

European Commission
Directorate-General for Development
and Cooperation - EuropeAid

PROCUREMENT AND GRANTS
FOR EUROPEAN UNION EXTERNAL ACTIONS
A Practical Guide

TABLE OF CONTENTS

4. SUPPLY CONTRACTS#SUPPLIES.....	4	Deleted: 445
4.1. Introduction	4	Deleted: 445
4.2. Procurement procedures	4	Deleted: 445
4.2.1. Contracts with a value of EUR 300 000 or more.....	4	Deleted: 445
4.2.1.1. International open procedure	4	Deleted: 445
4.2.2. Contracts of more than EUR 100 000 and less than 300 000	5	Deleted: 556
4.2.2.1. Local open procedure	5	Deleted: 556
4.2.3. Contracts with a value of less than EUR 100 000	5	Deleted: 556
4.2.3.1. Competitive negotiated procedure	5	Deleted: 556
4.2.4. Contracts with a value of less than or equal to EUR 20 000	5	Deleted: 556
4.2.5. Procedures applicable without ceilings	5	Deleted: 556
4.2.5.1. Negotiated procedure.....	5	Deleted: 556
4.2.5.2. Dynamic purchasing system.....	7	Deleted: 778
4.2.5.3. Competitive dialogue.....	7	Deleted: 778
4.3. International open tender for contracts of EUR 300 000 or more#International open procedure - supplies.....	8	Deleted: 878
4.3.1. Publicity.....	8	Deleted: 878
4.3.1.1. Publication of prior information notices.....	8	Deleted: 878
4.3.1.2. Publication of contract notices	8	Deleted: 889
4.3.2. Drafting and content of the tender dossier#Lots – supplies;Technical Specifications – supplies;Tender dossier –supplies;Financial Guarantee- supplies;Pre-financing – supplies	9	
4.3.3. Selection and award criteria#Award criteria – supplies;Selection criteria - supplies	11	Deleted: 111112
4.3.3.1. Supply contracts not including ancillary services	12	Deleted: 121213
4.3.3.2. Supply contracts including ancillary services	12	Deleted: 121213
4.3.3.3. Supply contracts including particularly significant ancillary services	12	Deleted: 131213
4.3.4. Additional information during the procedure	13	Deleted: 131213
4.3.5. Deadline for the submission of tenders	13	Deleted: 131314
4.3.6. Period of validity	14	Deleted: 141314
4.3.7. Submission of tenders.....	14	Deleted: 141314
4.3.8. The Evaluation Committee#Evaluation committee - supplies	14	Deleted: 141314
4.3.9. Stages in the evaluation process	14	Deleted: 141315
4.3.9.1. Receipt and registration of tenders	14	Deleted: 141315
4.3.9.2. Preparatory meeting.....	14	Deleted: 141415
4.3.9.3. Tender opening session	14	Deleted: 151415
4.3.9.4. Evaluation of technical offers.....	15	Deleted: 151516
4.3.9.5. Evaluation of financial offers	16	Deleted: 171617
4.3.9.6. Choice of contractor	17	Deleted: 171718
4.3.9.7. The evaluation committee's conclusions.....	18	Deleted: 181819
4.3.10. Cancelling the tender procedure	19	Deleted: 201920
4.3.11. Award of the contract#Award of contract - supplies	20	Deleted: 202021

Deleted: July 2015

4.3.11.1.	Notifying the successful tenderer	<u>20</u>	Deleted: 202021
4.3.11.2.	Contract preparation and signature.....	<u>20</u>	Deleted: 202021
4.3.11.3.	Publicising the award of the contract	<u>20</u>	Deleted: 202021
4.4.	Local open tender for contracts between EUR 100 000 and EUR 300 000	<u>20</u>	Deleted: 202021
4.5.	Competitive negotiated procedure for contracts under EUR 100 000#Competitive negotiated procedure – supplies;Single tender - supplies.....	<u>21</u>	Deleted: 212122
4.6.	Modifying supply contracts#Addendum- supplies;Contract modification - supplies	<u>21</u>	Deleted: 222123
4.7.	List of Annexes	<u>22</u>	Deleted: 222223

4. Supply contracts#Supplies

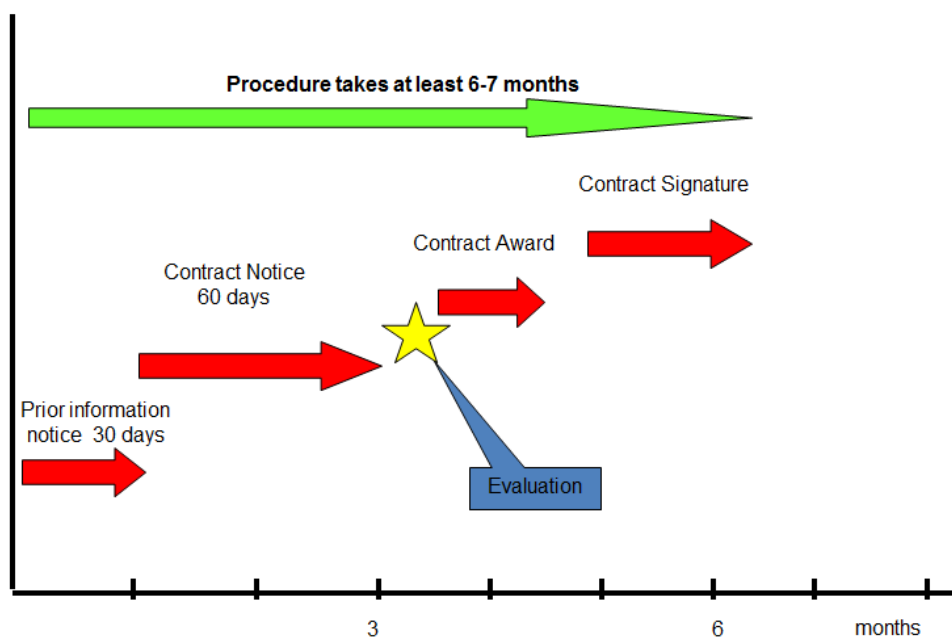
4.1. Introduction

Supply contracts cover the purchase, leasing, rental or hire purchase (with or without option to buy) of products. For mixed contracts, see section 2.4.9.

4.2. Procurement procedures

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

Timeline of an international open tender procedure for a supply contract



4.2.1.1. International open procedure

All supply contracts above this threshold must be the subject of an international open tender procedure following publication of a prior information notice and a contract notice (see section 4.3.).

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4.2.2. Contracts of more than EUR 100 000 and less than 300 000

These supply contracts may be awarded through a local open procedure.

4.2.2.1. Local open procedure

In this case, supply contracts are awarded by an open procedure in which the contract notice is published in the partner country and on the EuropeAid website with the address from which firms can obtain further information. For details see section 4.4.

4.2.3. Contracts with a value of less than EUR 100 000

These supply contracts may be awarded through a competitive negotiated procedure.

4.2.3.1. Competitive negotiated procedure

Supply contracts under EUR 100 000 are awarded by competitive negotiated procedure. At least three candidates are sent an invitation to tender. No contract notice needs to be published. For details, see section 4.5.

4.2.4. Contracts with a value of less than or equal to EUR 20 000

The contracting authority may award supply contracts of a value of EUR 20 000 or less on the basis of a single tender. See point 2.4.8.

For supplies with a value of less than or equal to EUR 2 500, the contracting authority may pay on the basis of an invoice without prior acceptance of a tender.

4.2.5. Procedures applicable without ceilings

4.2.5.1. Negotiated procedure

DIRECT MANAGEMENT:

Prior approval/event to be reported as the case may be is required from the European Commission.

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

The contracting authority must seek prior authorisation from the European Commission 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.

See also text box in section 2.4.8.

Supply contracts may be awarded by 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 competitive procedures cannot be met.

Operations carried out in crisis situations as referred to in Article 190(2) of the Rules of Application of the EU Financial Regulation satisfy the test of extreme urgency.¹

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- b) Where the supplies can only be provided by a single supplier because: (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance; (ii) competition is absent for technical reasons; (iii) the protection of exclusive rights including intellectual property rights must be ensured (e.g., where performance of the contract is exclusively reserved for the holders of patents or licences to use patents). The exceptions in points (ii) and (iii) shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement.

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

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- d) Where the tender procedure has been unsuccessful, i.e. where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the Contracting Authority may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, if they comply with the selection criteria, provided that the original procurement documents are not substantially altered and the principle of equal treatment is observed.

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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 this basis.

- e) For contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or where the protection of the essential interests of the European Union or the partner country so requires, provided the essential interests concerned cannot be guaranteed by other measures (such as requirements to protect the confidential nature of information which the contracting authority makes available in the procurement procedure).

- f) For contracts in respect of supplies quoted and purchased on a commodity market.

- g) For contracts in respect of purchases of supplies on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or the liquidators in an

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¹ '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, mainly for actions which are not governed by Article 19c of Annex IV to the Cotonou Agreement. Emergency assistance is linked to the application of Article 72 and/or 73 of the Cotonou Agreement. For OCTs, see also Article 79(5) of the Council Decision 2013/755/EU of 25 November 2013.

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insolvency procedure, an arrangement with creditors, or a similar procedure under national law.

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h) Where a new contract has to be concluded after early termination of an existing contract;

i) Where the products are manufactured purely for the purpose of research, experimentation, study or development; however such contracts shall not include quantity production to establish commercial viability or to recover research and development costs;

j) For the purchase of public communication networks in the meaning of art. 2(d) of Directive 2002/21/EC².

The contracting authority must prepare a negotiation report (see template in Annex A10) justifying the manner in which the negotiations were conducted and the basis for the resulting contract award. The procedures set out in point 4.3.11.1.-2 must be followed by analogy, and the negotiation report must be included in the contract dossier.

4.2.5.2. Dynamic purchasing system

A dynamic purchasing system is a completely electronic process for making commonly used purchases for a period of up to four years. A contract notice invites indicative tenders, which must be evaluated within 15 days. Tenderers that comply with the specifications are admitted to the system. The system is open to any economic operator who meets the selection criteria and submits an indicative tender that is found compliant.

For each individual contract, a simplified contract notice is published giving tenderers that have not yet been admitted to the system the possibility of submitting an indicative tender within 15 days. The contracting authority then invites the tenderers admitted to the system to submit a tender within a reasonable time limit. The contract will be awarded to the tender offering the best price-quality ratio on the basis of the award criteria specified in the contract notice for the establishment of the dynamic purchasing system.

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The contracting authority may not resort to this system to prevent, restrict or distort competition.

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

4.2.5.3. Competitive dialogue

See point 2.4.7. for further details.

4.2.5.4. Framework contract

See point 2.4.5. for further details.

² 'Public communications network' means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points.

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4.3. International open tender for contracts of EUR 300 000 or more#International open procedure - supplies

4.3.1. Publicity

In order to ensure the widest possible participation in competitive tendering and the requisite transparency, a prior information notice and a contract notice must be published for every open tender procedure according to the Guidelines for publication (Annex A11e).

4.3.1.1. Publication of prior information notices

A prior information notice setting out the specific characteristics of the planned tender procedure must be published, save in exceptional circumstances, at least 30 days before the publication of the contract notice. Prior information notices must briefly state the subject and content of the related tenders. (See template in Annex C1). Publishing a prior information notice does not bind the contracting authority to finance the contracts proposed and prospective suppliers are not expected to submit tenders at this stage.

The prior information notices are published in the Official Journal of the European Union, on the EuropeAid website³ and in any other appropriate media according to the Guidelines for publication (Annex A11e).

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

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

4.3.1.2. Publication of contract notices

In addition to prior information notices, all supply contracts of EUR 300 000 or more must also be the subject of a contract notice published in the Official Journal of the European Union, on the EuropeAid website and in any other appropriate media according to the Guidelines for publication (Annex A11e). A minimum of 30 days must be allowed to elapse between the publication of the prior information notice and the contract notice.

The Contracting Authority drafts the contract notice using the appropriate template (Annex C2) and sends it in due time in electronic form to the European Commission.

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

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

Contract notices and tender dossiers must be submitted for publication to the European Commission in electronic form using the template in Annex C2 at least 15 days before the intended date of

³ See http://ec.europa.eu/europeaid/index_en.htm.

publication, to allow time for translation of the contract notice.

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

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

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.

4.3.2. Drafting and content of the tender dossier#Lots – supplies;Technical Specifications – supplies;Tender dossier –supplies;Financial Guarantee-supplies;Pre-financing – supplies

Tender documents must be carefully drafted to ensure that both the contract and the procurement procedure are carried out correctly.

Tender documents must contain all the provisions and information that tenderers need to submit their tenders: the procedures to follow, the documents to provide, cases of non-compliance, award criteria, etc. 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 Technical Specifications.

Technical specifications must afford equal access for candidates and tenderers and not have the effect of creating unjustified obstacles to competitive tendering. They specify what is required of a product, service or material or work to achieve the purpose for which they are intended.

The specifications may include as appropriate:

- a) a clear definition of the tasks to be performed;
- b) minimal quality levels;
- c) environmental and climate performance;
- d) for purchases intended for use by natural persons, wherever possible, the accessibility criteria for people with disabilities or the design for all users;
- e) the levels and procedures of conformity assessment;
- f) performance or use of the supply (fitness for use);
- g) safety or dimensions, including the sales name and user instructions, terminology, symbols, testing and test methods, packaging, marking and labelling, production processes and

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methods;

The contracting authority is responsible for drawing up these documents.

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

As with terms of reference for service contracts, particular attention must be paid to drafting the technical specifications. They are the key to successful procurement, a sound supply contract and a successful project.

The technical specifications state - where applicable, lot by lot - the exact nature and performance characteristics of the supplies. Where applicable, they also specify conditions for delivery and installation, training and after-sales service.

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

The purpose of the technical specifications is to define the required supplies precisely. The minimum quality standards, defined by the technical specifications, will enable the evaluation committee to determine which tenders are technically compliant.

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

DIRECT MANAGEMENT:

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

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

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

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INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

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

TENDER DOSSIER CONTENT

A. Instruction to Tenderers

B. Draft Contract, Special Conditions and Annexes (incl. Technical Specifications)

C. Further Information

D. Tender Form for a Supply Contract

See the standard format in Annex C4.

The tender dossier must clearly state whether a firm, non-revisable price must be quoted. The prices

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should normally be fixed and not subject to revision, but in specific cases a price revision clause might be justified. If that is the case, the tender dossier must lay down the conditions and/or formulas for revision of prices during the lifetime of the contract (art. 26.9 of the Special Conditions). In such cases the contracting authority must take particular account of:

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

A tender guarantee assures the Contracting Authority that submitted tenders will not be withdrawn. If the contracting authority deems a tender guarantee to be appropriate and proportionate, it may request it, representing 1% to 2% of the overall value of the contract. The contracting authority shall return the tender guarantee as foreseen in point 4.3.9.3. at the end and 4.3.10. and release it for all tenderers when the contract is signed.

The contracting authority shall call in the tender guarantee if the tender is withdrawn before contract signature.

According to the applicable rules, guarantees (pre-financing and/or performance guarantee) could be required or not. If so, this must be mentioned in the tender dossier.

4.3.3. Selection and award criteria#Award criteria – supplies;Selection criteria - supplies

The criteria should be precise, non-discriminatory and not prejudicial to fair competition. All criteria must be applied as specified in the tender dossier and cannot be changed during the procedure.

1. The selection criteria relate to the tenderer's capacity to execute the contract.

The selection procedure involves:

1. eliminating tenderers who are ineligible in view of their nationality (see point 2.3.1.) or fall into one of the situations described in sections 2.3.3.1 (exclusion from participation in procurement procedures) and 2.3.3.2 (rejection from a given procedure);
2. checking that the tenderers' financial situation (financial and economic capacity) is sound, as backed up, for example, by balance sheets and turnover for the previous three years (see point 2.4.11.1.2) if specifically required in the Tender Dossier;
3. verifying the tenderers' technical and professional capacity, for example by looking at their average annual staffing levels, the size and professional experience of their management and the main supplies delivered in the field in question in recent years (see point 2.4.11.1.3).

The selection criteria specified in the annexes to this Practical Guide are given by way of illustration and need to be adapted to the nature, cost and complexity of the contract. They must be in a YES/NO format to allow a clear assessment of whether or not the offer meets them.

2. Evidence of selection criteria

If, for some exceptional reason which the contracting authority considers justified, the tenderer is unable to provide the references required by the contracting authority, it may prove its economic and financial capacity by any other means which the contracting authority considers appropriate. Where

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the supplies are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the Contracting Authority or on its behalf by a competent official body of the country in which the tenderer is established, subject to that body's agreement. Such checks will cover the tenderer's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

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Only successful tenderers must supply supporting documents for the selection criteria before the award of the contract (optional for contracts below EUR 300.000, see point 2.4.11.).

3. Technical evaluation

The technical evaluation will be based on the evaluation grid published in the tender dossier, which must not be changed in any way during the evaluation process. Given the wide variety of supplies and their technical nature, the technical requirements must be tailored to each tender in a YES/NO format to allow a clear assessment of whether or not the offer meets the technical specifications set out in the tender dossier.

4. The award criterion applied to technically compliant tenders is price or, in exceptional cases mentioned in point 4.3.3.3., the best price-quality ratio,

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4.3.3.1. Supply contracts not including ancillary services

Price is the sole award criterion for awarding supply contracts not including ancillary services (such as after-sales services and training). All non-compliant tenders having already been eliminated, the contract is awarded to the tenderer submitting the least expensive, compliant tender. Where specified in the technical specifications, the financial evaluation may take into account not only the acquisition costs but, to the extent relevant, costs borne over the life cycle of the supplies (such as for instance maintenance costs and operating costs), in line with the conditions set out in article 20.4 c) of the instructions to tenderers. If so, the procurement dossier must in advance indicate the data to be provided by the tenderers and the method which will be used to determine the life-cycle costs on the basis of those data.

If the selected tender exceeds the maximum budget available for the contract, point 4.2.5.1.(d) applies.

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4.3.3.2. Supply contracts including ancillary services

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

If the selected tender exceeds the maximum budget available for the contract, point 4.2.5.1.(d) applies.

4.3.3.3. Supply contracts including particularly significant ancillary services

Where a supply contract includes particularly significant ancillary services (such as after sales services and/or training), the evaluation may be carried out either as in 4.3.3.2. or, subject to prior approval, according to the best price-quality ratio criterion.

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4.3.4. Additional information during the procedure

The tender dossier must be clear enough to save tenderers from requesting additional information during the tender procedure. If the contracting authority provides additional information on the tender dossier, either on its own initiative or in response to a tenderer's request, it must send that information in writing to all tenderers at the same time.

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. Questions and answers, clarifications and any minor changes to the tender dossier must be published on the EuropeAid website. Please note that the Contracting Authority cannot give a prior opinion on the assessment of the tender.

If the questions result in an amendment to the contract notice, a corrigendum must be published, as explained in point 4.3.1.2.

The corrigendum must be published before the submission deadline. The deadline for the submission of tenders may be extended to allow tenderers to take account of the changes. The corrigendum must also be published on the EuropeAid website.

If the technical content of the tender is complex, the contracting authority may hold an information meeting and/or site visit. This meeting must be announced in the tender dossier and must take place at least 21 days before the deadline for submission of tenders. The Contracting Authority must state in the tender dossier if attendance at this meeting or site visit is strongly advised or compulsory. All costs of attending the meeting must be met by the tenderers. Individual visits by companies during the tender period cannot be organised by the contracting authority for reasons of 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.

4.3.5. Deadline for the submission of tenders

Tenders must reach the contracting authority at the address and, at the very latest, the date and time indicated in the tender dossier. The deadline for submission must be long enough to guarantee the quality of tenders and so permit truly competitive tendering.

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

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

INDIRECT MANAGEMENT WITH EX-ANTE AND EX-POST CONTROLS:
Prior authorisation is required from the European Commission for a shorter deadline.

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4.3.6. Period of validity

See point 2.8.5.

4.3.7. Submission of tenders

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

4.3.8. The Evaluation Committee#Evaluation committee - supplies

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

4.3.9. Stages in the evaluation process

4.3.9.1. Receipt and registration of tenders

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

4.3.9.2. Preparatory meeting

The first meeting of the evaluation committee should be held before the tender opening session. The tender dossier should have been distributed in advance to the members of the evaluation committee. The chairperson states the purpose of the tender, the procedures to be followed by the evaluation committee including the evaluation grid and selection and award criteria specified in the tender dossier.

4.3.9.3. Tender opening session

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

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

See the tender opening checklist in Annex C5 for the detailed formalities to be carried out by the Chairperson with the assistance of the Secretary.

DIRECT MANAGEMENT:

The evaluation committee appointed by the European Commission must carry out the tender opening session.

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS: The European Commission must be informed of the tender opening session. It may be represented as an observer at the tender-opening session and receive a copy of each tender.

INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

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

The chairperson must check that no member of the Evaluation Committee has a potential conflict of interest with any of the tenderers (on the basis of the tenders received, consortium members and any identified subcontractor). See points [2.8.2](#) and [2.8.3](#).

The evaluation committee must decide whether or not tenders comply with the formal requirements. The summary of tenders received, which is attached to the tender opening report (see Annex C6) must be used to record whether each of the tenders complies with the formal submission requirements. The minutes of this meeting are included in the tender opening report and this must be made available to the tenderers on request.

Any tender guarantee must be returned to the tenderers which do not comply with the formal submission requirements. This implies that any tenders which arrive after the submission deadline must also be opened (after the opening session) so that the guarantees can be returned.

4.3.9.4. Evaluation of technical offers

The evaluation committee must use the administrative compliance grid and the evaluation grid published in the tender dossier.

During the technical evaluation, the evaluation committee analyses whether the tenders satisfy the requirements set in the tender dossier. This includes any service components included in the technical specifications. The results are recorded in a YES/NO grid for all the items specified in the tender dossier. No scoring method should be used. If the tender is divided into lots, the evaluation should be carried out lot by lot.

With the agreement of the majority of the evaluation committee voting members, the chairperson may write to tenderers whose submissions require clarification, asking them to reply within a reasonable deadline set by the evaluation committee.

Part 1: Administrative compliance

Before conducting a detailed evaluation of the tenders, the contracting authority checks that they comply with the essential requirements of the tender dossier (i.e. the administrative compliance grid).

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

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

- the documentation is complete

Deleted: July 2015

- the language required by the tender dossier has been used

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

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

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

Part 2: Technical compliance

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

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

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

Rule of origin: All tenders must fulfil the requirements listed in point 2.3.1. In case of any doubt as to the origin of goods, additional information must be requested. Should doubts persist, the advice of the European Commission should be sought (if it is not the contracting authority).

The tenderer will be required to provide proof of origin in the form of a certificate of origin or other official documentation as prima facie evidence, before the contract is signed if possible.

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

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

Nationality of subcontractors: The evaluation committee must check at this stage that the nationalities of any subcontractors identified in the technical offers comply with the nationality rule explained in point 2.3.1.

Having evaluated the tenders, the evaluation committee must then rule on the technical compliance of each tender, classifying it as technically compliant or not technically compliant. Where contracts include after-sales service and/or training, the technical quality of such services is also assessed in accordance with the published criteria.

4.3.9.5. Evaluation of financial offers

Once the technical evaluation has been completed, the evaluation committee checks that the financial offers contain no obvious arithmetical errors. Any obvious arithmetical errors are corrected without penalty to the tenderer.

If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation must pick out the best financial offer for each lot, taking into consideration any discounts granted by the tenderers.

An example of how to treat discounts:

Deleted: July 2015

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

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

After applying the discount:

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

The 3 combinations possible:

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

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

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

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

4.3.9.6. Choice of contractor

The successful tenderer is the one submitting the least expensive tender (or, in exceptional cases mentioned in point 4.3.3.3., the tender with the best price-quality ratio) classified as ‘technically compliant’ during the technical evaluation. It must be declared the successful tender if it is equal to or lower than the maximum budget available for the contract.

If the chosen tender exceeds the maximum budget available for the contract, point 4.2.5.1.(d) applies.

Abnormally low tenders

Contracting authorities can reject tenders that appear to be abnormally low in relation to the goods, 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

Deleted: July 2015

conditions in the location of the contract, such as the economics of the products, the manufacturing 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 to reject the tender or not.

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

EDF-FUNDED PROGRAMMES:

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

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

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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 successful tenderer;
- they meet the requirements specified by the tender dossier, attaining at least the minimum quality and performance required by the technical specifications; and
- the price of the variant proposed is not higher than the price of the winning tender.

It is up to the evaluation committee to compare the variant and the original offer, and to recommend the best solution to the contracting authority.

4.3.9.7. The evaluation committee's conclusions

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

- Award the contract to the tenderer which has submitted a tender:
 - which complies with the formal requirements and the eligibility rules;
 - whose total budget is within the maximum budget available for the project;
 - which meets the minimum technical requirements specified in the tender dossier; and
 - which is the least expensive tender (or, in exceptional cases mentioned in point 4.3.3.3., the tender with the best price-quality ratio (satisfying all of the above conditions).
- Cancel the tender procedure (see point 2.4.13.).

Deleted: July 2015

DIRECT MANAGEMENT:

The entire procedure (technical and financial evaluation) is recorded in an evaluation report (see template in Annex C7) to be signed by the chairperson, the secretary and all evaluators. This evaluation report must be submitted to the European Commission, which must decide whether or not to accept its recommendations.

INDIRECT MANAGEMENT WITH EX-ANTE CONTROLS:

The entire procedure (technical and financial evaluation) is recorded in an evaluation report (see template in Annex C7) to be signed by the chairperson, the secretary and all evaluators. This evaluation 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 Evaluation Report together with its proposed decision to the European Commission. If there is an award proposal and the European Commission has not already received a copy of the tenders, these must be submitted.

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

If the European Commission accepts the proposed decision, the contracting authority will either commence awarding the contract (see point 4.3.11.) or cancel the tender, as decided.

INDIRECT MANAGEMENT WITH EX-POST CONTROLS:

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

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

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

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

4.3.10. Cancelling the tender procedure

See point 2.4.13.

A cancellation notice must be published following the guidelines for publication (see Annex A11e).

Tenderers are entitled to the immediate release of their tender guarantee. If the tender procedure is cancelled before the opening session, the unopened and sealed envelopes must be returned to the tenderers.

Deleted: July 2015

4.3.11. Award of the contract#Award of contract - supplies

4.3.11.1. Notifying the successful tenderer

See section 2.9. for the award of contract and point 2.4.12. in case of suspension clause.

4.3.11.2. Contract preparation and signature

See section 2.9.

The proposed contract must follow Annex C4.

4.3.11.3. Publicising the award of the contract

See section 2.9.

4.4. Local open tender for contracts between EUR 100 000 and EUR 300 000

In this case, the publication of a prior information notice is not obligatory and the contract notice is not published in the Official Journal of the European Union but only in the partner country and on the EuropeAid website with the address from which firms can obtain further information. The contract notice for a local tender must as a minimum be published in the Official Journal of the partner country or any equivalent media. Publication is the responsibility of the partner country.

As the cost of publishing the full contract notice in the local media may be high, the template in Annex C3 gives the minimum information which must be included in a local advertisement. However, the full contract notice must be available from the address referred to in the advertisement, together with the tender dossier.

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

In this procedure, there must be a minimum of 30 days between the date of publication of the contract notice in the local press and the deadline for receipt of tenders. However, in exceptional cases, a shorter deadline may be allowed in compliance with internal procedures.

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

Prior authorisation by the European Commission must also be sought for a shorter deadline.

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

EDF-FUNDED PROGRAMMES:

Deleted: July 2015

Tenderers from the ACP States, either individually or in a consortium with European partners, shall be accorded a 15 % price preference during the financial evaluation.

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

a) to the tenderer from an ACP State; or

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

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

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(See also point 2.4.10.)

4.5. Competitive negotiated procedure for contracts under EUR 100 000#Competitive negotiated procedure – supplies;Single tender - supplies

The contracting authority may award contracts under EUR 100 000 by competitive negotiated procedure, without publishing the contract notice. The contracting authority draws up a list of at least three firms with a justification for its choice. The candidates are sent a letter of invitation to tender accompanied by a tender dossier. The contract notice is not published, but it is included in the tender dossier as it contains important information for those firms which are invited to tender.

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

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

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

In the event of one failure of the competitive negotiated procedure, the contract may be awarded by negotiated procedure (see point 4.2.5.1.d)). The remainder of the procedure (preparing the tender dossier, evaluating the tenders, awarding the contract, etc.) is the same as under the international open procedure (see points 4.3.2. to 4.3.11.2.).

4.6. Modifying supply contracts#Addendum- supplies;Contract modification - supplies

See section 2.10. for general information on modifying contracts.

Leaving aside varying the quantities according to Article 22 of the General Conditions (see below) before contracting and/or during the execution of the contract, the contracting authority may not increase the budget of the initial supply contract or agree to/arrange for the purchase of equipment that was not covered in the initial tender and subsequent contract.

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The only exceptions to this rule are:

(1) for additional deliveries by the original supplier intended either as a partial replacement of supplies or installations included in the original contract, or as an extension of existing supplies or installations. This is only allowed where a change of supplier would oblige the contracting authority to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance. The additional deliveries arrangement is regarded as a negotiated procedure (see point 4.2.5.1. c) and an addendum or a new contract should be signed.

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(2) the situations listed in 2.10.1.

Under Article 22 of the General Conditions, the contracting authority has the power to issue an administrative order on variations. The contractor must comply with the variation order.

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4.7. List of Annexes

C	Supplies	
C1	Prior information notice	c1_priorinfo_en.doc
C2	Contract notice	c2_contractnotice_en.doc
C3	Summary Contract notice – Local Advertisement	c3_summarycn_en.doc
C4	Standard tender dossier (including standard contract)	
C4a	Letter of invitation to tender	c4a_invit_en.doc
C4b	Instructions to tenderers	c4b_itt_en.doc
C4c	Draft contract	c4c_contract_en.doc
C4d	Draft contract : Special conditions	c4d_specialconditions_en.doc
C4e	Draft contract : General conditions (Annex I)	c4e_annexigc_en.pdf
C4f	Technical Specifications (Annex II) & Technical Offer (Annex III)	c4f_annexiitechspeciitechoffer_en.doc
C4g	Financial Offer (Annex IV)	c4g_annexivfinoffer_en.doc
C4h	Performance Guarantee (Annex V)	c4h_perfguarantee_en.doc
C4i	Pre-financing Guarantee (Annex V)	c4i_prefinanceguarantee_en.doc
C4j	Administrative Compliance Grid	c4j_admingrid_en.doc

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C4k	Evaluation Grid	c4k_evalgrid_en.doc
C4l	Tender submission form	c4l_tenderform_en.doc
C4 m	Tax and Custom Arrangements (Annex V)	c4m_taxcustomsarrangements_en.doc
C4n	Tender Guarantee	c4n_tenderguarantee_en.doc
C4o1	Bank account notification form	c4o1_fif_en.pdf
C4o2	Legal Entity File (individual)	c4o2_lefind_en.pdf
C4o3	Legal Entity File (private companies)	c4o3_lefcompany_en.pdf
C4o4	Legal Entity File (public bodies)	c4o4_lefpublic_en.pdf
C5	Tender opening checklist	c5_openchecklist_en.doc
C6	Tender opening report	c6_openreport_en.doc
C7	Evaluation report	c7_evalreport_en.doc
C8a	Notification Letter to tenders	c8a_notifletter_supply_en.doc
C8b	Letter to unsuccessful tenderers	c8b_letterunsuccessful_en.doc
C9a	Contract award notice for international calls	c9a_awardnotice_internationalcalls_en.doc
C9b	Contract award notice for other procedures	c9b_awardnotice_en.doc
C10	Contractor assessment form	c10_assessment_en.doc
C11	Provisional and Final Acceptance	c11_provfinalaccept_en.doc
C12	Addendum to contract	c12_addendum_en.doc
C13	Budget modification	c13_budgetmodif_en.doc