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## **RULES AND PROCEDURES**

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

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**PART I**  
**BASIC RULES GOVERNING ALL**  
**PROCUREMENT CONTRACTS**  
**FOR EXTERNAL ACTIONS**

Where contracts for services, supplies and works financed by the Community and concluded for the purposes of Community cooperation with third countries and the Common Foreign and Security Policy (CFSP) 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 or in the case of CFSP, by the Commission or a third party in charge of the implementation of an action financed under Title V of the Treaty of the European Union from the budget, 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 as amended by Council Regulation (EC, Euratom) 1995/2006 of 13 December 2006, (hereafter “Financial Regulation”);
- 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, amended by Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005, by Commission Regulation (EC, Euratom) N° 1248 of 7 August 2006 and by Commission Regulation N° 478/2007 of 23 April 2007 (hereafter “Implementing Rules”);
- the Regulations and other specific instruments relating to the various cooperation and external aid programmes as well as the basic acts or other acts related to the implementation of Title V of the Treaty of the European Union (CFSP/ESPD), A reference is made to the relevant provisions applicable to the external actions, in particular Title IV of Part Two of the Financial Regulation relating to the special provisions for external actions and its Chapter III relating to the special provisions for external actions in regard to public procurement.

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.

The authorising officer by delegation, in association with the relevant departments of the European Commission, will adopt standard contracts and operational instructions to implement these rules. The standard contracts and operational instructions are annexed to the "Practical Guide to contract procedures for EC external actions".

The award of service, supply and works contracts financed by the European Development Fund is governed by specific rules, in accordance with the provisions of the ACP-EC Partnership Agreement signed in Cotonou on 23 June 2000,<sup>1</sup> amended by the Agreement signed in Luxembourg on 25 June 2005,<sup>2</sup> and ACP-EC Council of Ministers Decision No 2/2002 of 7 October 2002.<sup>3</sup>

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<sup>1</sup> OJ L 317, 15.12.2000, p. 3.

<sup>2</sup> OJ L 287, 28.10.2005, p.4.

<sup>3</sup> OJ L 320, 23.11.2002, p.1.

These rules and procedures do not apply to operations carried out in the context of operations concerning humanitarian aid or urgencies implemented by ECHO in accordance with Article 238(2) of the Implementing Rules.

For the purposes of the SAPARD<sup>4</sup> programme, the provisions of these rules and procedures apply to the decentralised management, in accordance with Article 167(2) of the Financial Regulation.

When Community aid granted by virtue of Regulation (EC) N° 1638/2006 of the European Parliament and the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument is managed by a joint managing authority, the procurement rules are those laid down in the implementing rules of this regulation.<sup>5</sup>

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<sup>4</sup> Council Regulations 1268/1999 of 21 June 1999 concerning Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period, OJ L 161 26.06.1999, p.87. This Regulation has been amended several times by the Council and has been the subject of several Commission implementing regulations.

<sup>5</sup> Article 21.9 of Regulation (EC) N° 1638/2006 (OJ L 310 of 9.11.2006)

**PART II**  
**PROCUREMENT PROCEDURES TO BE**  
**USED BY GRANT BENEFICIARIES**

## **II.1. General Principles**

If the implementation of an action which is supported by a grant from the Community for the purposes of external actions requires procurement by the grant beneficiary, the contract must be awarded to the most economically advantageous tender (i.e. 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 II.2 to II.7 below, subject to Section II.8.

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.

The provisions of this part apply mutatis mutandis to contracts concluded by the beneficiary's partners.

## **II.2. Eligibility for contracts**

### **II.2.1 The nationality rule**

The beneficiaries of grants comply with the eligibility rules for public procurement foreseen in the respective regulations for different cooperation programmes as well as the basic acts or other acts relating to the implementation of Title V of the Treaty of the European Union (CFSP/ESDP) when the implementation of aid requires them to carry out public procurement.

Tenderers must state, in their tender, the country of which they are nationals by presenting the proof of nationality usual under their national legislation.

This rule does not apply to the experts proposed by the service providers taking part in the calls for tenders or in the service contracts financed by the grant, who may be of any nationality. This provision is without prejudice to the qualitative and financial requirements set out in the Community's procurement rules.

### **II.2.2 The rule of origin**

In accordance with the Regulations on different cooperation and external aid programmes as well as the basic acts or other acts relating to the implementation of Title V of the Treaty of the European Union (CFSP/ESDP) supplies and materials purchased under a contract financed under a Community instrument must originate in the Community or in an eligible country. For the purpose of this decision, the term “origin” is defined in Articles 23 and 24 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and in other Community legislation governing non-preferential origin.

Tenderers must state in the origin of the supplies in their tenders. The contractor must submit proof of origin for equipment and vehicles of a unit purchase price higher than EUR 5000 to the grant beneficiary no later than when the first invoice is presented. The proof of origin has to ensure that the indication of origin does comply with the rules laid down by the relevant Community legislation.

### **II.2.3 Exceptions to the rules on nationality and origin**

The exceptions to the rules on nationality and origin are laid down in the regulations on different cooperation programmes.

### **II.2.4 Grounds for exclusion from participation in contracts**

See Article 93 of the Financial Regulation.

### **II.2.5 Exclusion from award of contracts**

See Article 94 of the Financial Regulation.

## **II.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 website relating to external actions. The European Commission does not publish the tender documents established by the grant beneficiary.

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, possessing all the technical and administrative capacities necessary to express a valid opinion on the tenders. The beneficiary must ensure that the members of the evaluation committee are not in a situation of conflict of interest. If such a situation arises, the member concerned must abstain and inform the beneficiary.

A beneficiary implementing contracts financed by the European Community must take appropriate measures to prevent irregularities, fraud, corruption or any other illegal activity in the management of the action. All suspected and actual cases of irregularity, fraud and corruption, as well as measures related thereto taken by the beneficiary must be reported to the contracting authority without delay.

## **II.4. Rules governing service contracts**

### **II.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 website, 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 number will be in the range of four to eight and must be sufficient to ensure genuine competition.

All would-be service providers fulfilling the conditions referred to in Section II.2 may ask to participate, but only candidates satisfying the published selection criteria may, at the grant beneficiary's written invitation, submit a tender.

### **II.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 10 000 or less, the beneficiary may place orders on the basis of a single tender.

## **II.5. Rules governing supply contracts**

### **II.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 website, 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 II.2 may submit a tender.

### **II.5.2 Contracts between EUR 60 000 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.

### **II.5.3 Contracts under EUR 60 000**

Supply contracts worth less than EUR 60 000 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 10 000 or less, the beneficiary may place orders on the basis of a single tender.

## **II.6. Rules governing works contracts**

### **II.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 website, 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 II.2 may submit a tender.

### **II.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.

### **II.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 10 000 or less, the beneficiary may place orders on the basis of a single tender.

## **II.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 cases detailed in Articles 242, 244 and 246 of the Implementing Rules, which respectively concern services, supplies and works.

In the case of crisis situations within the meaning of Article 168(2) of the Implementing Rules, note that it is the Commission which notifies the grant beneficiary of the existence and end of such situations.

The grant beneficiary may also use the negotiated procedure in the following cases:

(a) when orders are placed with a humanitarian central buying office, recognised as such by the relevant service of the European Commission;

It is to notice that a central buying office is an autonomous and professional non-profit making structure specialising in the technical and commercial management of supplies.

(b) for the issue of a certificate of expenditure verification and of a financial guarantee when they are required by the grant contract.

## **II.8. Special cases**

### **II.8.1 Cofinancing**

The grant beneficiary may apply rules imposed by the other donor where:

- the action is cofinanced by several donors and
- one of the 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 II.3 to II.6.

In all cases, the general principles and rules on nationality and origin set out in Sections II.1 and II.2 continue to apply.

### **II.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 rather than the rules set out in Sections II.3 to II.7. In all cases, the general principles and rules on nationality and origin set out in Sections II.1 and II.2 continue to apply.

### **II.8.3 International organisations and cofinancing**

When Community financing covers an action implemented through an international organization or an action co-financed with a third country, a regional organization or a Member State, specific eligibility rules are laid down in the regulations on the different cooperation programmes.

Where the grant beneficiary is an international organisation, it applies its own procurement procedures if they provide guarantees equivalent to internationally accepted standards. Otherwise or in specific cases, the Commission and the international organisation will agree to apply other rules which do provide such guarantees.

Where the partner is an international organisation, it applies its own procurement procedures if they provide guarantees equivalent to internationally accepted standards. Otherwise or in specific cases, the Commission and the international organisation will agree to apply other rules which do provide such guarantees.

The international organisations referred to in this Section are those defined in Article 43(2) of the Implementing Rules.

## **II. 8.4 Central Buying Offices**

When the beneficiary of a grant uses a central buying office as service provider, it will select that office in accordance with the procedures laid down above for service contracts.

A central buying office is an autonomous and professional non-profit-making structure specialising in the technical and commercial management of supplies.

This central buying office will comply with the rules that bind the beneficiary of the grant. If it is a humanitarian central buying office, recognised as such by the relevant service of the European Commission, it will comply with the rules agreed upon at the time of its approval, subject to the nationality and origin rules stipulated in Section II.2 above.