

RULES AND PROCEDURES

**FOR SERVICE, SUPPLY AND WORKS
CONTRACTS FINANCED FROM THE
GENERAL BUDGET OF THE EUROPEAN
COMMUNITIES IN THE CONTEXT OF
COOPERATION WITH THIRD COUNTRIES**

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PART I
BASIC RULES GOVERNING
PROCUREMENT CONTRACTS

I.1. Legal basis

Where contracts for services, supplies and works financed by the Community and concluded in the context of Community cooperation with third countries financed by the general budget of the European Union are awarded by a contracting authority of the beneficiary country or by the Commission for and on behalf of the beneficiary, procurement procedures are governed by the following legal framework:

- Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, and in particular Title IV of Part Two thereof, which specifically concerns external actions;
- Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, and in particular Chapter III of Title III thereof, which specifically concerns procurement aspects of external actions;
- the Regulations and other specific instruments relating to the various cooperation programmes.

These rules and procedures govern the award of service, supply and works contracts financed from the general budget of the European Communities, with the exception of contracts for which the Commission acts as contracting authority on its own account. The Commission will ensure that contracting authorities adhere to the terms of these rules and procedures. They set out the principles and conditions governing participation in and award of contracts, except where the legislation – in particular the provisions of the acts specific to each cooperation programme – provides otherwise. The authorising officer by delegation will adopt measures to implement these rules, including standard contracts and operational instructions, in association with the relevant departments of the European Commission.

The award of service, supply and works contracts financed by the European Development Fund is governed by another set of general regulations. Under the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000, the ACP-EC Council of Ministers adopted, by Decision No 2/2002 of 7 October 2002, new general regulations governing the 9th EDF which are very similar to those in this text.

These rules and procedures do not apply to operations carried out under Council Regulation (EC) No 1257/96.¹ These actions are governed by the above-mentioned Regulation and the specific Partenariat Framework Contract from which it derives, in conformity with Article 184 of the Implementing Rules. Parts I to IV of these rules and procedures apply to the contracting authorities referred to in Article 187(1)(a) and (1)(b) of the Financial Regulation. However, they do not apply to the contracting authorities referred to in Article 167(1)(b) of the Financial Regulation where, following the checks referred to in Article 164, the Commission has authorised them to use their own procurement procedures in the context of decentralised management.

¹ OJ L 163, 2.07.1996, p.1-6 Council Regulation of 20 June 1996 concerning humanitarian aid.

Part V of these rules and procedures apply to the contracting authorities referred to in Article 167(1)(c) of the Financial Regulation.

In the context of the SAPARD² programme, the provisions of these rules and procedures apply to decentralised management referred to in Article 164(1) of the Financial Regulation, as specified in the financing agreements established with the beneficiary third countries and in accordance with the principles defined in Article 167(2) of the Financial Regulation.

I.2. Eligibility for contracts

The provisions governing who may participate in tender procedures and contracts are termed "eligibility criteria". They are based on the nationality of natural and legal persons and the origin of supplies.

I.2.1 The rule on nationality and origin

(a) Participation in competitive tendering is open on equal terms to all persons coming within the scope of the Treaties and, in accordance with the specific provisions in the basic instruments governing the cooperation sector concerned, to all natural and legal persons who are nationals of the beneficiary third countries or of any other third country as are expressly mentioned in those instruments.

(b) In duly substantiated exceptional cases, it may be decided, on the basis of the specific conditions laid down in the basic acts governing cooperation, to allow third-country nationals other than those referred to in paragraph (a) to tender for contracts.

(c) Where an agreement on widening the market for procurement of goods or services to which the Community is party applies, the contracts for procurement financed by the budget are also open to third-country nationals other than those referred to in paragraphs (a) and (b), under the conditions laid down in that agreement.

(d) This nationality rule also applies to the experts proposed by service providers taking part in tender procedures or service contracts financed by the 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 usual proof of nationality under their national legislation.

(e) All supplies purchased under a supply contract must originate in the Community or an "eligible" country as defined in (a). 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 project once the contract is completed.

² Regulations 1266/1999, 1268/1999 and 2222/2000

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. Which of these options is to apply must be specified in the contract concerned.

Origin certificates 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 beneficiary country's contracting authority to check that there is an origin certificate. Where there are serious doubts about origin, it is for the Commission's departments in Brussels to decide on the course of action.

I.2.2 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 Commission.

- (a) With regard to nationality, the 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 point (a) above. Note, however, that the frequently used argument that a product of ineligible origin is cheaper than the Community or local product does not automatically constitute grounds for awarding a derogation.

I.2.3 Grounds for exclusion from participation in contracts

Candidates or tenderers are excluded from participation in a procurement procedure 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, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of *res judicata*;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;

(e) they have been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

(f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

The contracting authority will accept, as satisfactory evidence that the candidate or tenderer is not in one of the situations described in points (a), (b) or (e), production of a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The contracting authority will accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (d), a recent certificate issued by the competent authority of the Member State concerned. Where no such certificate is issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in its country of origin or provenance. Depending on the national legislation of the country in which the tenderer or candidate is established, the above documents relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.

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.

I.2.4 Exclusion from award of contracts

Contracts may not be awarded to candidates or tenderers which, during the procurement procedure:

(a) are subject to a conflict of interest;

(b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.

I.2.5 Administrative and financial penalties

Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors which have been guilty of making false declarations or have been found to have seriously failed to meet their contractual obligations in an earlier procurement procedure will be excluded from the award of all procurement contracts and grants financed from the Community budget for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor. That period may be increased to three years in the event of a repeat offence within five years of the first infringement.

Tenderers or candidates which have been guilty of making false declarations will also incur financial penalties representing 2% to 10% of the total value of the contract being awarded. Contractors which have been found to have seriously failed to meet their contractual obligations will incur financial penalties representing 2% to 10% of the total value of the contract in question. That rate may be increased to 4% to 20% in the event of a repeat offence within five years of the first infringement.

In the cases referred to in Article 93(1)(a), (c), (d) and (f) of the Financial Regulation, the candidates or tenderers will be excluded from the award of all procurement contracts and grants for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor.

In the cases referred to in Article 93(1)(b) and (e) of the Financial Regulation, the candidates or tenderers will be excluded from the award of all procurement contracts and grants for a minimum of one year and a maximum of four years from the date of notification of the judgement.

Those periods may be increased to five years in the event of a repeat offence within five years of the first infringement or the first judgement.

The cases referred to in Article 93(1)(e) of the Financial Regulation are the following:

- (a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995;³
- (b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997;⁴
- (c) cases of participation in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council;⁵
- (d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC.⁶

³ OJ C 316, 27.11.1995, p.48.

⁴ OJ C 195, 25.6.1997, p.1.

⁵ OJ C 351, 29.12.1998, p.1. Joint Action of 21 December 1998 making it a criminal offence to participate in a criminal organisation in the Member States of the European Union.

⁶ OJ C 166, 28.6.1991, p.77. Directive of 10 June 1991, as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 (OJ L 344, 28.12.2001, p.76).

Where the award procedure or performance of the contract is vitiated by substantial errors or irregularities or by fraud, the Commission will suspend performance of the contract. Where such errors, irregularities or fraud are attributable to the contractor, the Commission may in addition refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud.

The purpose of suspending the contract shall be to verify whether presumed substantial errors and irregularities or fraud have actually occurred. If they are not confirmed, performance of the contract will resume as soon as possible. A substantial error or irregularity is any infringement of a provision of a contract or regulation resulting from an act or an omission which causes or might cause a loss to the Community budget.

I.3. Contract award procedures

The basic principle governing the award of procurement contracts is competitive tendering. The purpose is twofold: (i) to ensure the transparency of operations and (ii) to obtain the desired quality of services, supplies or works at the best possible price. The applicable regulations oblige the Commission and the beneficiary 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:

I.3.1 Open procedure

The open procedure involves an open invitation to take part in competitive tendering. The contract is given maximum publicity through the publication of a notice in the Official Journal of the European Union, on the Internet and in any other appropriate media.

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 (i.e. verification of the eligibility and of the financial, economic, technical and professional standing of tenderers) and the award procedure (i.e. comparison of tenders), in accordance with section I.4 ("Selection and award criteria"). No negotiation is allowed.

I.3.2 Restricted procedure

Under the restricted procedure, the contracting authority invites a limited number of candidates to tender. Before launching a tender procedure, it draws up a shortlist of candidates selected as a result of their qualifications on the basis of a published procurement notice.

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, in most cases, a procurement notice published in the Official Journal of the European Union, on the Internet and in any other appropriate media.

In the second stage of the procedure, the contracting authority invites tenders from shortlisted candidates, sending them the tender dossier. The successful tenderer is chosen by the award procedure once the tenders have been analysed (see section I. 4 "Selection and award criteria"). No negotiation is allowed.

I.3.3 Competitive negotiated procedure

Under the competitive negotiated procedure, the contracting authority consults candidates of its choice and establishes contract conditions with them on the basis of the specifications. At the end of the procedure, the contracting authority selects the most economically advantageous tender.

I.3.4 Framework contracts

A framework contract is a contract concluded between a contracting authority and an economic operator for the purpose of laying down the essential terms governing a series of specific contracts to be awarded during a given period, in particular as regards the duration, subject, prices, conditions of performance and the quantities envisaged.

The contracting authority may also conclude multiple framework contracts, which are separate contracts with identical terms awarded to a number of suppliers or service providers. The tender dossier will then specify the maximum number of operators with whom the contracting authority will conclude contracts.

For each specific contract (assignment), the contracting authority invites the contractors on the list to submit an offer within the bounds of their framework contracts. It then selects the most economically advantageous tender.

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

Specific contracts based on the framework contracts referred to above will be awarded in accordance with the terms laid down in the framework contract. Only specific contracts concluded under framework contracts will be preceded by a budget commitment.

I.3.5 In-house implementation of operations (programme estimate)

In the case of operations implemented in-house, the project is executed by the public bodies in the beneficiary state concerned (direct labour). The Community's involvement is limited to financing temporary and additional costs, e.g. the purchase of supplies or materials needed for the project.

I.3.6 Tendering arrangements

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

In the case of mixed contracts covering a combination of works, supplies or services, the contracting authority, in agreement with the Commission, determines the award procedure to be used. This will depend on which of the components (works, supplies or services) predominates, an assessment which will be made on the basis of its value and strategic importance relative to the contract as a whole.

No contract may be split simply to evade compliance with the procedures set out in these rules and procedures. If there is any doubt about how to estimate the value of the contract, the contracting authority must consult the Commission on the matter before embarking on the procurement procedure.

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.

I.4. Selection and award criteria

The award of procurement contracts by open or restricted procedure is always carried out by taking into consideration the following:

I.4.1 Selection criteria

I.4.1.1 General principles

The contracting authorities must draw up clear and non-discriminatory selection criteria. The following selection criteria apply in every procurement procedure:

- (a) the eligibility of the tenderer or candidate to take part in the procedure, checks having been carried out on the possible grounds for exclusion referred to in these rules and procedures;
- (b) criteria for assessing its financial, economic, technical and professional capacity.

The contracting authority may lay down minimum capacity levels below which it cannot select candidates. Any tenderer or candidate may be asked to prove that it is authorised to perform the contract under national law, as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.

The contracting authorities must specify in the procurement notice, or in the call for expressions of interest or the invitation to tender, the references chosen to test the status and the legal capacity of tenderers or candidates.

The information requested by the contracting authority as proof of the financial, economic, technical and professional capacity of the candidate or tenderer may not go beyond the subject of the contract and must take account of the legitimate interests of the economic operators as regards in particular the protection of the firm's technical and business secrets.

I.4.1.2 Verification of the eligibility of tenderers or candidates

This is done as set out in section I.2 "Eligibility for contracts".

I.4.1.3 Verification of the financial and economic standing of tenderers or candidates

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

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

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

An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

I.4.1.4 Verification of the technical and professional capacities of tenderers, candidates and their managerial staff

The technical and professional capacity of economic operators must be evaluated and verified in accordance with the following paragraph. In procurement procedures for supplies requiring siting or installation operations, services and/or works, such capacity must be assessed with particular reference to their know-how, efficiency, experience and reliability.

Evidence of such capacity may, depending on the nature, quantity or scale and purpose of the supplies, services or works to be provided, be furnished on the basis of the following documents:

- (a) the educational and professional qualifications of the service provider or contractor and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services or carrying out the works;
- (b) a list:
 - (i) of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private; Where the services or supplies were provided to contracting authorities, evidence of performance must take the form of certificates issued or countersigned by the competent authority;
 - (ii) of the works carried out in the last five years, with the sums, dates and place. The list of the most important works must be accompanied by certificates of satisfactory execution, specifying whether they have been carried out in a professional manner and have been fully completed;
- (c) a description of the technical equipment, tools and plant to be employed by the firm for performing a service or works contract;
- (d) a description of the measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;
- (e) an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;
- (f) in respect of supplies: samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products with the specifications or standards in force;
- (g) a statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;

- (h) an indication of the proportion of the contract which the service provider may intend to subcontract.

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

An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

I.4.2 Award criteria

Contracts are awarded in one of the two following ways:

- (a) under the automatic award procedure, in which case the contract is awarded to the tender which, while being in order and satisfying the conditions laid down, quotes the lowest price; or
- (b) under the best-value-for-money procedure.

I.5. Tender procedure with "suspension clause"

In duly substantiated exceptional cases, tender procedures may be published with a suspension clause. This means that a tender procedure is issued before a financing decision is issued or a financing agreement signed between the Commission and the beneficiary; the award of that contract is therefore subject to the conclusion of the financing agreement 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 cancelled if the Commission's decision-making procedure is not completed or the financing agreement is not signed.

I.6. Cancellation of award procedures

The contracting authority may, before the contract is signed, either abandon the procurement contract, or cancel the contract award procedure without the candidates or tenderers being entitled to claim any compensation. 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. Cancellation may occur where:

- (a) the tender procedure has remained unsuccessful, i.e. 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) where all technically compliant tenders exceed the financial resources available;
- (e) where there have been serious irregularities in the procedure, in particular where these have prevented normal competition.

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

- to launch a new tender procedure;
- to open negotiations with one or more tenderers which comply with the selection criteria and have submitted technically compliant tenders, provided that the original terms of the contract have not been substantially altered;
- not to award the contract.

Whatever the case, the final decision is taken by the contracting authority (with the agreement of the Commission in the case of contracts awarded by the beneficiary).

I.7. Ethics clauses

Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the 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 he is affected by no potential conflict of interest, and that he 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.

The contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of its profession. He must refrain from making public statements about the project or services without the contracting authority's prior approval. He 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 state.

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

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

The 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 and if the contracting authority fails to take all appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are the offer of a bribe, gift, gratuity or commission to any person as an inducement or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the contracting authority.

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

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

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

I.8. Appeals

Tenderers believing that they have been harmed by an error or irregularity during a selection or procurement procedure may petition the contracting authority directly (informing the Commission, where the latter is not itself the contracting authority). The contracting authority must reply within 90 days of receipt of the complaint.

Where informed of such a complaint, the 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's national legislation in the case of a contract for which the contracting authority is the beneficiary, or
- procedures established under Community legislation in the case of a contract for which the Commission is the contracting authority.

European citizens also have the right to complain to the European Ombudsman, who investigates complaints of maladministration by the European Community institutions.

Should a contracting authority fail to adhere to the contract award procedures provided for in these rules and procedures, the Commission reserves the right to suspend, withhold or recover funding for the contracts under suspicion.

I.9. Specific rules governing real estate contracts

The only buildings contracts which may be financed from operating appropriations for external actions are those relating to the renting of buildings already constructed at the time the lease is signed. These contracts may be awarded by negotiated procedure after prospecting the local market and after the prior approval of the Commission, if it is not the contracting authority.

PART II
SPECIFIC RULES GOVERNING
SERVICE CONTRACTS

II.1. Introduction

Technical and economic support in the course of cooperation 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, i.e. the contractor must provide a given product: the technical and operational means by which he 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 or to provide the experts specified in the contract.

Technical assistance contracts often only specify the means, i.e. 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: he 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. Service contracts are concluded by the authority appointed in a financing agreement, i.e.:

- (a) either the Commission acting on behalf of the beneficiary (in the case of centralised contracts); or
- (b) the beneficiary, i.e. the government or a public entity of the beneficiary country with legal personality with which the Commission draws up a financing agreement (in the case of decentralised contracts).

In the latter case, the Commission and the beneficiary draw up shortlists in close consultation with each other. Before the procedure is launched, the beneficiary must submit tender dossiers to the Commission for approval. On the basis of decisions thus approved, and in close consultation with the Commission, it is responsible for launching tender procedures, receiving tenders, chairing tender-examination sessions and deciding on the results of tender procedures. The beneficiary then submits the result of this examination and the contract award proposal to the Commission for approval. Once it has received this approval, it signs the contracts and notifies the Commission accordingly. The Commission is normally represented when tenders are opened and evaluated and must always be formally invited.

Audit, evaluation and framework contracts are always concluded by the Commission for and on behalf of the beneficiary.

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

II.2. Award procedures

II.2.1 Contracts of EUR 200,000 or more

II.2.1.1 Restricted procedure

Service contracts are normally awarded by restricted procedure. As a rule, all service contracts worth EUR 200,000 or more must be awarded by restricted tender procedure following publication of a contract forecast and a procurement notice as laid down in section II.3.1 "Publicity".

II.2.1.2 Negotiated procedure

For service contracts, contracting authorities may use the negotiated procedure on the basis of a single tender in the following cases, with the prior approval of the Commission, if the Commission is not the contracting authority:

- (a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in Article 91(1)(a), (b) and (c) of the Financial Regulation cannot be kept. The circumstances invoked to justify extreme urgency must in no way be attributable to the contracting authority.

Operations carried out in crisis situations as referred to in Article 168(2) of the implementing rules are considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate after consulting the other authorising officers by delegation concerned, will establish that a situation of extreme urgency exists and review his decision regularly with regard to the principle of sound financial management;

- (b) where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field;
- (c) where contracts extend activities already under way; there are two scenarios for this:
 - *complementary services* not included in the main contract but which, due to unforeseen circumstances, have become necessary to perform the contract, provided that the complementary services are technically and economically inseparable from the main contract without causing major inconvenience for the contracting authority, and that the aggregate amount of complementary services does not exceed 50% of the value of the main contract;
 - *additional services* consisting of the repetition of similar services entrusted to the contractor providing these services under the initial contract, provided that a procurement notice was published for the initial contract, and that the possibility of using the negotiated procedure for further services for the project as well as the estimated cost were clearly indicated in the procurement notice published for the initial contract;

The contract can be extended only once, such that the value and duration of the extension do not exceed the value and duration of the initial contract.

- (d) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, provided that the initial conditions of the tender procedure are not substantially altered and that the principle of fair competition is observed;
- (e) where the contract concerned follows a contest and must, under the applicable rules, be awarded to the winner of the contest or to one of the winners, in which case, all winners must be invited to participate in the negotiations;
- (f) where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider.

II.2.2 Contracts under EUR 200,000

II.2.2.1 Framework contracts and competitive negotiated procedure

Contracts of a value of under EUR 200,000 may be awarded either under the framework contract procedure or under a competitive negotiated procedure involving at least three candidates. This does not apply to cases in which section II.2.1.2 provides for the negotiated procedure.

II.3. Restricted tender procedures (for contracts of EUR 200,000 or more)

II.3.1 Publicity

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

II.3.1.1 Publication of contract forecasts

The contract forecasts must give a brief indication of the subject, content and value of the contracts concerned. They must be published in the Official Journal of the European Union, on the Internet and in any other appropriate media. Given that they are forecasts, publication does not bind the Commission to finance the contracts proposed, and suppliers are not expected to submit expressions of interest at this stage.

An initial, global contract forecast setting out the estimated total value of contracts, by category of service, which the contracting authorities intend to award during a financial year must be sent to the Office for Official Publications of the European Union as early as possible in the year, and in any event before 31 March each year, provided the contracting authority is planning to invite tenders for more than one service contract and the total value of such contracts is EUR 750,000 or more. A second, individual contract forecast, setting out the specific characteristics of the planned tender procedure, must be published, save in exceptional circumstances, at least 30 days before the publication of the procurement notice. Where the conditions for publishing a global contract forecast are not met, the contracting authority need only publish an individual contract forecast.

II.3.1.2 Publication of service procurement notices

In addition to contract forecasts, all service contracts of EUR 200,000 or more must also be the subject of a restricted procedure procurement notice published in the Official Journal of the European Union, on the Internet 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 specific 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. The time allowed for candidates to submit their applications must be sufficient to permit proper competition. The minimum deadline for submitting applications is 30 days from the date of the notice's publication in the Official Journal of the European Union and on the Internet. The actual deadline will be determined by the contract's size and complexity.

If the procurement notice is also published locally, it must be identical to the procurement notice published in the Official Journal of the European Union and on the Internet and must appear at the same time. The Commission is responsible for publication in the Official Journal of the European Union and on the Internet. If the notice is published locally, this may be done by the beneficiary.

II.3.2 Establishment of shortlists

Would-be service providers (individually or as part of a consortium) must accompany their applications with the information required in the procurement notice so that their capacity to fulfil the contract in question can be assessed. The selection procedure involves:

- eliminating any ineligible candidates (see section I.2 "Eligibility for contracts") or fall into one of the situations described in section I.7 "Ethics clauses";
- checking that the candidates' financial situation (financial and economic standing) is sound, as backed up, for example, by balance sheet extracts and turnover for the previous three years;
- verifying the candidates' technical and professional capabilities, backed up (i) where applicable, by the candidates' average annual staffing levels and the size and professional experience of their management and (ii) by the references to the main services supplied in the field in question in recent years.

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 shortlisted. The shortlist should contain a minimum of four candidates and a maximum of eight. Every procurement notice should specify a maximum and minimum number of candidates to be shortlisted.

Once a shortlist has been approved by the Commission (for centralised contracts) or the beneficiary and the Commission together (for decentralised contracts), shortlisted service providers or consortia may no longer form alliances or subcontract to each other for the contract in question.

The contracting authority may allow subcontracting with other suppliers provided that the tenderer's tender clearly provides for it, that the subcontractor complies with the eligibility conditions set out in section I.2 "Eligibility for contracts" and section I.7 "Ethics clauses" and that subcontracting does not account for an excessive proportion of the tender. The tender dossier must stipulate what the proportion is.

Candidates which are not selected will be informed of that fact. Candidates which are selected will receive a letter of invitation to tender and the tender dossier. At the same time, the final shortlist will be posted on the Internet.

II.3.3 Drafting and contents of the tender dossier

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

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.

The contracting authority is responsible for drawing up these documents. The contracting authority will send only the shortlisted candidates a letter of invitation to tender accompanied by a tender dossier comprising the following documents:

- instructions to tenderers, which must include: (i) the type of contract, (ii) the award criteria and their weightings, (iii) whether interviews are possible and when they are likely to be held, (iv) whether variants are allowed, (v) whether, and in what proportion, subcontracting is permitted, (vi) the maximum budget available for the contract and (vii) the currency of the tenders;
- the shortlist of candidates (stipulating that they cannot form alliances);
- general conditions for service contracts;
- specific conditions which amplify, supplement or derogate from the general conditions, and where they conflict, override them;
- terms of reference, with a provisional timetable for the project and provisional dates from which the key experts should be available;
- budget breakdown (for completion by the tenderer);
- tender submission form;
- contract form;
- format for a guarantee from a bank or a similar institution for pre-financing payments.

The tender dossier must clearly state whether or not the tender must be made with fixed, non-revisable prices. If not, the tender dossier must state the conditions and/or formulae for revising prices in the course of the contract. The contracting authority then takes particular account of:

- (a) the nature of the contract and the economic situation in which it is taking place;
- (b) the nature and duration of the tasks and of the contract;

(c) its financial interests.

A guarantee is required to cover any pre-financing payment exceeding EUR 150,000. It will be released as and when the pre-financing payment is deducted from interim payments or payments of balances made to the contractor in accordance with the terms of the contract.

II.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 subcriteria. 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 recipient 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 subcriteria. 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 details of the technical evaluation grid, with its criteria and subcriteria and their weightings.

II.3.5 Additional information during the procedure

The tender dossier should be clear enough to prevent service providers 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 a request from a tenderer, provides additional information on the tender dossier, it must send such information in writing to all other tenderers 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 to all tenderers' questions at least 11 days before the deadline for receipt of tenders.

II.3.6 Deadline for submission of tenders

Tenders must reach the contracting authority at the address and by no later than the date and time shown in the 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 minimum period between the dispatch of the letter of invitation to tender and the deadline for receipt of tenders is 50 days. However, in urgent cases, with prior authorisation from the Commission, periods may be shorter.

II.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 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 the 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.

II.3.8 Submission of tenders

Tenders must be submitted in accordance with the double envelope system, i.e. in an outer parcel or envelope containing two separate, sealed envelopes, one bearing the words "Envelope A – Technical offer" and the other "Envelope B – Financial offer".

Any infringement of this requirement (e.g. unsealed envelopes or references to price in the technical offer) will be regarded as 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 must bear:

- (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.

II.3.9 Opening 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.

Tenders are opened and evaluated by an evaluation committee made up of an odd number of members (at least three) possessing the technical and administrative capacities necessary to give an informed opinion on the tenders. The members of the committee must sign a declaration of impartiality.

In the case of decentralised contracts, the Commission is, as a general rule, represented by the Commission delegation accredited to the country concerned, acting as an observer. The Commission representative receives copies of the tenders received.

Only tenders in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.

Initially only the technical offers are opened. The sealed envelopes containing the financial offers are retained by the contracting authority once signed by members of the committee.

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.

Minutes are taken of the tender-opening session and signed by all members of the evaluation committee. They must state:

- the date, time and place of the session;
- the persons present;
- the names of the tenderers which have replied within the deadline;
- whether tenders were submitted using the double-envelope system;
- 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;
- the names of any tenderers which withdrew their tenders.

II.3.10 Evaluation of tenders

II.3.10.1 Evaluation of technical offers

Before 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 tenders are evaluated by the different members of the committee in a consistent manner.

The committee then opens the technical offers, the financial offers remaining sealed. The committee's evaluators receive copies of the technical offers. When evaluating technical offers, each evaluator awards each offer a score out of a maximum 100 points in accordance with the technical evaluation grid (setting out the technical criteria, subcriteria and weightings) laid down in the tender dossier (see section II.3 "Award criteria"). Under no circumstances may the committee or the evaluators change the technical evaluation grid communicated to tenderers in the tender dossier.

In practice, it is recommended that tenders be scored for each criterion in turn, 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 is automatically rejected and no points awarded.

If the tender dossier expressly permits variants, such variants are scored separately.

On completion of the technical evaluation, the points awarded by each member are compared at the committee's session. Besides giving their numerical scores, evaluators must explain the reasons for their choice and defend their scores before the committee. The committee discusses each technical offer and each member awards it a final score. The aggregate final score is the arithmetic average of the individual 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. 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 10 days' advance notice of the date and time of the interview. Where a tenderer is prevented from attending an interview by force majeure, another appointment will be given.

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.

The interview procedure is very costly both for tenderers and for the contracting authority and should therefore be used with restraint. It must be recorded in a report, which may lead to revision of the initial technical evaluation of the tender. If the contracting authority is the beneficiary, the Commission must approve the need for interviews. The indicative timetable for these interviews must be given in the tender dossier.

Once the committee has established each technical offer's final score (the arithmetic average of the scores awarded by each 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 by means of the following formula:

Points = (initial score of the tender in question ÷ initial score of the best technical offer) x 100.

II.3.10.2 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 are opened and signed by the committee at the session. At the session, the committee checks that the financial offers contain no arithmetic errors. Any arithmetic errors are corrected without prejudice to the tenderer.

Comparison of the financial offers takes account of all contract expenses (fees, direct or lump-sum costs, etc.) with the exception of expenses repayable on presentation of proof of payment. The tender dossier, which includes a price schedule, requires the tenderer to classify these costs. The committee must nevertheless check the conformity of this classification and correct it where necessary. Fees are set by the tenderer alone.

Financial offers exceeding the maximum budget allocated for the contract are eliminated.

The lowest financial offer receives 100 points. The others are awarded points by means of the following formula:

Points = (lowest financial offer ÷ financial offer being considered) x 100.

II.3.11 Award of the contract

II.3.11.1 Choice of contractor

The tender offering best value for money is selected using an 80/20 weighting distribution between technical quality and price. This is done by multiplying:

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

The resulting technical and financial scores are then added together, and the contract is awarded to the tender achieving the highest score.

The entire procedure (technical and financial evaluation) is recorded in a report to be signed by all members of the committee and approved, in the case of centralised contracts, by the Commission or, in that of decentralised contracts, by the beneficiary. In the latter case, the beneficiary submits the result of the tender evaluation and a contract award proposal to the Commission, which must decide whether or not to accept it. This report on the evaluation and ranking of requests to participate and tenders declared to satisfy the requirements is drawn up, dated and kept for future reference. It must contain at least the following:

- (a) the name and address of the contracting authority, and the subject and value of the contract or of the framework contract;
- (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
- (d) the names of the candidates or contractor proposed and the reasons for that choice and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties.

The contracting authority then takes its decision giving at least the following:

- (a) its name and address, and the subject and value of the contract or of the framework contract;
- (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
- (d) the names of the candidates or contractor selected and the reasons for that choice by reference to the selection and award criteria announced in advance and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties;
- (e) in the case of negotiated procedures, the circumstances referred to in these rules and procedures which justify their use;
- (f) where appropriate, the reasons why the contracting authority has decided not to award a contract.

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 (availability of experts) if the evaluation procedure takes too long.

The entire tender procedure, from the drawing-up of the shortlist to the notification of the successful tenderer, is strictly confidential. The committee's decisions are collective and its deliberations must remain secret. The committee members are bound to secrecy.

The evaluation reports and minutes, in particular, are for official use only and may be divulged neither to tenderers nor to any party outside the authorised departments of the beneficiary, the Commission and the supervisory authorities (Court of Auditors, etc.).

II.3.11.2 Notification of award of contract

The contracting authority informs candidates and tenderers of decisions reached concerning the award of the contract as soon as possible, including the grounds for any decision not to award a contract for which there has been competitive tendering or to recommence the procedure.

After the Commission has given its 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 selected.

Within not more than 15 days of receiving a written request, the contracting authority must notify all candidates or tenderers whose applications or tenders were rejected of the grounds on which the decision was taken, and all tenderers whose tenders were admissible and which make a request in writing of the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract was awarded. However, certain details need not be disclosed where disclosure would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between those undertakings.

Where a contract is awarded under a financing agreement, the contracting authority must not notify the successful tenderer unless the financing agreement has been concluded (see section I.5 "Tender procedure with suspension clause").

The contract award notice must be sent when the contract is signed. The Commission publishes the results of the tender procedure in the Official Journal, on the Internet and in any other appropriate media. Contract award notices must state the number of tenders received, the date of award of the contract, the name and address of the successful tenderer and the contract value.

II.3.11.3 Signing of the contract

Once signed by the contracting authority the contract is sent to the successful tenderer, which must countersign and return it within 30 days of receipt.

The contract must be dated. It may neither cover earlier services nor enter into force before the date on which it is signed by the parties. The parties are bound by the contract from the moment it is signed, hence the importance of carefully selecting the date.

II.3.12 Approval of experts

Where the Commission concludes a contract, it is required to notify the beneficiary, through the Delegation accredited to the country concerned, of the name of the successful tenderer and obtain its approval of the experts proposed. Such a request is not a request for approval of the Commission's evaluation.

The beneficiary may not withhold its approval unless it submits duly substantiated and justified objections to the proposed experts in writing to the Commission Delegation within 30 days of the date of the request for approval.

II.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. Should the contracting authority and the Commission learn that such facts have been concealed after the contract has been awarded, they may decide either to cancel the award of the contract and recommence the tender procedure or to award the contract to the tender awarded second place by the committee. Such behaviour may lead to a tenderer's exclusion from other Community contracts.

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 wishes 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. 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.

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

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

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.

Where a member of staff has to be replaced, the replacement must possess at least equivalent qualifications and experience and his 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 functions, the contracting authority may ask the contractor to assign a temporary expert to the project pending the new expert's arrival or to take other steps to bridge the gap. Whatever the case may be, the contracting authority will make no payment for the period of absence of the expert or his replacement (whether temporary or permanent).

II.4. Procedures for the award of contracts under EUR 200,000

II.4.1 Framework contracts

For service contracts under EUR 200,000 and with a performance period of under 12 months, the contracting authority may opt to use framework contracts.

Under this procedure, the Commission, acting for and on behalf of all the beneficiaries, uses a restricted tender procedure (see section II.3 above) with lots covering several different areas of technical specialisation to draw up lists of potential service providers. This saves having to draw up a shortlist of service providers for each ensuing contract.

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

For the purposes of specific contracts under EUR 200,000 and with a performance period of under 12 months, the Commission, acting for and on behalf of the recipient, sends the profile(s) of the expert(s) required to three service providers bound by a framework contract and figuring on the shortlist for the lot relating to the requisite area of specialisation.

The three companies approached have eight days in which to propose experts matching the profile sought at a rate within the bracket agreed when the framework contract was concluded. The Commission chooses the most economically advantageous tender and notifies the chosen contractor.

To ensure fair competition between companies shortlisted for each lot of the framework contract, the Commission should make sure that it consults them in rotation.

II.4.2 Competitive negotiated procedure

If recourse to the framework contract is unsuccessful or not possible, the contracting authority may award a contract under EUR 200,000 by competitive negotiated procedure, without publication.

The contracting authority draws up a list of at least three service providers 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 and by no later than the date and time shown in the invitation to tender. The chosen candidates must be allowed at least 30 days from the dispatch of the letter of invitation to tender 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 with the necessary technical and administrative expertise. The members of the committee must sign a declaration of impartiality. After evaluating the tenders, the committee identifies the most economically advantageous tender on the basis of technical quality and price. If the contracting authority does not receive at least three valid tenders, the procedure must be cancelled and started again.

However, the contracting authority may place orders for services of a value of EUR 5,000 or less on the basis of a single tender.

PART III
SPECIFIC RULES GOVERNING
SUPPLY CONTRACTS

III.1. Introduction

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

"Supplier" describes any natural or legal person furnishing supplies. A supplier submitting a tender is known as a "tenderer" and one applying to take part in a competitive negotiated procedure as a "candidate".

The contracting authority, which is always specified in the procurement notice, is the authority empowered to conclude the contract. Supply contracts are generally concluded by the beneficiary with which the Commission draws up a financing agreement (decentralised contracts).

The beneficiary must submit tender dossiers to the Commission for approval before issuing them. On the basis of decisions thus approved and in close consultation with the Commission, it is responsible for launching tender procedures, receiving tenders, chairing tender-examination sessions and deciding on the results of tender procedures. The beneficiary then submits the result of this examination and the contract award proposal to the Commission for approval. Once it has received this approval, it signs the contracts and notifies the Commission accordingly. The Commission is normally represented when tenders are opened and evaluated and must always be formally invited.

III.2. Award procedures

III.2.1 Contracts of EUR 150,000 or more

III.2.1.1 Open procedure

As a rule, supply contracts are the subject of an international open tender procedure following publication of a procurement notice. The Commission may, on behalf of the recipient, award framework contracts for repeat purchases of a given item or category of items.

III.2.1.2 Negotiated procedure

Supply contracts may be awarded by negotiated procedure on the basis of a single tender in the following cases, with the prior approval of the Commission, if it is not the contracting authority:

- (a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time-limit for the procedures referred to in points (a), (b) and (c) of Article 91(1) of the Financial Regulation cannot be kept.

Operations carried out in crisis situations as referred to in Article 166(2) of the implementing rules are considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate after consulting the other authorising officers by delegation concerned, will establish that a situation of extreme urgency exists and review his decision regularly with regard to the principle of sound financial management;

- (b) where warranted by the nature or particular characteristics of the supplies, for example, 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 the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, provided that the initial conditions of the tender procedure are not substantially altered and the principle of fair competition is observed.

III.2.2 Contracts between EUR 30,000 and EUR 150,000

III.2.2.1 Local open procedure

In this case, supply contracts are awarded by an open procedure in which the procurement notice is published only in the beneficiary country. The Commission publishes the references of such tender procedures (dossier number, country, contracting authority and type of contract) on the Internet with the address of the Delegation from which firms can obtain further information.

III.2.2.2 Negotiated procedure

With the Commission's agreement, the beneficiary may award supply contracts by negotiated procedure in the situations given in section III.2.1.2.

III.2.3 Contracts under EUR 30,000

III.2.3.1 Competitive negotiated procedure

Supply contracts under EUR 30,000 are awarded by competitive negotiated procedure. Three suppliers must be consulted, but no procurement notice need be published. However, the contracting authority may place orders for supplies of a value of EUR 5,000 or less on the basis of a single tender.

III.3. International open tender procedure (for contracts of EUR 150,000 or more)

III.3.1 Publicity

III.3.1.1 Publication of contract forecasts

The contract forecasts must give a brief indication of the subject, content and value of the contracts concerned. They must be published in the Official Journal of the European Union, on the Internet and in any other appropriate media. Given that they are forecasts, publication does not bind the Commission to finance the contracts proposed, and suppliers are not expected to submit expressions of interest at this stage.

An initial, global contract forecast setting out the estimated total value of contracts, by product group, which the contracting authorities intend to award during a financial year must be sent to the Office for Official Publications of the European Union as early as possible in the year, and in any event before 31 March each year, provided the contracting authority is planning to invite tenders for more than one supply contract and the total value of such contracts is EUR 750,000 or more. A second, individual contract forecast, setting out the specific characteristics of the planned tender procedure, must be published, save in exceptional circumstances, at least 30 days before the publication of the procurement notice. Where the conditions for publishing a global contract forecast are not met, the contracting authority need only publish an individual contract forecast.

III.3.1.2 Publication of supply procurement notices

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

The procurement notice is published in the Official Journal of the European Union, on the Internet and in any other appropriate media. The Commission is responsible for publication in the Official Journal of the European Union and on the Internet. Local publication is the responsibility of the beneficiary.

The notice must identify clearly, precisely and completely the contracting authority and the subject of the contract. If the procurement notice is also published locally, it must be identical to the procurement notice published on the Internet and appear at the same time.

The tender dossier for the contract in question is sent to would-be suppliers in the beneficiary country or Europe by the beneficiary or the Commission (delegations, offices in the Member States or headquarters).

III.3.2 Drafting and contents of the tender dossier

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

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.

Responsibility in this regard generally falls to the beneficiary, which must submit the tender dossier to the Commission for approval prior to issue.

III.3.2.1 Contents of the tender dossier

The tender dossier must contain the following documents:

- instructions to tenderers, which must include: (i) the contract award criteria, (ii) whether variants are authorised and (iii) the currency of the tender;
- general conditions for supply contracts;
- specific conditions which amplify, supplement or derogate from the general conditions, and where they conflict, override them;
- technical annexes, containing plans, technical specifications and provisional timetable for performance;
- price schedule (for completion by the tenderer);
- tender submission form;
- contract form;
- formats for guarantees from a bank or a similar institution for: the tender (1-2% of the budget available for the contract), pre-financing payments, performance (10% of the contract value).

The tender dossier must clearly state whether or not the tender must be made with fixed, non-revisable prices. If not, the tender dossier must state the conditions and/or formulae for revising prices in the course of the contract. The contracting authority then takes particular account of:

- (a) the nature of the contract and the economic situation in which it is taking place;
- (b) the nature and duration of the tasks and of the contract;
- (c) its financial interests.

A guarantee is required to cover any pre-financing payment exceeding EUR 150,000. It will be released as and when the pre-financing payment is deducted from interim payments or payments of balances made to the contractor in accordance with the terms of the contract.

III.3.2.2. Technical specifications

Technical specifications must afford equal access for candidates and tenderers and not have the effect of creating unjustified obstacles to competitive tendering. They must define the characteristics required of a product, service or material or work with regard to the purpose for which they are intended by the contracting authority. Those characteristics include:

- (a) the quality levels;
- (b) environmental performance;
- (c) design for all requirements (including accessibility for disabled people);
- (d) the levels and procedures of conformity assessment;
- (e) fitness for use;
- (f) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production procedures and methods;

Unless warranted by the nature of the contract, technical specifications mentioning 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".

III.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 proposals are requested for after-sales services and/or training, the quality of such proposals.

III.3.4 Additional information during the procedure

The tender dossier should be clear enough to prevent contractors from having to request additional information during the 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 other 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 laid down in section III.3.1.2 ("Publication of supply procurement notices"). The deadline for the submission of tenders may be extended to allow tenderers to take account of the change.

Tenderers may submit questions in writing up to 21 days before the deadline for submission of tenders. The contracting authority must reply to all tenderers' questions at least 11 days before the deadline for receipt of tenders.

III.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 minimum period between the date of publication of the procurement notice and the deadline for receipt of tenders is 60 days. However, in certain exceptional cases and with the prior authorisation of the Commission, other time limits may be authorised.

III.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 the 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.

III.3.7 Submission of tenders

Technical and financial offers must be placed in separate sealed envelopes within a package or 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.

III.3.8 Opening of tenders

On receiving tenders, the contracting authority must register them and provide receipt of delivery for those delivered by hand. Envelopes must remain sealed and be kept in a safe place until they are opened.

Tenders are opened and evaluated by a committee made up of an odd number of members (at least three) possessing the technical and administrative capacities necessary to give an informed opinion on tenders. The members of the committee must sign a declaration of impartiality.

The evaluation committee opens the tenders in public at the place and time fixed in the tender dossier. At the public tender-opening session, the names of the tenderers, the prices quoted, the provision of the necessary tender guarantee and any other formality which the contracting authority thinks appropriate must be announced.

The Delegation must be informed automatically. It is represented as an observer at the tender-opening session and receives a copy of each tender.

Only tenders in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.

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.

Minutes are taken of the tender-opening session. They are signed by all members of the evaluation committee and state:

- the date, time and place of the session;
- the persons present;
- the names of the tenderers which have replied within the deadline;
- whether tenders have been submitted in sealed envelopes;
- whether tenders have been duly signed and the requisite number of copies sent;
- the tender prices;
- the names of tenderers whose tenders were found to be non-compliant at the opening session;
- the names of any tenderers which withdrew their tenders;

- any declarations made by the tenderers.

III.3.9 Evaluation of tenders

Before conducting a detailed evaluation of the tenders, the contracting authority 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 contracting authority and may not subsequently be made to comply by undergoing corrections or having discrepancies or restrictions removed.

Having evaluated the tenders, the committee rules on the technical admissibility of each tender, classifying it as technically compliant or non-compliant. Where contracts include after-sales service and/or training, the technical quality of such services is also assessed during the technical evaluation.

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.

In the case of abnormally low tenders, the evaluation committee requests any relevant information concerning the composition of the tender. If, for a given contract, tenders appear to be abnormally low, the contracting authority will, before rejecting such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and verify those constituent elements, after due hearing of the parties, taking account of the explanations received. The contracting authority may, in particular, take into consideration explanations relating to:

- (a) the economics of the manufacturing process, of the provision of services or of the construction method;
- (b) the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;
- (c) the originality of the tender.

III.3.10 Award of the contract

III.3.10.1 Choice of contractor

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

(b) Where a supply contract includes services such as after-sales and/or training, the technical evaluation must take account of the quality of such services. All non-compliant tenders having already been eliminated, the contract is awarded to the tender that is most economically advantageous in terms of the technical quality of the services offered and the price proposed.

In either case, if the tender selected exceeds the budget allocated for the contract, the provisions of section III.2.1.2(d) apply.

The entire evaluation procedure must be recorded in an evaluation report to be signed by all the members of the evaluation committee. This report must state why tenders were deemed technically non-compliant and how they fell short of the technical specifications laid down. The beneficiary then transmits the evaluation report and the contract award proposal to the Commission for approval. This report on the evaluation and ranking of tenders declared to satisfy the requirements is drawn up, dated and kept for future reference. It must contain at least the following:

- (a) the name and address of the contracting authority, and the subject and value of the contract or of the framework contract;
- (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
- (d) the reasons for the rejection of tenders found to be abnormally low;
- (e) the names of the candidates or contractor proposed and the reasons for that choice and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties.

The contracting authority then takes its decision giving at least the following:

- (a) its name and address, and the subject and value of the contract or of the framework contract;
- (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (c) the names of the candidates or tenderers to be examined and the reasons for their selection;

- (d) the reasons for the rejection of tenders found to be abnormally low;
- (e) the names of the candidates or contractor selected and the reasons for that choice by reference to the selection and award criteria announced in advance and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties;
- (f) in the case of negotiated procedures, the circumstances referred to in these rules which justify their use;
- (g) where appropriate, the reasons why the contracting authority has decided not to award a contract.

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 up to the notification of the successful tenderer is strictly confidential. The committee's decisions are collective and its deliberations must remain secret. The members of the committee are bound to secrecy.

The evaluation reports and minutes, in particular, are for official use only and may be divulged neither to tenderers nor to any party outside the authorised departments of the beneficiary, the Commission and the supervisory authorities (Court of Auditors, etc.).

III.3.10.2 Notification of award of contract

The contracting authority informs candidates and tenderers of decisions reached concerning the award of the contract as soon as possible, including the grounds for any decision not to award a contract for which there has been competitive tendering or to recommence the procedure.

After the Commission has given its 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.

Within not more than 15 days of receiving a written request, the contracting authority must notify all candidates or tenderers whose applications or tenders were rejected of the grounds on which the decision was taken, and all tenderers whose tenders were admissible and which make a request in writing of the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract was awarded. However, certain details need not be disclosed where disclosure would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between those undertakings.

Where a contract is awarded under a financing agreement, the contracting authority must not notify the successful tenderer unless the financing agreement has been concluded (see section I.5 "Tender procedure with suspension clause").

The contract award notice must be sent when the contract is signed. The Commission publishes the results of the tender procedure (contract award notice) in the Official Journal, on the Internet and in any other appropriate media. Contract award notices must state the number of tenders received, the date of award of the contract, the name and address of the successful tenderer and the contract price.

III.3.10.3 Signing of the contract

Once signed by the contracting authority the contract is sent to the successful tenderer, which must countersign it within 30 days of receipt and return it with the performance guarantee.

The contract must be dated. It may neither cover earlier services nor enter into force before the date on which it is signed by the parties. The parties are bound by the contract from the moment it is signed, hence the importance of carefully selecting the date.

III.4. Local open tender procedure (for contracts between EUR 30,000 and EUR 150,000)

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

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 (e.g. 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.

The measures applicable to an international open procedure, as described in section III.3, apply by analogy to the local open procedure. The contracting authority may require a tender guarantee.

III.5. Competitive negotiated procedure (for contracts under EUR 30,000)

The contracting authority may award contracts under EUR 30,000 by competitive negotiated procedure, without publication. It must consult at least three suppliers of its choice.

The contracting authority draws up a list of at least three firms. The candidates receive a letter of invitation to tender accompanied by the relevant technical specifications. No tender guarantee is required in this case.

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

The contracting authority has an evaluation report drawn up on the tenders received, stating the technical compliance and contractual terms of the tenders. If the contracting authority does not receive at least three valid tenders, the procedure must be cancelled and started again.

However, the contracting authority may place orders for supplies of a value of EUR 5,000 or less on the basis of a single tender.

PART IV
SPECIFIC RULES GOVERNING
WORKS CONTRACTS

IV.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 applying to take part in a restricted tender procedure or a competitive negotiated procedure as a "candidate".

The contracting authority, which is always specified in the procurement notice, is the authority empowered to conclude the contract. Works contracts are usually concluded by the beneficiary with which the Commission draws up a financing agreement (decentralised contracts).

The beneficiary must submit tender dossiers to the Commission for approval before issuing them. On the basis of decisions thus approved and in close consultation with the Commission, it is responsible for launching tender procedures, receiving tenders, chairing tender-examination sessions and deciding on the results of tender procedures. The beneficiary then submits the result of this examination and the contract award proposal to the Commission for approval. Once it has received this approval, it signs the contracts and notifies the Commission accordingly. The Commission is normally represented when tenders are opened and evaluated and must always be formally invited.

IV.2. Award procedures

IV.2.1 Contracts of EUR 5,000,000 or more

IV.2.1.1 Open procedure

The general rule for the award of works contracts is the international open tender procedure following publication of a procurement notice.

IV.2.1.2 Restricted procedure

In exceptional cases justified by the special characteristics of certain projects, and with the prior authorisation of the Commission, a restricted tender procedure may be used. In this case, the publication of the procurement notice remains mandatory (so-called "shortlisting" procedure) to ensure the widest possible participation.

IV.2.1.3 Negotiated procedure

Works contracts may be awarded by negotiated procedure on the basis of a single tender in the following cases, with the prior approval of the Commission if it is not the contracting authority:

- (a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time-limit for the procedures referred to in points (a), (b) and (c) of Article 91(1) of the Financial Regulation cannot be kept.

Operations carried out in crisis situations as referred to in Article 166(2) of the implementing rules are considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate after consulting the other authorising officers by delegation concerned, establishes that a situation of extreme urgency exists and reviews his decision regularly with regard to the principle of sound financial management.

- (b) for additional works not included in the initial contract which have, through unforeseen circumstances, become necessary for carrying out the works described therein and which have been awarded to the contractor already carrying out the work:

- where such works cannot be technically or economically separated from the main contract without serious inconvenience to the beneficiary;

- where such works, although separable from the performance of the original contract, are strictly necessary to its completion;

- where the aggregate value of contracts awarded for additional works does not exceed 50% of the value of the principal contract.

- (c) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, provided that the initial conditions of the tender procedure are not substantially altered and the principle of fair competition is observed.

IV.2.2 Contracts between EUR 300,000 and EUR 5,000,000

IV.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 Commission publishes the references of such tender procedures (dossier number, country, contracting authority and type of contract) on the Internet with the address of the Delegation from which firms can obtain further information.

IV.2.2.2 Negotiated procedure

With the agreement of the Commission, the beneficiary may also award works contracts by negotiated procedure in the situations given in section IV.2.1.3.

IV.2.3 Contracts under EUR 300,000

IV.2.3.1 Competitive negotiated procedure

Works contracts under EUR 300,000 are awarded by competitive negotiated procedure. Three contractors must be consulted, but no procurement notice need be published.

IV.3. International open tender procedure (for contracts of EUR 5,000,000 or more)

IV.3.1 Publicity

IV.3.1.1 Publication of contract forecasts

Contract forecasts are sent as soon as possible after the decision approving the programme for works contracts.

The contract forecasts must give a brief indication of the subject, content and value of the contracts concerned. Given that they are forecasts, publication does not bind the Commission to finance the contracts proposed, and suppliers are not expected to submit expressions of interest at that stage.

They must be published in the Official Journal of the European Union, on the Internet and in any other appropriate media.

IV.3.1.2 Publication of procurement notices

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

The procurement notice is published in the Official Journal of the European Union, on the Internet and in any other appropriate media. The Commission is responsible for publication in the Official Journal of the European Union and on the Internet. Local publication is the responsibility of the beneficiary.

The notice must identify clearly, precisely and completely the contracting authority and the subject of the contract. If the procurement notice is published locally, it must be identical to the procurement notice published in the Official Journal of the European Union 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 flat fee by the consultancy firm responsible for compiling them. The consultancy firm in question must sign an undertaking of secrecy.

The tender dossier will also be available for consultation at the premises of the beneficiary and the Commission (delegation, offices in the Member States or headquarters).

IV.3.2 Drafting and contents of the tender dossier

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

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.

Responsibility in this regard generally falls to the beneficiary, which must submit the tender dossier to the Commission for approval prior to issue.

IV.3.2.1 Contents of the tender dossier

The tender dossier must contain the following documents:

- instructions to tenderers, which must include: (i) the selection and award criteria, (ii) whether variants are allowed and (iii) the currency of the tender;
- general conditions for works contracts;
- specific conditions which amplify, supplement or derogate from the general conditions, and where they conflict, override them;
- technical annexes, containing plans, technical specifications and provisional timetable for performance;
- price schedule (for completion by the tenderer) and breakdown;
- tender submission form;
- contract form;
- formats for guarantees from a bank or a similar institution for: the tender (1-2% of the budget available for the contract), pre-financing payments, performance (10% of the contract value).

The tender dossier must clearly state whether or not the tender must be made with fixed, non-revisable prices. If not, the tender dossier must lay down the conditions and/or formulae for revising prices in the course of the contract. The contracting authority then takes particular account of:

- (a) the nature of the contract and the economic situation in which it is taking place;
- (b) the nature and duration of the tasks and of the contract;

- (c) its financial interests.

A guarantee is required to cover any pre-financing payment exceeding EUR 150,000. It will be released as and when the pre-financing payment is deducted from interim payments or payments of balances made to the contractor in accordance with the terms of the contract.

IV.3.2.2 Technical specifications

Technical specifications must afford equal access for candidates and tenderers and not have the effect of creating unjustified obstacles to competitive tendering. They must define the characteristics required of a product, service or material or work with regard to the purpose for which they are intended by the contracting authority. Those characteristics include:

- (a) the quality levels;
- (b) environmental performance;
- (c) design for all requirements (including accessibility for disabled people);
- (d) the levels and procedures of conformity assessment;
- (e) fitness for use;
- (f) for works contracts, the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the contracting authority may impose under general or specific regulations in relation to the finished works and to the materials or parts which they involve.

Unless warranted by the nature of the contract, technical specifications mentioning 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".

IV.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.

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

IV.3.4 Additional information during the procedure

The tender dossier should be clear enough to prevent contractors from having to request additional information during the 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 other tenderers at the same time.

If it proves impossible to identify potential tenderers in the case of an open procedure, a notice to this effect setting out any changes made to the tender dossier must be published as laid down in section IV.3.1.2 ("Publication of works procurement notices"). The deadline for the submission of tenders may be extended to allow tenderers to take account of the changes.

Tenderers may submit questions in writing up to 21 days before the deadline for submission of tenders. The contracting authority must reply to all tenderers' questions at least 11 days before the deadline for receipt of tenders.

IV.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 minimum period between the date of publication of the procurement notice and the deadline for receipt of tenders is 90 days. However, in certain exceptional cases and with the prior authorisation of the Commission, other time limits may be authorised.

IV.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 the 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.

IV.3.7 Submission of tenders

Technical and financial offers must be placed in separate sealed envelopes within a package or 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.

IV.3.8 Opening of tenders

On receiving tenders, the contracting authority must register them and provide receipt of delivery for those delivered by hand. Envelopes must remain sealed and be kept in a safe place until they are opened.

Tenders are opened and evaluated by a committee made up of an odd number of members (at least three) possessing the technical and administrative capacities necessary to give an informed opinion on tenders. The members of the committee must sign a declaration of impartiality.

The evaluation committee opens the tenders in public at the place and time fixed in the tender dossier. At the public tender-opening session, the names of the tenderers, the prices quoted, the provision of the necessary tender guarantee and any other formality which the contracting authority thinks appropriate must be announced.

The Delegation must be informed automatically. It is represented as an observer at the tender-opening session and receives a copy of each tender.

Only tenders in envelopes received by the date and time indicated in the tender dossier are considered for evaluation.

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.

Minutes are taken of the tender-opening session. They are signed by all members of the evaluation committee and state:

- the date, time and place of the session;
- the persons present;
- the names of the tenderers which have replied within the deadline;
- whether tenders have been submitted in sealed envelopes;
- whether tenders have been duly signed and the requisite number of copies sent;
- the tender prices;
- the names of tenderers whose tenders were found to be non-compliant at the opening session;
- the names of any tenderers which withdrew their tenders;

- any declarations made by the tenderers.

IV.3.9 Evaluation of tenders

Before conducting a detailed evaluation of the tenders, the contracting authority 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 contracting authority and may not subsequently be made to comply by undergoing corrections or having discrepancies or restrictions removed.

Having evaluated the tenders, the committee rules on the technical admissibility of each tender, classifying it as technically compliant or non-compliant.

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.

In the case of abnormally low tenders, the evaluation committee requests any relevant information concerning the composition of the tender. If, for a given contract, tenders appear to be abnormally low, the contracting authority will, before rejecting such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and verify those constituent elements, after due hearing of the parties, taking account of the explanations received. The contracting authority may, in particular, take into consideration explanations relating to:

- (a) the economics of the manufacturing process, of the provision of services or of the construction method;
- (b) the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;
- (c) the originality of the tender.

IV.3.10 Award of the contract

IV.3.10.1 Choice of contractor

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

If the chosen tender exceeds the budget allocated for the contract, the provisions set out in section IV.2.1.3(c) apply.

The entire evaluation procedure must be recorded in an evaluation report to be signed by all the members of the evaluation committee. This report must state why tenders were deemed technically non-compliant and how they fell short of the technical specifications laid down. The beneficiary then transmits the evaluation report and the contract award proposal to the Commission for approval. This report on the evaluation and ranking of tenders declared to satisfy the requirements is drawn up, dated and kept for future reference. It must contain at least the following:

- (a) the name and address of the contracting authority, and the subject and value of the contract or of the framework contract;
- (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
- (d) the reasons for the rejection of tenders found to be abnormally low;
- (e) the names of the candidates or contractor proposed and the reasons for that choice and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties.

The contracting authority then takes its decision giving at least the following:

- (a) its name and address, and the subject and value of the contract or of the framework contract;
- (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
- (d) the reasons for the rejection of tenders found to be abnormally low;

- (e) the names of the candidates or contractor selected and the reasons for that choice by reference to the selection and award criteria announced in advance and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties;
- (f) in the case of negotiated procedures, the circumstances referred to in these rules which justify their use;
- (g) where appropriate, the reasons why the contracting authority has decided not to award a contract.

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 up to the notification of the successful tenderer is strictly confidential. The committee's decisions are collective and its deliberations must remain secret. The members of the committee are bound to secrecy.

The evaluation reports and minutes, in particular, are for official use only and may be divulged neither to tenderers nor to any party outside the authorised departments of the beneficiary, the Commission and the supervisory authorities (Court of Auditors, etc.).

IV.3.10.2 Notification of award of contract

The contracting authority informs candidates and tenderers of decisions reached concerning the award of the contract as soon as possible, including the grounds for any decision not to award a contract for which there has been competitive tendering or to recommence the procedure.

After the Commission has given its 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.

Within not more than 15 days of receiving a written request, the contracting authority must notify all candidates or tenderers whose applications or tenders were rejected of the grounds on which the decision was taken, and all tenderers whose tenders were admissible and which make a request in writing of the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract was awarded. However, certain details need not be disclosed where disclosure would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between those undertakings.

Where a contract is awarded under a financing agreement, the contracting authority must not notify the successful tenderer unless the financing agreement has been concluded (see section I.5 "Tender procedure with suspension clause").

The contract award notice must be sent when the contract is signed. The Commission publishes the results of the tender procedure (contract award notice) in the Official Journal, on the Internet and in any other appropriate media. Contract award notices must state the number of tenders received, the date of award of the contract, the name and address of the successful tenderer and the contract price.

IV.3.10.3 Signing of the contract

Once signed by the contracting authority the contract is sent to the successful tenderer, which must countersign it within 30 days of receipt and return it with the performance guarantee.

The contract must be dated. It may neither cover earlier services nor enter into force before the date on which it is signed by the parties. The parties are bound by the contract from the moment it is signed, hence the importance of carefully selecting the date.

IV.4. Restricted tender procedure (for contracts of EUR 5,000,000 or more)

In exceptional cases justified by the special characteristics of certain projects, and with the prior authorisation of the Commission, a restricted tender procedure may be used. In this case, publication of the procurement notice in the Official Journal of the European Union, on the Internet and in any other appropriate media remains mandatory (the so-called "shortlisting" procedure).

On the basis of the outcome of the shortlisting procedure, the contracting authority draws up a list of firms that will be invited to tender after obtaining the Commission's approval.

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 measures applicable to an open procedure, as described in section IV.3, apply by analogy to the restricted procedure for works contracts.

IV.5. Local open tender procedure (for contracts between EUR 300,000 and EUR 5,000,000)

In this case, the procurement notice is published only in the beneficiary country, unless the Commission is acting as contracting authority for and on behalf of the beneficiary. The Commission publishes the references of such tender procedures (dossier number, country, contracting authority and type of contract) on the Internet with the address of the Delegation from which firms can obtain further information.

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

The measures applicable to an international open procedure, as described in section IV.3, apply by analogy to the local open procedure. The contracting authority may require a tender guarantee.

IV.6. Competitive negotiated procedure (for contracts under EUR 300,000)

The contracting authority may award contracts under EUR 300,000 by competitive negotiated procedure, without publication. It must consult at least three firms of its choice.

The contracting authority draws up a list of at least three firms. The candidates receive a letter of invitation to tender accompanied by the relevant technical specifications. No tender guarantee is required in this case.

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

Tenders are opened and evaluated by an evaluation committee possessing the requisite technical and administrative expertise. Tenders are evaluated as they would be in an open tender procedure. If the contracting authority does not receive at least three valid tenders, the procedure must be cancelled and started again.

However, the contracting authority may place orders for works of a value of EUR 5,000 or less on the basis of a single tender.

PART V
PROCUREMENT PROCEDURES TO BE
USED BY GRANT BENEFICIARIES

V.1. General principles

If the implementation of an action which is supported by a grant from the Community in the context of external actions requires procurement by the grant beneficiary, the contract must be awarded to the most economically advantageous tender (ie, the tender offering the best price-quality ratio), in accordance with the principles of transparency and fair competition for potential contractors and taking care to avoid any conflicts of interest.

To this end, grant contracts provide for compliance with the rules set out in sections V.2 to V.7 below, subject to section V.8.

Where the grant beneficiary makes use of the services of a central buying office, the buying office must follow the same rules which are to be followed by the beneficiary.

In the event of failure to comply with the rules referred to above, expenditure relating to the operations in question is not eligible for Community financing.

The Commission will carry out ex-post checks on the compliance of grant beneficiaries with these rules. Grant contracts must provide expressly for the Commission, including the European Anti-Fraud Office (OLAF), and the Court of Auditors to exercise their powers of control, on documents and on the spot, over all contractors and subcontractors which have received Community funds.

V.2. Eligibility for contracts

V.2.1 The nationality rule

Participation in tender procedures administered by grant beneficiaries is open on equal terms to all natural and legal persons of the Member States and the States and territories of regions expressly covered and/or allowed by the Financial Regulation, the basic legislation or other instruments governing the aid programme under which the grant is being financed.

This rule also applies to the experts proposed by service providers taking part in tender procedures or service contracts financed by the grant. Tenderers must state, in the tender, the country of which they are nationals by presenting the usual proof of nationality under their national legislation.

V.2.2 The rule of origin

If the basic act or the other instruments applicable to the programme under which the grant is financed contain rules of origin for supplies acquired by the grant beneficiary in the context of the grant, the tenderer must state the origin of supplies. Contractors must present a certificate of origin to the grant beneficiary no later than when the first invoice is presented. The certificate of origin must be made out by the competent authorities of the country of origin of the supplies or supplier and must comply with the international agreements to which that country is a signatory or to the relevant Community legislation if it is an EU Member State.

V.2.3 Exceptions to the rules on nationality and origin

Where an agreement on widening the market for procurement of goods or services applies, the procurement contracts must also be open to nationals of other countries under the conditions laid down in that agreement.

In addition, in duly substantiated exceptional cases, the Commission may allow nationals of countries other than those referred to in section V.2.1 to tender for contracts (or supplies of goods originating in such countries) on the basis of the specific conditions laid down in the basic act or other instrument governing the programme under which the grant is financed.

V.2.4 Grounds for exclusion from participation in contracts

Candidates or tenderers are excluded from participation in a procurement procedure 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, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(b) they have been convicted of an offence concerning their professional conduct by a judgement which has the force of *res judicata*;

(c) they have been guilty of grave professional misconduct proven by any means which the beneficiary of the grant can justify;

(d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the grant beneficiary or those of the country where the contract is to be performed;

(e) they have been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

(f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

Candidates or tenderers must certify that they are not in one of the situations listed above.

V.2.5 Exclusion from award of contracts

Contracts may not be awarded to candidates or tenderers which, during the procurement procedure:

(a) are subject to a conflict of interests;

(b) are guilty of misrepresentation in supplying the information required by the beneficiary of the grant as a condition of participation in the contract procedure or fail to supply this information.

V.3. Rules common to all tender procedures

The tender documents must be drafted in accordance with best international practice. If they do not have their own documents, grant beneficiaries may use the models (in particular the tender dossier) published on the Commission's web site relating to external actions .

The time-limits for receipt of tenders and requests to participate must be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders.

All requests to participate and tenders declared as satisfying the requirements must be evaluated and ranked by an evaluation committee on the basis of the exclusion, selection and award criteria announced in advance. This committee must have an odd number of members, at least three, with all the technical and administrative capacities necessary to give an informed opinion on the tenders.

V.4. Rules governing service contracts

V.4.1 Contracts of EUR 200,000 or more

Service contracts worth EUR 200,000 or more must be awarded by means of an international restricted tender procedure following publication of a procurement notice.

The procurement notice is to be published in all appropriate media, in particular on the grant beneficiary's web site, in the international press and the national press of the country in which the action is being carried out, or in other specialist periodicals. It must state the number of candidates which will be invited to submit tenders. This will be within a range of four to eight candidates, and must be sufficient to ensure genuine competition.

All would-be service providers fulfilling the conditions referred to in section V.2 may ask to participate but only candidates satisfying the published selection criteria and invited in writing by the grant beneficiary may submit a tender.

V.4.2 Contracts under EUR 200,000

Service contracts worth less than EUR 200,000 must be awarded by means of a negotiated procedure without publication, in which grant beneficiaries consult at least three service providers of their choice and negotiate the terms of the contract with one or more of them.

For services of a value of EUR 5,000 or less, the beneficiary may place orders on the basis of a single tender.

V.5. Rules governing supply contracts

V.5.1 Contracts of EUR 150,000 or more

Supply contracts worth EUR 150,000 or more must be awarded by means of an international open tender procedure following publication of a procurement notice.

The procurement notice is to be published in all appropriate media, in particular on the grant beneficiary's web site, in the international press and the national press of the country in which the action is being carried out, or in other specialist periodicals.

Any would-be supplier which fulfils the conditions referred to in section V.2 may submit a tender.

V.5.2 Contracts between EUR 30,000 and EUR 150,000

Such contracts are awarded by means of an open tender procedure published locally: the procurement notice is published in all appropriate media but only in the country in which the action is being carried out.

A local open tender procedure must provide other eligible suppliers with the same opportunities as local firms.

V.5.3 Contracts under EUR 30,000

Supply contracts worth less than EUR 30,000 must be awarded by means of a negotiated procedure without publication, in which grant beneficiaries consult at least three suppliers of their choice and negotiate the terms of the contract with one or more of them.

For supplies of a value of EUR 5,000 or less, the beneficiary may place orders on the basis of a single tender.

V.6. Rules governing works contracts

V.6.1 Contracts of EUR 5,000,000 or more

Works contracts worth EUR 5,000,000 or more must be awarded by means of an international open tender procedure following publication of a procurement notice.

The procurement notice is to be published in all appropriate media, in particular on the grant beneficiary's web site, in the international press and the national press of the country in which the action is being carried out, or in other specialist periodicals.

Any contractor which fulfils the conditions referred to in section V.2 may submit a tender.

V.6.2 Contracts between EUR 300,000 and EUR 5,000,000

Such contracts are awarded by means of an open tender procedure published locally: the procurement notice is published in all appropriate media but only in the country in which the action is being carried out.

A local open tender procedure must provide other eligible contractors with the same opportunities as local firms.

V.6.3 Contracts under EUR 300,000

Works contracts worth less than EUR 300,000 must be awarded by means of a negotiated procedure without publication, in which grant beneficiaries consult at least three contractors of their choice and negotiate the terms of the contract with one or more of them.

For works of a value of EUR 5,000 or less, the beneficiary may place orders on the basis of a single tender.

V.7. Use of the negotiated procedure

The beneficiary of the grant may use the negotiated procedure on the basis of a single tender in the following cases:

(a) where, for reasons of extreme urgency brought about by events which the grant beneficiary could not have foreseen and which can in no way be attributed to him, the time-limit for the procedures referred to in sections V.3 to V.6 cannot be kept. The circumstances invoked to justify extreme urgency must in no way be attributable to the grant beneficiary.

Actions carried out in crisis situations identified by the Commission are considered to satisfy the test of extreme urgency. The Commission will inform the grant beneficiary if a crisis situation exists and when it comes to an end.

(b) where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field;

(c) where contracts extend activities already under way which are not included in the main contract but which, due to unforeseen circumstances, have become necessary to perform the contract, or which consist of the repetition of similar services entrusted to the contractor providing services under the initial contract;

(d) 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 grant beneficiary to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance;

(e) for additional works not included in the initial contract concluded which have, through unforeseen circumstances, become necessary for carrying out the works;

(f) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the grant beneficiary may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, provided that the initial terms of the tender procedure are not substantially altered;

(g) where the contract concerned follows a contest and must, under the rules applying, be awarded to the winner of the contest or to one of the winners of the contest, in which case, all winners shall be invited to participate in the negotiations;

(h) where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider;

(i) where warranted by the nature or particular characteristics of the supplies, for example, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents.

V.8. Special cases

V.8.1 Cofinancing

Where:

- the action is cofinanced by several donors and
- one of the other donors, whose contribution to the total cost of the action is greater than that of the Commission, imposes procurement rules on the grant beneficiary that differ from those set out in sections V.3 to V.6,

the grant beneficiary may apply the rules imposed by the other donor. In all cases, the general principles and rules on nationality and origin set out in sections V.1 and V.2 still apply.

V.8.2 Public administrations of the Member States

Where the grant beneficiary is a contracting authority and/or a contracting entity within the meaning of the Community Directives applicable to procurement procedures, it must apply the relevant provisions of those texts, in preference to the rules set out in sections V.3 to V.7. In all cases, the general principles and rules on nationality and origin set out in sections V.1 and V.2 still apply.

V.8.3 International organisations

Where the beneficiary of a grant is an international organisation, it applies its own procurement procedures if they provide guarantees equivalent to internationally accepted standards. If not or in specific cases, the Commission and the international organisation agree to apply other rules which provide such guarantees.

In the event of joint management, the rules on nationality and origin of the international organisation apply, if the basic act or other instruments governing the programme under which the grant is financed permit this. In all other cases, the rules on nationality and origin set out in section V.2 apply.

In all cases, the general principles set out in section V.1 remain applicable.

ANNEXES

ANNEX 1
SUMMARY OF PROCUREMENT THRESHOLDS

SERVICES	SUPPLIES	WORKS
<p>x = EUR 200,000</p> <p>International restricted tender procedure. 4 to 8 service providers invited.</p>	<p>x = EUR 150,000</p> <p>International open tender procedure.</p>	<p>x = EUR 5,000,000</p> <p>1. International open tender procedure. 2. International restricted tender procedure (exceptional cases).</p>
	<p>EUR 30,000 = x < EUR 150,000</p> <p>Local open tender procedure.</p>	<p>EUR 300,000 = x < EUR 5,000,000</p> <p>Local open tender procedure.</p>
<p>x < EUR 200,000</p> <p>1. Framework contract, or 2. Competitive negotiated procedure with consultation of at least 3 service providers. 3. x = EUR 5,000: a single tender.</p>	<p>x < EUR 30,000</p> <p>1. Competitive negotiated procedure with consultation of at least 3 suppliers. 2. x = EUR 5,000: a single tender.</p>	<p>x < EUR 300,000</p> <p>1. Competitive negotiated procedure with consultation of at least 3 contractors. 2. x = EUR 5,000: a single tender.</p>

ANNEX 2

DEFINITIONS

Appropriate media: Publication in the Official Journal of the European Union and on the Internet is obligatory for all contracts covered by the regulations. Publication in the press of recipient countries and, if need be, specialised publications may be necessary or advisable.

Breakdown of lump-sum price: A heading-by-heading list of the rates and costs making up the lump sum.

Candidate: Any natural or legal person or group thereof applying to take part in a restricted or negotiated procedure.

Commission: The Commission of the European Communities.

Competitive negotiated procedure: Procedure without prior publication of a procurement notice, in which only candidates invited by the contracting authority may submit tenders (see section I.3.3 of the regulations).

Conflict of interests: Any event influencing the capacity of a candidate, tenderer or contractor to give an objective and impartial professional opinion, or preventing it, at any moment, from giving priority to the interests of the contracting authority. Any consideration relating to possible contracts in the future or conflict with other commitments, past or present, of a candidate, tenderer or contractor. These restrictions also apply to subcontractor and employees of the candidate, tenderer or contractor.

There is a conflict of interests within the meaning of Article 52 of the Financial Regulation where the impartial and objective exercise of the functions of a player in the implementation of the budget or an internal auditor is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.

Contracting authority: The Commission, the State or the public or private legal person concluding the contract, as provided for in the Financing Agreement.

Day: Calendar day.

In-house implementation of operations: Contracts executed by public or public-private agencies or services of the recipient country, where that country's administration possesses qualified managers.

Evaluation committee: A committee made up of an odd number of members (at least three) possessing the technical and administrative capacities necessary to give an informed opinion on tenders.

Framework contract: A framework contract is a contract concluded between a contracting authority and an economic operator for the purpose of laying down the essential terms governing a series of specific contracts to be awarded during a given period, in particular as regards the duration, subject, prices, conditions of performance and the quantities envisaged. The contracting authority may also conclude multiple framework contracts, which are separate contracts with identical terms awarded to a number of suppliers or service providers.

General conditions: The general contractual provisions setting out the administrative, financial, legal and technical clauses governing the execution of contracts.

Hybrid contract: A contract between the contracting authority and a service provider, supplier or construction firm covering two or more of the following: works, supplies and services.

Most economically advantageous tender: The best tender by the criteria laid down for the contract in question, e.g. quality, technical properties, aesthetic and functional qualities, after-sales service and technical assistance, delivery date or performance period, the price or lowest price. These criteria must be published in the procurement notice or stated in the tender dossier.

Negotiated procedure: Procedure without prior publication of a procurement notice, in which the contracting authority consults the candidate or candidates of its choice and negotiates the terms of the contract with one or more of them (see sections II.2.1.2, III.2.1.2 and IV.2.1.3 of the regulations).

Open tender procedure: Tender procedures are open where all interested economic operators may submit a tender.

Period: A period begins the day after the act or event chosen as its starting point. Where the last day of a period is not a working day, the period expires at the end of the next working day.

Public contract: Public contracts are contracts for pecuniary interest concluded in writing by a contracting authority within the meaning of Articles 104 and 167 of the Financial Regulation, in order to obtain, against payment of a price paid in whole or in part from the budget, the supply of movable or immovable assets, the execution of works or the provision of services.

Real estate contract: Real estate contracts cover the purchase, long lease, leasing, rental or hire purchase, with or without option to buy, of land, existing buildings or other real estate.

Restricted tender procedure: Tender procedures are restricted where all economic operators may ask to take part but only candidates satisfying the selection criteria and invited simultaneously and in writing by the contracting authorities may submit a tender.

Special conditions: The special conditions laid down by the contracting authority as an integral part of the tender dossier, including amendments to the general conditions, clauses specific to the contract and the terms of reference (for a service contract) or technical specifications (for a supply or works contract).

Successful tenderer: The tenderer selected at the end of the procedure for the award of the contract.

Study contract: A service contract between a service provider and the contracting authority concerning, for example, identification and preparatory studies for projects, feasibility studies, economic and market studies, technical studies, evaluations and audits.

Supply contract: Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products. The delivery of products may in addition include siting, installation and maintenance.

Technical assistance contract: A contract between a service provider and the contracting authority under which the service provider exercises an advisory role, directs or supervises a project, or provides the experts stipulated in the contract.

Tenderer: Any natural or legal person or group thereof submitting a tender with a view to concluding a contract. The terms "supplier", "contractor" and "service provider" refer to three categories of economic operator, natural or legal persons, which supply products, execute works and provide services respectively.

Tender dossier: The dossier compiled by the contracting authority and containing all the documents needed to prepare and submit a tender.

Terms of reference: The document drawn up by the contracting authority setting out its requirements and/or objectives in respect of the provision of services, specifying, where relevant, the methods and resources to be used and/or results to be attained.

Works contracts: Works contracts cover either the execution, or both the execution and design, of works or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.

**Explanatory list of amendments made to SEC (1999) 1802/2
adopted by the Commission at the meeting of 10 November 1999**

1. In order to emphasise the legal force of the obligations set out in this text both for Commission officials and for countries benefitting from Community operations, and for the sake of consistency with the approach adopted for the harmonisation of the general regulations for the European Development Fund, the title of the document has been changed from “Manual of Instructions” to “Rules and procedures for service, supply and works contracts financed from the general budget of the European Communities in the context of cooperation with third countries”. Certain obvious errors have been corrected (for example, a section 15.1.1 without a section 15.1.2). The text has been expanded and renumbered.
2. The first section of the Introduction, entitled “Legal basis”, has been amended to take account of organisational changes made since the text was first drafted, such as Directorate-General SCR being disbanded and the adoption of the new Financial Regulation and its implementing rules. Likewise, all references to Financial Control have been removed.
3. In accordance with Article 238 of the implementing rules, provisions have been added in a fifth Part to cover procurement by the types of contracting authority referred to in Article 167(1)(c) of the Financial Regulation.
4. The former Annex 3 to the Manual of Instructions provided an incomplete list of specific Regulations and other instruments governing cooperation programmes as at 1999. It has been deleted, as the new Financial Regulation and the implementing rules clearly define the scope of this text.
5. The first three paragraphs of the former section 2.1 on eligibility have been amended to reflect changes introduced by Article 168 of the Financial Regulation.
6. The former section 2.3 (“Grounds for exclusion from participation in contracts”) has been rewritten to take account of the new requirements of Article 93 of the Financial Regulation and Article 132 of the implementing rules. A new section I.2.4 has been added to incorporate Article 94 of the Financial Regulation and a new section I.2.5 added pursuant to Articles 96 and 103 of the Financial Regulation and Articles 131 and 151 of the implementing rules.
7. References to the “simplified procedure” have been replaced systematically to use the new term “competitive negotiated procedure” introduced by the implementing rules of the Financial Regulation.
8. The former section 3.4 covering the framework contract has been rewritten on the basis of Article 117 of the implementing rules, though the mechanism for ensuring competition within multiple framework contracts has been retained.
9. Some of the provisions of section 7 in the former Manual concerning ethics clauses have been dropped, in view of the adoption of the new section I.2.5 on financial and administrative penalties.
10. The definitions have been updated on the basis of those of the implementing rules, in particular for the definitions of works and supply contracts.
11. All references to the concept of “procurement agent” have been deleted, since this is incompatible with the requirements of Article 57 of the Financial Regulation.
12. The requirements of Article 131(1) and (2) of the implementing rules concerning technical specifications have been incorporated into the corresponding sections of the description of the procedures for supply and works contracts (sections III.3.2.2 and IV.3.2.2 of the new text). In view of these additions, the relevant sections have been divided into two parts.

13. The new requirements for contract forecasts for service and supply contracts laid down by the implementing rules have been incorporated into the text. The contract forecast for works and supply contracts, previously only required in the Practical Guide to EC external aid contract procedures, has been added. The former requirement for quarterly updates of individual notices under Article 118(1) of the Financial Regulation of 1977 no longer applies.
14. The circumstances in which the negotiated procedures can be used, included in the former sections 10.1.2, 14.1.2 and 19.1.3, have been updated in the light of Articles 124, 242, 244 and 246 of the implementing rules.
15. The requirements of Article 132 of the implementing rules (price revision) and Article 250(3) (requirement of a guarantee to cover pre-financing payments exceeding EUR 150,000) have been incorporated into the new sections II.3.3, III.3.2.1, and IV.3.2.1.
16. The former section 4 (“Selection and award criteria”) has been expanded and reorganised to take account of Articles 135, 136, 137 and 138 of the implementing rules.
17. The former sections 15.9 and 20.9 have been expanded to include the provisions of Articles 139 and 252 of the implementing rules on abnormally low tenders.
18. The requirements of Article 147 of the implementing rules on the outcome of the evaluation have been included in the new sections II.3.11.1, III.3.10.1 and IV.3.10.1.
19. The requirements of Articles 100 and 101 of the Financial Regulation and Articles 149 and 240 of the implementing rules, concerning information for candidates and tenderers, have been incorporated into the new sections II.3.11.2, III.3.10.2 and IV.3.10.2.
20. An extra section in Part I and a new point in the definitions have been added to cover real estate contracts (Articles 235 and 247 of the implementing rules).