

Practical Guide

to

Phare, Ispa & Sapard

contract procedures

Practical Guide to Phare, Ispa & Sapard contract procedures

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1 INTRODUCTION

This Practical Guide to the contracting procedures which apply to EC external aid contracts is aimed at everyone involved in the Phare, Ispa and Sapard programmes. It provides the procedures to be used in practice both in decentralised systems with ex-ante approval by the European Commission and in decentralised systems with ex-post controls.


It incorporates the relevant provisions of the Manual of Instructions for the award of contracts for works, supplies and services concluded for the purposes of Community co-operation with third countries which was adopted by the European Commission on November 10, 1999 as well as the Commission's Vade-mecum on Grant Management.

The procedures and standard documents for awarding services, supplies and works contracts set out in this Practical Guide and its annexes are applicable to Phare and Ispa as from **January 1, 2001** and will replace all those in the procurement section of the existing Phare DIS (Decentralised Implementation System) Manual. All tenders in progress at that date must be completed using the procedures and standard documents given in the existing Phare DIS Manual. **However, the procedures in the sections on the use of the Framework Contract (Section 3.4.1) and on awarding grants (Section 6) are already applicable.** Note that, owing to the specific nature of Phare Twinning, the provisions of the Practical Guide are not relevant to it - please refer to the Twinning Manual.


For Sapard, this Practical Guide is only applicable with respect to the public procurement procedures (in Sections 2, 3, 4 and 5).

This Practical Guide will be revised in July 2001, if necessary, to take account of any modifications which are appropriate after the first six months of implementation.

Sections 2, 3, 4 and 5 relate to service, supply and works contract procedures while Section 6 relates to the award of grants. Annex A1 contains a glossary of the terms used in this Practical Guide.

	<ul style="list-style-type: none"> ❑ All references to days in this Practical Guide should be interpreted as calendar days (unless otherwise specified). ❑ The person responsible for monitoring the implementation of a project on behalf of the Contracting Authority is referred to as the Project Manager. ❑ For Phare, references to the European Commission in this Practical Guide should be interpreted as being to
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	<p>the Delegation of the European Commission accredited to the country concerned. However, in some cases such as decisions regarding exceptions to the procedures explained in this Practical Guide, the Delegation will have to refer to the European Commission headquarters in Brussels to ensure that the approach is consistent throughout the programme (and with other programmes).</p> <p>□ For Sapard, references to the European Commission in this Practical Guide should be interpreted as being to DG AGRI</p>
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	<p>All projects funded by the European Communities are subject to audit at any stage, whether during the award process, during execution of the project or once the project has been completed.</p> <p>Contracting Authorities must retain all procurement and award documentation for a period of five years after the completion of a project. These documents must be made available for inspection by the European Commission and the European Court of Auditors. For practical reasons, the language to be used in all documentation, applications and tenders is English.</p>
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2 BASIC RULES FOR SERVICE, SUPPLY & WORKS CONTRACTS

2.1 OVERVIEW

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


Where contracts for services, supplies and works financed by the European Community in the course of co-operation with Phare, Ispa and Sapard countries are awarded by a Contracting Authority of the beneficiary country, award procedures are governed by the following legal framework:

- ❑ the **Financial Regulation** of 21 December 1977 applicable to the General Budget of the European Communities, as last amended by Council Regulation (EC) No 2458/98 of 23 November 1998, and in particular Title IX, External Aid, which lays down the basic rules, methods and procedures for the award of contracts from EC funds. It also specifies the principles of equal access and fair treatment for all eligible firms and individuals; [Note that the Financial Regulation is currently being revised but, until the approval of the new Financial Regulation, the above Financial Regulation continues to apply]
- ❑ Council Regulation No 3906/89 of 18 December 1989 and its subsequent amendments, which established the Phare programme and which defines, in particular, the eligibility rules to be applied (in respect of the nationality of experts and firms);
- ❑ Council Regulation EC/1266/1999, which established the co-ordination rules for the pre-adhesion instruments Ispa and Sapard and which, in particular, allows management tasks normally executed by the European Commission to be carried out in a decentralised system with ex-post controls.
- ❑ Council Regulation EC/1267/1999, which established Ispa;
- ❑ Council Regulation EC/1268/1999, which established Sapard.

The following are also applicable:


- ❑ The **Framework Agreement** signed by the EC and the beneficiary country concerned. This agreement contains the rules for administrative co-operation between the two bodies for the implementation of External Aid.

- The **Financing Memorandum** (known as a **Financing Agreement** in the Financial Regulation and in other EC external aid programmes, including Sapard) signed by the EC and the beneficiary country concerned for each EC-funded programme. This sets out the programme objectives and budget.

	<p>The Manual of Instructions for the award of contracts for works, supplies and services concluded for the purposes of Community co-operation with third countries [SEC(1999) 1801/2] adopted by the European Commission on November 10, 1999</p>
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- the **standard documents and templates** in the annexes to this Practical Guide, which include the standard tender documents for service contracts (see Annex B8), supply contracts (see Annex C4) and works contract (see Annex D4)

The procedures established by the European Commission for procurement under the Phare, Ispa and Sapard programmes are consolidated in this Practical Guide.

	<p>Before initiating any tender procedure, the service, supply or works to be contracted must have been approved in a Financing Memorandum and the funds must be available</p>
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2.2 CENTRALISED AND DECENTRALISED CONTROLS

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

- **Centralised:** decisions are taken by the European Commission, acting for and on behalf of the beneficiary country. [As it has been written specifically for the decentralised scenario, this Practical Guide does not cover the centralised approach. However, the underlying principles are the same.]
- **Decentralised:**
 - **Ex-ante:** decisions concerning the procurement and award of contracts are taken by the Contracting Authority and referred for approval to the European Commission. Details are specified throughout this Practical Guide
 - **Ex-post:** decisions are taken by the Contracting Authority without prior reference to the European Commission (apart from exceptions to the standard procedures given in this Practical Guide).

In all cases, the Contracting Authority assumes full responsibility for its actions and will be accountable for these in any subsequent audit or other investigation


This guide includes the procedures to be observed under both alternative decentralised approval mechanisms using the following notation:

DECENTRALISED: EX-ANTE
Procedures to be followed under a decentralised programme with ex-ante controls
DECENTRALISED: EX-POST
Procedures to be followed under a decentralised programme with ex-post controls

At present, **Phare and Ispa are decentralised with ex-ante controls** while **Sapard is decentralised with ex-post controls**. Eventually, Phare and Ispa are also likely to become decentralised with ex-post controls.

2.3 ELIGIBILITY CRITERIA AND OTHER ESSENTIALS

2.3.1 THE RULES ON NATIONALITY AND ORIGIN

	<p>Nationality: Contracts are open on equal terms to all natural and legal persons of the EU Member States and the countries and territories of the regions covered and/or allowed by the Regulation or other instruments governing the aid programme under which a given contract is being financed. See Annex A2 for the list of countries for each aid programme or instrument (Phare, Ispa, & Sapard).</p> <p>This nationality rule also applies to the experts proposed by service providers taking part in tender procedures for service contracts financed by the European Community. For the purposes of verifying compliance with the nationality rule, the tender dossier requires tenderers to state the country of which they are nationals by presenting the documents required under that country's law.</p> <p>If the Contracting Authority suspects that a candidate/tenderer has only a registered office in an eligible country or state and that the nationality of the candidate/tenderer is ineligible, the candidate/tenderer is responsible for demonstrating effective and continuous links with that country's economy. This is to avoid</p>
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	awarding contracts to firms whose nationalities are ineligible but which have set up 'letter box' companies in an eligible country to circumvent the rules on nationality.
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Rule of origin: All supplies and equipment purchased under a supply contract must originate in the EU or in an eligible country, as defined in the nationality rule above. The same goes for supplies and equipment purchased by a contractor for works or service contracts if the supplies and equipment are destined to become the property of the beneficiary country once the contract is completed.

In its tender, a tenderer must state the origin of supplies. Contractors must present a certificate of origin to the Contracting Authority when bringing supplies into the beneficiary country, when provisional acceptance of the supplies takes place or when the first invoice is presented. The contract will specify which of these options is applicable.

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

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

2.3.2 EXCEPTIONS TO THE RULE ON NATIONALITY AND ORIGIN

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

- (a) With regard to **nationality**, the European Commission may exceptionally allow nationals of countries other than those stipulated in the applicable Regulation to participate in tenders and contracts, on a case-by-case basis.
- (b) With regard to the **origin of supplies**, the same exception applies as under (a). Note, however, that the frequently used argument that a product of ineligible origin is cheaper than the Community or local product does not constitute grounds for awarding a derogation.

2.3.3 GROUNDS FOR EXCLUSION

Natural or legal persons are **not** entitled to participate in competitive tendering or be awarded contracts if:






- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they are the subject of proceedings for a declaration of bankruptcy, for winding-up, for administration by the courts, for an arrangement with creditors or for any similar procedure provided for in national legislation or regulations;
- (c) they have been convicted of an offence concerning professional conduct by a judgement which has the force of *res judicata* (ie, against which no appeal is possible);
- (d) they are guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (e) they have not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country where they are established;
- (f) they have not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country where they are established;
- (g) they are guilty of serious misrepresentation in supplying the information required by the contracting authorities as a condition of participation in a tender procedure or contract;
- (h) they have been declared to be in serious breach of contract for failure to comply with obligations in connection with another contract with the same contracting authority or another contract financed with Community funds;
- (i) they are in one of the situations allowing exclusion referred to in the Ethics Clauses (section 2.4.11) in connection with the tender or contract.


Candidates (in the first stage of a restricted tender procedure) must supply a sworn statement that they do not fall into any of the categories listed above as part of their applications.

Successful tenderers (in the second stage of a restricted tender procedure or in the single stage of an open tender procedure), as well as all other tenderers in any works tender procedure, must supply the proof usual under the law of the country in which they are established that they do not fall into categories (a), (b), (c), (e) or (f) listed above.

The date on the evidence or documents provided must be no earlier than 180 days before the deadline for submission of tenders. Tenderers must, in addition, provide a sworn statement that their situations have not altered in the period that has elapsed since the evidence in question was drawn up.

2.3.4 OTHER ESSENTIALS

	<u>Fair competition:</u> To avoid any conflict of interest, any firm (including firms within the same legal group, other members of the same consortium, and sub-contractors) or expert participating in the preparation of a project must be excluded from participating in tenders based on this preparatory work.
	<u>Transparency and impartiality:</u> The contract award procedure must be completely transparent and impartial.
	<u>Best value for money:</u> The most economically advantageous tender must be selected.
	<p><u>No retroactive awards:</u> Contracts are considered to take effect from the date of signature of the last signatory. Contracts or contract addenda cannot be awarded retroactively under any circumstances. This means that no disbursements can be effected and no goods and services provided prior to the signature of the contract and/or addendum.</p> <p>All contracts must show the true dates of signature of the contracting parties.</p>
	<u>Use of standard documents:</u> Standard contracts and document formats (as provided in the Annexes) must be used.

	<p><u>Record keeping:</u> Written records of the entire tendering and contracting procedure must be kept confidential and retained by the Contracting Authority for five years after the completion of the project. These must include the originals of all tenders submitted, together with the corresponding tender dossiers and any related correspondence.</p>
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2.4 CONTRACT AWARD PROCEDURES

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

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

The applicable Regulations oblige the European Commission and the Contracting Authority to guarantee the widest possible participation, on equal terms, in tender procedures and contracts financed by the Community. There are several different procedures for awarding contracts, each allowing for a different degree of competition.

2.4.1 WHICH AWARD PROCEDURE TO APPLY

The rules for applying the standard procurement procedures explained later in this section are summarised in the table below. They are divided between those for **services** (eg, technical assistance, studies, provision of know-how, and training), **supplies** (ie, equipment and materials) and **works** (ie, infrastructure and other engineering works). Once approval for an activity has been granted by the European Commission within a Financing Memorandum, the Contracting Authority can proceed with tendering and contracting following these standard procedures. The thresholds given in the table are based on the maximum budget for the contract in question (**including** any co-financing).

	≥ € 200,000	< € 200,000 but > € 5,000		≤ € 5,000
SERVICES	International restricted tender procedure	1 Framework Contract 2 Simplified procedure		Single tender
	≥ € 150,000	< € 150,000 but ≥ € 30,000	< € 30,000 but > € 5,000	≤ € 5,000
SUPPLIES	International open tender procedure	Local open tender procedure	Simplified procedure	Single tender
	≥ € 5,000,000	< € 5,000,000 but ≥ € 300,000	< € 300,000 but > € 5,000	≤ € 5,000
WORKS	1 International open tender procedure 2 International restricted tender procedure (in exceptional cases)	Local open tender procedure	Simplified procedure	Single tender

2.4.2 OPEN PROCEDURE

The open procedure involves an open invitation to take part in competitive tendering. Under the open procedure, any natural or legal person wishing to tender receives, upon request, the tender dossier (which may have to be paid for), in accordance with the procedures laid down in the procurement notice. When the tenders received are examined, the contract is awarded by conducting the selection procedure (ie, verification of the eligibility and of the financial, economic, technical and professional standing of tenderers) and the award procedure (ie, comparison of tenders), in accordance with section 2.4.8. No negotiation is allowed.

2.4.3 RESTRICTED PROCEDURE

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

In the second stage of the procedure, the Contracting Authority invites tenders from short-listed candidates, sending them the tender dossier. The successful tenderer is chosen by the award procedure once the

tenders have been analysed (see section 2.4.8). No negotiation is allowed.

2.4.4 SIMPLIFIED PROCEDURE

Under the simplified procedure, the Contracting Authority invites tenders from candidates of its choice. At the end of the procedure, the Contracting Authority selects the most economically advantageous tender. See Sections 3.4.2, 4.5 and 5.6 for further details.

2.4.5 FRAMEWORK CONTRACT

Under the Framework Contract arrangements, the European Commission has launched an international restricted tender procedure, selected the candidates, examined the framework proposals made, and drawn up a list of potential contractors on whom it can call to provide experts for specific assignments in the areas of specialisation put out to tender.

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


2.4.6 NEGOTIATED PROCEDURE

To be used in exceptional cases. See Sections 3.2.1.2, 4.2.1.2, and 5.2.1.3.

2.4.7 FAIR COMPETITION

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

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

	<p>No contract may be split simply to evade compliance with the rules set out in this Guide. If there is any doubt about how to estimate the value of the contract, the Contracting Authority must consult the European Commission on the matter before embarking on the procurement procedure.</p>
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Whatever the procedure used, the Contracting Authority must ensure that conditions are such as to allow fair competition. Wherever there is an obvious and significant disparity between the prices proposed and the services offered by a tenderer, or a significant disparity in the prices proposed by the various tenderers (especially in cases in which publicly-owned companies, non-profit associations or non-governmental organisations are taking part in a tender procedure alongside private companies), the Contracting Authority must carry out checks and request any additional information necessary. The Contracting Authority must keep such additional information confidential. Tenderers must routinely state that their financial offers cover all their costs, including overheads.

2.4.8 SELECTION AND AWARD CRITERIA

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

- (a) Selection procedure based on selection criteria published in the procurement notice:
 - verification of the eligibility of tenderers or candidates as laid down in section 2.3;
 - verification of the financial and economic standing of tenderers or candidates;
 - verification of the technical and professional capacities of tenderers, candidates and their managerial staff.

The procurement notice or the tender dossier must specify the reference criteria for these checks.

- (b) Comparison of tenders on the basis of the award criteria stipulated in the procurement notice and in the tender dossier, using price and other pre-established criteria enabling the most economically advantageous tender to be identified.

These criteria must be precise, must not be discriminatory, and must not be prejudicial to fair competition. Under the open procedure, both (a) and (b) are carried out when tenders are examined.

Under the restricted procedure, (a) is carried out during the first stage, when candidatures are examined (drawing-up of a shortlist), and (b)

during the second stage (invitation to tender), when tenders are examined.

2.4.9 TENDER PROCEDURE WITH "SUSPENSION CLAUSE"

In exceptional and duly justified cases, tender procedures may be published with a suspension clause. This means that a tender procedure is launched before a financing decision is issued or a Financing Memorandum signed between the European Commission and the beneficiary country; the award of that contract is therefore subject to the conclusion of the Financing Memorandum and the provision of funding.


Because of its implications, the existence of a suspension clause must be explicitly mentioned in the procurement notice.

The tender procedure will invariably be annulled if the European Commission's decision-making procedure is not completed or the Financing Memorandum is not signed.

2.4.10 CANCELLATION OF AWARD PROCEDURES

Cancellation may occur where:

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

	If a contract award procedure is cancelled, all tenderers must be notified in writing and as soon as possible of the reasons for the cancellation. A cancellation notice must be published in the event that a tender is cancelled. See template in Annex A5
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After cancelling a tender procedure, the Contracting Authority may decide:

- to launch a new tender procedure;

- to open negotiations with one or more tenderers who comply with the selection criteria and have submitted technically compliant tenders, provided that the original terms of the contract have not been substantially altered (this option is not available if the reason for cancellation is that there have been irregularities in the tender procedure which may have prevented fair competition);
- not to award the contract.


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

2.4.11 ETHICS CLAUSES

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

Without the Contracting Authority's prior written authorisation, a contractor and its staff or any other company with which the contractor is associated or linked may not, even on an ancillary or subcontracting basis, supply other services, carry out works or supply equipment for the project. This prohibition also applies to any other programmes or projects that could, owing to the nature of the contract, give rise to a conflict of interest on the part of the contractor.

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

	Civil servants or other agents of the public administration of the beneficiary country, regardless of their administrative situation, must not be engaged as experts by tenderers.
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The contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. It must refrain

from making public statements about the project or services without the Contracting Authority's prior approval. It may not commit the Contracting Authority in any way without its prior written consent.

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

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

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

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

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

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

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

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

The contractor undertakes to supply the European Commission on request with supporting evidence regarding the conditions in which the contract is being executed. The European Commission may carry out

whatever documentary or on-the-spot checks it deems necessary to find evidence in cases of suspected unusual commercial expenses.

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

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



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

2.4.12 APPEALS

Tenderers believing that they have been harmed by an error or irregularity during the award process may petition the Contracting Authority directly. The Contracting Authority must reply within 90 days of receipt of the complaint.

Where informed of such a complaint, the European Commission must communicate its opinion to the Contracting Authority and do all it can to facilitate an amicable solution between the complainant (tenderer) and the Contracting Authority.

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



Should a Contracting Authority fail to adhere to the contract award procedures provided for in this Practical Guide, the European Commission reserves the right to refuse to finance the contract or to suspend, withhold or recover funding for the contracts concerned.

2.5 CONTRACT SIZE

In order to achieve economies of scale, to ensure maximum co-ordination between related activities and to keep programme administration as simple as possible, care must be taken to design

projects to allow for maximum contract size and consequently to avoid the unnecessary fragmentation of programmes into a series of small contracts. Thus:-

- In the procurement of services for contracts of less than €200,000 but more than €5,000, the Framework Contract (see Section 3.4.1) should be used whenever possible.
- Artificially splitting related activities into smaller lot sizes or contracts to circumvent the procurement thresholds mentioned in Section 2.4.1 is prohibited.
- Technical assistance and related activities must be grouped where appropriate in large tenders and contracts.

2.6 CO-FINANCING

The situation of co-financing may arise for external aid projects. Often, the additional funding may come from the beneficiary country, an individual Member State or, in some cases, from international organisations such as UN agencies, the World Bank, the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD).

There are two types of co-financing : parallel and joint co-financing. Under **parallel co-financing**, the project is broken down into clearly identifiable sub-projects which are each funded by the different co-financing partners. **The rules and procedures included in this Practical Guide are applicable in their entirety and without modification to the EC-funded part of all projects with parallel co-financing.**

Under **joint co-financing**, the total project cost is divided between the co-financing partners and all the funds are pooled such that the source of funding for a specific activity within the project cannot be identified. As the situation is more complex than for parallel co-financing, it must be studied on a case-by-case basis by the Contracting Authority with the technical support of the European Commission.

2.7 TERMS OF REFERENCE AND TECHNICAL SPECIFICATIONS

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

Dossier and will become an annex of the eventual contract awarded as a result of the tender.

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

In particular, the budget for the standard service contract incorporates a fixed provision (for all, actual expenses not related to fees) to be determined in the tender dossier. This provision must correspond to the requirements of the Terms of Reference and must be carefully estimated.

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

DECENTRALISED: EX-ANTE

Before the tender is launched, the final version of the Terms of Reference or Technical Specifications for a project must be approved by the European Commission. An indicative calculation showing the basis for the amount of the provision to be included in the eventual service tender dossier must be submitted to the European Commission for approval at the same time.

DECENTRALISED: EX-POST

Before the tender is launched, the final version of the Terms of Reference or Technical Specifications for a project must be approved in accordance with the internal procedures of the Contracting Authority

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

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

CONTENT: TERMS OF REFERENCE

1. BACKGROUND INFORMATION

2. PROJECT OBJECTIVES

3. ASSUMPTIONS & RISKS

4. SCOPE OF THE WORK

5. LOGISTICS AND TIMING

6. REQUIRED OUTPUTS/REPORTING

7. REQUIRED INPUTS

8. MONITORING AND EVALUATION

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

3 SERVICE CONTRACTS

3.1 INTRODUCTION

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

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

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

Technical assistance contracts are used where a service provider is called on to play an advisory role, to manage or supervise a project, to provide the experts specified in the contract or to procure works, supplies or services for and on behalf of the Contracting Authority.

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

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

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

DECENTRALISED: EX-ANTE

Service contracts are concluded by the Contracting Authority designated in a Financing Memorandum, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the Financing Memorandum.

The Contracting Authority will draw up shortlists, in close consultation with the European Commission. Before the procedure is launched, the Contracting Authority must submit tender dossiers to the European Commission for approval. On the basis of decisions thus approved, and in close consultation with the European Commission, the Contracting Authority is responsible for issuing invitations to tender, receiving tenders, chairing tender evaluation meetings and deciding on the results of tender procedures.

The Contracting Authority then submits the result of this examination and the contract award proposal to the European Commission for approval. Once the award is approved, it will sign the contracts and notify the European Commission accordingly. As a general rule, the European Commission will be represented when tenders are opened and evaluated and must always be invited.

The Contracting Authority must submit procurement notices and award notices to the European Commission for publication.

DECENTRALISED: EX-POST

Service contracts are concluded directly by the Contracting Authority designated in a Financing Memorandum, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the Financing Memorandum. It will draw up shortlists and is responsible for issuing invitations to tender, receiving tenders, chairing tender-examination sessions, deciding on the results of tender procedures, and signing the contracts without the prior approval of the European Commission. The Contracting Authority must submit procurement notices and award notices to the European Commission for publication.

“Service provider” describes any natural or legal person offering services. A service provider who has applied to take part in a restricted tender procedure is termed a “candidate”; a service provider submitting a tender is termed a “tenderer”.

3.2 AWARD PROCEDURES

3.2.1 CONTRACTS OF €200,000 OR MORE

3.2.1.1 RESTRICTED PROCEDURE

All service contracts worth €200,000 or more must be awarded by restricted tender procedure following the international publication of a contract forecast and a procurement notice as laid down in section 3.3.1.

3.2.1.2 NEGOTIATED PROCEDURE

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

Service contracts may be awarded in the following situations using a negotiated procedure:

- (a) Where unforeseeable events oblige the Contracting Authority to act with an **urgency** incompatible with the periods laid down for the restricted or simplified procedures described in Sections 3.3 and 3.4.2. The circumstances invoked to justify extreme urgency must in no way be attributable to the Contracting Authority (eg, if the Financing Memorandum is about to expire).
- (b) Where **services are being provided by public entities or non-profit institutions or associations**.



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

- (c) In the case of contracts extending activities already under way; there are two scenarios for this:

- **complementary services** not included in the main contract but which, because of unforeseen circumstances, are necessary to perform the contract. This provision is subject to the following conditions:
 - i. the complementary services must be technically or economically inseparable from the main contract without causing major inconvenience to the Contracting Authority; and
 - ii. the estimated cost must not exceed 50% of the value of the main contract;
 - **additional services** repeat services performed by the service provider under an earlier contract. This provision is subject to two conditions:
 - i. the earlier contract must have been awarded after publication of a procurement notice; and
 - ii. the possibility of additional services being procured by negotiated procedure and their estimated cost must have been clearly indicated in the notice published for the earlier service contract. Such additional services could, for example, include the second phase of a study or operation. The contract can be extended only once, with its maximum value and duration not exceeding that of the earlier contract.
- (d) Where the tender procedure has been unsuccessful, ie, where **no qualitatively 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 chosen by the Contracting Authority, from among those that took part in the tender procedure, provided that the initial requirements of the tender dossier are not substantially altered (see section 2.4.10). This option is not available if the reason for cancellation is that there have been irregularities in the tender procedure which may have prevented fair competition.
- (e) Where the contract concerned follows a **design competition** and must, under the rules applying, be awarded to the winner or one of the winners. In the latter case, all winners must be invited to participate in the negotiations.

The Contracting Authority must prepare a Negotiation Report justifying the manner in which the negotiations were conducted and the basis for the contract award decision resulting from these negotiations. The procedures given in Sections 3.3.10.6 and 3.3.12 must be followed by analogy, with the Negotiation Report being included in the contract dossier.

3.2.2 CONTRACTS UNDER €200,000

Contracts of a value of under €200,000 may be awarded either under the Framework Contract procedure or under a simplified procedure involving at least three candidates. This does not apply to cases in which Section 3.2.1.2 provides for the negotiated procedure.

3.3 RESTRICTED TENDERS (FOR CONTRACTS OF €200,000 OR MORE)

3.3.1 PUBLICITY

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

3.3.1.1 PUBLICATION OF CONTRACT FORECASTS

Once a year, the Contracting Authority must publish forecasts of service contracts to be put out to tender for the twelve months following publication and, once every three months, any amendments to the above forecasts.

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

The contract forecasts are published in the Official Journal of the European Communities, on the Internet and in any other appropriate media.

DECENTRALISED: EX-ANTE

The Contracting Authority must submit annual contract forecasts and quarterly updates for publication to the European Commission in electronic form using the template in Annex B1 **at least 15 days before** the intended date of publication, to allow time for translations to be made. **They must be published at least 30 days before the corresponding procurement notice.**

DECENTRALISED: EX-POST

The Contracting Authority must submit annual contract forecasts and quarterly updates for publication to the European Commission in electronic form using the template in Annex B1 **at least 15 days before** the intended date of publication, to allow time for translations to be made. **They must be published at least 30 days before the corresponding procurement notice.**

3.3.1.2 PUBLICATION OF PROCUREMENT NOTICES

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

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


DECENTRALISED: EX-ANTE


The Contracting Authority must submit procurement notices for publication to 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 translations to be made. The finalised Terms of Reference (see Section 2.7) must also be submitted to the European Commission either at this time or in advance to demonstrate that the proposed procurement notice corresponds to the objectives of the contract.

DECENTRALISED: EX-POST

The Contracting Authority must submit procurement notices for publication to 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 translations to be made.

The procurement notice must state clearly, precisely, and completely what the subject of the contract is and who the Contracting Authority is. It must specify the maximum budget available for the intended operation and the forecast timetable of activities. It must provide would-be service providers with the information they need to determine their capacity to fulfil the contract in question. (See template in Annex B2).

	<p>The selection criteria identified in the procurement notice must be:</p> <ul style="list-style-type: none"> ❑ Clearly formulated, without any ambiguity ❑ Easy to verify on the basis of the information submitted using the standard application form (see Annex B3) ❑ Devised to allow a clear YES/NO assessment to be made as to whether or not the candidate satisfies a particular selection criterion
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	<p>Candidates are required to use the standard application form available from the following Internet address:</p> <p>http://europa.eu.int/comm/scr/tender/index_en.htm</p> <p>Its format and instructions must be strictly observed.</p> <ul style="list-style-type: none"> ❑ Any application which does not observe these provisions will be automatically eliminated. ❑ Any additional documentation (brochure, letter, etc) sent with an application will not be taken into consideration.
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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 Communities and on the Internet. The actual deadline will be determined by the contract's size and complexity.

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

3.3.2 ESTABLISHING SHORTLISTS

The short-listing of candidates must be carried out by a Shortlist Panel appointed by the Contracting Authority comprising a non-voting Chairman, a non-voting Secretary and an odd number of voting members (minimum of three) possessing the technical and administrative capacities necessary to give an informed opinion on the

applications. Each member must have a reasonable command of the language in which the applications are submitted. All members of the Shortlist Panel are obliged to sign a Declaration of Impartiality and Confidentiality (see Annex A4).

DECENTRALISED: EX-ANTE

The Shortlist Panel (ie, the Chairman, the Secretary and the voting members) must be nominated on a personal basis by the Contracting Authority. The composition of the Shortlist Panel must be submitted for approval to the European Commission. As a general rule, the European Commission nominates an observer to follow all or part of the proceedings of the Shortlist Panel. Prior approval must be sought from the European Commission for the participation of other observers.

DECENTRALISED: EX-POST

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


Would-be service providers must include with their applications (individually or as part of a consortium) the information required in the notice and the standard application form (see Annex B3) so that their capacity to fulfil the contract in question can be assessed. The selection procedure involves:

1. establishing a long list (see template in Annex B4) summarising all the applications received
2. eliminating candidates who are ineligible (see section 2.3) or fall into one of the situations described in section 2.4.11;
3. checking that the candidates' financial situation (financial and economic standing) is sound;
4. verifying the candidates' technical and professional capabilities, for instance by reviewing
 - the candidates' average annual staffing levels and the size and professional experience of their management and
 - the main services provided in the field in question over the previous years.



The selection must be carried out by applying the selection criteria specified in the procurement notice without any modification.

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


	<p>The shortlist should contain a minimum of four candidates and a maximum of eight. Every procurement notice must specify this.</p> <p>If the number of eligible candidates meeting the selection criteria is either less than four or greater than eight, the manner in which the list of eligible candidates is augmented or diminished must be duly recorded and justified in the Shortlist Report.</p>
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If the number of eligible candidates meeting the selection criteria is less than the minimum of four, the Contracting Authority may call upon additional potential candidates (who have not submitted an application) from other sources such as a database of natural and legal persons who have previously registered their interest in similar projects with the European Commission. These potential candidates must satisfy the same selection criteria. Any resulting addition(s) to the shortlist must be justified individually in the Shortlist Report.

If the number of eligible candidates meeting the selection criteria is greater than the maximum of eight, the relative strengths and weaknesses of the applications of these candidates must be re-examined to identify the eight best applications for the tender procedure. The results of this re-examination must be duly justified in the Shortlist Report. Factors which may be taken into consideration during this re-examination include, for example:

- performance in previous EC contracts
- giving preference to candidates which have previously had a significant involvement in major, international projects relevant to this tender procedure during the previous 3 years
- giving preference to an international consortium over an equivalent individual candidate

This should produce a final shortlist of at most 8 candidates.

	<p>The short-listing process and the final shortlist itself must be fully documented in a Shortlist Report (see template in Annex B5). This and all the application forms received must be retained.</p>
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DECENTRALISED: EX-ANTE

The Shortlist Report and the tender dossier to be sent to short-listed candidates must be submitted to the European Commission. The European Commission retains the right to reject the shortlist. Once a shortlist has been approved by the Contracting Authority and the European Commission, **short-listed service providers or consortia are not allowed to form alliances with any other firms or to subcontract to each other for the contract in question.**

DECENTRALISED: EX-POST

Once a shortlist has been established by the Contracting Authority, **short-listed service providers or consortia are not allowed to form alliances with any other firms or to subcontract to each other for the contract in question.**

The Contracting Authority may allow subcontracting with entities other than those on the shortlist provided that the tenderer's technical offer clearly provides for it, that the subcontractor complies with the eligibility conditions set out in section 2.3 and section 2.4.11 and that subcontracting does not account for an excessive proportion of the tender. The tender dossier must stipulate what the proportion is.

Candidates not selected will be informed of that fact by the Contracting Authority by means of a standard letter, the format of which is given in Annex B6. Candidates who are selected will receive a letter of invitation to tender and the tender dossier (see template in Annex B8). **At the same time, the final shortlist will be published on the Internet in the format shown in Annex B7.**



The Contracting Authority is responsible for preparing the shortlist notice using the template in Annex B7 and for submitting it for publication on the Web site http://europa.eu.int/comm/scr/tender/index_en.htm to the European Commission in electronic form within 24 hours of establishing the shortlist.

PROCEDURE FOR ESTABLISHING SHORTLISTS

PUBLISH CONTRACT FORECAST Must be sent to the European Commission at least 15 days before the intended date of publication Forewarns interested parties of a forthcoming procurement notice	
At least 30 days after	publishing contract forecast
PUBLISH PROCUREMENT NOTICE Must be sent to the European Commission at least 15 days before the intended date of publication	
Candidates must be given at standard application	least 30 days to submit forms
SHORTLIST PANEL MEETS TO:	
1) ESTABLISH LONG LIST Summarises all candidates	
2) ELIMINATE ALL CANDIDATES WHICH MUST BE EXCLUDED Apply the grounds for exclusion in Section 2.3.3	
3) ELIMINATE ALL INELIGIBLE CANDIDATES Apply the eligibility criteria in Section 2.3.1	
4) IDENTIFY ALL ELIGIBLE CANDIDATES MEETING THE SELECTION CRITERIA If more than 8, identify the best 8 If less than 4, seek additional candidates	
5) PREPARE SHORTLIST REPORT Record the entire short-listing process	
6) SHORTLIST OF BETWEEN 4 AND 8 CANDIDATES Send tender dossier to short-listed candidates Send letters to unsuccessful candidates Send shortlist to the European Commission for publication on the Internet	

3.3.3 DRAFTING AND CONTENTS OF THE TENDER DOSSIER

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

These documents must contain all the provisions and information that candidates invited to tender need to present their tenders: the procedures to follow, the documents to provide, cases of non-compliance, award criteria and their weightings, stipulations regarding subcontracting, etc. It may be desirable for representatives of the final

beneficiaries to participate in the tender preparation at an early stage. See Section 2.7 for guidelines for preparing Terms of Reference.

The Contracting Authority is responsible for drawing up these documents.

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

The Contracting Authority will send only the short-listed candidates a **letter of invitation to tender** (see template in Annex B8) accompanied by the tender dossier comprising the following documents:

TENDER DOSSIER CONTENT

① INSTRUCTIONS TO TENDERERS

Which must include:

- ☐ The type of contract (ie, Service)
- ☐ The tender evaluation criteria (and any sub-criteria) and their weightings
- ☐ Whether interviews are possible and when they are likely to be held
- ☐ Whether variants are allowed
- ☐ Whether, and in what proportion, sub-contracting is permitted
- ☐ The maximum budget available for the contract
- ☐ The currency of the tenders (ie, euro)
- ☐ The sworn statement to be provided by the tenderers

See Annex B8 for template

② THE SHORTLIST OF CANDIDATES

This is the notice published on the Internet to announce the names of the short-listed candidates for the tender (stipulating that they cannot form alliances or subcontract to each other). See template in Annex B5.

③ DRAFT CONTRACT AND ANNEXES

See standard format in Annex B8. This includes:

- ❑ The Special Conditions of the contract, which amplify, supplement or derogate from the General Conditions and, where they conflict, override them
- ❑ The Terms of Reference for the project (which will become an annex of the eventual contract), with a forecast timetable for the contract and forecast dates from which the key experts must be available. See Section 2.7
- ❑ An overall structure for the Organisation and Methodology to be provided by the tenderer and which will become an annex of the eventual contract
- ❑ A standard format for the summary and CVs of key staff, to be included as an annex of the eventual contract
- ❑ The format of the budget (for completion by the tenderer) which will become an annex of the eventual contract
- ❑ The General Conditions for service contracts, to be included as an annex of the eventual contract. **Changes to the General Conditions are forbidden.**
- ❑ The format to be used by a bank or similar institution to provide a guarantee for the advance payment under the contract
- ❑ Any additional contractual information such as special tax arrangements for contracts funded by the European Community

④ TENDER SUBMISSION FORMAT

The format in which the tender should be submitted. See Annex B8 for template. If this format is not respected, the tender must be rejected.

3.3.4 AWARD CRITERIA

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

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

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

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

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



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

3.3.5 ADDITIONAL INFORMATION BEFORE THE DEADLINE FOR SUBMISSION OF TENDERS

The tender dossier should be **clear** enough to avoid candidates invited to tender from having to request additional information during the procedure. **If the Contracting Authority, either on its own initiative**

or in response to the request of a short-listed candidate, provides additional information on the tender dossier, it must send such information in writing to all other short-listed candidates at the same time.

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

3.3.6 DEADLINE FOR SUBMISSION OF TENDERS

Tenders must **reach** the Contracting Authority at the address and, at the very latest, the date and time indicated in the letter of invitation to tender. The period for submission must be sufficient to guarantee the quality of tenders and so permit truly competitive tendering. Experience shows that too short a period prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders. The deadline for submissions must be at the close of business of a working day in the beneficiary country (eg, 16:00 local time on a Friday).

DECENTRALISED: EX-ANTE

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, with prior authorisation from the European Commission, this period may be shorter.

DECENTRALISED: EX-POST

The minimum period between the dispatch of the letter of invitation to tender by the Contracting Authority and the deadline for receipt of tenders is 50 days. However, in exceptional cases, this period may be shorter.

3.3.7 PERIOD DURING WHICH TENDERS ARE BINDING

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

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

The successful tenderer must maintain its tender for a further 60 days from the date of notification of award.

3.3.8 SUBMISSION OF TENDERS

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

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

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

The outer envelope should carry:

- (a) the address for submission of tenders specified in the tender dossier;
- (b) the reference of the tender procedure to which the tenderer is responding;
- (c) where applicable, the numbers of the lots tendered for;
- (d) the words "Not to be opened before the tender-opening session" in the language of the tender dossier **and** in the local language;
- (e) the name of the tenderer.

3.3.9 THE EVALUATION COMMITTEE

3.3.9.1 COMPOSITION

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

DECENTRALISED: EX-ANTE

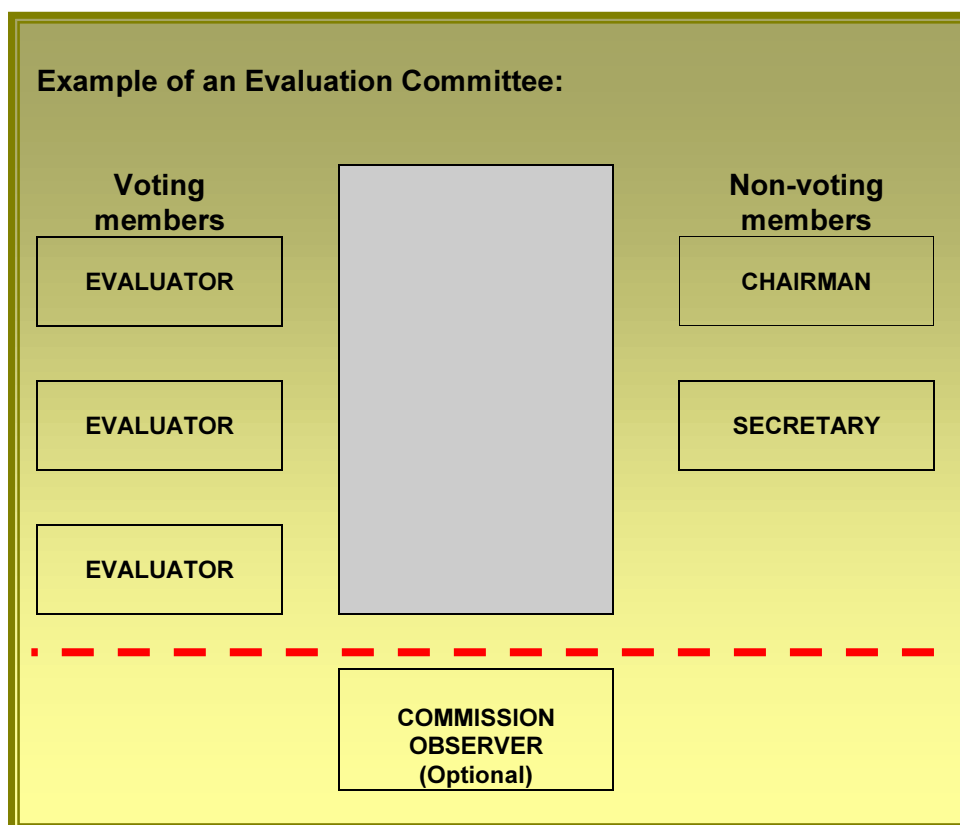
The Evaluation Committee (ie, the Chairman, the Secretary and the voting members) must be nominated on a personal basis by the Contracting Authority. The composition of the Evaluation Committee must be submitted for approval to the European Commission. As a general rule, the European Commission nominates an observer to follow all or part of the proceedings of the Evaluation Committee. Prior approval must be sought from the European Commission for the participation of other observers.

DECENTRALISED: EX-POST

The Evaluation Committee (ie, the Chairman, the Secretary and the voting members) must be nominated on a personal basis by the Contracting Authority. The participation of any observers must be authorised individually by the Contracting Authority.

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


All voting members of the Evaluation Committee have equal voting



rights. The names and functions of all those involved in the evaluation process must be recorded in the Evaluation Report.

3.3.9.2 IMPARTIALITY AND CONFIDENTIALITY

All members of the Evaluation Committee and any observers must sign a Declaration of Impartiality and Confidentiality (see Annex A4). Any Evaluation Committee member or observer who has a potential conflict of interest due to a link with any tenderer must declare it and immediately withdraw from the Evaluation Committee. He/she will be excluded from participating further in any capacity in the evaluation meetings. Any Evaluation Committee member who withdraws from the Evaluation Committee for whatever reason must be replaced (following the standard procedure for appointing members of the Evaluation Committee, as explained in Section 3.3.9.1) and the evaluation process must be restarted. Any assessment by a voting member withdrawing from the committee at whatever stage of the evaluation has to be disregarded.

	<p>No information about the examination, clarification, evaluation or comparison of tenders or decisions about the contract award can be disclosed before the signature of the contract by the Contracting Authority and the successful tenderer. <u>Any attempt by a tenderer to influence the process in any way (whether by initiating contact with members of the Evaluation Committee or otherwise) will result in the immediate exclusion of its tender from further consideration.</u></p>
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- ❑ The proceedings of the Evaluation Committee, from the opening of tenders to the conclusion of the work of the Evaluation Committee, are conducted *in camera* and are confidential
- ❑ In order to maintain the confidentiality of the proceedings, participation in the Evaluation Committee meetings is limited to the members of the Evaluation Committee designated by the Contracting Authority and any authorised observers
- ❑ The tenders should not leave the room/building in which the committee meetings take place before the conclusion of the work of the Evaluation Committee. They should be kept in a safe place when not in use.

3.3.9.3 RESPONSIBILITIES OF THE EVALUATION COMMITTEE MEMBERS

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

The Secretary to the Committee is responsible for carrying out all the administrative tasks within the evaluation procedures. These will include:

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

Any request for clarification requiring communication with the tenderers during the evaluation process must be conducted in writing (by fax or letter) and signed by both the Chairman and the Secretary of the Evaluation Committee. Copies of any such communication must be annexed to the Evaluation Report.

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

3.3.9.4 TIMETABLE

The Evaluation Committee should be formed early enough to ensure the availability of the designated members (and any observer nominated by the European Commission, in the case of decentralised ex-ante control) during the period necessary to prepare and conduct the evaluation process. The tender evaluation should be completed as soon as possible.

The duration of the evaluation process should be agreed between members of the Evaluation Committee and the Contracting Authority. The evaluation process must be completed in time to allow the successful tenderer to be notified by the Contracting Authority (after all necessary approvals) within the tender validity period (ie, 90 days) specified in the tender dossier.

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 and provide a receipt for those delivered by hand. The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened.

The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

3.3.10.2 TENDER OPENING SESSION

Part 1: Preparatory phase

- ❑ First meeting of Evaluation Committee
 - to be held before starting the actual evaluation
 - the tender dossier should have been circulated in advance to members of the Evaluation Committee
- ❑ The Chairman presents the purpose of the tender procedure in general terms
- ❑ The Chairman reminds the Committee of the award criteria and weightings specified in the tender dossier, stating that these must be respected without modification. (The selection criteria used in the short-listing of candidates should not be used during the tender evaluation).
- ❑ The Chairman explains the procedures to be followed by the Committee
- ❑ Before the tenders are opened, the Chairman of the committee checks that all members are familiar with the technical evaluation grid set out in the tender dossier to make sure that the tenders will be evaluated by the different members of the committee in a consistent manner. See Annex B8 for the format of an evaluation grid.
- ❑ The Chairman reminds the Committee that the threshold for acceptance of technical offers is 80 points, that the financial evaluation will be carried out later as per the tender dossier, and that the weightings given to the technical and financial evaluations will be 0.80 and 0.20 respectively

Part 2: Compliance with formal requirements

- ❑ **See tender opening checklist in Annex B9**

The following tasks are carried out by the Chairman and Secretary:

- ❑ Examine and state the condition of outer envelopes before opening them in order of receipt, announcing the name of the tenderer and that separate envelopes have been used for technical and financial offers. **Only tenders contained in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.**

- ❑ Require all members of the Evaluation Committee and any observer(s) to read and sign a Declaration of Impartiality and Confidentiality (see Annex A4)
- ❑ Open the inner envelope containing the technical offer and mark the tender envelope number on each copy of the technical offer. The front page of each copy of the technical offer must be initialled by the Chairman and the Secretary
- ❑ The Chairman and the Secretary must initial the inner envelope containing the financial offer across the seal, marking the tender envelope number on the envelope. This is not opened and must be locked away in a safe place until the financial evaluation takes place, after completion of the technical evaluation

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


Part 3: Administrative compliance

The Committee checks the compliance of tenders with the instructions given in the tender dossier. Any formal errors or major restrictions affecting performance of the contract or distorting competition result in the rejection of the tender concerned.


- ❑ Copies of the technical offers are distributed to the Committee members. The originals are locked away for safe keeping
- ❑ Each technical offer is examined for compliance with the tender dossier, in particular that:
 - the documentation is complete
 - the language required by the tender dossier has been used
 - a declaration of intent, accepting the terms of reference and general conditions, has been signed by the tenderer (ie, leader and all consortium partners, in the case of a consortium)
 - each of the key personnel proposed have signed a statement of availability and exclusivity for this tender (see Annex B8)
 - **for consortia:** the confirmation of association and designation of a lead company has been signed by all consortium members

- **for tenderers intending to sub-contract tasks (if permitted by the tender dossier):** the tenderer has included a statement regarding the content and extent of sub-contracting envisaged, which must be within the limit stated in the tender dossier, and the identity of the sub-contractor

- With the agreement of the other Committee members, the Chairman may communicate in writing with tenderers whose submissions require clarification, offering them the possibility to respond by fax within a maximum of 48 hours. Any such request for clarification must not seek the correction of formal errors or major restrictions affecting performance of the contract or distorting competition.

	<p>The Chairman 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, tenders received, consortium members and any identified sub-contractor). Any Evaluation Committee member or observer who has a potential conflict of interest due to a link with any tenderer must declare it and immediately withdraw from the Evaluation Committee. He/she will be excluded from participating further in any capacity in the evaluation meetings.</p> <p>Any Evaluation Committee member who withdraws from the Evaluation Committee for whatever reason must be replaced (following the standard procedure for appointing members of the Evaluation Committee, as explained in Section 3.3.9.1) and the evaluation process must be restarted.</p>
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The table included in the Tender Opening Report (see Annex B10) must be used to record the administrative compliance of each of the tenders.


	<p>The Tender Opening Report, which comprises the summary of tenders received and the minutes of the tender opening session, must be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. The Tender Opening Report must state:</p> <ul style="list-style-type: none"> □ The date, time and place of the session; □ The persons present; □ The names of the tenderers who submitted tenders within the stipulated deadline; □ Whether tenders were submitted using the double-
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	<p>envelope system;</p> <ul style="list-style-type: none"> ❑ Whether the originals were duly signed, and whether technical offers were sent in the requisite number of copies; ❑ Whether any requests for clarification were sent by the Chairman, including copies of the correspondence ❑ The names of any tenderers whose tenders were found to be non-compliant at the opening session and the requirement(s) with which their tenders failed to comply; ❑ The names of any tenderers who withdrew their tenders.
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3.3.10.3 EVALUATION OF TECHNICAL OFFERS

The committee then examines the technical offers, the financial offers remaining sealed. The committee members receive copies of the technical offers. 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 section 3.3.4). **Under no circumstances may the committee or its members change the technical evaluation grid communicated to the tenderers in the tender dossier.**

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

	<p><u>Nationality of experts and sub-contractors:</u> The Evaluation Committee must check at this stage that the nationalities of the key experts and sub-contractors identified in the technical offers satisfy the nationality rule in Section 2.3.1. If the service provider is required by the terms of reference to provide supplies, the Evaluation Committee must verify that the proposed supplies satisfy the Rule of Origin in Section 2.3.1.</p>
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If the tender dossier expressly permits variants, such variants are scored separately.

	<p>Each voting committee member completes an evaluation grid (see Annex B8) 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.</p>
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On completion of the technical evaluation, the points awarded by each member are compared at the committee's session. Besides the numerical score, a member must explain the reasons for his/her choice and defend his/her scores before the committee.

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

Once discussed, each Evaluation Committee member finalises his/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 committee members as part of the Evaluation Report.

	<p>In the case of major discrepancies, a full justification has to be provided by dissenting members during a meeting of the Evaluation Committee.</p>
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The example in Annex B11 shows the format of such a summary as part of the Evaluation Report and indicates the level of detail expected. The Secretary calculates the aggregate final score, which is the arithmetic average of the individual final scores.

If interviews were provided for in the tender dossier, the committee may, after writing up its provisional conclusions and before definitively concluding its evaluation of the technical offers, decide to interview the key members of the team of experts proposed in technically compliant tenders (ie, those which have achieved an average score of 80 points or more in the technical evaluation). In this case the experts are interviewed by the committee, preferably collectively in the case of a team, at intervals close enough to permit comparison. Interviews must follow a standard format agreed beforehand by the committee and applied to all experts or teams called to interview.

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

On completion of these interviews, the Evaluation Committee, without modifying either the composition or the weighting of the criteria laid down in the technical evaluation grid, decides whether it is necessary to

adjust the scores of the experts who have been interviewed. Any adjustments must be substantiated.

This procedure entails considerable costs both for tenderers and the Contracting Authority and should therefore be used with restraint. It must be recorded in the Evaluation Report, which may lead to revision of the initial technical evaluation of the tender. The indicative timetable for these interviews must be given in the tender dossier.

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

The committee considers only tenders that have obtained at least 80 points. Of these tenders, the best technical offer is then awarded 100 points. The others receive points calculated using the following formula:


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

Specimen Tender Evaluation Summary Part 1: Technical Evaluation

	Maximum possible score	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*	$84.67/85.33 \times 100 = 99.22$	100.00

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


The Secretary must record the names of the firms and the results in the Evaluation Report. At this stage, the Chairman may give the committee members the opportunity to comment, to table objections or to query dissenting opinions. The Chairman should then state for the record the names of those firms which have passed the 80-point threshold and will proceed for financial evaluation.

	Note that all technical offers must be retained by the Contracting Authority, whether or not they achieve this threshold.
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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 which were not eliminated during the technical evaluation (ie, those which have achieved an average score of 80 points or more) are opened and all copies of these financial offers are initialled by Chairman and Secretary of the Evaluation Committee.

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

	Tenders presented in currencies other than euro are not acceptable and must be rejected.
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- ❑ The envelopes containing the financial offers of rejected tenderers must be retained by the Contracting Authority with other documents for the tender. They must remain unopened
- ❑ The Evaluation Committee checks that the financial offers contain no arithmetic errors. Any arithmetic errors are corrected without prejudice to the tenderer.
- ❑ The total contract value comprises the fees (including employment-related overheads) and the provision for actual expenditure which is specified in the tender dossier. This total contract value is compared with the maximum budget available for the contract.

	Tenders exceeding the maximum budget available for the contract are eliminated.
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- ❑ The Evaluation Committee then proceeds with the financial comparison of the fees (including employment-related overheads) between the different financial offers. The provision is excluded from the comparison of the financial offers as it was specified in the tender dossier.

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

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



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

Specimen Tender Evaluation Summary Part 2: Financial Evaluation*

	Maximum possible score	Tenderer 1	Tenderer 2	Tenderer 3
Total fees		ELIMINATED	€951,322	€1,060,452
Financial score (Lowest total fees / Actual total fees x 100)		FOLLOWING THE TECHNICAL EVALUATION	100.00	$951,322 / 1,060,452 \times 100 = 89.71$

* Only tenderers scoring at least 80 points in the technical evaluation qualify for the financial evaluation

3.3.10.5 CONCLUSION OF EVALUATION COMMITTEE

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


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

Specimen Tender Evaluation Summary Part 3: Composite Evaluation

	Maximum possible score	Tenderer 1	Tenderer 2	Tenderer 3
Technical score x 0.80		ELIMINATED	$99.22 \times 0.80 = 79.38$	$100.00 \times 0.80 = 80.00$
Financial score x 0.20		FOLLOWING THE TECHNICAL EVALUATION	$100.00 \times 0.20 = 20.00$	$89.71 \times 0.20 = 17.94$
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 and the contract is awarded to the tender achieving the highest overall score. It is essential to make the calculations **strictly** according to the above instructions.

Specimen Tender Evaluation Summary				
	Maximum possible score	Tenderer 1	Tenderer 2	Tenderer 3
Technical Evaluation				
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		58.00	84.67	85.33
Technical score		ELIMINATED*	99.22	100.00
Financial Evaluation				
Total fees		ELIMINATED	€951,322	€1,060,452
Financial score		FOLLOWING THE TECHNICAL EVALUATION	100.00	89.71
Composite Evaluation				
Technical score x 0.80		ELIMINATED	$99.22 \times 0.80 = 79.38$	$100.00 \times 0.80 = 80.00$
Financial score x 0.20		FOLLOWING THE TECHNICAL EVALUATION	$100.00 \times 0.20 = 20.00$	$89.71 \times 0.20 = 17.94$
Overall score			$79.38 + 20.00 = 99.38$	$80.00\% + 17.94 = 97.94$
Final ranking			1	2
* Only tenderers with average scores of at least 80 points in the technical evaluation qualify for the financial evaluation				

	<p>As a result of its deliberations, the Evaluation Committee may make any of the following recommendations:</p> <ul style="list-style-type: none"> ❑ Award the contract to the tenderer which has submitted a tender: <ul style="list-style-type: none"> ❑ which complies with the formal requirements and the eligibility rules; ❑ whose total budget is within the maximum budget available for the project; ❑ which meets the minimum technical requirements specified in the tender dossier; and ❑ which is the most economically advantageous tender (satisfying all of the above conditions). ❑ Cancel the tender procedure in exceptional circumstances, such as: <ul style="list-style-type: none"> ❑ None of the tenders satisfies the selection/award criteria of the tender procedure ❑ No tenders achieved the minimum threshold during the technical evaluation ❑ The total price (comprising both the fees and the provision) of all tenders received exceed the maximum amount available for the contract
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DECENTRALISED: EX-ANTE

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex B11) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. This must be submitted to the Contracting Authority, which must decide whether or not to accept its recommendation.

The Contracting Authority must then submit the Evaluation Report together with its recommendation to the European Commission for approval. If there is an award proposal and the European Commission has not already received the original tender of the recommended tenderer and copies of the other tenders, these must be submitted.

At the same time, for any award proposal, a contract dossier including a proposed contract must be prepared on the basis of the recommended tender (see Section 3.3.10.6). It must be submitted to the European Commission for endorsement (agreement to finance the proposed contract).


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

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

DECENTRALISED: EX-POST

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex B11) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. This must be submitted to the Contracting Authority, which must decide whether or not to accept its recommendations. No prior approval from the European Commission is required before the Contracting Authority acts on the recommendations of the Evaluation Committee.

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

	<p>The entire tender procedure is confidential from the drawing-up of the shortlist to the signature of the contract by both parties. The Evaluation Committee's decisions are collective and its deliberations must remain secret. The Evaluation Committee members and any observers are bound to secrecy.</p>
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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 departments of the Contracting Authority, the European Commission and the supervisory authorities (eg, the European Court of Auditors).


3.3.10.6 CONTRACT PREPARATION

If the Evaluation Committee recommends the award of a contract to a particular tenderer and the Contracting Authority approves the Evaluation Report, the Contracting Authority must use the standard contract format (see Annex B8) to prepare the proposed contract. All the components of the proposed contract should be available from either the tender dossier or the tender submitted by the recommended tenderer. Only the Special Conditions should need to be completed.

A contract dossier must be prepared using the following structure:

- a) Explanatory note using the format in Annex A6
- b) Copy of the Financing Memorandum authorising the project
- c) Copy of the tender announcements (contract forecast, procurement notice and shortlist), Shortlist Report, Tender Opening Report, Evaluation Report, and any other relevant information
- d) Four copies of the proposed contract, which is based on the standard service contract template (see Annex B8):
 - Special conditions (to be completed by the Contracting Authority)
 - General conditions for service contracts (standard & in the tender dossier)
 - Terms of reference (from the tender dossier)
 - Organisation and methodology (from the recommended tender)
 - List of key experts and their CVs (from the recommended tender)
 - Budget breakdown (from the recommended tender)

- ❑ Miscellaneous (from the tender dossier and including, for example, tax and Customs arrangements, financial guarantee format, and the standard invoice format to be used by the contractor)

	<p>The standard contract annexes for the General conditions and Miscellaneous Information (see Annex B8) must be reproduced without modification in every service contract. The Special conditions must be completed by the Contracting Authority</p>
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3.3.11 CANCELLING THE TENDER PROCEDURE

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

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

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

3.3.12 AWARDING THE CONTRACT

3.3.12.1 NOTIFYING THE SUCCESSFUL TENDERER

DECENTRALISED: EX-ANTE

After the Contracting Authority and the European Commission have given their formal approval and before the period of validity of tenders expires, the Contracting Authority notifies the successful tenderer in writing that its tender has been accepted (see format of letter in Annex B13) and draws attention to any arithmetic errors which were corrected during the evaluation process.

DECENTRALISED: EX-POST

Before the period of validity of tenders expires, the Contracting Authority notifies the successful tenderer in writing that its tender has been accepted (see format of letter in Annex B13) and draws attention to any arithmetic errors which were corrected during the evaluation process.

This notification to the successful tenderer implies that the validity of the successful tender is automatically extended for a period of 60 days from the date of notification of award of the contract. At the same time, the Contracting Authority requests the successful tenderer to submit the evidence required by the tender dossier to confirm the declarations made in the tender submission form and in the CVs of the key experts **within 15 days** of the date of the notification letter. The Contracting Authority must examine the evidence submitted by the successful tenderer before sending the contract to the tenderer for signature (see Section 3.3.12.2).

Where a contract is awarded under a Financing Memorandum which had not been concluded at the time the tender procedure was launched, the Contracting must not notify the successful tenderer before the Financing Memorandum has been concluded (see Section 2.4.9).

3.3.12.2 CONTRACT SIGNATURE

In preparing the contract for signature, the Contracting Authority has to go through the following steps:

- 1) use the contract dossier prepared following the recommendation of the Evaluation Committee (see Section 3.3.10.6)


- 2) sign all copies of the contract
- 3) send all four signed copies of the contract to the successful tenderer, who must countersign them **within 30 days** of receipt (and, in any case, before the expiry of the tender validity period) and return three copies to the Contracting Authority together with the advance guarantee required in the contract. If the successful tenderer fails to do this within the specified deadline or indicates at any stage that it is not willing or able to sign the contract, the tenderer cannot be awarded the contract and forfeits its tender guarantee. The contract preparation process must be restarted from step 1 with a new contract dossier prepared using the tender which has achieved the next highest score (provided that that tender passed the technical threshold and is within the maximum budget available for the contract). (In the decentralised: ex-ante system, the new, proposed contract would need to be sent to the European Commission for endorsement).

DECENTRALISED: EX-ANTE

- 4) on receipt of the three signed copies from the successful tenderer, the Contracting Authority keeps one in a secure contract archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the European Commission. A copy of the signed contract should be sent to the Project Manager.

DECENTRALISED: EX-POST

- 4) on receipt of the three signed copies from the successful tenderer, the Contracting Authority keeps one in a secure contracts archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the Project Manager.


	<p>The Contracting Authority and the Contractor must note on the contract the date on which they are signing it. It is the later date of signature which is the date of effect of the contract. A contract <u>cannot</u> cover earlier services or enter into force before this date.</p>
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3.3.12.3 PUBLICISING THE AWARD OF THE CONTRACT

Once the contract has been signed, the Contracting Authority must prepare a service contract award notice (using the template in Annex B14) and send it to the European Commission, which publishes the results of the tender procedure in the Official Journal, on the Internet

and in any other appropriate media. In addition, the Contracting Authority must:

- send the other tenderers a standard letter (see Annex B12) informing them that their tenders have been unsuccessful. This letter must also state any shortcomings in the addressee's tender, the detailed score achieved by that tender and the aggregate score achieved by the successful tenderer
- record all statistical information concerning the contract award procedure (via the PERSEUS system for Phare) including the contract value, the names of the other tenderers and the successful tenderer.

	The Contracting Authority is responsible for preparing the service contract award notice using the template in Annex B14 and for submitting it for publication to the European Commission in electronic form within 24 hours of receiving the countersigned contract from the successful tenderer.
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3.3.13 PROVISION AND REPLACEMENT OF EXPERTS

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

Whatever the form, the key staff (head of project, long-term experts, project administrator, accountant, etc.) to be provided by the contractor must be identified and named in the contract.

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

Should the Contracting Authority learn that such facts have been concealed after the contract has been awarded, it may decide to cancel the contract and either recommence the tender procedure or award the contract to the tender ranked second by the Evaluation Committee (provided that that tender achieved the threshold of 80 points in the technical evaluation and is within the maximum budget available for the contract). No prior approval from the European Commission would be required. Such behaviour may lead to a tenderer's exclusion from other contracts funded by the European Community.

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

In both cases, the contractor must first obtain the Contracting Authority's written approval by substantiating its request for replacement. The Contracting Authority has 30 days from the date of receipt of the request in which to reply. No prior approval from the European Commission is required.

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

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

In the course of performance, the Contracting Authority may also submit a substantiated written request for a replacement where it considers a member of staff incompetent or unsuitable for the purposes of the contract. No prior approval of the European Commission is required.

Where a member of staff has to be replaced, the replacement must possess at least equivalent qualifications and experience and his/her remuneration may in no circumstances exceed that of the expert replaced. Where the contractor is unable to provide a replacement possessing equivalent qualifications and/or experience, the Contracting Authority may either terminate the contract, if it feels that its performance is jeopardised, or, if it feels that this is not the case, accept the replacement, in which case the latter's fees are to be negotiated downwards to reflect the proper level of remuneration.

Any additional expenses resulting from the replacement of staff are borne by the contractor. Where an expert is not replaced immediately and some time elapses before the new expert takes up his/her 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/her replacement (whether temporary or permanent).

3.4 PROCEDURES FOR THE AWARD OF CONTRACTS UNDER €200,000

3.4.1 FRAMEWORK CONTRACT

For short-term, technical assistance contracts under €200,000 and with a performance period (ie, duration of actual services to be provided) of under 12 months, the Contracting Authority should use the Framework Contract. For sectors which are not covered by the Framework Contract, the simplified procedure (see Section 3.4.2) must be used.


The Framework Contract offers access to technical assistance in a much shorter period than the simplified procedure (see Section 3.4.2)

which is the only alternative for this type of contract. The same procedures apply to both decentralised ex-ante and ex-post systems.

3.4.1.1 CONCEPT

Framework Contracts are used to provide short-term experts. The contractor must keep to a fixed deadline for the submission of proposals.

The European Commission, acting for and on behalf of all the Contracting Authorities, has used an international restricted tender procedure with lots covering several different areas of technical specialisation (see http://europa.eu.int/comm/scr/tender/cadre01/lots_en.htm) to draw up lists of potential service providers (Framework Contractors) valid for three to five years. This saves having to draw up a shortlist of service providers for each ensuing contract.

	<p>The services required under the Framework Contract are to be performed in the exclusive interest of the recipient countries and solely on the spot in these recipient countries (except for the possible briefing/debriefing by the European Commission services in Brussels) and can cover one or more phases of the project cycle (e.g. ex-ante preparation, execution, audit, evaluation or closing projects).</p> <p>The assignment to be contracted via a Framework Contract has to be part of an approved Financing Memorandum.</p>
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3.4.1.2 CONTACT DETAILS AND EXPERT CATEGORIES

The details of the sectors to which the Framework Contract applies, including the contact details of the Framework Contractors, are given in the SCR Web site at the following Internet address: http://europa.eu.int/comm/scr/tender/cadre01/index_en.htm .

The three categories of experts are as follows:

Category	Description	Minimum professional experience (years)
I	Highly qualified expert, having assumed important responsibilities within the profession, recruited for his/her capacities of management, perception and judgement.	15
II	Qualified expert with very good experience in the relevant sector.	10
III	Qualified expert with good experience in the relevant sector.	5

3.4.1.3 HOW TO USE THE FRAMEWORK CONTRACT

See the **User guide** on the Web site http://europa.eu.int/comm/scr/tender/cadre01/index_en.htm.

3.4.1.4 ASSIGNMENTS COVERING MORE THAN ONE SECTOR

If an assignment covers more than one sector (lot) the Contracting Authority should ask the European Commission to request Offers for Services from three of the Framework Contractors in each of the sectors concerned.

3.4.1.5 CIRCUMSTANCES IN WHICH THE FRAMEWORK CONTRACT CANNOT BE USED

The application of procurement through a Framework Contract is **not** possible where the services required are for the provision of long-term technical assistance to the Contracting Authority.

No assignment can be split up into separate Orders for Services with the sole purpose of making it suitable for contracting via the Framework facility.

3.4.1.6 FINANCIAL CONDITIONS

The Framework Contract operates on the basis of standard price brackets for the fees paid to experts and the subsistence rates applicable to all EU External Aid contracts. The standard price brackets are given in the SCR Web site at the following Internet address: http://europa.eu.int/comm/scr/tender/cadre01/index_en.htm. The subsistence rates are given in the SCR Web site at the following Internet address: http://europa.eu.int/comm/scr/perdiem/index_en.htm.

Under no circumstances may the subsistence rates be exceeded. Offers for Services must be rejected if the expert fees proposed are not within the agreed price brackets.


3.4.1.7 MODIFYING ASSIGNMENT CONTRACTS

In the course of implementation it may become necessary to modify or extend the content of assignment contracts. The same procedures apply as for issuing the original Order for Services.

	The original Order for Services plus addenda cannot exceed the limits established for assignments carried out under the Framework Contract.
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3.4.2 SIMPLIFIED PROCEDURE

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


	Note that the simplified procedure requires more time than the procedure to initiate an assignment under the Framework Contract.
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The Contracting Authority draws up a list of at least three service providers of its choice, drawing *inter alia* on data in the Commission's database of experts and consultancy firms. The candidates are sent a letter of invitation to tender accompanied by a tender dossier.


Tenders must reach the Contracting Authority at the address given in the letter of invitation to tender and by the date and time specified. 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.

Tenders must be sent in two envelopes, one containing the technical offer and the other the financial offer.

Tenders are opened and evaluated by a committee possessing the requisite technical and administrative capacities. The members of the committee must sign a Declaration of Impartiality and Confidentiality (see Annex A4). After evaluating the tenders, the committee identifies the most economically advantageous tender on the basis of technical quality and price.

	<p>If the Contracting Authority receives fewer than three compliant tenders, the procedure must be cancelled and started again. Consequently, it would be prudent to invite tenders from more than three service providers. The procedure for evaluating the tenders and awarding the contract is the same as under the Restricted procedure (see Sections 3.3.9 to 3.3.12.3)</p>
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	<p>The Contracting Authority may award service contracts of a value of €5,000 or less on the basis of a single tender.</p>
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	<p>Note that projects must not be split artificially to circumvent the procurement thresholds (see Section 2.5).</p>
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3.5 MODIFYING SERVICE CONTRACTS

Service contracts may need to be modified during their duration if the circumstances affecting project implementation have changed since the initial contract was signed. Contract modifications must be formalised through an addendum to the contract. Such an addendum must be signed by the contracting parties (and, under a decentralised ex-ante system, approved and endorsed by the European Commission).


Changes of address, changes of bank account, and changes of auditor may simply be notified in writing by the contractor to the Contracting Authority, although this shall not affect the right of the Contracting Authority to oppose the contractor's choice of bank account or auditor.


3.5.1 GENERAL PRINCIPLES

The following **general principles** must always be respected:

- ❑ A contractor's requests for contract modifications should not automatically be accepted by the Contracting Authority. There must be justified reasons for modifying a contract. The Contracting Authority must examine the reasons given, and reject requests which have little or no substantiation.
- ❑ **Contract modifications can only be made within the period of execution of the contract and cannot be effected retroactively**
- ❑ The purpose of the addendum must be closely connected with the nature of the project covered by the initial contract.
- ❑ Major changes, such as a fundamental alteration of the Terms of Reference, cannot be made by means of an addendum.

- ❑ The addendum must not alter the competition conditions prevailing at the time the contract was awarded.
- ❑ Unit prices, particularly fee rates, must be identical to those in the initial contract, unless the initial contract stipulates otherwise (ie, there is a price-revision clause).
- ❑ Any modification extending the duration of the performance period of the contract must be such that implementation and final payments can be completed before the expiry of the Financing Memorandum under which the initial contract was financed
- ❑ Any modifications which require additional funding must have been foreseen in the Terms of Reference of the initial contract and can only be agreed before the expiry of the Financing Memorandum under which the initial contract was financed. The additional funding must come from the same budget line as that used for the initial contract


	Under no circumstances can modifications be made to contracts such that the budget of the complementary services exceeds 50% of the budget of the initial contract.
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	Requests for contract modifications to service contracts must be made (by one contracting party to the other) allowing at least 30 days for the addendum to be signed before the end of the period of execution of the initial contract.
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3.5.2 PREPARING AN ADDENDUM

In preparing an addendum, the Contracting Authority has to go through the following steps:


- 1) Use the standard template for an addendum (see Annex A7)

	All references in the proposed addendum to article numbers and/or annexes to be modified must correspond to those in the initial contract
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Any addendum modifying the budget must include a replacement budget showing how the full budget breakdown of the initial contract has

been modified by this addendum (and any previous addenda). The following column headings should be used:

Budget item	Initial contract budget	Addendum 1	(Addendum 2 ...)	Revised budget

	<p>If the budget is modified by the proposed addendum, the payment schedule must also be modified accordingly, taking into account any payments already made in the course of the contract.</p> <p>The payment schedule must not be modified unless either the budget is being modified or the contract is being extended.</p>
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2) Prepare a dossier using the following structure:

- a) Explanatory note (see template in Annex A6) providing a technical and financial justification for making the modifications in the proposed addendum
- b) Copy of the contractor's request for (or agreement to) the proposed modifications
- c) Copy of the Financing Memorandum authorising the project
- d) Copy of the initial contract and any subsequent addenda
- e) Copy of the initial tender announcements (contract forecast, procurement notice and shortlist), Shortlist Report, Tender Opening Report, Evaluation Report, and any other relevant information
- f) Four copies of the proposed addendum, which is based on the standard addendum template (see Annex A7) and includes any revised annexes

DECENTRALISED: EX-ANTE

- 3) Sign all copies of the addendum and send the addendum dossier to the European Commission for approval and endorsement.

DECENTRALISED: EX-POST

- 3) Sign all copies of the addendum. No prior approval or endorsement by the European Commission is required.


- 4) Send all four signed copies of the addendum to the contractor, who must countersign them within 30 days of receipt and return three copies to the Contracting Authority together with any financial guarantee required in the addendum

DECENTRALISED: EX-ANTE

- 5) On receipt of the three signed copies from the contractor, the Contracting Authority keeps one in a secure contract archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the European Commission. A copy of the signed addendum must be sent to the Project Manager.

DECENTRALISED: EX-POST

- 5) on receipt of the three signed copies from the contractor, the Contracting Authority keeps one in a secure contracts archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the Project Manager

	<p>The Contracting Authority and the Contractor must note on the addendum the date on which they are signing it. It is the later date of signature which is the date of effect of the addendum. An addendum <u>cannot</u> cover earlier services or enter into force before this date.</p>
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4 SUPPLY CONTRACTS

4.1 INTRODUCTION

Supply contracts concern the design, manufacture, delivery, assembly and commissioning of goods together with any other tasks specified in the contract, eg, maintenance, repairs, installation, training and after-sales services.

“Supplier” describes any natural or legal person furnishing supplies. A supplier submitting a tender is known as a “tenderer”.

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

DECENTRALISED: EX-ANTE

Supply contracts are concluded by the Contracting Authority designated in a Financing Memorandum, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the Financing Memorandum.

The Contracting Authority must submit tender dossiers to the European Commission for approval before issuing them. The Contracting Authority must submit procurement notices and award notices to the European Commission for publication.

On the basis of decisions thus approved and in close consultation with the European Commission, the Contracting Authority is responsible for launching tender procedures, receiving tenders, chairing tender-examination sessions and deciding on the results of tender procedures. The Contracting Authority then submits the result of this examination and the contract award proposal to the European Commission for approval. Once the award is approved, the Contracting Authority signs the contracts and notifies the European Commission accordingly. As a general rule, the European Commission will be represented when tenders are opened and evaluated and must always be invited.

DECENTRALISED: EX-POST

Supply contracts are concluded by the Contracting Authority designated in a Financing Memorandum, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the Financing Memorandum. It is responsible for launching tender procedures, receiving tenders, chairing tender-examination sessions, deciding on the results of tender procedures, and signing the contracts without the prior approval of the European Commission. The Contracting Authority must submit procurement notices and award notices to the European Commission for publication.

4.2 AWARD PROCEDURES

4.2.1 CONTRACTS OF €150,000 OR MORE

4.2.1.1 INTERNATIONAL OPEN PROCEDURE

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

4.2.1.2 NEGOTIATED PROCEDURE

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

Supply contracts may be awarded in the following situations using a negotiated procedure:

- (a) Where unforeseeable events oblige the Contracting Authority to act with an **urgency** incompatible with the periods laid down for the open or simplified procedures described in Sections 4.3, 4.4 and 4.5. The circumstances invoked to justify extreme urgency must in no way be attributable to the Contracting Authority (eg, if the Financing Memorandum is about to expire).
- (b) Where the nature or **particular characteristics** of the supplies warrant, eg, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents.
- (c) For **additional deliveries by the original supplier** intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the Contracting Authority to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance.
- (d) Where a tender procedure has been unsuccessful, ie, where **no qualitatively or financially worthwhile tender has been received**. In such cases, after cancelling the tender procedure, the Contracting Authority may (with the prior approval of the

European Commission, in the case of decentralised ex-ante control) negotiate directly with one or more suppliers chosen by the Contracting Authority, from among those that took part in the tender procedure, provided that the initial requirements of the tender dossier are not substantially altered (see section 2.4.10). This option is not available if the reason for cancellation is that there have been irregularities in the tender procedure which may have prevented fair competition.

The Contracting Authority must prepare a Negotiation Report justifying the manner in which the negotiations were conducted and the basis for the contract award decision resulting from these negotiations. The procedures given in Section 4.3.11 must be followed by analogy, with the Negotiation Report being included in the contract dossier.

4.2.2 CONTRACTS OF AT LEAST €30,000 AND UNDER €150,000

4.2.2.1 LOCAL OPEN PROCEDURE

In this case, supply contracts are awarded by an open procedure in which the contract forecast and procurement notice are published only in the beneficiary country. The European Commission publishes the references of such tender procedures (publication reference, country, Contracting Authority and type of contract) on the Internet with the address from which firms can obtain further information.

4.2.2.2 NEGOTIATED PROCEDURE

DECENTRALISED: EX-ANTE

With the European Commission's prior agreement, the Contracting Authority may award supply contracts by negotiated procedure in the situations given in section 4.2.1.2.

DECENTRALISED: EX-POST

The Contracting Authority may award supply contracts by negotiated procedure in the situations given in section 4.2.1.2. No prior approval by the European Commission is required.

4.2.3 CONTRACTS UNDER €30,000 - SIMPLIFIED PROCEDURE

Supply contracts under €30,000 are awarded by simplified procedure. Three compliant tenders must be obtained **so at least three suppliers must be consulted**, but no procurement notice need be published.



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

4.3 INTERNATIONAL OPEN TENDER (FOR CONTRACTS OF €150,000 OR MORE)

4.3.1 PUBLICITY

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

4.3.1.1 PUBLICATION OF CONTRACT FORECASTS

Once a year, the Contracting Authority must publish forecasts of supply contracts to be put out to tender for the twelve months following publication and, once every three months, any amendments to the above forecasts.

The contract forecasts must give a brief indication of the subject and content of the contracts concerned. (See template in Annex C1). Given that they are forecasts, publication does not bind the Contracting Authority to finance the contracts proposed, and prospective suppliers are not expected to submit tenders at this stage.

The contract forecasts are published in the Official Journal of the European Communities, on the Internet and in any other appropriate media.

DECENTRALISED: EX-ANTE

The Contracting Authority must submit annual contract forecasts and quarterly updates 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 translations to be made. **They must be published at least 30 days before the corresponding procurement notice.**

DECENTRALISED: EX-POST

The Contracting Authority must submit annual contract forecasts and quarterly updates 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 translations to be made. **They must be published at least 30 days before the corresponding procurement notice.**

4.3.1.2 PUBLICATION OF PROCUREMENT NOTICES

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

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

DECENTRALISED: EX-ANTE

The Contracting Authority must submit procurement notices for publication to the European Commission in electronic form using the template in Annex C2 **at least 15 days before** the intended date of publication, to allow time for translations to be made. The finalised tender dossier (see Section 4.3.2) must also be submitted to the European Commission either at this time or in advance to demonstrate that the proposed procurement notice corresponds to the objectives of the contract.

DECENTRALISED: EX-POST

The Contracting Authority must submit procurement notices for publication to the European Commission in electronic form using the template in Annex C2 **at least 15 days before** the intended date of publication, to allow time for translations to be made.

The procurement notice must identify clearly, precisely, and completely what the subject of the contract is and who the Contracting Authority is. If the procurement notice is also published locally, it must be identical to the procurement notice published by the European Commission in the Official Journal and on the Internet and appear at the same time.

The tender dossier for the contract in question is sent to would-be suppliers in eligible countries by the Contracting Authority.

4.3.2 DRAFTING AND CONTENTS OF THE TENDER DOSSIER

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

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

may be desirable for representatives of the final beneficiaries to participate in the tender preparation at an early stage. See Section 2.7 for guidelines for preparing Technical Specifications.

The Contracting Authority is responsible for drawing up these documents.

DECENTRALISED: EX-ANTE

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) who must be recruited by the Contracting Authority with the prior approval of the European Commission. Each such specialist must sign a Declaration of Objectivity and Confidentiality (see Annex A3).

DECENTRALISED: EX-POST

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

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

The Technical Specifications indicate - where applicable, lot by lot - the exact nature and performance characteristics of the supplies. Where applicable, they also specify technical conditions for delivery, installation, training and follow-up assistance.

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


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

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

- ❑ they are submitted by the tenderer submitting the least expensive, compliant tender; **and**

- ❑ they meet the technical specifications required by the tender dossier, attaining at least the minimum quality and performance required.

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

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

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

DECENTRALISED: EX-POST

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

The tender dossier must contain the following documents:

TENDER DOSSIER CONTENT

① INSTRUCTIONS TO TENDERERS

Which must include:

- ❑ The type of contract (ie, Supply)
- ❑ The selection and award criteria
- ❑ The grid to be used to evaluate the tenders. Given the wide variety of supplies and their technical nature, the grid must be individually developed for each tender in a YES/NO format to allow clear assessment whether or not the offer responds to the Technical Specifications
- ❑ Whether variants are allowed
- ❑ Whether, and in what proportion, sub-contracting is

permitted

- ❑ The currency of the tender (ie, euro)
 - ❑ The format to be used by a bank or similar institution to provide a tender guarantee (1-2% of the budget available for the contract)

See Annex C4 for template

② DRAFT CONTRACT AND ANNEXES

See standard format in Annex C4. This includes:

- ❑ The Special Conditions of the contract, which amplify, supplement or derogate from the General Conditions and, where they conflict, override them
- ❑ The technical annexes, containing any plans and the Technical Specifications, as well as a provisional timetable for performance
- ❑ The format of the budget (for completion by the tenderer)
- ❑ The General Conditions for supply contracts, to be included as an annex of the eventual contract. **Changes to the General Conditions are forbidden.**
- ❑ The formats to be used by a bank or similar institution to provide guarantees for:
 - ❑ The advance to be paid under the contract
 - ❑ Performance (10% of the contract value).
- ❑ Any additional contractual information such as special tax arrangements for contracts funded by the European Community

③ TENDER SUBMISSION FORMAT

The format in which the tender should be submitted. See Annex C4 for template.

The technical and financial offers must both be submitted in a single, sealed envelope or packet.

The technical offer must satisfy the Technical Specifications

in all respects. Variant solutions can only be considered if a fully responsive technical offer has also been submitted by the tenderer.

The financial offer must be in euro and presented in the standard format to facilitate comparison of the financial offers. If this format is not respected, the tender must be rejected.

4.3.3 SELECTION AND AWARD CRITERIA

The selection criteria concern the tenderer's capacity to execute similar contracts. In certain cases, where the contract includes works or installation services, the tender dossier may include selection criteria concerning the tenderer's technical capabilities.


The award criteria applied to technically compliant tenders are price and, where offers are requested for after-sales services and/or training, the quality of such offers.

The criteria should be precise, should not be discriminatory, and should not be prejudicial to fair competition. All criteria specified in the tender dossier must be applied as such and cannot in any case be modified during the procedure. The technical evaluation will be based on the evaluation grid published in the tender dossier, which must not be modified in any way during the evaluation process. Given the wide variety of supplies and their technical nature, these must be individually developed for each tender in a YES/NO format to allow clear assessment whether or not the offer responds to the technical requirements of the tender dossier. See example in Annex C4.

4.3.4 ADDITIONAL INFORMATION BEFORE THE DEADLINE FOR SUBMISSION OF TENDERS

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

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

	<p>If the tender has a particularly complex technical content, the Contracting Authority may organise a clarification meeting or site visit. This meeting must be announced in the tender dossier and must take place at least 21 days before the expiry of the deadline. All costs of attending such a meeting must be met by the tenderers. Visits by individual companies during the tender period cannot be permitted other than for these clarification meetings and/or site visits for all tenderers.</p>
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Tenderers may submit questions in writing up to 21 days before the deadline for submission of tenders. The Contracting Authority must reply (sending a copy to the European Commission, in the case of decentralised ex-ante control) to all tenderers' questions at least 11 days before the deadline for receipt of tenders.

4.3.5 DEADLINE FOR THE SUBMISSION OF TENDERS

Tenders must **reach** the Contracting Authority at the address and, at the very latest, the date and time indicated in the tender dossier. The period for submission must be sufficient to guarantee the quality of tenders and so permit truly competitive tendering. Experience shows that too short a period prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders. The deadline for submissions must be at the close of business of a working day in the beneficiary country (eg, 16:00 local time on a Friday).

DECENTRALISED: EX-ANTE

The minimum period between the date of publication of the procurement notice and the deadline for receipt of tenders is 60 days. However, in exceptional cases, and with the prior authorisation of the European Commission, this period may be shorter.

DECENTRALISED: EX-POST

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

4.3.6 PERIOD DURING WHICH TENDERS ARE BINDING

Tenderers are bound by their tenders for the period specified in the tender dossier. This period must be sufficient to allow the Contracting Authority to examine the tenders, approve the contract award proposal, notify the successful tenderer and conclude the contract. **The period of**

validity of tenders is fixed at 90 days from the deadline for the submission of tenders.

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

The successful tenderer must maintain its tender for a further 60 days from the date of notification of award.

4.3.7 SUBMISSION OF TENDERS

Each tender (including both the technical and financial offers) must be placed inside a parcel or inside an outer envelope bearing:

- (a) the address for submission of tenders indicated in the tender dossier;
- (b) the reference of the tender procedure to which the tenderer is responding;
- (c) where applicable, the numbers of the lots tendered for;
- (d) the words "Not to be opened before the tender-opening session" written in the language of the tender dossier **and** in the local language;
- (e) the name of the tenderer.

4.3.8 THE EVALUATION COMMITTEE

4.3.8.1 COMPOSITION

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

DECENTRALISED: EX-ANTE

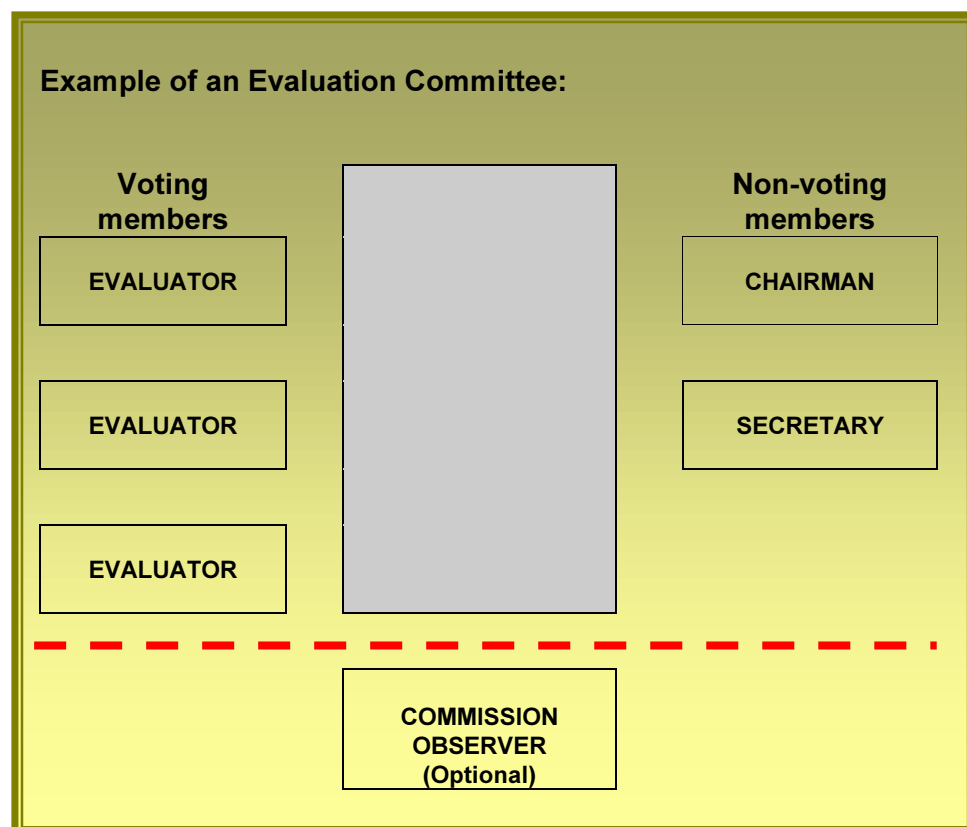
The Evaluation Committee (ie, the Chairman, the Secretary and the voting members) must be nominated on a personal basis by the Contracting Authority. The composition of the Evaluation Committee must be submitted for approval to the European Commission. As a general rule, the European Commission nominates an observer to follow all or part of the proceedings of the Evaluation Committee. Prior approval must be sought from the European Commission for the participation of other observers.

DECENTRALISED: EX-POST

The Evaluation Committee (ie, the Chairman, the Secretary and the voting members) must be nominated on a personal basis by the Contracting Authority. The participation of any observers must be authorised individually by the Contracting Authority.

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


All voting members of the Evaluation Committee have equal voting rights. The names and functions of all those involved in the evaluation process must be recorded in the Evaluation Report.



4.3.8.2 IMPARTIALITY AND CONFIDENTIALITY

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

Any Evaluation Committee member who withdraws from the Evaluation Committee for whatever reason must be replaced (following the standard procedure for appointing members of the Evaluation Committee, as explained in Section 4.3.8.1) and the evaluation process must be restarted. Any assessment by a voting member withdrawing from the committee at whatever stage of the evaluation has to be disregarded.

	<p>No information about the examination, clarification, evaluation or comparison of tenders or decisions about the contract award can be disclosed before the signature of the contract by the Contracting Authority and the successful tenderer. <u>Any attempt by a tenderer to influence the process in any way (whether by initiating contact with members of the Evaluation Committee or otherwise) will result in the immediate exclusion of its tender from further consideration.</u></p>
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- ❑ Apart from the tender opening session, the proceedings of the Evaluation Committee are conducted *in camera* and are confidential
- ❑ In order to maintain the confidentiality of the proceedings, participation in the Evaluation Committee meetings is limited to the members of the Evaluation Committee designated by the Contracting Authority and any authorised observers
- ❑ The tenders should not leave the room/building in which the committee meetings take place before the conclusion of the work of the Evaluation Committee. They should be kept in a safe place when not in use.

4.3.8.3 RESPONSIBILITIES OF THE EVALUATION COMMITTEE MEMBERS

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

The Secretary to the Committee is responsible for carrying out all the administrative tasks within the evaluation procedures. These will include:

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

Any request for clarification requiring communication with the tenderers during the evaluation process must be conducted in writing (by fax or letter) and signed by both the Chairman and the Secretary of the Evaluation Committee. Copies of any such communication must be annexed to the Evaluation Report.

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

4.3.8.4 TIMETABLE

The Evaluation Committee should be formed early enough to ensure the availability of the designated members (and any observer nominated by the European Commission, in the case of decentralised ex-ante control) during the period necessary to prepare and conduct the evaluation process. The tender evaluation should be completed as soon as possible.

The duration of the evaluation process should be agreed between members of the Evaluation Committee and the Contracting Authority. The evaluation process must be completed in time to allow the successful tenderer to be notified by the Contracting Authority (after all necessary approvals) within the tender validity period (ie, 90 days) specified in the tender dossier.

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 and provide a receipt for those delivered by hand. The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened.


The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

4.3.9.2 PREPARATORY MEETING

- First meeting of Evaluation Committee
 - to be held before the tender opening session
 - the tender dossier should have been distributed in advance to the members of the Evaluation Committee
- The Chairman presents the purpose of the tender procedure in general terms
- The Chairman reminds the Evaluation Committee of the selection and award criteria specified in the tender dossier, stating that these must be respected without modification
- The Chairman explains the procedures to be followed by the Evaluation Committee
- The Chairman checks that all members are familiar with the evaluation grid set out in the tender dossier to make sure that the tenders will be evaluated by the different members of the Evaluation Committee in a consistent manner. See Annex C4 for the format of an evaluation grid.

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, that the documents have been duly signed and that the tenders are generally in order.

	<p>The tender opening session is a formal, public process. The Evaluation Committee opens the tenders in public at the place and time fixed in the tender dossier. The following are announced at the tender-opening session: the names of the tenderers, the tender prices, the provision of the requisite tender guarantee and any other formality which the Contracting Authority thinks appropriate.</p>
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DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST


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

- ❑ Representatives of the tenderers may attend the session if they wish. The minutes of this meeting must be recorded separately and may be made available to the tenderers on request.
- ❑ All members of the Evaluation Committee and any observers are required to read and sign a Declaration of Impartiality and Confidentiality (see Annex A4)
- ❑ **See tender opening checklist in Annex C5** for the detailed formalities to be carried out by the Chairman with the assistance of the Secretary, as summarised below

The following tasks are carried out by the Chairman and Secretary:

- ❑ Examine and state the condition of outer envelopes before opening them in order of receipt, announcing the name of the tenderer. **Only tenders in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.**
- ❑ Initial the front page of each document and all pages of the financial offer

The Committee must decide whether or not tenders comply with the formal requirements. The Summary of tenders received, which is attached to the Tender Opening Report (see Annex C6) must be used to record the compliance of each of the tenders with the formal requirements. Non-compliant tenders must be rejected. The tenders not considered for further evaluation must be kept by the Contracting Authority, together with the other tenders - the associated guarantees may be returned to the tenderers on request.

	<p>The Tender Opening Report, which comprises the Summary of supply tenders submitted and the minutes of the tender opening session, must be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. It may be made available to the tenderers upon request. The Tender Opening Report must state:</p> <ul style="list-style-type: none"> ❑ The date, time and place of the session; ❑ The persons present; ❑ The names of the tenderers who submitted tenders within the stipulated deadline; ❑ Whether the originals of the tenders were duly signed, and whether technical offers were sent in the requisite
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	<p>number of copies;</p> <ul style="list-style-type: none"> ❑ The names of any tenderers whose tenders were found to be non-compliant at the opening session and the requirement(s) with which their tenders failed to comply; ❑ The names of any tenderers who withdrew their tenders; ❑ The tender prices of those tenders accepted for further evaluation; ❑ Any declarations made by the tenderers.
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4.3.9.4 EVALUATION OF TECHNICAL OFFERS

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

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

Part 1: Administrative compliance


Before conducting a detailed evaluation of the tenders, the Evaluation Committee checks that they comply with the essential requirements of the tender dossier.

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 execution 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.

Tenders which do not comply with the tender dossier must be rejected by the Evaluation Committee and may not subsequently be made to comply by undergoing corrections or having discrepancies or restrictions removed.

- ❑ Copies of the tenders are distributed to the committee members. The originals are locked away for safe keeping
- ❑ Each tender is examined for compliance with the tender dossier, in particular that:

- the documentation is complete
 - the language required by the tender dossier has been used
 - the tender submission form has been duly completed and the declaration attached to it has been signed by the tenderer (ie, leader and all consortium partners, in the case of a consortium)
 - **for consortia:** the confirmation of association and designation of a lead company has been signed by all consortium members
 - **for tenderers intending to sub-contract tasks (if permitted by the tender dossier):** the tenderer has included a statement regarding the content and extent of sub-contracting envisaged, which must be within the limit stated in the tender dossier, and the identity of the sub-contractor
- With the agreement of the other Evaluation Committee members, the Chairman may communicate in writing with tenderers whose submissions require clarification, offering them the possibility to respond by fax within a maximum of 48 hours. Any such request for clarification must not seek the correction of formal errors or major restrictions affecting performance of the contract or distorting competition.


	<p>The Chairman 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 sub-contractor). Any Evaluation Committee member or observer who has a potential conflict of interest due to a link with any tenderer must declare it and immediately withdraw from the Evaluation Committee. He/she will be excluded from participating further in any capacity in the evaluation meetings.</p> <p>Any Evaluation Committee member who withdraws from the Evaluation Committee for whatever reason must be replaced (following the standard procedure for appointing members of the Evaluation Committee, as explained in Section 4.3.8.1) and the evaluation process must be restarted.</p>
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The administrative compliance of each of the tenders must be recorded in the Evaluation Report (see Annex C7).


Part 2: Technical compliance of tenders


The detailed evaluation of the tenders takes place after checking that the tenders satisfy the formal requirements of tender submission. The criteria to be applied are those published in the tender dossier and, accordingly, the evaluation grid included in the tender dossier must be used. **Under no circumstances may the committee or its members change the evaluation grid communicated to the tenderers in the tender dossier.**

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

	<p><u>Rule of origin:</u> All tenders must satisfy the rule that the goods to be supplied originate in EU Member States and/or the countries and territories of the regions covered and/or allowed by the Regulation or other instruments governing the programme under which the contract is being financed.</p> <p>Evidence to this effect is asked for in the instructions to tenderers. The tenderer must provide a declaration that the goods tendered comply with the origin requirement and specify the respective country of origin. 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.</p> <p>The tenderer will be required to provide, prior to the signature of the contract, proof of origin in the form of a Certificate of Origin or other official documentation as <i>prima facie</i> evidence.</p> <p>Where the provision of a Certificate of Origin is not possible (in many countries these are only issued against presentation to the Chamber of Commerce of commercial invoices), the tenderer can in these cases submit its own declaration. The official Certificates of Origin must then be submitted with the first invoice. Failing this, the Contracting Authority cannot release any funds to the contractor.</p> <p>The rule of origin applies to all items tendered and supplied. Therefore, it is insufficient that only a certain percentage of the goods tendered and supplied or a certain percentage of the total tender and contract value comply with this requirement.</p> <p>To establish origin, one must determine where the product in question has been obtained or produced. A product cannot originate in a country in which no production process has taken place. On the other hand, the country of production is not necessarily the country of origin but only when the</p>
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	<p>relevant provisions of Regulation (EEC) 2913/92 and its implementing regulation are fulfilled.</p> <p>Furthermore, the country of origin is not necessarily the country from which the goods have been shipped and supplied. Where there is only one country of production, the origin of the finished product is easily established. However, in cases where more than one country is involved in the production of goods it is necessary to determine which of those countries confers origin on the finished goods. The country of origin is deemed to be the country in which the goods have undergone their last, economically justified, substantial transformation and the provisions of Article 24 of the Customs Code must therefore be applied on a case by case basis to those goods. If the last substantial transformation has not taken place in a Member State of the European Union or one of the eligible recipient countries, the goods cannot be tendered for the project.</p> <p>The supplier must certify that the goods tendered comply with the origin requirement specifying the country or countries of origin. When tendering for systems comprising more than one item, the origin of each item in the system must be specified. If requested to do so the supplier must provide any additional information and/or a certificate of origin in support of the origin claimed in the tender.</p>
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	Tenders which clearly fail to satisfy the rule of origin must be rejected.
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	<p><u>Nationality of experts and sub-contractors:</u> The Evaluation Committee must check at this stage that the nationalities of any experts and/or sub-contractors identified in the technical offers satisfy the nationality rule in Section 2.3.1.</p>
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Having evaluated the tenders, the Evaluation Committee rules on the technical compliance of each tender, classifying it as technically compliant or not technically compliant. Where contracts include after-sales service and/or training, the technical quality of such services is also assessed during the technical evaluation. **If the tenderer submitting the compliant tender with the lowest price has also submitted a variant solution, the variant tender should also be evaluated.**

4.3.9.5 EVALUATION OF FINANCIAL OFFERS



Tenders presented in currencies other than euro are not acceptable and must be rejected.

Once the technical evaluation has been completed, the committee checks that the technically compliant tenders contain no arithmetic errors. Any errors are corrected without prejudice to the tenderer.

If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the technically compliant tender with the lowest price for each lot.

4.3.9.6 CHOICE OF SUCCESSFUL TENDERER

DECENTRALISED: EX-ANTE

If for a given contract, one tender appears to have an abnormally low price in relation to the market for the supplies in question, the Chairman of the Evaluation Committee must write to the tenderer to obtain a detailed explanation for the low price proposed. Such a tender must be rejected unless the low price can be justified on objective grounds such as:

- ☐ an economic production method
- ☐ the technical solution proposed
- ☐ or exceptionally favourable conditions available to the tenderer.

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

DECENTRALISED: EX-POST

If for a given contract, one tender appears to have an abnormally low price in relation to the market for the supplies in question, the Chairman of the Evaluation Committee must write to the tenderer to obtain a detailed explanation for the low price proposed. Such a tender must be rejected unless the low price can be justified on objective grounds such as:

- ☐ an economic production method
- ☐ the technical solution proposed
- ☐ or exceptionally favourable conditions available to the tenderer.

The justification for rejecting or accepting an abnormally low offer must be recorded in the Evaluation Report and the Contracting Authority must notify the European Commission of its decision.

4.3.9.6.1 Supply contracts not involving services

Price is the sole criterion for awarding supply contracts not involving services. All non-compliant tenders having already been eliminated, the contract is awarded to the tenderer submitting the least expensive, compliant tender.

If the selected tender exceeds the maximum budget available for the contract, the provisions of section 4.2.1.2 (d) apply.

4.3.9.6.2 Supply contracts involving ancillary services

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

If the selected tender exceeds the maximum budget available for the contract, the provisions of section 4.2.1.2 (d) apply.

4.3.9.6.3 Particularly complex supplies

DECENTRALISED: EX-ANTE


For particularly complex supplies, a combination of quality and price may be used as the basis for awarding the contract to the most economically advantageous tender. This should be limited to products/projects with particular security/production/implementation constraints. **The European Commission must give its prior approval to the use of this approach and will provide technical support to the Contracting Authority on a case-by-case basis.**

DECENTRALISED: EX-POST

For particularly complex supplies, a combination of quality and price may be used as the basis for awarding the contract to the most economically advantageous tender. This should be limited to products/projects with particular security/production/implementation constraints. If it intends to use this approach, the Contracting Authority must record the justification for this in the Evaluation Report and notify the European Commission.

If the selected tender exceeds the maximum budget available for the contract, the provisions of section 4.2.1.2 (d) apply.

4.3.9.7 CONCLUSION OF EVALUATION COMMITTEE

	<p>As a result of its deliberations, the Evaluation Committee may make any of the following recommendations:</p> <ul style="list-style-type: none"> ❑ Award the contract to the tenderer which has submitted a tender: <ul style="list-style-type: none"> ❑ which complies with the formal requirements and the eligibility rules; ❑ whose total budget is within the maximum budget available for the project; ❑ which meets the minimum technical requirements specified in the tender dossier; and ❑ which is the least expensive tender (satisfying all of the above conditions). ❑ Cancel the tender procedure in exceptional circumstances, such as: <ul style="list-style-type: none"> ❑ None of the tenders satisfies the selection/award criteria of the tender procedure ❑ All tenders received exceed the maximum budget available for the contract
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DECENTRALISED: EX-ANTE

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex C7) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. This must be submitted to the Contracting Authority, which must decide whether or not to accept its recommendation.

The Contracting Authority must then submit the Evaluation Report together with its recommendation to the European Commission for approval. If there is an award proposal and the European Commission has not already received the original tender of the recommended tenderer and copies of the other tenders, these must be submitted.

At the same time, for any award proposal, a contract dossier including a proposed contract must be prepared on the basis of the recommended tender (see Section 4.3.9.8). It must be submitted to the European Commission for endorsement (agreement to finance the proposed contract).

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

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

DECENTRALISED: EX-POST

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex C7) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. This must be submitted to the Contracting Authority, which must decide whether or not to accept its recommendations. No prior approval from the European Commission is required before the Contracting Authority acts on the recommendations of the Evaluation Committee.

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



The entire tender procedure is confidential from the end of the tender opening session to the signature of the contract by both parties. The Evaluation Committee's decisions are

	collective and its deliberations must remain secret. The Evaluation Committee members and any observers are bound to secrecy.
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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 departments of the Contracting Authority, the European Commission and the supervisory authorities (eg, the European Court of Auditors).

4.3.9.8 CONTRACT PREPARATION

If the Evaluation Committee recommends the award of a contract to a particular tenderer and the Contracting Authority approves the Evaluation Report, the Contracting Authority must use the standard contract format (see Annex C4) to prepare the proposed contract. All the components of the proposed contract should be available from either the tender dossier or the tender submitted by the recommended tenderer. Only the Special conditions should need to be completed.

A contract dossier must be prepared using the following structure:

- a) Explanatory note using the format in Annex A6
- b) Copy of the Financing Memorandum authorising the project
- c) Copy of the tender announcements (contract forecast and procurement notice), Site Visit Report, Tender Opening Report, Evaluation Report, and any other relevant information
- d) Four copies of the proposed contract, which is based on the standard supply contract template (see Annex C4):
 - ❑ Special conditions (to be completed by the Contracting Authority)
 - ❑ General conditions for supply contracts (standard & in the tender dossier)
 - ❑ Technical specifications (from the tender dossier)
 - ❑ Budget (from the recommended tender)
 - ❑ Miscellaneous (from the tender dossier and including, for example, tax and Customs arrangements, financial guarantee format, and the standard invoice format to be used by the contractor)

	<p>The standard contract annexes for the General conditions and Miscellaneous Information (see Annex C4) must be reproduced without modification in every supply contract. The Special conditions must be completed by the Contracting Authority</p>
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4.3.10 CANCELLING THE TENDER PROCEDURE

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

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

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

In the event of cancellation of any tender procedure, tenderers must be notified of the cancellation by the Contracting Authority. Such tenderers shall not be entitled to compensation; they shall be entitled to the immediate release of their tender guarantee. When the tender procedure is cancelled before the outer envelope of any tender has been opened, the unopened and sealed envelopes must be returned to the tenderers.

4.3.11 AWARDING THE CONTRACT

4.3.11.1 NOTIFYING THE SUCCESSFUL TENDERER

DECENTRALISED: EX-ANTE

After the Contracting Authority and the European Commission have given their formal approval and before the period of validity of tenders expires, the Contracting Authority notifies the successful tenderer in writing that its tender has been accepted (see format of letter in Annex C9) and draws attention to any arithmetic errors which were corrected during the evaluation process.

DECENTRALISED: EX-POST

Before the period of validity of tenders expires, the Contracting Authority notifies the successful tenderer in writing that its tender has been accepted (see format of letter in Annex C9) and draws attention to any arithmetic errors which were corrected during the evaluation process.

This notification to the successful tenderer implies that the validity of the successful tender is automatically extended for a period of 60 days from the date of notification of award of the contract. At the same time, the Contracting Authority requests the successful tenderer to submit the evidence required by the tender dossier to confirm the declaration made in the sworn statement **within 30 days** of the date of the notification letter. The Contracting Authority must examine the evidence submitted by the successful tenderer before sending the contract to the tenderer for signature (see Section 4.3.11.2).

Where a contract is awarded under a Financing Memorandum which had not been concluded at the time the tender procedure was launched, the Contracting Authority must not notify the successful tenderer before the Financing Memorandum has been concluded (see section 2.4.9).

4.3.11.2 CONTRACT SIGNATURE

In preparing the contract for signature, the Contracting Authority has to go through the following steps:

- 1) use the contract dossier prepared following the recommendation of the Evaluation Committee (see Section 4.3.9.8)
- 2) sign all copies of the contract
- 3) send all four signed copies of the contract to the successful tenderer, who must countersign them within 30 days of receipt (and, in any case, before the expiry of the tender validity period) and return three copies to the Contracting Authority together with any financial guarantees required in the contract. If the successful


tenderer fails to do this within the specified deadline or indicates at any stage that it is not willing or able to sign the contract, the tenderer cannot be awarded the contract and forfeits its tender guarantee. The contract preparation process must be restarted from step 1 with a new contract dossier prepared using the tender which has the next lowest price (provided that that tender is technically compliant and is within the maximum budget available for the contract). (In the decentralised: ex-ante system, the new, proposed contract would need to be sent to the European Commission for endorsement).

DECENTRALISED: EX-ANTE

- 4) on receipt of the three signed copies from the successful tenderer, the Contracting Authority keeps one in a secure contract archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the European Commission. A copy of the signed contract should be sent to the Project Manager.

DECENTRALISED: EX-POST

- 4) on receipt of the three signed copies from the successful tenderer, the Contracting Authority keeps one in a secure contracts archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the Project Manager


	<p>The Contracting Authority and the Contractor must note on the contract the date on which they are signing it. It is the later date of signature which is the date of effect of the contract. A contract <u>cannot</u> cover earlier supplies/services or enter into force before this date.</p>
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4.3.11.3 PUBLICISING THE AWARD OF THE CONTRACT

Once the contract has been signed, the Contracting Authority must prepare a supply contract award notice (using the template in Annex C10) and send it to the Commission, which publishes the results of the tender procedure in the Official Journal, on the Internet and in any other appropriate media. In addition, the Contracting Authority must:

- write to the unsuccessful tenderers using the format in Annex C8, informing them that their tenders have been unsuccessful and explaining why they have not been awarded the contract, stating whether their tenders were technically compliant and indicating any technical shortcomings
- record all statistical information concerning the contract award procedure (via the PERSEUS system for Phare) including the

contract value, the names of the other tenderers and the successful tenderer.

	<p>The Contracting Authority is responsible for preparing the supply contract award notice using the template in Annex C10 and for submitting it for publication to the European Commission within 24 hours of receiving the countersigned contract from the successful tenderer.</p>
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4.4 LOCAL OPEN TENDER (FOR CONTRACTS OF AT LEAST €30,000 AND UNDER €150,000)


In this case, the contract forecast and procurement notice are published only in the beneficiary country. The European Commission publishes the references of such tender procedures (dossier number, country, Contracting Authority and type of contract) on the Internet with the address from which firms can obtain further information.

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

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

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


	<p>The measures applicable to an international open procedure, as described in section 4.3, apply by analogy to the local open procedure.</p>
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	<p>The Contracting Authority is responsible for preparing the supply contract award notice in electronic form using the template in Annex C10 and for submitting it for publication to the European Commission within 24 hours of receiving the countersigned contract from the successful tenderer.</p>
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4.5 SIMPLIFIED PROCEDURE (FOR CONTRACTS UNDER €30,000)

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

Tenders must reach the Contracting Authority at the address given in the tender dossier by the date and time specified. The tenders are evaluated by an Evaluation Committee possessing the requisite technical and administrative capacities appointed by the Contracting Authority. The members of the Evaluation Committee must each sign a Declaration of Impartiality and Confidentiality (see Annex A4).

	<p>If the Contracting Authority receives fewer than three compliant tenders, the procedure must be cancelled and started again. Consequently, it would be prudent to invite tenders from more than three suppliers. The remainder of the procedure (including preparation of the tender dossier, evaluating the tenders and awarding the contract) is the same as under the international open procedure (see Sections 4.3.2 to 4.3.11.3)</p>
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	<p>The Contracting Authority may award supply contracts of a value of €5,000 or less on the basis of a single tender. Note that projects must not be split artificially to circumvent the procurement thresholds (see Section 2.5).</p>
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4.6 MODIFYING SUPPLY CONTRACTS

Supply contracts may need to be modified during their duration if the circumstances affecting project implementation have changed since the initial contract was signed. Contract modifications must be formalised through an addendum to the contract. Such an addendum must be

signed by the contracting parties (and, under a decentralised ex-ante system, approved and endorsed by the European Commission).

Changes of address, changes of bank account, and changes of auditor may simply be notified in writing by the contractor to the Contracting Authority, although this shall not affect the right of the Contracting Authority to oppose the contractor's choice of bank account or auditor.

4.6.1 GENERAL PRINCIPLES

The following **general principles** must always be respected:

- ❑ A contractor's requests for contract modifications should not automatically be accepted by the Contracting Authority. There must be justified reasons for modifying a contract. The Contracting Authority must examine the reasons given, and reject requests which have little or no substantiation.
- ❑ **Contract modifications can only be made within the period of execution of the contract and cannot be effected retroactively**
- ❑ The purpose of the addendum must be closely connected with the nature of the project covered by the initial contract.
- ❑ Major changes, such as a fundamental alteration of the Technical Specifications, cannot be made by means of an addendum.
- ❑ The addendum must not alter the competition conditions prevailing at the time the contract was awarded.
- ❑ Unit prices must be identical to those in the initial contract, unless the initial contract stipulates otherwise (ie, there is a price-revision clause).
- ❑ Any modification extending the duration of the performance period of the contract must be such that implementation and final payments can be completed before the expiry of the Financing Memorandum under which the initial contract was financed
- ❑ Any modifications which require additional funding must have been foreseen in the Technical Specifications of the initial contract and can only be agreed before the expiry of the Financing Memorandum under which the initial contract was financed. The additional funding must come from the same budget line as that used for the initial contract



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

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



Requests for contract modifications to supply contracts must be made (by one contracting party to the other) allowing at least 30 days for the addendum to be signed before the end of the period of execution of the initial contract.

4.6.2 PREPARING AN ADDENDUM

In preparing an addendum, the Contracting Authority has to go through the following steps:


- 1) Use the standard template for an addendum (see Annex A7)



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

Any addendum modifying the budget must include a replacement budget showing how the full budget breakdown of the initial contract has been modified by this addendum (and any previous addenda). The following column headings should be used:

Budget Item	Initial contract budget	Addendum 1	(Addendum 2 ...)	Revised budget

	<p>If the budget is modified by the proposed addendum, the payment schedule must also be modified accordingly, taking into account any payments already made in the course of the contract.</p> <p>The payment schedule must not be modified unless either the budget is being modified or the contract is being extended.</p>
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2) Prepare a dossier using the following structure:

- a) Explanatory note (see template in Annex A6) providing a technical and financial justification for making the modifications in the proposed addendum
- b) Copy of the contractor's request for (or agreement to) the proposed modifications
- c) Copy of the Financing Memorandum authorising the project
- d) Copy of the initial contract and any subsequent addenda
- e) Copy of the initial tender announcements (contract forecast and procurement notice), Site Visit Report, Tender Opening Report, Evaluation Report, and any other relevant information
- f) Four copies of the proposed addendum, which is based on the standard addendum template (see Annex A7) and includes any revised annexes

DECENTRALISED: EX-ANTE

- 3) Sign all copies of the addendum and send the addendum dossier to the European Commission for approval and endorsement.

DECENTRALISED: EX-POST

- 3) Sign all copies of the addendum. No prior approval or endorsement by the European Commission is required.

- 4) Send all four signed copies of the addendum to the contractor, who must countersign them within 30 days of receipt and return three copies to the Contracting Authority together with any financial guarantee required in the addendum


DECENTRALISED: EX-ANTE

- 5) On receipt of the three signed copies from the contractor, the Contracting Authority keeps one in a secure contract archive, one

copy is sent to the financial service in charge of payments and the third copy is sent to the European Commission. A copy of the signed addendum must be sent to the Project Manager.

DECENTRALISED: EX-POST

- 5) on receipt of the three signed copies from the successful tenderer, the Contracting Authority keeps one in a secure contracts archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the Project Manager

	<p>The Contracting Authority and the Contractor must note on the addendum the date on which they are signing it. It is the later date of signature which is the date of effect of the addendum. An addendum <u>cannot</u> cover earlier supplies/services or enter into force before this date.</p>
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5 WORKS CONTRACTS

5.1 INTRODUCTION

Works contracts are concluded between a contractor and a Contracting Authority for the execution of works or the building of a structure.

“Contractor” describes any natural or legal person carrying out the works. A contractor submitting a tender is known as a “tenderer” and one invited to take part in a restricted tender procedure or simplified procedure as a “candidate”.

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

DECENTRALISED: EX-ANTE

Works contracts are concluded by the Contracting Authority designated in a Financing Memorandum, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the Financing Memorandum.

The Contracting Authority must submit tender dossiers to the European Commission for approval before issuing them. The Contracting Authority must submit procurement notices and award notices to the European Commission for publication.

On the basis of decisions thus approved and in close consultation with the European Commission, the Contracting Authority is responsible for launching tender procedures, receiving tenders, chairing tender-examination sessions and deciding on the results of tender procedures. The Contracting Authority then submits the result of this examination and the proposal of award to the European Commission for approval. Once the award is approved, the Contracting Authority signs the contracts and notifies the European Commission accordingly. As a general rule, the European Commission will be represented when tenders are opened and evaluated and must always be invited.

DECENTRALISED: EX-POST

Works contracts are concluded by the Contracting Authority designated in a Financing Memorandum, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the Financing Memorandum. It is responsible for launching tender procedures, receiving tenders, chairing tender-examination sessions, deciding on the results of tender procedures, and signing the contracts without the prior approval of the European Commission. The Contracting Authority must submit procurement notices and award notices to the European Commission for publication

5.2 AWARD PROCEDURES

5.2.1 CONTRACTS OF €5,000,000 OR MORE

5.2.1.1 INTERNATIONAL OPEN PROCEDURE

The standard method of awarding of works contracts is by means of an international open tender procedure following publication of a procurement notice, as described in Section 5.3.

5.2.1.2 RESTRICTED PROCEDURE

In exceptional cases justified by the special characteristics of certain projects (including contracts of €100 million or more co-financed by Ispa), a restricted tender procedure may be used (with the prior authorisation of the European Commission in the case of decentralised ex-ante control). The publication of the procurement notice remains mandatory to ensure the widest possible participation.

5.2.1.3 NEGOTIATED PROCEDURE

DECENTRALISED: EX-ANTE
The Contracting Authority must seek prior approval from the European Commission of the use of the negotiated procedure.
DECENTRALISED: EX-POST
No prior approval by the European Commission is required for the use of the negotiated procedure.

Works contracts may be awarded in the following circumstances using a negotiated procedure:

- (a) Where unforeseeable events oblige the Contracting Authority to act with an **urgency** incompatible with the periods laid down for the open, restricted or simplified procedures described in Sections 5.3, 5.4, 5.5 and 5.6 below. The circumstances invoked to justify the overriding urgency must in no way be attributable to the Contracting Authority (eg, if the Financing Memorandum is about to expire).
- (b) For **additional works** not included in the original contract but which have, through unforeseen circumstances, become necessary for the carrying-out of the works described therein, provided that the award is made to the contractor already carrying out such work:
 - where such works cannot be technically or economically separated from the main contract without major inconvenience to the Contracting Authority;

- where such works, although separable from the execution of the original contract, are absolutely necessary to its completion.

However, **the aggregate cost of contracts awarded for additional works must not exceed 50% of the amount of the main contract.**

- (c) Where the tender procedure has been unsuccessful, ie, where **no qualitatively or financially worthwhile tender has been received**. In such cases, after cancelling the tender procedure, the Contracting Authority may (with the prior agreement of the European Commission, in the case of decentralised ex-ante control) negotiate directly with one or more tenderers chosen by the Contracting Authority, from among those that took part in the tender procedure, provided that the initial requirements of the tender dossier are not substantially altered (see section 2.4.10). This option is not available if the reason for cancellation is that there have been irregularities in the tender procedure which may have prevented fair competition.

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

5.2.2 CONTRACTS OF AT LEAST €300,000 AND UNDER €5,000,000

5.2.2.1 LOCAL OPEN PROCEDURE

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

5.2.2.2 NEGOTIATED PROCEDURE

DECENTRALISED: EX-ANTE


With the European Commission's prior agreement, the Contracting Authority may award works contracts by negotiated procedure in the situations given in Section 5.2.1.3.

DECENTRALISED: EX-POST

The Contracting Authority may award works contracts by negotiated procedure in the situations given in section 5.2.1.3. No prior approval by the European Commission is required.

5.2.3 CONTRACTS UNDER €300,000 (SIMPLIFIED PROCEDURE)

Works contracts under €300,000 are awarded by simplified procedure. Three alternative tenders must be obtained so **at least three contractors must be consulted**, but no procurement notice need be published.

	However, the Contracting Authority may award works contracts of a value of €5,000 or less on the basis of a single tender.
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5.3 INTERNATIONAL OPEN TENDER (FOR CONTRACTS OF €5,000,000 OR MORE)

5.3.1 PUBLICITY

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

5.3.1.1 PUBLICATION OF CONTRACT FORECASTS

Once a year, the Contracting Authority must publish forecasts of works contracts to be put out to tender for the twelve months following publication and, once every three months, any amendments to the above forecasts.

The contract forecasts must give a brief indication of the subject and content of the contracts concerned. (See template in Annex D1). Given that they are forecasts, publication does not bind the Contracting Authority to finance the contracts proposed, and prospective contractors are not expected to submit tenders at this stage.

The contract forecasts are published in the Official Journal of the European Communities, on the Internet and in any other appropriate media.

DECENTRALISED: EX-ANTE
The Contracting Authority must submit annual contract forecasts and quarterly updates for publication to the European Commission in electronic form using the template in Annex D1 at least 15 days before the intended date of publication, to allow time for translations to be made. They must be published at least 30 days before the corresponding procurement notice.

DECENTRALISED: EX-POST

The Contracting Authority must submit annual contract forecasts and quarterly updates for publication to the European Commission in electronic form using the template in Annex D1 **at least 15 days before** the intended date of publication, to allow time for translations to be made. **They must be published at least 30 days before the corresponding procurement notice.**

5.3.1.2 PUBLICATION OF PROCUREMENT NOTICES

In addition to contract forecasts, all works contracts of €5,000,000 or more must also be the subject of a procurement notice published in the Official Journal of the European Communities, on the Internet (at http://europa.eu.int/comm/scr/tender/index_en.htm) and in any other appropriate media. A minimum of 30 days must be allowed to elapse between the publication of the contract forecast and the procurement notice.

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

DECENTRALISED: EX-ANTE

The Contracting Authority must submit procurement notices for publication to the European Commission in electronic form using the template in Annex D2 **at least 15 days before** the intended date of local and international publication, to allow time for translations to be made. The finalised tender dossier (see Section 5.3.2) must also be submitted to the European Commission either at this time or in advance to demonstrate that the proposed procurement notice corresponds to the objectives of the contract.

DECENTRALISED: EX-POST

The Contracting Authority must submit procurement notices for publication to the European Commission in electronic form using the template in Annex D2 **at least 15 days before** the intended date of local and international publication, to allow time for translations to be made.

The procurement notice must identify clearly, precisely, and completely what the subject of the contract is and who the Contracting Authority is. If the procurement notice is also published locally, it must be identical to the procurement notice published by the European Commission in the Official Journal of the European Communities and on the Internet and appear at the same time.

The Contracting Authority must send tender dossiers to would-be tenderers. Because of their size and printing costs, tender dossiers for

works contracts are usually sent out for a fixed fee. **If a contractor is responsible for compiling the tender dossier and/or sending it out, the contractor in question must sign a Declaration of Objectivity and Confidentiality (see Annex A3).**

The tender dossier will also be available for inspection at the premises of the Contracting Authority and the European Commission.

5.3.2 DRAFTING AND CONTENTS OF THE TENDER DOSSIER

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

These documents must contain all the provisions and information that tenderers need to present their tenders: the procedures to follow, the documents to provide, cases of non-compliance, award criteria, etc. It may be desirable for representatives of the final beneficiaries to participate in the tender preparation at an early stage. See Section 2.7 for guidelines for preparing Technical Specifications.

The Contracting Authority is responsible for drawing up these documents.

DECENTRALISED: EX-ANTE

Given the technical complexity of many works contracts, the preparation of the tender dossier - particularly the Technical Specifications - may require the assistance of one or more external technical specialist(s) who must be recruited by the Contracting Authority with the prior approval of the European Commission. Each such specialist must sign a Declaration of Objectivity and Confidentiality (see Annex A3).

DECENTRALISED: EX-POST

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

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

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


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

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

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

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

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

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

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

DECENTRALISED: EX-POST

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

The tender dossier must contain the following documents:

TENDER DOSSIER CONTENT

① INSTRUCTIONS TO TENDERERS

Which must include:

- ☐ The type of contract (ie, Works)
- ☐ The selection and award criteria
- ☐ The grid to be used to evaluate the tenders. Given the wide variety of works and their technical nature, the grid must be individually developed for each tender in a YES/NO format to allow clear assessment whether or not the offer responds to the Technical Specifications
- ☐ Whether variants are allowed
- ☐ Whether, and in what proportion, sub-contracting is permitted
- ☐ The currency of the tender (ie, euro)
- ☐ The format to be used by a bank or similar institution to provide a tender guarantees (1-2% of the budget available for the contract)

See Annex D4 for template

② DRAFT CONTRACT AND ANNEXES

See standard format in Annex D4. This includes:

- ❑ The Special Conditions of the contract, which amplify, supplement or derogate from the General Conditions and, where they conflict, override them
- ❑ The technical annexes, containing any plans and the Technical Specifications, as well as a provisional timetable for performance
- ❑ The format of the bill of quantities / budget (for completion by the tenderer)
- ❑ The General Conditions for works contracts, to be included as an annex of the eventual contract. **Changes to the General Conditions are forbidden.**
- ❑ The formats to be used by a bank or similar institution to provide guarantees for:
 - ❑ The advance to be paid under the contract
 - ❑ Performance (10% of the contract value).
- ❑ Any additional contractual information such as special tax arrangements for contracts funded by the European Community

③ TENDER SUBMISSION FORMAT

The format in which the tender should be submitted. See Annex D4 for template.

The required standard content comprises predetermined formal documentation and the actual tender of the tenderer. The technical and financial offers must both be submitted in a single, sealed envelope or packet.

The technical offer must satisfy the Technical Specifications in all respects. Variant solutions can only be considered if a fully responsive technical offer has also been submitted by the tenderer.

The financial offer must be in euro and presented in the standard format to facilitate comparison of the financial offers. If this format is not respected, the tender must be rejected.

5.3.3 SELECTION AND AWARD CRITERIA

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


The criteria should be precise, should not be discriminatory, and should not be prejudicial to fair competition. All criteria specified in the tender dossier must be applied as such and cannot in any case be modified during the procedure. The technical evaluation will be based on the evaluation grid published in the tender dossier, which must not be modified in any way during the evaluation process. Given the wide variety of works and their technical nature, these must be individually developed for each tender in a YES/NO format to allow clear assessment whether or not the offer responds to the technical requirements of the tender dossier. See example in Annex D4.

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

5.3.4 ADDITIONAL INFORMATION BEFORE THE DEADLINE FOR SUBMISSION OF TENDERS

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

If it proves impossible to identify potential tenderers in the case of an open tender procedure, a notice setting out the changes to the tender dossier must be published as explained in section 5.3.1, taking into account that international notices must be submitted for publication to the European Commission **at least 15 days** before the intended date of publication. The deadline for the submission of tenders may be extended to allow tenderers to take account of the change.

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

must reply (sending a copy to the European Commission, in the case of decentralised ex-ante control) to all tenderers' questions at least 11 days before the deadline for receipt of tenders.

5.3.5 DEADLINE FOR SUBMISSION OF TENDERS

Tenders must **reach** the Contracting Authority at the address and, at the very latest, the date and time indicated in the tender dossier. The period for submission must be sufficient to guarantee the quality of tenders and so permit truly competitive tendering. Experience shows that too short a period prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders. The deadline for submissions must be at the close of business of a working day in the beneficiary country (eg, 16:00 local time on a Friday).

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

The minimum period between the date of publication of the procurement notice and the deadline for receipt of tenders is 90 days. However, in exceptional cases, this period may be shorter.

5.3.6 PERIOD DURING WHICH THE TENDERS ARE BINDING

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

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

The successful tenderer must maintain its tender for a further 60 days from the date of notification of award.

5.3.7 SUBMISSION OF TENDERS

Each tender (including both the technical and financial offers) must be placed inside a parcel or inside an outer envelope bearing:

- (a) the address for submission of tenders indicated in the tender dossier;
- (b) the reference of the tender procedure to which the tenderer is responding;
- (c) where applicable, the numbers of the lots tendered for;
- (d) the words "Not to be opened before the tender-opening session" written in the language of the tender dossier **and** in the local language;
- (e) the name of the tenderer.

5.3.8 THE EVALUATION COMMITTEE

5.3.8.1 COMPOSITION

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

DECENTRALISED: EX-ANTE

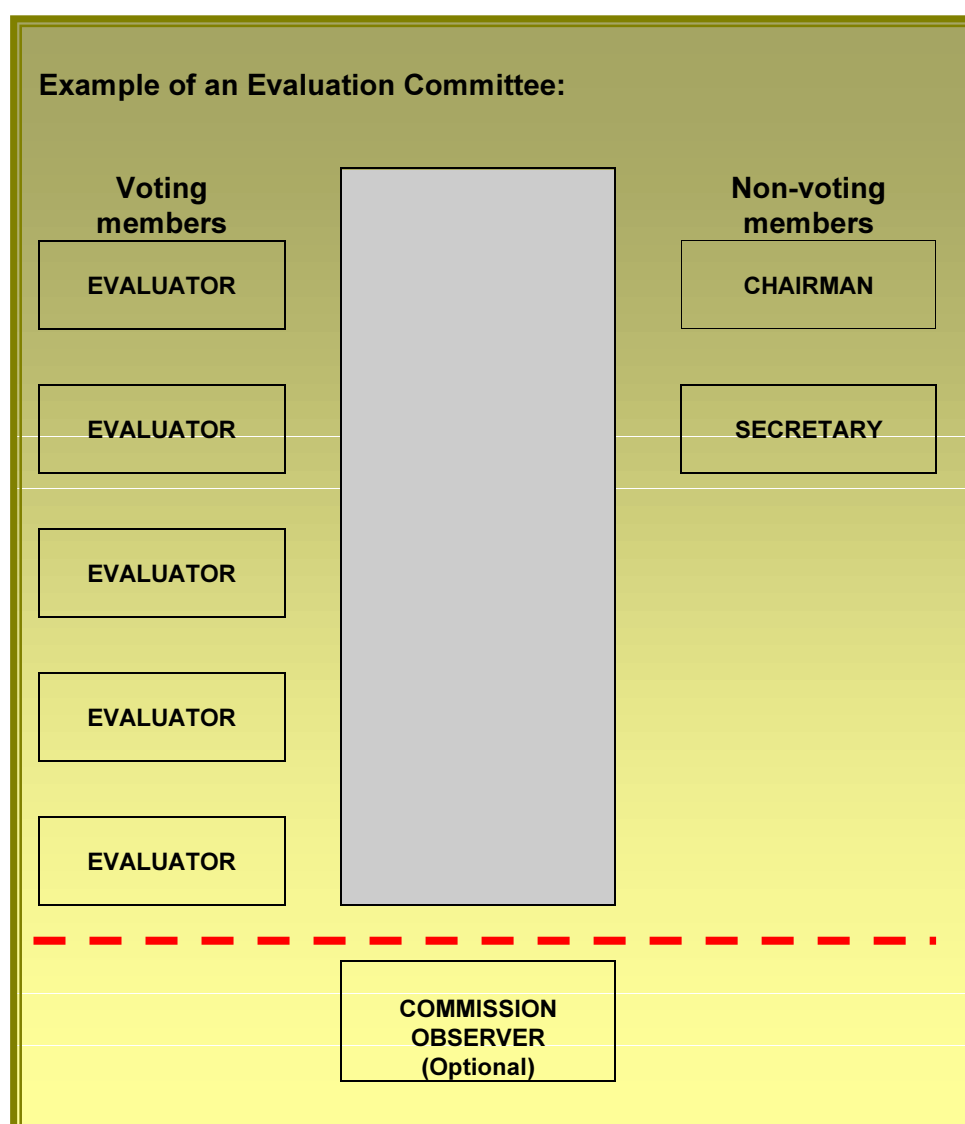
The Evaluation Committee (ie, the Chairman, the Secretary and the voting members) must be nominated on a personal basis by the Contracting Authority. The composition of the Evaluation Committee must be submitted for approval to the European Commission. As a general rule, the European Commission nominates an observer to follow all or part of the proceedings of the Evaluation Committee. Prior approval must be sought from the European Commission for the participation of other observers.

DECENTRALISED: EX-POST

The Evaluation Committee (ie, the Chairman, the Secretary and the voting members), must be nominated on a personal basis by the Contracting Authority. The participation of any observers must be authorised individually by the Contracting Authority.

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


All voting members of the Evaluation Committee have equal voting rights. The names and functions of all those involved in the evaluation process must be recorded in the Evaluation Report.



5.3.8.2 IMPARTIALITY AND CONFIDENTIALITY

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

Any Evaluation Committee member who withdraws from the Evaluation Committee must be replaced (following the standard procedure for appointing members of the Evaluation Committee, as explained in Section 5.3.8.1) and the evaluation process must be restarted. Any assessment by a voting member withdrawing from the committee at whatever stage of the evaluation has to be disregarded.

	<p>No information about the examination, clarification, evaluation or comparison of tenders or decisions about the contract award can be disclosed before the signature of the contract by the Contracting Authority and the successful tenderer. <u>Any attempt by a tenderer to influence the process in any way (whether by initiating contact with members of the Evaluation Committee or otherwise) will result in the immediate exclusion of its tender from further consideration.</u></p>
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- ❑ Apart from the tender opening session, the proceedings of the Evaluation Committee are conducted *in camera* and are confidential
- ❑ In order to maintain the confidentiality of the proceedings, participation in the Evaluation Committee meetings is limited to the members of the Evaluation Committee designated by the Contracting Authority and any authorised observers
- ❑ The tenders should not leave the room/building in which the committee meetings take place before the conclusion of the work of the Evaluation Committee. They should be kept in a safe place when not in use.

5.3.8.3 RESPONSIBILITIES OF THE EVALUATION COMMITTEE MEMBERS

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

The Secretary to the Committee is responsible for carrying out all the administrative tasks within the evaluation procedures. These will include:

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

Any request for clarification requiring communication with the tenderers during the evaluation process must be conducted in writing (by fax or letter) and signed by both the Chairman and the Secretary of the Evaluation Committee. Copies of any such communication must be annexed to the Evaluation Report.

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

5.3.8.4 TIMETABLE

The Evaluation Committee should be formed early enough to ensure the availability of the designated members (and any observer nominated by the European Commission, in the case of decentralised ex-ante control) during the period necessary to prepare and conduct the evaluation process. The tender evaluation should be completed as soon as possible.

The duration of the evaluation process should be agreed between members of the Evaluation Committee and the Contracting Authority. The evaluation process must be completed in time to allow the successful tenderer to be notified by the Contracting Authority (after all necessary approvals) within the tender validity period (ie, 90 days) specified in the tender dossier.

5.3.9 STAGES IN THE EVALUATION PROCESS

5.3.9.1 RECEIPT AND REGISTRATION OF TENDERS

On receiving tenders, the Contracting Authority must register them and provide a receipt for those delivered by hand. The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened.


The outer envelopes of tenders must be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

5.3.9.2 PREPARATORY MEETING

- First meeting of Evaluation Committee
 - to be held before the tender opening session
 - the tender dossier should have been distributed in advance to the members of the Evaluation Committee
- The Chairman presents the purpose of the tender procedure in general terms
- The Chairman reminds the Evaluation Committee of the selection and award criteria specified in the tender dossier, stating that these must be respected without modification
- The Chairman explains the procedures to be followed by the Evaluation Committee
- The Chairman checks that all members are familiar with the evaluation grid set out in the tender dossier to make sure that the tenders will be evaluated by the different members of the Evaluation Committee in a consistent manner. See Annex D4 for the format of an evaluation grid.

5.3.9.3 TENDER OPENING SESSION

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

	<p>The tender opening session is a formal, public process. The Evaluation Committee opens the tenders in public at the place and time fixed in the tender dossier. The following are announced at the tender-opening session: the names of the tenderers, the tender prices, the provision of the requisite tender guarantee and any other formality which the Contracting Authority thinks appropriate.</p>
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DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST


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

- ❑ Representatives of the tenderers may attend the session if they wish. The minutes of this meeting must be recorded separately and may be made available to the tenderers on request.
- ❑ All members of the Evaluation Committee and any observers are required to read and sign a Declaration of Impartiality and Confidentiality (see Annex A4)
- ❑ **See tender opening checklist in Annex D5** for the detailed formalities to be carried out by the Chairman with the assistance of the Secretary, as summarised below

The following tasks are carried out by the Chairman and Secretary:

- ❑ Examine and state the condition of outer envelopes before opening them in order of receipt, announcing the name of the tenderer. **Only tenders in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.**
- ❑ Initial the front page of each document and all pages of the financial offer

The Committee must decide whether or not tenders comply with the formal requirements. The Summary of tenders received, which is attached to the Tender Opening Report (see Annex D6) must be used to record the compliance of each of the tenders with the formal requirements. Non-compliant tenders must be rejected. The tenders not considered for further evaluation must be kept by the Contracting Authority, together with the other tenders - the associated guarantees may be returned to the tenderers on request.

	<p>The Tender Opening Report, which comprises the Summary of works tenders submitted and the minutes of the tender opening session, must be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. It may be made available to the tenderers upon request. The Tender Opening Report must state:</p> <ul style="list-style-type: none"> ❑ The date, time and place of the session; ❑ The persons present; ❑ The names of the tenderers who submitted tenders within the stipulated deadline; ❑ Whether the originals of the tenders were duly signed, and whether technical offers were sent in the requisite number of copies; ❑ The names of any tenderers whose tenders were found to be non-compliant at the opening session and the requirement(s) with which their tenders failed to
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	comply; <ul style="list-style-type: none"> ❑ The names of any tenderers who withdrew their tenders; ❑ The tender prices of those tenders accepted for further evaluation; ❑ Any declarations made by the tenderers.
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5.3.9.4 EVALUATION OF TECHNICAL OFFERS

It is obligatory that the technical evaluation uses the evaluation grid published in the tender dossier.

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

Part 1: Administrative compliance


Before conducting a detailed evaluation of the tenders, the Evaluation Committee checks that they comply with the essential requirements of the tender dossier.

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 execution 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.

Tenders which do not comply with the tender dossier must be rejected by the Evaluation Committee and may not subsequently be made to comply by undergoing corrections or having discrepancies or restrictions removed.

- ❑ Copies of the tenders are distributed to the committee members. The originals are locked away for safe keeping
- ❑ Each tender is examined for compliance with the tender dossier, in particular that:
 - the documentation is complete
 - the language required by the tender dossier has been used

- the tender submission form has been duly completed and the declaration attached to it has been signed by the tenderer (ie, leader and all consortium partners, in the case of a consortium)
 - **for consortia:** the confirmation of association and designation of a lead company has been signed by all consortium members
 - **for tenderers intending to sub-contract tasks (if permitted by the tender dossier):** the tenderer has included a statement regarding the content and extent of sub-contracting envisaged, which must be within the limit stated in the tender dossier, and the identity of the sub-contractor
- With the agreement of the other Evaluation Committee members, the Chairman may communicate in writing with tenderers whose submissions require clarification, offering them the possibility to respond by fax within a maximum of 48 hours. Any such request for clarification must not seek the correction of formal errors or major restrictions affecting performance of the contract or distorting competition.

	<p>The Chairman 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 sub-contractor). Any Evaluation Committee member or observer who has a potential conflict of interest due to a link with any tenderer must declare it and immediately withdraw from the Evaluation Committee. He/she will be excluded from participating further in any capacity in the evaluation meetings.</p> <p>Any Evaluation Committee member who withdraws from the Evaluation Committee for whatever reason must be replaced (following the standard procedure for appointing members of the Evaluation Committee, as explained in Section 5.3.8.1) and the evaluation process must be restarted.</p>
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The administrative compliance of each of the tenders must be recorded in the Evaluation Report (see Annex D7).


Part 2: Technical compliance of tenders


The detailed evaluation of the tenders takes place after checking that the tenders satisfy the formal requirements of tender submission. The criteria to be applied are those published in the tender dossier and, accordingly, the evaluation grid included in the tender dossier must be used. **Under no circumstances may the committee or its members**

change the evaluation grid communicated to the tenderers in the tender dossier.

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


	<u>Rule of origin:</u> Supplies and equipment to be used by a contractor for a works contract and which are destined to become the property of the beneficiary country once the contract is completed must originate in EU Member States and/or the countries and territories of the regions covered and/or allowed by the Regulation or other instruments governing the programme under which the contract is being financed.
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	Tenders which clearly fail to satisfy the rule of origin must be rejected.
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	<u>Nationality of experts and sub-contractors:</u> The Evaluation Committee must check at this stage that the nationalities of any experts and/or sub-contractors identified in the technical offers satisfy the nationality rule in Section 2.3.1.
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Having evaluated the tenders, the Evaluation Committee rules on the technical compliance of each tender, classifying it as technically compliant or not technically compliant. **If the tenderer submitting the compliant tender with the lowest price has also submitted a variant solution, the variant tender should also be evaluated.**

5.3.9.5 EVALUATION OF FINANCIAL OFFERS

	Tenders presented in currencies other than euro are not acceptable and must be rejected.
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Once the technical evaluation has been completed, the committee checks that the tenders contain no arithmetic errors. Any errors are corrected without prejudice to the tenderer.

If the tender procedure contains several lots, financial offers are compared for each lot. The financial evaluation will have to identify the technically compliant tender with the lowest price for each lot.

5.3.9.6 CHOICE OF SUCCESSFUL TENDERER

The successful tenderer is the one submitting the “most economically advantageous” tender, ie, the least expensive tender classified as “technically compliant” during the technical evaluation. This must be declared the successful tender if it is equal to or lower than the maximum budget available for the contract.

If the chosen tender exceeds the maximum budget available for the contract, the provisions set out in section 5.2.1.3 (c) apply.

DECENTRALISED: EX-ANTE

If for a given contract, one tender appears to have an abnormally low price in relation to the market for the works in question, the Chairman of the Evaluation Committee must write to the tenderer to obtain a detailed explanation for the low price proposed. Such a tender must be rejected unless the low price can be justified on objective grounds such as:

- ☐ an economic production method
- ☐ the technical solution proposed
- ☐ or exceptionally favourable conditions available to the tenderer.

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


DECENTRALISED: EX-POST

If for a given contract, one tender appears to have an abnormally low price in relation to the market for the works in question, the Chairman of the Evaluation Committee must write to the tenderer to obtain a detailed explanation for the low price proposed. Such a tender must be rejected unless the low price can be justified on objective grounds such as:

- ☐ an economic production method
- ☐ the technical solution proposed
- ☐ or exceptionally favourable conditions available to the tenderer.

The justification for rejecting or accepting an abnormally low offer must be recorded in the Evaluation Report and the Contracting Authority must notify the European Commission of its decision.

5.3.9.7 CONCLUSION OF EVALUATION COMMITTEE

	As a result of its deliberations, the Evaluation Committee may make any of the following recommendations:
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	<ul style="list-style-type: none"> ❑ Award the contract to the tenderer which has submitted a tender: <ul style="list-style-type: none"> ❑ which complies with the formal requirements and the eligibility rules; ❑ whose total budget is within the maximum budget available for the project; ❑ which meets the minimum technical requirements specified in the tender dossier; and ❑ which is the least expensive tender (satisfying all of the above conditions). ❑ Cancel the tender procedure in exceptional circumstances, such as: <ul style="list-style-type: none"> ❑ None of the tenders satisfies the selection/award criteria of the tender procedure ❑ All tenders received exceed the maximum budget available for the contract
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DECENTRALISED: EX-ANTE

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex D7) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. This must be submitted to the Contracting Authority, which must decide whether or not to accept its recommendation.

The Contracting Authority must then submit the Evaluation Report together with its recommendation to the European Commission for approval. If there is an award proposal and the European Commission has not already received the original tender of the recommended tenderer and copies of the other tenders, these must be submitted.

At the same time, for any award proposal, a contract dossier including a proposed contract must be prepared on the basis of the recommended tender (see Section 5.3.9.8). It must be submitted to the European Commission for endorsement (agreement to finance the proposed contract).


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

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

DECENTRALISED: EX-POST

The entire procedure (technical and financial evaluation) is recorded in an Evaluation Report (see template in Annex D7) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee. This must be submitted to the Contracting Authority, which must decide whether or not to accept its recommendations. No prior approval from the European Commission is required before the Contracting Authority acts on the recommendations of the Evaluation Committee.

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

	The entire tender procedure is confidential from the end of the tender opening session to the signature of the contract by both parties. The Evaluation Committee's decisions are collective and its deliberations must remain secret. The Evaluation Committee members and any observers are bound to secrecy.
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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 departments of the Contracting Authority, the European Commission and the supervisory authorities (eg, the European Court of Auditors).

5.3.9.8 CONTRACT PREPARATION

If the Evaluation Committee recommends the award of a contract to a particular tenderer and the Contracting Authority approves the Evaluation Report, the Contracting Authority must use the standard contract format (see Annex D4) to prepare the proposed contract. All the components of the proposed contract should be available from either the tender dossier or the tender submitted by the recommended tenderer. Only the Special conditions should need to be completed.

A contract dossier must be prepared using the following structure:

- a) Explanatory note using the format in Annex A6
- b) Copy of the Financing Memorandum authorising the project
- c) Copy of the tender announcements (contract forecast and procurement notice), Site Visit Report, Tender Opening Report, Evaluation Report, and any other relevant information
- d) Four copies of the proposed contract, which is based on the standard works contract template (see Annex D4):
 - ❑ Special conditions (to be completed by the Contracting Authority)
 - ❑ General conditions for works contracts (standard & in the tender dossier)
 - ❑ Technical specifications (from the tender dossier)
 - ❑ Budget (from the recommended tender)
 - ❑ Miscellaneous (from the tender dossier and including, for example, tax and Customs arrangements, financial guarantee format, and the standard invoice format to be used by the contractor)

	<p>The standard contract annexes for the General conditions and Miscellaneous Information (see Annex D4) must be reproduced without modification in every works contract. The Special conditions must be completed by the Contracting Authority</p>
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5.3.10 CANCELLING THE TENDER PROCEDURE

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

- ❑ the tender procedure has been unsuccessful, ie, no qualitatively or financially worthwhile tender has been received or there is no response at all;
- ❑ the economic or technical data of the project have been fundamentally altered;
- ❑ exceptional circumstances or *force majeure* render normal performance of the contract impossible;

- ❑ all technically compliant tenders exceed the financial resources available;
- ❑ there have been irregularities in the procedure, in particular where these have prevented fair competition.

DECENTRALISED: EX-ANTE

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

DECENTRALISED: EX-POST

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

In the event of cancellation of any tender procedure, tenderers must be notified of the cancellation by the Contracting Authority. Such tenderers shall not be entitled to compensation; they shall be entitled to the immediate release of their tender guarantee. When the tender procedure is cancelled before the outer envelope of any tender has been opened, the unopened and sealed envelopes must be returned to the tenderers.

5.3.11 AWARD OF THE CONTRACT

5.3.11.1 NOTIFYING THE SUCCESSFUL TENDERER

DECENTRALISED: EX-ANTE

After the Contracting Authority and the European Commission have given their formal approval and before the period of validity of tenders expires, the Contracting Authority notifies the successful tenderer in writing that its tender has been accepted (see format of letter in Annex D9) and draws attention to any arithmetic errors which were corrected during the evaluation process.

DECENTRALISED: EX-POST

Before the period of validity of tenders expires, the Contracting Authority notifies the successful tenderer in writing that its tender has been accepted (see format of letter in Annex D9) and draws attention to any arithmetic errors which were corrected during the evaluation process.

This notification to the successful tenderer implies that the validity of the successful tender is automatically extended for a period of 60 days from the date of notification of award of the contract. The

Contracting Authority may send the contract to the successful tenderer for signature (see Section 5.3.11.2) at the same time.

Where a contract is awarded under a Financing Memorandum which had not been concluded at the time the tender procedure was launched, the Contracting Authority must not notify the successful tenderer before the Financing Memorandum has been concluded (see section 2.4.9).

5.3.11.2 CONTRACT SIGNATURE

In preparing the contract for signature, the Contracting Authority has to go through the following steps:

- 1) use the contract dossier prepared following the recommendation of the Evaluation Committee (see Section 5.3.9.8)
- 2) sign all copies of the contract
- 3) send all four signed copies of the contract to the successful tenderer, who must countersign them within 30 days of receipt (and, in any case, before the expiry of the tender validity period) and return three copies to the Contracting Authority together with any financial guarantees required in the contract. If the successful tenderer fails to do this within the specified deadline or indicates at any stage that it is not willing or able to sign the contract, the tenderer cannot be awarded the contract and forfeits its tender guarantee. The contract preparation process must be restarted from step 1 with a new contract dossier prepared using the tender which has the next lowest price (provided that that tender is technically compliant and is within the maximum budget available for the contract). (In the decentralised: ex-ante system, the new, proposed contract would need to be sent to the European Commission for endorsement).

DECENTRALISED: EX-ANTE

- 4) on receipt of the three signed copies from the successful tenderer, the Contracting Authority keeps one in a secure contract archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the European Commission. A copy of the signed contract should be sent to the Project Manager.

DECENTRALISED: EX-POST

- 4) on receipt of the three signed copies from the successful tenderer, the Contracting Authority keeps one in a secure contracts archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the Project Manager.




The Contracting Authority and the Contractor must note on the contract the date on which they are

	signing it. It is the later date of signature which is the date of effect of the contract. A contract <u>cannot</u> cover earlier works/supplies/services or enter into force before this date.
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5.3.11.3 PUBLICISING THE AWARD OF THE CONTRACT

Once the contract has been signed, the Contracting Authority must prepare a works contract award notice (using the template in Annex D10) and send it to the European Commission, which publishes the results of the tender procedure in the Official Journal, on the Internet and in any other appropriate media. In addition, the Contracting Authority must:

- ❑ write to the unsuccessful tenderers using the format in Annex D8, explaining why they have not been awarded the contract, stating whether their tenders were technically compliant and indicating any technical shortcomings
- ❑ record all statistical information concerning the contract award procedure (via the PERSEUS system for Phare) including the contract value, the names of the other tenderers and the successful tenderer.

	The Contracting Authority is responsible for preparing the works contract award notice using the template in Annex D10 and for submitting it in electronic form for publication to the European Commission within 24 hours of receiving the countersigned contract from the successful tenderer.
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5.4 RESTRICTED TENDER (FOR CONTRACTS OF €5,000,000 OR MORE)

DECENTRALISED: EX-ANTE

In exceptional cases justified by the special characteristics of certain projects (including contracts of €100 million or more co-financed by Ispa), a restricted tender procedure may be used. **The European Commission must give its prior approval to the use of this approach and will provide technical support to the Contracting Authority on a case-by-case basis.**

DECENTRALISED: EX-POST

In exceptional cases justified by the special characteristics of certain projects, a restricted tender procedure may be used. If it intends to use this approach, the Contracting Authority must record the justification for this in the Evaluation Report and notify the European Commission.

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

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

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

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



The remainder of the procedure (including preparing the tender dossier, evaluating the tenders and awarding the contract) is the same as under the international open procedure (see Sections 5.3.2 to 5.3.11.3)

5.5 LOCAL OPEN TENDER (FOR CONTRACTS OF AT LEAST €300,000 AND UNDER €5,000,000)


In this case, the contract forecast and procurement notice are published only in the beneficiary country. The European Commission publishes the references of such tender procedures (dossier number, country, Contracting Authority and type of contract) on the Internet with the address from which firms can obtain further information.


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

Note that a local open tender procedure must provide other eligible contractors with the same opportunities as local firms. No conditions seeking to restrict the participation of other eligible contractors are

allowed (eg, obliging such firms to be registered in the beneficiary country or to have won contracts there in the past).

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

	<p>The measures applicable to an international open procedure, as described in section 5.3, apply by analogy to the local open procedure. The principal difference is that minimum number of voting members in the Evaluation Committee is three.</p>
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	<p>The Contracting Authority is responsible for preparing the works contract award notice in electronic form using the template in Annex D10 and for submitting it for publication to the European Commission within 24 hours of receiving the countersigned contract from the successful tenderer.</p>
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5.6 SIMPLIFIED PROCEDURE (FOR CONTRACTS UNDER €300,000)

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

Tenders must reach the Contracting Authority at the address given in the letter of invitation to tender and by the date and time specified. 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.

Tenders are opened and evaluated by an Evaluation Committee possessing the requisite technical and administrative capacities appointed by the Contracting Authority. The members of the committee must each sign a Declaration of Impartiality and Confidentiality (see Annex A4).

	<p>If the Contracting Authority receives fewer than three compliant tenders, the procedure must be cancelled and started again. Consequently, it would be prudent to invite tenders from more than three service providers. The remainder of the procedure (including preparation of the tender dossier, evaluating the tenders and awarding the contract) is the same as under the international open procedure (see Sections 5.3.2 to 5.3.11.3)</p>
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	<p>The Contracting Authority may award works contracts of a value of €5,000 or less on the basis of a single tender. Note that projects must not be split artificially to circumvent the procurement thresholds (see Section 2.5).</p>
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5.7 MODIFYING WORKS CONTRACTS

Works contracts may need to be modified during their duration if the circumstances affecting project implementation have changed since the initial contract was signed. Contract modifications must be formalised through an addendum to the contract. Such an addendum must be signed by the contracting parties (and, under a decentralised ex-ante system, approved and endorsed by the European Commission).

Changes of address, changes of bank account, and changes of auditor may simply be notified in writing by the contractor to the Contracting Authority, although this shall not affect the right of the Contracting Authority to oppose the contractor's choice of bank account or auditor.

5.7.1 GENERAL PRINCIPLES

The following **general principles** must always be respected:

- ❑ A contractor's requests for contract modifications should not automatically be accepted by the Contracting Authority. There must be justified reasons for modifying a contract. The Contracting Authority must examine the reasons given, and reject requests which have little or no substantiation.
- ❑ **Contract modifications can only be made within the period of execution of the contract and cannot be effected retroactively**
- ❑ The purpose of the addendum must be closely connected with the nature of the project covered by the initial contract.
- ❑ Major changes, such as a fundamental alteration of the Technical Specifications, cannot be made by means of an addendum.

- ❑ The addendum must not alter the competition conditions prevailing at the time the contract was awarded.
- ❑ Unit prices must be identical to those in the initial contract, unless the initial contract stipulates otherwise (ie, there is a price-revision clause).
- ❑ Any modification extending the duration of the performance period of the contract must be such that implementation and final payments can be completed before the expiry of the Financing Memorandum under which the initial contract was financed
- ❑ Any modifications which require additional funding must have been foreseen in the Technical Specifications of the initial contract and can only be agreed before the expiry of the Financing Memorandum under which the initial contract was financed. The additional funding must come from the same budget line as that used for the initial contract




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

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

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


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

	Requests for contract modifications to works contracts must be made (by one contracting party to the other) allowing at least 30 days for the addendum to be signed before the end of the period of execution of the initial contract.
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5.7.2 PREPARING AN ADDENDUM


In preparing an addendum, the Contracting Authority has to go through the following steps:

- 1) Use the standard template for an addendum (see Annex A7)

	All references in the proposed addendum to article numbers and/or annexes to be modified must correspond to those in the initial contract
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Any addendum modifying the budget must include a replacement budget showing how the full budget breakdown of the initial contract has been modified by this addendum (and any previous addenda). The following column headings should be used:

Budget Item	Initial contract budget	Addendum 1	(Addendum 2 ...)	Revised budget

	<p>If the budget is modified by the proposed addendum, the payment schedule must also be modified accordingly, taking into account any payments already made in the course of the contract.</p> <p>The payment schedule must not be modified unless either the budget is being modified or the contract is being extended.</p>
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- 2) Prepare a dossier using the following structure:

a) Explanatory note (see template in Annex A6) providing a technical and financial justification for making the modifications in the proposed addendum
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- b) Copy of the contractor's request for (or agreement to) the proposed modifications
- c) Copy of the Financing Memorandum authorising the project
- d) Copy of the initial contract and any subsequent addenda
- e) Copy of the initial tender announcements (contract forecast and procurement notice), Site Visit Report, Tender Opening Report, Evaluation Report , and any other relevant information
- f) Four copies of the proposed addendum, which is based on the standard addendum template (see Annex A7) and includes any revised annexes

DECENTRALISED: EX-ANTE

- 3) Sign all copies of the addendum and send the addendum dossier to the European Commission for approval and endorsement.

DECENTRALISED: EX-POST

- 3) Sign all copies of the addendum. No prior approval or endorsement by the European Commission is required.


- 4) Send all four signed copies of the addendum to the contractor, who must countersign them within 30 days of receipt and return three copies to the Contracting Authority together with any financial guarantee required in the addendum

DECENTRALISED: EX-ANTE

- 5) On receipt of the three signed copies from the contractor, the Contracting Authority keeps one in a secure contract archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the European Commission. A copy of the signed addendum must be sent to the Project Manager.

DECENTRALISED: EX-POST

- 5) on receipt of the three signed copies from the successful tenderer, the Contracting Authority keeps one in a secure contracts archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the Project Manager.

	<p>The Contracting Authority and the Contractor must note on the addendum the date on which they are signing it. It is the later date of signature which is the date of effect of the addendum. An addendum <u>cannot</u> cover earlier works/supplies/services or enter into force before this date.</p>
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6 GRANTS

6.1 INTRODUCTION

6.1.1 DEFINITION

A grant is a direct payment of a non-commercial nature by the Contracting Authority to a specific beneficiary to implement an action (or in some cases to finance part of its budget) in order to promote an EC policy aim.

A grant is made for a project which is proposed by a potential beneficiary (an “applicant”). The grant beneficiary retains ownership of the project and its results. This is in contrast to a service contract, in which the Contracting Authority draws up the Terms of Reference for a project it wants to be carried out and gets the ownership of the results.

A grant can only be made for a project whose immediate objective is non-commercial and strictly non-profit-making. Under no circumstances may the grant give rise to profits (ie, it must be restricted to the amount required to balance income and expenditure for the project). Grant beneficiaries must be non-profit-making except when grants are being awarded under a grant programme which is specifically aimed at profit-making entities (such as SME's in the case of support for social and economic cohesion).

In case there is any doubt as to whether an operation should be considered as a grant, the Contracting Authority may refer to the European Commission for advice.

The Contracting Authority, which is always specified in the Call for Proposals notice, is the authority empowered to conclude the contract.

6.1.2 OVERVIEW

Where grants financed by the European Community in the course of co-operation with third countries are awarded by a Contracting Authority of the beneficiary country, award procedures are governed by the following legal framework:


- the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities and in particular Title IX, External Aid; [Note that the Financial Regulation is currently being revised and will eventually include a specific section on grants but, until the approval of the new Financial Regulation, the above Financial Regulation continues to apply]

- ❑ Council Regulation No 3906/89 of 18 December 1989 and its subsequent amendments, which established the Phare programme and which defines, in particular, the eligibility rules to be applied (in respect of the nationality of grant beneficiaries);
- ❑ Council Regulation EC/1266/1999, which established the co-ordination rules for the pre-adhesion instruments Ispa and Sapard, and which, in particular, allows management tasks normally executed by the European Commission to be carried out in a decentralised system with ex-post controls.
- ❑ Council Regulation EC/1267/1999, which established Ispa;
- ❑ Council Regulation EC/1268/1999, which established Sapard.

The following are also applicable:

- ❑ The **Framework Agreement** signed by the EC and the beneficiary country concerned. This agreement contains the rules for administrative co-operation between the two bodies for the implementation of External Aid.
- ❑ The **Financing Memorandum** (known as a Financing Agreement in the Financial Regulation and in other EC external aid programmes, including Sapard) signed by the EC and the beneficiary country concerned for each EC-funded programme. This sets out the programme objectives and budget.
- ❑ The **Vade-mecum on Grant Management** adopted by the European Commission in July 1998 (COM(98)PV1395) and applicable since 1st January, 1999.
- ❑ The standard documents and templates in the annexes to this Practical Guide, which include the standard grant contract for external aid (see Annex E3), and standard documents for Calls for Proposals for grants (see Annexes E1, E2 & E3)

The procedures established by the European Commission for grant management under the Phare, Ispa & Sapard programmes are consolidated in this Practical Guide.

	<p>Before initiating any grant award process, the objectives for which grants are to be awarded must have been approved in a Financing Memorandum and the funds must be available.</p>
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6.1.3 CENTRALISED AND DECENTRALISED CONTROLS

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

- **Centralised:** decisions are taken by the European Commission, acting for and on behalf of the beneficiary country. [As it has been written specifically for the decentralised scenario, this Practical Guide does not cover the centralised approach. However, the underlying principles are the same.]
- **Decentralised:**
 - **Ex-ante:** decisions concerning the award of contracts are taken by the Contracting Authority and referred for approval to the European Commission. Details are specified throughout this Practical Guide.
 - **Ex-post:** decisions are taken by the Contracting Authority without prior reference to the European Commission (apart from exceptions to the standard procedures given in this Practical Guide).

In all cases, the Contracting Authority assumes full responsibility for its actions and will be accountable for these in any subsequent audit or other investigation

This guide includes the procedures to be observed under both alternative decentralised approval mechanisms using the following notation:

DECENTRALISED: EX-ANTE
Procedures to be followed under a decentralised programme with ex-ante controls
DECENTRALISED: EX-POST
Procedures to be followed under a decentralised programme with ex-post controls

At present, **Phare and Ispa are decentralised with ex-ante controls** while **Sapard is decentralised with ex-post controls**. Eventually, Phare and Ispa are also likely to become decentralised with ex-post controls.

DECENTRALISED: EX-ANTE

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

Before launching a Call for Proposals, the Contracting Authority must submit the associated notice and Guidelines for Applicants to the European Commission for approval.


On the basis of decisions thus approved, and in close consultation with the European Commission, the Contracting Authority is responsible for issuing Calls for Proposals, receiving proposals, chairing evaluation sessions and deciding on the results of Calls for Proposals.

The Contracting Authority must submit the Evaluation Report and details of the proposed grants to the European Commission for approval. Once a grant has been approved, the Contracting Authority will sign the contract and notify the European Commission accordingly. As a general rule, the European Commission will be represented when proposals are opened and evaluated and must always be invited.

The Contracting Authority must submit Call for Proposals notices, Guidelines for Applicants and grant award notices to the European Commission for publication.


DECENTRALISED: EX-POST


Grants are awarded directly by the Contracting Authority designated in a Financing Memorandum, ie, the government or an entity of the beneficiary country with legal personality with which the European Commission establishes the Financing Memorandum. It is responsible for issuing Calls for Proposals, receiving proposals, chairing evaluation sessions, deciding on the results of Calls for Proposals, and signing the contracts without the prior approval of the European Commission. The Contracting Authority must submit Call for Proposals notices, Guidelines for Applicants and grant award notices to the European Commission for publication.

	<p>Should a Contracting Authority fail to adhere to the contract award procedures provided for in this Practical Guide, the European Commission reserves the right to refuse to finance the grant or to suspend, withhold or recover funding for the grants concerned.</p>
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6.1.4 ELIGIBILITY CRITERIA

6.1.4.1 THE RULES ON NATIONALITY AND ORIGIN

	<p>Nationality: Contracts are open on equal terms to all natural and legal persons of the EU Member States and the countries and territories of the regions covered and/or allowed by the Regulation or other instruments governing the aid programme under which a given contract is being financed. See Annex A2 for the list of countries for each aid programme or instrument (Phare, Ispa, & Sapard).</p> <p>For the purposes of verifying compliance with the nationality rule, the Call for Proposals requires applicants to state the country of which they are nationals by presenting the documents required under that country's law.</p> <p>If the Contracting Authority suspects that an applicant has only a registered office in an eligible country or state and that the nationality of the applicant is ineligible, the applicant is responsible for demonstrating effective and continuous links with that country's economy. This is to avoid awarding contracts to organisations whose nationalities are ineligible but which have set up 'letter box' organisations in an eligible country to circumvent the rules on nationality.</p>
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	<p>Rule of origin: All supplies and equipment purchased under a grant contract must originate in the EU or in an eligible country, as defined in the nationality rule above.</p>
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6.1.4.2 EXCEPTIONS TO THE RULE ON NATIONALITY AND ORIGIN

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

- (a) With regard to **nationality**, the European Commission may exceptionally allow nationals of countries other than those stipulated in the applicable Regulation to participate in Calls for Proposals and contracts, on a case-by-case basis.
- (b) With regard to the **origin of supplies**, the same exception applies as under (a). Note, however, that the frequently used argument that a product of ineligible origin is cheaper than the Community or local product does not constitute grounds for awarding a derogation.

6.1.4.3 GROUNDS FOR EXCLUSION

Natural or legal persons are **not** entitled to participate in Calls for Proposals or be awarded grants if:


- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended activities or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they are the subject of proceedings for a declaration of bankruptcy, for winding-up, for administration by the courts, for an arrangement with creditors or for any similar procedure provided for in national legislation or regulations;
- (c) they have been convicted of an offence concerning professional conduct by a judgement which has the force of *res judicata* (ie, against which no appeal is possible);
- (d) they are guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (e) they have not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country where they are established;
- (f) they have not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country where they are established;
- (g) they are guilty of serious misrepresentation in supplying the information required by the contracting authorities as a condition of participation in a Call for Proposals or contract;
- (h) they have been declared to be in serious breach of contract for failure to comply with obligations in connection with another contract with the same contracting authority or another contract financed with Community funds;
- (i) they have attempted to obtain confidential information or influence the Evaluation Committee or the Contracting Authority during the evaluation process of current or previous Calls for Proposals.

Applicants must supply with their applications a sworn statement that they do not fall into any of the categories listed above.

6.1.5 BASIC RULES FOR GRANTS

- Programming: Grants should be programmed by the Contracting Authority with clearly defined objectives.


- ❑ **Publicity:** The availability of grants must be publicised widely and in an easily accessible way.
- ❑ **Transparency and impartiality:** The grant award process must be completely transparent and impartial. This means that:
 - ❑ Proposals are selected on the basis of published evaluation criteria
 - ❑ An Evaluation Committee must select proposals, with the advice of assessors where appropriate, using the published evaluation criteria.
 - ❑ **The same project proposal must not receive more than one EC-funded grant.**

	<p>A list of all grants awarded should be published at least once a year using the standard grant award notice in Annex E14.</p>
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- ❑ **Use of standard documents:** The standard grant contract and other document formats (as provided in the Annexes) must be used.
- ❑ **Record keeping:** Written records of the entire award procedure must be kept confidential and retained by the Contracting Authority for five years after the completion of the project. These must include the originals of all proposals submitted, together with the corresponding Call for Proposals and any related correspondence.
- ❑ **Procurement of services, supplies or works within a grant project:** If the implementation of grants involves the procurement of services, supplies or works by the grant beneficiary, the “decentralised ex-post” contract award procedures specified in Sections 2, 3, 4 and 5 of this Practical Guide must be applied for each such contract.
- ❑ Any deviation from the procedures set out in this section (Section 6) requires the prior approval of the European Commission.

6.2 AWARD PROCEDURES

6.2.1 CALL FOR PROPOSALS

	<p>Grants awarded as part of a grant programme defined within a Financing Memorandum must be awarded following the publication of a Call for Proposals if</p>
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	<ul style="list-style-type: none"> ❑ it is not reasonably feasible to identify all the organisations which could be eligible to submit project proposals; or ❑ all the organisations which could be eligible to submit project proposals are identifiable but the nature of projects they would propose cannot be established in advance. <p>The criteria specified in Sections 6.2.1.1 and 6.2.1.2 determine whether the Call for Proposals should be published internationally or locally.</p>
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6.2.1.1 INTERNATIONAL CALL FOR PROPOSALS

An international Call for Proposals (see Section 6.3) must be launched if the following four conditions are **all** satisfied:

- ❑ the overall budget for the grant programme is at least €2,000,000;
- ❑ the minimum size of each grant to be awarded within the grant programme is at least €100,000;
- ❑ organisations from countries other than that of the Contracting Authority are likely to be interested in applying for grants under the grant programme;
- ❑ the grant programme is not reserved exclusively for national applicants.

6.2.1.2 LOCAL CALL FOR PROPOSALS

A local Call for Proposals (see Section 6.4) must be launched if one or more of the conditions specified in Section 6.2.1.1 are not satisfied, ie, if:

- ❑ the overall budget for the grant programme is under €2,000,000;
- ❑ the maximum size of each grant to be awarded within the grant programme is under €100,000;
- ❑ organisations from countries other than that of the Contracting Authority are unlikely to be interested in applying for grants under the grant programme;
- ❑ the grant programme is reserved exclusively for national applicants.

6.2.2 DIRECT AWARD

DECENTRALISED: EX-ANTE
The Contracting Authority must seek prior approval from the European Commission for the use of the direct award procedure.
DECENTRALISED: EX-POST
No prior approval by the European Commission is required for the use of the direct award procedure.

It is not necessary to organise a Call for Proposals before awarding grants in the following circumstances:

- The objectives of the grant programme are such that all the potential applicants and the nature of the projects which they would propose are known and their number is too limited to justify the publication. In such a case, all the potential applicants must be consulted. The evaluation process as described in Section 6.3.7 applies nevertheless.
- Special legal or technical characteristics of the grant programme envisaged make it compulsory to award the grant to a particular beneficiary.
- For running cost grants.
- Where unforeseeable events oblige the Contracting Authority to act with an **urgency** incompatible with the periods laid down for a Call for Proposals procedures described in Section 6.2.1. The circumstances invoked to justify extreme urgency must in no way be attributable to the Contracting Authority (eg, if the Financing Memorandum is about to expire).

In all cases, the Contracting Authority must prepare an Evaluation Report justifying the manner in which the grant beneficiaries were identified and grant amounts were established, as well as the basis for the resulting contract award decision. The procedures given in Section 6.3.9 must be followed by analogy, with this Evaluation Report being included in the contract dossier.

6.3 INTERNATIONAL CALL FOR PROPOSALS

6.3.1 PUBLICITY

In order to ensure the widest possible participation and the requisite transparency, a Call for Proposals notice must be published for every international Call for Proposals. It must be prepared by the Contracting Authority using the template given in Annex E1.

This is published in the Official Journal of the European Communities, on the Internet (at http://europa.eu.int/comm/scr/tender/index_en.htm) and in any other appropriate media (specialised press, local publications, etc...). The European Commission is responsible for publication in the Official Journal of the European Communities and on the Internet, while the Contracting Authority must arrange local publication directly.

DECENTRALISED: EX-ANTE

The Contracting Authority must submit Call for Proposals notices for publication to the European Commission in electronic form using the template in Annex E1 **at least 15 days before** the intended date of publication, to allow time for translations into the 11 official languages of the Community to be made.

DECENTRALISED: EX-POST

The Contracting Authority must submit Call for Proposals notices for publication to the European Commission in electronic form using the template in Annex E1 **at least 15 days before** the intended date of publication, to allow time for translations into the 11 official languages of the Community to be made.

The notice must clearly identify the Contracting Authority and the purpose of the Call for Proposals. If the Call for Proposals is advertised locally, the advertisement must be published at the same time as the notice is published on the Internet and in the Official Journal.

As the cost of publishing the full Call for Proposals notice in the local media may be prohibitive, the template in Annex E2 gives the minimum information which must be included in a local advertisement. However, the full Call for Proposals notice and Guidelines for Applicants must be available from the address referred to in the advertisement.

6.3.2 DRAFTING AND CONTENTS OF THE GUIDELINES FOR APPLICANTS

The Guidelines for Applicants (which include an Application Form and other annexes) explain the purpose of the Call for Proposals, the rules regarding the eligibility of applicants and partners, the types of actions and costs which are eligible for financing, and the evaluation criteria. They also provide instructions on how to fill in the application form, what to annex to it and what procedures to follow for applying. Finally, they give information on the evaluation process that will follow (including an indicative timetable) and on the contractual conditions which will apply to those selected.

In drafting the Guidelines, particular attention should be paid to the eligibility and evaluation criteria (see Section 6.3.3), since these will bind the Evaluation Committee at a later stage. The evaluation grid, which

contains these criteria and which will be used by the Evaluation Committee, must be included in the Guidelines.

The Application Form to be completed by the applicants is included with the Guidelines. It comprises the following parts:

- ❑ Information about the proposed project, including its budget
- ❑ Information about the applicant
- ❑ Information about any partners

The Guidelines should be drafted for each Call for Proposals using the template provided in Annex E3.

DECENTRALISED: EX-ANTE

The Contracting Authority must submit the Guidelines for Applicants to the European Commission for approval prior to issue.

DECENTRALISED: EX-POST

No prior approval of the Guidelines for Applicants by the European Commission is required.

The Guidelines for Applicants are published on the Internet together with the Call for Proposals notice, and are also available in hard copy from the Contracting Authority. They should be available in the languages appropriate to the context of the Call for Proposals.

6.3.3 ELIGIBILITY AND EVALUATION CRITERIA

The eligibility criteria relate to three different aspects:

- Eligibility of the applicant: this refers primarily to the applicant's legal and administrative status - see Sections 6.1.4.1 (Rules on nationality and origin) and 6.1.4.3 (Grounds for exclusion).

It also refers to the applicant's financial and technical capacity to manage activities corresponding to the size of the project for which a grant is requested.

Finally, if a Call for Proposals is aimed at projects to be implemented in partnership, the minimum number of partners and the eligibility criteria applicable to each of the partners of the lead applicant must be specified.

- Eligibility of projects: this refers to the types of activities, sectors or themes and geographical areas covered by the Call for Proposals.

- Eligibility of costs: this details the types of costs which may be financed. In brief they must be real costs, actually incurred and necessary for carrying out the project.

The evaluation criteria relate, in particular, to the relevance of the project and its coherence with the objectives of the grant programme under which the Call for Proposals is financed, to the quality, expected impact and sustainability of the project as well as to its cost-effectiveness.

The criteria should be precise, should not be discriminatory, and should not be prejudicial to fair competition. All criteria specified in the Call for Proposals must be applied as such and cannot in any case be modified during the procedure. The evaluation will be based on the published administrative compliance and eligibility grid and evaluation grid – see the standard templates given in Annexes E7 and E10.

6.3.4 ADDITIONAL INFORMATION BEFORE THE DEADLINE FOR SUBMISSION OF PROPOSALS

During the time between the publication and the deadline for receipt of proposals, applicants should be able to ask questions to help them fill in the form and put together their applications. The Contracting Authority should therefore provide a contact point to which questions may be addressed. Applicants may submit questions of substance in writing up to 21 days before the deadline for the submission of proposals. The Contracting Authority must reply to all such questions at least 11 days before the deadline for submission of proposals.

In the interests of transparency and equal opportunity, the answer provided to one applicant on points which may be of interest to the other applicants should be made available to all the others. The easiest – and recommended – way to achieve this is to publish on the Internet, where appropriate, a table of questions and answers along with the Guidelines for Applicants. This must be updated regularly until 11 days before the deadline for submission of proposals.

6.3.5 DEADLINE FOR SUBMISSION OF PROPOSALS

Proposals must **reach** the Contracting Authority at the address and, at the very latest, the date and time indicated in the Call for Proposals. The period for submission must be sufficient to guarantee the quality of proposals. Experience shows that too short a period prevents would-be applicants from submitting proposals or causes them to submit incomplete or ill-prepared proposals. The deadline for submissions must be at the close of business of a working day in the beneficiary country (eg, 16:00 local time on a Friday).

DECENTRALISED: EX-ANTE

The minimum period between the date of publication of the Call

for Proposals notice and the deadline for receipt of proposals is 90 days. However, in exceptional cases, and with the prior authorisation of the European Commission, this period may be shorter.

DECENTRALISED: EX-POST

The minimum period between the date of publication of the Call for Proposals notice and the deadline for receipt of proposals is 90 days. However, in exceptional cases, this period may be shorter.

6.3.6 SUBMISSION OF PROPOSALS

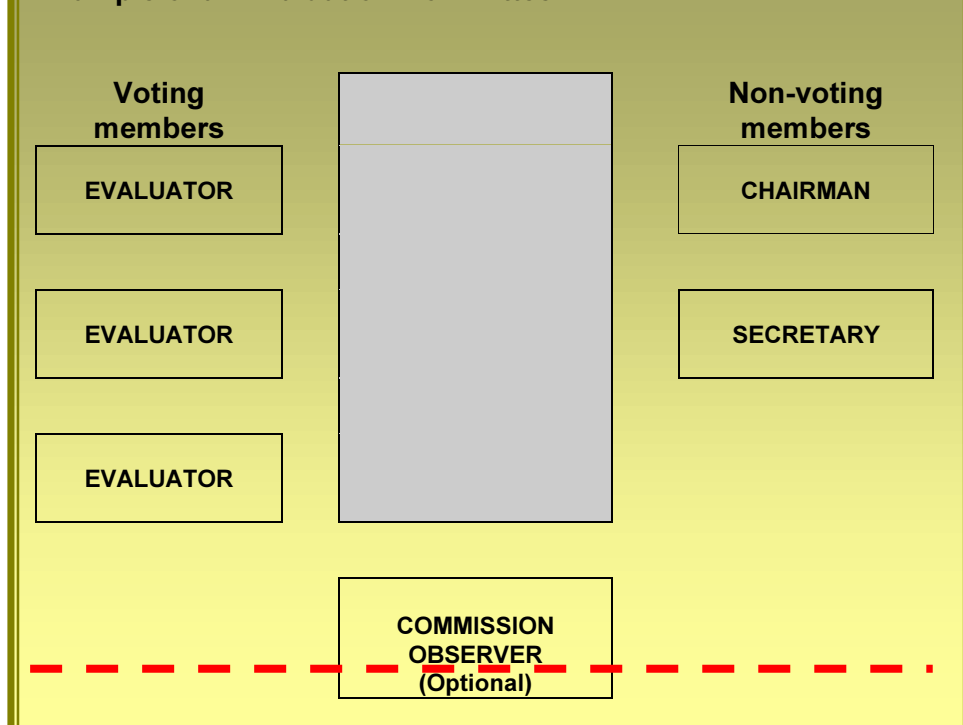
Each proposal must be placed in a sealed parcel or envelope bearing:

- (a) the address for submission of proposals indicated in the Call for Proposals;
- (b) the reference number of the notice of Call for Proposals to which the applicant is responding;
- (c) the full name and address of the applicant;
- (d) the words “Not to be opened before the opening session” written in the language of the Call for Proposals **and** in the local language.

Applications must be sent by registered mail or express messenger or by hand-delivery. They must contain the original and five copies of the completed application form and of its annexes and supporting documents.

6.3.7 THE EVALUATION COMMITTEE

Example of an Evaluation Committee:



DECENTRALISED: EX-ANTE

The Evaluation Committee (ie, the Chairman, the Secretary and the voting members) must be nominated on a personal basis by the Contracting Authority. The composition of the Evaluation Committee must be submitted for approval to the European Commission. As a general rule, the European Commission nominates an observer to follow all or part of the proceedings of the Evaluation Committee. Prior approval must be sought from the European Commission for the participation of other observers.

DECENTRALISED: EX-POST

The Evaluation Committee (ie, the Chairman, the Secretary and the voting members), must be nominated on a personal basis by the Contracting Authority. The participation of any observers must be authorised individually by the Contracting Authority.

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

All voting members of the Evaluation Committee have equal voting rights. The names and functions of all those involved in the evaluation process must be recorded in the Evaluation Report.

6.3.7.2 USE OF ASSESSORS

Given the high number of proposals usually received, it may not be possible for the Evaluation Committee to examine each proposal in detail. Instead, assessors who are not members of the Evaluation Committee may be engaged to carry out this detailed examination so that the Evaluation Committee may carry out its deliberations on the basis of their assessments.



Assessors can never be members of the Evaluation Committee, although they may be present at meetings of the Evaluation Committee as observers.

Assessors may be civil servants (or other agents of the public administration of the beneficiary country) or external experts. They must have an in-depth knowledge of the issues covered by the grant programme for which proposals are being evaluated. Their expertise should be established on the basis of their CVs. A minimum of five years' experience of a particular issue should be expected. External assessors who are not civil servants or other agents of the public administration of the beneficiary country must be selected in accordance with the standard procedures in Section 3.

Assessors may only be used for the stages of the evaluation procedure described in detail in Sections 6.3.8.3 (Assessment of Administrative Compliance and Eligibility) and 6.3.8.4 (Assessment of Technical and

Financial Quality). The members of the Evaluation Committee must carry out all other stages of the evaluation procedure.

The assessment of proposals is carried out in two stages:


- ❑ With respect to the assessment of administrative compliance and eligibility, the task of assessors consists of carrying out a screening of each proposal on the basis of the published grid (see Annex E7). Each proposal need only be screened by one assessor.
- ❑ With respect to the assessment of technical and financial quality, the task of assessors consists of carrying out a written assessment of each proposal on the basis of the published evaluation grid (see Annex E10). At least two assessors, must assess each proposal, working independently of each other.

The assessors may be called before the Evaluation Committee to present their assessments and to answer any questions regarding them raised by the members of the Evaluation Committee. The assessors must withdraw from the Evaluation Committee meeting once they have presented their assessments and must not be present when the Evaluation Committee is finalising its conclusions on the selection of the projects for which grants may be awarded.

6.3.7.3 IMPARTIALITY AND CONFIDENTIALITY

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

Any Evaluation Committee member who withdraws from the Evaluation Committee for whatever reason must be replaced (following the standard procedure for appointing members of the Evaluation Committee, as explained in Section 6.3.7.1) and the evaluation process must be restarted. Any assessment by a voting member withdrawing from the committee at whatever stage of the evaluation has to be disregarded.

	<p>No information about the examination, clarification, assessment or comparison of proposals or decisions about the grant award can be disclosed. Any attempt by an applicant to influence the process in any way (whether by initiating contact with members or assessors of the Evaluation Committee or otherwise) will result in the immediate exclusion of its proposal from further consideration.</p>
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- ❑ The proceedings of the Evaluation Committee, from the opening of proposals to the conclusion of the work of the Committee, are conducted *in camera* and are confidential.
- ❑ In order to maintain the confidentiality of the proceedings, participation in the Evaluation Committee meetings is limited to the members of the Evaluation Committee, any assessors designated by the Contracting Authority and any authorised observers.
- ❑ Apart from the copies given to any assessor(s), the proposals should not leave the room/building in which the committee meetings take place before the conclusion of the work of the Evaluation Committee. They should be kept in a safe place when not in use.

6.3.7.4 RESPONSIBILITIES OF THE EVALUATION COMMITTEE MEMBERS

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

The Secretary to the Committee is responsible for carrying out all the administrative tasks within the evaluation procedures. These will include:

- ❑ circulating and collecting the Declarations of Impartiality and Confidentiality;
- ❑ ensuring that summaries of assessments are completed and made available in good time to the members of the Evaluation Committee;
- ❑ keeping the minutes of all evaluation meetings and the required records thereof; and
- ❑ registering attendance to meetings and compiling the Evaluation Report and its supporting annexes.

Any request for clarification requiring communication with the applicants during the evaluation process must be conducted in writing (by fax or letter) and signed by both the Chairman and the Secretary of the Evaluation Committee. Copies of any such communication must be annexed to the Evaluation Report.

If a proposal infringes the formal requirements, the Evaluation Committee may use its discretion to decide whether or not it should still be considered during the rest of the evaluation process. Whatever the Evaluation Committee decides, this must be fully recorded and justified in the Evaluation Report.

6.3.8 STAGES IN THE EVALUATION PROCESS

The evaluation process starts with the receipt of the proposals by the Contracting Authority, and ends with the decision to award grants to the selected applicants. The procedure is set out below. **Note that the Guidelines for Applicants and its annexes must be prepared for each Call for Proposals prior to publication of the Call for Proposals notice.**

6.3.8.1 RECEIPT AND REGISTRATION OF PROPOSALS

On receiving proposals, the Contracting Authority must register them and provide a receipt for those delivered by hand (see template in Annex E4). The envelopes containing the proposals must remain sealed and be kept in a safe place until they are opened.

The outer envelopes of proposals must be numbered in order of receipt (whether or not they are received before the deadline for submission of proposals).

They should be registered on arrival with the following information taken from the envelope:


- ☐ registration number of proposal
- ☐ date of arrival
- ☐ name and address of applicant (if marked)

6.3.8.2 OPENING SESSION

All proposals should be opened in an opening session at which the registration details will be checked and the copies of the application forms and annexes will be distributed. The Contracting Authority must send an acknowledgement letter as soon as the opening session has been held. The acknowledgement letter (see template in Annex E6) includes a statement informing the applicant whether or not the application was received in time within the deadline for submission of applications.

For each proposal,

- ☐ The original is kept safely in the archives of the Contracting Authority;
- ☐ The copies are distributed to the evaluators and, where appropriate, to the assessor(s).

	The Proposal Opening Report , which includes the minutes of the Proposal Opening Session, must be signed by the members of the Evaluation Committee (see template in Annex E5). It must state:
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	<ul style="list-style-type: none"> ❑ The date, time and place of the session; ❑ The persons present; ❑ The names of the applicants who submitted proposals within the stipulated deadline; and ❑ The names of the applicants who submitted proposals after the stipulated deadline;
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6.3.8.3 ASSESSMENT OF ADMINISTRATIVE COMPLIANCE AND ELIGIBILITY


This assessment must be carried out using the administrative compliance and eligibility grid (see Annex E7) using the criteria set out in the Guidelines for Applicants. **Under no circumstances may assessors or members of the Evaluation Committee change the administrative compliance and eligibility grid communicated to the applicants in the Guidelines for Applicants.**

- ❑ Administrative compliance: is the dossier complete? In case some document is missing or some part of the application form is not completed, completion will be required from the applicant within 48 hours.
- ❑ Eligibility: are the applicant, the partners and the project eligible? This is assessed according to the criteria set out in the Guidelines for Applicants. The ineligible proposal will not be considered for further evaluation.

The administrative compliance and eligibility grid included in the Guidelines for Applicants (see Annex E7) must be used to record the compliance of each of the proposals with the requirements of the Guidelines for Applicants. The proposals not considered for further evaluation must be kept by the Contracting Authority. A standard letter (see Annex E9) must be sent by the Contracting Authority to those applicants who are ineligible and/or whose proposals have been found to be non-compliant even after the 48-hour period of grace (stating the requirement(s) with which their proposals failed to comply).

The assessment of administrative compliance and eligibility may be carried out by members of the Evaluation Committee or by assessors.

If the members of the Evaluation Committee do not carry out the assessment themselves, the Evaluation Committee must review the conclusions of the assessors on the basis of their completed administrative compliance and eligibility grids. In order to facilitate the Evaluation Committee's review of the assessments, the Secretary to the Evaluation Committee must ensure that two lists are established: one containing the proposals which are ineligible and one containing those which have problems of administrative compliance. For each entry on a list, the reason(s) for the ineligibility or the administrative problem(s) must be identified.

	<p>The first part of the Evaluation Report, concerning the administrative compliance and eligibility, which comprises the checklists on administrative compliance and eligibility and the minutes of this session, must be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee (see template in Annex E11). It must state:</p> <ul style="list-style-type: none"> ❑ The date, time and place of the session; ❑ The persons present; ❑ The names of any applicants whose proposals were found to be non-compliant and the requirement(s) with which their proposals failed to comply; <p>The checklists must specify the missing documents and the eligibility criteria which have not been met and the reasons for this.</p>
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6.3.8.4 ASSESSMENT OF TECHNICAL AND FINANCIAL QUALITY

The quality of all eligible proposals will be assessed by at least two different people (who may be either members of the Evaluation Committee or assessors) on the basis of the evaluation grid (see Annex E10). A score is given for each sub-heading. Comments are made for each heading, on the basis of the questions and criteria used for that heading. In particular cases, comments may need to be made for specific subheadings. The overall assessment is based on the scores obtained under each subheading, multiplied by the weight of that subheading (where applicable) and added up by heading. The final score is the mathematical average of the scores given by the two people examining each proposal.

The Secretary will then prepare a list of all the proposals, ranked by score. In addition, the Evaluation Committee should also receive a summary of the findings of each person reviewing the proposals. The two sets of scores, including the specific score obtained for each heading, must be included in this summary.

6.3.8.5 CONCLUSIONS OF THE EVALUATION COMMITTEE


The Evaluation Committee will draw up its recommendations after the assessors have examined all the proposals. The Evaluation Committee must not change the assessors' scores or recommendations and must not alter the evaluation grids completed by the assessors.

Nonetheless, the Evaluation Committee may decide to select proposals with a lower score than other proposals which it has not selected, if

there are good reasons for doing so. In this event, the members of the Evaluation Committee must carry out their own assessments of specific proposals using the same evaluation grid (in accordance with the rules set out in Section 6.3.8.4).

All such decisions must be recorded and fully justified in the Evaluation Report. The evaluation grids completed by the members of the Evaluation Committee must be kept with those completed by the assessors.

The Evaluation Committee's decisions are taken independently and in an advisory capacity. The Evaluation Committee must ultimately draw up a list of the proposals selected for financing, indicating the proposed amount to be financed.

	<p>The second part of the Evaluation Report, on the technical and financial quality of proposals is drawn up following the final meeting of the Evaluation Committee. It comprises the evaluation grids and the minutes of the evaluation sessions and must be signed by all members of the Evaluation Committee. It must state:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The date, time and place of the session; <input type="checkbox"/> The persons present; <input type="checkbox"/> The successful applicants and the recommended grant amounts to be awarded to them; <input type="checkbox"/> The unsuccessful applicants and reasons for non-selection
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DECENTRALISED: EX-ANTE

The entire evaluation procedure is recorded in an Evaluation Report (see template in Annex E11) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee and submitted to the Contracting Authority, which must decide whether or not to accept its recommendations. The Contracting Authority must then submit the Evaluation Report and any award proposals to the European Commission for approval.

Once this approval has been received, the Contracting Authority will commence awarding the grants (see Section 6.3.9).

DECENTRALISED: EX-POST

The entire evaluation procedure is recorded in an Evaluation Report (see template in Annex E11) to be signed by the Chairman, the Secretary and all voting members of the Evaluation Committee and submitted to the Contracting Authority, which must decide whether or not to accept its recommendations. No prior approval from the European Commission is required.



The entire procedure, from the drawing-up of the Call for Proposals to the selection of successful applicants, is confidential. The Evaluation Committee's decisions are collective and its deliberations must remain secret. The committee members are bound to secrecy.

The Evaluation Report, in particular, is for official use only and may be divulged neither to applicants nor to any party outside the authorised departments of the Contracting Authority, the European Commission and the European Court of Auditors.

**PROCEDURE FOR CARRYING OUT
CALLS FOR PROPOSALS**

**PUBLISH NOTICE AND GUIDELINES FOR APPLICANTS FOR THE
CALL FOR PROPOSALS**

Must be sent to the European Commission **at least 15 days** before
the intended date of publication

At least 90 days

RECEIVE AND REGISTER PROPOSALS

Applicants submit their proposals with standard application forms
included with the Guidelines for Applicants

EVALUATION COMMITTEE MEETS TO:

OPEN PROPOSALS

Check registration details and distribute copies of the proposals
Send acknowledgement letters

ASSESS ADMINISTRATIVE COMPLIANCE

Check that the requirements made in the Guidelines for Applications
have been satisfied and all parts of the Application Form have been
completed

If documents or information have not been supplied, applicant must
be asked to provide them within 48 hours

ASSESS COMPLIANCE WITH ELIGIBILITY CRITERIA

Apply the eligibility criteria in Section 6.1.4

EVALUATION COMMITTEE MEETS TO:

CONSIDER ADMINISTRATIVE COMPLIANCE AND ELIGIBILITY

Prepare the first part of the Evaluation Report (on administrative
compliance and eligibility of proposals)
Send letters to non-compliant and ineligible applicants

**ASSESS TECHNICAL AND FINANCIAL QUALITY OF ALL
ELIGIBLE PROPOSALS**

Apply the evaluation grid published in the Guidelines for Applicants

EVALUATION COMMITTEE MEETS TO:

**CONSIDER ASSESSMENTS AND MAKE RECOMMENDATIONS
FOR GRANTS TO BE AWARDED**

Assessors may be called to present their findings and make their
recommendations
Prepare the second part of the Evaluation Report (on the technical
and financial quality of proposals)

6.3.9 AWARDING GRANTS

6.3.9.1 NOTIFYING THE SUCCESSFUL APPLICANTS

DECENTRALISED: EX-ANTE

After the Contracting Authority and the European Commission have given their official approval to the final list of grants to be awarded, the Contracting Authority notifies the successful applicants in writing that their applications have been selected.

The Contracting Authority must also send the unsuccessful applicants a standard letter informing them that they have not been selected and specifying the reasons.

DECENTRALISED: EX-POST

The Contracting Authority notifies the successful applicants in writing that their applications have been selected. No prior approval from the European Commission is required.

The Contracting Authority must also send the unsuccessful applicants a standard letter informing them that they have not been selected and specifying the reasons.

6.3.9.2 CONTRACT PREPARATION

In preparing grant contracts for each of the successful applicants on the final list, the Contracting Authority has to go through the following steps:

- 1) Prepare grant contracts using the standard contract format (see Annex E3), which is mandatory for all grants of €10,000 or above.
- 2) Prepare a general background dossier containing information applicable to all grant contracts to be concluded as a result of the Call for Proposals, using the following structure:

- a) Explanatory note using the format in Annex A6
- b) Copy of the Call for Proposals notice, Proposal Opening Report, Evaluation Report, the list of grants to be awarded, and any other relevant information
- c) Copy of the Guidelines for Applicants

- 3) Prepare a dossier for each grant contract to be concluded as a result of the Call for Proposals using the following structure:

Four copies of the specific parts of the proposed contract prepared

using the standard grant contract (see Annex E3):

- ❑ Special Conditions (Any additions to or derogations from the General Conditions must be specified in article 7 of the Special Conditions, which is provided for that purpose)
- ❑ Description of the project
- ❑ General Conditions
- ❑ Budget of the project
- ❑ Contract award procedures to be used if services, supplies or works need to be procured as part of a project funded by a grant



The standard contract annexes for the General Conditions and contract award procedures (see Annex E3) must be reproduced without modification in every grant contract. The Special Conditions and Budget of the project must be completed by the Contracting Authority.

Features of the standard grant contract

- It acknowledges the autonomy of the Beneficiary in implementing the operation and lays down simplified management rules accordingly. In particular the Beneficiary is given the possibility to adapt and modify the project without the prior agreement of the Contracting Authority provided that the modifications are not substantial and do not exceed 10 % of any budget heading.
- The advance, covering as the case may be 80 % of the contract amount or 80% of the first annual budget, is paid on signature of the contract by both parties. Thereafter, for larger contracts, an intermediate report is sent together with a request for payment once a year, as soon as 70% of the previous payment has been used. The balance is paid upon approval of the final report. The Beneficiary does not have to send supporting documents to the Contracting Authority but must keep them for control and audit purposes until five years after the end of the contract.
- The Community finances a given percentage of the operation's total eligible costs, not a specific part of the operation. If at the end of the project the actual costs have been lower than planned, the grant is reduced proportionately.
- An audit, whether of the operation or of the Beneficiary, is required if the grant is for €100,000 or more. Moreover, an annual audit is required if the operation lasts for 18 months or more. In addition, a financial guarantee is required to secure any advance of €1,000,000 or more.

DECENTRALISED: EX-ANTE

- 4) Sign all copies of each contract and send the contract dossier to the European Commission for approval and endorsement. When a Call for Proposals results in the award of a large number of grants which all have the same grant contract conditions, the European Commission need not endorse contracts individually but must approve and endorse the list of grants to be awarded. This list must include all the elements necessary to conclude the contracts (including the applicant details, grant amount and contract duration). This 'global endorsement' approach can only be used if the Contracting Authority confirms that there are no derogations (either in the special conditions or in the proposed contract annexes) from the standard contract conditions annexed to the Guidelines for Applicants for the Call for Proposals.

DECENTRALISED: EX-POST

- 4) Sign all copies of the contract.


- 5) send all four signed copies of each contract to the appropriate successful applicant, who must countersign them within 30 days of receipt and return three copies to the Contracting Authority together with any financial guarantee required in the contract.

DECENTRALISED: EX-ANTE

- 6) on receipt of the three signed copies from the successful applicant, the Contracting Authority keeps one in a secure contract archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the European Commission. A copy of the signed contract must be sent to the Project Manager.


DECENTRALISED: EX-POST

- 6) on receipt of the three signed copies from the successful applicant, the Contracting Authority keeps one in a secure contracts archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the Project Manager.


	The Contracting Authority and the grant beneficiary must note on the contract the date on which they are signing it. It is the later date of signature which is the date of effect of the contract. A contract <u>cannot</u> cover earlier activities or enter into force before this date.
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6.3.9.3 PUBLICISING THE AWARD OF GRANTS

Once the contracts have been signed, the Contracting Authority must prepare a grant contract award notice (using the template in Annex E14) and send it to the European Commission, which publishes the results of the Call for Proposals in the Official Journal, on the Internet and in any other appropriate media. In addition, the Contracting Authority must record all statistical information concerning the contract award procedure (via the PERSEUS system for Phare) including the grant amounts, the names of the applicants, and details of the successful applicants).

	The Contracting Authority is responsible for preparing the grant contracts award notice using the template in Annex E14 and for submitting it in electronic form to the European Commission for publication.
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6.4 LOCAL CALL FOR PROPOSALS

	The measures applicable to an international Call for Proposals, as described in section 6.3, apply by analogy to a local Call for Proposals, except as specified below.
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In a local Call for Proposals, the Call for Proposals notice and Guidelines for Applicants are published only in the beneficiary country.

DECENTRALISED: EX-ANTE

The minimum period between the date of publication of the Call for Proposals notice and the deadline for receipt of proposals is 60 days. However, in exceptional cases, and with the prior authorisation of the European Commission, this period may be shorter.

DECENTRALISED: EX-POST

The minimum period between the date of publication of the Call for Proposals notice and the deadline for receipt of proposals is 60 days. However, in exceptional cases, this period may be shorter.

As the cost of publishing the full Call for Proposals notice in the local media may be prohibitive, the template in Annex E2 gives the minimum information which must be included in a local advertisement. However, the full Call for Proposals notice and Guidelines for Applicants must be available from the address referred to in the advertisement.

6.5 MODIFYING GRANT CONTRACTS


Grant contracts may need to be modified during their duration if the circumstances affecting project implementation have changed since the initial contract was signed. Grant contract modifications must be formalised through an addendum to the contract. Such an addendum must be signed by the contracting parties (and, under a decentralised ex-ante system, approved and endorsed by the European Commission).

Changes of address, changes of bank account, and changes of auditor may simply be notified in writing by the grant beneficiary to the Contracting Authority, although this shall not affect the right of the Contracting Authority to oppose the grant beneficiary's choice of bank account or auditor.

6.5.1 GENERAL PRINCIPLES

The following **general principles** must always be respected:


- ❑ A grant beneficiary's requests for grant contract modifications should not automatically be accepted by the Contracting Authority. There must be justified reasons for modifying a grant contract. The Contracting Authority must examine the reasons given, and reject requests which have little or no substantiation.
- ❑ **Grant contract modifications can only be made within the period of execution of the contract and cannot be effected retroactively.**
- ❑ The purpose of the addendum must be closely connected with the nature of the project covered by the initial grant contract.
- ❑ Unit prices must be identical to those in the initial contract.
- ❑ Any modification extending the duration of the performance period of the contract must be such that implementation and final payments can be completed before the expiry of the Financing Memorandum under which the initial grant contract was financed.

	Requests for contract modifications to grant contracts must be made (by one contracting party to the other) allowing at least 30 days for the addendum to be signed before the end of the period of execution of the initial contract.
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6.5.2 PREPARING AN ADDENDUM

In preparing the addendum, the Contracting Authority has to go through the following steps:

- 1) Use the standard template for an addendum (see Annex A7)

	All references in the proposed addendum to article numbers and/or annexes to be modified must correspond to those in the initial contract
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Any addendum modifying the budget must include a replacement budget showing how the full budget breakdown of the initial grant contract has been modified by this addendum (and any previous addenda). The following column headings should be used:

Budget Item	Initial contract budget	Addendum 1	(Addendum 2 ...)	Revised budget



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

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

2) Prepare a dossier using the following structure:

- Explanatory note (see template in Annex A6) providing a technical and financial justification for making the modifications in the proposed addendum
- Copy of the grant beneficiary's request for (or agreement to) the proposed modifications
- Copy of the Financing Memorandum authorising the project
- Copy of the initial grant contract and any subsequent addenda
- Four copies of the proposed addendum, which is based on the standard addendum template (see Annex A7) and includes any revised annexes

DECENTRALISED: EX-ANTE

- Sign all copies of the addendum and send the addendum dossier to the European Commission for approval and endorsement.

DECENTRALISED: EX-POST

- Sign all copies of the addendum. No prior approval or endorsement by the European Commission is required.


- Send all four signed copies of the addendum to the grant beneficiary, who must countersign them within 30 days of receipt and return three copies to the Contracting Authority together with any financial guarantee required in the addendum.


DECENTRALISED: EX-ANTE

- 5) On receipt of the three signed copies from the grant beneficiary, the Contracting Authority keeps one in a secure contract archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the European Commission. A copy of the signed addendum must be sent to the Project Manager.

DECENTRALISED: EX-POST

- 5) on receipt of the three signed copies from the grant beneficiary, the Contracting Authority keeps one in a secure contracts archive, one copy is sent to the financial service in charge of payments and the third copy is sent to the Project Manager.

	<p>The Contracting Authority and the grant beneficiary must note on the addendum the date on which they are signing it. It is the later date of signature which is the date of effect of the addendum. An addendum <u>cannot</u> cover earlier activities or enter into force before this date.</p>
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	<p>All projects funded by the European Communities are subject to audit at any stage, whether during the award process, during execution of the project or once the project has been completed.</p> <p>Contracting Authorities must retain all selection and grant documentation for a period of five years after the completion of a project. These documents must be made available for inspection by the European Commission and the European Court of Auditors.</p>
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