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<tr>
<th>Abbreviation</th>
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<tr>
<td>ACP</td>
<td>The ACP Group consists of countries in Africa, Caribbean and Pacific</td>
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<td>ACT</td>
<td>Action by Churches Together</td>
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<tr>
<td>AWB</td>
<td>Air Way Bill</td>
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<tr>
<td>B/L</td>
<td>Bill of Lading</td>
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<td>DCA</td>
<td>DanChurchAid</td>
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<tr>
<td>ECHO</td>
<td>European Commission for Humanitarian Aid &amp; Civil Protection</td>
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<tr>
<td>FPA</td>
<td>Framework Partnership Agreement</td>
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<tr>
<td>GDP</td>
<td>Good Distribution Practices</td>
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<tr>
<td>GFU</td>
<td>DanChurchAid Global Funding Unit</td>
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<tr>
<td>GHTF</td>
<td>Global Harmonization Task Force</td>
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<td>GMDN</td>
<td>Global Medical Device Nomenclature</td>
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<td>GMP</td>
<td>Good Manufacturing Practices</td>
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<tr>
<td>GSP</td>
<td>Good Storage Practices</td>
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<tr>
<td>GTC</td>
<td>General Terms and Conditions</td>
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<tr>
<td>HMA</td>
<td>DanChurchAid Humanitarian Mine Action</td>
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<tr>
<td>HPC</td>
<td>Humanitarian Procurement Centre</td>
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<tr>
<td>HQ</td>
<td>DanChurchAid Head Quarter</td>
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<tr>
<td>IATA</td>
<td>International Air Transportation Association</td>
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<tr>
<td>ICC</td>
<td>International Chamber of Commerce</td>
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<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
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<tr>
<td>INGO</td>
<td>International Non Governmental Organisation</td>
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<tr>
<td>ISO</td>
<td>International Standardization for Organisation</td>
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<tr>
<td>LDC</td>
<td>Least Developed Countries</td>
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<tr>
<td>MOU</td>
<td>Memorandum of Understanding</td>
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<tr>
<td>MQAS</td>
<td>Model Quality Assurance System</td>
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<tr>
<td>MSF</td>
<td>Medecines Sans Frontieres</td>
</tr>
<tr>
<td>NA</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>PRAG</td>
<td>Practical Guide (EuropeAid)</td>
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<td>ProLog</td>
<td>Procurement and Logistics Unit, DCA Head Quarter in Copenhagen</td>
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<td>RFP</td>
<td>Request for Proposal</td>
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<td>RFQ</td>
<td>Request for Quotation</td>
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<td>RO</td>
<td>DanChurchAid Regional Office</td>
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<td>TOR</td>
<td>Terms of Reference</td>
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<td>UNICEF</td>
<td>United Nations International Children's Fund</td>
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<td>WHO</td>
<td>World Health Organisation</td>
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INTRODUCTION

This 4th edition of the DanChurchAid (DCA) Procurement Manual is based on donor requirements and international best practices. The Manual is applicable for all DCA operations and can be freely used by DCA and our partners.

The aim of the Manual is to implement appropriate procedures in all procurement activities carried out by DCA and partners in order to ensure that funds are being spent honestly and efficiently to the benefit of our beneficiaries. The procedures of this Manual ensure that DCA and partners practice sound procurement for which transparency, equal opportunity, ethics, best quality and value for money, supporting the project community, and preventing conflicts of interest and corruption are fundamental principles.

The content of the Manual is not set in stone; it is a living document which is updated regularly on the basis of donor requirement, experiences and best practices. Users of the Manual are therefore encouraged to provide feedback and suggestions to the Manual and its related annexes to the DCA Procurement and Logistics Unit in Copenhagen, Denmark.

The 4th edition of the Procurement Manual has been developed by the DCA Procurement and Logistic Unit with important input from procurement staff in the field. Thanks to all who have contributed to the 4th edition of the Procurement Manual. The Manual and its annexes have been developed with reference to publicly accessible procurement documents from the World Bank, EuropeAid and ECHO and the procedures and guidelines for procurement in this Manual meet ECHO and EuropeAid rules and requirements.

The Manual can be downloaded from the DCA website or from the DCA intranet where translations of specific templates and the 2nd and 3rd edition of the Manual as well as a list of the main changes are also found.

Applicability

The Procurement Manual applies to all DCA operations whether implemented by a DCA office or by partners. If stricter procurement procedures are stipulated by a donor, the donor’s procedures shall prevail (e.g. EuropeAid or USAID). If less strict procedures are stipulated by a donor the procedures described in this Manual shall prevail.

Operations funded through the ACT Alliance via a multilateral agreement on the basis of an ACT appeal will not be required to follow the procedures of this Manual, as DCA’s contractual relationship is with ACT and not the partner. However, when a bilateral contractual relationship exists with a partner either in the ACT Alliance or otherwise, the policies and procedures of this Manual shall apply, and shall be annexed to any cooperation agreement.
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1 PROCUREMENT POLICY

DCA and partners are administrating entrusted funds and are accountable to both beneficiaries, as well as public and private donors. Throughout the procurement process DCA and partners shall perform professionally to ensure that funds are spent in a financially and ethically sound manner and with respect for the dignity of the beneficiaries and their right to efficient aid. To ensure that DCA and partners live up to this responsibility, all procurement of supplies, services and works, irrespective of the procurement procedure, shall be carried out on the basis of the following General Procurement Principles and Ethical Procurement Principles.

1.1 GENERAL PROCUREMENT PRINCIPLES

The following General Procurement Principles constitute the basis for sound administration of all procurement related activities executed by DCA and partners.

**Transparency and Equal Opportunity**

Transparency in procurement means that all information related to procurement activities, procedures and opportunities are documented and made visible and accessible to all relevant stakeholders.

Transparency ensures that DCA and partners provide equal business opportunities for suppliers/candidates and ensures that they are treated equally and fairly throughout the procurement process. To promote and ensure equal opportunity amongst businesses, all information related to procurement shall be made visible, accessible and known\(^1\).

Additionally, transparency in the procurement process can make it easier to detect irregularities and ensure that funds are being honestly spent, accounted for and fairly distributed.

**Avoid Conflicts of Interest**

A conflict of interest occurs whenever a person deviates from his/her impartial and objective exercise of his/her professional functions and on the contrary misuses the professional position for private, financial or organisational gain, or for the gain of any third party (family, friends, colleagues, etc.). If conflicts of interest are not identified and managed well they may evolve into corruption, which shall be avoided at all times.

DCA and partners shall be alert to individual or organisational conflicts of interest and shall avoid getting into situations in which they may have a private interest that could influence their professional performance. DCA and partners are expected to show good judgement and if a conflict of interest arises, it shall be disclosed to the superior authority and appropriate action shall be taken. If in doubt whether a conflict of interest exists, please contact a superior.

DCA and partners shall also be alert to conflicts of interest and/or non-competitive practices by contractors. Procurement shall not take place if a contractor, to the knowledge of DCA or partner, is a member of any of DCA’s or partner’s employees’ immediate family or has any financial interest with a DCA or partner employee.

**Anti-corruption**

DCA defines corruption as the misuse of entrusted power for private gain. Corruption occurs on various levels and in different forms. What always characterises corrupt practices is that they involve conflicts of interest and unreasonably influence impartiality and objectivity in e.g. the selection process or in the contract execution. The abuse of power, extortion, fraud, embezzlement and bribery is always prohibited (and in most countries illegal).

\(^1\) Deviation from the principle of equal opportunity and transparency is possible if the principle contradicts the efficient use of resources or for security reasons.
DCA staff and partners shall not give or receive any gift, service or favour that may influence the exercise of their professional function and performance. In order to respect traditions and conventional hospitality minor gifts or small scale hospitality may be accepted if the intention is professional. Receiving minor gifts shall never influence the staff’s good judgement and shall be shared with colleagues in order to create transparency and prevent partiality. Cash gifts are never to be accepted. As the value of an acceptable gift varies over the countries in which DCA operates, receiving or giving a minor gift is always a matter of context, good judgement and professionalism. Whenever in doubt, contact a superior.

For ECHO funded projects unacceptable gifts are defined as having a value above EUR 100 and substantial hospitality such as accommodation and holidays are never acceptable.

DCA staff and partners shall not engage in corrupt practices. To prevent corruption and misuse of finances it is a DCA policy that procurement and payment may never be done by the same person. DCA staff and partners shall reject any bid, or terminate any contract, put forward by corrupt actors. DCA staff and partners shall follow the anti-corruption Policy and are obliged to report all corrupt incidences (taking place in DCA itself, in partner organisations or any other corrupt incidence related to DCA activities) to the DCA Complaints Mechanism. Partners and contractors have to live up to the anti-corruption policy. It is the responsibility of DCA to inform our partners and other relevant stakeholders about this policy.

Best Quality and Value for Money
The principle of best quality and value for money aims at ensuring efficiency, effectiveness and economy in procurement and it is an award criterion which ensures that the optimum quotation/proposal is awarded the contract. The optimum quotation/proposal fulfils the defined needs and the objective of the action with requirements to the following four indicators: satisfactory quality of the supplies/services/works; timely delivery or completion; price corresponding to market prices or lower; and with considerations to human, social and labour rights and the environment.

The award of contracts regardless of the procurement procedure shall always conform to the principle of best quality and value for money.

Support the Project Community
In order to support the regional economy and the development of markets, DCA and partners shall seek to procure resources locally whenever possible and pertinent.

1.2 ETHICAL PROCUREMENT PRINCIPLES
DCA is an active player on the global market buying various supplies, services and works. As a buying organisation DCA influences the flow and allocation of economic resources and consequently has an impact, whether direct or indirect, on poverty, rights, social- and environmental conditions. Thus, DCA and partners have a responsibility and obligation to ensure that the way we practice procurement seeks to decrease the ethical risks and support sustainable development. Ethical procurement is in line with DCA’s general values and goals of empowering “the world’s poorest in their struggle for a dignified life” with “respect for the individual’s human rights and the equal worth of all human beings”.

Practicing ethical procurement involves looking beyond economic parameters and efficiency. The life cycle of the products and services we purchase and the related social consequences, risks and implications for people, society and the environment, shall be considered in the procurement process. Within this commitment lies a responsibility to encourage and oversee responsible business behavior in our supply chains and the implementation of our Code of Conduct for Contractors.
The following Ethical Procurement Principles are based on international conventions\(^2\), recommendations from the Danish Initiative for Ethical Trade (DIEH), UN Global Compact Principles, UN Guiding Principles on Business and Human Rights and ECHO’s Humanitarian Aid Guidelines for Procurement 2011.

**Promote and Protect Human, Social and Labour Rights**

In all procurement DCA staff and partners shall work towards avoiding procurement practices and decisions which negatively affect people’s human, social and labour rights. DCA and partners shall throughout the procurement process consider the impact procurement decisions may have on people’s rights and take the necessary actions to promote a responsible business environment where contractors are willing and able to integrate people’s human, social and labour rights in their businesses.

DCA and partners procurement decisions shall seek to support and promote the following internationally recognised rights: The International Human Rights; non exploitation of child labour\(^3\); freedom to choose employment; freedom of association and collective bargaining; payment of living wages\(^4\); freedom from discrimination in employment; no harsh and inhumane treatment of employees; safe and hygienic working conditions; non-excessive working hours; and securing regular employment\(^5\).

**Uphold International Humanitarian Law and related Conventions**

For all procurement DCA and partners shall take the necessary precautions to avoid contractors who are engaged in activities which initiate, sustain or exacerbate armed conflict and violations of International Humanitarian Law\(^6\), or any other illegal activity. DCA and partners shall always seek to avoid procurement practices and decisions which directly or indirectly inflict harm to civilians affected by conflict.

DCA staff and partners shall uphold DCA’s responsibilities and commitment to the Ottawa Convention against landmines and the Convention on Cluster Munitions. DCA and partners shall ensure that we do not use contractors who are engaged in any development, sale or manufacture of anti-personnel mines, cluster bombs or components or any other weapon which feed into violations of International Humanitarian Law or is covered by the Geneva Conventions and Protocols.

**Protection of the Environment**

DCA wishes to minimise the environmental damage applied to nature via procurement and DCA and partners shall seek to act in accordance with the Rio Declaration. This involves making procurement decisions which consider environmental issues and integrate them into the procurement process.

The following four main issues are to be considered in the procurement process and in the selection criteria: The choice of transportation and the associated pollution risks; the purchase of environmentally friendly products/materials or recycled products whenever possible and pertinent; efficient use of resources, and conservation of scarce resources (water, flora, forest, land, etc.).

**Code of Conduct for Contractors**

Alongside the above mentioned Ethical Procurement Principles DCA’s Ethical Procurement Policy includes the Code of Conduct for Contractors which defines the ethical principles and standards for DCA’s contractors. The Code of Conduct is a mandatory component of DCA’s contracts and shall be signed by all contractors.

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\(^2\) The full list of international conventions related to the DCA Ethical Procurement Principles can be found in the Code of Conduct for Contractors.

\(^3\) The definition of child labour is found on: [http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle5.html](http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle5.html)

\(^4\) A living wage is the minimum hourly wage necessary for an individual to meet basic needs, including housing and other incidentals such as clothing and nutrition. According to ILO Conventions a living wage includes a discretionary income. A discretionary income is the amount of an individual's income that is left for spending, investing or saving after taxes and personal necessities (food, shelter, and clothing) have been paid.

\(^5\) In the Code of Conduct for Contractors the full list of the rights DCA seeks to uphold and promote is found and a thorough description on each matter.

\(^6\) International Humanitarian Law prohibits pillage – the unlawful taking of private property for personal or private use. This includes the accusation of private property based on force, threats, intimidation, pressure and through a position of power accomplished due to the surrounding conflict.
It is the contractors’ responsibility to comply with the Code of Conduct. As a general rule DCA does not wish to practice a ‘running and cutting’ practice\(^7\) which does not contribute to actual improvements. We wish to promote dialogue and positive changes. However, if a contractor does not commit to the Code of Conduct and show will to collaborate and make changes, DCA or partners shall turn down the quote/proposal or consider terminating the Contract. DCA and partners shall always act in accordance with donor requirements for termination of contracts.

### 1.2.1 Implementation of the Ethical Procurement Principles

To decrease and avoid the ethical risks related to procurement DCA recommends that the following issues are considered and integrated in the procurement process:

- **Lead times and changes to contract specifications.** Short lead times and changes to the contract specifications may influence the contractors’ ability to provide secure and regular employment and may result in forced (and unpaid) overtime. Good planning and clearly defined specifications and selection criteria enable contractors to plan ahead and provide feedback on specifications.

- **Pricing.** Putting pressure on prices may have negative consequences for contractors’ employees and may lead to deterioration in health, safety and payment of living wages or compensation for overtime. The prices paid shall leave room for both the supplier and the Contracting authority to benefit from the relationship. Be aware of this when negotiating the contract price. Also make sure to pay the contractor on time.

- **Include ethical criteria’s in RFP/RFQ/Tender Dossier.** When relevant make sure to include ethical criteria’s in the specifications/TOR and contract conditions in the RFP/RFQ/Tender Dossier and in the Proposal- or Quotation Submission Form. This could be in the form of requirements to specific ethical criteria’s that the product, service or works has to live up to or additional requirements to the contract performance (which are not mentioned in the Code of Conduct). If certifications/standards (e.g. FairTrade, Rainforest Alliance, SA8000 or FSC) are required as a means of proof for complying to a set of defined criteria’s it must be stipulated that other reliable means of proof are also accepted.

- **‘Think Green’**. Whenever possible and pertinent think green solutions into procurement. This could be product specific such as: solar panels, wind power, water efficient equipment, biogas installations, recycled materials etc. Also include requirements to specific certifications which ensure e.g. environmental sustainability, proper energy management, legal/sustainable forestry, organic materials, ecology etc.

- **High risk sectors and countries.** Be aware that ethical risks are often related to specific sectors and countries and are often interrelated. E.g. child labour is often also bonded or trafficked; the garment/textile sector is known for violations of labour rights; child labour is more common in the agricultural and garment/textile sectors than in other sectors; seasonal production is more likely to make use of migrant workers whose labour rights are often not covered by national law; in many developing countries the minimum wage is not a living wage; land grabbing is often related to food production and bio fuel; and polluting production practices are often associated with certain industries and countries.

It is recommended to make a risk assessment to get a basic identification of sector and country specific risks in the country of operation. You may find useful information on the following online resources:

- www.countryriskportal.org (human rights and risks for businesses – to be launched in 2013);
- www.hrw.org/publications (Human Rights Watch);
- www.maplecroft.com (global risks and businesses).

- **Sharing knowledge.** Sharing knowledge (through e.g. NGOs, government institutions, trade unions, etc.) on general CSR\(^8\) issues, general attitudes towards human rights, national laws and environmental risks in a given country provide essential and useful information on ethical issues and risks.

- **Small scale risk assessment on contractors.** The sourcing of new contractors shall entail a small scale risk analysis on each contractor’s ethical business performance. If possible, it is recommended to make a Google

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\(^7\) A ‘running and cutting’ practice means the immediate termination of sourcing from a supplier. Termination of a relationship with a supplier does not have a positive effect on employees, working conditions or situation. On the contrary it might worsen their situation.

\(^8\) Corporate Social Responsibility. CSR is a volunteer business reporting framework or business approach which includes environmental and social aspects alongside financial measures. Through CSR businesses include a social and environmental responsibility in their business actions and goals.
search on each contractor in order to generate information on e.g. CSR policy, labour violations, human rights violations, polluting practices, relevant certifications, the SA8000 standard etc. Findings shall be documented and filed in the procurement file. The generated information - positive, negative or non-existent shall then be integrated in the selection of contractors. If any, the identified ethical problems shall be addressed in dialogue with the chosen contractor or alternative procurement options shall be identified.

- **Supplier visits.** When visiting suppliers/candidates for sourcing reasons or other reasons make simple observations on ethical issues also e.g. how are the working conditions? Are wastewater led directly into the stream/river? Are children working at the compound? Are workers in direct contact with chemicals? etc. Document your observations, make a note to file in the procurement file or in your supplier database and take appropriate action.

- **Engaging in dialogue.** Dialogue is an important component of creating changes to ethical issues. As a general rule, if there is a suspicion or proof of a contractor not complying with the Code of Conduct for Contractors this should be discussed in the Procurement Committee. It should then be decided what actions are to be taken for that specific case in that specific context – all with the aim of dialogue. If the problem is severe, e.g. child labour, bonded labour, mine production etc. the program management shall be included and for DCA projects ProLog in HQ shall be contacted to find a proper solution or for determining if the contract should be terminated.
2 PROCUREMENT RESPONSIBILITIES

2.1 THE DCA PROCUREMENT AND LOGISTICS UNIT, CPH

As a service to our partners and DCA Regional Offices (RO) the DCA Procurement and Logistics Unit in Copenhagen (ProLog) provides assistance and advice on the following procurement tasks at project preparation stage:

- Activity planning.
- The Procurement Plan.
- Budgeting (identifying storage, transport, spare parts etc.).
- Identifying the need for procurement capacity.
- Identifying if derogations from the procurement procedures are necessary.

At project implementation stage DCA Procurement and Logistics Unit is providing training in the use of the Procurement Manual for partners and procurement staff at RO’s. It is important to stress the need to incorporate the training in the project planning phase (when drafting project budget).

As a general rule DCA Procurement and Logistics Unit is always available to partners and RO’s for any questions they might have on procurement rules and procedures, implementation difficulties, ethical issues and for the provision of standard documents.

When procurement activities are significant, the services of a logistician or an international consultant may be needed for the practical implementation of procurement procedures (paper work, detailed market investigations, contacts with suppliers, filing of procurement documentation). DCA Procurement and Logistics Unit can assist in the identification of experts when required.

Depending on the project DCA Procurement and Logistics Unit’s assistance might be agreed upon for implementation, supervision and monitoring of procurement activities. It is important to stress the need to incorporate these services in the project planning phase (when drafting the project budget).

For global funding projects the level of involvement by DCA Procurement and Logistics Unit shall always be coordinated and agreed with the Global Funding Unit (GFU). For other projects the responsible Project Manager shall coordinate directly with DCA Procurement and Logistics Unit. For procurement carried out by DCA Procurement and Logistics Unit, please refer to the Memorandum of Understanding (MoU) between the HMA Unit and ProLog.

2.2 HUMANITARIAN MINE ACTION

For DCA Humanitarian Mine Action (HMA) programmes all international procurement shall be carried out by DCA Procurement and Logistics Unit (unless otherwise stated in the approved procurement plan), and all purchases shall be carried out by the field personnel (Procurement Committee).

For procurement carried out by DCA Procurement and Logistics Unit please refer to the MoU between the HMA Unit and DCA Procurement and Logistics Unit.

2.3 DCA PARTNERS AND REGIONAL OFFICES

According to DCA’s decentralisation policy, DCA partners and DCA RO’s (except international procurement for HMA programmes), are responsible for procurement planning and implementation. Authorisations and responsibilities shall be in accordance with the internal rules for the specific partner or RO. Consider carefully if
those rules (in particular for award of contracts and for payment procedures) could impact the procurement procedures. It may be necessary to introduce new rules for authorisation and responsibilities in order not to impede or slow down the procurement process.

For all procurement carried out by DCA partners and ROs the DCA Procurement Manual applies.

2.4 PROCUREMENT COMMITTEE
A Procurement Committee shall be established before any procurement activities are initiated. The Procurement Committee shall consist of at least three persons and preferably an odd number.

The main responsibilities of the Procurement Committee are to:
- Ensure that a procurement plan is drafted and that it corresponds to the activity plan.
- Ensure that all procurement requirements are planned for at the beginning of the project.
- Ensure that procurement activities are initiated on time.
- Ensure the collection of quotations and issue purchase orders/contracts.
- Ensure that ethical risks are considered and addressed in the procurement process.
- Ensure that the procurement fulfils donor requirements (e.g. procurement procedures or the Rules of Nationality and Origin).
- Ensure that all internal and external experts required for the project are being consulted early in the project phase and committed to provide the input/information/specifications needed for the procurement activities and to ensure that the procurement plan and activity plan corresponds.
- Evaluate quotes/proposals. The Procurement Committee is responsible for the evaluation of quotes. It is not a requirement to form an independent evaluation committee for evaluation purposes. For the evaluation of high value tenders (Local and International Open Tenders) it is especially important that the committee possess the necessary technical and administrative expertise to perform the tender evaluation. If the members of the Procurement Committee do not possess the required qualifications, internal or external experts shall be appointed (for the same project the Procurement Committee may use different experts for evaluation of the individual lots depending on the contract category). However, the procurement officer/responsible person shall always be a member of the Procurement Committee as the expert on procurement procedures.

The Three Main Objectives of the Procurement Committee
- Ensure that procurement planning is considered and included in the project planning and cycle and that key project staff understand how the timeframe for procurement will affect the project.
- Ensure that all procurement is carried out objectively in a fair and transparent manner and to prevent conflict of interests and corruption. As a rule procurement and payment may not be done by the same person.
- Ensure that the best quality and value for money is obtained.

NOTE: All members of the Procurement Committee shall sign the Declaration of Impartiality and Confidentiality (The template is found in Annex GEN 2).
3 PROCUREMENT PROCEDURES

Procurement procedures are the rules and actions that apply to the purchase of a given resource, depending on the contract category and the value of the purchase. Put in a simple way – they are the rules for “how to buy”. Overall this chapter provides an introduction to which procurement procedure to apply according to contract category and value.

In order to select an appropriate procurement procedure for each activity in the procurement plan, the Procurement Committee shall first of all consider which contract category the resources belong to and the value of the contracts accordingly. The following two sections provide a short description of the various contract categories, the procurement procedures and thresholds respectively.

For an overview of the thresholds and the affiliated procurement procedures for the contract categories see the tables on page 17+18.

3.1 CONTRACT CATEGORIES

The resources to be procured are divided into the following contract categories:

Supplies
Supply Contracts cover the purchase, operational leasing\(^9\), and rental or hire of various kinds of products (including rent of vehicles with or without option to buy). The delivery of products may in addition include siting, installation and maintenance. Note that whenever rental of venues for meetings, conferences etc. is a direct project cost, it is categorised as a supply.

Service
A Service Contract is a contract for the provision of a defined service. It covers all intellectual and non-intellectual services other than those covered by Supply Contracts, Works Contracts and Property Contracts.

Service Contracts also comprise the following contract forms:
- A Study Contract is a contract which includes studies for the identification and preparation of projects, feasibility studies, technical studies and audits.
- A Technical Assistance Contract is a contract in which the contractor is called on to play an advisory role, to manage or supervise a project or to provide the consultants specified in the contract.
- Freight Contracts are contracts covering transport of goods from one site to another (unless the freight is included in the Supply Contract).

Rent of a vehicle with a driver is also a Service Contract.

When rental of equipment and venues are direct projects costs it is not considered a Service Contract, but a Supply Contract (e.g., rent of vehicle or conference room). Be aware that some services such as repair of machinery, cleaning services or small scale catering might be considered “running costs” and therefore not subject to procurement procedure.

A Service Contract and an Employment Contract are two different contracts. An Employment Contract involves recruitment, fixed salary, regulations on leave, resignation restrictions etc. These obligations are hence for the Contracting Authority as an employer, rather than merely a party to a contract for the provision of a service. Employment Contracts are not covered by this Manual and are not considered procurement. (See more details in section 7.5.)

\(^9\) For operational leasing there is no transfer of legal ownership to the lessee. Depending on the contract most risks are held by the owner.
Works

'Works' means the outcome of building or civil engineering taken as a whole and sufficient to fulfil an economic or technical function. Works Contracts cover either the execution, or both execution and design of a work corresponding to the requirements specified by the Contracting Authority. It is a Works Contract when an entrepreneur or construction company has the obligation of delivering works and is responsible for hiring and/or buying the necessary resources to fulfil this obligation (i.e. the entrepreneur hires the labour, brings the equipment and buys the construction materials and supplies). Examples of Works Contracts are construction, reconstruction, demolition, repair or renovation of a building, site preparation, excavation, drilling, etc.

Hybrid Contracts

A Hybrid Contract is a combined contract covering supplies, services and/or works. The procurement procedure shall be determined by the part which represents the highest value. E.g. a contract covering supplies and works shall be considered a Supply Contract whenever the value of the supplies in question exceeds that of the works included in the contract and vice versa.

3.2 THRESHOLDS AND THE AFFILIATED PROCUREMENT PROCEDURES

The contract category and value of a contract defines the applicable procurement procedure for a particular purchase. The rules and procedures to be followed get stricter the higher the value of the Contract.

The contract value is determined by the estimated costs of a lot including any additional services or options covered by the Contract. If the Contract establishes a running relationship, for example a service agreement or a Framework Contract, the contract value covers the entire contract period and includes all related payments.

This section describes each of the four applicable procurement procedures. It is important to stress that it is mandatory to follow procedures for each purchase. Thorough information and guidelines on these procedures are described in the Supply, Service and Works chapters respectively.

If donor rules are stricter than the procedures outlined in this Manual, the donor rules shall prevail.

Simple Procedure

The Simple Procedure is the simplest procurement procedure. This procedure is, as a general rule, applicable when thresholds are of the value EUR 0 - 9,999. In special cases, described in section 4.8.1, the Simple Procedure can be applied for procurement above EUR 9,999.

The Simple Procedure does not require more than one supplier/candidate to be invited to submit a quotation/proposal. However it is important to stress that the price shall correspond with, or be lower than the present market price. This shall always be justified and filed in the procurement file. To prove that the price corresponds with the market price you can e.g. search the internet, refer to recent contracts, or obtain at least three written or non-written quotations. Please ensure that all non-written quotations are put down in writing and filed in the procurement file.

A purchase order or contract shall always be issued for procurement above the value of EUR 2,000. For procurement below EUR 2,000 it is optional to issue a purchase order or contract, but an invoice shall in all cases be received and filed. As this lower boundary allows for more flexibility in issuing purchase orders and contracts under the value of EUR 2,000, it is important to be aware of the risks involved. In order to minimise risks and ensure that the suppliers/contractors are aware of the General Terms and Conditions (GTC) and Code of Conduct for Contractors, it may be advisable to issue a purchase order or a contract for purchases less than EUR 2,000 in some contexts.

For EuropeAid calls prior to 2013 it is a requirement to issue a purchase order or contract irrespective of the contract value.
**Negotiated Procedure**
The Negotiated Procedure is more formal than the Simple Procedure and is applicable for Supply and Service contracts when contracts of the value EUR 10,000 - 149,999 (10,000 - 299,999 for Works Contracts).

The Negotiated Procedure requires that a minimum of three suppliers/candidates are invited simultaneously to submit a quotation based on a RFQ/RFP. The Contract shall be awarded the most compliant supplier/candidate. For DCA and partners an award notice is required to be published on the DCA website (mandatory for contracts above EUR 30,000). Letters to all unsuccessful suppliers/candidates shall be submitted.

The Negotiated Procedure is less formal than a Local Open Tender Procedure and gives the opportunity to negotiate the terms of the Contract.

**Local Open Tender Procedure**
The Local Open Tender Procedure (from here on named Local Open Tender) is more extensive and elaborate than the Negotiated Procedure. It is applicable to higher value purchases of EUR 150,000 - 299,999 (300,000 - 2,999,999 for Works Contracts).

The procedure requires a public advertisement of a tender notice in the country of operation (in newspapers, online procurement media, DCA website etc.) with a bid flow of at least 21 days. A Local Open Tender shall provide eligible suppliers/candidates within the country of operation with the same business opportunities.

A specified tender dossier shall be drafted and forwarded to interested suppliers/candidates who then have the opportunity to make a tender request. After the deadline of receiving tenders the tenders shall be opened and announced in the presence of all interested tenderers. Evaluation of the tenders is fulfilled by the members of the Procurement Committee on the basis of a clearly predefined evaluation grid. The outcome of each member’s evaluation is compared and the best compliant tender is awarded the Contract. For DCA and partners an award notice is required to be published on the DCA website and letters to all unsuccessful suppliers/candidates shall be submitted.

**International Open Tender Procedure**
The International Open Tender Procedure (from here on named International Open Tender) is similar to the Local Open Tender except for the rules applicable to advertisement and the timeframe for the bid flow. International Open Tenders shall always be advertised internationally and the deadline for submitting a tender shall be at least 30 days after the Tender Notice is published. The International Open Tender is applicable for all purchases of Supplies and Services above EUR 300,000 (above EUR 3,000,000 for EuropeAid Works Contracts).

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**Thresholds and Affiliated Procurement Procedures for DCA/ECHO:**

<table>
<thead>
<tr>
<th>Threshold</th>
<th>Procurement Procedure</th>
<th>Key Activity</th>
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</thead>
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## Procurement Procedures

### SUPPLIES

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<tr>
<th>Threshold</th>
<th>Procurement Procedure</th>
<th>Key Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to EUR 9,999 (and in special cases)</td>
<td>Simple Procedure</td>
<td>See section 6.1</td>
</tr>
<tr>
<td>EUR 10,000 - 149,999</td>
<td>Negotiated Procedure</td>
<td>See section 6.2</td>
</tr>
<tr>
<td>EUR 150,000 - 299,999</td>
<td>Local Open Tender Procedure</td>
<td>See section 6.3</td>
</tr>
<tr>
<td>Above EUR 300,000</td>
<td>International Open Tender Procedure</td>
<td>See section 6.4</td>
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### SERVICES

<table>
<thead>
<tr>
<th>Threshold</th>
<th>Procurement Procedure</th>
<th>Key Activity</th>
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</thead>
<tbody>
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</tr>
<tr>
<td>Above EUR 300,000</td>
<td>International Open Tender Procedure</td>
<td>See section 7.4</td>
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</table>

### WORKS

<table>
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<tr>
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<th>Procurement Procedure</th>
<th>Key Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to EUR 9,999 (and in special cases)</td>
<td>Simple Procedure</td>
<td>See section 8.1</td>
</tr>
<tr>
<td>EUR 10,000 - 299,999</td>
<td>Negotiated Procedure</td>
<td>See section 8.2</td>
</tr>
<tr>
<td>EUR 300,000 - 2,999,999</td>
<td>Local Open Tender Procedure</td>
<td>Contact ProLog for instructions and standard documents</td>
</tr>
<tr>
<td>Above EUR 3,000,000</td>
<td>International Open Tender Procedure</td>
<td>Contact ProLog for instructions and standard documents</td>
</tr>
</tbody>
</table>

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**Thresholds and Affiliated Procurement Procedures for EuropeAid PRAG 2012:**

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<thead>
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<th>Threshold</th>
<th>Procurement Procedure</th>
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### SUPPLIES

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<th>Procedure</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to EUR 9,999 (and in special cases)*</td>
<td>Simple Procedure</td>
<td>See section 6.1</td>
</tr>
<tr>
<td>EUR 10,000 - 59,999</td>
<td>Negotiated Procedure</td>
<td>See section 6.2</td>
</tr>
<tr>
<td>EUR 60,000 - 149,999</td>
<td>Local Open Tender Procedure</td>
<td>See section 6.3</td>
</tr>
<tr>
<td>Above EUR 150,000</td>
<td>International Open Tender Procedure</td>
<td>See section 6.4</td>
</tr>
</tbody>
</table>

* See EuropeAid Annex IV for the special cases for which the Simple Procedure can be applied to contracts of a value above EUR 9,999 in EuropeAid funded projects.

### SERVICES

<table>
<thead>
<tr>
<th>Value Range</th>
<th>Procedure</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to EUR 9,999 (and in special cases)*</td>
<td>Simple Procedure</td>
<td>See section 7.1</td>
</tr>
<tr>
<td>EUR 10,000 - 199,999</td>
<td>Negotiated Procedure</td>
<td>See section 7.2</td>
</tr>
<tr>
<td>Above EUR 200,000</td>
<td>International Restricted Tender Procedure</td>
<td>Contact ProLog for instructions and standard documents</td>
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### WORKS

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<td>EUR 10,000 - 299,999</td>
<td>Negotiated Procedure</td>
<td>See section 8.2</td>
</tr>
</tbody>
</table>
Procurement Planning

4 PROCUREMENT PLANNING

Thorough and timely procurement planning is crucial. For each project it shall be determined: which supplies, works and services are required to carry out the project; when they shall be delivered; the standards needed; and which procurement procedure shall be followed for each contract. Lack of procurement planning may result in waste of funds, serious delays in implementation and may have ethical consequences.

Overview of the Procurement Process:

### 4.1 THE PROCUREMENT PLAN

The Procurement Plan shall answer the questions of what to buy, when to buy, estimated prices and how to buy. See the sample of a general procurement plan in Annex GEN 7.3. The Procurement Plan shall include considerations to the issues mentioned in the following sections 4.2 – 4.12. When preparing the procurement plan use the template in Annex GEN 7.1.

A procurement plan shall be drafted as a part of the project application even if not required by the donor. This is to ensure that all procurement and logistic costs are included in the budget and that procurement time constraints are considered in the activity plan. It is the responsibility of the Procurement Committee to ensure that the Procurement Plan is prepared.

The Procurement Plan is a dynamic planning tool which will change during the project period. Make sure to document the process and the development of the Procurement Plan, by saving a version of each updated excel sheet.  

**Step 1: Identify Required Resources and Costs**

In cooperation with relevant project staff, it shall be established which resources are required to be procured (supplies, services, works). At this stage it is important to determine the minimum technical specifications
(see section 4.13.1). Moreover considerations regarding the use of e.g. HPCs, community involved procurement, Framework Contracts, vouchers etc. shall be integrated in the procurement plan.

When preparing the budget, all expenses for logistics, such as transport, clearance, import costs, insurance, warehousing and distributions, shall also be included. (See Annex SUP 9 for Guidelines on Transport and Storage.)

For products with a limited shelflife it may be necessary to plan for partial deliveries which will in turn increase the freight costs.

For Works Contracts an engineer may be required to supervise the works of the contractor and include the costs in the budget.

For Service Contracts the field of expertise required shall be determined.

Any ethical risks related to the specific product or service, or related to the specific sector or country shall be considered. Relevant information can be obtained from the portals mentioned in section 1.2.1. or NGO trade organisations etc. can be contacted for sharing knowledge. If reasons for concern exists alternative procurement options shall be considered. Future candidates shall be provided with information on DCA’s ethical requirements and standards in the Code of Conduct for Contractors (see Annex 4-1).

**Step 2: Specific Donor Requirements**

For each project it is important to investigate the specific donor requirements for procurement. This Manual represents the DCA minimum procurement requirements which shall be followed. If stricter procurement procedures are stipulated by a donor, then the donor requirements shall prevail. E.g. a donor may have specific requirements in respect to the country of origin of supplies, or have a lower threshold for Open Tender Procedures. If the donor has less strict requirements for procurement, then the procedures described in this Manual shall prevail.

**NOTE:** Be aware of the EuropeAid Rules of Nationality and Origin.

**Step 3: Market Survey**

Once the required resources have been identified a thorough market survey shall be carried out to establish:

- The availability of the required supplies, services and/or works. The market survey shall answer basic question regarding prices, trade customs, availability of resources and the quality of the supplies. At this stage possible contractors shall be mapped and registered using the format in Annex GEN 6.

- The availability of suppliers/candidates and their record and reputation.

- The existing import regulations and restrictions. Once it has been established which supplies need to be imported, the customs authority and a clearing agent shall be contacted to investigate on the procedures for importing supplies and the requirement for import licence or other related documentation. To avoid delays it is important that import regulations and restrictions are carefully checked for all types of supplies. This is particularly important when procuring pharmaceutical products, medical equipment, radio and satellite communication equipment, mine detectors, plastic explosives, food, etc.

- The need for transport, storage and costs for customs clearing.

- The social, labour and environmental risks related to the supplies, service or works to be procured. The obtained information helps to identify high risk sectors, countries, suppliers/candidates, the
necessity to seek alternative procurement options, if special requirements to ethical standards are to be included in the selection criteria (e.g. certifications); need for dialogue with suppliers/candidates; and if it is necessary to exclude some suppliers/candidates due to ethical reasons (e.g. use of child labour), etc.

- The need for derogations from procurement procedures. Once all the above mentioned information has been collected it shall be determined which derogations may be needed. Be aware of the time constraints and resources involved.

**Step 4: Grouping of Lots**

Based on information obtained from the Budget and the Market Survey, all the required resources should now be grouped in to Lots. For further information on grouping of Lots, see section 4.1.1

**Step 5: Procurement Procedure**

The applicable procurement procedure is determined by the contract category and the total value of each lot. See section 3.2 for an overview of the procurement procedures. For a thorough description of the procedures go to the Supply, Service or Works chapters respectively.

**Step 6: Timeframe Considerations**

For the overall duration of the project, the timeframe for carrying out each procurement procedure shall be taken into account i.e. time for advertising, preparing technical specifications/Terms Of Reference (TOR), issuing a Request for Quotation (RFQ) or a Request for Proposal (RFP), evaluation etc. Note that procurement time constraints are often underestimated.

Timely and thorough planning can help prevent the placement of last minute contracts or changes to existing contracts which may influence the contractors’ ability to comply with the ethical principles and standards outlined in the Code of Conduct for Contractors.

The following table shows the overall timeframe for the different procurement procedures.

<table>
<thead>
<tr>
<th>Procurement Procedure</th>
<th>Bid flow</th>
<th>Total timeframe for procedure</th>
<th>Supplier’s delivery time to site</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simple Procedure</td>
<td>NA</td>
<td>1 - 2 weeks</td>
<td>Shall be added</td>
</tr>
<tr>
<td>Negotiated Procedure</td>
<td>Recommended 14 days</td>
<td>3 - 8 weeks</td>
<td>Shall be added</td>
</tr>
<tr>
<td>Local Open Tender Procedure</td>
<td>Minimum 21 days</td>
<td>10 - 14 weeks</td>
<td>Shall be added</td>
</tr>
<tr>
<td>International Open Tender Procedure</td>
<td>Minimum 30 days</td>
<td>13 - 18 weeks</td>
<td>Shall be added</td>
</tr>
</tbody>
</table>

**Step 7: Request for Derogations**

Based on all the information collected (step 1-6), it may be necessary to request derogations from the DCA Procurement Manual and/or from donor requirements. For further information on derogations see section 4.8.

**4.1.1 Grouping of Lots**

Preparing lots is the process of grouping items/services/works which can be purchased from one supplier/candidate in order to obtain the best quality and prices for the required resources for a project. The grouping of lots is foremost
defined by the market structure. There is no fixed solution to what a lot includes, thus it is important to obtain market knowledge via the market survey. In some contexts it is possible to group many different items into one lot and purchase from one supplier, as this is how the market is structured. In other contexts the same items may have to be purchased separately as the suppliers in the market have more specific product groups and will not be able to deliver various items. In the latter case the procurement plan will include more lots than in the first case.

**Example: The Market and Grouping of Lots**
Most markets are structured in a way that does not allow us to purchase motorcycles and computers from the same supplier. Thus there would be two lots - one for the computers and one for the motorcycles. But in Cambodia a Procurement Officer found that he could purchase both the computers and the motorcycles from the same supplier and thus in this context it was one lot.

When preparing lots start out by dividing the identified resources into the three contract categories of supplies, services, and works. Once this is done further group the items/services into lots.

Please note that the grouping of lots are for the entire project period and independent of project activities, geography for implementation, and the number of donors and partners for the project. This means that e.g. if there are more than one donor for a particular project it is not allowed to purchase donor-wise. If one donor is paying for one laptop and another donor is paying for another laptop then this is one lot with a total value of the two computers together.

The grouping of lots has several advantages: it enables the suppliers/candidates to quote lower prices; it reduces efforts and costs of preparing the purchasing process; it is time saving; it reduces overhead costs (frequent advertising, bookkeeping, logistics etc.); and it is cost saving for the Contracting Authority.

Grouping of lots does though have some disadvantages also which shall be taken into account at the project planning stage and the related costs shall be included in budget and the Procurement Plan. The disadvantages are: increased demand for storage facilities, increased demand for liquidity, and the requirement of careful planning. Artificial splitting of lots to avoid a stricter procedure is not allowed.
Example: The Grouping of Lots

SUPPLY:
Lot 1) Field equipment:
Camp beds, sleeping bags, mosquito nets, tents, chairs, lamps.
Lot 2) Computer equipment:
Laptop, printer, toner, UPS, router, keyboard.
Lot 3) Workshop materials:
Pen, pencils, flip chart, files folders.
Lot 4) Medical equipment:
Stretcher, oxygen tank, stethoscope, sterilizer.
Lot 5) Generator:
Five diesel generators including delivery to site, installation, spare part package and after sales service for two years.

SERVICE:
Lot 6) Engineer:
Service Contract for supervision of the works (see below lot 7).

WORKS:
Lot 7) Tube wells:
Works Contract for the delivery and construction of tube wells with pumps.

Sub lots
In some cases we find that even though we can purchase several items from one supplier (one lot), it may be pertinent to split this lot into several sub lots in order to promote competition and obtain the best quality and value for money. By splitting one lot into several sub lots we provide suppliers who cannot deliver all items within the lot with the opportunity to quote for one or several of the sub lots. This may be useful in contexts where the market consist of e.g. many small suppliers and a few big suppliers, in contexts where we wish to support project market development or in projects with a wide geographical implementation. Splitting a lot into several sub lots enables the Contracting Authority to award either one contract to one supplier/candidate who has provided the best quality and value for money for the entire lot or to award several suppliers/candidates with individual contracts because they have provided the best quality and value for money on one or several sub lots. Please note that when splitting a lot into several sub lots the total value of the lot remains the same and the applicable procurement procedure stays the same. If a written procedure is applicable, only one RFQ/RFP/Tender Dossier is issued and submitted to the relevant suppliers/candidates.

Sub lots
For a lot with e.g. construction material it may be pertinent to split the lot into several sub lots in the RFQ/Tender Dossier and specify herein that the supplier can quote for one or all sub lots. The Contracting Authority reserves the right to award the contract(s) by sub lots. Only one RFQ/Tender Dossier is issued, but several suppliers may be contracted based on the best quality a value for money provided per sub lot. The advantage is cost saving since some suppliers may only be able to quote for some of the sub lots. The supplier quoting the lowest price per sub lot can thus be contracted, instead of the supplier with the overall lowest price. The disadvantage is the administration of more than one contract.
4.2 GENERAL CONSIDERATIONS

- For each project activity, clearly identify the required supplies, services and works.

- For hybrid contracts (mix of supplies, services and/or works), determine which component has the highest value in order to determine the procurement procedure. For hybrid contracts you shall also take into consideration which type of contract, i.e. Works, Service or Supply Contract that will best meet your requirements.

- Investigate and map availability and prices for the required supplies and availability of required consultants and contractors.

- Investigate the ethical risks that exist for the procurement of the required supplies, services or works and integrate the findings in the procurement process. The portals mentioned in section 1.2.1 provide useful information on ethical risks.

- Establish whether it is beneficial to use Framework Contracts for some of the supplies/services (see section 4.10).

- Investigate import rules and regulations for the required supplies and take into account the time required to obtain all necessary approvals and licences.

- For works, consider carefully all legal aspects described in section 8.3 and 9.

- Identify the procurement procedures presented in this Manual and consider the time required to carry out the procurement.

- Prepare a procurement plan (complete the template in Annex GEN 7-1)

- Determine the applicable procurement procedure according to contract category and contract value. See chapter 3 for an overview or the Supply, Service and Works chapters respectively. The Procurement Committee shall take notice if stricter procurement procedures are stipulated by the donor than the ones outlined in this Manual.

- Carefully consider the logistics e.g. can all the goods be delivered in one go to the project site? Is security for theft in place or is it necessary to arrange for warehousing facilities with guards? Remember to include all such costs in the budget.

- Conduct an assessment of the procurement capacity by answering the questions presented in Annex GEN 5. Is a procurement consultant required?

- Identify capacity building needs and include these as expense items in the project proposal e.g. consulting services from a procurement expert, an accountant or a bookkeeper for a certain number of days per year, training expenses for the procurement and financial management staff etc.

- Identify if translation of this Manual and/or relevant annexes into other languages is needed and if possible include this in the budget and procurement plan.

4.3 MULTI PARTNER PROJECTS

In projects with several implementing partners it is important to organise procurement as early in the project phase as possible. Based on the project context, the procurement principles and donor demands, it is important to carefully consider the advantages and disadvantages of the three below scenarios and to select the most suitable one. The decision shall be clearly indicated in the procurement plan.

a. Shall each partner carry out its own procurement?
   This may be favourable in situations when the partners are situated in remote areas, supplies can be sourced from the project community, the market is characterised by many small suppliers/candidates with limited capacity, and there is no economic advantage in making a joint purchase.
b. Shall the procurement be carried out by one partner on behalf of the other partners?
   This may be favourable when an economic and logistic advantage in centralising procurement with one
   partner is existent. In an ECHO project in Uganda one of the partners was a small NGO with its head
   office in a remote town far from the capital. It was agreed that one of the other two urban based partners
   would procure the vehicle, water pumps and spare parts on behalf of the small NGO for reasons of low
   procurement capacity and remoteness.

c. A combination of the above two scenarios?
   This may be favourable when it is an advantage to make a joint purchase of some products e.g.
   technical equipment and to buy the remaining products separately.

The applicable procurement procedure is dictated by the total lot value and is therefore the same for all three
scenarios.

Example: Applicable Procurement Procedure in a Multi Partner Project
Five partners need to procure a generator, each for a unit value of EUR 2,500 and the market has a supplier
that can deliver all units. Consequently, the total value of the procurement is EUR 12,500 and the Negotiated
Procedure shall be applied. If it is decided that each separate partner procure separately, the procedural
consequence is that all partners shall implement a Negotiated Procedure, even though each partner only
procure one generator. Please refer to the definition of lots in step 3 in section 4.1.

Procurement in Multi Country Projects
Multi country projects may take place within both multi partner and consortium contexts. For projects with two or
more countries, procurement may be split between the countries. In such cases and if required it shall be highlighted
in the project proposal that for economic purposes procurement will be carried out separately in each country.

Check specific donor requirements on multi country projects.

4.4 CONSORTIUM PROJECTS
A consortium project is defined as an entity with a lead agency and several often international consortium members
(INGOs). The lead agency and the INGOs may have several implementing partners each. This model can be rather
complex and requires significant preparation in the design of the organisational setup.

There are several issues to be considered when planning procurement activities in a consortium project:
- Which procurement guidelines shall apply and what are the related implications?
- What is the partners’ capacity, is there a need for capacity building and what are the staff
  requirements?
- Considering the project context, shall procurement be centralised or be undertaken
  separately by each consortium member and it’s partner(s) or a combination of both?
- Shall joint or individual procurement plans be developed?
- How and where shall the Procurement Committees be organised?
- What are the monitoring and reporting requirements of the lead agency?
- It is important to ensure that decisions resulting from the above discussions are captured
  in the Memorandum of Identifying (MOU) summarising the commitments and
  responsibilities of each consortium member.

4.5 VOUCHERS
The use of cash grants and vouchers in projects are recognised as methods to respond to a wide range of
humanitarian needs. They offer greater choice to beneficiaries and help foster dignity in the receipt of assistance.
Vouchers are defined as conditional or unconditional cash and they provide access to predefined commodities and services for beneficiaries. They can be exchanged in designated shops, or in fairs and markets and are described as value based, commodity based or service based. Combined vouchers also exist.

Value based vouchers are not considered to be procurement as they are not tied to a set of predefined commodities or services and shall be handled as cash grants accordingly.

For commodity and service based vouchers two procurement scenarios exist:

a. The beneficiaries receive commodity/service vouchers from which they are free to purchase a mix of predefined commodities or services at many different locations (the beneficiary chooses which). In this case no procurement procedure applies, but a small market survey and preliminary selection of suppliers/candidates in order to assure quality, transparency and ethical standards shall be carried out.

b. The beneficiaries receive commodity or service vouchers where the quantity of the commodity or service is predefined and the purchase is tied to a limited number of predefined suppliers or candidates (selected by the Contracting Authority). In this case a contract is established with the suppliers or candidates, indicating the type, quantity, price and delivery conditions of the commodity or services. Appropriate procurement procedures shall be applied according to the contract value.

Cash Grants
Cash grants are tied to the provision of money to individuals or households and are not considered to be procurement. Thus cash grants are not subject to procurement procedures.

Where possible, it can be beneficial to use cash grants in projects where it will be a challenge to implement a competitive procurement procedure. This is often the case where products, e.g. livestock will be procured from households, small village suppliers and markets in the project area.

4.6 COMMUNITY INVOLVEMENT
Community involved procurement is defined as the participation of beneficiaries in the procurement process and is governed by the procurement procedures laid down in this Manual as well as donor requirements.

Use of Community Involved Procurement
Community involvement is not limited to products found in the rural areas, also referred to as project procurement. Community involvement in procurement is often used where the community has access to the market and can provide meaningful inputs on what to buy and where to buy it. Typical items are village products such as bamboo, paddy seeds, indigenous variety of seeds, sand, bricks, boats, nets, livestock, fishling and perishable goods etc.

Organising Community Involved Procurement
Community involvement can be organised in several ways and with varying complexity.

Some common approaches are:

- Community participation in identifying material needs and providing input to the Procurement Committee on technical specifications.
- Community participation in identifying material needs, formulating technical specifications and in addition identifying suppliers and collecting quotations in the market in collaboration with the Procurement Committee.
- Communities participating in identifying material needs, formulating technical specifications, identifying suppliers, collecting quotations and in addition negotiating the prices and making a decision on what to procure. This requires that the beneficiaries become members of the Procurement Committee.

Please note that the legal relationship shall be between the partner and the supplier. Consequently, it is only the partner who can place the Purchase Order/Contract.
Planning of Community Involved Procurement

Planning of community involved procurement is an integrated part of preparing a procurement plan. A project may involve one or several activities that include community involvement in the procurement process. Before including an element of community involvement, please thoroughly consider the suitability and how to organise and manage this activity.

Please address:

a. If more suitable alternatives exist, such as cash grants or vouchers which could facilitate the same without a procurement procedure (as described in the Procurement Manual, chapter 4.5)?

b. If a project activity requires beneficiaries to contribute with e.g. sand or bricks from their land, it is paramount to include a detailed description in the project proposal. This will allow the donor to pre-approve the approach and the items will not be subject to the procurement procedures listed in the Procurement Manual.

c. Is there a market to meet the principle of competition?

d. The need for capacity building of community participants in terms of the technical requirements of procurement procedures and record keeping.

e. The substantial time needed to collect information from the community by the community or to organise the procurement through the creation of Procurement Committees etc.

f. How to avoid conflicts of interest e.g. preventing Procurement Committee members from purchasing from family and friends and from becoming suppliers themselves?

Please observe that beneficiaries shall not use own cash subsidies to purchase a more expensive livestock or item than the one selected through a procurement procedure. A type of livestock or item that differs from the selection in the approved procurement plan will be deemed ineligible.

4.7 USE OF OWN VEHICLES

If a partner organisation wishes to utilize all or part of a vehicle rental budget line on a vehicle from their own existing fleet (as distinguished from commercial rental) for a specific period of time, only running costs for such vehicles are eligible. This is not considered to be procurement and shall thus not be included in the Procurement Plan, but shall be specified in the project proposal.

The following information shall be established at project start and filed to report:

- Details of vehicle i.e. model, registration number, etc.
- Purpose of the use of the vehicle.
- Time period for use of the vehicle.
- Daily/monthly charges including details of what this includes i.e. fuel, driver costs, insurance etc.

The daily or monthly rates for running costs shall be significantly lower than the current commercial vehicle rental rates indicating that the purpose is not profit making. It is therefore recommended to conduct a market survey establishing the current market price. This can be done by collecting three commercial quotations.

The vehicle in question shall be dedicated to this project only during the time period indicated to avoid a complex monitoring procedure. Proper records of the vehicle’s activities on the project will need to be kept through use of a log book (showing location and purpose of the vehicle’s movements) as well as fuel receipts.

The use of own vehicle falls technically outside procurement, but from experience those involved in procurement often monitor such transactions, as it is unlikely to be addressed by another department.

4.8 DEROGATIONS

To request for derogation means to ask for an exemption from a rule or to request for a waiver to a rule.
Any derogation from the rules and procedures established in this Manual is subject to written approval from the Head of Procurement at DCA Procurement and Logistics Unit, who will deal expeditiously with any request accompanied with proper justification.

For EuropeAid funded projects derogations can only be requested for The Rule of Origin and Nationality and granted by the European Commission or the EU Delegation. A written request shall be drafted with the assistance of DCA Procurement and Logistics Unit and will be submitted to the EU Commission or the EU Delegation by the DCA Global Funding Unit.

Whenever possible the request for derogation shall be included in the project application.

Derogations from procurement procedures can be granted on the basis of:
- Security reasons
- Operational reasons
- Technical reasons
- Ethical reasons
- Shortfall or unavailability of the supplies on the market
- Cost or delays due to transport
- Legislation
Examples of Derogations

SECURITY REASONS
In a Danida funded civil society project, dealing with politically sensitive issues, a derogation for abstaining from posting an Advertisement of Business Opportunities was requested, due to the security risk this would have imposed on the project partner.

OPERATIONAL REASONS
As the safety helmets used in the Humanitarian Mine Action programme in Angola originated from Canada, a request for a derogation to the EU Delegation was submitted before a purchase of new visors for the existing helmets could be conducted.

TECHNICAL REASONS
For an Europe Aid project implemented in Jerusalem, community mapping was required to be carried out. The Community mapping demanded highly advanced and durable GPS equipment, laptops and a graphic desktop with specific software for obtaining a correct result. As the required equipment were manufactured in USA and Taiwan respectively, a request for derogation was sought for and approved by Europe Aid.

ETHICAL REASONS
In a Humanitarian Response project, DCA required tents for a refugee camp for the value of EUR 12,000. After thoroughly having assessed the market, it was found that only one supplier of tents could provide evidence of not using child labour; thus narrowing the market to one single supplier only. A request for derogation to use the Simple Procedure was submitted and justified by Ethical reasons and the purpose of supporting the development of social responsibility among the suppliers.

SHORTFALL OR UNAVAILABILITY OF SUPPLIES ON THE MARKET
After a thorough research, DCA concluded that the website technology required for an Europe Aid action in Palestine was unavailable in the eligible countries under the action. There were only a few companies that combined web development with GIS technologies in an open source format. As it turned out, only one of these companies was capable of building the infrastructure of the website/online platform and incorporating this into an interactive online platform in a way that responded to the needs of the project and fulfilled its objective. A request for a derogation on the Rule of Origin and Nationality to procure from this service providing company registered in the USA was submitted and approved by the EU.

COST OR DELAYS DUE TO TRANSPORT
In an ECHO project in Cambodia, a request for derogation to use Simple Procedure was submitted for the procurement of livestock of calves. For the sake of animal welfare and in order to avoid expensive transport costs to a wide geographic area, this livestock would be purchased from several suppliers, each with limited quantities of calves available.

NATIONAL LEGISLATION
For an ECHO project in Bangladesh a competitive bid could not be conducted, due to the fertilizer supplier being appointed by the Government of Bangladesh. Derogation was granted from the Head of DCA Procurement and Logistics Unit based on national legislation.

4.8.1 Automatic Derogation to Apply the Simple Procedure
In special cases an automatic derogation is granted to apply the Simple Procedure for contracts above EUR 9,999 – irrespective of the contract value. A prior approval from the DCA head of Procurement and Logistics Unit is not required.
These special cases are restricted to and reserved for:

a. **Urgent operations.** Urgent operations are those intended to meet immediate and unforeseeable humanitarian requirements generated by sudden natural or man-made disasters, such as floods, earthquakes and outbreaks of fighting or comparable situations.

   The concept of urgency also includes any situation, duly justified, in which the implementation of the humanitarian aid operation has to start immediately and the delay incurred by putting procurement contracts out to tender would put lives at risk.

   The concept of urgency cannot be based on circumstances that can be attributed to the Contracting Authority.

   The Procurement Plan shall always present the urgency in operations and reasons that prevented a larger consultation. If more restrictive procurement procedures are stipulated by a donor for urgent operations they shall prevail.

   Please be aware that for ECHO funded projects an urgent action shall be identified as such in the Grant Agreement. If not, automatic derogation is not granted.

b. **Whenever no tenders or no suitable tenders/proposals/quotes have been submitted in response to a Negotiated or Open Tender Procedure after the initial procedure has been completed, provided that the original terms of the Contract are not substantially altered.**

c. **Whenever, for technical or for reasons connected with the protection of exclusive rights, the Contract can be awarded only to a particular economic operator.**

d. **For additional Contracts consisting of the repetition/renewal of services, works or supplies entrusted to a contractor awarded an earlier contract in the same region, provided that the terms of the original Contract are not substantially altered. The period elapsed from the award of the first Contract shall not be longer than one year. As a maximum contracts can be renewed twice on these grounds.**

e. **For additional supplies, works and services not included in the initial Contract which, due to unforeseen circumstances, have become necessary for the performance of the humanitarian operation, provided that the aggregate amount of additional supplies, works or services does not exceed 50% of the value of the initial Contract.**

f. **For Property Contracts (renting of property only), after prospecting the market.**

g. **Contracts in respect of purchases on particularly advantageous terms, either from a supplier who is definitely winding up its business activities or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure.**

h. **For individual purchase orders based on a Framework Contract (see section 4.10).**

i. **Purchases from Humanitarian Procurement Centres (see section 4.9.1).**

The decision to use the Simple Procedure in these special cases shall be based on strong and convincing justifications. These justifications shall be documented and filed in the procurement file.

### 4.9 CENTRAL BUYING OFFICES

A Central Buying Office, or Buying Agent, is a professional organisation/entity offering supply chain management related services to humanitarian organisations. It may also be a procurement department of a humanitarian organisation which handles the organisations supply chain management and provides services for other humanitarian organisations.

When awarding a contract to a Central Buying Office it shall always be in accordance with the applicable procurement procedure for that particular Supply or Service Contract. Long term relationships with Central Buying Offices shall be established on the basis of a Framework Contract. For further information on Framework Contract see section 4.10.
It is the responsibility of the Contracting Authority to validate the financial viability of the Central Buying Office and ensure that proper procurement procedures (which live up to ECHO requirements) are followed and quality requirements are met (e.g. prequalification of pharmaceuticals/suppliers). This shall be stipulated in the Contract.

For DCA and partners the use of Central Buying Offices is limited and often related to the procurement of foods, pharmaceuticals and medical devices. For the procurement of these products DCA strongly recommend that ECHO recognised Humanitarian Procurement Centres (HPC) are approached. This ensures that procurement of these products is as safe and efficient as possible and it simplifies procedures. (When procuring from an HPC the Simple Procedure always applies.)

4.9.1 Humanitarian Procurement Centres

A Humanitarian Procurement Centre (HPC) is an ECHO recognised entity specialized in buying emergency and health supplies and related services for use in humanitarian aid operations. These entities are always Non-profit and either autonomous entities or specialised procurement and logistics departments of INGOs. HPCs foremost provide services within stockholding, non-stockholding and/or consultancy services for the following products/services: pharmaceutical products, medical devices, veterinary, foods, water and sanitation, engine-ring, shelter, telecommunication, transport and administration.

The overall purpose of an HPC is to facilitate efficient and safe procurement of quality products and to reduce costs for Contracting Authorities. To be recognised as an HPC, ECHO assesses the procurement rules and procedures, and the financial and operational capabilities of those entities. The HPCs are signatories to the HPC Charter which guarantees common standards and commitments amongst HPCs. This includes commitments to uphold the mandatory principles of procurement set out in ECHO Annex IV. An HPC is validated by ECHO at least every second year.

Please note that even though a recognised HPC assumes the responsibility of ensuring the required quality of products and respecting the appropriate procedures, it is always the responsibility of the Contracting Authority, via the contractual relation, to reassure that the HPC lives up to its responsibilities.

A register of ECHO validated HPCs is accessible from:

**Recommendation**

It is strongly recommended that DCA and partners use HPCs for the procurement of medicine and medical devices.

**Contract Category and Procurement Procedure**

When procuring from an HPC the contract category depends on the object to be purchased. Whenever purchasing a product e.g. a pharmaceutical product from an HPC it is a Supply Contract and when purchasing a consultancy service it is a Service Contract.

When placing orders with an HPC, irrespective of the Contract value, the Simple Procedure applies.

**Contractual Relations**

There is no contractual relation between the European Commission and the HPC. The contractual relation is solely between the Contracting Authority and the HPC and it is governed by the Contract signed by them.

An HPC is a non-profit entity and overhead costs or handling fees are only to be charged by the HPC to cover its costs, never for profit making. The HPC is restricted to charge a maximum of 7% of the total direct costs. The contractual arrangements concluded between DCA or partner and the HPC shall include the necessary provisions in this respect and shall allow the identification of the different costs. DCA and partners only need to be in possession of procurement documentation for the relationship between the HPC and themselves. It is not necessary...
for DCA and partners to request supplementary documentation relating to the relationship between the HPC and its suppliers e.g. Framework Contracts, insurance invoices, transport documentation etc.

**Entering a Contract with an HPC**

When entering a contract with an HPC the templates for Supply or Service Contracts in the SER and SUP Annexes are to be applied. Adjust the contract to the specific procurement task and make sure that the following issues are carefully considered and implemented in the contract:

- The HPC shall ensure the identification/breakdown of the different costs in the invoice.
- The HPC shall be able to certify that it is recognised as an HPC by ECHO and follow ECHO recognised procurement procedures.
- The HPC shall show compliance to international standards and quality assurances. This is a requirement for the procurement of pharmaceuticals, medical devices and food.
- The HPC shall immediately inform the Contracting Authority if a situation occurs where ECHO may cancel the registry of the Contractor as an approved HPC.
- Delay in shipment/demurrage charges as a result of missing documentation is the sole responsibility of the HPC, unless the delay is due to the fault of the Contracting Authority.
- Provide clear and thorough technical specifications and TOR’s to the HPC.
- Avoid additional costs such as bank guarantees or payment interests as these are non-eligible costs.
- When awarding the contract, mention the source of funding.

If an HPC fails to meet the required quality standards or procurement procedures this shall be noted and reported to ECHO.

**4.10 FRAMEWORK CONTRACTS**

A Framework Contract is a long term (maximum five years) contract concluded between the Contracting Authority and one or several contractors. It is used to define the general terms such as subject, technical specifications, price(s), duration, procedure for the award of specific contracts etc. for future procurement of a series of goods or services for which the precise quantity or scope and time of delivery cannot be defined at the outset of the contract. The specific conditions, quantity, date of delivery etc. of a given purchase shall only be laid down in a purchase order or contract when the goods or services are needed. Contracts, under a Framework Contract, shall be awarded in accordance with the terms laid down in the Framework Contract.

The Framework Contract helps reduce costs, improve efficiency in supply chain management and improves relations with reliable contractors. Framework Contracts may never be used in such a way as to prevent, restrict or distort competition.

Framework Contract does not need to be tied to a specific project or action and it can only be used for the purchase of service or supply (often it is related to office purchases). It is not possible to have a Framework Contract for works.

The decision to apply the Framework Contract to a series of purchases shall be made during the project proposal stage and integrated in the Procurement Plan.

Please ensure availability of an updated list of all Framework Contracts in force and all Contracts/Purchase Orders placed on the basis of a Framework Contract shall be kept in the procurement file.

**Framework Contracts with a Single Contractor**

A Framework Contract can be entered with a single contractor. The applicable procurement procedure for the award of the Framework Contract with a single contractor shall be based on the contract category and the total value of
the Contract for the entire duration of the Contract. Each specific contract under the Framework Contract is ruled by the general terms laid down in the Framework Contract and is not subject to reopening of competition.

**Framework Contracts with Multiple Contractors**
A Framework Contract can be entered into with multiple contractors also called Multiple Framework Contracts. Each Contractor has a separate Framework Contract with the Contracting Authority, but the Contracts are concluded on identical terms. The applicable procurement procedure for awarding multiple contractors with a Framework Contract is based on the contract category and the total value of the Contract for the entire duration of the Contract. For Multiple Framework Contracts the minimum of contractors shall be at least three.

The placements of Contracts/Purchase Orders are based on a list of priorities without reopening competition. The contractor who made the best quote or proposal is first priority. If that contractor is unavailable or not interested in the specific contract, the Contract/Purchase order is then placed with the second contractor on the list and so forth. For this kind of multiple Framework Contracts the general terms laid down in the Framework Contract is applied to the award of the specific contract.

In sectors subject to rapid price changes or technological developments (computers, software, cell phones etc.), Framework Contracts without reopening of competition are not recommended. However, if a Framework Contract is entered, the Framework Contracts shall contain a stipulation either on a midterm review or on a benchmarking in order to adjust the general terms to developments in the sector.

**Example: Applicable Procurement Procedure for a Framework Contract**
Entering a five year Framework Contract for demining tools within an estimated contract value of EUR 50,000 per year, the total value of the Contract is EUR 250,000 and the applicable procurement procedure is a Local Open Tender.

### 4.11 RUNNING COSTS
Running costs are in general defined as recurring purchases/costs, e.g. weekly or monthly costs, and are often related to office procurement. For running costs no procurement procedure applies and purchases are not to be included in the Procurement Plan. Sound financial management shall however be applied and the market shall be checked to ensure the principle of best quality and price. Proper documentation shall be filed at all times.

**Running Costs (No Procurement Procedure Applies)**
E.g.: rent of office buildings, coffee/tea/water, representation gifts, fuel, maintenance of existing vehicles/motorbikes/premises, repair of machinery, cleaning articles, electricity, newspapers/magazines/books, postage/packing, copy paper, stationeries, insurance on e.g. warehousing, financial services (transfer charges, bank guarantees, consultancy etc.), accommodation, catering, internet connections, phone subscriptions, cleaning services, repeated small amounts of medicine e.g. headache pills etc.

For running costs of higher value it is recommended to follow procurement procedures in order to get the best value for money for e.g. internet connections, flight tickets, security services, insurances, phone subscriptions etc.

**Not a Running Cost (Procurement Procedures Apply)**
E.g.: phones/mobile phones, computers, vehicles, copy machines, vacuum cleaners, washing machines, furniture, malaria medicine etc.

These are DCA guidelines - if donor rules are stricter, these shall prevail.
4.12 ADVERTISEMENT AND SOURCING

The obtainment of a broad methodology to source new suppliers and contractors is essential to create transparency, equal opportunity and to ensure that the best quality and price is obtained for any given Supply, Service or Works Contract.

4.12.1 Advertisement

At the beginning of a project the Procurement Committee shall always ensure that a General Advertisement of Business Opportunities is published to inform the community and potential suppliers and contractors about the business opportunities offered in the project. This is mandatory irrespective of the different applicable procurement procedures (see Annex GEN 8, Template for Advertisement of Business Opportunities and for procurement of medical devices, Annex SUP 1).

Advertising will help the Procurement Committee to source new suppliers and contractors.

Advertisement helps the Procurement Committee to source new suppliers and contractors and it will generate competition, as well as promote transparency and accountability. Advertisement shall be published in the relevant newspapers (which normally carry such notices).

If newspapers, or other printed media, are not available or do not provide the best advertisement platform, a notice can also be posted on the internet, in a relevant trade journal, on a notice board in front of the office, at the market or in other relevant public places.

Always carry out a small scale risk analysis on potential risks and suppliers’ ethical business performance e.g. CSR policy, safety policy, standards/certifications (or lack of) etc. The findings can be used to set up ethical criteria’s in the RFQ/RFP/Tender Dossier or technical specifications/TOR to address potential risks. (See section 1.2.1 for the implementation of the Ethical Procurement Principles).

Visibility of the General Terms and Conditions and Code of Conduct for Contractors

In order to make future suppliers and contractors aware of the General Terms and Conditions (GTC) and Code of Conduct for Contractors it is recommended that these documents are made visible at the DCA ROs and at partners’ compounds (e.g. on a notice board).

4.12.2 Sourcing

In addition to the mandatory Advertisement of Business Opportunities the following list gives examples of common methods to source new contractors and general issues to consider when sourcing.

Internet

Suppliers/candidates can also be found through the Internet, on portals like www.google.com, www.dihad.org http://www.businessinafrica.net, www.aidandtrade.com, and other national portals. Contact the embassy(-ies) or representative(s) they will most likely have some useful internet addresses.

Chamber of Commerce

Often the Chamber of Commerce will have a website with information of their members. Alternatively contact the Chamber of Commerce and ask for a list of suppliers of the required type of product.

Trade Organisations

Search the market for trade organisations. Posting the Advertisement of Business Opportunities and Tender Notices in trade magazines/journals is an effective way of sourcing qualified suppliers and contractors. Contact the embassy(-ies) or representative(s). They will most likely have some useful information on trade organisations.

References from other Organisations or Companies

Contact other organisations such as NGO’s, UN agencies or NGO networking bodies and other companies and learn more about where they procure supplies, services and works.
Yellow Pages
Look at the Yellow Pages or similar directories online as well as printed.

Trade Fairs or Exhibitions
Visit relevant trade fairs e.g. for medical devices: http://www.medica-tradefair.com/.

Databases
It is advisable that organisations establish and maintain a supplier database for easy sourcing during the execution of the procurement procedures. At some offices and partner organisations a supplier database is available from which suppliers and contractors can be identified.

Sourcing of Suppliers of Medical Devices
To source suppliers of medical devices, it is recommended that an Advertisement of Business Opportunities is published at the beginning of the year or a project period. This advertisement shall invite suppliers of relevant medical devices to be prequalified and registered in the supplier database.

Requirements for suppliers of medical devices are described in 6.5.2 and the template for Advertisement of Business Opportunities for Medical Devices is found in Annex SUP 1.

Ethical Considerations
When sourcing new suppliers and contractors it is recommended to obtain general information on sector and country specific risks in order to identify which ethical issues could be of concern. The Procurement Committee shall ensure that a small scale risk analysis on the candidates ethical business performance e.g. CSR policy, health policy, ISO or SA8000 certifications etc. is carried out. The findings shall be documented and integrated in the selection of suppliers and candidates.

Sourcing Challenges and Considerations
When sourcing new suppliers and contractors in different contexts we face different challenges. In some contexts suppliers/candidates may not be familiar with the procurement process and this way of doing business. In this case it is important to ensure that they are informed about the process and ensure that they fill in all the required information in the RFP/RFQ/Tender Dossier, sign and stamp the relevant pages and submit their bid according to the described requirements. Supporting and capacity building potential suppliers/contractors in attending a tender process aims at promoting competition and equal opportunity and thus enable the Contracting Authority to obtain the best quality and value for money. One way of doing this is to submit a ‘cover letter’ with the RFQ/RFP in which the main requirements to filling in the form is highlighted. See GEN 1-1: Guidance letter to Suppliers for an example of a cover letter. Another tool is to conduct vendor trainings where e.g. a Tender Procedure and affiliated requirements are covered. In some contexts a consequence of not supporting suppliers/candidates in the process may be that the Contracting Authority does not obtain any valid quotes and thus run the risk of delaying projects activities. Always ensure that all contractors are treated equally and have access to the same information. Another challenge may be that suppliers/candidates are not interested in participating in a tender procedure because they find it too complicated to submit a quote/proposal for a contract they consider to be of a very low value to them. One way of dealing with this is to keep good contact with the suppliers/candidates and explain them why they should submit a quote/proposal/tender. This could also be done in a cover letter submitted with the RFQ/RFP/Tender Dossier.

When sourcing internationally, carefully consider what effects this may have on the project and if procurement should alternatively be carried out in a national context. E.g. consider if there is a risk of delays due to transport implications to a particular destination? Is there a risk of theft during transport or in the port/airport? What is the timeframe for getting the goods through customs? Is the necessary import permits and/or tax/vat exemption in place? Etc.
4.13 TECHNICAL SPECIFICATIONS AND TERMS OF REFERENCE

Technical specifications and Terms of Reference (TOR) define the characteristics required of a product, service or works taking into consideration the purpose for which they are intended. Thorough preparation of the Technical Specifications for supplies and works or TOR for services is extremely important for the ultimate success of the project.

Poorly drafted Technical Specifications or TORs may result in inefficient repetition of procurement procedures which will delay implementation. It may also result in the receipt of inadequate or incorrect equipment or services which can reduce the quality of the projects.

In the process of preparing the Technical Specifications and TORs it is advisable to consult all relevant parties involved in the project proposal as well as ensure the necessary assistance from the required technical experts.

4.13.1 Technical Specifications

Precise and clear technical specifications are prerequisite for suppliers to respond realistically and competitively to the requirements of the Contracting Authority. Clear Technical Specifications also help the supplier to plan ahead and comment on the Contracting Authority’s requirements. In addition this may have a positive effect on suppliers’ ability to comply with the ethical principles and standards.

Technical Specifications, including the characteristics and requirements related to a product or works includes requirements of:

- Quality levels
- Environmental or social criterias e.g. certifications or equivalent proof of compliance
- Design for all requirements
- Levels and procedures of conformity assessment
- Fitness for use, durability and validity
- Safety
- Marking and visibility requirement
- Other dimensions, e.g. 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

Care shall be taken when drafting Technical Specifications to ensure that they are not restrictive to a specific brand. In Technical Specifications for materials, equipment, workmanship and other supplies, international standards shall be used as much as possible. Where e.g. a national standard is referred to, the Technical Specifications shall state that other standards with a quality equal to the standard mentioned will also be acceptable.

For Works Contracts the Procurement Committee shall use an engineer or staff member with a technical background and experience in the field to draft the Technical Specifications. If an external engineer shall supervise the works, the Technical Specifications shall be drawn up in cooperation with him/her.
Examples: Technical Specifications

PROCUREMENT OF CEMENT

For a project in Sri Lanka the following Technical Specifications were applied and information requested from interested suppliers.

Description: Cement in 50kg bags for use in foundation, production of concrete blocks and construction of housing.

- Please state type/material of bag/packing
- Quality in accordance with Standard SLS 107 or equivalent standard. A copy of the certification shall be submitted with the offer
- A technical data sheet shall be submitted with the offer
- Specify quality certificates held by the company
- Please state name of manufacturer
- Please state brand name
- Please state country of origin
- Stock available upon submission of bid and location of stock (a separate document can be attached)

PROCUREMENT OF HOES

Often the project report will only state “hoe” in the Technical Specification. Even for a small item as a hoe it is important to describe the length, thickness, material of handle, material of the hoe.

As an example a project in which only “hoe” was written in the specification ended up with hoes which were constructed of wood only (no metal) - as a result the hoes broke after being used only a few times.

4.13.2 Terms of Reference

The service required for a project is often part of project activities and it is probable that TOR have already been drafted in another context than procurement. Personnel in charge of programme activities are often the ones in charge of drafting the TOR. It is important to incorporate all requirements related to the acquired service in the TOR in order to receive proposals which are able to fulfil the tasks and provide the best price and quality.

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

Content of TOR:

- Background information
- Contract purpose and expected results
- Assumptions and risks
- Scope of the services activities
- Timing, logistics and facilities
- Key experts and other personnel
- Subcontracting (if any)
- Reporting
- Environmental or social criteria’s (e.g. certifications or equivalent proof of compliance)

The Request for Proposal (RFP) and the Tender Dossier for Service Contracts contain a template for TOR which indicates the minimum details to be provided. The TOR shall be adjusted to the specific task.
5 PROCUREMENT DOCUMENTATION

Ensuring that the procurement documentation is compiled, filed and in order is a crucial part of the procurement process. Incomplete procurement documentation may result in repayment of funds.

Sound management of procurement documentation begins at the project outset and ensures that all procurement is well documented throughout the entire project period.

5.1 PROCUREMENT FILES

Keeping proper record of all relevant procurement documentation from the outset of a project is a vital part of procurement. The procurement files are the main tool for this and it is the responsibility of the Procurement Committee to maintain proper compiling and record keeping of procurement documents as per the below instructions. Moreover the Procurement Committee shall decide upon the location of the physical procurement files during the project period and after receipt of the final payment, keeping in mind the accessibility and safety of the files in case of an audit.

Some donors require files to be kept in both physical and electronic/scanned files.

For all procurement (Supply, Service and Works), procurement files shall be compiled with the following documentation (as well as any additional relevant documentation):

General Procurement File
- Application (Contract Award)
- Procurement Plan, updates and budget
- Donor communication (procurement related - e.g. derogations and VAT issues)
- Signed Declaration of Impartiality and Confidentiality
- Advertisement of Business Opportunities and supplier responses
- List of eligible countries (if the EU Rules of Nationality and Origin apply)

Simple Procedure Procurement File
- Simple Procedure Quotation form/Copy of procurement request/RFP (optional)
- Quotations
- Evaluation/justification for selection of supplier/contractor
- Purchase Order/Contract (optional below EUR 2.000)
- Invoice
- Shipping documents
- Proof of receipt
- Certificate of Origin11 (if applicable)
- Proof of Nationality (if applicable)

Negotiated Procedure Procurement File
- List of Suppliers/Candidates
- Copy of RFQ/RFP
- Quotations
- Evaluation Grid
- Purchase Order/Contract
- Letter to Unsuccessful Suppliers/Candidates
- Invoice
- Shipping documents
- Proof of receipt
- Award Notice (for contracts above EUR 30.000)

11 For purchase of Supplies for Europe Aid projects, above the value of EUR 5,000
Procurement Documentation

- Certificate of Origin (if applicable)
- Proof of Nationality (if applicable)

Open Tender Procurement File
- Tender Dossier
- Tender Notice
- List of Suppliers/Candidates and Tender Receipt Form
- Questions and Answers
- Tender opening Checklist, List of Participants, Tender opening form
- Tender bids
- Evaluation Grid and Report
- Contract, Letter of Acceptance
- Letter to Unsuccessful Suppliers/Candidates
- Invoice
- Shipping documents
- Proof of Receipt
- Award Notice
- Certificate of Origin (if applicable)
- Proof of Nationality (if applicable)

For all procurement procedures it is recommended that the procurement responsible keeps a ‘logbook’ on the procurement process (on the steps that has been undertaken, challenges, delays, etc.). This enables the Procurement Committee, the procurement responsible and future auditors to track the procurement process for each purchase.

Procurement Monitoring
At any stage during the project period it may be pertinent to carry out procurement monitoring in order to ensure that all the relevant procurement documentation is in place and properly filed. Please see Annex GEN 18 for the applicable template. This template is a practical tool to identify what documentation is accessible, what is missing, what needs to be followed up on and to identify irregularities that need to be corrected.

5.2 PROCUREMENT FINALISATION

Final Procurement Plan
Upon procurement completion and before finalisation of the Final Donor Report, the Procurement Committee shall ensure that the Procurement Plan is updated and harmonized with the Final Narrative and Final Financial Report i.e. the Donor Reporting Columns in the Procurement Plan shall be filled in with the information on the actual procurement. This information may differ from what was initially planned which is not uncommon. In this way the final Procurement Plan will reflect the planned procurement as well as the actual procurement and will thus demonstrate the changes made during the project period.

Storage of Procurement Files
The Procurement Committee shall ensure that all procurement documentation are kept for at least five years after receiving final payment and ensure that the files are kept in a safe and accessible place, ready for audit (seven years for EuropeAid projects before 2013 and five years for projects from January 2013 and onwards)
Some donors require files to be kept in both physical and electronic/scanned files.
6 Supply Contracts

This chapter provides a step by step guide for procurement procedures applicable to Supply Contracts according to contract value.

Supply Contracts cover the purchase, operational leasing, rental or hire of various products (including rent of vehicles with or without option to buy). The delivery of products may in addition include siting, installation and maintenance. Whenever rental of venues for meetings, conferences etc. is a direct project cost, it is categorised as supplies.

<table>
<thead>
<tr>
<th>Supplies</th>
<th>Simple Procedure</th>
<th>Negotiated Procedure</th>
<th>Local Open Tender Procedure</th>
<th>International Open Tender Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to EUR 9,999 (and in exceptional cases)</td>
<td>Simple Procedure</td>
<td>See section 6.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EUR 10,000 - 149,999</td>
<td>Negotiated Procedure</td>
<td>See section 6.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EUR 150,000 - 299,999</td>
<td>Local Open Tender Procedure</td>
<td>See section 6.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Above EUR 300,000</td>
<td>International Open Tender Procedure</td>
<td>See section 6.4</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Ethical Considerations**

The procurement of supplies involves specific ethical risks related to the production, handling and/or transport of products which negatively influence employees’ labour rights and companies’ social and environmental performance. In order to avoid or prevent ethical risks it is important to consider which risks are related to the purchase of a specific product from a specific sector. It is recommended to include ethical considerations in the market survey and to conduct a small scale research on the suppliers’ ethical business performance in the sourcing process and further make procurement decisions which seek to avoid or manage the identified ethical risks. Also consider how internal purchasing practices may influence suppliers’ ability to meet ethical criteria’s and standards e.g. short lead times, changes to specifications and negotiating prices. Please ensure always to communicate the ethical principles and standards to potential suppliers either by personal contact or by publishing the Code of Conduct for Contractors. See section 1.2 + 1.2.1 for more information on ethical procurement principles and implementation.

6.1 The Simple Procedure

The Simple Procedure is the simplest procurement procedure. This procedure is, as a general rule, applicable within the threshold EUR 0 - 9,999. In special cases, described in section 4.8.1 the Simple Procedure can be applied for procurement above EUR 9,999.

The Simple Procedure does not require that more than one supplier is invited to submit a quotation. It is though important to stress that the price shall correspond with the present market price or lower. This shall always be justified and filed in the procurement file. To prove that the price corresponds with the market price you can e.g. search the internet, refer to recent contracts, or obtain at least three written or non-written quotations. Please make sure that all non-written quotations are put down in writing and filed in the procurement file.

An advertisement on business opportunities is mandatory and shall be posted in the newspaper, on a notice board or in other public places before the Procurement process is initiated. This advertisement is published in the beginning of a project and may also contain information on other business opportunities related to the project. See section 4.12.1 for more information on advertisement of business opportunities. Before the process is initiated, make sure that all members of the Procurement Committee sign the Declaration of Impartiality and Confidentiality.

**Purchase Order below EUR 2,000**
A purchase order shall always be issued for procurement above the value of EUR 2,000. For procurement below EUR 2,000 it is optional to issue a purchase order but an invoice shall in all cases be received and filed. As this lower boundary allows for more flexibility in issuing purchase orders under the value of EUR 2,000 it is important to be aware of the risks involved. In order to minimise risks and ensure that suppliers are aware of the GTC and Code of Conduct for Contractors, it may in some contexts be advisable to issue a purchase order, even for purchases of a value less than EUR 2,000.

NOTE: For EuropeAid funded projects prior to PRAG 2013, it is a requirement to issue a contract irrespective of the contract value. Make sure to always to check donor rules.

The steps involved in the Simple Procedure for Supply Contracts:

<table>
<thead>
<tr>
<th>Step</th>
<th>Task</th>
<th>Description</th>
<th>Annex</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Technical specifications</td>
<td>Identify the specifications of the item(s) to be procured.</td>
<td>SUP 2: Request for Quotation</td>
</tr>
<tr>
<td>2</td>
<td>Approach potential suppliers or search media</td>
<td>Collect a minimum of three quotations/prices.</td>
<td>SUP 1: Simple Procedure Quotation Form</td>
</tr>
<tr>
<td>3</td>
<td>Evaluation</td>
<td>Evaluate quotations/prices and select best offer.</td>
<td>SUP 4: Evaluation Grid for Negotiated Procedure</td>
</tr>
<tr>
<td>4</td>
<td>Purchase Order</td>
<td>Issue the Purchase Order.</td>
<td>SUP 6: Purchase Order (Optional below EUR 2,000)</td>
</tr>
<tr>
<td>5</td>
<td>Receipt and inspection</td>
<td>Inspect that supplies received comply with the Purchase Order. Sign and file a proof of receipt/delivery note.</td>
<td></td>
</tr>
</tbody>
</table>

Step 1: Specifications

Identify the items to be purchased from the Procurement Plan. Identify and draft the technical specifications (section 4.13.1). Clearly defined technical specifications are important to enable suppliers to plan ahead and provide feedback. Ensure that all proper import permits are available for the relevant items.

NOTE: Special requirements exists for the purchase of pharmaceuticals and medical devices (see section 6.5.1 and 6.5.2).

Step 2: Request for Quotation

Approach the supplier(s) for a written or non-written quotation, search the internet for the best price and quality or refer to recent purchase orders to ensure that the price corresponds with the present market price or lower. The obtained prices/quotations shall be documented and filed in the procurement file. The advantage of using the Simple Procedure Quotation Form is that it prevents misunderstandings and ensures that all the required information is obtained in one go. The written form also provides an opportunity to specify ethical criterias for the contract via the technical specifications/TOR or contract conditions (- which can e.g. be proved via the provision of certain certifications/standards or equivalent proof of compliance). If a non-written quotation is obtained the Procurement Committee shall make a written note of the price, name of supplier, contact person, description of goods or picture and note the date. This note shall be filed in the procurement file. At this stage it is also important to communicate the ethical principles and standards to the suppliers.

NOTE: Be aware of specific donor requirements such as the EuropeAid Rules of Nationality and Origin.

Step 3: Evaluation and Purchase Order
Evaluate the offers received or collected prices. For evaluation it may be useful to apply the Evaluation Grid also used for the Negotiated Procedure (see Annex SUP 4).

After selecting the best offer a purchase order shall be issued by the Procurement Committee in accordance with the template in Annex SUP 6. Check if the Purchase Order has to be adapted to national legislation, traditions or requirements, as appropriate. Never delete or make alterations to the GTC for Supply Contracts Ver4 2012. Incorporate in the Contract all agreements reached with the selected Supplier and attach the relevant annexes.

The Purchase Order shall be forwarded unsigned to the selected supplier and returned to the Contracting Authority with all pages duly signed. Only thereafter shall the Purchase Order be signed by the Contracting Authority. Signing the Contract creates a legally binding document for both parties.

Before signing the Purchase Order and returning the signed copy to the supplier, the Procurement Committee shall ensure:

- That adequate and exact reference is made in the Purchase Order to the relevant RFQ (or the supplier’s quotation).
- That the Supplier acknowledges the GTC and the Code of Conduct for Contractors without exceptions or amendments.
- For new suppliers - make sure that sufficient references and company data has been collected, or preferably that a Contractor Registration Form has been submitted by the Supplier.

NOTE: The latest version of the GTC shall be applied to all Purchase Orders. If the supplier cannot accept the GTC, the Procurement Committee shall decline that quote and proceed the process with another supplier.

Step 4: Receipt

Inspect the supplies received to ensure they comply with the Purchase Order. Proceed as described in section 6.7.

The Simple Procedure applied in special cases to contracts above EUR 9,999

In special cases an automatic derogation is granted to apply the Simple Procedure for contracts above EUR 9,999 – irrespective of the contract value. A prior approval from the DCA head of Procurement and Logistics Unit is not required. See section 4.8.1 for restrictions and the situations this is reserved for.

<table>
<thead>
<tr>
<th>Annexes for Supply Contracts when applying Simple Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>GEN 2 Declaration of Impartiality and Confidentiality</td>
</tr>
<tr>
<td>SUP 1 Simple Procedure Quotation Form</td>
</tr>
<tr>
<td>SUP 4 Evaluation Grid for Negotiated Procedure</td>
</tr>
<tr>
<td>SUP 6 Purchase Order</td>
</tr>
</tbody>
</table>

6.2 THE NEGOTIATED PROCEDURE

The Negotiated Procedure is more formal than the Simple Procedure. This procedure is applicable for the threshold of EUR 10,000 – 149,999 and requires that a minimum of three suppliers are invited simultaneously to submit a quotation based on a RFQ. The Contract shall be awarded to the most compliant supplier. A public award notice is required (mandatory for contracts above EUR 30,000). Letters to all unsuccessful suppliers shall be submitted.
The Negotiated Procedure is less formal than a Local Open Tender Procedure and gives the opportunity to negotiate the terms of the Contract.

An advertisement on business opportunities is mandatory and shall be posted in the newspaper, on a notice board or in other public places before the Procurement process is initiated. This advertisement is published in the beginning of a project and may also contain information on other business opportunities related to the project. See section 4.12.1 for more information on advertisement of business opportunities.

Before the process is initiated make sure that all members of the Procurement Committee sign the Declaration of Impartiality and Confidentiality.

### The steps involved in the Negotiated Procedure for Supply Contracts.

<table>
<thead>
<tr>
<th>Step</th>
<th>Task</th>
<th>Description</th>
<th>Annex</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Technical specifications.</td>
<td>Identify the specifications of the item(s) to be purchased.</td>
<td>SUP 2: Request for Quotation</td>
</tr>
<tr>
<td>2</td>
<td>Make a short list of a minimum of 4-8 suppliers</td>
<td>Use e.g. the available databases or internet to source new suppliers.</td>
<td>GEN 13: List of Suppliers/Candidates and Tender Receipt Form</td>
</tr>
<tr>
<td>3</td>
<td>Submit the RFQ</td>
<td>Prepare the RFQ and submit it simultaneously to all selected suppliers.</td>
<td>SUP 2: Request for Quotation</td>
</tr>
<tr>
<td>4</td>
<td>Evaluation</td>
<td>Evaluate quotations in writing by using the Evaluation Grid.</td>
<td>SUP 4: Evaluation Grid for Negotiated Procedure</td>
</tr>
<tr>
<td>5</td>
<td>Negotiation (optional)</td>
<td>There is an option to negotiate the terms. Rules are described further in this chapter.</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Final evaluation and Purchase Order</td>
<td>After final evaluation the Purchase Order shall be completed and sent to the successful supplier.</td>
<td>SUP 6: Purchase Order</td>
</tr>
<tr>
<td>7</td>
<td>Submit letters to unsuccessful suppliers</td>
<td>Unsuccessful suppliers shall be notified of the result of the procedure.</td>
<td>SUP 8: Letter to Unsuccessful Suppliers</td>
</tr>
<tr>
<td>8</td>
<td>Publish the Award Notice</td>
<td>To be published on websites, in newspapers, market places, office receptions, bill boards etc.</td>
<td>GEN 17: Award Notice (Optional below EUR 30,000)</td>
</tr>
<tr>
<td>9</td>
<td>Receipt and inspection</td>
<td>Inspect that the supplies received comply with the Purchase Order. Sign and file the proof of receipt/delivery note.</td>
<td></td>
</tr>
</tbody>
</table>

### Step 1: Specifications

Identify the lots of items to be purchased from the Procurement Plan. Identify and draft the technical specifications (see section 4.13.1). Clearly defined technical specifications are important to enable suppliers to plan ahead and provide feedback. Ensure that all proper import permits are available for the relevant items.

**NOTE:** Special requirements exist for the purchase of pharmaceuticals and medical devices (see section 6.5.1 and 6.5.2).

### Step 2: Short List

Prepare a short list of suppliers with a minimum of three suppliers. It is recommended to include 4-8 suppliers to ensure that a minimum of three quotations are obtained.
As an option databases can be used to identify suppliers. When sourcing new suppliers it is recommended to obtain general information on sector and country specific ethical risks. (See section 4.12.2 for more information on how to source new suppliers.)

Always carry out a small scale risk analysis on the suppliers ethical business performance e.g. CSR policy, environmental policy, health policy, relevant certifications etc. The findings shall be documented and integrated in the evaluation of suppliers in step 5. (See section 1.2.1 for implementation of the Ethical Procurement Principles.)

Step 3: Request for Quotation

Thoroughly prepare the RFQ and approach the suppliers for a proposal. The RFQ shall be forwarded simultaneously (same day) to all the shortlisted suppliers. This is to ensure that all suppliers are given an equal amount of time to prepare and submit their offer. At this stage it is important to communicate the ethical principles and standards to the suppliers.

One way of ensuring supplier response is to submit a ‘cover letter’ together with the RFQ, in which the main requirements to filling in the form is highlighted. See Annex GEN 1-1 Guidance letter to Suppliers for an example of an RFQ cover letter.

When preparing the RFQ decide on:
- Delivery terms (incl. Incoterms if required).
- Technical specifications.
- If installation and/or maintenance and/or after sales service and/or spare parts are required.
- Deadline for receipt of quotations (it is recommended to allow a minimum of two weeks depending on the complexity of the requirements).
- Payment terms
- Evaluation criteria
- Ethical criteria
- If a Tender Guarantee and/or Performance Guarantee shall be required (recommended for contracts above EUR 50,000. Please read section 9.3 for more information on guarantees).

NOTE: Be aware of specific donor requirements such as EuropeAid’s Rule of Nationality and Origin.

Follow up on submission of the RFQ

To ensure that sufficient offers will be received on time it is recommended to contact all shortlisted suppliers 1-2 days after submitting the RFQ to ask the suppliers if they intend to submit an offer before the deadline. When a short deadline is required, it is particularly good practice to follow up with the suppliers and explain the importance of completing the Submission Form and submitting the offer prior to the deadline.

Step 4: Evaluation

Upon receipt of the quotations, register the time when the offers were received and carry out the evaluation utilising the Evaluation Grid in Annex SUP 4. Please note that suppliers who have not submitted their quotation before the deadline shall not be considered.

For comparison and evaluation of the quotations, the Procurement Committee shall take into consideration the criteria selected in the RFQ. Instructions are included in the Evaluation Grid (see Annex SUP 4).

The Procurement Committee may apply a different evaluation procedure. This shall then be amended in the RFQ and the Evaluation Grid shall be adjusted accordingly.
Recommendations on Evaluation Challenges

PRICES ARE TOO HIGH
In case all suppliers have offered prices which are too high and/or the technical specifications need to be changed or adjusted, it is not necessary to issue a new RFQ. Instead the suppliers can be contacted in writing (stating the amendments and new deadline) and a revised quotation requested.

LESS THAN THREE QUOTATIONS ARE RECEIVED
If less than three quotations have been received and if some suppliers have declined to submit a quotation it is allowed to proceed with the best offer provided that the General Procurement Principles are met. E.g. it shall be ensured that all suppliers have been given sufficient time to submit a quotation, that all suppliers have acknowledged the receipt of the RFQ, and all suppliers who have submitted a letter of interest are invited. If it is not possible to find a minimum of three qualified suppliers in the market, it is important to survey broader e.g. markets in neighbouring districts and countries (see section 4.12.2 for how to source new suppliers). Lack of suppliers in the regional market is not sufficient grounds for proceeding with less than three quotations. A market survey would reveal this fact during the planning stage and derogations from Negotiated Procedure to Simple Procedure may be requested.

Step 5: Negotiate Terms (Optional)

If pertinent, the Procurement Committee has the option to negotiate the terms of the Contract. Negotiations shall not entail any substantial deviation from the terms and conditions of the RFQ, but shall have the purpose of obtaining better conditions in terms of delivery date, technical quality, payment conditions etc.

Negotiations may however have the purpose of reducing the scope of the supply or revising other terms of the Contract in order to reduce the total price. This may be necessary when prices proposed by all suppliers exceed the limits of the funds made available to the Contracting Authority by its donor/funding agency.

Negotiation can also facilitate a discussion on identified ethical risks in order to find possible solutions or determine if the proposal shall be turned down.

The negotiations can be done by email, fax, phone or at a meeting. In the latter two cases, a written recap shall be prepared, filed, copied and submitted to the Supplier. There are no specific procedures on negotiations except that the General Procurement Principles shall always be respected.

When negotiating the terms, consider how requirements on e.g. lead times and price may affect the supplier’s ability to comply with the ethical principles and standards.

Step 6: Final Evaluation and Purchase Order

The Purchase Order shall be awarded to the best and most compliant supplier, i.e. the supplier who is substantially responsive to the RFQ, is technically compliant, and who has offered the best quality and price, provided further that the Supplier has demonstrated the capability and resources to carry out the Contract effectively.

The Purchase Order is to be issued by the Procurement Committee in accordance with the template in Annex SUP 6. Check if the Purchase Order has to be adapted to national legislation, traditions or requirements, as appropriate. Never delete or make alterations to the GTC for Supply Contracts Ver4 2012. Incorporate in the Contract all agreements reached with the selected Candidate and attach the relevant annexes.

The Purchase Order shall be forwarded unsigned to the selected supplier and returned to the Contracting Authority with all pages duly signed. Only thereafter shall the Purchase Order be signed by the Contracting Authority. Signing the Contract creates a legally binding document for both parties.
Before signing the Purchase Order and returning the signed copy to the Supplier, the Procurement Committee shall ensure:

- That adequate and exact reference is made in the Purchase Order to the relevant RFQ.
- That the Supplier acknowledges the GTC and the Code of Conduct for Contractors without exceptions or amendments.
- For new suppliers - make sure that sufficient references and company data has been collected, or preferably that a Contractor Registration Form has been submitted by the Supplier.

NOTE: The latest version of the GTC shall be applied to all Purchase Orders. If the supplier cannot accept the GTC, the Procurement Committee shall decline that quote and continue the process with another supplier.

Step 7: Letter to Unsuccessful Suppliers

Once the selected supplier has returned the Purchase Order duly signed a letter shall be sent to the unsuccessful suppliers informing them of the result of the procedure i.e. the name of successful supplier and the total contract amount.

Step 8: Award Notice

An award notice shall be published. The purpose of the public announcement is to meet the principle of transparency with the added benefit of attracting new suppliers. Thus the award notice is useful for all contracts.

Please publish the award notice in a relevant place where suppliers will notice the information. For posting an award notice on the DCA website please forward the award details to the DCA Procurement and Logistics Unit. Please refer to GEN 17 for the relevant information.

The publishing of an award notice can be exempted if the Procurement Committee considers that a public notice might endanger the organisation’s safety or harm its interests.

NOTE: The Procurement Committee shall take notice of any specific donor requirements for publishing an Award Notice.

Step 9: Receipt

Inspect that the supplies received comply with the Purchase Order. Proceed as described in section 6.7.

<table>
<thead>
<tr>
<th>Annexes for Supply Contracts when applying Negotiated Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>GEN 2</td>
</tr>
<tr>
<td>GEN 13</td>
</tr>
<tr>
<td>SUP 2</td>
</tr>
<tr>
<td>SUP 4</td>
</tr>
<tr>
<td>SUP 6</td>
</tr>
</tbody>
</table>
6.3 THE LOCAL OPEN TENDER PROCEDURE

The Local Open Tender Procedure (from here on named Local Open Tender) is more extensive and elaborate than the Negotiated Procedure. It is applicable to higher value purchases of EUR 150,000 – 299,999.

A Local Open Tender requires a public and specified advertisement of a tender notice in the country of operation in e.g. newspapers and suitable online procurement media, with a bid flow of at least 21 days. A Local Open Tender shall provide eligible suppliers in the country of operation with equal business opportunities.

A specified tender dossier shall be drafted and forwarded to interested suppliers who then have the opportunity to make a tender request. After the deadline of receiving tenders they shall be opened and announced in the presence of all interested tenderers. Evaluation of the Tenders is fulfilled by the Procurement Committee on the basis of a clearly predefined evaluation grid and the most compliant Tender is awarded the Contract. A public award notice is required and letters to all unsuccessful suppliers shall be submitted.

An advertisement on business opportunities is mandatory and shall be posted in the newspaper, on a notice board or in other public places before the Procurement process is initiated. This advertisement is often published in the beginning of a project and may also contain information on other business opportunities related to the project. See section 4.12.1 for more information on advertisement of business opportunities.

Before the process is initiated make sure that all members of the Procurement Committee have signed the Declaration of Impartiality and Confidentiality.
The steps involved in the Local Open Tender for Supply Contracts.

<table>
<thead>
<tr>
<th>Step</th>
<th>Task</th>
<th>Description</th>
<th>Annex</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Technical specifications</td>
<td>Identify the specifications of the item(s) to be procured.</td>
<td>SUP 3: Tender Dossier</td>
</tr>
<tr>
<td>2</td>
<td>Issue the Tender Dossier</td>
<td>Issue the Tender Dossier with special attention to the technical specifications, special requirements, time schedule and award criteria.</td>
<td>SUP 3: Tender Dossier</td>
</tr>
<tr>
<td>3</td>
<td>Publish the Tender Notice</td>
<td>Specify the main content of the Tender Dossier in the Tender Notice and publish it in a suitable procurement media. The deadline shall not be less than 21 days from the date of the advertisement. The Tender dossier shall be available on the date of the advertisement.</td>
<td>GEN 11: Tender Notice</td>
</tr>
<tr>
<td>4</td>
<td>Send out the Tender Dossier</td>
<td>A record of the date of submitting the Tender Dossier and to who shall be made. Each Tenderer shall be identified with a number. When clarifications/amendments to the Tender Dossiers occur all potential tenderers shall receive a copy of questions and answers simultaneously.</td>
<td>GEN 13: List of Suppliers/Candidates and Tender Receipt Form GEN 14: Question and Answers</td>
</tr>
<tr>
<td>5</td>
<td>Receive tenders</td>
<td>For each tender received, the date and time of receipt shall be registered. All received tenders shall be kept unopened in a secure place until the tender opening.</td>
<td>GEN 13: List of Suppliers/Candidates and Tender Receipt Form</td>
</tr>
<tr>
<td>6</td>
<td>Tender opening</td>
<td>Tenders shall be opened at the announced time, place and date in the presence of tenderers who choose to attend. Names of tenderers and prices are read aloud.</td>
<td>GEN 15-1: Tender Opening Checklist GEN 15-2: List of Participants GEN 15-3: Tender Opening Form</td>
</tr>
<tr>
<td>7</td>
<td>Ensure administrative compliance</td>
<td>Post qualification of tenderers shall be performed after the tender opening (tenderers shall not be present).</td>
<td>SUP 5: Evaluation Grid for Open Tender Procedures</td>
</tr>
<tr>
<td>8</td>
<td>Start evaluating tenders</td>
<td>Evaluate tenders in writing by using the Evaluation Grid. Tenders which have passed the post qualification are subject to evaluation by each member of the Procurement Committee.</td>
<td>SUP 5: Evaluation Grid for Open Tender Procedures</td>
</tr>
<tr>
<td>9</td>
<td>Evaluation meeting and selection of tenderer</td>
<td>Discuss the evaluation and select a tenderer. Draft a report of the evaluation identifying clearly which evaluation criteria the successful Tenderer was superior in and why.</td>
<td>GEN 15-4: Evaluation Report for Open Tenders</td>
</tr>
<tr>
<td>10</td>
<td>Issue the Contract and submit the Letter of Acceptance</td>
<td>Prepare the Contract in accordance with the draft in the Tender Dossier and submit the letter of acceptance with the Contract. Invite the Tenderer to sign the Contract.</td>
<td>SUP 3: Tender Dossier GEN 16: Letter of Acceptance</td>
</tr>
<tr>
<td>11</td>
<td>Submit letters to unsuccessful suppliers</td>
<td>Unsuccessful tenderers shall be notified of the result of the Tender after the Contract has been signed by the successful Tenderer.</td>
<td>SUP 8: Letter to Unsuccessful Suppliers</td>
</tr>
<tr>
<td>12</td>
<td>Publish the Award Notice</td>
<td>Publish the Award Notice in a suitable procurement media.</td>
<td>GEN 17: Award Notice</td>
</tr>
<tr>
<td>13</td>
<td>Receipt and inspection</td>
<td>Inspect that supplies received comply with the Contract. Sign and file a proof of receipt/delivery note.</td>
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Step 1: Specifications

Identify the lots of items to be purchased from the Procurement Plan. Identify and draft the technical specifications of the item(s) to be purchased (see section 4.13.1). Clearly defined technical specifications are important to enable suppliers to plan ahead and provide feedback. Ensure that all proper import permits are available for the relevant items.

NOTE: Special requirements exist for the purchase of pharmaceuticals and medical devices (see section 6.5.1 and 6.5.2).

Step 2: Tender Dossier

Draft the Tender Dossier with the following considerations:

Technical specifications: The biggest challenge when drafting a tender dossier is to give the correct technical specifications which will ensure that the correct items are being offered and supplied. Clearly defined technical specifications (and selection criteria) also enables the Contractor to plan ahead and provide feedback on specifications. When drafting a tender dossier, the technical specifications are by far the most time consuming and important (Please refer to section 4.13.1 when drafting the technical specifications).

Award Criteria: The Tender Dossier shall stipulate the award criteria for the Contract. A Supply Contract shall be awarded to the best and most compliant tender, i.e. the supplier who is substantially responsive to the Tender Dossier, is technically compliant, and who has offered the best price. This provided that the Tenderer has demonstrated appropriate capability and resources to carry out the Contract effectively. Please ensure to include ethical criteria’s in the award criteria whenever it is relevant and pertinent.

Timeframe: When are the goods required at final site? Consider if the timeframe is realistic or if it provides too short lead times for supplier(s).

Transport and storage: Will the project staff themselves arrange for transport from delivery point to final site and which Incoterm shall be applied? The choice of transport and the associated environmental risks shall also be considered. Has consideration been given to storage facilities at site? Lack of storage facilities could be solved by requesting partial deliveries in the Tender Dossier. Partial deliveries are also common for products with a short shelf-life. It is recommended to draft a distribution schedule as a working tool (see Annex GEN 9-3).

Donor Requirements: Be aware of specific donor requirements such as EuropeAid Rules of Nationality and Origin.

Payment terms: Which payment terms shall be applied?

Ethical criteria’s: Is there a need to include specific criteria to ethical issues in the Tender Dossier such as certifications or specific terms in the contract such as environmental or social performance?

Inspection: Will a preshipment inspection be required or will the goods be inspected upon arrival?

Bank guarantees: Will a tender guarantee be required? Will a performance guarantee be required? For more information on bank guarantees see section 9.3.

12 A contract in a Local and International Open Procedure has the same function as the Purchase Order, but is a more thorough legal binding document.
Step 3: Tender Notice

Draft the Tender Notice which as a minimum shall describe: the supplies to be procured (incl. the essential technical specifications); the rules governing the submission and presentation of tenders; the exclusion, selection and award criteria; and where and when the Tender Dossier can be obtained.

Deadline for submission of tenders shall not be less than 21 days from the date of publishing the Tender Notice. However, the deadline may be longer depending on the nature of supplies. The Tender Dossier shall be available on the date of publishing the Tender Notice.

The Tender Notice shall be published in the country of operation by any relevant means available e.g. national news paper, radio, notice board at a public place and/or online procurement media.

The Local Open Tender shall provide eligible suppliers in the country of operation with equal business opportunities and the Procurement Committee is encouraged to submit the Tender Notice directly to a broad list of suppliers who could be interested in participating in the tender procedure.

It is in the interest of the Procurement Committee to ensure the widest possible participation in the Tender to obtain the best quality and value for money.

When sourcing new suppliers it is recommended to obtain general information on sector and country specific ethical risks.

Step 4: Submission of Tender Dossier

The Tender Dossier shall be submitted to all suppliers who have made a request within a few days of it being requested by the supplier. At this stage it is important to communicate the ethical principles and standards to the suppliers.

A record of the date the Tender Dossier was submitted and to whom shall be made. Each tenderer shall be identified by a number.

As specified in the Tender Dossier, there is a deadline for clarifications to the Tender Dossier. Procedures for submission of clarifications are specified in the Tender Dossier (see Annex GEN 14: Questions and Answers).

Tenderers may submit questions in writing at the latest on the date specified in the time table in the Tender Dossier. Information regarding interpretation of the Tender Dossier shall be requested in writing. Tenderers are not allowed to approach the Contracting Authority for oral clarification. Clarifications to the Tender Dossier shall be shared with all tenderers interested in participating in the tender procedure.

Always carry out a small scale risk analysis on suppliers’ ethical business performance e.g. CSR policy, health policy, ISO standards, SA8000 certification etc. The findings shall be documented and integrated in the evaluation of suppliers in step 8. (See section 1.2.1 for implementation of the Ethical Procurement Principles)

NOTE: Any prospective tenderer seeking to arrange individual meetings during the tender period with either the Contracting Authority and/or any other organisation with which the Contracting Authority is associated or linked shall be excluded from the tender procedure.
Step 5: Receiving Tenders

For each tender received, the date and time of receipt shall be registered including name of the person who received the tender. All received tenders shall be kept unopened in a secure place until the tender opening.

All tenders received after the deadline shall be rejected at the tender opening. If deadline is 17:00 hrs, then offers received at 17:01 or later shall be rejected.

Step 6: Tender Opening

Tenders shall be opened at the announced time, place and date in the presence of Tenderers who choose to attend. The names of the Tenderers and prices are read aloud and the Tenderers who participate shall be registered (use the format in Annex GEN 15-2).

See Annex GEN 15-1: Tender Opening Checklist for guidance on how to prepare and conduct the tender opening session.

Step 7: Administrative Compliance

After the tender opening the Procurement Committee shall carry out a post qualification/administrative compliance of the tenders received. This is a preliminary examination of all tenders.

Each tender shall be checked for administrative compliance based on the requirements set out in the Tender Dossier e.g.:
- Was the tender received before the deadline?
- Are the required no. of copies supplied?
- Are all the requested documents submitted and properly signed (check for documents such as a Tender Guarantee, Tender Submission Form. (The required documents are listed under “instructions to tenderers” in the Tender Dossier).

The documents shall not be evaluated at this stage. It is only nessesary to ensure that the documents are available and properly signed. (See Annex SUP 5: Evaluation Grid for Open Tender Procedures)

At this stage, offers which do not comply shall be rejected. The reason for rejection shall be written in the administrative compliance report which is a part of the evaluation report (see Annex GEN 15-4).

Step 8: Evaluation

After the post qualification (part A of the Evaluation Grid for Open Tender Procedures, Annex SUP 5) each member of the Procurement Committee will receive a copy of the remaining tenders for evaluation and analysis. This evaluation shall be done in private and tenderers are not allowed to be present. Each member shall fill in an evaluation grid (Part B and C of the Evaluation Grid), which shall be compared at the evaluation meeting. Please note that suppliers who have submitted their offer after the deadline shall not be considered.

NOTE: During the evaluation it may be necessary to obtain clarification from a tenderer. Depending on the type of clarification, the Tenderer shall be allowed at least 48 hours to respond. Always remember to put a deadline for receipt of the clarification. Communication with the Tenderer shall be in writing.
Evaluation Challenges

AMEND TECHNICAL SPECIFICATIONS
If there is a need to amend the technical specifications described in the Tender Notice and the Tender Dossier, either by reducing or increasing the minimum requirements, the tender process shall be cancelled and a new one initiated. The Tender Notice and Tender Dossier with the new technical specifications shall be issued – the deadline for submitting tenders can be reduced to e.g. 15 days (depending on the complexity). It may be easier to contact all tenderers directly, but this is not allowed due to the Principle of Equal Opportunity. Suppliers who were not part of the initial tender process may be interested in participating after the change of technical specifications. This emphasizes the importance of drafting clear and thorough technical specifications from the outset of the procurement process.

PRICE OF TENDERS ARE TOO HIGH
If all financial offers exceed the budget substantially the cause for this can either be change in the market price, minimum technical requirements are too high, etc. The reason for the high offers shall be clarified. Proceed as described in the above case scenario if changes to the technical specifications are needed.

NONE OR LESS THAN THREE TENDERS ARE RECEIVED
Whenever less than three tenders have been submitted, it is possible to proceed with a Simple Procedure with one supplier of choice as long as no substantial changes to the contract terms of the Tender Dossier are made. If substantial changes to the contract terms of the Tender Dossier have to be made, the tender process shall be cancelled and a new one initiated. It may seem easier to contact all tenderers directly, but this is not allowed because of the Principle of Equal Opportunity. Suppliers who were not part of the initial tender process may be interested in participating after the changes to the contract terms of the Tender Dossier have been made. If no tenders are received a new tender procedure shall be initiated. Analyse the possible reason for the lack of tenders and implement the findings in the contract terms of the new Tender Dossier.

Step 9: Evaluation Meeting

After each member has completed the evaluation a meeting of the Procurement Committee shall be held. Discuss the evaluation and select a tenderer. Draft a short report of the evaluation which clearly identifies in which evaluation criteria the winning Tenderer was superior and why (the report shall reflect the criteria in the Tender Dossier). The report shall be signed by all members of the Procurement Committee. Tenderers can not attend this meeting (see Annex GEN 15-4).

Step 10: Contract and Letter of Acceptance

Prepare the Contract in accordance with the draft in the Tender Dossier and forward a Letter of Acceptance to the selected Tenderer (GEN 16). Check if the Contract has to be adapted to national legislation, traditions or requirements, as appropriate. Never delete or make alterations to the GTC for Supply Contracts - Ver4 2012. Incorporate in the Contract all agreements reached with the selected Candidate and attach the annexes (see article B 16 of the draft contract).

The Contract shall be forwarded unsigned to the selected tenderer and returned to the Contracting Authority with all pages duly signed. Only thereafter shall the Contract be signed by the Contracting Authority. Signing the Contract creates a legally binding document for both parties.

Before signing the Contract and returning the signed copy to the Tenderer, the Procurement Committee shall ensure:
- That adequate and exact references are made in the Contract to the Tender.
- That the Tenderer acknowledges the GTC and the Code of Conduct for Contractors without exceptions or amendments.
For new suppliers – make sure that sufficient references and company data has been collected, or preferably that a Contractor Registration Form has been submitted by the Tenderer.

NOTE: The latest version of the GTC shall be applied to all purchases. If the Tenderer cannot accept the GTC the Procurement Committee shall decline the quote and continue the process with another tenderer.

Step 11: Letter to Unsuccessful Tenderers

After the Contract has been signed, the Procurement Committee shall submit a notification letter to the unsuccessful tenderers notifying them of the result of the Tender (see Annex SUP 8).

Step 12: Award Notice

An award notice shall be published. The purpose of the public announcement is to meet the principle of transparency with the added benefit of attracting new suppliers. Thus the award notice is useful for all contracts.

Please publish the award notice in a relevant place where suppliers will notice the information. For posting an award notice on the DCA website please forward the award details to the DCA Procurement and Logistics Unit. Please refer to GEN 17 for the relevant information.

The publishing of an award notice can be exempted if the Procurement Committee considers that a public notice might endanger the organisation’s safety or harm its interests.

NOTE: The Procurement Committee shall take notice of any specific donor requirements for publishing an Award Notice.

Step 13: Receipt

Inspect that the supplies received comply with the Contract. Proceed as described in section 6.7.

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<th>Annexes for Supply Contracts when applying Local Open Tender</th>
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6.4 THE INTERNATIONAL OPEN TENDER PROCEDURE

The International Open Tender Procedure (from here on named International Open Tender) is similar to the Local Open Tender except for the rules applicable to advertisement and the time frame for the bid flow. International Open Tenders shall always be advertised internationally and the deadline for submitting a tender shall be at least 30 days after the Tender Notice is published. The International Open Tender is applicable for all purchases above EUR 299,999.

An advertisement on business opportunities is mandatory and shall be posted in the newspaper, on a notice board or in other public places before the Procurement process is initiated. This advertisement is often published in the beginning of a project and may also contain information on other business opportunities related to the project. See section 4.12.1 for more information on advertisement of business opportunities. Before the process is initiated make sure that all members of the Procurement Committee have signed the Declaration of Impartiality and Confidentiality.

The steps involved in the International Open Tender for Supply Contracts

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<thead>
<tr>
<th>Step</th>
<th>Task</th>
<th>Description</th>
<th>Annex</th>
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<tbody>
<tr>
<td>1-3</td>
<td>Follow the procedure as described for Local Open Tender</td>
<td>Specify the main content of the Tender Dossier in the Tender Notice and publish it in the project country, Internationally and on the DCA website. Depending on the nature of the Services, the deadline for submitting tenders shall not be less than 30 days from the date of issuing the Tender Notice. The Tender Dossier shall be available on the date of the advertisement of the Tender Notice.</td>
<td>GEN 11: Tender Notice</td>
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<tr>
<td>4</td>
<td>Publish the Tender Notice</td>
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<tr>
<td>5-14</td>
<td>Follow the procedure as described for Local Open Tender</td>
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Step 1: (Step 1-3) Specifications and Tender Dossier

Proceed as described in step 1-3 for the Local Open Tender (section 6.3).

Step 4: Tender Notice

Draft the Tender Notice, which as a minimum shall describe: the supplies to be procured (incl. the essential technical specifications); the rules governing the submission and presentation of tenders; the exclusion, selection and award criteria; and where and when the Tender Dossier can be obtained. (See also section 6.3 step 4).

The Tender Notice shall be published in the country of operation by any relevant means available e.g. regional and international newspapers, other media, as well as media required by donor. In addition, the Tender Notice shall be published on the DCA website on the same day (contact procurement@dca.dk).

If the project is funded by the World Bank or UN then the notice can be published on www.devbusiness.com. If it is funded by other donors the notice can be published on www.dgmarket.com.
When feasible, advertising in technical magazines and trade publications shall be envisaged. It is also recommended to advertise the Tender Notice on TED [http://ted.europa.eu](http://ted.europa.eu).

Tender procedures are open whenever all interested economic operators may submit a tender after international publication of a Tender Notice.

The deadline shall not be less than 30 days from the date of issuing the Tender Notice. The Tender Dossier shall be available from the date of publishing the Tender Notice.

The procurement Committee can choose to submit the Tender Notice directly to a list of relevant suppliers who could be interested in participating.

It is in the interest of the Procurement Committee to ensure the widest possible participation in the tender.

**Step 5: (Step 5-14)**

Proceed as described in step 5-14 for the Local Open Tender (section 6.3).

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<td>GEN 17</td>
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**6.5 PROCUREMENT OF MEDICINE AND MEDICAL DEVICES**

When procuring medicine and medical devices, it is paramount to abide by international norms for procurement of these products, to ensure quality and to respect patents and national drug regulations in the individual countries. For procurement of both medicine and medical devices the Negotiated Procedure applies and only shortlisted, prequalified suppliers are to be invited to submit an offer. A potential supplier shall offer prequalified medicine and/or medical devices and shall meet WHO standards for production, storage, distribution and management. Suppliers shall always provide certifications for prequalification of their company and the products they sell.

At all times the aim of procuring medicine and medical devices is to ensure high quality products which are authentic, effective and safe for patients. Quality shall always be the number one priority when procuring medicine and medical devises.
Please always check if the donor has specific requirements for the procurement of medicine and medical devices which supersede the procedures described in this Manual.

The Procurement Committee shall always verify the certificates received from a supplier. Make sure to check the certificates for validity, name and address of the company and that the product description on the certificate actually corresponds with the required product. Certificates shall always be filed in the Procurement File.

**Market Survey and Project Proposal**

Procuring medicine is complex, time consuming and requires knowledge of the market, the national drug regulatory system, the occurrence of counterfeits, as well as knowledge on prequalification requirements. To plan procurement of medicine and medical devices it is very important to obtain such knowledge at the project proposal stage. In some contexts it may not be possible to apply the required rules and procedures due to national legislation, market conditions or other complex issues. In these cases, non-compliance shall always be well justified and documented, and included in the proposal to the donor. If specific donor rules cannot be fulfilled it is a prerequisite to apply for a derogation and preferably include this in the project proposal.

It is recommended to contact e.g. UNICEF, MSF, Red Crescent or the Ministry of Health in the country of operation, as they may be able to assist you with useful information and guidance.

For DCA and Partners: The DCA Procurement and Logistics Unit provide support and advise on the procurement of medicine and medical devices, but cannot provide technical assistance on the issue due to lack of specialised technical knowledge and capacity.

**Humanitarian Procurement Centres**

At the project proposal stage, please set aside time to thoroughly consider if the Contracting Authority has the technical capacity and expertise in procurement of medicines and medical devices to ensure the purchase of genuine and prequalified products from prequalified suppliers. If not, it is strongly recommended to appoint an ECHO recognised Humanitarian Procurement Centre (HPC) to carry out the procurement. Please reflect this decision in the Procurement Plan. Procurement through an HPC is preferred because the HPC conducts efficient and safe procurement and assumes responsibility for purchasing high quality and genuine medicine and medical devices. Additionally when buying from an HPC the Simple Procedure applies irrespective of the contract value, thus making the process less time consuming (see section 4.9.1 for more details on HPCs). When considering procuring from a HPC please note that HPCs often operate with minimum order requirements. Also assess the national legislation on import of medicine and medical devices as it is likely that the HPC will have to ship the order to the country of operation. Import of medicine and medical devices may be illegal, regulated or complicated in some countries.
For the procurement of medicine or medical devises two scenarios. Follow the flowchart below and find out how to approach the procurement of medicine or medical devises.

6.5.1 Procurement of Medicine

Medicine, also referred to as pharmaceuticals, is the term used to define medical products comprising chemical substances with intended use for medical diagnosis, cure, treatment, or prevention of disease.

Counterfeit Medicine

The biggest threat to purchasing safe quality products is counterfeit (and sub-standard\(^1\)) medicine. The World Health Organisation (WHO) defines a counterfeit as a medicine "which is deliberately and fraudulently mislabelled with respect to identity and/or source. Counterfeiting can apply to both branded and generic products and counterfeit products may include products with the correct ingredients or with the wrong ingredients, without active ingredients, with insufficient active ingredients or with fake packaging\(^2\). Counterfeits pose a genuine threat to individual patient’s health and safety but they also pose a threat to public health in general. Counterfeits are widespread in the medical market and especially in developing countries. This is due to states weak and inadequate regulatory control and low enforcement capacity, which enables counterfeits to enter the distribution channels at no risk. In some countries counterfeit medicine makes up 50% of the market and up to 85% for specific product categories.\(^3\) To prevent procuring counterfeit medicines it is essential to understand the market, the national drug regulatory system and to ensure prequalification of both product and supplier. Purchasing medicine from ECHO recognised humanitarian Procurement Centres lessens the risk of purchasing counterfeits.

Procurement Procedure

When the Contracting Authority carry out their own procurement of medicines it is a requirement to only procure prequalified products which are delivered by prequalified suppliers. Prequalification of both products and suppliers shall be carried out and certified by an international recognised certification body which meets WHO norms and standards.\(^4\). Certification of prequalification shall be issued either by WHO, a stringent regulatory authority (such as a National Drug Regulatory Authority or an internationally recognised independent certification authority) or an ECHO recognised humanitarian Procurement Centre. For prequalified products please also refer to the WHO List of Prequalified Medicines described below.

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\(^1\) See [http://www.who.int/medicines/services/counterfeit/faqs06/en/index.html](http://www.who.int/medicines/services/counterfeit/faqs06/en/index.html) for the definition of a substandard medicine.
\(^2\) [http://www.who.int/medicines/services/counterfeit/overview/en/](http://www.who.int/medicines/services/counterfeit/overview/en/)
\(^3\) World Health Organization (2006:3); “Combating counterfeit drugs: A concept paper for effective international cooperation,”
\(^4\) Prequalification shall be based on: Good Manufacturing Practices (GMP), Good Storage Practices (GSP), Good Distribution Practices (GDP), monitoring systems, complaint mechanism, standard operating procedures and quality control systems.
Essential requirements to certifications to both supplier and products shall be informed in the Advertisement of Business Opportunities (GEN 8) or whenever a potential supplier is contacted to be shortlisted.

Carrying out prequalification of products and suppliers cannot be assessed by most Contracting Authorities due to lack of professional capacity within the pharmaceutical field.

Irrespective of the value of the Contract to be awarded, the Contracting Authority shall launch a Negotiated Procedure by inviting simultaneously and in writing only shortlisted prequalified suppliers (suppliers/NGOs/ Central Buying Offices17) of their choice.

Identifying the prequalified suppliers requires a thorough market survey, and knowledge of the industry, risks and national legislation. It is recommended to search the WHO and other international bodies’ websites for information and to consult other humanitarian actors in the country or region.

The number of suppliers invited shall be sufficient to ensure genuine competition. The market situation for each product, the nature of the medicine, and the critical dates for delivery may determine the number of suppliers approached. Choices are restricted by the characteristics of the medicines as some are either single-source or limited source products. Other products may be multi-source but effectively restricted to limited-sources in many settings.

Once the prequalified suppliers have been shortlisted the RFQ is issued and the shortlisted suppliers are invited to submit an offer. When issuing the RFQ a specialist e.g. medic or pharmacist shall be consulted to ensure the correctness of the product specifications, packing requirements, storage requirements, shelf life, specific transport requirements, product certificates required, etc.

Additionally International recognised standards can be indications of quality and good management systems. In the RFQ the selection criteria shall give priority to suppliers that comply with at least one of the following standards or equivalent: United States QS (21 CFR part 820), ISO9001/ISO9002, or ISO9001/2000. Certifications shall always be verified by the certifying organisation itself.

WHO List of Prequalified Medicinal Products
WHO has developed a list of prequalified medicinal products used for HIV/AIDS, malaria tuberculosis, influenza, reproductive health and other diseases. The list contains information on products, the respective manufacturer, packing standards, and manufacturing site. When procuring medicine for the treatment of the mentioned deceases only products from this list are to be procured. The list is found at: http://apps.who.int/prequal/info_general/notes.htm

The rules and procedures applicable for purchasing products on the list are the same as for any other product (see the top of this section).

The International Drug Prices Indicator Guide
The contracting Authority shall consult the International Drug Prices Indicator Guide18 for all procurement of medicine. The Guide aims to make price information widely available in order to improve procurement of medicine of assured quality for the lowest possible price. When comparing the costs of the products in the Drug Price Indicator, the cost of the entire treatment (not just the cost per unit) shall be taken into consideration. Additionally the choice may also be influenced by other factors such as transportation charges, storage requirements and shelf-life, and the total cost shall be considered.

When procuring medicine the overriding aim is to source high quality products which are authentic, effective and safe for patients. To this end, please keep in mind the principle of best value for money and apply the award criteria that call for the lowest price meeting the technical specifications.

17 When buying from an ECHO recognised Humanitarian Procurement Centre the Simple Procedure applies (see section 4.9.1).
18 The International Drug Prices Indicator is regularly updated and provides a spectrum of prices from pharmaceutical suppliers and procurement agencies, based on their current catalogues or price lists. It also contains prices obtained from international development organisations and government agencies, and represents an essential tool to be used by Contracting Authorities to compare prices. http://erc.msh.org/mainpage.cfm?file=1.0.htm&module=DMP&language=english
Controlled Drugs
Controlled drugs are controlled by strict national laws, due to their high potential for abuse and addiction and are divided into accepted (e.g. morphine or ketamine) or non-accepted (e.g. heroine or cannabis) drugs for medical use. Most countries have a list of controlled drugs and on this list you will find the generic name and what schedule the drug belongs to. Note that controlled drugs are not the same as other prescription drugs, for which less strict rules apply. National laws differ, but often practitioners (e.g., doctors, dentists, physician assistants) are the only parties licensed by the state to utilize and prescribe this type of medicine and only licenced agents or companies are allowed to procure controlled drugs. Thus in some countries it may not be possible to apply the required procurement procedure. In such cases the reason for not applying the Negotiated Procedure shall be duly justified and documented in the project proposal and/or in the request for derogation to the donor. Always consult the Ministry of Health/other relevant government body and other NGO's for advice on how to procure controlled drugs.

Medicine as a Running Cost
When purchasing small amounts of over the counter medicine e.g. pain killers or malaria pills, which can be defined as a running cost related to the Contracting Authority’s office or operational cost, it is allowed to purchase from government regulated pharmacies without applying a procurement procedure (see section 4.11 on running costs). However, the quality requirements to products and suppliers are equal to purchasing medicine in general. To ensure safe and genuine quality of the products sold at the pharmacies it is essential to know the pitfalls in the market (counterfeits) and the quality of the prequalification scheme applied by the National Drug Regulatory Authority. Please refer to the section below on government regulated pharmacies. When using a pharmacy, it is a requirement to provide proof of its registration with the relevant government body.

Government Regulated Pharmacies
In most countries a National Drug Regulatory Authority carries out the prequalification of suppliers and the products used in national clinics, hospitals and government regulated pharmacies. Prequalification of suppliers and medicinal products by such authorities shall be based on the WHO norms and standards. When purchasing medicine from pharmacies, please be aware that the quality of the prequalification schemes and the licencing of pharmacies vary significantly from country to country. According to WHO only 20% of the 191 WHO member states have appropriate drug regulation in place. The developing countries are likely to have weak and inadequate drug regulation in place and the risk of purchasing counterfeits at pharmacies are accordingly high. This risk shall be factored into the procurement of medicine from pharmacies.

Importing or Buying in Country
Assess if the products are available in the country of operation or if import is required. Also check the national rules and restrictions on import and distribution of medicines. In some countries only local agents can import medicine from foreign companies. In other countries, this is only one option.

In some cases it is complicated or prohibited to import certain medicines and/or obtain the documentation from local suppliers. In these situations it is recommended to contact e.g. UNICEF, MSF or the Ministry of Health in the country of operation, as they may be able to assist you with the supply or provide useful guidance.

Transportation and Storage
Consider specific transport requirements and storage requirements (temperature/humidity/shelf-life); e.g. vaccines are heat sensitive. Cold-room capacity shall be available at the time the vaccines are delivered. See the WHO Guide to Good Storage Practice for Pharmaceuticals for valid recommendations on storage and transportation of medicine.

Procurement of Vaccines and Sera

19 Five schedules exists – Schedule 5 has the highest risk of abuse and addiction, it’s illegal and not for medical use. Schedule 4-1 is for medical use - Schedule 1 with the lowest risk of abuse and addiction. According to schedule the controlled drugs are regulated by National Authorities. Schedule 5 is regulated by criminal law.
20 http://www.who.int/medicines/services/counterfeit/overview/en/index1.html
21 http://whqlibdoc.who.int/trs/WHO_TRS_908.pdf#page=135
The procurement of vaccines and sera is complex and require specialised knowledge. There are many companies producing vaccines, but only a few meet internationally recognised standards of safety and effect. Most Contracting Authorities do not have the technical capacity or expertise to carry out the procurement of vaccines and sera and it is strongly recommended to appoint an ECHO recognised HPC to carry out the procurement of these products. Please reflect this decision in the Procurement Plan. Please also be aware that very specific requirements to transport and storage exists for vaccines and sera. For further information on guidelines for international procurement of vaccines and sera, see the following link: 

6.5.2 Procurement of Medical Devices

The term ‘medical device’ refers to an instrument, apparatus, implement, machine contrivance, implant, in vitro reagent or a component that provides a diagnosis, cure, mitigation, treatment, or prevention of a disease or condition, which does not achieve its intended use by being metabolised or through a chemical reaction.

Examples of medical devices can include: walking stick, surgical instruments, contact lens lubricants, condoms, stethoscopes, insulin syringes and needles, wheelchairs, hearing aids, implantable devices, Magnetic Resonance Imaging (MRI), and Computed Tomography Imaging (CT). Therefore, medical devices include an enormous variety of existing healthcare items, and many new forms are being constantly invented. The Global Medical Device Nomenclature (GMDN) system designates 12 categories of medical devices consisting of more than 10,000 generic groups (see: http://www.gmdnagency.com/Info.aspx?pageid=2).

Procurement Procedure

When the Contracting Authority carry out their own procurement of medical devise it is, likewise the procurement of medicine, a requirement that both suppliers and products are prequalified and certified by an international recognised certification body (See section 6.5.1 above).

Identifying the prequalified suppliers requires a thorough market survey, and knowledge of the industry, risks and national legislation. Please be aware that the risk of purchasing counterfeit products is, likewise medicine, high in developing countries.

Irrespective of the value of the Contract to be awarded, the Contracting Authority shall launch a Negotiated Procedure by inviting simultaneously and in writing only shortlisted prequalified suppliers. If an HPC is appointed the Simple Procedure applies (see section 4.9.1 for more information on HPCs).

To be shortlisted the supplier shall provide documentation showing that the product(s):

- Meets essential requirements as described by the Global Harmonization Task Force GHTF).
- Is produced in conformity with ISO standards and/or other equivalent standards as recognised by the GHTF22 (such as ISO13485/ ISO13488; Japan QS Standard for medical devices 1128).
- Is marketed according to at least one of the regulatory authorities: MPALS License (Australia), Device License (Canada), CE Mark (EU), Device License (Japan), and 510 k Device Letter (USA).

NOTE: If the supplier is not the manufacturer of the product the Manufacturer’s Authorisation shall be submitted.

The essential requirements to certifications shall be informed in the Advertisement of Business Opportunities (SUP 1) or whenever a potential supplier is contacted to be shortlisted.

The number of shortlisted suppliers invited shall be sufficient to ensure genuine competition. The market situation of each product, the nature of the medical equipment, and the critical dates for delivery may determine the numbers

http://www.ghtf.org/documents/sg1/sg1n41r92005.pdf
of suppliers approached. Choices are restricted by the characteristics of the medical equipment as some are either single-source or limited-source products. Other products may be multi-source but effectively restricted to limited sources in many settings.

6.5.3 Procurement of Veterinary Medicine
The applicable procurement procedure shall be established in accordance with the rules and procedures applicable to supplies, described in chapter 6 of this Manual.

Subject to the national veterinary drug regulations the Procurement Committee shall strive to assure that the product(s) offered also comply with international standards on safety, quality and efficacy for veterinary medicine. This is to protect the health of both animals and consumers. Please be aware that the risk of purchasing counterfeit products is, likewise medicine and medical devises, high in developing countries.

The manufacturer shall always be ISO certified or equivalent and the following certificates shall be acquired:
- ISO 9001:2000 – Quality management systems or equivalent.
- Marketing authorisation from the national Drug Regulatory Affairs (DRA) in the country of origin for the products offered.
- GMP Certificate (Good Manufacturing Practice).

If procuring through a national agent or wholesaler, the following additional certificates shall be obtained:
- Copy of import licence for the product offered.
- Certificate of origin for the product offered.
- Marketing authorisation from the national drug regulatory authority for the product offered.

Depending on the country of operation it may not be possible to obtain the above certificates, in which case make sure that the supplier, as a minimum, has the proper authorisations from the national authorities to supply this product and ask for evidence. Always check with the authorities that the authorisation is valid for the specific product.

Please take the necessary steps to ascertain that the quality of the product (is the packaging broken or damaged? Is the spelling of the product name correct or could the product be a counterfeit? Etc.) and that the shelf life is sufficient upon delivery to the Contracting Authority.

6.6 PROCUREMENT OF FOOD AID
The following special procurement rules and procedures applicable for the procurement of food are only applicable when food belongs to the category of food for human consumption (fresh and dry food). Included in this food category are also fortified products such as fortified or high calorie foods for prevention or avoidance of malnutrition.

Sourcing of Food Aid Suppliers
Whenever possible and pertinent, procurement of food aid in the country of operation or neighbouring countries shall be given priority. It is vital to consider the context in which the action is implemented and to make sure that the procurement does not disturb the regional markets significantly.

Prior to the procurement of food aid it is vital to acquire evidence, based on regional market analysis, that regional procurement will not induce market distortions that could adversely affect vulnerable populations. Additionally the food aid products shall as much as possible match the nutritional habits of the beneficiary population.

Quality and Domestic Legislation
The characteristics of the products and their packaging shall respect quality standards laid down in the domestic legislation of the country of origin and/or the country of destination, whichever legislation has the higher quality.

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23 The purchase of commodities such as wheat or corn/maize intended for agricultural purposes or for animal consumption is to be done in accordance with the general applicable rules and procedures. Note that USAID have special requirements on this issue.
standard. Where legislation does not exist, internationally recognized standards such as Codex Alimentarius\textsuperscript{24} could be taken as reference to the extent possible.

**Procurement of fresh Food**
For procurement of fresh food flexibility in dividing the fresh food procurement into several lots and with different contracts with various suppliers exists. This flexibility is introduced with consideration to the fact that fresh food is often seasonal, it is often purchased locally and from a variety of suppliers and the value of a contract is often of low or medium value (Simple Procedure or Negotiated Procedure). Splitting the procurement of fresh food into several lots may widen the variety of products, limit the risk of price inflation, reduce overall costs and support the development of the regional/national market economy. Each one of the fresh food lots will be considered individually, and not aggregated, in order to establish the applicable threshold.

Note that this flexibility in dividing procurement into several lots does not apply to the purchase of other types of food e.g. canned food, dry food, precooked food etc.

**Specifications in the Tender Documents**
For procurement of food above the value of EUR 150,000 the technical specifications shall be supplemented by the following specifications:
- The net weight and cubic of the lots
- The proposed price per net metric tonne of the product at the place of delivery
- When of relevance, the transport costs from the place of loading to the place of delivery
- The net quantity of the products offered shall be specified by the supplier
- The delivery deadline/timeframe e.g. where storage facilities at the delivery place are only available from a certain date
- Identify the procedure for establishing reductions of price for quality deviations or late delivery
- When required, the contractual Incoterm and the applicable Incoterm edition. When the Incoterm, specified in the Tender Notice, obliges the supplier to take out a transport insurance policy, this insurance shall be for at least the awarded contract amount and shall cover all risks associated with carriage
- Establish conditions for deliveries beyond the contracted delivery date or period
- Packing

**NOTE:** Whenever relevant and pertinent these specifications may also be advantageous to include in contracts with a value less than EUR 150,000.

**Procurement of Food above EUR 300,000**
When awarding a food supply contract for a non-urgent action with a value higher than EUR 300,000 DCA or partner shall contract a monitoring agency responsible for verifying and certifying the quantity, quality, packing and marking of supplies. DCA or partner shall include the necessary provisions in the Tender and contractual documents in order to assure the right of access and monitoring of the Monitoring Agency. If DCA or partner uses a monitoring agency on a regular basis it is recommended to conclude a Framework Contract.

The award of contracts to monitoring agencies shall be in accordance with the applicable procedure for Service Contracts and shall be awarded prior to the award of the Food Supply Contract. The Monitoring Agency shall never be involved in the selection of suppliers.

**Buying from an HPC**
When procuring food from an HPC, the HPC assumes the responsibility of ensuring the required quality and respecting the appropriate procedures. It is however always the responsibility of DCA or partner, via the contractual relation, to reassure that the HPC lives up to its responsibilities. For all procurement from HPCs the applicable procedure is the Simple Procedure (see section 4.9.1 for more information on HPCs).

\textsuperscript{24} \url{http://www.codexalimentarius.net/web/index_en.jsp}
Therapeutic Food
Therapeutic food is special nutritional food with a therapeutic (treatment) purpose. This category includes: therapeutic milk formulas, nutritional pastes, nutrient-fortified oat bars, etc. Therapeutic food is considered a pharmaceutical and shall be procured in accordance to the special rules and procurement procedures applicable to pharmaceuticals (see section 6.5.1).

6.7 RECEIVING SUPPLIES
When receiving the supplies follow the three steps below:

Step 1: Forwarders receipt
Upon receipt of supplies, check that the packages are not wet or damaged. Always sign and file a proof of receipt/delivery note in the Procurement File. If the packing is wet, damaged or bent, it is extremely important to make a note on the receipt/delivery note. Write e.g. “received damaged” or “shortage”.

Step 2: Unpacking and inspection
Unpack goods and within 48 hours after receipt of supplies. At the final destination the Procurement Committee shall inspect that the supplies are in acceptable condition. If the Procurement Committee lacks the expertise to make an inspection, a Technical Advisor shall be consulted for assistance. Payment shall only be authorised to the supplier after inspection is completed and supplies found to be in order.

Step 3: Damaged goods
In case of damaged supplies or shortage, a claim shall be made to the forwarder and the insurance company within five days. For DCA insured goods it is important that the damage report is forwarded to DCA Procurement and Logistics Unit immediately. This report shall include a copy of the signed receipt/delivery note (as in step 1), pictures of the damaged supplies, where it was inspected and by whom, where the damaged supplies are now stored and a short description of the damage or shortage. The insurance company may send a representative to inspect the damage.

6.8 INCOTERMS
Incoterms are internationally recognised trade clauses most commonly used for international sales contracts published by the International Chamber of Commerce (ICC). The standard clauses can be adopted as the legal regulation for delivery of supplies and distribution of cost and risks between the seller and the Contracting Authority in the Purchase Order/Contract (see http://www.iccwbo.org/incoterms/id3042/index.html).

The following table is meant to give a broad overview of the various Incoterms. It is important to stress the need to study each Incoterm more thoroughly in the ICC’s “Incoterms 2010” before applying an Incoterm to a contract.

For all the Incoterms it is important to specify the port (or other named delivery destination) as precisely as possible. It is also important to note that if no Incoterm is specified in a Purchase Order/Contract, it is EX Works which applies, placing minimum risk and obligations on seller and maximum on buyer.

For a table overview of the 2010 Incoterms please see:
http://www.sdstraining.co.za/Img_Upload_Departments/5719_113114751.JPG

Rules for any Mode(s) of Transport:

<table>
<thead>
<tr>
<th>Incoterm (2010)</th>
<th>Definition and description</th>
</tr>
</thead>
<tbody>
<tr>
<td>EX Works (EXW)</td>
<td>The seller has met his/her obligations to deliver once the goods are placed at the disposal of the buyer at the seller’s premises or another clearly named place (i.e. works,</td>
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<tr>
<td>Terms</td>
<td>Description</td>
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<td>---------------------------</td>
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<tr>
<td><strong>Supply Contracts</strong></td>
<td></td>
</tr>
<tr>
<td>(Minimum risk and obligations on seller/ maximum on buyer)</td>
<td>Factory, warehouse etc.) not cleared for export, and not loaded on any collecting vehicle. Seller has no obligations to clear the goods for import, pay any import duty or carry out import customs formalities. Make sure to specify the point of delivery at the named place, as the risk passes to the buyer at this point. This term represents the minimum obligation for the seller, and the buyer has to bear all costs and risks involved in taking the goods from the seller’s premises (or other delivery point). However, if the parties want the seller to be responsible for the loading of the goods on departure and to bear the risks and all costs of such loading, this shall be made clear by adding explicit wording to this effect in the Contract. This term shall not be used when the buyer cannot carry out the export formalities directly or indirectly. In such circumstances, the Free Carrier (FCA) term shall be used, provided the seller agrees that he/she will load at his/her cost and risk.</td>
</tr>
<tr>
<td><strong>Free Carrier (FCA)</strong></td>
<td>The seller has met his/her obligations to deliver once the goods are delivered to the carrier (or any other person) nominated by the buyer at the named place and cleared for export. Seller has no obligations to clear the goods for import, pay any import duty or carry out import customs formalities. Make sure to specify the point of delivery at the named place in the Contract, as the risk passes to the buyer at this point. It shall be noted that the chosen place of delivery has an impact on the obligations of loading and unloading the goods at that place. If delivery occurs at the seller’s premises, the seller is responsible for loading, and if delivery occurs at any other place, the seller is not responsible for unloading.</td>
</tr>
<tr>
<td><strong>Carriage Paid To (CPT)</strong></td>
<td>The seller delivers the goods to the carrier (or any other person) nominated by the buyer and he/she shall pay the cost of carriage necessary to bring the goods to the named destination. This means that the buyer bears all risks and any additional costs occurring after the goods have been delivered to the nominated carrier (or any other person). Seller has fulfilled his/her obligation to deliver once the goods are handed over to the nominated carrier, but still pays the costs for the carriage to the named destination. Make sure to specify the point of delivery to the carrier in the Contract, as the risk passes to the buyer at this point. If subsequent carriers are used for the carriage to the agreed destination, the risk passes to the buyer once the goods have been delivered to the first carrier. The CPT term requires the seller to clear the goods for export, but seller has no import responsibilities or import costs.</td>
</tr>
<tr>
<td><strong>Carriage and Insurance Paid to (CIP)</strong></td>
<td>The seller delivers the goods to the carrier (or any other person) nominated by him and the seller shall pay the cost of carriage necessary to bring the goods to the named destination. This means that the buyer bears all risks and any additional costs occurring after the goods have been delivered to the nominated carrier (or any other person). Make sure to specify the point of delivery to the carrier in the Contract, as the risk passes to the buyer at this point. Seller has fulfilled his/her obligation to deliver once the goods are handed over to the nominated carrier, but still pays the costs for the carriage to the named destination. However, when the CIP applies the seller also has to procure insurance against the buyer’s risk of loss of or damage to the goods during the carriage. Consequently, the seller contracts for insurance and pays the insurance premium. The buyer shall note that under CIP the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have an enhanced insurance cover, he would either need to clearly agree with the seller on this or subscribe for own additional insurance. If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier. The CIP term requires the seller to clear the goods for export, but seller has no import responsibilities or import costs.</td>
</tr>
<tr>
<td><strong>Delivered at Terminal (DAT)</strong></td>
<td>The seller has met his/her obligations to deliver once the goods have been unloaded from the arriving mode of transport at a named terminal (warehouse, container yard, port, cargo terminal etc.) at the named port or other named place of destination. The goods shall be placed at the disposal of the buyer. The seller bears all risks until the...</td>
</tr>
</tbody>
</table>
Supply Contracts

Goods are unloaded at the terminal. It is at buyers own cost and risk to get the goods from the terminal to the final destination. Seller shall clear the goods for export, but seller has no import responsibilities or import costs.

**Delivered at Place (DAP)**

The seller has met his/her obligations to deliver once the goods are placed at the disposal of the buyer on the arrived means of transport at a named port or other named place of destination. Seller bears all risks of bringing the goods to the named port/destination, but notice that unloading of goods is not seller’s responsibility. Seller delivers before unloading. Seller shall clear the goods for export, but has no import responsibilities or import costs.

**Delivery Duty Paid (DDP)**

The seller has met his/her obligations to deliver once the goods are delivered to the buyer, cleared through customs cleared for import, but not unloaded from the arriving means of transport at the named place of destination. The seller has to bear all the costs and risks involved in bringing the goods to the named place of destination. This includes that seller bears all export and import obligations, risks, and costs in bringing the goods to the named destination.

While the EXW term represents the minimum obligation and costs for the seller, DDP represents the maximum obligation and cost for the seller. This term shall not be used if the seller is unable directly or indirectly to obtain the import licence. However, if the parties wish to exclude from the seller’s obligations some of the costs payable upon import of the goods (such as value-added tax VAT), this shall be made clear by adding explicit wording to this effect in the contract of sale. If the parties wish the buyer to bear all risks and costs of the import, the DAP term shall be used.

### Rules for Sea and Inland Waterway Transport:

#### Incoterm (2010)

**Definition and description**

**Free Along Ship (FAS)**

The seller has met his/her obligations to deliver once the goods are placed alongside the vessel (nominated by the buyer) at the named port of shipment, and cleared for export. All risk and costs are on the seller until this point of delivery. Once the goods are placed alongside the vessel, risk and costs are transferred to the buyer.

The FAS term requires the seller to clear the goods for export, but seller has no import responsibilities or import costs. If goods are shipped in containers, it is common that seller hands over the goods to the carrier at a terminal, and not alongside the vessel. In this case the FCA term shall be used.

**Free on Board (FOB)**

The seller has met his/her obligations to deliver once the goods are loaded onboard the vessel (nominated by the buyer) at the named port of shipment. This means that the buyer bears all costs and risks of loss or damage to the goods from that point and onwards. The FOB term requires the seller to clear the goods for export, but seller has no import responsibilities or import costs. If the goods are handed over to the carrier before loaded onboard the vessel, which is often the case with goods transported in containers, the FCA term is applicable.

**Cost and Freight (CFR)**

The seller has met his/her obligations to deliver once the goods are loaded onboard the vessel at the port of shipment. The seller shall contract for and pay the costs and freight necessary to bring the goods to the named port of destination, but the buyer bears all risks (damage, loss etc.) and any additional costs occurring after the goods have been delivered onboard the vessel. It is very important to identify and describe the port of shipment in the Contract as this is where risks pass from the seller to the buyer. The CFR term requires the seller to clear the goods for export, but seller has no import responsibilities or import costs.

**Cost, Insurance and Freight (CIF)**

The seller has met his/her obligations to deliver once the goods are loaded onboard the vessel in the port of shipment. The seller shall contract for and pay the costs and freight necessary to bring the goods to the named port of destination, but the buyer bears all
risks (damage, loss etc.) and any additional costs occurring after the goods have been delivered onboard the vessel. It is very important to identify and describe the port of shipment in the Contract as this is where risks pass from the seller to the buyer. However, in CIF the seller also has to procure marine insurance against the buyer’s risk of loss of or damage to the goods during carriage. Consequently, the seller contracts for insurance and pays the insurance premium. The buyer shall note that under the CIF term the seller is required to obtain insurance only on minimum cover. If buyer wishes to have an enhanced insurance cover, he/she would either need to clearly agree with the seller on this or subscribe for own additional insurance. The CIF term requires the seller to clear the goods for export, but seller has no import responsibilities or import costs. If more risks and cost are wished to be transferred to the seller the terms DAT, DAP or DDP shall be applied.

6.9 LEGAL ASPECTS – WARRANTY OBLIGATIONS

The GTC establish warranty obligations of the seller which are significantly more extended than what a seller is generally including in his/her own general terms and conditions, and which could be contrary to the customs of the country. If it is foreseen that this could be a hindrance to obtain offers, consider limiting these provisions in the Purchase Order/Contract (e.g. in common law systems “Incidental damages” are excluded from seller’s liability). The duration of the warranty period (one year according to the GTC) can also be increased, for example if required by the applicable law which provides for a longer period.

Besides these warranty obligations, which are contractual, the seller is generally subject to legal “product liability” (for hidden defects) in the countries where the products are sold. This product liability is governed by mandatory provisions, generally protecting the consumer or third party and is therefore not considered in the GTC.
7 SERVICE CONTRACTS

This chapter provides a step by step guide for procurement procedures applicable to Service Contracts according to contract value.

Since Service Contracts with a contract value above EUR 150,000 are unlikely to occur, the Local Open Tender and International Open Tender Procedure for Service Contracts is not described in this Manual. Should one of these procedures be required, please contact the DCA Procurement and Logistics Unit for assistance and standard tender documents.

A Service Contract is a contract for the provision of a defined service. It covers all intellectual and non-intellectual services other than those covered by Supply Contracts, Works Contracts and Property Contracts.

Service Contracts also comprise the following contract forms:

- A Study Contract is a contract which includes studies for the identification and preparation of projects, feasibility studies, technical studies and audits.
- A Technical Assistance Contract is a contract in which the Contractor is called on to play an advisory role, to manage or supervise a project or to provide the consultants specified in the Contract.
- Freight Contracts are contracts covering transport of goods from one site to another (unless the freight is included in the Supply Contract).

Rent of a vehicle with a driver is also a Service Contract.

When rental of equipment and venues are direct projects costs it is not considered a Service Contract, but a Supply Contract (e.g., rent of vehicle or conference room). Be aware that some services such as repair of machinery, cleaning services or small scale catering might be considered running costs and therefore not subject to procurement procedures. (See section 4.11 for more information on running costs).

NOTE: A Service Contract and an Employment Contract are two different contracts. An Employment Contract involves recruitment, fixed salary, regulations on leave, resignation restrictions etc. These obligations are hence for the Contracting Authority as an employer rather than merely a party to a contract for the provision of a service. Employment Contracts are not covered by this Manual and are not subject to procurement procedures. (See section 7.5 for more information on this matter.)

<table>
<thead>
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<th>PROCEDURE</th>
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<td>Up to EUR 9,999 (and in exceptional cases)</td>
<td>Simple Procedure</td>
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<tr>
<td>EUR 10,000 - 149,999</td>
<td>Negotiated Procedure</td>
</tr>
<tr>
<td>EUR 150,000 - 299,999</td>
<td>Local Open Tender Procedure</td>
</tr>
<tr>
<td>Above EUR 300,000</td>
<td>International Open Tender Procedure</td>
</tr>
</tbody>
</table>

Ethical Considerations

The procurement of services involves specific ethical risks which are related to employees’ labour rights and companies’ social and environmental responsibilities. In order to avoid or prevent ethical risks it is important to consider which risks are related to the purchase of a service in a specific context. It is recommended to include ethical considerations in the market survey and to conduct a small scale research on the candidates’ ethical business performance in the sourcing process and further make procurement decisions which seek to avoid or manage the identified ethical risks. Also consider how internal procurement practices may influence contractors’ ability to meet ethical requirements and standards e.g. short lead times, changes to TOR and negotiating prices.
Please ensure always to communicate the ethical principles and standards to potential candidates either by personal contact or by publishing the Code of Conduct for Contractors nationally. See section 1.2 + 1.2.1 for more information on ethical procurement principles and implementation.

The use of the Standard Templates for Service Contracts
In Annex SER 2 you will find the standard templates for Service Contracts. The templates are to be used for entering Service Contracts with: consultants, procurement agents, inspection agents, auditors, universities, research institutions, NGOs and individuals for the carrying out of a wide range of activities such as policy advice; organisational development; studies, appraisals and evaluations; audits; management; procurement services; social and environmental studies; and identification, preparation and implementation of projects.

In the context of a construction project, they will also be used for contracts with engineering firms and construction managers, for provision of engineering services, construction supervision and administration and monitoring of Works Contracts. In this case however, a specific contract shall be used (included in Annex SER 1), because of the specificity of the engineering services required and the necessary link to the Works Contract.

Note that the templates are not appropriate for other kinds of Service Contracts, which do not involve the provision of “intellectual” services. This could be as contracts for transport, financial services, cleaning services, accommodation, catering etc. Should the standard templates for Service Contracts not fulfil your needs, please contact DCA Procurement and Logistic Unit for advice.

7.1 THE SIMPLE PROCEDURE
The Simple Procedure is the simplest procurement procedure. This procedure is, as a general rule applicable within the threshold EUR 0 - 9,999. In special cases, described in section 4.8.1 the Simple Procedure can be applied for procurement above EUR 9,999.

The Simple Procedure does not require that more than one candidate is invited to submit a proposal. It is though important to stress that the contract price shall correspond with the present market price or lower. This shall always be justified and filed in the procurement file. To prove that the price corresponds with the market price you can e.g. search the internet, refer to recent contracts, or obtain at least three written or non-written proposals. Please make sure that all non-written proposals are put down in writing and filed in the procurement file.

An advertisement on business opportunities is mandatory and shall be posted in the newspaper, on a notice board or in other public places before the Procurement process is initiated. This advertisement is often published in the beginning of a project and may also contain information on other business opportunities related to the project. See section 4.12.1 for more information on advertisement of business opportunities. Before the process is initiated, make sure that all members of the Procurement Committee sign the Declaration of Impartiality and Confidentiality.

Contracts below EUR 2,000
A contract shall always be issued for procurement above the value of EUR 2,000. For procurement below EUR 2,000 it is optional to issue a contract, but an invoice shall in all cases be received and filed. As this lower boundary allows for more flexibility in issuing contracts under the value of EUR 2,000 it is important to be aware of the risks involved. In order to minimise risks and ensure that contractors are aware of the GTC and Code of Conduct for Contractors, in some contexts it may be advisable to issue a contract for services of a value less than EUR 2,000.

NOTE: For EuropeAid funded projects prior to PRAG 2013, it is a requirement to issue a contract irrespective of the contract value. Make sure always to check donor rules.

The steps involved in the Simple Procedure for Service Contracts

<table>
<thead>
<tr>
<th>Step</th>
<th>Task</th>
<th>Description</th>
<th>Annex</th>
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COPRIGHTS DANCHURDHAID 2013
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<tr>
<th></th>
<th>TOR</th>
<th>Draft TOR</th>
<th>SER 2: Request for Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Approach potential candidates or search media</td>
<td>Collect a minimum of three proposals/prices</td>
<td>SER 2: Request for Proposal</td>
</tr>
<tr>
<td>3</td>
<td>Evaluation</td>
<td>Evaluate proposals/prices and select the best offer</td>
<td>SER 3: Evaluation Grid for Negotiated Procedure</td>
</tr>
<tr>
<td>4</td>
<td>Contract</td>
<td>Issue the Contract (optional below EUR 2,000).</td>
<td>SER 4: Contract or SER 2: Request for Proposal (Contract included in the RFP)</td>
</tr>
<tr>
<td>5</td>
<td>Receipt and inspection</td>
<td>Inspect that services received comply with the Contract. Sign and file a proof of receipt/delivery note.</td>
<td></td>
</tr>
</tbody>
</table>

### Step 1: Terms of Reference

Identify the service(s) required and draft TOR (see section 4.13.2). The services are often part of project activities and it is probable that a TOR has already been drafted in a context other than procurement. Personnel in charge of programme activities are usually in charge of drafting the TOR.

### Step 2: Request for Proposal

Approach the candidate(s) for a written or non-written proposal, search the internet for the best price and quality or refer to recent contracts to ensure that the price corresponds with the present market price or lower. The obtained prices/proposals shall be documented and filed in the procurement file. The advantage of using a written RFP is that it prevents misunderstandings and ensures that all the required information is obtained in one go. The written form also provides an opportunity to specify ethical criteria for the contract via the TOR or contract conditions (which can e.g. be proved via the provision of certain certifications/standards or equivalent proof of compliance). If a non-written proposal is obtained the Procurement Committee shall make a written note of the price, name of candidate, description of service and note the date. This note shall be filed in the procurement file. At this stage it is also important to communicate the ethical principles and standards to the candidates.

**NOTE:** Be aware of specific donor requirements such as Europe Aid’s Rule of Nationality.

### Step 3: Evaluation and Contract

Evaluate the received proposals. For evaluation it may be useful to apply the Evaluation Grid also used for the Negotiated Procedure (Annex SER 3).

After selecting the best offer a contract shall be issued by the Procurement Committee in accordance with the draft Contract presented in the RFP (SER 2) or the separate contract in Annex SER 4. Short guidelines on how to complete the Contract are presented therein. Check if the Contract has to be adapted to existing legislation, traditions or requirements, as appropriate. Never delete articles 9 (eligibility) or 10 (audits) in case of an ECHO or EuropeAid funded project (EU requirements). Also do not delete or make alteration to the GTC for Service Contracts Ver2 2012. Incorporate in the Contract all agreements reached with the selected Candidate and attach the annexes (See article B.11 in the draft Contract).

The Contract shall be forwarded unsigned to the selected candidate and returned to the Contracting Authority with all pages duly signed. Only thereafter shall the Contract be signed by the Contracting Authority. Signing the Contract creates a legally binding document for both parties.
Before signing the Contract and returning the signed copy to the Contractor, the Procurement Committee shall ensure:

- That adequate and exact reference is made in the Contract to the relevant RFP
- That the Contractor acknowledges the GTC and the Code of Conduct for Contractors without exceptions or amendments
- For new contractors - make sure that sufficient references and company data have been collected, or preferably that a Contractor Registration Form has been submitted by the Contractor

**NOTE:** The latest version of the GTC shall be applied to all contracts. If the Contractor cannot accept the GTC, the Procurement Committee shall decline that proposal and continue the process with another candidate.

**Step 4: Receipt**

Ensure that the services received comply with the Contract.

**The Simple Procedure applied in special cases to contracts above EUR 9,999**

In special cases an automatic derogation is granted to apply the Simple Procedure for contracts above EUR 9,999 – irrespective of the contract value. A prior approval from the DCA head of Procurement and Logistics Unit is not required. See section 4.8.1 for restrictions and the situations this is reserved for.

<table>
<thead>
<tr>
<th>Annexes for Service Contracts when applying Simple Procedure</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>GEN 2 Declaration of Impartiality and Confidentiality</td>
<td>Mandatory</td>
</tr>
<tr>
<td>SER 2 Request for Proposal</td>
<td>Optional</td>
</tr>
<tr>
<td>SER 3 Evaluation Grid for Negotiated Procedure</td>
<td>Optional</td>
</tr>
<tr>
<td>SER 4 Contract</td>
<td>Mandatory (Optional below EUR 2,000)</td>
</tr>
</tbody>
</table>

**7.2 THE NEGOTIATED PROCEDURE**

The Negotiated Procedure is more formal than the Simple Procedure. This procedure is applicable for the threshold of EUR 10,000 – 149,999 and requires that a minimum of three candidates are invited simultaneously to submit a proposal based on a RFP. The Contract shall be awarded to the most compliant candidate. A public award notice is required (mandatory for contracts above EUR 30,000). Letters to all unsuccessful candidates shall be submitted. The Negotiated Procedure is less formal than a Local Open Tender Procedure and gives the opportunity to negotiate the terms of the Contract.

An advertisement on business opportunities is mandatory and shall be posted in the newspaper, on a notice board or in other public places before the Procurement process is initiated. This advertisement is often published in the beginning of a project and may also contain information on other business opportunities related to the project. See section 4.12.1 for more information on advertisement of business opportunities.

Before the process is initiated make sure that all members of the Procurement Committee sign the Declaration of Impartiality and Confidentiality.
The steps involved in the Negotiated Procedure for Service Contracts.

<table>
<thead>
<tr>
<th>Step</th>
<th>Task</th>
<th>Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>TOR</td>
<td>Draft TOR.</td>
<td>SER 2: Request for Proposal</td>
</tr>
<tr>
<td>2</td>
<td>Make a short list of a minimum of 4-8 candidates</td>
<td>Use e.g. available databases or the internet to source new candidates.</td>
<td>GEN 13: List of Suppliers/Candidates and Tender Receipt Form</td>
</tr>
<tr>
<td>3</td>
<td>Submit the RFP</td>
<td>Prepare the RFP and submit it simultaneously to all selected candidates.</td>
<td>SER 2: Request for Proposal</td>
</tr>
<tr>
<td>4</td>
<td>Evaluation</td>
<td>Evaluate proposals in writing by using the Evaluation Grid.</td>
<td>SER 3: Evaluation Grid for Negotiated Procedure</td>
</tr>
<tr>
<td>5</td>
<td>Interview candidates (optional)</td>
<td>There is an option to interview candidates who have obtained a minimum technical score. The evaluation grid can be adjusted after interviews.</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Negotiate (optional)</td>
<td>There is an option to negotiate the terms. Rules are described further in this chapter.</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Final evaluation and Contract</td>
<td>After final evaluation the Service Contract in the RFP shall be completed and sent to the successful candidate.</td>
<td>SER 2: Request for Proposal</td>
</tr>
<tr>
<td>8</td>
<td>Submit letters to unsuccessful candidates</td>
<td>Unsuccessful candidates shall be notified of the result of the procedure.</td>
<td>SER 5: Letter to Unsuccessful Candidates</td>
</tr>
<tr>
<td>9</td>
<td>Publish the Award Notice</td>
<td>To be published on websites, in newspapers, market places, office receptions, bill boards etc.</td>
<td>GEN 17: Award Notice (Optional below EUR 30,000)</td>
</tr>
<tr>
<td>10</td>
<td>Receipt and inspection</td>
<td>Inspect that the services received comply with the Contract. Sign and file a proof of receipt/delivery note.</td>
<td></td>
</tr>
</tbody>
</table>

**Step 1: Terms of Reference**

Identify the service(s) required and draft TOR (see section 4.13.2). The services are often part of project activities and it is probable that TORs have already been drafted in a context other than procurement. Personnel in charge of programme activities are usually in charge of drafting the TOR.

**Step 2: Short List**

Prepare a short list with a minimum of three candidates. It is recommended to include 4-8 candidates, to ensure that a minimum of three proposals are obtained.

When sourcing new contractors it is recommended to obtain general information on sector and country specific ethical risks. (See section 4.12.2 for more information on how to source new contractors.)

Always carry out a small scale risk analysis on the candidates ethical business performance e.g. CSR policy, environmental policy, health policy, relevant certifications etc. The findings shall be documented and integrated in the evaluation of candidates in step 5. (See section 1.2.1 for implementation of the Ethical Procurement Principles.)

**Step 3: Request for Proposal**
Thoroughly prepare the RFP and approach the candidates for a proposal. The RFP shall be forwarded simultaneously (same day) to all the selected candidates. This is to ensure that all candidates are given an equal amount of time to prepare and submit their proposal. Also start drafting the Contract in accordance with the draft Contract presented in the RFP in Annex SER 2.

At this stage it is important to communicate the ethical principles and standards to the suppliers. When preparing the RFP decide on:

a. **Type of Remuneration**

The Service Contract may be a ‘Global price’ contract, a ‘fee-based’ contract or a mix of the two (i.e. a global amount for fees with reimbursable expenses). One of the three options has to be chosen in article A 6 of the RFP (instructions to candidates) and in clause B 7 of the Draft Contract.

‘Global price’ contracts, are normally used when: the definition of the tasks to be performed is clear and unambiguous; when the commercial risks taken by the candidate are relatively low; or when the candidate is prepared to perform the assignment for an agreed predetermined global price. Such price has been agreed upon on the basis of inputs (including rates) provided by the candidate. The Contracting Authority agrees to pay the candidate according to a schedule of payments linked to the delivery of certain outputs, e.g. reports. A major advantage of the ‘global price’ contract is the simplicity of its administration, the Contracting Authority having only to be satisfied with the outputs without monitoring the staff inputs or the reimbursable expenses. Studies are usually carried out on a global price basis e.g. surveys, master plans, economic, sector, simple feasibility and engineering studies.

‘Fee-based’ contracts are used for assignments for which remuneration is being determined on the basis of the time actually spent by the contractor in carrying out the services. Such contracts are recommended when the scope of the services cannot be established with sufficient precision, or the duration and quantity of services depend on variables that are beyond the control of the contractor. In fee-based contracts the contractor provides services on a time basis according to quality specifications and the remuneration is based on (i) agreed unit rates for the candidates staff multiplied by the actual time spent by the staff in executing the assignment, and (ii) reimbursable expenses using actual expenses and/or agreed unit prices. This type of contract requires the Contracting Authority to closely supervise the contractor and to be involved in the daily execution of the assignment.

b. **Evaluation Criteria**

In the standard RFP an evaluation model which can be applied is presented. (See article A 11 in the RFP (SER 2) and the Evaluation Grid in SER 3)

Examples of evaluation criteria could be: proposed remuneration, the Candidate’s experience in the field, qualifications, specific experience in the region/country of the assignment, adequacy of the proposed methodology, work plan and approach in responding to the TOR, conditions and time limits for performing the services, and ethical criteria’s. The chosen evaluation criteria shall be of relevance to the project, and they shall be usable for evaluation. The advantage of this approach is that it is easily evaluated by the Procurement Committee.

The Procurement Committee may apply a different evaluation procedure. This shall then be amended in the RFP and the Evaluation Grid shall be adjusted accordingly.

c. **Timeframe**

When are the services required and for which period(s)?

d. **Donor Requirements**
Take notice of specific donor requirements such as requirements to origin and nationality, exclusivity clauses, publication rights, visibility, right to audit, exclusion and eligibility clauses, preference criteria, etc., which might require amendment of the RFP and/or the Contract.

e. **Payment Terms**
What payment terms shall be applied?

f. **Ethical criteria’s**
Is there need to include specific criteria’s to ethical procurement issues in the RFP such as certifications (or equivalent proof of compliance to ethical criteria’s) or the inclusion of specific terms in the contract related to eg. environmental or social performance?

g. **Bank guarantees**
Will a prepayment guarantee or a performance guarantee be required? (For more information on bank guarantees, see section 9.3.)

The standard RFP does not contain provisions in respect of such guarantees since it is uncommon that they are required for Service Contracts. However, it may be relevant to require in the case of a contract of high value.

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**Follow up on Submission of the RFP**

To ensure that sufficient offers will be received on time it is recommended to contact all shortlisted candidates 1-2 days after submitting the RFP to ask the suppliers if they intend to submit an offer before the deadline. When a short deadline is required, it is particularly good practice to follow up with the candidates and explain the importance of completing the Submission Form (and the Organisation and Methodology annex, when of relevance) and submitting the offer prior to the deadline.

---

**Step 4: Evaluation**

Upon receipt of the proposals, register the time when the offers were received and carry out the evaluation utilising the Evaluation Grid in Annex SER 3. Please note that candidates who have not submitted their proposal before the deadline shall not be considered.

For comparison and evaluation of the proposals, the Procurement Committee shall take into consideration the criteria selected in the RFP and the weight attributed to each criterion. Instructions on how to attribute scores and weighted scores are included in the Evaluation Grid (Annex SER 3). I.e. proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weighting of 75% for the technical proposal and 25% for the offered price. (See the Evaluation Grid in Annex SER 3 and RFP for further guidance Annex in SER 2)

The Procurement Committee may apply a different evaluation procedure. This shall then be amended in the RFP and the Evaluation Grid shall be adjusted accordingly.

Please note that candidates who have submitted their offer after the deadline shall not be considered.
### Recommendations on Evaluation Challenges

**PRICES ARE TOO HIGH**

In case all candidates have offered prices which are too high and/or the TOR needs to be changed or adjusted, it is not necessary to issue a new RFP. Instead the candidates can be contacted in writing (stating the amendments and new deadline) and requested a revised proposal.

**LESS THAN THREE PROPOSALS ARE RECEIVED**

If less than three proposals have been received and if some candidates have declined to submit a proposal, it is allowed to proceed with the best offer - provided that the General Procurement Principles are met. E.g. it shall be ensured that all candidates have been given sufficient time to submit a proposal, that all candidates have acknowledged the receipt of the RFP, and all candidates who have submitted a letter of interest are invited. If it is not possible to find a minimum of three qualified candidates in the market, it is important to survey broader e.g. markets in neighbouring districts and countries (See section 4.12.2 for how to source new candidates). Lack of candidates in the market is not sufficient grounds for proceeding with less than three proposals. A market survey would reveal this fact during the planning stage and derogations from Negotiated Procedure to Simple Procedure should have been requested.

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**Step 5: Interview of Candidates (optional)**

The candidates who are administratively compliant (having passed the questions in Part A of the Evaluation Grid) can be invited for an interview. After the interviews the Procurement Committee has the possibility to change the scores in the Evaluation Grid. There is a separate column in the Evaluation Grid for this purpose.

An interview can also facilitate a discussion on identified ethical risks in order to find possible solutions or determine if the proposal shall be turned down for ethical reasons.

**Step 6: Negotiate Terms (optional)**

If pertinent, the Procurement Committee has the option to negotiate the terms of the Contract. Negotiations shall not entail any substantial deviation from the terms and conditions of the RFP. The purpose of the negotiations is to obtain better conditions in terms of technical quality, implementation periods, payment conditions etc.

Negotiations may however have the purpose of reducing the scope of the services or revising other terms of the Contract in order to reduce the proposed remuneration. This may be necessary when prices proposed by all candidates exceed the limits of the funds made available to the Contracting Authority by its donor/funding agency.

Negotiation can also facilitate a discussion on identified ethical risks in order to find possible solutions or determine if the proposal shall be turned down.

The negotiations can be done by email, fax, phone, or at a meeting. In the two latter cases a written recap shall be prepared, filed, copied and submitted to the Candidate as well as for the procurement file. There are no specific procedures for negotiations except that the General Procurement Principles shall always be respected.

When negotiating the terms, consider how requirements on e.g. lead times and price may affect the candidate’s ability to comply with the ethical principles and standards.
Step 7: Final Evaluation and Contract Award

The Contracting Authority shall award the Contract to the Candidate whose proposal has been determined to be substantially responsive to the requirements of the RFP and which has obtained the highest overall score, provided that the Candidate has also been determined to fulfil the eligibility and non exclusion criteria. I.e. proposals will be ranked according to their combined technical and financial scores using the weighting of 75% for the Technical Proposal; and 25% for the offered price.

Once a candidate has been selected and the Contract awarded by the Procurement Committee the draft Contract shall be separated from the RFP and renamed “Contract”. The Contract shall be drafted in accordance with the draft Contract presented in the RFP in Annex SER 2 and short guidelines on how to complete the Contract are presented therein.

Check if the Contract has to be adapted to existing legislation, traditions and requirements, as appropriate, Never delete articles 9 (eligibility) or 10 (audits) in case of an EU funded-project (EU requirements). Also do not delete or make any alterations to the GTC for Service Contracts Ver2 2012. Incorporate in the Contract all agreements reached with the selected Candidate and attach the relevant annexes (see article B 11 in the draft Contract of the RFP).

The Contract shall be forwarded unsigned to the selected candidate and returned to the Contracting Authority with all pages duly signed. Only thereafter shall the Contract be signed by the Contracting Authority. Signing the Contract creates a legally binding document for both parties.

Before signing the Contract and returning the signed copy to the Contractor, the Procurement Committee shall ensure:

- That adequate and exact reference is made in the Contract to the relevant RFP.
- That the Contractor acknowledges the GTC and the Code of Conduct for Contractors without exceptions or amendments.
- For new contractors - make sure that sufficient references and company data has been collected, or preferably that a Contractor Registration Form has been submitted by the Contractor.

NOTE: The latest version of the GTC shall be applied to all contracts. If the Contractor cannot accept the GTC, the Procurement Committee shall decline that proposal and continue the process with another candidate.

Step 8: Letter to Unsuccessful Candidates

Once the selected candidate has returned the Contract duly signed, a Letter to Unsuccessful Candidates shall be sent to the unsuccessful candidates informing them of the result of the procedure i.e the name of the successful candidate, the total contract amount and the scores as per the Evaluation Grid.

Step 9: Award notice

A public award notice is mandatory for contracts above EUR 30,000. The purpose of the public announcement is to meet the principle of transparency with the added benefit of attracting new suppliers. Thus the award notice is useful for all contracts.

Please publish the award notice in a relevant place where suppliers will notice the information. For posting an award notice on the DCA website please forward the award details to the DCA Procurement and Logistics Unit. Please refer to GEN 17 for the relevant information.

The publishing of an award notice can be exempted if the Procurement Committee considers that a public notice might endanger the organisation’s safety or harm its interests.
NOTE: The Procurement Committee shall take notice of any specific donor requirements for publishing an Award Notice.

**Step 10: Receipt**

Ensure that the services received comply with the Contract and issue a Completion Certificate or other relevant documentation e.g. the report.

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<th>Annexes for Service Contracts when applying Negotiated Procedure</th>
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<td>GEN 13</td>
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<td>SER 2</td>
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<td>SER 3</td>
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<td>SER 5</td>
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<tr>
<td>GEN 17</td>
</tr>
</tbody>
</table>

### 7.3 THE LOCAL OPEN TENDER PROCEDURE

The Local Open Tender Procedure (from here on named Local Open Tender) is more extensive and elaborate than the Negotiated Procedure. It is applicable to higher value purchases of EUR 150,000 – 299,000.

A Local Open Tender requires a public and specified advertisement of a tender notice in the country of operation in e.g. newspapers and suitable online procurement media, with a bid flow of at least 21 days. A Local Open Tender shall provide eligible suppliers in the country of operation with equal business opportunities.

A specified tender dossier shall be drafted and forwarded to interested candidates who then have the opportunity to make a tender request. After the deadline of receiving tenders they shall be opened and announced in the optional presence of all interested tenderers. Evaluation of the tenders is fulfilled by the Procurement Committee on the basis of a clearly predefined evaluation grid and the most compliant Tenderer is awarded the Contract. An award notice is required to be published on the DCA website and letters to all unsuccessful tenderers shall be submitted.

An advertisement on business opportunities is mandatory and shall be posted in the newspaper, on a notice board or in other public places before the Procurement process is initiated. This advertisement is often published in the beginning of a project and may also contain information on other business opportunities related to the project. See section 4.12.1 for more information on advertisement of business opportunities.

Before the process is initiated make sure that all members of the Procurement Committee have signed the Declaration of Impartiality and Confidentiality.

NOTE: Please be aware that special rules apply to the International Restricted Tender Procedure for Service Contracts (threshold above EUR 200,000) under EuropeAid funded projects.
The steps involved in the Local Open Tender for Service Contracts.

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<tr>
<th>Step</th>
<th>Task</th>
<th>Description</th>
<th>Annex</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>TOR</td>
<td>Draft TOR.</td>
<td>SER 6: Tender Dossier</td>
</tr>
<tr>
<td>2</td>
<td>Issue the Tender Dossier</td>
<td>Issue the Tender Dossier with special attention to the TOR, special requirements, time schedule and evaluation and award criteria.</td>
<td>SER 6: Tender Dossier</td>
</tr>
<tr>
<td>3</td>
<td>Publish the Tender Notice</td>
<td>Specify the main content of the Tender Dossier in the Tender Notice and publish it in a suitable procurement media. The deadline shall not be less than 21 days from the date of the advertisement. The Tender dossier shall be available on the date of the advertisement.</td>
<td>GEN 11: Tender Notice</td>
</tr>
<tr>
<td>4</td>
<td>Send out the Tender Dossier</td>
<td>A record of the date of submitting the Tender Dossier and to whom shall be made. Each tenderer shall be identified with a number. When clarifications/amendments to the Tender Dossiers occur all potential tenderers shall receive a copy of questions and answers simultaneously.</td>
<td>GEN 13: List of Suppliers/Candidates and Tender Receipt Form GEN 14: Question and Answers</td>
</tr>
<tr>
<td>5</td>
<td>Receive tenders</td>
<td>For each tender received, the date and time of receipt shall be registered. All received tenders shall be kept unopened in a secure place until the tender opening.</td>
<td>GEN 13: List of Suppliers/Candidates and Tender Receipt Form</td>
</tr>
<tr>
<td>6</td>
<td>Tender opening</td>
<td>Tenders shall be opened at the announced time, place and date in the presence of tenderers who choose to attend. Names of tenderers and prices are read aloud.</td>
<td>GEN 15-1: Tender Opening Checklist GEN 15-2: List of Participants GEN 15-3: Tender Opening Form</td>
</tr>
<tr>
<td>7</td>
<td>Ensure administrative compliance</td>
<td>Post qualification of tenderers shall be performed after the tender opening (tenderers shall not be present).</td>
<td>SER 7: Evaluation Grid for Open Tender Procedures</td>
</tr>
<tr>
<td>8</td>
<td>Start evaluating tenders</td>
<td>Evaluate tenders in writing by using the Evaluation Grid. Tenders who have passed the post qualification will be subject to evaluation by each member of the Procurement Committee.</td>
<td>SER 7: Evaluation Grid for Open Tender Procedures</td>
</tr>
<tr>
<td>9</td>
<td>Evaluation meeting and selection of tenderers</td>
<td>Discuss the evaluation and select a Tenderer. Draft a report of the evaluation identifying clearly which evaluation criteria the successful Tenderer was superior in and why.</td>
<td>GEN 15-4: Evaluation Report for Open Tenders</td>
</tr>
<tr>
<td>10</td>
<td>Issue the Contract and submit the Letter of Acceptance</td>
<td>Prepare the Contract in accordance with the Draft Contract in the Tender Dossier and submit the Letter of Acceptance with the Contract. The Tenderer signs the Contract.</td>
<td>SER 6: Tender Dossier GEN 16: Letter of Acceptance</td>
</tr>
<tr>
<td>11</td>
<td>Submit letters to unsuccessful tenderers</td>
<td>Unsuccessful tenderers shall be notified of the result of the tender procedure after the Contract has been signed by the successful Tenderer.</td>
<td>SER 5: Letter to Unsuccessful Candidates</td>
</tr>
<tr>
<td>12</td>
<td>Publish the Award Notice</td>
<td>Publish the Award Notice on the DCA website.</td>
<td>GEN 17: Award Notice</td>
</tr>
<tr>
<td>13</td>
<td>Receipt and inspection</td>
<td>Inspect that the services received comply with the Contract. Sign and file a proof of receipt/delivery note/final report.</td>
<td></td>
</tr>
</tbody>
</table>
Step 1: Terms of Reference

Identify the service(s) required and draft TOR (see section 4.13.2). Services are often part of project activities and it is probable that TORs have already been drafted in a context other than procurement. Personnel in charge of programme activities are usually in charge of drafting the TOR.

Step 2: Tender Dossier

Draft the Tender Dossier with the following considerations:

Terms of Reference: When drafting a tender dossier it is very important to give correct and detailed information of the required services in the TOR. All requirements related to the acquired services shall be incorporated in the TOR in order to ensure that the Contracting Authority receive proposals from tenderers which are able to fulfill the task required and provide the best price and quality. (Please refer to section 4.13.2 when drafting the TOR).

Organisation and Methodology: Consider if there is a need to include a Organisation and Methodology in the Tender Dossier. This is often the case for complex service tasks which can be performed using different methodologies or if specific risks are related to the performance of the services and there is a need to clarify how tenderers will deal with these risks.

Evaluation Criteria: The Tender Dossier shall stipulate the evaluation and award criteria for the Contract. The Service Contract shall be awarded to the best and most compliant tender, i.e. the Tenderer who is substantially responsive to the Tender Dossier, is technically compliant, and who has offered the best price and quality. This provided that the Tenderer has demonstrated appropriate capability and resources to carry out the Contract effectively.

In the standard Tender Dossier an evaluation model which can be applied is presented. (See article A 16 in the Tender Dossier, SER 6 and the Evaluation Grid in SER 7)

Examples of evaluation criteria could be: proposed remuneration, the Tenderer’s experience in the field, qualifications, specific experience in the region/country of the assignment, adequacy of the proposed methodology, work plan and approach in responding to the TOR, and conditions and time limits for performing the services. Please ensure to include ethical criteria’s in the award criteria whenever it is relevant and pertinent. The chosen evaluation criteria shall be of relevance to the project, and they shall be usable for evaluation. The advantage of this approach is that it is easily evaluated by the Procurement Committee.

The Procurement Committee may apply a different evaluation procedure. This shall then be amended in the Tender Dossier and the Evaluation Grid shall be adjusted accordingly.

Type of remuneration: The Service Contract may be a ‘Global price’ contract, a ‘fee-based’ contract or a mix of the two (i.e. a global price for fees with reimbursable expenses). One of the three options has to be chosen in article A. 10 of the Tender Dossier (instructions to tenderers) and in clause B. 8 of the Draft Contract.

‘Global price’ contracts, are normally used when: the definition of the tasks to be performed is clear and unambiguous; when the commercial risks taken by the Tenderer are relatively low; or when the Tenderer is prepared to perform the assignment for an agreed predetermined global price. The Contracting Authority agrees to pay the Tenderer according to a schedule of payments in predefined rates or linked to the delivery of certain outputs, e.g. reports. A major advantage of the ‘global price’ contract is the simplicity of its administration, the Contracting Authority having only to be satisfied with the outputs without monitoring the staff inputs or the reimbursable expenses. Studies are usually carried out on a global price basis e.g. surveys, master plans, economic, sector, simple feasibility and engineering studies.
'Fee-based' contracts are used for assignments for which remuneration is being determined on the basis of the time actually spent by the contractor in carrying out the services. Such contracts are recommended when the scope of the services cannot be established with sufficient precision, or the duration and quantity of services depend on variables that are beyond the control of the Contractor. In fee-based contracts the Contractor provides services on a time basis according to quality specifications and the remuneration is based on (i) agreed unit rates for the Contractors staff multiplied by the actual time spent by the staff in executing the assignment, and (ii) reimbursable expenses using actual expenses and/or agreed unit prices. This type of contract requires the Contracting Authority to closely supervise the Contractor and to be involved in the daily execution of the assignment.

'Global price for fees with reimbursable expeces' is a mix of the two above mentioned types of remuneration and it is used for assignments when all expenses related to the Contractor's time spent on the assignment can be determined from the outset of the Contract and all fees (including overhead, profit, sick leave, holiday pay etc.) are included in the contract price and covers all obligations of the Contractor. This remuneration leaves room for the reimbursement of actual expenses incurred for the performance of the Contract upon presentation of invoices or receipts. This could be expenses related to transport, per diem, accomodation etc. Costs and expenses which are not mentioned in the Contract shall be deemed covered by the overhead of profit included in the Contractors fees.

**Timeframe:** When are the services required and for which period(s)?

**Donor Requirements:** Take notice of specific donor requirements such as requirements to origin and nationality, exclusivity clauses, publication rights, visibility, right to audit, exclusion and eligibility clauses, preference criteria, etc., which might require amendment of the Tender Dossier and/or the Contract.

**Payment terms:** What payment terms shall be applied (article B. 10 of the Draft Contract)?

**Bank guarantees:** Will a Tender Guarantee be required? Will a Performance Guarantee be required? For more information on bank guarantees see section 9.3.

**Special conditions.** Make sure to include all the special conditions for the specific Contract in the Draft Contract. The Tender Dossier in SER 6 provides the basic information and wording, but each contract shall be adapted to the specific requiremetns of the project, the services required and contractual context.

**Step 3: Tender Notice**

Draft the Tender Notice which as a minimum shall describe: the services required (incl. the essential content of the TOR); the rules governing the submission and presentation of tenders; the exclusion, selection and award criteria; and where and when the Tender Dossier can be obtained.

Deadline for submission of tenders shall not be less than 21 days from the date of publishing the Tender Notice. However, the deadline may be longer depending on the nature of the services. The Tender Dossier shall be available on the date of publishing the Tender Notice.

The Tender Notice shall be published in the country of operation by any relevant means available e.g. national news paper, radio, notice board at a public place and/or online procurement media.

The Local Open Tender shall provide eligible candidates in the country of operation with equal business opportunities and the Procurement Committee is encouraged to submit the Tender Notice directly to a broad list of candidates who could be interested in participating in the tender procedure.

It is in the interest of the Procurement Committee to ensure the widest possible participation in the Tender to obtain the best quality and value for money.
When sourcing new candidates it is recommended to obtain general information on sector and country specific ethical risks. (See section 4.12.2 for more information on how to source new contractors.)

NOTE: Please be aware of special donor requirements on publishing Tender Notices in pre-defined and specialized medias and that the bid-flow varies from donor to donor. Bid flow for EuropeAid’s international Restricted Tender is 30 days.

**Step 4: Submission of Tender Dossier**

The Tender Dossier shall be submitted to all candidates who have made a request within a few days after the request. At this stage it is important to communicate the ethical principles and standards to the candidates.

A record of the date the Tender Dossier was submitted and to whom shall be made. Each prospective tenderer shall be identified by a number.

As specified in the Tender Dossier, there is a deadline for clarifications to the Tender Dossier. Procedures for submission of clarifications are specified in the Tender Dossier (see Annex GEN 14: Questions and Answers).

Tenderers may submit questions in writing at the latest on the date specified in the time table in the Tender Dossier. Any information regarding interpretation of the Tender Dossier shall be requested in writing. Tenderers are not allowed to approach the Contracting Authority for oral clarification. Clarifications to the Tender Dossier shall be shared with all tenderers interested in participating in the tender procedure.

Any prospective tenderer seeking to arrange individual meetings during the tender period with either the Contracting Authority and/or any other organisation with which the Contracting Authority is associated or linked shall be excluded from the tender procedure.

NOTE: Be aware of the special rules applying to longlisting and shortlisting candidates when applying the International Restricted Tender Procedure under EuropeAid funded projects.

**Step 5: Receiving Tenders**

For each tender received, the date and time of receipt shall be registered including name of the person who received the Tender. All received tenders shall be kept unopened in a secure place until the tender opening.

All tenders received after the deadline shall be rejected at the tender opening. If deadline is 17:00 hrs, then offers received at 17:01 or later shall be rejected.

**Step 6: Tender Opening**

Tenders shall be opened at the announced time, place and date in the presence of tenderers who choose to attend. The names of the tenderers and prices are read aloud and the tenderers who participate shall be registered (use the format in Annex GEN 15-2).

**Step 7: Administrative Compliance**
After the tender opening the Procurement Committee shall carry out a post qualification/administrative compliance of the tenders received. This is a preliminary examination of all tenders.

Each tender shall be checked for administrative compliance based on the requirements set out in the Tender Dossier e.g.:

- Was the tender received before the deadline?
- Are the required no. of copies supplied?
- Is the Tender Submission Form completed and duly signed?
- Is the rule of nationality respected – if required?
- Are all the requested documents submitted and duly signed (check for documents such as a Tender Guarantee, Tender Submission Form? (The required documents are listed under “instructions to tenderers” in the Tender Dossier).

The documents shall not be evaluated at this stage. It is only necessary to ensure that the documents are available and properly signed. (See Annex SER 7: Evaluation Grid for Open Tender Procedures).

At this stage, tenders which do not comply shall be rejected. Please note that tenderers who have submitted their offer after the deadline shall not be considered. The reason for rejection shall be stated in the evaluation report under section 4. Administrative Compliance (see Annex GEN 15-4).

Always carry out a small scale risk analysis on tenderers’ ethical business performance e.g. CSR policy, health policy, ISO standards, SA8000 certification etc. The findings shall be documented and integrated in the evaluation of tenders in step 9. (See section 1.2.1 for implementation of the Ethical Procurement Principles).

Step 8: Evaluation

After the post qualification (part A of the Evaluation Grid, Annex SER 7) each member of the Procurement Committee will receive a copy of the remaining tenders for evaluation and analysis. This evaluation shall be done in private and tenderers are not allowed to be present. Each member shall fill in an evaluation grid (Part B, C and D of the Evaluation Grid), which shall be compared at the evaluation meeting.

For comparison and evaluation of the proposals, the Procurement Committee shall take into consideration the criteria selected in the Tender Dossier and the weight attributed to each criterion. Instructions on how to attribute scores and weighted scores are included in the Evaluation Grid. I.e. proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weighting of 75% for the technical proposal and 25% for the offered price. (See the Evaluation Grid in Annex SER 7 and Tender Dossier in Annex in SER 6 for further guidance)

The Procurement Committee may apply a different evaluation procedure. This shall then be amended in the Tender Dossier and the Evaluation Grid shall be adjusted accordingly.

NOTE: During the evaluation it may be necessary to obtain clarification from a tenderer. Depending on the type of clarification, the Tenderer shall be allowed at least 48 hours to respond. Always remember to put a deadline for receipt of the clarification. Communication with the Tenderer shall be put in writing.
Evaluation Challenges

AMENDMENTS TO TERMS OF REFERENCE
If there is a need to make amendments to TOR described in the Tender Notice and the Tender Dossier, either by reducing or increasing the minimum requirements, the tender process shall be cancelled and a new one initiated. A new Tender Notice and Tender Dossier with the new TOR shall be issued – the deadline for submitting tenders can be reduced to e.g. 15 days (depending on the complexity). It may be easier to contact all tenderers directly, but this is not allowed due to the Principle of Equal Opportunity. Candidates who were not part of the initial tender process may be interested in participating after the changes to the TOR. This emphasises the importance of drafting clear and thorough TOR from the outset of the project/procurement process.

PRICE OF TENDERS ARE TOO HIGH
If all financial offers exceed the budget substantially the cause for this can either be change in the market price, minimum requirements are too high, etc. The reason for the high offers shall be clarified. Proceed as described in the above case scenario if changes to the TOR are needed.

NONE OR LESS THAN THREE TENDERS ARE RECEIVED
Whenever less than three tenders have been submitted, it is possible to proceed with a Simple Procedure with one Tenderer of choice as long as no substantial changes to the contract terms of the Tender Dossier are made. If substantial changes to the contract terms of the Tender Dossier have to be made, the tender process shall be cancelled and a new one initiated. It may seem easier to contact all tenderers directly, but this is not allowed because of the Principle of Equal Opportunity. Candidates who were not part of the initial tender process may be interested in participating after the changes to the contract terms of the Tender Dossier have been made. If no tenders are received a new tender procedure shall be initiated. Analyse the possible reason for the lack of tenders and implement the findings in the contract terms of the new Tender Dossier.

Step 9: Evaluation Meeting

After each member has completed the evaluation a meeting of the Procurement Committee shall be held. Discuss the evaluation and select a tenderer. Draft a short report of the evaluation which clearly identifies in which evaluation criteria the winning Tenderer was superior and why (the report shall reflect the criteria in the Tender Dossier). The report shall be signed by all members of the Procurement Committee. (see Annex GEN 15-4). Tenderers can not attend this meeting.

Step 10: Contract and Letter of Acceptance

Prepare the Contract in accordance with the Draft Contract in the Tender Dossier and forward a Letter of Acceptance to the selected Tenderer (GEN 16). Check if the Contract has to be adapted to existing legislation, traditions and requirements, as appropriate. Never delete or make alterations to the General Terms and Conditions for Service Contracts – Ver2 2012. Incorporate in the Contract all agreements reached with the selected Tenderer and attach the annexes (see article B. 13 of the Draft Contract).

The Contract shall be forwarded unsigned to the selected Tenderer and returned to the Contracting Authority with all pages duly signed. Only thereafter shall the Contract be signed by the Contracting Authority. Signing the Contract creates a legally binding document for both parties.

Before signing the Contract and returning the signed copy to the Tenderer, the Procurement Committee shall ensure:
- That adequate and exact references are made in the Contract to the Tenderer
- That the Tenderer acknowledges the GTC and the Code of Conduct for Contractors without exceptions or amendments
For new contractors – make sure that sufficient references and company data has been collected, or preferably that a Contractor Registration Form has been submitted by the Tenderer.

NOTE: The latest version of the GTC shall be applied to all contracts. If the Tenderer cannot accept the GTC the Procurement Committee shall decline the quote and continue the process with another tenderer.

Step 11: Letter to Unsuccessful Tenderers

Once the selected Tenderer has returned the Contract duly signed, a Letter to Unsuccessful Candidates shall be sent to the unsuccessful tenderers informing them of the result of the procedure i.e the name of the successful Tenderer, the total contract amount and the scores as per the Evaluation Grid (see Annex SER 5).

Step 12: Award Notice

A public award notice is mandatory for contracts above EUR 30,000. The purpose of the public announcement is to meet the principle of transparency with the added benefit of attracting new suppliers. Thus the award notice is useful for all contracts.

Please publish the award notice in a relevant place where suppliers will notice the information. For posting an award notice on the DCA website please forward the award details to the DCA Procurement and Logistics Unit. Please refer to GEN 17 for the relevant information.

Step 13: Receipt

Ensure that the services received comply with the Contract and issue a Completion Certificate or other relevant documentation e.g. the report.

<table>
<thead>
<tr>
<th>Annexes for Service Contracts when applying Local Open Tender</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>GEN 2                    Declaration of Impartiality and Confidentiality</td>
<td>Mandatory</td>
<td></td>
</tr>
<tr>
<td>GEN 11                   Tender Notice</td>
<td>Mandatory</td>
<td></td>
</tr>
<tr>
<td>GEN 13                   List of Supplier/Candidates and Tender Receipt Form</td>
<td>Mandatory</td>
<td></td>
</tr>
<tr>
<td>SER 6                    Tender Dossier</td>
<td>Mandatory</td>
<td></td>
</tr>
<tr>
<td>GEN 14                   Questions and Answers</td>
<td>Mandatory</td>
<td></td>
</tr>
<tr>
<td>GEN 15-1                 Tender Opening Checklist</td>
<td>Support</td>
<td></td>
</tr>
<tr>
<td>GEN 15-2                 List of Participants</td>
<td>Mandatory</td>
<td></td>
</tr>
<tr>
<td>GEN 15-3                 Tender Opening Form</td>
<td>Mandatory</td>
<td></td>
</tr>
<tr>
<td>SER 7                    Evaluation Grid for Open Tender Procedures</td>
<td>Mandatory</td>
<td></td>
</tr>
<tr>
<td>GEN 15-4                 Evaluation Report for Open Tenders</td>
<td>Mandatory</td>
<td></td>
</tr>
<tr>
<td>GEN 16                   Letter of Acceptance</td>
<td>Mandatory</td>
<td></td>
</tr>
<tr>
<td>SER 5                    Letter to Unsuccessful Candidates</td>
<td>Mandatory</td>
<td></td>
</tr>
<tr>
<td>GEN 17                   Award Notice</td>
<td>Mandatory</td>
<td></td>
</tr>
</tbody>
</table>
7.4 THE INTERNATIONAL OPEN TENDER PROCEDURE

The International Open Tender Procedure (from here on named International Open Tender) is similar to the Local Open Tender except for the rules applicable to advertisement of the Tender Notice and the time frame for the bid flow. International Open Tenders shall always be advertised internationally and the deadline for submitting a tender shall be at least 30 days after the Tender Notice is published. The International Open Tender is applicable for all Service Contracts above EUR 299,999.

An advertisement on business opportunities is mandatory and shall be posted in the newspaper, on a notice board or in other public places before the Procurement process is initiated. This advertisement is often published in the beginning of a project and may also contain information on other business opportunities related to the project. See section 4.12.1 for more information on advertisement of business opportunities.

Before the process is initiated make sure that all members of the Procurement Committee have signed the Declaration of Impartiality and Confidentiality.

### The steps involved in the International Open Tender for Supply Contracts

<table>
<thead>
<tr>
<th>Step</th>
<th>Task</th>
<th>Description</th>
<th>Annex</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-3</td>
<td>Follow the procedure as described for Local Open Tender</td>
<td>Specify the main content of the Tender Dossier in the Tender Notice and publish it in the project country, Internationally and on the DCA website. Depending on the nature of the Services, the deadline for submitting tenders shall not be less than 30 days from the date of issuing the Tender Notice. The Tender Dossier shall be available on the date of the advertisement of the Tender Notice.</td>
<td>GEN 11: Tender Notice</td>
</tr>
<tr>
<td>4</td>
<td>Publish the Tender Notice</td>
<td>Follow the procedure as described for Local Open Tender</td>
<td></td>
</tr>
</tbody>
</table>

**Step 1: (Step 1-3) Specifications and Tender Dossier**

Proceed as described in step 1-3 for the Local Open Tender (section 7.3).

**Step 4: Tender Notice**

Draft the Tender Notice, which as a minimum shall describe: the services required (incl. the main specifications of the TOR); the rules governing the submission and presentation of tenders; the exclusion, selection and award criteria; and where and when the Tender Dossier can be obtained (See also section 7.3 step 4).

The Tender Notice shall be published in the country of operation by any relevant means available e.g. regional and international newspapers, other media, as well as media required by donor. In addition, the Tender Notice shall be published on the DCA website on the same day (contact procurement@dca.dk).

If the project is funded by the World Bank or UN then the notice can be published on www.devbusiness.com. If it is funded by other donors the notice can be published on www.dgmarket.com. When feasible, advertising in trade magazines/journals and trade publications shall be envisaged. It is also recommended to advertise the Tender Notice on TED [http://ted.europa.eu](http://ted.europa.eu) (contact DCA Procurement and Logistic Unit for more options).
Tender procedures are open whenever all interested economic operators may submit a tender after international publication of a Tender Notice.

The deadline shall not be less than 30 days from the date of issuing the Tender Notice. The Tender Dossier shall be available from the date of publishing the Tender Notice.

The Procurement Committee can additionally choose to submit the Tender Notice directly to a list of candidates who may be interested in participating. It is in the interest of the Procurement Committee to ensure the widest possible participation in the tender.

**Step 5: (Step 5-14)**

Proceed as described in step 5-14 for the Local Open Tender (section 6.3).

<table>
<thead>
<tr>
<th>Annexes for Supply Contracts when applying International Open Tender</th>
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</thead>
<tbody>
<tr>
<td>GEN 2</td>
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<td>GEN 11</td>
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<tr>
<td>GEN 13</td>
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<td>SER 6</td>
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<td>GEN 14</td>
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<td>GEN 15-1</td>
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<td>GEN 15-2</td>
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<td>GEN 15-3</td>
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<td>SER 7</td>
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<td>GEN 15-4</td>
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<tr>
<td>GEN 16</td>
</tr>
<tr>
<td>SER 5</td>
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<tr>
<td>GEN 17</td>
</tr>
</tbody>
</table>

### 7.5 LEGAL ASPECTS – EMPLOYMENT CONTRACTS VERSUS SERVICE CONTRACTS

The standard documents and related tendering procedures do not, in principle, apply to employment contracts i.e. where the Contracting Authority hires an individual for the provision of the equivalent services under an employee-employer relationship. There is much legal discussion about the distinction between a Service Contract and an Employment Contract.

Some generally accepted criteria to determine the existence of an employment relationship are:

- A relationship of subordination in relation to the client
- The technical and functional integration of the worker into the productive and organisational structure of the client
- The exercise of managerial and disciplinary powers, that is to be found, strictly speaking, only in subordinate/employment relationship
- The commercial risk relating to the activity, resting finally with the client
The form of payment/salary (not linked directly to a result, in an employment relationship)

This distinction might not have much significance under certain legal systems (such as in Denmark), where labour law is flexible and allows forms of employment which are qualified by the ILO as "a typical employment", including part time work and fixed term contracts.

Under many other national systems (e.g. in many Latin, civil-law countries), the distinction is fundamental because of a rigid labour law which imposes strict dismissal procedures for all kinds of employment contracts, and very limited possibilities for entering fixed-term contracts. When operating in a country with rigid labour law, Contracting Authorities shall be very careful never to hire a service provider/consultant under a contract which could be qualified by a court in the project country as an Employment Contract. The risk being of not having the possibility of terminating the relationship at the expiry of the services, or at the price of a costly dismissal procedure; plus the risk of the application of all labour law protective provisions in favour of the "employee".

The Service Contract in the RFP (SER 2) or in Annex SER 4 exclude clearly any link of subordination between the Contracting Authority and a service provider, and places a clear responsibility on a service provider in respect of the outcomes of the provided services.
This chapter provides a step by step guide for procurement procedures applicable to Works Contracts according to contract value.

Since Works Contracts with a value above EUR 300,000 are unlikely to occur, the Local Open Tender and International Open Tender Procedure will not be described in this Manual. Should the procedures be required, please contact the DCA Procurement and Logistics Unit for assistance and standard tender documents.

'Works' means the outcome of building or civil engineering taken as a whole and sufficient to fulfil an economic or technical function. Works Contracts cover either the execution or both execution and design, of works or the realisation of a work corresponding to the requirements specified by the Contracting Authority. It is a Works Contract when an entrepreneur or construction company has the obligation of delivering works and is responsible for hiring and/or buying the necessary resources to fulfil this obligation (i.e., the entrepreneur hires the labour, brings all equipment and buys the construction materials and supplies).

Examples of Works Contracts are: construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, drilling etc.

Customs and regulations play a large part in the procurement of works and the Request for Proposal and Contract shall be adapted as necessary to the risks and requirements of the specific works to be procured and the context in which the project is executed. It is though important to be aware that too strict requirements may discourage companies to submit proposals and entering a contract.

NOTE: Please read section 8.3 (Legal Aspects) concerning specific legal risks and necessary precautions for Works Contracts before proceeding.

<table>
<thead>
<tr>
<th>WORKS</th>
<th>PROCEDURE</th>
<th>SEE</th>
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<td>Up to EUR 9,999 (and in exceptional cases)</td>
<td>Simple Procedure</td>
<td>See section 8.1</td>
</tr>
<tr>
<td>EUR 10,000 - 299,999</td>
<td>Negotiated Procedure</td>
<td>See section 8.2</td>
</tr>
<tr>
<td>EUR 300,000 - 2,999,000</td>
<td>Local Open Tender Procedure</td>
<td>Contact ProLog for instructions and standard documents</td>
</tr>
<tr>
<td>Above EUR 3,000,000</td>
<td>International Open Tender Procedure</td>
<td>Contact ProLog for instructions and standard documents</td>
</tr>
</tbody>
</table>

**Ethical Considerations**

The procurement of works is very complex and involves specific ethical risks which are related to employees’ labour rights and companies social and environmental responsibilities as well as the production, handling and/or transport of products. In order to avoid or prevent ethical risks it is important to consider which risks are related to the procurement of works in a specific context. It is recommended to include ethical considerations in the market survey and to conduct a small scale research on the contractors’ ethical business performance in the sourcing process and further make procurement decisions which seek to avoid or manage the identified ethical risks. Also consider how internal purchasing practices may influence contractors’ ability to meet ethical requirements and standards e.g. short lead times, changes to specifications and negotiating prices. Please ensure always to communicate the ethical principles and standards to potential contractors either by personal contact or by publishing the Code of Conduct for Contractors. See section 1.2 + 1.2.1 for more information on ethical procurement principles and implementation.
The Administration and Supervision of Works Contracts

An engineer or a project manager with necessary construction experience shall be hired prior to the procurement procedure being initiated to administrate and supervise the process or the works e.g. prepare technical specifications, draft contract etc. This is a Service Contract (see Annex SER 1).

The administration and supervision of a Works Contract can also be entrusted to an employee of the Contracting Authority, such as the Project Manager. In this case it is an Employee Contract and not a Service Contract. (In the Works Contract with the Contractor, the provisions concerning the engineer are made applicable to the Project Manager, see article 1 of the GTC). However, it would be very important to establish a specific job description for the assignment, which would include the main provisions of the Contract for engineering services.

8.1 THE SIMPLE PROCEDURE

The Simple Procedure is the simplest procurement procedure. This procedure is, as a general rule, applicable within the threshold EUR 0 - 9,999. In special cases, described in section 4.8.1, the Simple Procedure can be applied for procurement above EUR 9,999.

The Simple Procedure does not require that more than one candidate is invited to submit a proposal. It is though important to stress that the price shall correspond with the present market price or lower. This shall always be justified and filed in the procurement file. To prove that the price corresponds with the market price you can e.g. search the internet, refer to recent contracts, or obtain at least three written or non-written proposals. Please ensure that verbal prices are captured in a Note to File kept in the procurement file.

An advertisement on business opportunities is mandatory and shall be posted in the newspaper, on a notice board or in other public places before the Procurement process is initiated. This advertisement is often published in the beginning of a project and may also contain information on other business opportunities related to the project. See section 4.12.1 for more information on advertisement of business opportunities.

Before the process is initiated, make sure that all members of the Procurement Committee sign the Declaration of Impartiality and Confidentiality.

Contracts below EUR 2,000

A contract shall always be issued for procurement above the value of EUR 2,000. For procurement below EUR 2,000 it is optional to issue a contract, but an invoice shall in all cases be received and filed. As this lower boundary allows for more flexibility in issuing contracts under the value of EUR 2,000 it is important to be aware of the risks involved. In order to minimise risks and ensure that contractors are aware of the GTC and Code of Conduct for Contractors, in some contexts it may be advisable to issue a contract for purchases of a value less than EUR 2,000.

For EuropeAid funded projects prior to PRAG 2013, it is a requirement to issue a contract irrespective of the contract value. Make sure always to check donor rules.
The steps involved in the Simple Procedure for Works Contracts.

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<thead>
<tr>
<th>Step</th>
<th>Task</th>
<th>Description</th>
<th>Annex</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Technical specifications</td>
<td>Identify the technical specifications of the works to be procured.</td>
<td>WOR 1: Request for Proposal</td>
</tr>
<tr>
<td>2</td>
<td>Approach potential contractor(s)</td>
<td>Collect a minimum of three prices/proposals.</td>
<td>WOR 1: Request for Proposal</td>
</tr>
<tr>
<td></td>
<td>or search the media</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Evaluation</td>
<td>Evaluate the proposals and select the best proposal.</td>
<td>WOR 3: Evaluation Grid and Report</td>
</tr>
<tr>
<td>4</td>
<td>Contract</td>
<td>Issue the Contract.</td>
<td>WOR 2: Contract (Optional below EUR 2,000)</td>
</tr>
<tr>
<td>5</td>
<td>Administer and inspect the works</td>
<td>Inspect that the works carried out comply with the Contract. Sign and file a Certificate of Final Completion.</td>
<td></td>
</tr>
</tbody>
</table>

**Step 1: Technical Specifications**

Identify the works to be procured from the Procurement Plan and draft technical specifications. The specifications shall be drafted by the engineer, architect or other specialist in cooperation with the project manager. Identify the specifications and works to be ordered (see section 4.13.1) and determine whether it is necessary and/or relevant to divide the works into lots (e.g. depending on the capacity of construction companies). Clearly defined technical specifications are important to enable the candidates to plan ahead and provide feedback on the specifications.

Prepare the technical specifications alongside the RFP.

**Step 2: Request for Proposal**

Approach the candidates for a written or non-written quotation, search the internet for the best price and quality or refer to recent contracts to ensure that the price corresponds with the present market price or lower. The obtained prices/quotations shall be documented and filed in the procurement file. Although optional, the use of a written RFP is strongly recommended. The advantage of using a written RFP is that it prevents misunderstandings and ensures that all the required information is obtained in one go. The written form also provides an opportunity to specify ethical criteria for the contract via the technical specifications or contract conditions (which can e.g. be proved via the provision of certain certifications/standards or equivalent proof of compliance). At this stage it is important to communicate the ethical requirement and standards to the candidates.

When preparing the RFP take into consideration whether the contract is: is of low or high risk of delays, insurance uncertainties, deficient quality, uncertainties on permits or authorisation, lack of capacity to administrate contract etc.; and whether the construction company is a small company or a large international company (see section 8.3). The higher the value and risk involved it becomes more important to include clauses ensuring the execution of the works and protecting the interest of the Contracting Authority. It is though important to be aware that too strict requirements may discourage companies from lodging a proposal.

If a non-written proposal is obtained the Procurement Committee shall make a written note of the price, name of candidate, description of works and note the date. This note shall be filed in the procurement file.

Be aware of specific donor requirements such as Europe Aid's Rules of Nationality and Origin.

**Step 3: Evaluation and Contract**
Evaluate the proposals received. For evaluation it may be useful to apply the Evaluation Grid and Report also used for the Negotiated Procedure (see Annex WOR 3).

After selecting the best offer a contract shall be issued by the Procurement Committee (see Annex WOR 2). Short guidelines on how to complete the Contract are presented therein. Check if the Contract has to be adapted to existing legislation, traditions and requirements, as appropriate. Works Contracts are complex contracts and the higher the value and risks involved, it becomes more important to include clauses ensuring the execution of the works and protecting the interest of the Contracting Authority.

The standard Contract includes the GTC and the Code of Conduct for Contractors which shall never be amended. If derogations and/or specifications are needed for a specific Works Contract instructions for that purpose are included in the Contract itself. Please consider carefully the legal issues specified in section 8.3. Incorporate into the Contract all agreements reached with the selected candidate (e.g., amount of global price, bank account references, etc.) and attach all requested annexes.

Although the GTC for Works Contract provide two different kinds of contracts, a ‘global price’ contract or a ‘unit-price’ contract, the standard dossier for RFP and the Works Contract applies only to global price contracts. Global price contracts are generally used for works that can be defined in their full physical and qualitative characteristics before tenders/proposals are called, or where the risks of substantial design variations are minimal. This is usually construction of buildings, pipe laying, power transmission towers, and series of small structures, such as shelters, latrines, ablution units, which are the most commonly constructed buildings under DCA projects.

The Contract shall be forwarded unsigned to the selected candidate and returned to the Contracting Authority with all pages duly signed. Only thereafter shall the Contract be signed by the Contracting Authority. Signing the Contract creates a legally binding document for both parties.

Before signing the Contract and returning the signed copy to the Contractor, the Procurement Committee shall ensure:

- That adequate and exact reference is made in the Contract to the relevant quotation/RFP
- That the Contractor acknowledges the GTC and the Code of Conduct for Contractors without exceptions or amendments
- For new contractors - make sure that sufficient references and company data has been collected, or preferably that a Contractor Registration Form has been submitted by the Contractor.

NOTE: The latest version of the GTC shall be applied to all contracts. If the candidate cannot accept the GTC the Procurement Committee shall decline that proposal and continue the process with another candidate.

**Step 4: Administration and Inspection**

The administration of a Works Contract and the inspection of the works require a particular expertise in this area. For example, the “measurement” of the works (art 39 of the GTC) and the determination whether the works can be considered “completed” (art 45 of the GTC) cannot be left to someone other than an engineer or a project manager having the adequate qualifications. A qualified engineer should not have difficulties in identifying the standard contractual clauses and in taking all necessary dispositions (issuance of instructions, notices, certificates) to ensure proper execution of the works. After inspection and approval of the works a Certificate of Final Completion shall be signed and filed.
The Simple Procedure applied in special cases to contracts above EUR 9,999
In special cases an automatic derogation is granted to apply the Simple Procedure for contracts above EUR 9,999 – irrespective of the contract value. A prior approval from the DCA head of Procurement and Logistics Unit is not required. See section 4.8.1 for restrictions and the situations this is reserved for.

Annexes for Works Contracts when applying Simple Procedure

<table>
<thead>
<tr>
<th>Annex</th>
<th>Description</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>GEN 2</td>
<td>Declaration of Impartiality and Confidentiality</td>
<td>Mandatory</td>
</tr>
<tr>
<td>WOR 1</td>
<td>Request for Proposal</td>
<td>Optional</td>
</tr>
<tr>
<td>WOR 3</td>
<td>Evaluation Grid and Report</td>
<td>Optional</td>
</tr>
<tr>
<td>WOR 2</td>
<td>Contract</td>
<td>Mandatory (Optional below EUR 2,000)</td>
</tr>
</tbody>
</table>

8.2 THE NEGOTIATED PROCEDURE
The Negotiated Procedure is more formal than the Simple Procedure. This procedure is applicable for the threshold of EUR 10,000 – 299,000 and requires that a minimum of three candidates are invited simultaneously to submit a proposal based on a RFP. The Contract shall be awarded to the most compliant candidate. A public award notice is required (mandatory for contracts above EUR 30,000). Letters to all unsuccessful candidates shall be submitted.

The Negotiated Procedure is less formal than a Local Open Tender Procedure and gives the opportunity to negotiate the terms of the Contract.

An advertisement on business opportunities is mandatory and shall be posted in the newspaper, on a notice board or in other public places before the Procurement process is initiated. This advertisement is often published in the beginning of a project and may also contain information on other business opportunities related to the project. See section 4.12.1 for more information on advertisement of business opportunities.

Before the process is initiated make sure that all members of the Procurement Committee have signed the Declaration of Impartiality and Confidentiality.
The steps involved in the Negotiated Procedure for Works Contracts.

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<tr>
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<td>Identify the technical specifications of the works to be procured.</td>
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</tr>
<tr>
<td>2</td>
<td>Make a short list of a minimum of 4-8 candidates</td>
<td>Use e.g. available databases or the internet to source new candidates.</td>
<td>GEN 13: List of Suppliers/Candidates and Tender Receipt Form</td>
</tr>
<tr>
<td>3</td>
<td>Submit the RFP</td>
<td>Prepare the RFP and submit it simultaneously to all selected candidates.</td>
<td>WOR 1: Request for Proposal</td>
</tr>
<tr>
<td>4</td>
<td>Evaluate proposals</td>
<td>Evaluate proposals in writing by using the Evaluation Grid.</td>
<td>WOR 3: Evaluation Grid and Report</td>
</tr>
<tr>
<td>5</td>
<td>Negotiate (optional)</td>
<td>There is an option to negotiate the terms. Rules are described further in this chapter.</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Evaluate and draft Contract</td>
<td>After final evaluation the Contract shall be issued and sent to the successful candidate.</td>
<td>WOR 2: Contract</td>
</tr>
<tr>
<td>7</td>
<td>Submit letters to unsuccessful candidates</td>
<td>Unsuccessful candidates shall be notified of the result of the procedure.</td>
<td>WOR 4: Letter to Unsuccessful Candidates</td>
</tr>
<tr>
<td>8</td>
<td>Publish the Award Notice</td>
<td>To be published on websites, in newspapers, market places, office receptions, bill boards etc.</td>
<td>GEN 17: Award Notice (Optional below EUR 30,000)</td>
</tr>
<tr>
<td>9</td>
<td>Administer and inspect Works Contract</td>
<td>Inspect that the works received comply with the Contract. Sign and file a Certificate of Final Completion.</td>
<td></td>
</tr>
</tbody>
</table>

**Step 1: Technical Specifications**

Identify the works to be procured from the Procurement Plan and draft technical specifications. The specifications shall be drafted by the engineer, architect or other specialist in cooperation with the project manager. Identify the specifications and works to be ordered (See section 4.13.1) and determine whether it is necessary and/or relevant to divide the works into lots (e.g. depending on the capacity of construction companies). Clearly defined technical specifications are important to enable the candidates to plan ahead and provide feedback on specifications.

Prepare the technical specifications alongside the RFP.

**Step 2: Short List**

Prepare a short list with a minimum of three candidates. It is recommended to include 4-8 candidates to ensure that a minimum of three proposals are obtained.

Before short listing the candidates the following shall be evaluated:
- The candidate’s previous experience with similar works
- The candidate’s references
- Capacity of the candidate to implement
- Experience of the staff
- The candidate’s access to plant and equipment

When sourcing new contractors it is recommended to obtain general information on sector and country specific ethical risks. (See section 4.12.2 for more information on how to source candidates.)
Always carry out a small scale risk analysis on the candidates ethical business performance e.g. CSR policy, environmental policy, health policy, relevant certifications etc. The findings shall be documented and integrated in the evaluation in step 6 (see section 1.2.1 for implementation of the Ethical Procurement Principles.)

**Step 3: Request for Proposal**

Thoroughly prepare the RFP and approach the candidates for a proposal. When preparing the RFP take into consideration whether the contract is of low or high risk in terms of delays, insurance uncertainties, deficient quality, uncertainties on permits or authorisation, lack of capacity to administrate contract etc. and whether the construction company is a small company, operating in the project country only - or a large international company. The higher the value and risk involved, it becomes more important to include clauses ensuring the execution of the works and protecting the interest of the Contracting Authority (see section 8.3). It is though important to be aware that too strict requirements may discourage small companies from lodging a proposal.

Also consider if there is a need to include specific requirements to ethical procurement issues the RFP such as certifications (or equivalent proof of compliance to criterias) or the inclusion of specific terms in the contract related to eg. environmental or social performance.

The RFP shall be forwarded simultaneously (same day) to all the selected candidates. This is to ensure that all candidates are given an equal amount of time to prepare and submit their proposal. At this stage it is important to communicate the ethical principles and standards to the candidates.

Be aware of specific donor requirements such as EuropeAid’s Rules of Nationality and Origin

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**Follow up on submission of the RFP**

To ensure that sufficient offers will be received on time it is recommended to contact all candidates 1-2 days after submitting the RFP to ask the candidates if they intend to submit an offer before the deadline. When a short deadline is required, it is particularly good practice to follow up with the candidates and explain the importance of completing the Submission Form and submitting the offer prior to the deadline.

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**Step 4: Evaluation**

Upon receipt of the proposals, register the time when the offers were received and carry out the evaluation utilising the Evaluation Grid and Report in Annex WOR 3. Please note that candidates who have not submitted their proposal before the deadline shall not be considered.

For comparison and evaluation of the proposals, the Procurement Committee shall take into consideration the criteria selected in the RFP and the weight attributed to each criterion. Instructions on how to attribute scores and weighted scores are included in the Evaluation Grid and Report (Annex WOR 3). I.e. proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weighting of 40% for the technical proposal and 60% for the offered price (see Annex WOR 3 and Annex WOR 1 for further guidance).

The Procurement Committee may apply a different evaluation procedure. This shall then be amended in the RFP and the Evaluation Grid and Report shall be adjusted accordingly.
Recommendations on Evaluation Challenges

PRICES ARE TOO HIGH
In case all candidates have offered prices which are too high and/or the technical specifications need to be changed or adjusted, it is not necessary to issue a new RFP. Instead the candidates can be contacted in writing (stating the amendments and new deadline) and requested to provide a revised proposal.

LESS THAN THREE PROPOSALS ARE RECEIVED
If less than three proposals have been received and if some candidates have declined to submit a proposal, it is permitted to proceed with the best offer provided that the General Procurement Principles are met. E.g. it shall be ensured that all candidates have been given sufficient time to submit a proposal, that all candidates have acknowledged the receipt of the RFP, and all candidates who have submitted a letter of interest are invited. If it is not possible to find a minimum of three qualified candidates in the market, it is important to survey broader markets e.g. in neighbouring districts and countries (see section 4.12.2 for how to source new candidates). Lack of candidates in the project country/project site is not sufficient grounds for proceeding with less than three proposals. A market survey would reveal this fact during the planning stage and derogations from Negotiated Procedure to Simple Procedure should have been requested.

Step 5: Negotiate Terms (optional)

If pertinent, the Procurement Committee has the option to negotiate the terms of the Contract. Negotiations shall not entail any substantial deviation from the terms and conditions of the RFP, but shall have the purpose of obtaining better conditions in terms of delivery date, technical quality, payment conditions etc.

Negotiations may however have the purpose of reducing the scope of the works or revising other terms of the Contract in order to reduce the total price. This may be necessary when prices proposed by all candidates exceed the limits of the funds made available to the Contracting Authority by its donor/funding agency.

Negotiation can also facilitate a discussion on identified ethical risks in order to find possible solutions or determine if the proposal shall be turned down.

The negotiations can be done by email, fax, phone, or at a meeting. In the two latter cases a written recap shall be prepared, filed, copied and submitted to the Candidate as well as for the procurement file. There are no specific procedures for negotiations except that the General Procurement Principles shall always be respected.

When negotiating the terms, consider how requirements on e.g. lead times and price may affect the supplier’s ability to comply with the ethical principles and standards.

Step 6: Final Evaluation and Contract Award

Proceed with the final evaluation. The Contracting Authority shall award the Contract to the Candidate whose proposal has been determined to be substantially responsive to the requirements of the RFP and which has obtained the highest overall score, provided that the candidate has also been determined to fulfill the eligibility and non-exclusion criteria. I.e. proposals will be ranked according to their combined technical and financial scores using the weighting of 40% for the Technical Proposal; and 60% for the offered price.

Once a candidate has been selected and the Contract awarded by the Procurement Committee the draft Contract shall be drafted in accordance with the Contract in Annex WOR 2. Short guidelines on how to complete the Contract are presented herein. Check if the standard contract has to be adapted to existing legislation, traditions for Works Contracts and requirements, as appropriate. Works Contracts are complex
contracts and the higher the value and risks involved, it becomes more important to include clauses ensuring the execution of the works and protecting the interest of the Contracting Authority. It is though important to be aware that too strict requirements may discourage smaller companies from entering the Contract.

The standard Contract includes the GTC and the Code of Conduct for Contractors which shall never be amended. If derogations and/or specifications are needed for a specific Works Contract instructions for that purpose are included in the Contract itself. Please consider carefully the legal issues specified in section 8.3. Incorporate into the Contract all agreements reached with the selected candidate (e.g., amount of global price, bank account references, etc.) and attach all requested annexes.

Although the GTC for Works Contract provide two different kinds of contracts, a “global price” contract or a “unit-price” contract, the standard dossier for RFP and the Works Contract applies only to global price contracts. Global price contracts are generally used for works that can be defined in their full physical and qualitative characteristics before tenders/proposals are called, or where the risks of substantial design variations are minimal. This is usually construction of buildings, pipe laying, power transmission towers, and series of small structures, such as shelters, latrines, ablution units, which are the most commonly constructed buildings under DCA projects.

The Contract shall be forwarded unsigned to the selected candidate and returned to the Contracting Authority with all pages duly signed. Only thereafter shall the Contract be signed by the Contracting Authority. Signing the Contract creates a legally binding document for both parties.

Before signing the Contract and returning the signed copy to the Contractor, the Procurement Committee shall ensure:

- That adequate and exact reference is made in the Contract to the relevant RFP.
- That the Contractor acknowledges the GTC and the Code of Conduct for Contractors without exceptions or amendments.
- For new contractors - make sure that sufficient references and company data has been collected, or preferably that a Contractor Registration Form has been submitted by the Contractor.

NOTE: The latest version of the GTC shall be applied to all contracts. If the candidate cannot accept the GTC the Procurement Committee shall decline that proposal and continue the process with another candidate.

Step 7: Letter to Unsuccessful Candidates

Once the selected candidate has returned the Contract duly signed, a Letter to Unsuccessful Candidates shall be sent to the unsuccessful candidates informing them of the result of the procedure, i.e. the name of the selected candidate, the total contract amount and the scores as per the Evaluation Grid.

Step 8: Award Notice

A public award notice is mandatory for contracts above EUR 30,000. The purpose of the public announcement is to meet the principle of transparency with the added benefit of attracting new suppliers. Thus the award notice is useful for all contracts.

Please publish the award notice in a relevant place where suppliers will notice the information. For posting an award notice on the DCA website please forward the award details to the DCA.

Procurement and Logistics Unit. Please refer to GEN 17 for the relevant information.
The publishing of an award notice can be exempted if the Procurement Committee considers that a public notice might endanger the organisation’s safety or harm its interests.

NOTE: The Procurement Committee shall take notice of any specific donor requirements for publishing an Award Notice.

Step 9: Administration and Inspection

The administration of a Works Contract and the inspection of the works require particular expertise in this area. For example, the “measurement” of the works (art 39 of the GTC) and the determination whether the works can be considered “completed” (art 45 of the GTC) cannot be left to someone other than an engineer or a project manager having adequate qualifications. A qualified engineer should not have difficulties in identifying the standard contractual clauses and in taking all necessary dispositions (issuance of instructions, notices, certificates) to ensure proper execution of the works. After inspection and approval of the works a Certificate of Final Completion shall be signed and filed.

### Annexes for Works Contracts when applying the Negotiated Procedure

<table>
<thead>
<tr>
<th>GEN 2</th>
<th>Declaration of Impartiality and Confidentiality</th>
<th>Mandatory</th>
</tr>
</thead>
<tbody>
<tr>
<td>GEN 13</td>
<td>List of Suppliers/Candidates and Tender Receipt Form</td>
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<tr>
<td>WOR 1</td>
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<tr>
<td>WOR 3</td>
<td>Evaluation Grid and Report</td>
<td>Mandatory</td>
</tr>
<tr>
<td>WOR 2</td>
<td>Contract</td>
<td>Mandatory</td>
</tr>
<tr>
<td>WOR 4</td>
<td>Letter to Unsuccessful Candidates</td>
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</tr>
<tr>
<td>GEN 17</td>
<td>Award Notice</td>
<td>Mandatory (Optional below EUR 30,000)</td>
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</tbody>
</table>

### 8.3 LEGAL ASPECTS

For Works Contracts special precautions have to be taken due to the inherently high legal risks and the complexity of the contracts. The following three sections describe in short some of the main legal issues of concern when applying Works Contracts.

**Legal Risks for Works Contracts**
- Inherent risk for serious accidents/damages and uncertainty about insurance coverage
- Inherent risk for delays
- Risk of deficient quality
- Lack of capacity/difficulty for the Contracting Authority in managing and administering complicated contracts
- Possible uncertainty on building permits and authorisations
- In particular uncertainty about the legal status of the lands where buildings are to be constructed

**Recommended Precautions**
The following precautions are recommended when applying Works Contracts:
- Works projects shall only be undertaken in collaboration with partners with an established record and expertise in construction.
- An engineer shall be hired or a project manager with necessary construction experience appointed. This shall be done before the start of the procurement procedure, to make sure he/she is involved in the preparation of the
Works Contract and the technical specifications, and he/she can participate in the procurement procedure for the works (please refer to the Contract for Engineering Services in Annex SER 1).

- International technical assistance shall be obtained when capacity is lacking in the project country - e.g. obtain advice from an international engineer on the necessary technical specifications of the works.

- An insurance company shall be contacted in advance to determine what kind of insurance coverage will be available, at which price and under which conditions. Clauses 17 of the GTC and article A.20 of the Contract will have to be amended accordingly.

- A legal opinion from a reputable law firm in the country where the works are to be carried out shall be obtained at the project feasibility stage to ensure that:
  - All necessary authorisation and building permits can be obtained on time and without major uncertainties.
  - There is a valid and official title to the land in the name of the legal person/authority who is involved in the project and willingness to put the land at disposal of the works/or who is recipient of the works (e.g. municipal authority). Ensure the necessary official approvals have been given and appropriate legally binding commitments from the owner of the land exists (article A. 15 of the Contract in Annex WOR 2).
  - Mandatory applicable laws and regulations in the country of execution are known in advance and incorporated in the conditions of the Contract (article A.12 in WOR 2, and article A.12 in the RFP (WOR 1). See also section 9.4 and 9.5 on applicable law and settlement of disputes).
  - The legal length of the defects liability period is established (article 47 of GTC and Contract in Annex WOR 2).
  - Appropriate insurance coverage is provided for in the proposed Contract and legally enforceable in the country of execution.

Complexity of the Contractual Provisions and Administration

Because of the inherent risks in construction activities, the Works Contract is necessarily a complex and complicated contract which strives to distribute the risks, rights, obligations and liabilities of the parties. The GTC for Works Contracts is inspired by internationally recognised practices, terms and clauses in the construction business. The administration of a Works Contract requires particular expertise in this area and cannot be left to someone other than an engineer or a project manager having the adequate qualifications (for example, the "measurement" of the works (art. 39) and the determination that the works can be considered "completed" (art. 45 + 51). A qualified engineer should not have difficulties in identifying the standard contractual clauses and in taking all necessary dispositions (issuance of instructions, notices, certificates) to ensure a proper execution of the works. Entering a proper Service Contract with an engineer for that purpose is therefore also crucial (see Annex SER 1).

A difficult part in the administration of a Works Contract is the determination of “interim payments” (art. 40 of the GTC) due to the Contractor, based on the measurement of the works.

Although the GTC for Works Contracts provide for two different kinds of contracts, a "global price" contract or a "fee-based" contract, the RFP refers only to global price contracts. Global price contracts are generally used for works that can be defined in their full physical and qualitative characteristics before tenders/proposals are requested, or where the risks of substantial design variations are minimal, usually construction of buildings, pipe laying, power transmission towers, and series of small structures, such as shelters, latrines, ablution units etc.

Applicable Law and Settlement of Disputes

The issues mentioned in section 9.4 and 9.5 are of particular importance and relevance in the context of a Works Contract. A procurement procedure for an international Works Contract shall not be initiated unless and until all issues critical to land rights and the allocation of risks have been assessed by a lawyer, both under the conditions and the law of the country of execution of the works and the applicable law - if different. In the area of construction, many mandatory rules are likely to override the contractual provisions. Labour law in the project country has also to be taken into consideration in respect of labour used on the site.
Article 61 of the GTC contains provisions for an amicable settlement of disputes. Failing such settlement, article 61.2 of the GTC and corresponding article 61 in the Contract, give the Contracting Authority the option of choosing a court or an arbitration clause. When choosing arbitration, the arbitration body, the place of arbitration and the arbitration rules shall be specified in the Contract. Depending on the country, the region, the legal system, the scope and circumstances of the Construction Contract in question, available options for arbitration may vary considerably. DCA Procurement and Logistic Unit may be consulted for advice on these options.
9 LEGAL ASPECTS

This chapter describes some of the general legal aspects of concern to Supply, Service and Works Contracts.

9.1 CONTRACTUAL DOCUMENTS

The different types of contracts are comprised of a series of documents including special conditions, GTC, Code of Conduct for Contractors, TOR, technical specifications and other relevant documents which shall be listed in the clause “Order of Precedence of Contract Documents” in the Contract. When doing so, documents shall generally be listed in the order from specific to more general. In case of later dispute about interpretation of contradicting provisions, the most specific obligation takes precedence over the general one.

Only the draft Contract and different respective annexes can be amended and filled in. Note that the text of the GTC and Code of Conduct for Contractors shall never be amended. However, that does not mean that there cannot be derogation(s) to some of their provisions. The GTC contain a list of rights and obligations which shall always apply in contracts entered into with DCA or Partners, unless it is specifically indicated otherwise in the Contract.

9.2 VALIDITY PERIOD OF THE QUOTE, PROPOSAL AND TENDER

When replying to a Tender Dossier, RFQ or RFP the invited company binds itself for the duration of the “validity period” which runs from the date of submission of its offer and a chosen date (the duration shall be chosen carefully). The company legally obliged to enter the Contract with the Contracting Authority, under the conditions of its quote/proposal/tender. If it is foreseen that a given procurement procedure is going to be particularly burdensome and there is a risk that an invited company, in spite of this legal obligation, withdraws its offer or refuses to enter into the Contract, the option of a tender guarantee shall be retained when preparing the Tender Dossier (see section 9.3 below).

If it is foreseen that the evaluation process or the negotiations are taking more time than expected and the Contract cannot be awarded before the expiry of the validity period, the invited suppliers/candidates shall be requested to confirm in writing that they grant an extension of the validity of their quote/proposal/tender until a new specified date.

9.3 PREPAYMENT, TENDER AND PERFORMANCE GUARANTEES

Each set of documents includes the possibility of requesting financial guarantees: Prepayment Guarantee, Tender Guarantee and Performance Guarantee. These guarantees consist of a written declaration from a bank or an insurance company (or another financial institution, depending on the financial system in a given country), that if the supplier/candidate fails to comply with its obligations towards the Contracting Authority, the bank/insurance company will satisfy the Contracting Authority’s claim for a certain financial amount.

Different countries have different financial practices concerning these kinds of guarantees. Therefore the Guarantees can be requested in the form of a bank guarantee, banker’s draft, certified cheque or irrevocable letter of credit. This on the condition that any such form of guarantee creates an at-first-demand obligation for the bank/guarantor (i.e. the guarantor has to pay as soon as requested in writing, without the Contracting Authority having to engage in a legal process). Therefore, when receiving a guarantee in a form other than the standard Performance Guarantee, a lawyer or the bank’s trade finance department shall be consulted to ensure proper legal coverage.

Practices and costs in the project country shall guide the decision as to whether such guarantees shall be required or may reasonably be obtained from contractors. It is not uncommon that suppliers/candidates withdraw/change
their offer in the validity period due to changes in the market price/availability. In these cases guarantees shall be considered if the banks issue bank guarantees and it is a known practice in the tender market to request guarantees.

These guarantees are payable 'on first demand' and are therefore comparable to cash money. It is therefore recommended that account references of the Contracting Authority are clearly specified in the Guarantee to ensure that payment under the Guarantee can only be made to that account. The Guarantee shall be kept in a secure place and with a reference in the procurement file.

Advantages and Disadvantages of Using Guarantees

**ADVANTAGES**

When applying guarantees the Contracting Authority reduces the risk of suppliers/candidates withdrawing their offers in the validity period (Tender Guarantee). Moreover they are committed to deliver the correct supplies/services/works at the agreed time (Performance Guarantee). When applying a tender guarantee the suppliers/candidates will put greater effort to make the offers and it will reduce the participation of unreliable suppliers.

**DISADVANTAGES**

When applying a tender guarantee, some suppliers may decide not to submit an offer as they will not take the risk due to the unstable market they operate in or if they do decide to submit an offer, the risk may be added to the price.

Prepayment Guarantee

In the event of a contractor being in breach of the Contract before delivering the supplies, performing the services or executing the works is covered by a prepayment. This type of guarantee ensures that the Contracting Authority can recover the amount of any prepayment made to a contractor. It is recommended that such a guarantee is requested when the Contract provides for a substantial prepayment and circumstances might create uncertainties as to future performance of the Contract. It shall be for the full value of the prepayment.

In the Prepayment Guarantee it is stated that it will expire upon issue of an Acceptance Certificate (supplies) or, Completion Certificate (services) or Certificate of Final Completion (works). However, where the Contract can be executed in successive deliveries/parts it is possible to limit such duration. The Guarantee shall then expire when the Contractor has completed the part of the Contract corresponding to the value of the Prepayment Guarantee.

A template for a Prepayment Guarantee is found in Annex GEN 10-1.

Tender Guarantee

The Tender Guarantee assures compensation to the Contracting Authority for the time and money lost if the successful Tenderer withdraws his/her offer or fails to enter into the Contract. It is recommended that such a guarantee is requested for Open Tenders, or when the amount of the Contract along with market conditions makes it relevant (e.g. high volatility of prices). The compensation is generally between one and two per cent of the total tender price. The Tender Guarantee shall be released upon the end of the validity period, or the receipt by the Contracting Authority from the successful Tenderer of the signed Contract and the Performance Guarantee (if required), whichever date is the earliest. Therefore, if an extension of the validity period is requested, the Tender Guarantee shall also be extended.

A template for a Tender Guarantee is found in Annex GEN 10-2.

Performance Guarantee

The Performance Guarantee covers broadly all obligations of the Contractor (proper performance of the Contract) and is generally of an amount of ten per cent of the contract value. It is recommended that such a guarantee is requested for all contracts above EUR 50,000. Depending on the context of the Contract, a performance guarantee can also be requested for contracts of a lower value, when risk of non-performance appears high.

If no default of the Contractor has occurred, the Performance Guarantee shall be terminated:
• For a Supply Contract, upon expiry of the warranty period (the Guarantor will therefore probably ask for a clear determination of such date (see relevant article of the General Terms and Conditions and the Purchase Order).
• For a Service or Works Contract, upon completion of the contract. A Certificate of Final Completion may be required for works.

A template for a Performance Guarantee is found in Annex GEN 10-3.

Guarantees shall be payable to the Contracting Authority “on first demand” in order to secure that funds are available without the Contracting Authority having to engage in a lengthy and costly legal process. The text in the Guarantee shall always be carefully checked to ensure that it has not been altered from the original text. If doubt exists on the credibility of the bank issuing the Guarantee, the Contracting Authority’s own bank shall be requested to confirm the Guarantee. By doing this the Contracting Authority’s bank vouches for the Guarantee.

9.4 APPLICABLE LAW

The question of applicable law in international contracts raises some of the most complex legal issues, which this Manual and the Contracts cannot attempt to address in an exhaustive way. The standard contractual documents proposed in this Manual strive at removing the unpredictability in the supply/service/works relationship by providing a contractual framework setting out as far as possible the rights and obligations of the parties.

However, owing to the diversity of applicable laws and fundamental conceptual differences existing between the different systems of laws prevailing in the different countries of operation, it cannot be ensured that all provisions of the GTC can be found legally binding in any country, and that no mandatory rules of the country of execution of the Contract will override the standard provisions. Since most legal systems recognise freedom of contract, it is nevertheless expected that, in case of dispute, a contractor will first refer to the provisions of the Contract (GTC and other contractual documents), and that if he refers the case to a court, this court will recognise the validity of the contractual provisions.

The GTC for the three types of contracts provide that the law applicable to the Contract (substantive law) is the law of the country of establishment of the Contracting Authority. However, it might be adequate to derogate to this clause and choose another applicable law depending on the circumstances of a given contract/project.

Generally it might be relevant to apply law of the project country in the following cases: supplies bought and delivered in the project country; services performed by a consultant in the project country, and when works contracts are implemented by a Contractor in a specific project country. When a given law in a project country is underdeveloped or subject to uncertainties, and/or the Contract is concluded with a Contractor established in another country, it can be better to designate a foreign law.

In case of a high value complex Works Contract, it is recommended that legal advice is sought before choosing the applicable law (see section 8.3).

9.5 SETTLEMENT OF DISPUTES

This issue is closely connected to the question of applicable law, since it is of importance to avoid giving competence to the courts of a given country, when the law applicable to the Contract is the law of another country (although national courts generally recognise their ability to apply foreign laws). The GTC therefore provide that the courts of the country of establishment of the Contracting Authority are competent and that procedural law of that country is applicable to such litigation (for Works Contract see section 8.3). Consistency between the applicable law and settlement of disputes provisions shall be ensured if derogating to the GTC is considered.

25 British law is frequently designated as the applicable law for Construction Contracts in South Asian countries. Whereas such countries generally have insufficient construction laws, British law is fairly well developed in the area of construction disputes. Using British law as the governing law is common in South Asia and comfortable to most people.
The judicial system of some countries where DCA projects are implemented may be unfit for such litigation due to backlogs, lack of capacity and/or corruption. In such cases, and if the Contract in question is closely connected to that country (contractor and execution in the project country), it shall be investigated whether there could be a more effective “Alternative Dispute Resolution” mechanism, established by a Chamber of Commerce in the project country. For contracts with foreign companies, consider choosing the courts of their respective country. For contracts of high value, providing for a settlement through international arbitration shall also be considered (e.g. for Works Contracts see section 8.3).

When choosing courts of a country different from the country of establishment (of the Contractor), it shall be considered that even if a judgment in that first country can be obtained, enforcing it against the Contractor in his/her country of establishment (or where he has some assets) shall be attempted. But the ability to enforce a judgment from one country to another country depends on whether there is a treaty between the two countries which provides for enforcement of such judgments or on the willingness of the project country courts to enforce foreign judgments. Often such judgments are not warmly received.

### Settlements of Disputes
Despite the high complexity of these legal issues, it shall be noted that, amicable/diplomatic settlement of disputes are always preferred and it is highly improbable that the Contracting Authority will undertake a costly international litigation in case of a breach of a contract. If problems and disputes arise with a supplier/contractor, assistance from your own organisations Procurement and Logistics Unit can be requested.

### 9.6 AUDITS
All donor funded projects are subject to immediate audit by donors. It is therefore important to keep the procurement files up-to-date at any given time (see chapter 5).

The standard terms and conditions of the three types of contracts provide for the Contracting Authority’s right to check and audit all documents related to the Contract, and give the same right to the funding agency. Audits can also be added as a condition in the Purchase Order/Contract as a special clause.
# Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>Award criteria:</td>
<td>The criteria defined by the Contracting Authority to reward a supplier/candidate with a Supply, Service or Works Contract.</td>
</tr>
<tr>
<td>Award Notice:</td>
<td>The publication of the outcome of the award procedure which specifies the type of supply, service or works procured, the amount of the Contract and the successful Tenderer.</td>
</tr>
<tr>
<td>Bid flow:</td>
<td>The timeframe from a tender/RFP/RFO is published until the offer shall be received by the Contracting Authority.</td>
</tr>
<tr>
<td>Carrier:</td>
<td>Any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport by rail, road, air, sea, inland waterway or by a combination of such modes of transportation.</td>
</tr>
<tr>
<td>Controlled drugs:</td>
<td>Controlled drugs have accepted or non-accepted medical use and are controlled by national laws based on their potential for abuse, which may lead to physical or psychological dependency. National laws differ, but often practitioners (e.g., doctors, dentists, physician assistants, advance practice nurses) are licensed by the State and have to be registered with a national regulatory body to prescribe this type of pharmaceuticals.</td>
</tr>
<tr>
<td>Tender:</td>
<td>The offer made by the Tenderer in response to a tender dossier.</td>
</tr>
<tr>
<td>Tenderer:</td>
<td>The supplier of supplies and/or services and/or works, who submits a tender dossier.</td>
</tr>
<tr>
<td>Certificate of Origin:</td>
<td>The official certificate issued by competent authorities which states the origin of supplies or equipment. The Certificate of Origin shall be obtained for purchases of equipment and vehicles when the unit price is more than EUR 5,000 for EuropeAid funded projects.</td>
</tr>
<tr>
<td>Coercive practice:</td>
<td>Impairing or harming, or threatening to impair or harm, directly or indirectly, any participant in the tender procedure to influence its activities improperly.</td>
</tr>
<tr>
<td>Collusive practice:</td>
<td>An undisclosed arrangement between two or more suppliers, tenderers or candidates designed to artificially alter the results of the tender procedure to obtain financial or other benefit.</td>
</tr>
<tr>
<td>Contract:</td>
<td>A legally binding document between a buyer (Contracting Authority) and a supplier of supplies and/or services and/or works.</td>
</tr>
<tr>
<td>Contractor:</td>
<td>The general term used in this manual referring to all types of economic operators concluding contracts with the Contracting Authority.</td>
</tr>
<tr>
<td>Corruption:</td>
<td>DCA defines corruption as the misuse of entrusted power for private gain. Corruption is a practice where a DCA or partner staff member is receiving or giving money or gifts in order to gain personal or organisational advantages such as favourable treatment, services, a possibility to gain power, lowering prices or ensuring that a particular contractor is winning a contract. Corruption may also occur in a more indirect form where the benefit is given to a third party (family, own business etc.).</td>
</tr>
<tr>
<td>Derogation:</td>
<td>The authorised allowance to depart from the general rules and procedures for procurement.</td>
</tr>
<tr>
<td>Eligibility:</td>
<td>Meeting the stipulated requirements or being qualified. Eligibility can e.g. refer to the eligibility of costs or eligibility of a supplier/candidate.</td>
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Ethical procurement: The inclusion of social and environmental factors, alongside financial factors, in procurement decisions. It involves looking beyond economic parameters and efficiency in procurement, and additionally considering the associated social consequences, risks, and/or implications for society and environment.

Exclusion criteria: The criteria defined by the Contracting Authority to exclude a supplier/candidate from a procurement procedure.

Fee based price: The remuneration of a service provider/consultant (Service Contract) based on a daily fee-rate for an eight hour working day.

Framework Contract: A long term (maximum five years) contract concluded between the Contracting Authority and one or several contractors. It is used to define the general terms for future procurement of a series of supplies or services for which the precise quantity/scope and time of delivery cannot be defined at the outset of the Contract. Framework Contracts can only be used for Service and Supply Contracts, not Works Contracts.

Fraudulent practice: Any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, the Contracting Authority to obtain a financial or other benefit or to avoid an obligation.

Global price: The complete remuneration of a service provider/consultant under a Service Contract, which cover all obligations of the successful candidate under the entire contract (without depending on actual time spent on the assignment). The global price covers the fee rate, including overhead, profit, all his/her obligations, sick leave, overtime, holiday pay, taxes, social charges and all expenses (such as transport, accommodation, food, office, etc.).

Humanitarian Procurement Centre: Humanitarian Procurement Centres (HPC’s) are ECHO recognised entities specialised in procuring emergency and health supplies or providing related services for the use of actors in humanitarian aid operations. The HPC’s provide services within the following areas: medicine, medical devices, veterinary, foods, water and sanitation, engineering, shelter, telecommunication, transport and administration.

Hybrid Contract: A contract which contains a mix of supply, services and/or works.

Partner: The partner organisation that implements a project or program.

Import clearance agent: A person/company who offers the service of customs clearance of goods.

Incoterms: Internationally recognised standard trade clauses published by the International Chamber of Commerce most commonly used for international sales contracts. The standard clauses can be adopted as the legal regulation for delivery of supplies and distribution of cost and risks between the seller and the Contracting Authority in a contract.

Lot/sub lot: A lot is a group of similar items, services or works which can be procured from the same supply, service or works provider. A sub lot is the division of each lot into smaller lots of items or services which can be procured from the same or from several suppliers, service or works providers.

Monitoring agency: An agency which is responsible for verifying and certifying the quality, quantity, packing and marking of the supplies to be delivered in respect of each supply, issuing the certificate of conformity or the certificate of delivery and generally coordinating all stages of the supply operation.

Purchase Order: A document issued by a buyer to a seller indicating types, quantities and agreed prices for products. Acceptance of a purchase order by a seller forms a legally binding contract between the parties.

Procurement: Procurement is the complete process of obtaining supplies, services and works from preparation and processing of a requisition through to receipt and approval of the invoice for payment.
Restricted Tender: The Restricted Tender is the applicable procurement procedure for a Service Contract with a value above EUR 200,000 for EuropeAid funded projects or programs.

Rules of Nationality and Origin: The Rule of Nationality refers to the nationality of the contractor signing a contract for EuropeAid funded projects. Country of origin refers to the place where supplies or equipment are produced. The rule applies to Supply Contracts funded by EuropeAid. For supplies with components produced in more than one country, the country of origin is the country in which the item underwent the last, substantial, economically justified processing or working.

Running costs: Running costs are defined as recurring purchases/costs e.g. each week or month often related to office procurement.

Selection criteria: A set of pre-established and non-discriminating criteria defined by the Contracting Authority which defines the minimum requirements of a tenderer or candidate to enter into a contract with the Contracting Authority.

Service Contract: A contract for the provision of a defined service. It covers all intellectual and non-intellectual services other than those covered by Supply, Works and Property Contracts. Service Contracts equally comprise Study, Freight (if not included in the Supply Contract) and Technical Assistance Contracts.

Shipper: A person who sends goods from one place to another by vessel (sea transport).

Supply Contract: Covers the purchase, operational leasing, rental or hire purchase, with or without option to buy, of supplies. Whenever rental of venues for meetings, conferences etc. is a direct project cost, it is categorised as a Supply Contract. The delivery of supplies may in addition include siting, installation and maintenance.

Sub grants: A Sub grant is a grant given to a third party (beneficiary) under a EuropeAid funded project. Sub grants are considered to be procurement and subsequently the DCA Procurement Manual and EuropeAid Annex IV shall apply.

Tender Dossier: A compilation of relevant documents which shall be received by all shortlisted suppliers/candidates for a contract above the value of EUR 150,000 (EUR 300,000 for Works Contracts). It consists of: Instructions to tenderers, technical specifications/TOR, draft contract, technical data form, tender submission form, GTC and Code of Conduct for Contractors (and other optional annexes).

Technical Specifications: Defines the characteristics and requirements related to supplies or works. It specifies requirements on e.g. quality, quantity, delivery, packing, compatibility, durability, safety, social/environmental performance etc.

Terms of Reference: Specifies the requirements needed for a Service Contract e.g. purpose, scope of service, timeframe, reporting, expected results etc.

Threshold: Thresholds are the marginal values of the contract categories defining which procurement procedure to apply to a given contract.

Urgent actions: Actions intended to meet immediate and unforeseeable humanitarian requirements generated by sudden natural or manmade disasters, such as floods, earthquakes and outbreaks of conflict or comparable situations. The concept of urgency also includes any situation, duly justified, in which the implementation of the humanitarian aid operation has to start immediately and where delay is incurred on the action by applying timely procurement procedures – hereby putting lives at risk. The concept of urgency cannot be based on circumstances that can be attributed to the Contracting Authority.

Works Contract: The outcome of building or civil engineering works, taken as a whole, which is sufficient in itself to fulfill an economic or technical function. It is a Works Contract when an entrepreneur or construction company has the obligation of delivering works and is responsible for hiring and/or buying the necessary resources to fulfill this obligation (i.e. the entrepreneur hires the labour, brings the equipment and buys the construction materials and supplies).
11  ANNEXES

The following annexes are contained in different folders.

GEN – General Annexes
SUP – Supply Annexes
SER – Service Annexes
WOR – Works Annexes

The annexes will be updated on a regular basis – each update will be identified by a correction date. The latest version will always be available from DCA Procurement Manual or requested by sending an email to procurement@dca.dk

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### Works Annexes

<p>| WOR 1 | Request for Proposal | Mandatory |</p>
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<tr>
<td></td>
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<tr>
<td></td>
<td>WOR 5</td>
<td>General Terms and Conditions for Works</td>
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</tbody>
</table>
12 USEFUL LINKS

ECHO
- ECHO helpdesk: http://www.dgecho-partners-helpdesk.eu/contact_us
- ECHO procurement information: http://www.dgecho-partners-helpdesk.eu/implementing_an_action/procurement
- General HPC information: http://ec.europa.eu/echo/partners/humanitarian_aid/procurement_en.htm
- EuropeAid helpdesk: http://www.puntosud.org/helpdesk-europeaid/doku.php/howto/the_helpdesk

Ethical Procurement:
- Danish Initiative for Ethical Trade (DIEH): http://www.dieh.dk/in-english/
- Ethical Trading Initiative: http://www.ethicaltrade.org/resources/key-eti-resources
- Country Portal (The portal is only launched in 2012): http://humanrightsbusiness.org/?f=country_portal
- Danish institute for Human Rights: http://humanrightsbusiness.org/
- Business and Human Rights Resource Centre: www.business-humanrights.org
- UN Global Compact: http://www.unglobalcompact.org/AboutTheGC/index.html
- Responsible Purchasing Network: http://www.responsiblepurchasing.org/#
- Ethical Cargo: http://www.ethicalcargo.org/
- Human Rights Watch: www.hrw.org
- Maplecroft (global risks and businesses): http://maplecroft.com/
- Social Accountability International (SA8000 standard): http://www.sa-intl.org/

Incoterms
• Table overview of the 2010 Incoterms: [http://www.sdstraining.co.za/Img.Upload_Departments/5719_113114751.JPG](http://www.sdstraining.co.za/Img.Upload_Departments/5719_113114751.JPG)

DanChurchAid
• Official website: [http://www.danchurchaid.org/](http://www.danchurchaid.org/)

Other:
• The ACP Countries: [http://www.acpsec.org/en/acp_states.htm](http://www.acpsec.org/en/acp_states.htm)
• The DAC list of ODA recipients: [http://www.oecd.org/document/45/0,3746,en_2649_34447_2093101_1_1_1_1_1,00.html](http://www.oecd.org/document/45/0,3746,en_2649_34447_2093101_1_1_1_1_1,00.html)