Annex VI)</u>	
B8j1	Bank account notification form	b8j1_annexvivif_en.pdf

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Draft contract: Budget (Annex V) ...

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Draft contract: Forms and other relevant documents (Annex VI) ...

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B8j2	Financial guarantee template	b8j2_annexviguarantee_en.doc
B8j3	Legal Entity File (individual)	b8j3_annexvilefind_en.pdf
B8j4	Legal Entity File (private companies)	b8j4_annexvilefcompany_en.pdf
B8j5	Legal Entity File (public bodies)	b8j5_annexvilefpublic_en.pdf
B8k	Draft contract: Expenditure verification: Terms of Reference and Report of factual Findings (Annex VII)	b8k_annexviexpverif_en.doc
B8l	Administrative compliance grid	b8l_adminingrid_en.doc
B8m1	Evaluation grid (fee- based)	b8m1_evalgrid_fees_en.doc
B8m2	Evaluation grid (global price)	b8m2_evalgrid_global_en.doc
B8n	Tender submission form	b8n_tenderform_en.doc
B8o	Simplified tender dossier (for the competitive negotiated procedure and for the single tender procedure)	b8o_simplified_en.zip
B8p	Tax and Custom arrangements	b8p_taxcustomsarrangements_en.doc
B9	Tender opening checklist	b9_openchecklist_en.doc
B10	Tender opening report	b10_openreport_en.doc
B11	Evaluation report	b11_evalreport_en.doc
B12a	Evaluators grid (fee- based)	b12a_evaluatorsgrid_fees_en.doc
B12b	Evaluators grid (global price)	b12b_evaluatorsgrid_global_en.doc
B13a	Notification Letter to awarded tenderer	b13a_notification_letter_en.doc
B13b	Letter to second best tenderer	b13b_lettersecond_best_en.doc
B13c	Letter to unsuccessful tenderer	b13c_letterunsuccessful_en.doc
B14a	Contract award notice for international calls	b14a_awardnotice_internationalcalls_en.doc
B14b	Contract award notice for other procedures	b14b_awardnotice_en.doc
B15	Contractor assessment form	b15_assessment_en.doc
B16	Addendum to contract	b16_addendum_en.doc

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B17	Budget modification to a contract	b17_budgetmodif_en.xls
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