



European Investment Bank

EIB Guide for Procurement

Guide for the procurement of services, supplies and works
by the EIB for its own account



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Introduction

The purpose of this Guide is to set out the procedures to be followed by the European Investment Bank (the “Bank”) when procuring services, supplies and works for its own account. These procedures apply also every time that the Bank is involved in the procurement irrespective of whether it pays for the value of the relevant services, supplies or works or not, unless the Bank has satisfied itself that in the procurement of the said services, supplies or works an acceptable level of fair competition is guaranteed.

As the European Union’s financing institution, the Bank, in its dealings with external providers, is committed to respecting the fundamental EU principles regarding public procurement, such as the principles of equal treatment, non-discrimination and transparency. The Bank considers that, as a general rule, these principles can be best implemented by competition among qualified tenderers and by a selection based both on cost and quality considerations.

Accordingly, in full respect of the tasks and activities assigned to it by the Treaty establishing the European Community, the Bank acts in principle in accordance with Community law on public procurement, in particular Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (hereafter “the Directive”). Even though the Directive is not applicable as such to the Bank, it provides an appropriate reference of establishing the Bank’s procedures.

The Bank is aware of the increased possibilities offered by the Directive in terms of new purchasing techniques, and it intends, to the extent possible, to promote the use of these techniques. Nevertheless, before they can be effectively applied to the award of specific Bank contracts, certain developments are still required, notably in the area of electronic procurement.

This Guide is designed to provide general information on Bank procurement procedures for its own account and it does not address specific terms and conditions of any particular contract that the Bank may conclude.

The Guide does not cover procurement for EIB-financed projects. The Bank’s policy, the applicable legal framework and the arrangements to be made by promoters and borrowers for procuring required services, supplies and works for such projects are explained in the EIB Guide to Procurement, available on the Bank’s website (<http://www.eib.org/infocentre/publications/all/guide-to-procurement.htm>).

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1. General aspects

1.1 Scope of this Guide

This Guide applies to service, supply and works contracts awarded by the Bank for its own account whether covered by the Directive or not.

Contracts covered by the Directive are awarded by the Bank in accordance with the procedures set out in section 2.

Contracts not covered by the Directive are awarded by the Bank in accordance with the procedures set out in section 3.

1.2 Definitions

In this Guide the terms “service contracts”, “supply contracts”, “work contracts”, “framework agreement”, “contractor”, “supplier”, “service provider”, “economic operator”, “tenderer”, “candidate”, “open procedures”, “restricted procedures”, “competitive dialogue”, “negotiated procedures”, “design contests”, “written” or “in writing”, “electronic means” shall have the meaning attributed to them in Article 1 of the Directive¹.

2. Procedures applicable to contracts of a type covered by the Directive

2.1 Scope of application

The Bank follows the procedures described in the Directive for the award of contracts which are not excluded from the application of the Directive in accordance with its provisions² and which have a total value exclusive of value-added tax (“VAT”) estimated to be equal to or greater than the following thresholds:

- (a) EUR 207 000³ for service and supply contracts;
- (b) EUR 2 500 000 for works contracts⁴.

However, for reasons pertaining to the functioning and status of the Bank as a financing institution of the EU, application of the provisions of the Directive may not be considered to be appropriate in respect of certain types of contract, the estimated value of which may be equal to or exceed the above-mentioned thresholds. In such cases, the Bank may decide to opt for a different procedure. In doing so, however, and in keeping with the overriding concern for best value for money, the awards of such contracts will be effected following an appropriate market analysis and in accordance with the fundamental principles set out in the introduction. In deciding whether alternatives are available at acceptable terms, the Bank takes account of its objective needs and performance standards, in relation to the scope and nature of the contract to be awarded.

2.2 Types of procedure

Save where contracts are concluded following an appropriate market analysis in accordance with section 2.1 above, the contracts covered by the Directive are awarded by call for tender, using either the “open procedure”, the “restricted procedure”, the “competitive dialogue” or the “negotiated procedure” after publication of a contract notice or the negotiated procedure without prior publication of a contract notice.

2.2.1 Open procedure

¹ For ease reference the definitions are attached in this note as Annex I.

² For example, pursuant to Article 16 of the Directive, are excluded some specific types of services, such as arbitration and conciliation services and financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions to raise money or capital.

³ This threshold of 200.000 EUR is fixed by the Directive 2004/18/EC from 1/1/2012 onward. Any future changes to this threshold introduced within the Directive 2004/18/EC by the EC are automatically applicable to this Guide.

⁴ Although the Directive covers works contracts with an estimated value of EUR 5 000 000, the Bank has decided to apply a lower threshold.

Contracts awarded through the open procedure are published in the Official Journal of the European Union (“OJEU”). Following a request from the economic operator, the Bank sends to him the tender specifications which define the terms and conditions of the contract, including the criteria for the award, and invites him to tender on that basis. Sections 2.4 and 2.5 below describe in detail the different stages of the procedure.

2.2.2 Restricted procedure

The criteria for selecting tenderers to take part in the restricted procedure are defined in a contract notice published in the OJEU (details in sections 2.4 and 2.5 below).

In a restricted procedure the number of candidates invited to submit a tender may not be less than five, provided that a sufficient number of suitable candidates is available. In any event, the Bank makes sure in all cases that the number of candidates invited to tender is sufficient to ensure genuine competition.

2.2.3 Competitive dialogue

The criteria for selecting tenderers to take part in the competitive dialogue procedure are defined in a contract notice published in the OJEU (details in sections 2.4 and 2.5 below).

The Bank may apply the competitive dialogue procedure in the case of particularly complex contracts, when it considers that the use of the open or restricted procedure will not allow the award of the contract.

During the dialogue, the Bank ensures equality of treatment among all tenderers. In particular, it does not provide information in a discriminatory manner which could give some tenderers an advantage over others.

The Bank pursues the dialogue until it identifies the solution suitable for meeting its needs and requirements. Once the dialogue is concluded and the participants have been informed of this, the Bank asks them to submit their final tenders which it will assess on the basis of the award criteria laid down in the contract notice or in the descriptive document.

In the competitive dialogue procedure, the number of candidates invited to conduct a dialogue will not be less than three, provided that a sufficient number of suitable candidates is available. In any event, the Bank makes sure in all cases that the number of candidates invited to tender is sufficient to ensure genuine competition.

2.2.4 Negotiated procedure

As a negotiated procedure is a derogation to the general principle of public tendering, the Bank will make use of such a procedure only as set out below.

2.2.4.1 *Negotiated procedure with prior publication of a contract notice*

The Bank may award contracts by negotiated procedure, after publication of a contract notice, in the following cases⁵:

(a) in the event of irregular tenders or in the event of submission of tenders which are unacceptable by reference to the specific provisions of the Directive⁶, in response to an open or restricted procedure or a competitive dialogue insofar as the original terms of the contract notice are not substantially altered.

The Bank may refrain from publishing a contract notice if it includes in the negotiated procedure all of, and only, the tenderers who satisfy the selection criteria set out in section 2.5.1.1 and who, during the prior open or restricted procedure or competitive dialogue, have submitted tenders in accordance with the formal requirements of the tendering procedure;

(b) in exceptional cases, when the nature of the works, supplies, or services or the risks attaching thereto do not permit prior overall pricing;

⁵ Article 30 of Directive 2004/18/EC

⁶ Articles 4, 24, 25, 27 and Chapter VII of Directive 2004/18/EC

(c) in the case of services, *inter alia* financial services, and intellectual services such as services involving the design of works, insofar as the nature of the services to be provided is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures;

(d) in respect of works contracts, for works which are performed solely for purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs.

In negotiated procedures where a contract notice is published, the Bank simultaneously and in writing invites the selected candidates to negotiate.

The Bank negotiates with tenderers the tenders submitted by them in order to adapt them to the requirements which it has set in the contract notice, the specifications and additional documents, if any, and to seek out the best tender. During the negotiations, the Bank shall ensure the equal treatment of all tenderers. In particular, it does not provide information in a discriminatory manner which could give some tenderers an advantage over others.

The Bank may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract notice or the specifications. The contract notice or the specifications indicate(s) whether recourse to this option is possible.

In negotiated procedures with publication of a contract notice the number of candidates invited to negotiate will not be less than three, provided that a sufficient number of suitable candidates is available. In any event, the Bank makes sure that the number of candidates invited to tender is sufficient to ensure genuine competition.

2.2.4.2 *Negotiated procedure without prior publication of a contract notice*

The Bank may award contracts by negotiated procedure without prior publication of a contract notice in the following cases⁷:

- for services contracts, supply contracts and works contracts:
 - (a) when no tenders or no suitable tenders or no applications have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of contract are not substantially altered;
 - (b) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator;
 - (c) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the Bank, the time limit for the open, restricted or negotiated procedures with publication of a contract notice cannot be complied with;
- for supply contracts:
 - (a) when the products involved are manufactured purely for the purpose of research, experimentation, study or development. This provision does not extend to quantity production to establish commercial viability or to recover research and development costs;
 - (b) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the Bank to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. The length of such contracts as well as that of recurrent contracts may not, as a general rule, exceed three years;
 - (c) for supplies quoted and purchased on a commodity market;

⁷ Article 31 of Directive 2004/18/EC

- (d) for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure;
- for service contracts, when the contract concerned follows a design contest and must, under the applicable rules, be awarded to the successful candidate or to one of the successful candidates. In the latter case, all successful candidates will be invited to participate in the negotiations;
- for service contracts and works contracts:
 - (a) for additional services or works not included in the project initially considered or in the original contract but which have, through unforeseen circumstances, become necessary for the performance of the services or works described therein, on condition that the award is made to the economic operator performing such services or works:
 - when such additional services or works cannot be technically or economically separated from the original contract without major inconvenience to the Bank,
 - or
 - when such services or works, although separable from the performance of the original contract, are strictly necessary for its completion.

However, the aggregate value of contracts awarded for additional services or works may not exceed 50 % of the amount of the original contract;

- (b) for new services or works consisting in the repetition of similar services or works entrusted to the economic operator to whom the Bank awarded an original contract, provided that such services or works are in conformity with a basic project for which the original contract was awarded according to the open or restricted procedure and that, as soon as the first project is put up for tender, the possible use of this procedure is disclosed.

This procedure may be used only during the three years following the conclusion of the original contract.

2.3 Framework agreements

The Bank may make use of such agreements⁸ for instance in cases where it can define in advance the main characteristics of the performance requested but where it does not know at the outset the exact delivery times nor the detailed requirements for the assignment to be performed.

For the purpose of concluding a framework agreement, the Bank follows the rules of procedure set out in this Guide for all phases up to the award of the individual contracts based on that framework agreement.

The term of a framework agreement concluded by the Bank may not exceed four years, save in exceptional cases duly justified, in particular by the subject matter of the framework agreement.

Where a framework agreement is concluded with a single economic operator, individual contracts based on that agreement are awarded in accordance with the terms laid down in the framework agreement. For the award of those contracts, the Bank may consult the operator party to the framework agreement in writing, requesting it to supplement its tender as necessary.

Where a framework agreement is concluded with several economic operators, the Bank ensures that there will be at least three of them, provided that as there is a sufficient number of economic operators to satisfy the selection criteria set out in section 2.5.1.1 and/or of admissible tenders which meet the award criteria set out in section 2.5.1.2.

Contracts based on framework agreements concluded with several economic operators may be awarded either:

- by application of the terms laid down in the framework agreement without reopening competition, or
- where not all the terms are laid down in the framework agreement, when the parties are again in competition, on the basis of the same and, if necessary, more precisely formulated terms, and,

⁸ Article 32 of Directive 2004/18/EC

where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:

- (a) for every individual contract to be awarded, the Bank consults in writing the economic operators capable of performing the contract;
- (b) the Bank fixes a time limit which is sufficiently long to allow specific tenders for each individual contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to submit tenders;
- (c) tenders are submitted in writing, and their content shall remain confidential until the stipulated time limit for reply has expired;
- (d) the Bank awards each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

When awarding contracts based on a framework agreement, the Bank shall not accept to make substantial amendments to the terms set out in that framework agreement.

2.4 Rules on advertising

2.4.1 Publication of notices

Save where contracts are awarded following an appropriate market analysis in accordance with section 2.1 hereof or where the negotiated procedure is used in accordance with section 2.2.4.2 hereof, the Bank awards contracts covered by the Directive after publication of a notice in the OJEU.

Contracts which have as their object services listed in Annex II B⁹ of the Directive may be awarded without publication of a contract notice in accordance with the procedures described in section 3 of this Guide.

Contracts which have as their object services listed both in Annex II A¹⁰ and in Annex II B of the Directive shall be awarded after publication of a contract notice where the value of the services listed in Annex II A is greater than the value of the services listed in Annex II B. In other cases, contracts shall be awarded in accordance with the procedures described in section 3 hereof.

Publication consists of three separate notices: (a) a prior information notice, (b) a contract notice and (c) an award notice. The notices shall be drawn up in accordance with the standard forms annexed to the Directive.

a) The prior information notice is a non-mandatory notice by which the Bank makes known, by way of general indication, the estimated total value of contracts, by category of service or groups of products, and the essential characteristics of works contracts which it intends to award during a budgetary year.

b) The contract notice is the means by which the Bank makes known its intention to launch a procurement procedure.

In the case of an open procedure, the contract notice specifies, among others, the date, time and place of the opening of tenders, which the tenderers are allowed to attend.

c) The award notice gives the outcome of the procurement procedure. It is sent to the Office for Official Publications of the European Union no later than forty-eight calendar days after the procedure is closed, that is to say, from the date on which the contract is signed. In the case of a framework agreement, the Bank will not usually issue a notice for each specific contract awarded on the basis of such an agreement.

In addition to the above form of advertising, the Bank may advertise contracts in any other way, notably in electronic form. Any such advertising will refer to the notice published in the OJEU, if one has been published, and will not precede the publication of that notice, which alone is authentic.

⁹ These include, for instance, legal, personnel placement, supply and vocational education services.

¹⁰ These include, for instance, maintenance, computer, auditing and management consulting services.

2.4.2 Time limits¹¹

When fixing the time limits for the receipt of tenders and requests to participate, the Bank takes account of the complexity of the contract in particular and the time required for drawing up tenders, without prejudice to the minimum time limits set by the Directive¹².

In the case of open procedures, the minimum time limit for the receipt of tenders is 52 days from the date on which the contract notice was sent.

In the case of restricted procedures, negotiated procedures with publication of a contract notice and of a competitive dialogue:

(a) the minimum time limit for receipt of requests to participate is 37 days from the date on which the contract notice is sent;

(b) in the case of restricted procedures, the minimum time limit for the receipt of tenders is 40 days from the date on which the invitation is sent.

When the Bank has published a prior information notice referred to above in section 2.4.1, the minimum time limit for the receipt of tenders may, as a general rule, be shortened to 36 days, but under no circumstances to less than 22 days.

Where notices are drawn up and transmitted by electronic means in accordance with the format and procedures indicated in the Directive, the time limits for the receipt of tenders in open procedures and the time limit for the receipt of the requests to participate in restricted and negotiated procedures and the competitive dialogue may be shortened by seven days.

The Bank may decide to offer to tenderers unrestricted and full access by electronic means to the contract documents and any supplementary documents from the date of publication of the notice. The text of the notice shall specify the internet address at which the documentation is accessible. Where the Bank allows access by electronic means, the time limits for the receipt of tenders in open and restricted procedures may be shortened by five days. This reduction may be added to that referred to in the preceding paragraph.

If, for whatever reason, the specifications and the supporting documents or additional information, although requested in good time, are not supplied within the time limits set in section 2.4.3, or where tenders can be made only after a visit to the site or after an on-the-spot inspection of the documents supporting the contract documents, the time limits for the receipt of tenders shall be extended so that all economic operators concerned may be aware of all the information needed to produce tenders.

In the case of restricted procedures and negotiated procedures with publication of a contract notice, where urgency renders impracticable application of the above time limits, the Bank may fix:

(a) a time limit for the receipt of requests to participate which may not be less than 15 days from the date on which the contract notice was sent, or less than 10 days if the notice was sent by electronic means,

(b) and, in the case of restricted procedures, a time limit for the receipt of tenders which shall be not less than 10 days from the date of the invitation to tender.

¹¹ All time limits are indicated in calendar days.

¹² Article 38 of the Directive

2.4.3 Documents relating to the calls for tenders¹³

In open procedures, where the Bank does not offer unrestricted and full direct access by electronic means to the specifications and any supporting documents, the specifications and supplementary documents are sent to economic operators within six days of receipt of the request to participate, provided that the request was made in good time before the deadline for the submission of tenders.

In restricted procedures, competitive dialogue procedures and negotiated procedures with publication of a contract notice in the OJEU, the Bank simultaneously and in writing invites the selected candidates to submit their tenders or to negotiate or, in the case of a competitive dialogue, to take part in the dialogue.

The Bank sends the additional information on the specifications, the descriptive document or the supporting documents not less than six days before the deadline fixed for the receipt of tenders, provided that it is requested in good time. In the event of a restricted or an accelerated procedure, that period shall be four days.

Terms and conditions applicable to contracts awarded by the Bank pursuant to a call for tenders are defined in the invitation to submit a tender, participate in the dialogue or negotiate. This invitation includes either:

- a copy of the specifications of the contract or of the descriptive document and any supporting documents, or
- a reference to accessing the specifications and the other documents indicated in the first indent, when they are made directly available by electronic means.

In addition, the invitation to submit a tender, to participate in the dialogue or to negotiate contains at least:

- (a) a reference to the contract notice published;
- (b) the deadline for the receipt of the tenders, the address to which the tenders must be sent and the language or languages in which the tenders must be drawn up;
- (c) in the case of competitive dialogue the date and the address set for the start of consultation and the language or languages used;
- (d) the draft model contract to which are annexed the general terms and conditions applicable;
- (e) a reference to any possible adjoining documents to be submitted by the tenderer;
- (f) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, if they are not given in the contract notice, the specifications or the descriptive document.

2.4.4 Rules applicable to communication

All communication and information exchange referred to in this Guide may be by post, by fax, by electronic means, by telephone in certain circumstances (Article 42.6 of the Directive), or by a combination of those means, according to the choice of the Bank, who will ensure that the means of communication chosen are generally available and thus do not restrict the economic operators' access to the tendering procedure. Requests by interested parties to participate in the procedures described herein may be made by telephone and must be confirmed in writing before expiry of the time limit set for their receipt.

Communication and the exchange and storage of information shall be carried out in such a way so as to ensure that the integrity of data and the confidentiality of tenders and requests to participate are preserved throughout the procedure. In particular, should the Bank decide to allow the use of electronic means for transmission and receipt of tenders and requests to participate, it shall take appropriate measures in order to ensure that devices used to that effect are compatible with the relevant community requirements on electronic transmission of data.

¹³ Articles 39 & 40 of Directive 2004/18/EC

2.5 Conduct of the procedure

2.5.1 Verification of the suitability and choice of participants and award of contracts

The Bank shall award its contracts on the basis of selection and award criteria announced in the contract notice and/or in the tender specifications, after having first assessed the eligibility of the economic operators to take part in the procedure¹⁴.

2.5.1.1 *Selection criteria*

The purpose of these criteria is to determine whether an operator has the necessary economic and financial standing and technical and professional ability to perform the contract¹⁵.

In any event, the Bank ensures that the information it requests as proof of the financial, economic, technical and professional capacity of the candidate or tenderer does not go beyond the subject of the contract and takes account of the legitimate interests of the economic operators as regards in particular the protection of the technical and business secrets.

The Bank may lay down minimum capacity levels below which it will not select tenderers or candidates. These minimum levels shall be indicated in the contract notice.

In restricted procedures, negotiated procedures with publication of a contract notice and in the competitive dialogue procedure, the Bank may limit the number of suitable candidates it will invite to tender, to negotiate or to conduct a dialogue with, provided a sufficient number of suitable candidates is available. The Bank shall indicate in the contract notice the objective and non-discriminatory criteria it intends to apply, the minimum number of candidates it intends to invite and, where appropriate, the maximum number.

Where, in restricted procedures, negotiated procedures with publication of a contract notice and in the competitive dialogue procedure, the number of candidates meeting the selection criteria and the minimum levels of ability is below the minimum number set in advance, the Bank may continue the procedure by inviting the candidate(s) with the required capabilities. In the context of this same procedure, the Bank will not include other economic operators who did not request to participate, or candidates who do not have the required capabilities.

2.5.1.2 *Award criteria*

The purpose of these criteria is to choose between tenderers who have not been disqualified from the procedure in accordance with section 2.5.1 hereof and who otherwise meet the selection criteria set out in the contract notice or in the specifications.

The criteria on which the Bank bases the award of contracts are either:

- (a) when the award is made to the tender most economically advantageous (best price-quality ratio) from the point of view of the Bank, various criteria linked to the subject-matter of the contract in question, for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, or
- (b) the lowest price only.

¹⁴ The assessment is done in accordance with Articles 45 and 46 of the Directive. Candidates or tenderers will be disqualified from the procedure if they have been involved, in the meaning of Article 45, in criminal activities including corruption, fraud or money laundering. They may be disqualified if i) they are bankrupt or in any analogous situation which affects or may affect their financial status, ii) they have been convicted by the competent bodies of a professional misconduct; iii) they have been found guilty of grave professional misconduct proven by any means which the Bank can demonstrate; iv) they have not fulfilled obligations relating to the payment of tax or social security contributions; or v) they have been found guilty of serious misrepresentation in supplying or failing to supply information required by the Bank. In accordance with Article 46, candidates or tenderers may also be disqualified from the procedure if they fail to prove that they hold the relevant permits or membership to pursue their professional activity.

¹⁵ The Bank shall define these criteria in accordance with Articles 47 and 48 of the Directive taking into account, where appropriate, the provisions of Articles 49 and 50.

In the case referred to in (a) above the Bank specifies in the contract notice or in the contract documents or, in the case of a competitive dialogue, in the descriptive document, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.

Those weightings can be expressed by providing for a range with an appropriate maximum spread.

Where, in the opinion of the Bank, weighting is not possible for demonstrable reasons, the Bank indicates in the contract notice or contract documents or, in the case of a competitive dialogue, in the descriptive document, the criteria in descending order of importance.

2.5.2 Contacts between the Bank and candidates and tenderers

During a tendering procedure, the Bank does not accept to enter into any discussions with candidates or tenderers that could compromise the objectivity of the procedure or the equal treatment of economic operators.

The Bank may, however, contact candidates or tenderers in writing to obtain clarification on specific points, respectively, on their request to participate or tender. Such contacts cannot lead to modifications being made to the terms of the requests to participate or tenders.

Should the Bank discover an error, a lack of precision, an omission or any other type of clerical defect in the contract documents, it may inform in writing all economic operators concerned and complete or rectify the documents accordingly.

Questions regarding the contract specifications or any supporting documents should be addressed exclusively in writing to the competent service of the Bank designated in the contract documents as a sole point of contact for that contract.

Once it has reached a decision regarding the tendering procedure, the Bank shall inform all parties concerned of the decision reached as soon as possible.

On request from the party concerned, the Bank will, within 15 days from receipt of the written request, inform:

- any unsuccessful candidate or tenderer of the reasons for the rejection, respectively, of his request to participate or tender,
- any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement.

However, the Bank may decide to withhold certain information affecting legitimate commercial interests of the economic operators or where the release of such information would impede law enforcement or would otherwise be contrary to the public interest.

3. Procedures applicable to contracts of a type not covered by the Directive

3.1 Types of procedure

For the award of its service, supply and works contracts which are not covered by the Directive, the Bank follows one of the procedures described below.

Contracts which have a total value exclusive of VAT estimated to be

- between EUR 35 000 (EUR 207,000 for works) and less than EUR 207 000¹⁶ (EUR 2 500 000 for works) contracts may be awarded by negotiated procedure based on a short-list including at least five tenderers; contracts which have as their object services listed in Annex II B of the Directive may be awarded following this procedure independently of the upper value of such contracts;
- Only for works, between EUR 35 000 and less than EUR 207,000, may be awarded by negotiated procedure based on a short-list including at least three tenderers;

¹⁶ This threshold of 207.000 EUR is fixed by the Directive 2004/18/EC from 1/1/2014 onward. Any future changes to this threshold introduced within the Directive 2004/18/EC by the EC are automatically applicable to this Guide.

- below EUR 35 000, may be awarded by negotiated procedure with one tenderer.

3.2 Rules on advertising

In pursuance of the Bank's commitment to respecting the fundamental EU principles regarding public procurement, save where the negotiated procedure can be used in accordance with the above provisions, service, supply and works contracts which are not covered by the Directive are nevertheless advertised by appropriate means in order to ensure competitive tendering and impartiality of the procurement procedure.

The Bank considers that it satisfies these requirements if it launches a call for tenders, without publication of a notice in the OJEU, involving at least the number of tenderers specified in section 3.1 above.

Tenderers admitted to take part in the procedure are normally selected following an appropriate market survey or on the basis of other information made available to the competent Bank services on economic operators' capabilities to perform the contract. Whenever justified in the interest of increased competition, prior to the launch of the procedure, the Bank may consider requests to participate from any interested providers who have made themselves known and who, in the opinion of the Bank, possess the minimum skills and competences required for a particular contract to be tendered.

Unless formally invited by the Bank to do so, no economic operator has the right to take part in the procurement procedure.

The invitations are sent simultaneously and in writing to all selected tenderers. When fixing the time limits for the receipt of tenders, the Bank takes account of the complexity of the contract and the time required for drawing up tenders. In any event, the Bank ensures that the time limit is reasonable to allow the tenderers to appropriately prepare their tenders.

3.3 Conduct of the procedure

The main features described in section 2 above apply, *mutatis mutandis*, to Bank procurement for lower value contracts not covered by the provisions of the Directive. Consequently, for instance, for each contract to be awarded through competitive procedure, the Bank sends tender specifications and supporting documents to the selected tenderers with the instructions for submission of offers. Contracts are awarded on the basis of award criteria announced in the specifications. In the event that the award is made to the most economically advantageous tender, the relative weighting given to each of the criteria will be indicated.

ANNEX 1 – DEFINITIONS

“Service contracts” are contracts other than works or supply contracts having as their object the provision of services referred to in Annex II of the Directive.

A contract having as its object both products and services within the meaning of Annex II of the Directive shall be considered to be a service contract if the value of the services in question exceeds that of the products covered by the contract.

A contract having as its object services within the meaning of Annex II of the Directive and including activities within the meaning of Annex I of the same that are only incidental to the principal object of the contract shall be considered to be a service contract.

“Supply contracts” are contracts other than work contracts having as their object the purchase, lease, rental or hire purchase, with or without option to buy, of products.

A contract having as its object the supply of products and which also covers, as an incidental matter, sitting and installation of operations shall be considered to be a supply contract.

“Work contracts” are contracts having as their object either the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex I of the Directive, or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority.

A **“work”** means the outcome of building or civil engineering works taken as a whole, which is sufficient of itself to fulfill an economic or technical function.

A **“Framework agreement”** is an agreement between the Bank and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

The terms **“contractor”**, **“supplier”** and **“service provider”** mean any natural or legal person or public entity or group of such persons and/or bodies which offers on the market, respectively, the execution of works and/or a work, products or services.

The term **“economic operator”** shall cover equally the concepts of contractor, supplier and service provider. It is used merely in the interest of simplification.

An economic operator who has submitted a tender shall be designated as a **“tenderer”**. One which has sought an invitation to take part in a restricted or negotiated procedure or a competitive dialogue shall be designated a **“candidate”**.

“Open procedures” means those procedures whereby any interested economic operator may submit a tender.

“Restricted procedures” means those procedures in which any economic operator may request to participate and whereby only those economic operators invited by the Bank may submit a tender.

“Competitive dialogue” is a procedure in which any economic operator may request to participate and whereby the Bank conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender.

“Negotiated procedures” means those procedures whereby the Bank consults the economic operators of their choice and negotiate the terms of contract with one or more of these.

“Design contests” means those procedures which enable the Bank to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.

“Written” or **“in writing”** means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.

“Electronic means” means using electronic equipment for the processing and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.



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