



# ICCO COOPERATION

## PROCUREMENT MANUAL

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## 1. Mandatory Principles

### 1.1 Introduction

The activities of ICCO and its Implementing Partners are guided by the respect of international law and the core humanitarian principles of humanity, impartiality, neutrality and independence.<sup>1</sup> Respect for these principles should be accompanied by the observance of high procurement standards by ICCO and its Implementing Partners as Contracting Authority as well as by their suppliers and other contractors.

The Mandatory Principles are, as their name suggests, obligatory for procurement regardless of who is awarding the contract or conducting the procurement procedure and regardless of the estimated value of the contract.

The following principles are the main Mandatory Principles which each imply respect for certain related concepts and procedures which must all be observed by all actors at every stage of the procurement processes:

- (i) The Principle of Ethical Procurement;
- (ii) The Principle of Transparency in the Procurement process;
- (iii) The Principle of Proportionality between the procedures followed for awarding contracts and the value of the contracts; and
- (iv) The Principle of Equal treatment and non-discrimination of potential contractors and donors.

There is a strong interdependence between the different Mandatory Principles. The compliance with one principle reinforces or is a condition for the compliance with another. For instance, in order to maintain the Equal treatment and non-discrimination of potential contractors it is necessary to ensure open competition through the publication of pre-established and announced criteria for exclusion and selection (Principle of Transparency) and these procedures should be as simple and accessible as possible (Principle of Proportionality) for all to be able to participate and compete equally. Furthermore in offering equal chances to all potential contractors a level playing field must be ensured which necessarily excludes the existence of any fraud, corruption or conflict of interests (Principle of Ethical procurement).

Just as the Mandatory Principles are interdependent, they may sometimes overlap and result in an apparent conflict. **There is no hierarchy between the Mandatory Principles of procurement and an integrated and coherent application of all the Mandatory Principles is necessary to overcome the potential conflicts among them.** For instance, the principle of Transparency requires open tendering, where possible, involving broad advertisement, increasing costs and resulting in higher administrative effort, which could contradict the principle of Proportionality and reducing the effectiveness of the

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<sup>1</sup> Compare: The European Consensus on Humanitarian Aid, Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission (2008/C 25/01). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:025:0001:0012:EN:PDF>

process. Therefore, a certain degree of flexibility and reaction capacity should be built into the system to overcome any conflict between procedures and priorities. Contracting authorities and those acting in or supporting the procurement function are in a special position of trust and must uphold high standards of professionalism to be able to solve any potential conflict between the respect of the Mandatory Principles and the humanitarian imperatives.

**It is essential that steps taken and reasons for taking them are well documented and that this documentation is kept on file in case the process is later monitored by ICCO, audited independently or some dispute arises on the procurement procedures followed.**

## 1.2 The Principle of Ethical Procurement

For Contracting Authorities, Tenderers and Candidates to truly observe the highest ethical standards during the procurement and execution of contracts means that they must, to the greatest extent possible, ensure that their suppliers and contractors further down the supply chain also maintain high standards of Ethical procurement, treatment of workers and use of resources.

The maintenance of high ethical standards in all actions by ICCO and its Implementing Partners naturally also includes due regard to the respect of the consuetudinary principles of International Humanitarian Law. In the context of procurement particular reference may be made here to the principle of **impartiality**, meaning that the implementation of Actions must solely respond to identified needs, without discrimination of any kind; the principle of **independence**, which implies the autonomy of the humanitarian or development Action with regard to economic or other motivations as well as the principle of **neutrality** which means that, in order to continue to enjoy the confidence of all, the organisation may not take or appear to take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Ethical behaviour may seem like a wide concept, but in the field of procurement some ethical concepts and principles are particularly relevant:

- **Respect for rules and regulations**: rules have to be applied and interpreted in accordance with their intention. All persons involved in procurement should understand the rules and regulations pertaining to their function and respect the formal requirements imposed by them.
- **Integrity**: integrity refers to personal qualities such as honesty, truthfulness, fidelity, probity and freedom from corruption.
- **Impartiality and fairness**: These ethical values ensure the objectivity and lack of bias, the restrained and equitable adoption of decisions.
- **Due diligence**: Due diligence refers to carrying out duties professionally, carefully and thoroughly, going well beyond the minimum effort.
- **Avoidance of appearance of impropriety**: The public trust cannot be compromised. Employee behaviour should be regular and proper and should also be seen to be so. This places extra responsibility on procurement professionals who must not only ensure that they act properly, but must also strive to avoid even the appearance of impropriety.

### 1.2.1 Ethical behaviour of the Contracting Authority

Ethical conduct is an ongoing process of self-regulation and reflection at every stage of the procurement process. The Contracting Authority manages funds provided in trust by public authorities and private individuals. These funds should be in the first instance at the benefit of the beneficiaries: people affected of a crisis or in urgent need for access to economic, social and political rights.

In order to ensure the highest standards of ethical behaviour throughout its organisation and, in particular, in the framework of procurement procedures, the Contracting Authority should ensure that its policies and procedures include systems and mechanisms which enable it to

- Prevent, detect and sanction unethical practices; so as to mitigate any financial and reputational risk linked to unethical behaviour.
- Take prompt action in cases of unprofessional or unethical behaviour;
- Enforce policy to address possible conflicts of interest;
- Provide guidance to staff at all levels and promote the observance of Ethical procurement standards in all purchasing activity;
- Address the treatment of unethical personal financial gain and the acceptance of large or otherwise inappropriate gifts;
- Have, (in its internal procurement procedures, guidelines for tender documents, its standard tender and contractual documents etc.), rules in place which prevent it from accepting any bid put forward by Tenderers or Candidates, or, where applicable, terminate their contract, if it is determined that they have engaged in corrupt, fraudulent, collusive or coercive practices.

#### Avoidance of Conflict of Interests

There is a situation amounting to conflict of interest where the impartial and objective exercise of the functions of a person involved in budget implementation, procurement, management, audit or control is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a third party. A conflict of interests may arise even in the case of honest and responsible staff members and, unless staff is trained or otherwise made aware of the issue, some members of staff may not even realise that the conflict exists.

Rules defining and limiting conflict of interests situations are necessary to ensure that staff members of the Contracting Authority cannot use their functions or information obtained for professional reasons for private gain, financial or otherwise, or for private gain of any third party. For example, a conflict of interests shall be presumed to exist if a Candidate or Tenderer is a member of staff of the Contracting Authority or has an equivalent professional relation with the Contracting Authority. Another practical example of avoiding conflict of interests is ensuring that buying Agents or other service providers, providing Technical Assistance to the Contracting Authorities in a procurement procedure, are precluded from presenting bids for contracts to be awarded under that same procedure.

The Contracting Authority should have in place clear rules and guidance to staff on what to do in case they or one of their colleagues are in a situation of conflict of interests including whom they may ask for advice or disclose the conflict to in order to resolve or decide upon the potential problem and, where necessary, take the appropriate action. It is good practice that staff involved in the

procurement process, including those participating in opening committee and evaluation committees sign formally in advance of their duties, a declaration of no conflict of interests.

Implementing Partners shall inform ICCO immediately when confronted with a situation constituting or likely to entail a conflict of interest. If in this case the funds have been provided to ICCO by an Institutional Donor, ICCO at its turn will immediately inform this Donor. ICCO and its Implementing Partner should jointly adopt measures to address the situation of conflict of interests. Appropriate provisions should be included by the Contracting Authority in the bidding documents and in the contractual instruments.

### Gifts and gratuities

A common question related to conflict of interest situations is whether or not to accept gifts from existing or potential contractors, Candidates or Tenderers. Offering gifts to customers is sometimes seen as a common practice in the private sector.

Contractors often offer different types of gifts, for example perishable products, hospitality, free training courses or experiences like exhibitions, fair trades, and sometimes in kind donations, etc. that are related to the activity of the humanitarian organisation. Nevertheless, as a general rule, significant gifts and hospitality from suppliers cannot be accepted in order to maintain an atmosphere of honesty and integrity in affairs and to avoid unfair competition.

While each organisation remains best placed to manage how to deal with this issue, identifying which gifts are acceptable or not is not always easy, so staff require adequate instructions. For example, training activities may be seen as beneficial for the organisation. A very careful review of the impact should be taken into account: would receiving the gift benefit one company over the others? Would acceptance be fair to the competitors? In cases where the content of such training / events is deemed appropriate and beneficial for the organisation in a technical sense, self-financial support, i.e. for travel expenses should be considered. The Contracting Authority should therefore ensure that their staff dealing with procurement are aware of such practices and how where or to whom to turn for advice to avoid any inappropriate receipt of gifts.

<b>Table B1 – Good Practice concerning the receipt of gifts and avoidance of conflicts of interests</b>	
<b>If the gift is...</b>	<b>Then...</b>
Low value, e.g. pens, stationery, chocolates, etc.	Accept it and share it with the colleagues in your office
Relatively high value, (e.g. more than €25)	Accept it, inform your management and inform the supplier that it is put at the disposal of your organisation
High value, (e.g. more than €100)	Return it, and thank the supplier but say you are not allowed to accept it. An internal registry should be established to record significant gifts and their value.
Sent to staff members' private address	Return it and tell the contractor that it is unacceptable practice to send gifts to staff members' private addresses.
Invitations from (potential) contractors to work-related lunches, dinners, receptions	Can be accepted if the intention is to discuss questions in the interest of the Contracting Authority or as part of the staff member's official function
Invitations from (potential) contractors of a social kind and substantial hospitality (accommodation)	Should always be declined if not related to work.

### Regularity of procurement procedures

Procurement is an activity that is potentially vulnerable to irregular and illegal activities such as fraud and corruption. Corruption and fraud in the Actions deplete funds intended for the achievement of the objectives of the Action directly damaging the interest of the beneficiaries. They undermine the effective functioning of the organisation and can jeopardize its existence.

Contracting Authorities shall reject any bids put forward by tenderers or candidates, or, where applicable, terminate their contract, if it is determined that they have engaged in corrupt, fraudulent, collusive or coercive practices. Naturally the Contracting Authority must also refrain from these practices and should, to the extent possible, ensure that none of their staff, associates, suppliers or other contractors engage in these irregular practices.

Individuals taking part in the procurement procedure should be accountable for their acts or omissions in the fulfilment of their duties and may be held personally responsible and financially liable for the consequences of professional wrongdoing, gross negligence or unethical behaviour. This is, of course, without prejudice to any applicable penal responsibilities arising in the country having criminal jurisdiction. Should irregular activity on the part of the contractor be confirmed, the Contracting Authority shall terminate the contract and inform ICCO immediately. If in this case the funds have been provided to ICCO by an Institutional Donor, ICCO at its turn will immediately inform this Donor.

**Corruption** is the practice of offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the activities of the Contracting Authority in the competitive selection process or in contract execution. Corruption can follow a direct approach, such as cash payments to a staff member of the Contracting Authority, or an indirect approach, where the benefits are given to family members or paid to business in which the corrupt person has an interest. The benefits can also be offered for the future, such as offers of future employment.

**Fraudulent practice** is defined as 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.

**Collusion** is the undisclosed arrangement between two or more Tenderers or Candidates designed to artificially alter the results of the tender procedure to obtain a financial or other benefit. Without knowledge of the contracting authorities, bidders coordinate their offers in order to establish prices at artificial, non-competitive levels.

**Coercion** means impairing or harming, or threatening to impair or harm, directly or indirectly, any participant in the tender process to influence improperly its activities.

In the event of being confronted by any these practices, without prejudice to its duty of due diligence and to the protection of its interest by all available means, the Implementing Partner should inform ICCO immediately in writing providing all the relevant information. If in this case the funds have been provided to ICCO by an Institutional Donor, ICCO at its turn, will immediately inform this Donor.



## Due Diligence and Risk Management

Ethical procurement goes beyond merely respecting the letter of the law, it involves observing the principles which underlie Humanitarian Aid and Development Cooperation, respecting the dignity of the beneficiaries and their right to efficient aid and ensuring complete accountability to the donor. Due diligence involves carrying out duties professionally, carefully and thoroughly, going well beyond the minimum effort.

In order to be adequately diligent in procurement matters a Contracting Authority should be aware of the importance of good procurement planning and should have in place systems of identifying risks and managing them.

Timely and systematic procurement planning is an important tool to manage the involved risks.

### 1.2.2 Ethical behaviour of contractors

Traditional procurement focused upon value-for-money considerations such as, price, quality, availability, timely delivery, functionality. For ICCO and its Implementing partners procurement involves looking beyond the traditional economic parameters and making decisions based on the whole life cost, the associated risks, measures of success and implications for society and the environment. Making decisions in this way requires setting procurement into a broader strategic context including a number of factors:

**Working conditions:** Very important aspects of ethical procurement are that of the avoidance of Child Labour and the assurance of adequate working conditions. Procurement contracts awarded should seek to support and encourage freedom of association and decent working conditions in the workplace and actively seek to avoid relationships with contractors that engage child labour, bondage or forced labour, or practice discrimination in the work-place. Working conditions should protect more vulnerable workers from exploitation or abuse of any sexual or other nature. The Contracting Authority must be sure that Candidates and Tenderers respect basic social rights and working conditions and do not procure goods or services from suppliers who use child labour or other exploitative practices. Other exploitative labour practices would include for example situations where the employer curtails the rights of freedom of association, collective bargaining or to join trade unions.<sup>2</sup>

**Social Rights:** Before awarding a procurement contract to a given contractor the Contracting Authority should consider the effects of that choice on issues such as poverty eradication, human rights, Fair-trade, sustainable development<sup>3</sup> and inequality in the distribution of resources. For

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<sup>2</sup> For more information on international standards on labour conditions please visit

<http://www.ilo.org/global/lang-en/index.htm>

<sup>3</sup> More on this matter may be found in the European Commission communication of 5 May 2009 entitled "Contributing to Sustainable Development: The role of Fair Trade and non-governmental trade-related sustainability assurance schemes" (COM(2009)0215), Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0215:FIN:EN:PDF>

example in one situation it might be more ethical to procure locally to support the local economy and generate jobs while in another situation procuring locally would place an undue strain on limited local resources, such as water, or artificially inflate prices to the detriment of the local population.

**Environmental aspects:** Consideration should also be given to the effects on the environment that the assets, supplies and/or services may have, including, where possible, to the effects of waste management ("green procurement"<sup>4</sup>). A supplier's environmental performance as well as the sustainability of the delivered products and solutions should, where possible be included as criteria in the selection process and be considered during supplier assessment exercises.

**Humanitarian Principle of Neutrality:** Procurement decisions, including those linked to the transport of aid, must reflect and respect the humanitarian principle of neutrality particularly in any man-made disaster or conflict. For example, dealing with a contractor with known links to one of the parties in a conflict -such as a company that supplies or transports arms or other supplies to a military actor or other combatant<sup>5</sup> -, would be a violation of the principle of neutrality and in any case would be unethical. Since certain commodities, such as precious minerals, diamonds, energy resources or other items which fuel, fund or facilitate armed conflict, can have such a destabilising effect in man-made conflicts, it may be unethical to contract services such as transport for humanitarian aid from a contractor known to transport these commodities and could moreover compromise the principle of neutrality. Likewise, in order to uphold this principle in the eyes of the victims of humanitarian crises and to avoid unnecessary confusion for them, the use of military or civil defence assets (e.g. helicopters & vehicles etc.) to deliver humanitarian aid, particularly in man-made disasters, should be used as a last resort when comparable civilian alternatives cannot be found.<sup>6</sup> This fundamental principle of neutrality in the implementation of humanitarian aid is supported by the more active concept of "Do No Harm" or conflict-sensitivity which states that humanitarian actors and, by extension all those involved in the delivery or transport of aid, should attempt to minimise the negative effects so that their interventions do not render civilians more vulnerable to attack, or bring unintended advantage to any military actors or other combatants. "Do No Harm" implies that potential unintended harmful effects of the humanitarian response (e.g. prolonging the conflict) or effects that promote inequity amongst recipients of aid should be identified from the initial stages of the programme design and should be pro-actively avoided.<sup>7</sup>

**Ethical Transport & Cargo:** When awarding a procurement contract to a private company the Contracting Authority should consider, where possible, whether that contractor is also involved in or

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<sup>4</sup> For more on the EU's initiatives on "green procurement" please visit: [http://ec.europa.eu/environment/gpp/index\\_en.htm](http://ec.europa.eu/environment/gpp/index_en.htm)

<sup>5</sup> For more related information see Lexicon of key civil-military relations related terminology Prepared by VOICE EU civil-military relations working group March 2009  
<http://www.ngovoice.org/documents/CIV%20%20MIL%20LEXICON%20FINAL%20MAY%202009.pdf>

<sup>6</sup> More information on the use of military and civil defence assets in disaster relief is available at <http://ochaonline.un.org/> in the section on Humanitarian Civil-Military Coordination.

<sup>7</sup> Also referred to in Part 3.3 para 42 of The European Consensus on Humanitarian Aid, Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission (2008/C 25/01).

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:025:0001:0012:EN:PDF>

linked to illegal activities (e.g. arms, drug or people smuggling). For example it would be unethical to contract services such as transport from a contractor known to transport drugs, arms or other illicit or illegal supplies or which conducts clandestine or rendition flights which may be contrary to international humanitarian law. In a number of countries the availability of cargo operators is limited due to security considerations therefore rather than setting fixed rules it is more relevant here to emphasise the importance of due diligence and cooperation/coordination between humanitarian actors to minimise the risk of funds being used to financially support businesses involved in unethical practices or even in violations of international human rights or humanitarian law.

Where an organisation opts to use a broker or freight forwarder in order to arrange the transport of relief items it is important that the organisation as the Contracting Authority makes it clear that the broker is expected to carry out due diligence on suppliers according to ethical considerations. A broker's ability to demonstrate it has an effective and public ethical policy in place could provide a concrete example of due diligence. This in itself does not absolve the Contracting Authority of doing its own checks, where necessary, to be satisfied that the broker has adequate ethical credentials or that ethical standards have been met in a particular transaction. If the Contracting Authority is relying on the supplier of the goods to arrange transportation, the supplier must be made aware of the ethical transport and cargo standards described above and included in Annex 2 to this manual.

Since all contractors should adhere to the highest ethical standards, **both during the bidding process and throughout the execution of a contract**, the Contracting Authority shall ask Candidates and Tenderers to submit a **formal declaration** accompanying their Tender or Offer:

- Undertaking to carry out their duties to the highest professional standards, in particular in terms of objectivity and impartiality and exclusively in the best interests of the Contracting Authority with no consideration linked to possibilities for future contracts;
- Guaranteeing that there is no conflict of interest with other commitments or contracts recently concluded or to be concluded either individually or through any consortium to which the contractor might belong or through any subsidiary or related company;
- Ensuring the respect of social and environmental aspects as stated above (particularly on the point of Child Labour); and
- Stating that they are not in any of the situations of Exclusion as referred to in Article 93 and 94 of the Financial Regulation applicable to the general budget of the European Union (see Exclusion Criteria, below).

Annex 2 to this manual offers a sample Declaration of ethical and regular Activity which Contracting Authorities shall ask Candidates or Tenderers to sign. It may be adapted according to the law governing the procurement contract, the type of relationship between the Contracting Authority and the signatory or the nature of the signatory (e.g. intermediary or broker).

### 1.3 **The Principle of Transparency in the Procurement process**

The principle of transparency could be defined as the unimpeded visibility and openness in all transactions, ensuring that all information on procurement procedures, opportunities and processes are clearly defined and made widely known and available. A transparent system increases the

possibility of detecting any deviations from fair and equal treatment, and therefore makes such deviations less likely to occur. Transparency thus protects the regularity of the procurement process.

### **(i) Transparency and Open Competition**

For procurement procedures to be fair and offer equal treatment to potential contractors they need to be conducted in the spirit of transparency and open competition.

In the framework of public procurement the Contracting Authority will make use of competitive procurement procedures. Whenever possible and advisable, advertisement of tendering opportunities should be done in an open and international manner. On the other hand the possibility of limiting and restricting competition has to be open when it could contradict the efficient use of resources or it will not be effective for producing results.

The principle of competition is fulfilled with fair and transparent procurement procedures rather than exclusively broadening the number of potential bidders. The principle of competition and the objective of broadening participation should be compatible with the wider objective of the Action.

Humanitarian imperatives may override the principle of competition in procurement transaction, for example, during humanitarian emergencies where open international competitive tendering may not reflect the best use of administrative resources to complete procurement within a reasonable period. These exceptional situations shall be well defined. The Implementing Parting shall ask ICCO for derogation from standard procurement procedures. When the funds are provided to ICCO by an Institutional Donor, ICCO shall ask this Donor for derogation from standard procurement procedures.

### **(ii) Exclusion Criteria**

Just as the principle of Transparency requires the establishment of clear Selection criteria (below), it also requires that interested parties be informed in advance of the Exclusion criteria. The announcement of this criteria offers equal treatment and ensures the regularity of the procurement procedure.

ICCO applies the Exclusion Criteria that are found in the Financial Regulation applicable to the general budget of the European Union ("Financial Regulation")<sup>8</sup> and in the detailed rules for its implementation ("Implementing Rules")<sup>9</sup>.

1. Candidates or tenderers shall be excluded from participation in procurement procedures if:

(a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

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<sup>8</sup> OJ L 248, 16.9.2002, p. 1, as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ L 390, 30.12.2006, p. 1).

See consolidated version: <http://eur-lex.europa.eu/LexUriServ/site/en/consleg/2002/R/02002R1605-20070101-en.pdf>.

<sup>9</sup> OJ L 357, 31.12.2002, p. 1, as amended by Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005 (OJ L 201, 2.8.2005, p. 3), by Commission Regulation (EC, Euratom) No 1248/2006 of 7 August 2006 (OJ L 227, 19.8.2006, p. 3) and by Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 (OJ L 111, 28.4.2007, p. 13). See consolidated version: <http://eur-lex.europa.eu/LexUriServ/site/en/consleg/2002/R/02002R2342-20070501-en.pdf>.

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

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

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

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

(f) they are currently subject to an administrative penalty referred to in Article 96(1).

Points (a) to (d) of the first subparagraph shall not apply in the case of purchase of supplies on particularly advantageous terms from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law."

The situations of Exclusion as well as the procedure for the verification shall be explained in the tender documentation.

2. Furthermore contracts may not be awarded to Candidates or Tenderers who, during the procurement procedure:

(a) are subject to a Conflict of interest;

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

(c) find themselves in one of the situations of Exclusion, referred to in Article 1., for the procurement procedure in question.

In order for the Contracting Authority to ascertain that Candidates and Tenderers are not in any of the situations of Exclusion, it shall request the Candidates or Tenderers to provide a formal declaration stating that they are not in any of the situations of Exclusion as referred to in these articles. (See Annex 2 – Sample Declaration for Candidates and Tenderers)

### **(iii) Selection Criteria**

Tender documents shall define clear pre-established and non-discriminatory selection criteria. The selection criteria shall be applied in every procurement procedure for the purpose of assessing the financial, economic, technical and professional capacity of the Candidate or the Tenderer. Candidates and Tenderers must satisfy certain objectively justifiable minimum requirements, which include the legal capacity to enter into a contract, the necessary professional and technical competence, financial

strength, plant, equipment and other physical facilities and qualified personnel to satisfy the requirements of the proposed work, service or supply. Any Tenderer or Candidate may be asked to prove that he is authorised to perform the contract under national law. The Contracting Authority shall specify in the Contract Notice or in the invitation to negotiate the references chosen to test the status and the legal capacity of Tenderers or Candidates. The Contracting Authority may lay down minimum capacity levels below which bids will not be selected. Depending on the type of contract to be awarded the Contract Notice and the tender documents or invitation to negotiate shall clearly explain the:

**Terms of Reference** -These are requirements for a Service Contract which accurately define the characteristics of the service required with regard to the purpose for which it is intended and sets out conformity assessment procedures prescribed by a Contracting Authority. Reference to these should be included in the Contract Notice; or

**Technical Specifications** -These are the requirements for Supply and Works Contracts that:

- set out the characteristics of supplies to be procured, such as quality, performance, safety and dimensions, or the process and methods for their production, or the processes or methods for their provision, including any applicable administrative provisions;
- address terminology, symbols, packaging, marking or labelling requirements, as they apply to a supply or related services; or
- set out conformity assessment procedures prescribed by a Contracting Authority. The information requested by the Contracting Authority as proof of and the minimum capacity levels may not go beyond the subject of the contract and shall take account of the legitimate interests of the economic operators as regards in particular the protection of the firm's technical and business secrets.

The principle of Proportionality may justify the imposition of very high selection criteria for large contracts or for supplies such as pharmaceutical products or medical devices. In such cases the standard procedures are adjusted to make provision for the overriding need to secure reliable suppliers, high quality and safe products (see Chapter 8, Special Rules).

Furthermore, a Contracting Authority may explicitly prioritize in the selection criteria factors which are otherwise extraneous to the immediate procurement but that contribute to the achievement of the objectives of the Action, such as the support to local livelihoods, support to most vulnerable women-owned businesses or prioritising bids received from disadvantaged groups, etc. These selection criteria are part of the normal implementation of the Action and can be accepted on condition that the link between the objectives of the Action and the procurement strategy are clearly presented and reasoned.

Specifications may be stated as one or a combination of the following:

Specification	Description
Functional	Focuses on what the product or service is to do.
Performance	Describes what is to be achieved.
Technical	Defines exact design and details of the good, service or work.

In some cases, restrictive selection criteria (or a particular brand name) may be needed for ensuring compatibility with existing equipment or other equivalent circumstances. In that case the Contracting Authority has to document the justification in the tender file. When a brand name is cited for the purpose of defining standards, the specifications should clearly indicate that no particular preference will be given to the specified brand names when evaluating the offers, and it should be followed by "or equivalent" to ensure that other brands are not discriminated against. In any case, minimum requirements have to be clearly stated in advance.

#### **(iv) Award Criteria and Best Value for Money**

Along with information on the Selection and Exclusion criteria, the principle of transparency requires that the Award Criteria also be set and communicated at the outset of the procurement procedure.

Award criteria shall be weighted, meaning that it should be possible for the Tenderer or Candidate to understand the comparative importance of the different award criteria and to differentiate the more important from the less important criteria. This also makes it possible to assess the quality of the proposals submitted in the light of the objectives and priorities set.

The Contracting Authority should award the contract to the Tenderer or Candidate who has submitted the best tender or bid on the basis of the award criteria set out at the launch of the procurement procedure. The award criteria must be defined in such a way that it will be possible subsequently to carry out an evaluation that the contract was properly awarded.

The award criteria published shall serve to identify the tender or bid offering best value for money, that is to say, the best price-quality ratio. This is the criterion to be applied for selecting the bid winning the contract. 'Best value for money' means selection of the bid which presents the optimum combination of factors such as appropriate quality, life-cycle costs and other parameters to best meet defined needs and objectives of the Action.

The most economically advantageous bid is not the same as the lowest price option. It requires an integrated assessment of technical, organisational, and pricing factors in light of their relative importance. Strategic objectives defined in the Action proposal should, equally, be taken into account with due regard to the Principle of Proportionality.

Contracting authorities shall specify in the Contract Notice or in the call for expressions of interest or the invitation to submit a tender, the criteria relevant for assessing the quality of the bids submitted in the light of the objectives and priorities set.

Equally, the weighting that will apply to each of the criteria for determining 'Best value for money' shall be specified in the Contract Notice or in the specification or in the descriptive document. That weighting may be expressed as a range. If, in exceptional cases, weighting is technically impossible the Contracting Authority shall merely specify the decreasing order of importance in which the criteria are to be applied.

#### **(v) Respect of confidentiality**

Details on pricing, proprietary data belonging to a supplier or trade secrets may be held confidential while still respecting the principle of Transparency. The duty of confidentiality pertains to all those involved in the procurement procedure including the Contracting Authority, members of any

Evaluation Committee and also the Tenderers or Candidates. Consequently this duty is referred to in both the sample declarations contained in Annexes 1 and 2 to this manual.

Confidentiality needs extra consideration in the context of humanitarian procurement due to the delicate nature of the information that is handled in the framework of the humanitarian Action. Security considerations may overrule some aspects of external transparency, in particular publication requirements. The procedure for waiving transparency requirements on the basis of security considerations should be codified in the Contracting Authority's procurement rules, (including, when relevant, the procedure for seeking the donors' agreement) or covered by other procedures such as those waiving normal procedures in exceptional cases.

Finally, disclosure of information linked to a procurement procedure has to be compatible with the humanitarian principle of neutrality, avoiding the provision of information that could be of any operational use to parties in conflict.

#### **(vi) Right of access for the purposes of verifications and audits**

The purpose of the verifications and audits is to control the legality and regularity of the procurement process, ensuring that the Contracting Authority respected the applicable procedures.

ICCO's Implementing Partner shall facilitate access of ICCO or persons mandated by ICCO on documents and on the spot, over all Contracting Authorities and contractors who have received its funds.

In case the funds were provided by the European Commission, both ICCO and its Implementing Partner shall facilitate the same access to the European Commission, or persons mandated by the European Commission, including the European Anti-Fraud Office (OLAF), and the Court of Auditors.

To this end, the Contracting Authority shall provide complete information on the procurement procedures, documents, and abstain from any obstructive practice which could hamper the access or the exercise of the control.

The establishment of proper routines for documentation of the procurement process is the responsibility of the Contracting Authority and it should be ensured that the standard tender documentation and contractual instruments of the Contracting Authority include the necessary detail to show that it has duly performed its duties (e.g. where relevant provisions engaging the responsibility of the third Parties to observe the applicable rules).

Depending on the procedure followed, the value of the contracts and the nature of the products or services supplied, procurement files should, where relevant, include the following information/documentation (in original and where necessary signed by the appropriate parties):

- Tender specifications and requirement definition (completed forms, notes, correspondence and communication with the Contracting Authority justification if brand name is used etc.)
- Sourcing information including justification of procurement method and type of competition
- Signed tender document, including attachments such as specifications, and proof of issuance (copies of cover letters, copies of e-mails, fax receipts, etc.)
- Corrections to tender documents, and any other clarifications and correspondence with suppliers



- Offers opening report
- All offers received (technical and financial)
- Evaluation report
- Minutes of clarifications (if any) and relevant communication with supplier
- Award decision
- Minutes of the award committee if applicable
- Original contract/Purchase Order
- Complaints and correspondence with contractor
- Amendments to contracts
- Any required progress reports and/or other proof of delivery of milestones as provided for in the contract
- Proof of receipt of goods, if relevant
- Receipt and inspection report, if relevant
- Acceptance report
- Certificate of final completion
- Proof of payment
- Supplier evaluation report

#### 1.4 **The Principle of Proportionality between the procedures followed for awarding contracts and the value of the contracts**

The Contracting Authority shall establish written procurement policies, rules and procedures which guarantee efficient and safe procurement, ensuring that procurement processes deliver goods, works or services in the right quantity and quality, in due time. Any budgetary commitment entered into by the Contracting Authority must be based on the principle of Sound Financial Management with due regard to the following principles:

**Economy** – this requires that the resources used by the institution for the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price;

**Efficiency** – this is concerned with the best relationship between resources employed and results achieved; and

**Effectiveness** – this is concerned with attaining the specific objectives set and achieving the intended results.

The principle of Proportionality requires that procedures followed for awarding a contract must be proportionate to the value of the contracts; this generally means that the higher the value the higher the more demanding the procedures. Internal rules and procedures, including the proper implementation of the principles of economy, efficiency and effectiveness, have to be established having due regard to the amount of the contract and taking into account the overall costs of the procurement procedure versus the difficulty and risk associated with the contract. Clearly some lower- value contracts may still involve great risk hence adopting more stringent measures may be prudent and justified.

Generally speaking, however, the procurement rules should develop a system of **segregation of procurement functions** with clear demarcations of authority and responsibility. Such delegations

should reduce administrative bottlenecks and provide increased responsiveness by locating decision making authority nearer to the activity. Delegations of procurement authority should include a clear reference to maximum amounts of individual contracts and a supervisory mechanism to confirm that the correct procedures have been followed. The identification and segregation of procurement functions should include clear job descriptions for the fulfilment of the procurement of specific supplies, such as medicines and food, which require adequate resources with the appropriate technical qualifications in the organisation. Individuals holding procurement functions must be fully versed in their role within the procedure as well as in the limits of their responsibilities and authority. Individuals holding this function shall be accountable for their acts or omissions and liable in case of negligence or misconduct.

Procurement rules should provide for the **procedure for waiving standard practices** when the best interest of the Action so requires. Waiving procedures should take into account the value of the contract when identifying the appropriate level of authority for granting the derogation. In order to have in place the appropriate checks and balances, the decision to waive a procedure should be taken by a person other than the person who is to sign the procurement contract. Permitted exceptions to the rules should be kept to a minimum and be properly documented on file and communicated in the final financial report to the donor. Such an exception should be agreed upon beforehand and included in a derogation clause of the Grant Agreement.

Procurement policies, rules and procedures should be reviewed as necessary, following an appropriate review process. A donor involved in a review process shall be informed of the outcome of the review.

#### **1.5 The Principle of Equal treatment and non-discrimination of potential contractors and donors**

The principles of equal treatment and non-discrimination refer both to the relations with potential bidders and with donors. These principles guarantee the fairness of the procurement process ensuring impartial and independent decisions, treating all suppliers and donors in the same way and applying the rules consistently to all.

##### **(i) Equal Treatment of Candidates and Tenderers**

As a general rule no restrictions should be placed on the procurement process limiting the pool of potential Tenderers and Candidates on the basis of their nationality or the country of origin of the supplies.

The exception to this rule is the case that certain donors use rules of nationality and / or origin. The rules that are a condition for funding by these donors, shall be applied when using their funds. When a derogation of these rules is possible and useful for the efficient attainment of the project objectives, it should be timely requested. Preferably a request for derogation is part of the project proposal and included in the procurement plan.

The Contracting Authority shall, next to applying the principle of untying of aid, endeavour to use local human and material resources whenever it is possible and pertinent. In certain situations, such

as in the case of "high pressure" countries it may prove impossible to use local human and material resources.

(ii) Equal Treatment of Donors

The principles of equal treatment and non-discrimination also apply in the relations of the Contracting Authority with its donors. In co-financed or Multi-donor Actions, the Implementing Partner shall ensure equal treatment to all financial contributions.

Implementing Partners should abstain from mixing tied aid contributions with untied aid contributions in the same Action. Likewise, the compatibility of using earmarked contributions with non-earmarked contributions in the same Action should be decided on a case-by-case basis. The analysis of compatibility between earmarked contributions and the principle of equal treatment of donors should be included in the procurement file.

Another concern in ensuring equal treatment of donors is related to visibility: the visibility actions of the project should at least satisfy the requirements of various donors and besides should not discriminate between them.

## 2. The procurement process in steps

Table B2 shows the procurement process. Chapter numbers are shown in the right column.

<b>Table B2 Steps in procurement process</b>	
Procurement planning	Ch. 3
Elaboration of technical specifications (supplies) or terms of reference (services)	Ch. 4
Selection procurement method	Ch. 5
Proceed with selected procurement method	
- For supplies	Ch. 6
- For supplies subject to special rules	Ch. 7
- For services	Ch. 8
- For civil works	Ch. 9
- For supplies as cash based transfers	Ch. 10
- For grants	Ch. 11
Documentation of procurement	Ch. 12

The objective of procurement is providing the inputs for the project in a fair and efficient way and so to use the available funds in the best way. To meet this objective it is also needed to pay attention to:

Transport of inputs	Ch. 13
Stock management after receipt of inputs	Ch. 14

### 3. Procurement planning

A procurement plan has to be drafted as a part of the project proposal, to ensure that all procurement/logistic costs are included in the budget and that procurement time constraints are considered in the activity plan. **Procurement planning will be more demanding if procurement in one lot above € 10,000 and especially when procurement in one lot above € 60,000 is foreseen.** In these cases the negotiated procedure respectively an open tender procedure are necessary and more time will be needed.

The procurement plan should be prepared using the format in Annex 5.

#### 3.1 Step 1 – Identify required resources and costs

What to buy – first it shall be established what resources are required (supplies, services, civil works). At this stage it is important to determine the minimum specification to obtain the correct budget prices.

For example – a generator: what size KVA is required; should it be supplied with a canopy to reduce noise level; should it be diesel or petrol; should installation be done by the supplier; is a spare part package required?

Since the estimated costs are essential for the determining thresholds for the applicable procurement methods, it is necessary for the Procurement Officer to perform a survey. Such market survey may be more or less formal.

Considerations for logistics – such as local transport, clearance, import costs, insurance, warehousing and distributions shall also be taken into consideration when preparing the budget.

For products with a limited shelf-life it may be necessary to have partial deliveries which will increase the freight costs etc.

For civil works contracts – consider if an engineer is required to supervise the works of the contractor and include the costs in the budget.

For services – determine the field of expertise required.

#### 3.2 Step 2 – Local market survey

Once the resource need has been established a thorough market survey shall be carried out to establish:

- Local availability of the required supplies services and/or civil works. The market survey should answer if the local quality is acceptable, prices, local trade customs and availability of resources. At this stage local suppliers should be mapped and registered.
- For service contracts and civil works contracts – investigate availability of local consultants and contractors. It is recommended to check the record and reputation of the contractors and consultants.
- Import regulations and restrictions – once it has been established which resources (supplies) need to be imported, the local customs authority and a clearing agent shall be contacted to investigate the procedures for importing supplies and if any of the required supplies require import license or other supplies related documentation.

- To avoid delays it is important that import regulations and restrictions are carefully investigated for all types of supplies, in particular for pharmaceutical products, medical equipment, radio and satellite communication equipment, mine detectors, plastic explosives, etc.
- Local transport and storage – options and costs.
- Costs for customs clearing.

Tips for new market survey: As a starting point arrange meetings with other NGOs and UN organizations locally – and gain information from their experience.

### 3.3 Step 3 – Grouping of lots/tenders

To get the best prices, all supplies, services and civil works required for the project shall be grouped into lots. Preparing the lots is the process of grouping similar items which can be purchased from one supplier.

First step is to divide the resources into three categories (supplies, services, and civil works).

Thereafter group the items into lots/tenders.

Resources					
↓		↓		↓	
Supplies		Services		Civil works	
↓		↓		↓	
Lot/tender 1:	Construction materials  Sub-lots 1): 1a – Nails 1b – wood 1c – steel sheets 1d – steel tubes 1e – steel wire	Lot/tender 1:	Base line study	Lot/tender 1:	Construction of tube wells
Lot/tender 2:	Life stock  Sub-lots 2a – Goats 2b – chickens	Lot/tender 2:	Engineer for supervision of the works contract	Lot/tender 2:	Renovation of a school

1) For the lot/tender with construction material – you may decide to make sub-lots in the tender dossier and write in the tender dossier that the supplier can quote for one or all lots and the Contracting Authority reserves the right to award the contract(s) by lot, which means that even though you are making one Open tender for all construction material you may end up awarding the contract to several suppliers. The advantage is that some supplier may only be able to offer for some of the lots and you will be able to buy from the supplier who is offering the lowest price per lot and not the overall lowest price (often you save costs) – the disadvantage is that you will end up with administration of more than one contract.

#### Procurement lots have several advantages:

- Suppliers can often quote lower prices – **cost saving**
- It reduces effort and cost of repeating the purchasing process many times – **time saving**
- It reduces overhead costs such as frequent advertising, bookkeeping and logistics - therefore **cost saving**.

**Example of grouping of lots/tenders:**

Lot 1 - Field equipment: Camp beds, sleeping bags, mosquito nets, tents, chairs, lamps

Lot 2 - Computer equipment: Laptop, printer, toner, UPS, router, keyboard, etc.

Lot 3 - Stationary: Pen, pencils, paper, file folders etc.

Lot 4 - Medical equipment: Stretcher, oxygen tank, stethoscope, sterilizer etc.

Lot 5 - Generator: 5 Diesel generators including delivery to site, installation, a spare part package and after sales service for 2 years.

Lot 6 - Tube wells: Works contract for the construction and delivery of tube wells with pumps

Lot 7 - Engineer: Consultancy contract for supervision of the work (lot 6) and for drafting specifications for the tender

Procurement lots have the following disadvantages:

- Increased demand for storage facilities
- Increased demand for liquidity
- Requires careful planning

The above mentioned issues must be taken into account at the planning stage, e.g. if additional storage is required, the costs should be included in budget and procurement plan.

Running costs shall not be included in the procurement plan. Often there are doubts of what is considered running costs; ICCO considers the following to be running costs (always check donor rules):

- procurement of gasoline
- office consumables (stationary) whenever each purchase is below € 500
- services and maintenance of vehicles and motorbikes
- insurance costs
- rent of office buildings
- some services e.g. financial services, cleaning services, accommodation and catering.

Running costs are defined as something that re-occurs e.g. each month.

### **3.4 Step 4 – Procurement method**

The procurement method is determined by the threshold of each lot (contract value of each lot). See chapter 6 for procurement methods.

Contract value is determined as the estimated costs including any additional service or options covered by the contract. If the contract establishes a running relationship, for example a service agreement, the contract value should include related payments for the entire contract period.

**Example:**

Lot 5 – Generator 5 Diesel generators including delivery to site, installation, a spare part package, after sales service for 2 years

The contract value for lot 5 is determined as the estimated costs for the Generators + delivery to site + installation + spare parts + service for 2 years.

Lot 6 – Tube wells Works contract for construction and delivery of tube wells including pumps.

The contract value for lot 6 is determined as the estimated costs for the works (labor and rent of machines), supplies for the constructions, i.e. cement, sand etc., and the pumps including after sales service. Even though this works contract has elements of supply and service and the component of the works is a low value due to the low labor wages, it shall be determined as a works contract if an entrepreneur is in charge of delivering the finished works and has the responsibility for finding and using all resources (human, plant, supplies) needed to achieve the result, i.e., the construction of the works as this contract.

Lot 7 – Engineer: Engineer to supervise the works contract of the tube wells and draft specifications.

The contract value shall be determined by all the costs connected to the engineer, i.e. fees, reimbursable expenses etc.

### **3.5 Step 5 – Time constraints**

Procurement **time constraints** are too often under-estimated.

For the overall duration of the project – the time required for carrying out the specific procurement method shall be taken into account, i.e. time for advertising, preparing specifications/TOR, issuing tender dossier, evaluation etc.

<b>B3 Time constraints in procurement</b>		
<b>Procurement method</b>	<b>Timeframe for the procedure</b>	<b>Supplier's delivery time to site</b>
Single quote	Within 1-2 weeks	Shall be added
Negotiated procedure	3-8 weeks	Shall be added
Local open tender	10-14 weeks	Shall be added
International open tender	13-18 weeks	Shall be added

See annex 6 for time tables for each procurement method.

Time limit for receipt of tenders is minimum 21 calendar days for local and 30 calendar days for international open tender. The above time schedules are including the required preparation of tender documents/RFQ, advertisement, contract negotiations etc. Depending on the complexity of the required resources the procurement process may be longer.

Consideration should always be given to the complexity of the contract whether it is a supply, service or civil work contract. A civil work contract may require more time to prepare for the Procurement Officer, the contractors may require more time to prepare the tender and site visits may be necessary.

Some supply and service contracts can also be complex and time demanding for both the Procurement Officer and the tenderers.

### **3.6 Step 6 – Specific donor requirements**

For each project it is important to investigate the donor requirements for procurement. This manual represents the ICCO minimum procurement procedures which shall be followed. As described in



section A, if stricter procurement procedures are stipulated by a donor, then the donor requirements shall prevail.

E.g. it may be that a donor has specific requirements in respect to country of origin – has a lower threshold for open tenders etc. If the donor has less strict requirements for procurement, then the procedures described in this manual shall be applied.

**3.7 Step 7 – Procedure for request for derogation**

To request for derogation means that you ask for an exception to a rule / request to waive a rule.

Based on all the information collected (step 1-6), it may be necessary to request derogations from the ICCO procurement manual and /or donor demands.

To whom and how to request for derogation:

Any derogation from the rules and procedures established herein is subject to written approval from ICCO. ICCO will deal expeditiously with any request accompanied with proper justification. If possible the request for derogation shall be included in the project proposal. If the derogation refers to specific donor requirements, take into account that approval may take more time. Local circumstances explaining the need for derogation have to be specified clearly and in detail (the donor’s official evaluation of the project proposal is not necessarily aware of the local circumstances).

**Be aware of donor rules (especially EU) in respect to nationality and country of origin.**

Derogations from procurement procedures can be funded on:

- security issues
- operational reasons (see example no. 2 in below box)
- technical reasons (only one supplier due to patent)
- ethical reasons
- shortfall or unavailability on the market of the supplies
- transportation issues (see example no. 3 and 4 below)
- ground legislation in the country of operation (see example no. 3 below)

<b>EXAMPLES OF DEROGATIONS IN DCA’S PRACTICE (with thanks to DCA)</b>
<p><b>1) Derogation on procurement method due to market issues:</b> Sri Lanka – shelter/water. DCA formally requests a derogation from a negotiated procedure in favor of a single quote for lot no: Sand &amp; Gravel. We ask for the derogation enabling us to support the suppliers in the local community. The suppliers in the local community have a permit from the government to supply sand and gravel from specific parts of the beaches. The majority of the suppliers do not possess the necessary skills to provide a written quotation to participate in a negotiated procedure. The intention is to divide the contract for sand and gravel into a number of smaller contracts with smaller suppliers from the local community after prospecting the local market.</p>
<p><b>2) Derogation due to operational reasons:</b> Burundi Mine Action Program. For lot no. 4, we kindly request you to grant us derogation on the procurement method and proceed with “Single quote”. The specific mine detector model (CEIA) is only available from one supplier. The model and brand of detector is already being used in the program and it is not feasible to have different brands of detectors in one program (considering training of de-miners and after sales service of the detectors).</p>
<p><b>3) Derogation on procurement method due to transport issues and local legislation:</b> Burundi Mine Action Program.</p>

For lot no. 6 Explosives, we kindly request you to grant us a derogation to proceed with a single quote for this lot as we may only have one option for local supply due to the type of commodity and the difficulties for both international and local transport – as well as subject to the national law regarding importation, transport and purchase of explosives.

**4) Derogation on procurement method due to logistics and animal welfare:**

Malawi food security Program.

Rules applicable to supply contracts (annex IV, section 5) - Please grant derogating from a local open tender in favor of a negotiated procedure for lot no. 6A and 7.

Lot no. 7: Livestock - With consideration to animal welfare a long transport time should be avoided. The project sites cover 3 regions of the country with 4 units in the North, 3 units in the center and 5 units in the south. The lot will be split into 3 lots, one lot for each region and we will proceed with a negotiated procedure in each region.

Lot no. 6A: The fruit tree seedlings will be ordered from farmers and with consideration to the nature of the commodity, distribution and lead time, we will divide the lot into three lots – one lot for each region and proceed with a negotiated procedure in each region.

**5) Derogation on the rule of Origin (Europe Aid funding):**

Burundi Mine Action Program.

We kindly ask you to grant us derogation on the rule of origin for all lots. A number of the items are not manufactured within the community or eligible countries e.g.

communication equipment is manufactured in Asia and Australia,

the required de-miners vests and protective visors are manufactured in Norway,

spare parts for the present Toyota fleet is manufactured in Asia,

local service is not available for European motorbikes - only motorbikes manufactured in Asia offers local after sales service,

the majority of the office equipment is manufactured in Asia,

for lot no. 11. Vehicles: as the present vehicle fleet is Toyota we find it feasible to expand the present fleet with the same brand considering spare parts, service and repairs.

### **3.8 Step 8 – Final procurement plan**

Complete the procurement plan with incorporation of all information from steps 1-7.

A procurement plan shall always be prepared at proposal stage to ensure timely procurement and to ensure correct budgeting.

#### **WARNING!**

The procurement plan shall be carefully drafted with due consideration to the entire project cycle.

Lack of procurement planning may result in serious delays in implementation and waste of funds.

#### 4. Technical specifications and Terms of Reference

Thorough preparation of the Technical Specifications for goods and works or Terms of Reference for services is extremely important for the ultimate success of the project.

Greater effort during project preparation will save time and money in the later stages of the project cycle and will ensure that resources will not be wasted.

When preparing the Technical Specifications or Terms of Reference it is helpful to consult all parties involved in the proposed project in preparing Technical Specifications or Terms of Reference. This should improve both the quality of the project as well as the commitment of the project staff and beneficiaries.

Technical specifications and Terms of Reference define the characteristics required of a product, service or work with regard to the purpose for which they are intended - those characteristics for supplies and works include:

- Quality levels
- Environmental performance
- Design for all requirements
- Levels and procedures of conformity assessment
- Fitness for use
- Safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labeling, production procedures and methods

##### **4.1 Technical Specifications (buyer's requirement)**

Precise and clear specifications are prerequisite for suppliers to respond realistically and competitively to the requirements of the purchaser without qualifying or conditioning their offers.

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

Some examples out of DCA practice show the need for clear specifications:

##### **Example: Specifications**

When preparing technical specifications the use and place of use shall be taken into consideration.

E.g. vehicle - the type of tires required for the terrain; is a tow bar required; no. of spare wheels; are spare parts and service available locally? Type of engine - should be simple to repair (some engines can only be adjusted by a computer), etc.

### **Example: Procurement of Cement**

When you procure cement it is not enough to just write “cement”, you should describe the quality you need, if you are not able to describe the quality then you minimum write for what purpose the cement is for.

The following technical specifications / requirements were applied in for procurement of cement for a project in Sri Lanka.

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

### **Example: Procurement of a hoe**

Often the project only writes “hoe” in the technical specification. It is important to describe, length, thickness, material of handle, material of hoe.

An example from a project where they only wrote hoe in the specification – they ended up with a hoe which was constructed of wood only (no metal) – as a result the hoe broke after a few times use.

### **Warning!**

Poorly drafted specifications may result in re-tenders which will delay implementation – or worse, risk of receiving inadequate/incorrect equipment and waste resources.

For works contracts – use an engineer or staff member with technical background and experience in the field to draft the technical specifications. If an external engineer shall supervise the work, the technical specifications must be drawn in cooperation with him.

Besides the technical specifications for the goods themselves the Contracting Authority should also specify the INCO terms: where shall the supplies be delivered and who is responsible for costs and risks during transport. See section 14.4 and annex 4 for INCO terms.

## **4.2 Terms of Reference (TOR)**

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

The TOR shall be adjusted to the specific task.

Content of Terms of Reference (TOR):

- Background information
- General objective of the assignment
- Tasks and expected outputs
- Required competences of key experts and other personnel
- Timing, logistics and facilities
- Sub-contracting (if any)
- Reporting

## 5. Selection of the procurement method

### 5.1 General thresholds

When selecting an appropriate procurement method for each activity in the procurement plan, the Contracting Authority shall consider which category of resources to buy and the threshold (value) of the different categories.

Resources are generally categorized in the following:

**Supplies:** Supply contracts cover the purchase, operational leasing, rental or hire purchase (with or without option to buy) of products. This includes e.g. rent of vehicles. The delivery of products may in addition include installation and maintenance.

**Services:** Service contracts cover all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and property contracts. Service contracts also comprise study and technical assistance contracts and freight contracts.

- 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).

**Civil works:** Works contracts cover either the execution, or both execution and design, of works or the realization, by whatever means, of a work corresponding to the requirements specified by the contracting authority. 'Work' means the outcome of building or civil engineering works taken as a whole that 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 labor, brings the plant and equipment and buys the construction materials and supplies).

**Combined:** In case of a combined contract covering both supplies, services and/or civil works – the procurement method 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.

Expenditures on running costs are not considered as procurement and are not treated in this manual.

### Selection of procurement method

The required procurement method is defined by the type and the value of the contract. Thresholds are defined, above which the contracting authority shall use a certain procurement method.

It is always possible to use a stricter procurement method than the required one. The thresholds are rather high which facilitates the control by the donor. Implementing Partners are stimulated to take into account their local context and to use the thresholds that they find reasonable. On the other hand it is not good to put the thresholds too low, for two reasons:

- it increases the risk that the threshold will not be applied in practice
- the costs of a stricter procurement method are not justified considering the risk of using a less strict method

<b>Table B4 Required procurement method</b>		
<b>Procurement Method</b>	<b>Value of contract</b>	<b>Minimal Commitment</b>
<b>SUPPLIES</b>		
International Open Tender	€ 150,000 and more	Contract
Local Open Tender	€ 60,000 up to € 150,000	Contract
Negotiated Procedure	€ 10,000 up to € 60,000	Purchase Order
Single Quote	Up to € 10,000	Above € 2,000 a Purchase Order, below € 2,000 an Invoice
<b>SERVICES</b>		
International Open Tender	€ 150,000 and more	Contract
Negotiated Procedure	€ 10,000 up to € 150,000	Contract
Single Quote	Up to € 20,000	Above € 2,000 a Purchase Order, below € 2,000 an Invoice
<b>WORKS</b>		
International Open Tender	€ 3,000,000 and more	Contract
Local Open Tender	€ 300,000 up to € 3,000,000	Contract
Negotiated Procedure	€ 10,000 up to € 300,000	Contract
Single Quote	Up to € 10,000	Above € 2,000 a Purchase Order, below € 2,000 an Invoice

The Contracting Authority shall take notice of any specific thresholds applied by different donors. If stricter procurement procedures are stipulated by a donor, then they shall prevail. The above mentioned thresholds cover the rules of both Europe Aid and ECHO, i.e. they are equally or more strict.

In many cases the contract will not be in euro, but in another currency. To apply the ICCO manual the value of the contract should be converted into euro applying the InforEuro<sup>10</sup> rate.

<sup>10</sup> <http://ec.europa.eu/budget/inforeuro/index.cfm?Language=en>

### Commitment by the Contracting Authority

When the invoice for the supply, service or works is less than € 2,000 no specific proof of commitment by the Contracting Authority is formally needed. This means that the agreement between seller and buyer may have been an oral agreement.

For supplies with a value of at least € 2,000 the Contracting Authority must have issued a purchase order. This is not necessarily a long and complicated document but at least a written commitment by the Contracting Authority. It is a document that enables the comparison between the invoice issued by the seller with the order issued by the buyer. Moreover it enables the Contracting Authority to verify if the correct procurement method has been followed and has been documented before entering into an engagement.

When the value of the purchase of supplies, services or works is at least € 10,000, moreover a contract between buyer and seller has to be concluded.

### Declaration of ethical procurement

The Contracting Authority shall not enter into an agreement with a supplier that does not fulfill the rules of ethical procurement. Based on the principle of proportionality the supplier shall have to sign the Declaration for Candidates & Tenderers (annex 2 to this manual) when the contract value is € 10,000 or more.

### Resources Management Audit

Relief projects with a budget of € 200,000 or more shall be audited in a RMA, a Resources Management Audit. In this audit the correct and efficient use of all resources is verified, it is not limited to financial resources. The verification integrates the use of financial resources, procurement, stock control, delivery procedures, assets, transports and human resources.

Annex 16 shows Terms of Reference for such a Resources management Audit.

## **5.2 Situations where single quote apply for contracts above € 10,000**

In the special cases described below contracts above € 10,000 can be awarded by using the single quote method - this method is discouraged and where it is necessary to use, it shall be restricted to and reserved for:

(a) Urgent operations - orders can be placed, irrespective of the value of the contracts in question, on the basis of a single quote. In this case, the procurement plan shall present the reasons that prevented a larger consultation. IMPORTANT – If more restrictive procurement procedures are stipulated by a donor for urgent operations, then they shall prevail.

Urgent humanitarian aid 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.

(b) Whenever no tenders or no suitable tenders/proposals have been submitted in response to an open, restricted or negotiated 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 operational reasons 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 in 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. Contracts can be renewed on these grounds for a maximum of two times

(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 principal contract;

(f) For property contracts (renting of property only), after prospecting the local market

(g) Flight tickets, after prospecting the market.

(h) 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.

The decision on using the single quote method is made on the basis of strong and convincing justifications, and where it offers clear advantages over competitive procurement methods. These justifications shall be recorded in the procurement file.

To apply single quote method in the situations listed above does not require prior approval; however the decision **must** be justified in the up-dated procurement plan and in the procurement file.

Although the single quote procedure can be applied in the cases as mentioned in this section, there is no reason to procure in a less formal way. The minimal commitment for purchases of at least € 2,000 remains a purchase order and for purchases of at least € 10,000 it remains a contract.

## 6. Supplies

Procurement methods are the rules about “**how to buy**”. This section describes the rules and methods for procurement of supplies:

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

The following table is part of table B4.

<b>Table B4.1 Required procurement method</b>		
<b>Procurement Method</b>	<b>Value of contract</b>	<b>Minimal Commitment</b>
<b>SUPPLIES</b>		
International Open Tender	€ 150,000 and more	Contract
Local Open Tender	€ 60,000 up to € 150,000	Contract
Negotiated Procedure	€ 10,000 up to € 60,000	Purchase Order
Single Quote	Up to € 10,000	Above € 2,000 a Purchase Order, below € 2,000 an Invoice

N.B.: Please refer to chapter 7 for procurement of pharmaceuticals and medical devices (7.1) and food aid (7.2)

## 6.1 Single quote (up to € 10,000 and in exceptional circumstances)

The Procurement Officer can negotiate the terms of a contract with one supplier. The Mandatory Principles still apply and the Procurement Officer is still obliged to **negotiate the best terms and conditions** possible in the circumstances. He / she shall always ensure that the contract price corresponds to the present market price or lower, which for example can be proven by obtaining more quotations or referring to recent contracts. He / she might also check prices at the internet. Anyway he / she should document how the decision was taken.

In special cases contracts above € 10,000 can be awarded by using the single quote method – this method is discouraged and where it is necessary to use, it shall be restricted to and reserved for the situations listed in section 5.2.

The steps involved in the single quote method are presented in the table below.

<b>Table B5 Single quote procedure for supplies in steps</b>				
<b>Step</b>	<b>What has to be done</b>	<b>Who is responsible</b>	<b>Description</b>	<b>Supporting annex</b>
1	Identify the lots and draft specifications	Procurement Officer	Understand the specifications of the item(s) to be purchased.	See Ch. 4
2	Approach the supplier(s)	Procurement Officer	The quotation(s) can be obtained by a non-written request or a written RFQ (Request for Quotation)	
3	Evaluate offer(s) and issue the purchase order.	Procurement Officer approved by Project Manager	Evaluate quotation(s) and select best offer. The purchase order shall be issued in accordance with the RFQ	
4	Receipt & inspection	Procurement Officer	Inspect that supplies received comply with the Purchase order	

### **Step 1: Specifications - Single Quote:**

Identify the lots of items to be purchased from the procurement plan and draft specifications. Understand the specifications of the item(s) to be purchased. Ensure that all proper import permits are available for the relevant items.

### **Step 2: Quotation – Single Quote:**

Approach the supplier(s) for a quotation. The quotations can either be obtained by a non-written request to the supplier or by a written Request for Quotation (RFQ). The advantage of using a written RFQ is that it prevents misunderstandings and ensures that all the required information is obtained in one go. If a non-written quotation is obtained, the procurement officer shall make a note of the price, name of supplier, description of goods or picture and note the date. This note shall be filed in the procurement file.

### **Step 3: Evaluation and Purchase order – Single Quote:**

A purchase order is needed for purchases with a minimum value of € 2,000 and helps to proof the application of a correct procurement procedure.

After receipt of the supplier's written offer a purchase order shall be issued by the Procurement Officer and approved by the Program or Project Manager or authorized person. The purchase order shall be issued in accordance with the sample in the RFQ.

The purchase order shall be forwarded by fax or e-mail in PDF format or by mail (**not signed**). The supplier shall return the purchase order by fax or scanned e-mail or mail with **all pages duly signed**. Only thereafter shall the purchase order be signed by the Procurement Officer and authorized person. Alternatively the supplier can be invited to sign the purchase order at the Contracting Authorities office.

In the exceptional case that a single quote procedure is used for an order of € 10,000 or more, a contract with the supplier is needed. Before signing the contract and returning the signed copy to the supplier, the Procurement Officer must ensure:

- (a) That adequate and exact reference is made in the contract to the relevant RFQ (if applied) or the suppliers' quotation.
- (b) That the contract acknowledges the General Terms and Conditions of the Contract without exceptions or amendments.
- (c) That the supplier has signed the Declaration for Candidates & Tenderers (Ethical conduct, Annex 2)

If the supplier cannot accept the General Terms & Conditions or does not sign the requested declaration, the Contracting Authority shall proceed with another supplier.

### **Step 4: Receipt – Single Quote:**

Inspect that supplies received comply with the Purchase order.

## 6.2 Negotiated procedure (€ 10,000 up to € 60,000)

The negotiated procedure is more formal than the single quote procedure and requires that minimum 3 suppliers are invited simultaneously in writing to submit a quotation. However, the procedure is less formal than an open tender procedure and gives the opportunity to negotiate the terms of the contract.

In special situations (see section 5.2), when an open tender is not necessary for contract of € 60,000 and more, the negotiated procedure should be preferred above the single quote.

The steps involved in this method are presented below.

<b>Table B6 Negotiated procedure for supplies in steps</b>				
<b>Step</b>	<b>What has to be done</b>	<b>Who is responsible</b>	<b>Description</b>	<b>Supporting annex</b>
1	Identify lots and draft specifications	Procurement Officer	Understand the specifications of the item(s) to be purchased.	See Ch. 4
2	Make a short list of minimum 3 suppliers	Procurement Officer approved by Project manager	Use your supplier database and source new suppliers, if necessary.	
3	Submit the Request for Quotation (RFQ)	Procurement Officer	Prepare the Request for Quotation and submit it <b>simultaneously</b> to all selected suppliers.	Annex 10
4	Evaluate quotations	Procurement Officer approved by Project manager	Draft information from the quotations on an evaluation grid.	Annex 11
5	Negotiate (optional)	Procurement Officer	There is an option to negotiate some terms. Rules are described further in this chapter.	
6	Purchase order	Procurement Officer approved by Project manager	The purchase order shall be issued in accordance with the sample presented in the RFQ.	
7	Notification Letter	Procurement Officer	Unsuccessful suppliers shall be notified of the result of the procedure	
8	Receipt	Procurement Officer	Inspect that the supplies have been received.	

Time schedule for Negotiated Procedure: See guidance in annex 6

### **Step 1: Specifications - Negotiated procedure**

Identify the lots of items to be purchased from the procurement plan. Understand and draft the specifications of the item(s) to be purchased. Ensure that all proper import permits are available for the relevant items.

## **Step 2: Short list - Negotiated procedure**

Prepare a short list of suppliers with a minimum of 3 suppliers. It is recommended to include 4-6 suppliers to ensure that a minimum of 3 quotations are obtained. The short list shall be prepared by the Procurement Officer and approved by the Program or Project Manager.

## **Step 3: RFQ - Negotiated procedure**

The Request for Quotation (annex 10) shall be forwarded simultaneously (same day) to all the selected suppliers. This is to ensure that all suppliers are given equally long time to prepare and submit their offer.

When preparing the Request for Quotation, decide on

- delivery terms
- specific technical requirements for the product (consult with a Technical Advisor)
- if installation and/or maintenance and/or after sales service and/or spare parts are required
- deadline for receipt of quotations (allow minimum 8 days, depending on complexity of the requirement)
- Evaluation criteria

### **Recommendation:**

To ensure that sufficient offers will be received on time, it is recommended to contact all suppliers 1-2 days after the RFQ has been submitted and ask the suppliers if they intend to submit the offer before the deadline. Particularly when a short deadline is required, it is a good idea to follow up with the suppliers and explain to new suppliers about the importance of submitting the offer prior to the deadline.

## **Step 4: Evaluation - Negotiated procedure**

Register the time when the offers were received and fill in the evaluation grid. Please take note that suppliers who have not submitted their offer before the deadline shall not be considered.

### **How to proceed when you did not receive 3 acceptable offers?**

- In case all suppliers have offered a too high price and/or you need to change/adjust the specifications, you do not need to issue a new RFQ; you can merely contact the supplier in writing with your amendments and request a revised quotation stating the new deadline (a few days depending on the amendments you have made).
- If less than 3 quotations are received and the other suppliers have declined to submit a quotation, you can proceed with the best offer.
- If you are unable to find minimum 3 qualified suppliers in your market it is important to survey broader e.g. markets in neighboring districts and countries. Lack of suppliers in the local market is not sufficient grounds for proceeding with less than 3 quotations. A market survey would reveal this fact during the planning stage and derogations from negotiated procedure to single quote should be requested.

### **Step 5: Negotiate terms (OPTIONAL) - Negotiated procedure**

If found necessary, the Contracting Authority has the option to negotiate the terms of the contract. Negotiations will not entail any substantial deviation to the terms and conditions of the Request for Quotation, but shall have the purpose of obtaining from the candidates better conditions in terms of delivery date, 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, when all quotations exceed the limits of the funds made available to the Contracting Authority by its donor/funding agency.

The negotiations can be done by phone, e-mail or fax or at a meeting (in the latter case, a written recap shall be filed and copied to the supplier). There are no specific procedures on negotiations except that the General Principles of procurement shall always be respected, i.e. all candidates shall be provided **equal opportunity** and the negotiations shall be documented and filed.

If negotiations are done by phone, then the Procurement Committee shall recap the negotiations and submit it to the supplier “with reference to our phone conversation – we can recap our conversation as follows: ……”

### **Step 6: Purchase order - Negotiated procedure**

The contract shall be awarded to the lowest compliant supplier, i.e. the supplier who is substantially responsive to the RFQ and technically compliant, and who has offered the lowest 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 Officer and approved by the Program or Project Manager (or authorized person). The purchase order shall be issued in accordance with the RFQ.

The purchase order shall be forwarded by fax, or e-mail in PDF format or by mail (**not signed**). The supplier shall return the purchase order by fax or scanned e-mail or mail with **all pages duly signed**. Only thereafter shall the purchase order be signed by the Procurement Officer and authorized person.

In the exceptional case that the negotiated procedure is used for an order of € 10,000 or more (see section 6.2), a contract with the supplier is needed. Before signing the contract and returning the signed copy to the supplier, the Procurement Officer must ensure:

- (a) That adequate and exact reference is made in the contract to the relevant RFQ (if applied) or the suppliers' quotation.
- (b) That the contract acknowledges the General Terms and Conditions of the Contract without exceptions or amendments.
- (c) That the supplier has signed the Declaration for Candidates & Tenderers (Ethical conduct, Annex 2)

If the supplier cannot accept the General Terms & Conditions or does not sign the requested declaration, the Contracting Authority shall proceed with another supplier.

**Step 7: Letter to all unsuccessful suppliers- Negotiated procedure**

Once the supplier has returned the purchase order duly signed, the Procurement Officer shall submit a Notification Letter to all unsuccessful suppliers informing them of the result of the procedure, i.e. name of successful supplier and the total contract amount.

**Step 8: Receipt - Negotiated procedure**

Upon receipt of goods the Procurement Officer shall inspect that supplies received comply with the purchase order.



### 6.3 Local open tender (€ 60,000 up to € 150,000)

This method is more elaborate than the negotiated procedure. It is applicable to higher value purchases and requires more experience.

This method requires advertisement of supplies needed, giving some time to all prospective tenderers to quote their prices in sealed envelopes and submit their tenders, opening of the tenders in the presence of all tenderers, comparing the services offered and costs, selection of a successful tenderer and award and signing of a formal contract.

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

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

The steps involved in this method are presented below.

Table B7 Local Open Tender for supplies in steps				
Step	What has to be done	Who is responsible	Description	Supporting annex
1	Identify lots and draft specifications	Procurement Officer	Understand the specifications of the item(s) to be purchased.	
2	Issue tender dossier (tender documents)	Procurement Officer approved by Project manager	Issue the tender dossier with special attention to the technical specifications, special requirements, time schedule and award criteria.	Annex 8: Tender Documents
3	Tender Notice (Procurement Notice)	Procurement Officer	Advertise the tender notice locally. The deadline should not be less <b>than 21 days</b> from the date of the advertisement. However, depending on the nature of supplies/services the deadline may be longer. The Tender dossier shall be available on the date of the advertisement.	Annex 7: Procurement Notice
4	Send out the Tender dossier	Procurement Officer	A record of when (date) the document was submitted and to whom shall be made. Each supplier shall be identified with a number. Clarifications/amendments to tender dossiers - all potential tenderers shall receive a copy of questions and answers at the same time (same day)	
5	Receiving tenders	Procurement Officer	For each tender received, the date and time of receipt must be registered. All received	

			tenders must be kept unopened in a secure place until the tender opening.	
6	Tender opening	Evaluation Committee	Tenders should 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.	
7	Administrative compliance	Evaluation Committee	Post-qualification of suppliers shall be performed after the tender opening (tenderers shall not be present).	Annex 11: Evaluation grid
8	Evaluation grid	Evaluation Committee	Tender which has passed the post-qualification will be subject to evaluation by each member of the Procurement Committee. (Tenderers shall not be present.)	Annex 11: Evaluation grid
9	Evaluation Committee meeting and selection of supplier	Evaluation Committee	Discuss the evaluation and select a tenderer. Draft a report of the evaluation identifying clearly on which evaluation criteria the winning tenderer was superior and why.	Annex 12: Tender Evaluation Report
10	Letter of acceptance and contract	Procurement Officer approved by Project manager	Prepare the contract and submit the letter of acceptance with the contract. Apply the contract draft in the tender dossier. Invite the tenderer to sign the contract.	Annex 9: General Terms and Conditions
11	Notification Letter	Procurement Officer	Unsuccessful tenderers shall be notified of the result of the tender after the contract has been signed by the successful tenderer.	
12	Contract award notice	Procurement Officer	Publish the contract award on the website. (Be aware of any donor requirements.)	
13	Supplies receipt note	Procurement Officer	Inspect that supplies are received	

Time schedule for Local Open Tender: See guidance in annex 6

All members of the Evaluation Committee shall sign the Declaration of impartiality and confidentiality (See Annex 1). The Evaluation Committee shall possess the necessary technical and administrative expertise to perform tender evaluation.

**Step 1: Specifications - Local Open Tender:**

Identify the lots of items to be purchased from the procurement plan. Ensure that all proper import permits are available for the relevant items. Understand and draft the specifications of the item(s) to be purchased.

**Step 2: Tender dossier - Local Open Tender**

Draft the tender dossier with the following considerations (also see Annex 8):

**Specifications:**

The biggest challenge when drafting a tender dossier is to give the correct technical requirements which will ensure that the correct items are being offered and supplied. When drafting a tender dossier, the technical specifications are by far the most time consuming and the most important. Please refer to chapter 4 when drafting the technical requirements.

**Award Criteria:**

The award criteria for supply contract shall be awarded to the lowest compliant tender, i.e. the supplier who is substantially responsive to the tender dossier and technically compliant, and who has offered the lowest price, provided further that the tenderer has demonstrated the capability and resources to carry out the contract effectively.

**Timeframe:**

When are the goods required at final site?

**Transport & storage:**

Will the project staff themselves arrange for transport from delivery point to final site and 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 plan as a working tool.

**Donor Requirements:**

Take notice of specific donor requirements – such as requirements for country of origin, procurement method etc.

**Payment terms:**

What payment terms should be applied?

**Inspection:**

Will a pre-shipment inspection be required or will the goods be inspected upon arrival?

### **Documents required:**

Specify the documents that the contractor should submit including the forms provided by the Contracting Authority. One required document is the signed 'Declaration for Candidates & Tenderers' (Annex 2 of this manual).

**To avoid any unnecessary delays or waste of funds – it is important that the tender dossier is drafted carefully with consideration to the entire project cycle.**

### **Step 3: Procurement Notice – Local Open Tender**

The Procurement Officer shall draft a Procurement notice (see sample in annex 7). The advertisement shall in brief describe:

1. The supplies to be procured (set out the essential technical specifications)
2. The rules governing the lodging/submission and presentation of tenders
3. The exclusion, selection and award criteria
4. Where and when the tender dossier can be obtained.

Deadline for submission of tenders should **not be less than 21 days** from the date of the advertisement. However, the deadline may be longer depending on the nature of supplies. The tender dossier shall be available on the date of the advertisement.

The procurement notice shall be advertised in the country of operation by any relevant means available (local news paper and/or radio and/or notice board at a public place and/or on-line procurement media such as [www.procnews.com](http://www.procnews.com) in East Africa and [www.businessinafrica.net](http://www.businessinafrica.net)).

A local open tender is not only open to local suppliers but also to eligible suppliers from other countries, and the Procurement Officer is encouraged to submit the procurement notice directly to a list of suppliers who could be interested to participate.

It is in the interest of the Contracting Authority to ensure the widest possible participation in the tender to obtain best value for money.

### **Step 4: Submission of tender dossier - Local Open Tender**

The Procurement Officer shall submit the tender dossier to the suppliers who have requested it. The tender dossier shall be submitted within a few days after the supplier has requested it.

A record of when (date) the document was submitted and to whom, shall be made. Each supplier shall be identified with 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.

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 this Invitation to tender must be requested in writing.

Tenderers are not allowed to approach the Contracting Authority for oral clarification.

Any clarification of the tender dossier given by the Contracting Authority will be submitted to all tenderers at the latest on the date specified in the tender dossier. If the Contracting Authority provides additional information on the tender dossier, such information will be sent in writing to all other prospective tenderers at the same time.

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

#### **Step 5: Receiving tenders - Local Open Tender**

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

All tenders received after deadline shall be rejected at the tender opening. The deadline is strict.

#### **Step 6: Tender opening - Local Open Tender**

Tenders should 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.

The tenderers who participate shall be registered at a list of participants.

#### **Step 7: Administrative Compliance - Local Open Tender**

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

Each tender should be checked for administrative compliance – based on the requirements set out in the tender e.g.

- was the tender received before the deadline
- is the required no of copies supplied
- are the requested documents submitted and properly signed

The documents should not be read / evaluated. It should just be checked that the documents are available and properly signed. See annex 11: Evaluation Grid, part A.

At this stage, offers which do not comply shall be rejected. The reason for rejection shall be written in the administrative compliance report.

#### **Step 8: Evaluation - Local Open Tender**

After the post-qualification (part A of the Evaluation) each member of the Evaluation Committee will receive a copy of the remaining tenders for evaluation and analysis. This should be done in private and tenderers shall not be present. Each member shall issue an evaluation grid (B and C), which shall be compared at the evaluation meeting. See annex 11: Evaluation grid.

Please note that during the evaluation it might be necessary to obtain clarification from a tenderer. Depending on the type of clarification the tenderer should be allowed 48 hours to respond. Always remember to put a deadline for receipt of the clarification. The communication with the tenderer shall be in writing. This has to be agreed by the Evaluation Committee after each evaluator has completed his/her evaluation and be submitted by the procurement advisor.

#### **Case scenario 1: Amend technical specification**

If you discover that you need to amend your technical specifications, either reduce or increase the minimum requirements, and the specification that you need to amend was mentioned in the procurement notice, then you will have to cancel the tender process and make a new procurement notice with the new specifications; the deadline can be reduced to e.g. 15 days (depending on the complexity).

It would be easier to just contact all tenderers, but in this case it might be that other suppliers can now tender because of the revised specifications. The principle of “equal opportunity” must be considered in this case.

#### **Case scenario 2: All the financial offers exceed the budget**

If all financial offers exceed the budget substantially, then the cause for this would either be change of the market price, minimum technical requirements too high etc. You will need to investigate the reason for the high offers. If you have to change the specifications as per the above scenario or other terms which were on the procurement notice, then you will have to cancel the tender process and make a new procurement notice as described in the scenario above.

#### **Case scenario: 3 No tender received or no suitable tenders received**

Whenever no tenders or no suitable tenders have been submitted, you can proceed with a single quote with a supplier of your choice as long as you do not make substantial changes to the contract terms of the tender dossier.

If you have to make substantial changes to the contract terms of the tender dossier, then you will need to advertise a new procurement notice and make a new tender process. This is with consideration that other suppliers might submit a tender based on the new terms. The principle of “equal opportunity” must be considered in this case.

### **Step 9: Evaluation meeting - Local Open Tender**

After each member has completed the evaluation, an Evaluation Committee meeting shall be held. Discuss the evaluation and select a tenderer. Draft a report of the evaluation identifying clearly on which evaluation criteria the winning tenderer was superior and why (the report shall of course reflect the criteria in the tender dossier). The report shall be signed by all members of the Procurement Committee. (Tenderers shall not be present at this meeting).

See annex 11: Tender Evaluation Report. This document is a key document in the procurement file, very important for auditors who want to check or donors that want to monitor the procurement.

### **Step 10: Letter of acceptance - Local Open Tender**

Prepare the contract in accordance with the draft in the tender dossier and forward a Letter of Acceptance to the selected tenderer.

Before submitting and signing the purchase contract, the Procurement Officer must ensure

- That the contract draft is prepared carefully and that all annexes are attached
- That the signer for the supplier is indeed authorized to sign (documented through transcript from the Registrar of Companies or similar documentation).

The Procurement Officer can either invite the selected supplier to sign the contract at the office of the Contracting Authority or require him to return the signed contract by mail.

Signing the purchase contract creates a legally binding document for both parties.

### **Step 11: Notification Letter to the unsuccessful Tenderers - Local Open Tender**

After the purchase order has been signed, the Procurement Officer shall submit a notification letter to the unsuccessful tenderers notifying them of the result of the tender.

### **Step 12: Award notice - Local Open Tender**

An award notice shall be published on the website of the organization or otherwise. The information includes a) description of the product, b) name of winning supplier, c) contract value, d) source of funding, and e) date of contract.

Publication of the Award notice can be exempted if the Contracting Authority considers that a public notice on a contract award might endanger the organization's safety or harm its interests.

The Contracting Authority shall take notice of any specific donor requirements for publishing an award notice.

### **Step 13: Receipt - Local Open Tender**

Inspect that supplies received comply with the offer received.

## **6.4 International open tender (€ 150,000 and more)**

The procedures for International Open Tenders are the same as for Local Open Tenders except for advertisement and the time frame. International Open Tenders shall be advertised internationally.

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

The steps involved in this method are presented below.

<b>Table B8 International Open Tender for supplies in steps</b>				
<b>Step</b>	<b>What has to be done</b>	<b>Who is responsible</b>	<b>Description</b>	<b>Supporting annex</b>
1-2	Follow the procedure as described in Local Open Tender			
3	Tender Notice	Procurement Officer	Advertise the tender notice locally and internationally. The deadline should not be less <b>than 30 days</b> from the date of the advertisement. The Tender dossier shall be available on the date of the advertisement.	Annex 7: Procurement notice
4-13	Follow the procedure as described in Local Open Tender			

Time schedule for Local Open Tender: See guidance in annex 4

### **Step 3: Procurement Notice - International Open Tender**

When the present rules prescribe international publication, the Contracting Authority shall advertise the procurement notice in

- a) the country of operation, by any relevant means available
- b) in any relevant regional and international newspapers (see suggestions below)
- c) in any specialized media required by donors

If the project is funded by the World Bank or UN then the notice can be published on [www.devbusiness.com](http://www.devbusiness.com). If it is funded by other donors the notice can be published on [www.dgmarket.com](http://www.dgmarket.com). When feasible, advertising in technical magazines and trade publications shall be envisaged. It is also recommended to advertise the procurement notice on TED (Tenders Electronic daily) <http://ted.publications.eu.int/official/>, [www.IAPSO.org](http://www.IAPSO.org).

Tender procedures are open whenever all interested economic operators may submit a tender after publication of a tender notice. The Procurement Notice (Annex 7) shall specify at least the rules governing the lodging/submission and presentation of tenders, the exclusion, selection and award criteria and set out the technical specifications.

Depending on the nature of supplies/services/works the deadline should not be less **than 30 days** from the date of the advertisement. The tender dossier shall be available from the date of the advertisement.



The Contracting Authority is also encouraged to submit the procurement notice directly to a list of suppliers who could be interested in participating.

It is in the interest of the Contracting Authority to ensure the widest possible participation in the tender.

## 7. Special Rules

### 7.1 Pharmaceuticals and Medical Devices

It is utmost important to safeguard the quality and safety of pharmaceutical products and medical devices for human use procured by Contracting Authorities which should be the principle objective in any procurement exercise of these particular products.

Every activity in the procurement process should be carried out according the WHO standards and norms relating the quality assurance of pharmaceutical products which include Good manufacturing practices (GMP); Good distribution practices (GDP); Good storage practices (GSP); Good procurement practices based on the WHO's Model Quality Assurance System for procurement agencies (MQAS).

**When buying products such as medicines the Contracting Authority shall use the service of a HPC to provide technical assistance or to supply pre-established stocks.** This is advantageous, not only because in that case the Contracting Authority may apply the negotiated procedure with a Single Bid Negotiated Procedure (Single Quote) to purchase from HPCs, but the HPC assumes responsibility for ensuring high quality and genuine pharmaceutical products. (See section 7.4 for the use of HPC)

Since the Contracting Authority shall use the service of an HPC, this section might end here. Nevertheless the standards for procurement of pharmaceutical products and medical devices are described below. It shows their complicated nature that explains ICCO's choice to use the service of an HPC. The description below is a part of section 4.3 in ECHO's "Humanitarian Aid Guidelines for Procurement".

The HPC will ensure that both pre-qualification of the supplier (including the manufacturing site in compliance of the International Norm ISO 9001:2008) and of the pharmaceutical product has been carried out based on the methodology and criteria outlined below.

#### Pre-Qualification of pharmaceutical products and medical devices

Pharmaceutical products and medical devices procured by an organization or HPC must be purchased on the basis of a pre-qualification scheme. Pre-Qualification of suppliers and their products involves screening both even before they are considered eligible for procurement in humanitarian aid or development Actions. Pre-qualification aims to make quality priority medicines available for the benefit of those in need.

The Pre-Qualification shall be implemented either by the World Health Organisation, (WHO); or a Stringent Regulatory authority; or a UN organisation; or a Non-Governmental Organisation, a Humanitarian Procurement Centre or a specialized commercial operator which meet WHO recommended norms and standards for carrying out pre-qualification.

The WHO has published a list of its prequalified medicinal products used for HIV/AIDS, malaria, tuberculosis and for reproductive health. These lists are already used by United Nations agencies — including UNAIDS and UNICEF — to guide their procurement decisions. Contracting Authorities

may therefore wish to consult the WHO's List of Prequalified Medicinal Products (<http://apps.who.int/prequal/>).

Since the WHO's List is currently limited to products related to HIV/AIDS, malaria, tuberculosis and for reproductive health, however, Contracting Authorities may also have to refer to other Pre-Qualification Schemes implemented by other above-mentioned entities which meet WHO recommended norms and standards for carrying out pre-qualification.

The WHO's web-site gives detailed guidance on its standards and provides the text of WHO Model Quality Assurance System for procurement agencies ("MQAS"). The WHO's MQAS is intended to assist procurement organizations to establish quality assurance systems to enable them to procure safe, effective, quality pharmaceuticals. The document focuses on key activities associated with procurement, such as prequalification of products and manufacturers/suppliers, purchasing, storage and distribution of products. The long-term goal of the MQAS is the design and implementation of a uniform and harmonized system that will ensure procurement of pharmaceutical products of defined quality for supply to patients.

[http://apps.who.int/prequal/info\\_applicants/procagencies/prequal\\_procagencies.htm](http://apps.who.int/prequal/info_applicants/procagencies/prequal_procagencies.htm)

#### Particular selection criteria for pharmaceuticals and medical devices

Particular Selection Criteria should be applied for pharmaceutical products and medical devices:

-Pharmaceutical products and medical devices are specialised products for which certain standards must be kept throughout the supply chain. Contracting Authorities should be aware of the risk that counterfeit products may enter the legitimate supply chain. Vigilance is therefore required at every step of the supply and distribution chain to ensure that the risk of counterfeit products is minimized.

- Pharmaceutical products and medical devices must respect patents and national drug regulations in the individual countries. This means that the Contracting authority is responsible for ensuring compliance with both the patents and the applicable drug regulations in the applicable countries, meaning the countries from which and to which the products are being transported or stored. If the products are being procured specifically for distribution to a known market, due diligence would dictate that the Contracting Authority, should where possible, ensure that the products are lawful in their country of destination. In certain turbulent situations it may be impossible to verify the regulatory norms in the country of destination, nevertheless, common sense and sensitivity to cultural and traditional values of the local population should be taken into consideration together with the overriding interests of the beneficiary patients.

- Pharmaceutical products and medical devices must abide by international norms and standards for pharmaceutical products and medical devices. In this respect reference to EN or ISO Standards is always a good indication of adequate quality. The select criteria shall give priority to contractors that comply at least with one of the following certifications or equivalent EN46001/ EN46002; ISO13485/ ISO13488; ISO9001/ISO9002, ISO9001/2000; Japan QS Standard for medical devices 1128; United States QS (21 CFR part 820).

Furthermore, Medical Devices shall meet essential requirements as described by the Global Harmonization Task Force (GHTF); be produced in conformity with ISO standards and/or other equivalent standards as recognised by the GHTF; be marketed according to at least one of the

following regulatory authorities: MPALS License (Australia), Device License (Canada), CE Mark (EU), Device License (Japan), and 510 k Device Letter (USA).

The references to international standards are neither exhaustive, nor definitive. Contracting Authorities shall take as a reference any internationally recognised standard that may be set and the updates and revisions of the standards mentioned herein.

Pharmaceutical products and medical devices must be purchased on the basis of an adequate price comparison exercise. The Contracting Authority should consult the International Drug Prices Indicator<sup>11</sup> when procuring pharmaceutical products. When comparing the costs of pharmaceutical products, the cost of the whole treatment not just the cost per unit- should be taken into consideration. Since the choice may also be influenced by other factors such as transportation charges, storage requirements and shelf-life, the total cost should be considered.

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 and represents an essential tool to be used by Contracting Authorities to compare prices. The International Drug Price Indicator Guide aims to make price information more widely available in order to improve procurement of medicines of assured quality for the lowest possible price.

Despite the duty of Contracting Authorities to carry out sufficient price research it must always be recalled that the overriding aim of the procurement of pharmaceutical products and medical devices is to ensure high standard products which are authentic, effective and safe for patients. In order for pharmaceutical products and medical devices to be accessible to as many beneficiaries as possible they naturally cannot be prohibitively priced, however, a search for the lowest price should not be the main objective of the procurement of these products.

#### The procurement procedures for pharmaceuticals and medical devices

Pharmaceutical products and medical devices must be purchased following a Negotiated Procedure based on pre-qualification of potential Candidates. The practical result of this is that the purchase of medicine need not be submitted to open tender but that irrespectively of the value of the contract to be awarded, the Contracting Authority shall launch a negotiated procedure by inviting simultaneously and in writing only pre-qualified Candidates.

Before initiating this procurement procedure the Contracting Authority should already be in a position to ascertain that the products they wish to procure are pre-qualified under a WHO approved scheme or equivalent. Any potential Candidate must offer pre-qualified goods and must also meet WHO standards in matters of production, storage and distribution. Therefore even before launching a Negotiated Procedure based on Pre-Qualification the Contracting Authority must somehow have established a list of potential suppliers which comply with the set standards as detailed above.

Whenever feasible, the number of candidates invited shall be sufficient to ensure genuine competition. In assessing to what extent competition can be opened the market situation of each product, the nature of the medicines and medical equipment, and the critical dates for delivery

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<sup>11</sup> [http://erc.msh.org/dmpguide/index.cfm?search\\_cat=yes&display=yes&module=dmp](http://erc.msh.org/dmpguide/index.cfm?search_cat=yes&display=yes&module=dmp)

may determine the numbers of candidates approached. Choices are restricted by the characteristics of medicines and medical equipment as some are either single-source or limited-source products. Other pharmaceutical products may be multi-source but effectively restricted to limited sources in many settings.

Procedurally the steps to be covered are similar to those used in a standard Negotiated Procedure, with the difference that another step is added in the form of pre-qualification. In any case, the Mandatory Principles of procurement must be observed so transparency and equal treatments of equal candidates should be upheld.

## 7.2 Food Aid

**The special rules in this section apply in particular to contracts of € 150,000 and more for food aid.**

**When the Contracting Authority itself does not have the required competence and experience in the procurement of food aid, the use of the service of a HPC (see section 7.4) is highly recommended.**

For Food Aid the Contracting Authority shall apply the special rules in this section. The applicability of the procedures established herein is determined by value of the contract and by its object.

Falling under these special rules are only those contracts whose object is the purchase of food for human consumption (fresh and dry food), including the purchase of specialised items such as 'fortified'; 'high-calorie' or 'supplementary foods' (such as ready-to use corn, wheat or soya blends, high-energy biscuits or food bars) for the prevention or avoidance of malnutrition.<sup>12</sup>

On the other hand the purchase of "therapeutic food", designed for specific, usually nutritional, therapeutic purposes, should be considered as medicines and subject to the Special Rules for procurement in section 7.1 above. Included in this category of products are milk formulas, such as F-100 and F-75 (also known as Formula 100 and Formula 75) - therapeutic milk products designed to treat severe malnutrition. Other examples of therapeutic foods include pastes such as Plumpy'nut (a high protein & energy peanut-based paste in a foil wrapper) categorized by the WHO as a Ready-to-Use Therapeutic Food (RUTF) and BP-100 (a nutrient-fortified wheat-and oat bar).

The purchase of commodities such as corn, wheat or soy products (sold separately – not blended) intended for **human consumption** shall be done in accordance with the Special Rules applicable to the procurement of Food and not those concerning Pharmaceutical products.

The purchase of commodities such as corn and wheat products etc. intended for **agricultural purposes (seeds) or for animal consumption** shall be done in accordance with the **applicable general rules** and not the Special Rules concerning either Food or Pharmaceutical products.

The procedure to be followed by the contracting authority when **awarding procurement contracts for an amount of €150,000 or higher** shall be in conformity with this Manual and shall include in the tender documents the requirements identified in this Manual. For contracts of lower value, the contracting authority may still decide to follow those instructions pertinent for the procedure it intend to launch, having due regard to the proportionality of the administrative effort required and the potential risks of all sorts.

There is an exception for the **supply of fresh food**: when the contract is divided into several lots taking into account the seasonal availability of products, each one of the lots will be considered individually, and not aggregated, in order to establish the applicable threshold. This is based on the understanding that fresh food is normally purchased locally through a number of low to

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<sup>12</sup> For some examples of these food products visit <http://www.wfp.org/photos/gallery/nutritional-products-used-wfp>

medium value contracts with a variety of suppliers taking into account the seasonal availability of products.

The splitting of the fresh food purchases into a number of lots and different contracts with multiple local suppliers may widen the choice and variety of products, limit the risks of price inflation, reduce overall costs (reduced transport costs) and inject cash into the local economy favouring economic recovery. Other types of food, such as dry food prepared/pre-cooked food rations and canned food are more suitable for procurement procedures designed to award a medium to high value<sup>13</sup> contract to a single supplier. These contracts may include also international transport, insurance and storage. Should the Contracting Authority split into lots the procurement of this type of food the usual rules for the calculation of the applicable threshold apply meaning that the value of all lots together must be taken into account for the overall evaluation of the applicable threshold.

#### Particular selection criteria for food products

Particular Selection Criteria for food may need to be set, which when relevant should be provided in advance or referred to for all Tenderers or Candidates in compliance with the principle of transparency and open competition.

When drafting tender specifications, contracting authorities have to ensure that the quality standards laid down in the domestic legislation of the country where the Action is implemented are met.

Where local legislation does not exist, internationally recognised standards such as Codex Alimentarius<sup>14</sup> could be taken as reference to the extent possible. The food distributed in the framework of humanitarian Actions shall, as much as possible, also match the nutritional habits of the beneficiary population.

In order to provide a higher level of legal security to the Parties, (contracting authority and awarded supplier), procurement procedures for the award of contracts of a value of € 150,000 or higher, shall include, other than the usual information and required technical specifications, the following specifications:

- the net weight of the lots;
- the proposed price per net metric tonne of product at the place of delivery as specified and in accordance with the conditions laid down in the tender documentation;
- where the invitation to tender is for a contract to supply a maximum quantity of a given product for a specific monetary amount, the net quantity of products offered;
- where relevant, the transport costs from the place of loading to the place of delivery for the specified delivery stage;
- the delivery deadline or delivery timeframe. Where appropriate, the tender documentation may specify a date before which any delivery will be considered premature;

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<sup>13</sup> € 150,000 or higher

<sup>14</sup> “food code” developed by the Commission and Technical Committees set up by the FAO and WHO to develop food standards, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Programme: see [www.codexalimentarius.net](http://www.codexalimentarius.net)

- where relevant, the contractual Incoterms delivery conditions applicable to the supply contract, and include the applicable Incoterms edition; and
- where relevant, the procedures arising from the intervention of a Monitoring Agency.

Contracting authorities may wish to include reference to these requirements also for awards under €150,000 using negotiated procurement procedures. Suppliers shall perform their obligations in accordance with the contract and the tender or offer documentation, including those arising from the Incoterms, where relevant, and the ones arising from their tender or offer.

### Monitoring Agencies

When the implementation of a non-urgent Action requires the award of a food supply contract for a value higher than € 300,000 the Contracting Authority shall contract a Monitoring Agency.

The Monitoring Agency shall be responsible for verifying and certifying the quality, quantity, packing and marking of the goods to be delivered in respect of each supply and issuing a certificate of conformity.

On the basis of a duly justified request of the Implementing Partner, ICCO may waive the obligation of contracting a monitoring agency for example for fresh food supply contracts or in urgent cases where the appointment of a Monitoring Agency would be operationally harmful. In case the funds for the Action are provided by an Institutional Donor, ICCO at its turn will request this derogation from the Institutional Donor.

Contracting Authorities shall select and award contracts to Monitoring Agencies in accordance with the rules applicable to the award of service contracts (see chapter 8). The award of the service contract shall be prior to the award of the food supply contract. When the Contracting Authority regularly engages Monitoring Agencies, a suggestion would be to conclude a Framework Service Contract (see section 7.3), rather than launching ad hoc tender procedures in each case. As soon as the food supply contract has been awarded, the Contracting Authority shall inform the supplier of the choice of the Monitoring Agency. Under no circumstances can a Monitoring Agency be involved, in one way or the other, in the selection of suppliers of the procurement procedure that it will monitor. **When the Contracting Authority considers the use of HPCs for the procurement of food the HPC assumes the responsibility of ensuring the required quality and respecting the appropriate procedures.**

The contract between the Contracting Authority and the Monitoring Agency shall ensure that the Monitoring Agency commits itself to:

- maintain a complete independence, not to accept any instructions from any other party than the Contracting Authority or its representatives, in particular not to accept instructions from the supplier, the consignees or any of their representatives, or other intermediaries involved in the operations under consideration;
- prevent any Conflict of interest between its activities under the contract with the Contracting Authority and any other activity it undertakes with a party involved in the operations under consideration;
- carry out its checks based on the terms of reference set. These should comply with the following international monitoring standards:



- o provisional check on quality conformity shall be carried out before loading and a check on quantity when the goods are loaded. When the provisional check is complete, the Monitoring Agency shall issue a **provisional certificate of conformity** to the supplier, subject to reservation if necessary. Transport from the place of loading can only start after the provisional certificate of conformity has been issued; and
- o final check after discharge at the place of delivery indicated in the supply contract. When the final check at the contractual place of delivery is complete, the Monitoring Agency shall issue a **final certificate of conformity** to the supplier specifying in particular the date of completion of the supply and the net quantity supplied; such certificate shall be subject to reservations if necessary.
- o the Monitoring Agency shall invite the representatives of the supplier to be present at the checking operations, in particular for the taking of samples to be used for analyses. The taking of samples shall be carried out in accordance with professional practice. When sampling is undertaken, the Monitoring Agency shall take two additional samples which shall be kept under seal at the Contracting Authority's disposal for the purpose of any further check or in the event of objections being raised by the supplier. The cost of the goods taken as samples shall be borne by the supplier. The supplier shall bear any financial consequences in the event of qualitative shortcomings or late presentation of the goods for checking.

The costs of the checks referred to above shall be invoiced to and paid by the Contracting Authority and are direct Eligible costs of the Action.

The consignee/recipient of the goods shall sign the transport way bill for reception of the goods at the contractual delivery place and enter its observations on the physical state of the goods and packaging as visually established. The Contracting Authority or its representative shall issue a taking-over certificate to the supplier without delay after the goods have been supplied at the contractual delivery place and the supplier has provided the original of the final certificate of conformity issued by the Monitoring Agency and with a pro forma invoice establishing both the value of the goods and their transfer to the Contracting Authority.

Where the Monitoring Agency after making the final check at the contractual place of delivery issues a reasoned 'notice of reservation', it shall notify the supplier and the Contracting Authority in writing as soon as possible. If the supplier wishes to dispute the findings he shall do so within five working days of dispatch of this notice.

If the supplier or the Contracting Authority object to the findings of a check, the Monitoring Agency shall arrange for a review inspection involving, according to the nature of the objection, a review sampling, review analysis, and/or a reweighing or rechecking of the packaging. The review inspection shall be carried out by an agency or laboratory designated by agreement between the supplier, the Contracting Authority and the Monitoring Agency. The contract should foresee that the costs of this review inspection shall be borne by the losing party.

If the final certificate of conformity is not issued after the checks or review inspection has been carried out, the supplier shall be obliged to replace the goods. The replacement and related checks costs shall be borne by the supplier.

#### Obligations related to the use of a Monitoring Agency

- Where the Contracting Authority engages the services of a Monitoring Agency the Contract Notice or Invitation to Negotiate should also specify the obligations (e.g. right of access) imposed upon the supplier resulting from the use of the Monitoring Agency to enable the Monitoring Agency to perform its duties.
- The contract with the supplier has to indicate the accepted tolerances for weight and / or quantity delivered at the contractual place of delivery.
- The contract terms with the supplier shall specify the procedure for establishing reductions for quality deviation as well as reductions for delivery beyond the contractual delivery period or date.

#### Sourcing of food aid in the country of operation or neighbouring countries

The Contracting Authority shall give priority to purchase in the country of operation or neighbouring countries, whenever it is possible and advisable having due regard to the context in which the Action is implemented and not significantly disturbing the local markets.

The Contracting Authority shall prior to the procurement acquire elements of evidence, based on local/regional market analysis, that local/regional procurement would not induce market distortions that could adversely affect vulnerable populations. The food aid products shall as much as possible match the nutritional habits of the beneficiary population.

The characteristics of the products and their packaging MUST 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 standard.

Contracts shall include provisions on the accepted tolerance for weight and/or quantities delivered and identify the procedure for establishing reductions of price for quality deviations and deliveries beyond the contracted delivery date or period.

### 7.3 Framework contracts

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

This section does not deal with multiple framework contracts, which are separate but identical contracts with a number of economic operators.

In contrast to direct contracts, Framework contracts merely set out a performance framework (in general, the characteristics and price of the goods or services that the economic operator is prepared to provide). The other basic elements of the contractual relationship are defined at a later stage in a specific contract, which is often an “order form” indicating the quantities and date of performance.

Framework contracts therefore give rise to no obligation for the Contracting Authority to award specific contracts.

Framework supply contracts, like framework service contracts, must stipulate the parties, the duration, the subject and the method of making particular purchases.

In practice, Framework contracts are for a precisely defined subject, but where the exact quantities and delivery times cannot be indicated in advance.

Some examples:

- Project evaluations, the characteristics of the required service (evaluators’ profile, evaluation methodology, available teams, duties, reports, etc.) can be indicated in advance; however, the location and duration of each assignment and the number of evaluators needed cannot be determined in advance.
- Capacity building programs: local consultants will be contracted during a certain period to provide training and coaching of organizations. The training program is not fully detailed beforehand.

Other defining characteristics of Framework contracts are their multiannual and the fact that they need not be linked to a specific project or action.

#### Procurement procedure for Framework Contracts

The procurement procedure for the award of framework contract will be chosen according to the estimated value of the framework contract for its whole duration (maximum 5 years).

In order to ensure the full transparency of the procedure, an Implementing Partner shall provide ICCO a list of all the Framework contracts in force in actions funded by ICCO and the amounts of the specific contracts concluded for each of them. Furthermore, the information concerning the procurement procedures followed by the Implementing Partner in the final report must indicate where a framework contract has been used and the subject and amount of the specific contract.

When the funds for the Action have been provided to ICCO by an Institutional Donor, ICCO will provide this information to the concerned donor.

#### Advantages and limitations of Framework contracts

Framework contracts can greatly improve the efficiency of the supply chain management of the Contracting Authority. The perennial aspect of framework contracts helps building robust relations with reliable suppliers ensuring quality, timely deliveries and costs reductions.

Contracting authorities should envisage concluding **Framework service contract or Framework supply contract** whenever it is envisaged to procure the same type of service or supply regularly but the precise volume and timing of delivery cannot be defined at the outset.

On the other hand, if the subject and timing can be defined at the outset and it is not foreseen to repeat the tender procedure in the short term, contracting authorities should envisage to award direct contracts through the applicable tender procedure. Moreover, direct contracts should be envisaged when the operational circumstances make it impracticable to resort to a framework contract.

In order not to limit competition, the duration of framework contracts is limited to a maximum of five years. Renewed competition should guarantee compliance with the general principles of transparency, proportionality, equal treatment, non-discrimination.

Contracting authorities may not misuse framework contracts in order to hinder, limit or distort competition. This situation would arise:

- Where the subject of the contract, the quantities involved and the work schedule can be precisely indicated when the specifications are drawn up.
- Where the prices of products or services can fluctuate unpredictably (IT hardware, paper, raw materials, etc.), and a review clause is not envisaged (framework contract with reopening of competition) nor the reopening of competition between contractors.
- Where the framework contract would not satisfy the obligation to provide a comprehensive, clear and accurate definition of the subject of the contract.

The Contracting Authority shall use framework contracts only in the specific situations in which this approach is justified and does not infringe the procurement rules.

## **7.4 Procurement Centres**

When the Contracting Authority considers having not sufficient time or competence to apply a complicated procurement method, it may use the service of an HPC, a Humanitarian Procurement Centre, recognized by DC ECHO. This is strongly advised for both the procurement of pharmaceuticals and medical devices and for food aid.

The use of the service of a HPC has to be considered in all projects, whether they are funded by DC ECHO or any other donor.

An Implementing Partner of ICCO shall mention the use of an HPC in the procurement plan that is part of the project proposal. When the Action is funded by ECHO, ICCO will mention the award of a contract to an HPC in Annex A to the Single Form; furthermore it shall in the final report of the Action identify the contracts awarded to an HPC.

### **7.4.1 HPCs, recognized by DC ECHO**

The concept of HPCs is introduced by DC ECHO as part of its wider policy objective of guaranteeing safer and more efficient procurement. DC ECHO aims to develop further the concept of HPCs and to facilitate humanitarian organisations' recourse to their services. DG ECHO intends to make HPCs and their sectors of specialisation better known to its Partner organisations and other donors. Through this pro-active approach, DC ECHO intends not only to facilitate efficient and safe procurement procedures for its Partners, but also to contribute to the reduction of overall costs related to procurement in humanitarian aid.

HPCs are entities specialised in buying emergency and health supplies and related services for use by others in humanitarian aid operations. Before an HPC is recognised by DG ECHO it is screened to ensure that it fulfils the requisite criteria set by DG ECHO to ensure high quality in operational efficiency and open procurement procedures.

HPCs are "not for profit organisations specialised in the technical and commercial management of supplies and services necessary for the implementation of humanitarian Actions. They can provide Technical Assistance in procurement to Contracting Authorities or supply pre-established stocks, purchasing or logistics capacity".

As regards its legal personality, an HPC may be either:

-A specialised humanitarian procurement organisation set up according to the national legislation of its country of establishment (which may be located outside the European Union); or

-A specialised supplies, logistics or procurement department or service of an International Organisation, including international public sector organisations set up by intergovernmental agreements, specialised agencies set up by such organisations (e.g. the UN and its agencies), the International Committee of the Red Cross and the International Federation off the Red Cross and Red Crescent societies.

In any case, to be eligible as an HPC, an entity must:

- Be a not-for-profit organisation;

- Be willing and able to procure products and services for any other humanitarian organisation in an open way and on an equal treatment basis regarding, for example, price, performance and quality;
- Have as a core function the management of the supply chain either for specific areas of trade (medicines, shelter supplies, food etc.) or for the general supply of relief items and humanitarian aid services; and
- Have the administrative and financial capacity to perform its procurement-related activities and services in accordance with the best practices in the sector.

The online HPC<sup>15</sup> Register on DG ECHO's web-site provides a list of the organisations which currently benefit from the recognition by DG ECHO as HPCs as well as an indication of their main areas of activity and the countries to which they supply goods or services This Register does not entail any contractual relationship between DG ECHO and the HPC.

Depending on their areas of specialisation, the HPCs recognised by DG ECHO supply goods or services in one or more of the following areas: Pharmaceutical products & medical supplies; Medical devices & equipment; Prosthetic Technology; Veterinary; Food; Livelihood support; Water & Sanitation; Shelter & Non-Food items; Engineering, Radio and Telecommunications; Transport; Administration and Services.

With regard to the type of products or services that they usually provide, HPCs can be:

- Stockholding: - holding stocks of supplies which they can make directly available to Partners; or
- Non-stockholding: - not holding their own stocks but purchasing the supplies on behalf of their client, often on the basis of framework contracts with suppliers; and/or
- Service providing: - offering consultancy services regarding procurement like offering advice on tender procedures, custom clearances, quality assurance, or organising procurement procedures for Partners without actually purchasing on their behalf.

An HPC can provide a combination of these services so while some HPCs are specialised in a given type of product (for instance, medicines and medical equipment) others may offer a wider choice of products and services.

Different forms of entities providing procurement services exist, however, not all of these are eligible for DG ECHO recognition as HPCs. Partners and international humanitarian organisations may still use these services of these entities however they should be aware that the simplified procedures applicable when dealing with an HPC do not extend to dealings with these entities. In other words, **unless a procurement entity is a recognised HPC, listed on ECHO's web-site, the usual procurement procedures apply.**

#### The relationship between DG ECHO and HPCs

As the Service of the European Commission responsible for the funding of humanitarian aid actions, it is the responsibility of DG ECHO to set the procedure for the assessment of organisations wishing to offer their services as HPCs. In this respect, DG ECHO will assess the procedures on procurement and

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<sup>15</sup> [http://ec.europa.eu/echo/files/partners/humanitarian\\_aid/HPC-register\\_en.pdf](http://ec.europa.eu/echo/files/partners/humanitarian_aid/HPC-register_en.pdf)

internal control as well as the financial viability of the candidate HPC and hold a register of recognised HPCs.

Once an HPC is recognised it will be subject to periodic checks and on-site examinations aimed at providing assurance to DG ECHO that the procurement procedures adopted by the HPC are in accordance with the requirements/principles of Annex IV of the FPA 2008.

Nevertheless there is no contractual relation between DG ECHO and the HPCs it recognises. DG ECHO will not accept any liability for failures to respect contractual obligations by HPCs or its Partners. Furthermore, the recognition by DG ECHO of a given organisation as HPC does not entail any certification of quality nor can it be presented as a system of preferred vendors. Any misrepresentation to third parties of the scope or the status of HPCs will result in DG ECHO's withdrawal of its recognition.

#### Fair pricing system & non-profit principle

HPCs must be able to demonstrate the methodology used to establish their prices. This methodology shall be presented as part of the assessment process prior to granting HPC recognition by DG ECHO. Furthermore, it may be tested in the framework of on-site examinations where HPCs shall present their sales price calculation for close scrutiny in light of the real costs and the set principles, including that of non-profit.

HPCs have to establish their prices with due regard to the following principles

##### -The principle of non-profit

The principle of non-profit does not imply that the HPC should make a loss, sell below its cost prices or subsidise its HPC operations using funds from other sources. Under no circumstances may surpluses generated from an HPC forming part of a larger organisation or network be used for funding running or operational costs of other services of that organisation but if generated should be used to invest in the core business of the HPC.

##### -The principle of verifiable and consistent pricing behaviour

When establishing sales prices, these must be calculated using a verifiable method that is applied consistently. This means that the HPC's pricing system should be explained in writing and be detailed and flexible enough to provide pricing guidelines to staff on how to deal with specific situations such as very urgent, complex or large bulk orders.

##### -The principle of equal treatment

The prices set by HPCs must be established in compliance with the principle of equal treatment of humanitarian organisations. This does not mean that no discounts or price reductions may be given - but that these be given equally to any organisation in the same defined situation and not just on the basis of some relationship with a particular organisation.

Whilst taking into consideration that HPCs may have their own established invoicing and pricing procedures the sales prices for products should generally be established on the basis of invoices from

third parties (e.g. product suppliers) or unit or production costs (where the HPC manufactured the product itself) to which the HPC adds a handling fee or overhead cost in order to cover its costs.

DC ECHO's Annex IV mentions that **handling fees or overhead costs charged by a HPC may be considered eligible providing the HPC is able to demonstrate the methodology used**. Furthermore, in order to avoid double charging handling fees or overhead charges are only permitted provided that the costs covered have not already been included in other cost categories.

Overhead costs or handling fees are defined as recurring costs of running an organisation; necessary for the legal and regular functioning of the HPC. They cannot be directly linked to or caused by a specific contract. Overheads include all the structural and support costs of an administrative, technical and logistical nature which are cross-cutting for the operation of the HPCs various activities and cannot therefore be booked in full to the action for which a specific contract is concluded because such contract is only one part of those activities.

Although not specifically mentioned in Annex IV (*of ECHO Guidelines*), it is clear that the HPC may also add handling fees or overheads such as Transport and/or Insurance costs to the purchase/service/unit price of the good or service. Some HPCs do not include these costs as a handling fees or overhead costs but add them as a separate direct or service cost – either way what is important is that the total price and cost breakdown is clear and fair (i.e. no double charging). Likewise the handling fees or overhead costs could take into account procurement costs such as pre-qualification of suppliers of medicines; quality control; warehouse costs unless these are included as separate services for a given contract.

#### **7.4.2 Relationship between Contracting Authority and HPC**

**The Contracting Authority may pass orders to a HPC without recourse to competitive tendering or publication (irrespective of the amount of the contract) and can apply a Single Quote Procedure to award the contract.** This way the applicable procurement procedures are simplified. It may pass orders without recourse to competitive tendering or publication irrespective of the amount of the contract. When the Contracting Authority uses a HPC for the procurement of food the HPC assumes the responsibility of ensuring the required quality and respecting the appropriate procedures.

When the organisation wishes to award a contract to an HPC, it does not have to conduct an in-depth analysis of the functioning and financial viability of the HPC. Such analysis has been conducted by DG ECHO and has entailed the validation as an HPC. To make the process quicker and more efficient the Contracting Authority should also avoid additional costs such as bank guarantees, payment interests, etc. which will not be eligible for EU-funding.

The procurement method to select an HPC is the single quote procedure applied to services, since the HPC provides the service of facilitating procurement to the Contracting Authority.

#### Eligible costs of the Action

Expenses committed by the Contracting Authority for purchases of goods and services from HPCs are direct costs of the Action. The eligibility of costs committed with an HPC enjoys a presumption of regularity and good faith in favour of DG ECHO Partners.



As long as the quality and timeliness of the delivery of goods and/or services has been respected, DG ECHO will reimburse the costs of contracts signed by humanitarian organisations even if DG ECHO's recognition of a given HPC has been withdrawn after the contract was signed.

Invoices from HPCs should contain the following details, where relevant:

- invoice number and date;
- date and place of delivery;
- Action for which procurement was made;
- type of item procured, quantities, sales price per quantity, total sales price and contractual conditions applied (reference to the applicable Incoterm);
- if applicable: insurance costs related to the items concerned, related customs costs committed by the HPC, related transport costs, related packaging costs;
- if applicable: administrative fees and other internal unit costs charged;
- if applicable overhead costs;
- total invoice value;
- VAT statement in accordance with the applicable VAT rules.

#### Obligations of the Contracting Authority when dealing with an HPC

Contractual relations between HPC and the Contracting Authority will be governed by the contracts signed by them. Any possible failures to comply with the contractual obligations should be addressed on the basis of the relevant provisions of those contracts.

HPCs are responsible for complying with their contractual obligations with third parties and will assume all liabilities derived from the performance of the contracts. There is no contractual relation between DG ECHO and HPCs. DG ECHO will not accept any liability for failures to respect contractual obligations by HPCs. **It is the responsibility of both the Contracting Authority and the HPC to guarantee that the delivered supplies or the rendered services are of satisfactory quality and in accordance with the technical description provided in the contract.**

Contracts signed between the HPC and the Contracting Authority have to lay down, at least, the following:

- The subject, the costs, the conditions applicable to the contract between the Contracting Authority and the HPC the arrangements and time limits for delivery, acceptance and payment, provisions concerning the friendly settlement of conflicts, if possible by arbitration or similar procedures. Timely deliveries of the supplies and the performance of the service have also to be addressed in the contract between the humanitarian organisation and the HPC.
- Technical specifications have to be annexed to the contract and are part of it. It will also include the list of documents relating to the procurement that the Contracting Authority should receive from the HPC, such as invoice, proof of delivery, certificate of donation, quality certificate (for food and medicines).<sup>16</sup>

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<sup>16</sup> N.B – The Contracting Authority only needs to be in possession of procurement documentation pertaining to the relationship between them and the HPC, it is therefore not necessary to request supplementary documentation relating to the relationship between the HPC and its suppliers (invoices from transporters, insurance policies, packing lists, tally lists,

- The necessary provisions in order to ensure that the obligations imposed on their contractors by the Agreement signed with DG ECHO are correctly and fully reflected in the contracts signed with HPCs.

When dealing with HPCs, the Contracting Authority should recall at all times that, although DG ECHO has screened the HPC as an organisation, it is the Contracting Authority that remains responsible for ensuring that the individual contracts it concludes with HPCs observe certain basic principles, such as the following:

- Contracts awarded to HPCs must comply with the principle of economy. This requires that the HPC provide the goods or services requested in due time, in appropriate quantity and quality and at the best price.
- Respect of the principle of due diligence. DG ECHO Partners are responsible in any case for the execution and coordination of all contracted activities. To this end they must exercise the necessary degree of care and diligence when procuring supplies and services from an HPC.
- Like with any other procurement procedure, the award of contracts has to be free from any interference due to conflict of interest, fraud, corruption, collusion and coercive practices. In this respect, the Contracting Authority has the duty to immediately inform ICCO of any irregularities they become aware of in the procurement process and take the necessary actions to redress the situation. ICCO, at its turn, will inform the Institutional Donor that has provided funds for the concerned Action.
- The compliance with the provisions foreseen in the HPC Charter such as international standards and quality assurance of products and services provided by HPCs and respect of international working standards has to be assured. In particular, the procurement of medicines and medical equipment and food shall be in accordance with international standards or best practice as referred to in Chapter 8.1 and 8.2 of this manual (above). Although these aspects have already been checked by DG ECHO, to the extent possible, any failures to meet these standards by HPCs should be noted by Partners and reported to DG ECHO immediately.
- In order to ensure the compliance with the principle of transparency, and where appropriate, the Contracting Authority shall mention the EU-funding to the HPC when awarding a contract.

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road consignment notes, framework agreements, tender documents of the HPC) unless this is considered of particular use to the Contracting Authority.

## 8. Services

### 8.1 Types of services

Procurement methods are the rules on “**how to buy**”. This section describes the rules and methods for procurement of services:

**Services:** Service contracts cover all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and property contracts. Service contracts also comprise study and technical assistance contracts and freight contracts.

A **study contract** is a contract which includes studies for the identification and preparation of projects, feasibility studies, technical studies, evaluations 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. (If the freight is included in the supply contract, it is not a service contract)

Rental and hire of equipment is not considered a service contract for procurement purposes, but a supply contract (e.g., rent of vehicle). Be aware that some services such as financial services, cleaning services, accommodation and catering might be considered “running costs” of the project, and therefore not subject to procurement procedure.

For the distinction between “consultant” contract and “employment” contract, please refer to section 8.4.

<b>Table B4.2 Required procurement method</b>		
<b>Procurement Method</b>	<b>Value of contract</b>	<b>Minimal Commitment</b>
<b>SERVICES</b>		
International Open Tender	€ 150,000 and more	Contract
Negotiated Procedure	€ 20,000 up to € 150,000	Contract
Single Quote	Up to € 20,000	Above € 2,000 a Purchase Order, below € 2,000 an Invoice

The steps in the Single Quote and the Negotiated Procedure will be treated in the sections 8.2 and 8.3 respectively. Since service contracts with a contract value above € 150,000 are unlikely to occur, the international open tender will not be explicitly treated in this manual. The procedure can be elaborated by comparing the negotiated procedure for services (what is needed for a service contract) to the international open tender for supplies (what is needed for an open tender, see sections 6.3 and 6.4).

There are many types of services with a need for specific requirements. This subject will be treated in section 8.4.

The provider of intellectual services is usually called a consultant. ICCO and its Implementing Partners frequently use the services of consultants. Sections 8.2 and 8.3 will be described based on the example of contracting a consultant or consultancy firm.

## 9.2 Single Quote –Services (up to € 20,000 and in special circumstances)

The Procurement Officer can negotiate the terms of a contract with one consultant or consultancy firm. The Mandatory Principles still apply and the Procurement Officer is still obliged to **negotiate the best terms and conditions** possible in the circumstances. He / she shall always ensure that the contract price corresponds to the present market price or lower, which for example can be proven by obtaining more quotations or referring to recent contracts. He / she might also check prices at the internet. Anyway he / she should document how the decision was taken.

In special cases contracts above € 20,000 can be awarded by using the single quote method – this method is discouraged and where it is necessary to use, it shall be restricted to and reserved for the situations listed in section 5.2.

The steps involved in the single quote method are presented in the table below.

<b>Table B9 Single quote for services procedure in steps</b>				
<b>Step</b>	<b>What has to be done</b>	<b>Who is responsible</b>	<b>Description</b>	<b>Supporting annex</b>
1	Draft TOR	Project Manager	Draft TOR (terms of reference)	See Ch. 4
2	Approach the consultant or consultancy firm to provide the service	Procurement Officer	The quotation(s) can be obtained by a non-written request or a written RFP (Request for Proposal)	Annex 13
3	Issue the contract	Procurement Officer approved by Project Manager	Negotiate the terms of the contract with consultant or consultancy firm	Annex 14

### Step 1: TOR (terms of reference) - Single Quote

Identify the service(s) required to implement the project and draft TOR (see sections 4.2 and 8.4). Those services are often part of project activities and it is probable that TOR have already been drafted in another context than procurement. Personnel in charge of program activities (and not the procurement officer) are the ones in charge of drafting the TOR.

The service may be provided by an individual consultant or a consultancy firm. Usually more complex services are provided by consultancy firms. With a consultancy firm the contract is more exhaustive and more formal.

## **Step 2: Request for proposal – Single Quote**

Approach the consultant or consultancy firm for an offer. The offer can either be obtained by a non-written request to the consultant or by a written Request for Proposal (RFP). The RFP shall include as annex a sample of the contract. The advantage of using a written RFP is to avoid misunderstandings and to ensure that you obtain all the required information at once. If proposals are obtained verbally, remember to make a **Note to File** with details of the proposals.

## **Step 3: Contract – Single Quote**

Although optional below € 20,000, the use of a formal contract is recommended. Negotiate the contract terms with the consultant or consultancy firm. For contracts above € 2,000 at least a purchase order is required.

The contract shall be drafted in accordance with the sample presented in the RFP. Annex 14 to this manual presents an example of a consultancy contract; short guidelines on how to complete the contract form are presented therein. Check if this standard contract has to be adapted to local legislation, local traditions for consultancy contracts or local requirements, as appropriate – but do not delete articles that are necessary to apply the mandatory principles of procurement. Incorporate in the contract all agreements reached with the selected consultant or consultancy firm.

The contract shall be forwarded by fax or e-mail (PDF format). The consultant or consultancy firm shall return the contract by fax with all pages duly signed. Alternatively, the consultant or consultancy firm can be invited to sign the contract at the Contracting Authorities' office.

### 9.3 Negotiated Procedure Services (€ 20,000 up to € 150,000)

The negotiated procedure is more formal than the single quote procedure and requires that minimum 3 suppliers are invited simultaneously in writing to submit a quotation. However, the procedure is less formal than an open tender procedure and gives the opportunity to negotiate the terms of the contract.

In special situations (see section 5.2), when an open tender is not necessary for contract of € 150,000 and more, the negotiated procedure should be preferred above the single quote.

The steps involved in this method are presented below.

<b>Table B10 Negotiated procedure for services in steps</b>				
<b>Step</b>	<b>What has to be done</b>	<b>Who is responsible</b>	<b>Description</b>	<b>Supporting annex</b>
1	Draft TOR	Project Manager	Draft TOR (terms of reference)	See Ch. 4
2	Make a short list of minimum 3 suppliers	Procurement Officer approved by Project manager	Use available databases and source new consultants / consultancy firms	
3	Submit the Request for Proposal	Procurement Officer	Prepare the Request for Proposal and submit it <b>simultaneously</b> to all selected consultants or consultancy firms	Annex 13
4	Evaluate proposals	Procurement Officer approved by Project manager	Draft information from the offers on an Evaluation grid.	Annex 15
5	Interview candidates(optional)	Project Manager	There is an option to interview candidates who have obtained a minimum technical score. The evaluation grid can be adjusted after interviews.	
6	Negotiate (optional)	Procurement Officer and Project manager	There is an option to negotiate some terms. Rules are described further in this chapter.	
7	Final evaluation and issue of contract	Procurement Officer approved by Project manager	The service contract included in the RFP shall be completed and sent to the successful consultant or consultancy firm for signature	Annex 14
8	Notification Letter	Procurement Officer	Unsuccessful candidates shall be notified of the award	
9	Award notice	Procurement Officer	To be published (optional for contract below € 30,000)	

Time schedule for Negotiated Procedure: See guidance in annex 6

In the description of steps below 'consultant' should be read as consultant or consultancy firm. Usually more complex services are provided by consultancy firms. With a consultancy firm the contract is more exhaustive and more formal.

### **Step 1: TOR (terms of reference) - Negotiated procedure**

Identify the service(s) required to implement the project and draft TOR (see section 4.2 and 8.4). Those services are often part of project activities and TOR may already have been drafted in another context than procurement. It is the responsibility of the Program or Project Manager to draft the TOR.

### **Step 2: Short list - Negotiated procedure**

Prepare a short list with a minimum of 3 consultants. It is recommended to include 4-6 consultants, to ensure that minimum 3 proposals are obtained. The short list shall be prepared by the Procurement Officer and approved by the Program or Project Manager (or the person appointed by him).

As an option an Implementing Partner can ask ICCO to support identifying consultants, especially when international consultants might be needed.

### **Step 3: RFP - Negotiated procedure**

The Request for Proposal shall be forwarded simultaneously (same day) to all selected consultants. This is to ensure that all Consultants are been given equally long time to prepare and submit their proposal.

When preparing the Request for Proposal decide in particular on:

#### **a) Type of contract/Type of remuneration**

The consultancy 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.

**Global price** – or "lump sum" contracts, is normally used when the definition of the tasks to be performed is clear and unambiguous, when the commercial risks taken by the Consultant are relatively low, and when therefore such Consultant is prepared to perform the assignment for an agreed predetermined global/lump sum price. Such price is arrived at on the basis of inputs - including rates - provided by the Consultant. The Contracting Authority agrees to pay the Consultant according to a schedule of payments linked to the delivery of certain outputs, for example 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: for example, surveys, master plans, economic, sector, simple feasibility and engineering studies.

**Fee-based** – or "time based" contracts are used for assignments for which remuneration is being determined on the basis of the time actually spent by the Consultant 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 Consultant. In fee-based contracts the Consultant provides services on a time basis according to quality specifications, and the Consultant's remuneration is based on (i) agreed unit rates for Consultant 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 Consultant and to be involved in the daily execution of the assignment.

#### **b) Evaluation Criteria**

Criteria which can be chosen include: proposed remuneration, Consultant's experience in the field of the assignment, qualifications, specific experience in the region/country of the assignment, adequacy of the proposed methodology, work plan and approach in responding to the Terms of Reference and conditions and time limits for performing the services. The criteria must be relevant to the project, they must be able to be evaluated in a meaningful way and they must be able to be used to allocate a score to the proposals.

#### **c) Timeframe**

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

#### **d) Donor Requirements**

Take notice of specific donor requirements – such as requirements as to nationality, exclusivity clauses, publication rights, visibility, right to audit, exclusion and eligibility clauses, preference criteria, etc., which might require amendment of the RFP or the contract.

#### **e) Payment terms**

What payment terms should be applied?

#### **f) Documents to be submitted**

Specify the documents that the contractor should submit including the forms provided by the Contracting Authority. One required document is the signed 'Declaration for Candidates & Tenderers' (Annex 2 of this manual).

#### Recommendation

To ensure that sufficient proposals will be received on time, it is recommended to contact all shortlisted consultants 1-2 days after the RFP has been submitted and ask the consultants if they intend to submit the offer before deadline. In particular when a short deadline is required, it is a good idea to follow up with the consultants and explain to new consultants about the importance of submitting the proposal prior to the deadline.

### **Step 4: Evaluate proposals - Negotiated procedure**



Upon receipt of the proposals, register the time of receipt of proposals and fill in the “evaluation grid”. Please take note that consultants who have not submitted their proposal before deadline shall not be considered.

The Project or Program Manager is responsible for the evaluation of offers and the selection of the consultant. He may ask one or more experts from his staff to join a committee for evaluation and selection. Since the Project Manager is responsible, this position will be mentioned in the description of the following steps.

For comparison and evaluation of the proposals, the Project Manager 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 shall be included in the “Evaluation Grid”.

For example: Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights of 80% for the Technical Proposal; and 20% for the offered price.

A different evaluation method can be chosen, in which case it will have to be clearly described in the RFP.

#### **Step 5: Interview of candidates (OPTIONAL) - Negotiated procedure**

The consultants who are administratively compliant and who have obtained a minimum technical score (decide on the score in the RFP) – can be invited for an interview. After the interviews the committee has the possibility to change the scores on the evaluation grid. A separate column in the evaluation grid might be used for this purpose.

#### **Step 6: Negotiate terms (OPTIONAL) - Negotiated procedure**

If found necessary, the Project Manager has the option to negotiate the terms of the contract. Negotiations will not entail any substantial deviation from the terms and conditions of the Request for Proposal, but shall have the purpose of obtaining from the candidates 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, when all the remunerations proposed by the candidates exceed the limits of the funds made available to the Contracting Authority by its donor/funding agency.

The negotiations can be done by phone, e-mail or fax or at a meeting (in this case, a written recap shall be filed and copied to the candidate). There are no specific procedures for negotiations except that the General Principles of procurement shall always be respected, i.e. all candidates shall be provided with an equal opportunity and the negotiations shall be documented and filed.

If negotiations are done by phone, then the Procurement Officer shall recap the negotiations and submit it to the candidate “with reference to our phone conversation – we can recap our conversation as follows: .....

## **Case scenario**

In case all consultants have offered a too high price and/or you need to change/adjust the TOR, you do not need to issue a new RFP; you can merely contact the consultants in writing with your amendments and request a revised proposal stating the deadline for a few days only depending on the amendments you have made.

### **Step 7: Final evaluation and award of contract – Negotiated procedure**

The Contracting Authority will award the contract to the Consultant 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 Consultant has also been determined to fulfill the eligibility and non-exclusion criteria.

Once the consultant has been selected and the contract awarded by the Project Manager, a formal contract has to be concluded based on a sample as presented beforehand in the RFP. Check if this contract has to be adapted to local legislation, local traditions for consultancy contracts or local requirements, as appropriate – but do not delete articles that are necessary to apply the mandatory principles of procurement. Incorporate in the contract all agreements reached with the selected consultant (e.g., amount of remuneration, bank account references). At least for contracts of € 10,000 and more the consultant has to sign a declaration of ethical conduct (see Annex 2).

The contract shall be signed by the person authorized in accordance with the authorization guidelines of the program.

The contract shall be forwarded by fax or e-mail. The consultant shall return the contract by fax with all pages duly signed. Alternatively the consultant can be invited to sign the contract at the Contracting Authority's office.

### **Step 8: Letter to all unsuccessful candidates - Negotiated procedure**

Once the Consultant has returned the Service Contract duly signed, a Notification Letter shall be sent to all unsuccessful candidates informing them of the name of the successful consultant, the total contract value and the scores as per the evaluation.

### **Step 9: Award Notice - Negotiated procedure**

An award notice shall be published on the website of the organization or otherwise.

Publication of the Award notice can be exempted if the Contracting Authority considers a public notice on a contract award might endanger the organization's safety or harm its interests.

The Contracting Authority shall take notice of any specific donor requirements for publishing an award notice.

The award notice should include information on: a) description of service, b) name of the consultant c) contract value, d) source of funding, and e) date of contract



## 9.4 Specific services and their requirements

“Service contracts” shall be used for contracts with consultants, procurement agents, inspection agents, auditors, universities, research institutions, NGOs and individuals for the carrying out a wide range of activities — such as policy advice; organizational 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 agreement” must be used, because of the specificity of the engineering services required and the necessary link to the works contract.

The procedures described in this manual cover this type of “intellectual services”. These documents are not appropriate for other kinds of service contracts, which do not involve the provision of “intellectual” services, such as contracts for transport, financial services, cleaning services, accommodation, catering...

### Consultants or own staff:

When activities that require certain competences need to be done in an organisation during longer periods or during many months per year it is usually cheaper for an organisation to recruit staff than to hire a consultant. Hiring a consultant or using the services of a consultancy firm is:

1. appropriate when there is a need for these competences for shorter periods. Moreover: the cost of a consultant may be higher than fixed staff, but there are no fixed costs. This is an advantage when the need for competences is not sure for a longer period.
2. necessary for some services when an independent opinion is necessary; examples are audits (annual consolidated audit, project audit) or evaluations.

In the first case – appropriate when .... – there is a risk that the relation is considered as an employment relationship instead of a service relationship. There is much legal discussion on this subject and the rules are different per country. 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 organizational 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 (not linked directly to a result, in an employment relationship)
- the consultant having more clients or not.

Contracting Authorities shall be very careful never to hire a consultant under a contract which could be qualified by a local court 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 labor law protective provisions in favor of the 'employee'.

The conditions for Consultancy Contracts (Annex 14 to this manual) exclude clearly any link of subordination between the Contracting Authority and the consultant (article 2.2), and place a clear responsibility on the consultant in respect of the outcomes of his services (articles 3, 4 and 5).

In the second case – necessary for ... – the service by an external consultant or firm is obvious. Nevertheless the organization can do much more than just leave the job to the service provider:

1. First of all the organization should do itself what can be done, prepare itself. Before the audit is done the financial report should be made by the organization and the accounts should be done and verified internally. Before an external evaluation of a project is realized, the organization should have collected statistical information and have realized an auto evaluation. Access to all information should be as easy as possible for an auditor or evaluator.
2. The Terms of Reference shall be described in a concrete way. Apart from legal or donor requirements the audit or evaluation should respond to clear questions of the organization.
3. The result, audit or evaluation report, shall be discussed with the organization, that add its own comments.

By proceeding in the above mentioned way the cost of the external service can be reduced, because the auditor or evaluator does not need to do what could be done by the organization itself. Besides, and not less important, the organization will learn from the service and so have more "value for money".

## 9. Civil Works

### 9.1 Types of works

Procurement methods are the rules on “**how to buy**”. This section describes the rules and methods for procurement of civil works.

**Civil works:** Works contracts cover either the execution, or both execution and design, of works or the realization, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient in itself to fulfill an economic or technical function. There 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 labor, brings the plant and 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.

<b>Table B4.3 Required procurement method</b>		
<b>Procurement Method</b>	<b>Value of contract</b>	<b>Minimal Commitment</b>
<b>WORKS</b>		
International Open Tender	€ 3,000,000 and more	Contract
Local Open Tender	€ 300,000 up to € 3,000,000	Contract
Negotiated Procedure	€ 10,000 up to € 300,000	Contract
Single Quote	Up to € 10,000	Above € 2,000 a Purchase Order, below € 2,000 an Invoice

The steps in the Single Quote and the Negotiated Procedure will be treated in the sections 9.2 and 9.3 respectively. Since works contracts with a contract value above € 300,000 are unlikely to occur in the practice of ICCO and its Implementing Partners, the local/international open tender will not be explicitly treated in this manual. The procedure can be elaborated by comparing the negotiated procedure for works (what is needed for a works contract) to the local/international open tender for supplies (what is needed for an open tender, see sections 6.3 and 6.4).

#### **When is it a works contract?**

Many of the projects in **water and sanitation** for example, involve construction activities. These projects can be implemented directly by ICCO's Implementing Partner who itself buys construction materials and hires local labor and possibly the services of an engineer/construction expert, but without hiring an entrepreneur or construction company. In those cases, it is not a “works contract”. The Implementing Partner will have to follow the rules applicable to the procurement of the different supplies and equipment necessary for the construction (and for services, if an engineer is hired), without having to comply with thresholds and rules for the award of works contracts.

However, when the Contracting Authority is in presence of works which will necessitate the services of an entrepreneur/construction company, make sure that appropriate documents for works contracts are used, and that specific procurement rules are followed (see rules, below).

**Please read section 9.4 concerning specific legal risks and necessary precautions for works contracts before you proceed.**

## 9.2 Single Quote – Civil Works (Up to € 10,000)

The Procurement Officer can negotiate the terms of a contract with one contractor. The Mandatory Principles still apply and the Procurement Officer is still obliged to **negotiate the best terms and conditions** possible in the circumstances. He / she shall always ensure that the contract price corresponds to the present market price or lower, which for example can be proven by obtaining more quotations or referring to recent contracts. He / she might also check prices at the internet. Anyway he / she should document how the decision was taken.

In special cases contracts above € 10,000 can be awarded by using the single quote method – this method is discouraged and where it is necessary to use, it shall be restricted to and reserved for the situations listed in section 5.2.

The steps involved in the single quote method are presented in the table below.

<b>Table B11 Single quote for works procedure in steps</b>				
<b>Step</b>	<b>What has to be done</b>	<b>Who is responsible</b>	<b>Description</b>	<b>Supporting annex</b>
1	Hire the Engineer	Project Manager	Unless the Project Manager has the necessary construction experience and skills, an Engineer shall be hired with consideration to the nature of the project	Is as such a service contract, see Ch. 8
2	Draft specifications/works and the RFP	Engineer approved by Project Manager	Understand the specifications and works to be purchased	
3	Approach the contractors to provide the works	Procurement Officer	The proposal can be obtained by a non-written request or a written Request for Proposal (RFP)	
4	Issue the contract	Procurement Officer approved by Project Manager	Use the works contract, presented in the RFP	
5	Administration of works contract and inspection of works	Engineer or Project Manager	Inspect if works comply with the contract	

### **Step 1: Hire an Engineer – Single Quote**

A local engineer should be hired or a project manager with necessary construction experience appointed – this must be BEFORE the start of the procurement procedure, so he can be involved in the preparation of the works contract and the technical specifications, and he can participate in the procedure for the procurement of the works.

The administration and supervision of a works contracts can also be entrusted to an employee of the Contracting Authority, in quality of a “Work Manager” – in which case obviously a service contract is not entered into with the employee. However, it would be very important to establish a specific job description for the assignment.

### **Step 2: Specifications - Single Quote**

Identify the works to be procured from the procurement plan and draft specifications. Understand the specifications and works to be ordered. The specifications shall in cooperation with the project staff be drafted by the Engineer or architect or other specialist. Determine whether it is necessary and/or relevant to divide the works into lots (e.g. depending on the capacity of local construction companies).

### **Step 3: Proposal - Single Quote**

Approach the contractor for a proposal. Proposals can be obtained by a non-written request to the supplier or by a written Request for Proposal (RFP).

Although optional, the use of the RFP is, however, strongly recommended, because it allows the contracting authority to obtain at once, from potential candidates, all information needed and in a way that permits comparison between several offers. The use of the RFP also ensures that from the beginning the potential contractor is aware of the exact scope of works and of the contractual conditions, and allows the Contracting Authority to make sure that the potential contractors comply with the eligibility requirements of the donor.

If proposals are obtained verbally, remember to make a **Note to File** with the details of the proposals.

### **Step 4: Purchase order – Single Quote**

Although optional below € 10,000, the use of a formal contract is recommended. The contract shall be based on the sample as presented in the RFP. Incorporate in the contract all agreements reached with the selected construction company (e.g., amount of global price, bank account references, etc).

The Contract shall be signed on behalf of the Contracting Authority by the person authorized in accordance with the authorization guidelines of the program.

The Contract shall be forwarded to the construction company by fax or e-mail. The construction company shall return the contract by fax with all pages duly signed. Alternatively the construction company can be invited to sign the contract at the Contracting Authority’s office.



## Step 5: Administration of the works contract and Inspection of the works – Single Quote

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 and the determination that the works can be considered "completed" cannot be left to someone else than an engineer (or a 'work manager' having adequate qualifications).

### 9.3 Negotiated procedure – Civil Works (€ 10,000 up to € 300,000)

The negotiated procedure is more formal than the single quote procedure and requires that minimum 3 contractors are invited simultaneously in writing to submit a quotation. However, the procedure is less formal than an open tender procedure and gives the opportunity to negotiate the terms of the contract.

In special situations (as mentioned in section 5.2), when an open tender is not necessary for a contract of € 300,000 and more, the negotiated procedure should be preferred above the single quote.

The steps involved in this procurement method are presented below.

<b>Table B12 Negotiated procedure for works in steps</b>				
<b>Step</b>	<b>What has to be done</b>	<b>Who is responsible</b>	<b>Description</b>	<b>Supporting annex</b>
1	Hire the Engineer	Project Manager	Unless the Project Manager has the necessary construction experience and skills, an Engineer shall be hired with consideration to the nature of the project	Is as such a service contract, see Ch. 8
2	Draft specifications/works and the RFP	Engineer approved by Project Manager	Understand the specifications and works to be purchased	
3	Make a short list of minimum 3 contractors	Procurement Officer approved by Project Manager	Source potential contractors	
4	Submit the Request for Proposal (RFP)	Procurement Officer	Submit it simultaneously to all the selected contractors	
5	Evaluation proposals	Evaluation Committee	Proceed with evaluation and fill in the evaluation grid	
6	Negotiate (optional)	Evaluation Committee	There is an option to negotiate some terms. Rules are described further in this chapter	
7	Issue the contract	Procurement Officer approved by Project Manager	The works contract shall be drafted as per the contract draft in the relevant RFP	

8	Notification Letter	Procurement Officer	Unsuccessful contractors shall be notified of the result of the negotiated procedure only	
9	Award notice	Procurement Officer	Can be published (optional for contracts below EUR 30,000)	
10	Administration of works contract and inspection of works	Engineer or Project Manager	Inspect works comply with the contract	

### **Step 1: Hire an Engineer- Negotiated Procedure**

A local engineer should be hired or a project manager with necessary construction experience appointed – this must be BEFORE the start of the procurement procedure, so he can be involved in the preparation of the works contract and the technical specifications, and he can participate in the procedure for the procurement of the works.

Administration and supervision of a works contracts can also be entrusted to an employee of the Contracting Authority, in quality of a “Work Manager” – in which case obviously a service contract is not entered into with the employee. However, it would be very important to establish a specific job description for the assignment.

### **Step 2: Specifications and drafting of RFP- Negotiated Procedure**

Identify the works to be procured from the procurement plan and draft specifications. Understand the specifications and works to be ordered. The specifications shall in cooperation with the project be drafted by the Engineer or architect or other specialist. Determine whether it is necessary and/or relevant to divide the works into lots (e.g., depending on the capacity of local construction companies).

At the same time that you prepare the technical specifications, you should start preparing the Request for Proposal (RFP) which includes the contractual terms. Be aware that it is a very complex contract. Please consider carefully the LEGAL ISSUES specified in section 9.4.

Check if the contract has to be adapted to local legislation, local traditions for works contracts or local requirements, as appropriate – but be very careful when amending the provisions, because you could compromise the balance of the whole contract.

Just as for Service Contracts (see section 8.3) the GTC (General Terms & Conditions) for works contract usually provide for different kinds of contracts, a “global price” (or lump sum) contract or a “unit-price” contract. The first option is probably more applicable. 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 — usually construction of buildings, pipe laying and series of small structures, such as shelters, latrines, ablution units... which are the most commonly constructed buildings under projects that are implemented by ICCO’s Partners.

Specify the documents that the contractor should submit including the forms provided by the Contracting Authority. One required document is the signed 'Declaration for Candidates & Tenderers' (Annex 2 of this manual).

### **Step 3: Short list - Negotiated procedure**

Prepare a short list of minimum 3 potential contractors. It is recommended to include 4-6 contractors to ensure that minimum 3 quotations are obtained. The short list shall be prepared by the Procurement Officer in cooperation with the project staff.

### **Step 4: RFP - Negotiated procedure**

The Request for Proposal shall be forwarded simultaneously (same day) to all the short-listed contractors. This is to ensure that all contractors are given equally long time to prepare and submit their proposal.

### **Recommendation**

To ensure that sufficient proposals will be received on time, it is recommended to contact all shortlisted contractors 1-2 days after the RFP has been submitted and ask the contractors if they intend to submit the offer before deadline. In particular when a short deadline is required, it is a good idea to follow up with the contractors and explain to new contractors about the importance of completing the submission form and submitting the proposal prior to deadline.

### **Step 5: Evaluation - Negotiated procedure**

A committee shall be formed for the evaluation consisting at least of the Project Manager, the hired Engineer or the Work Manager, and the Procurement Officer. Upon receipt of the proposals, register the time of receipt of proposals. Please note that Companies who have not submitted their proposal before deadline shall not be considered.

For comparison and evaluation of the proposals, the Evaluation Committee shall take into consideration the criteria selected in the RFP and the weight attributed to each criteria. The chosen evaluation will have to be clearly described in the RFP.

### **Step 6: Negotiations - Negotiated procedure**

The Evaluation Committee shall decide if it is necessary to negotiate the terms of the proposals with the Construction Companies who have been determined to be eligible, who have the capacity to execute the contract, and who have submitted proposals determined to be substantially responsive.

Negotiations will not entail any substantial deviation from the terms and conditions of the Request for Proposal, but shall have the purpose of obtaining from the candidates better conditions in terms of technical quality, implementation periods, 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 proposed price, when prices proposed by all candidates

exceed the limits of the funds made available to the Contracting Authority by its donor/funding agency.

The negotiations can be done by phone, e-mail or fax or at a meeting (in this case, a written recap shall be filed and copied to the candidate). There are no specific procedures on negotiations except that the General Principles shall always be respected, i.e. all potential contractors shall be provided with an equal opportunity and the negotiations shall be documented and filed.

If negotiations are done by phone, then the Procurement Officer shall recap the negotiations and submit it to the candidate “with reference to our phone conversation – we can recap our conversation as follows: ………”

#### **Step 7: Contract - Negotiated procedure**

The Contracting Authority will award the contract to the construction company 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 construction company has also been determined to fulfill the eligibility and non-exclusion criteria.

Once the construction company has been selected and the contract awarded by the Evaluation Committee, the draft contract has to be taken out of the RFP and renamed “Contract”.

Incorporate in the contract all agreements reached with the selected construction company (e.g. amount of global price, bank account references, etc.) and attach all requested annexes.

The Contract shall be signed on behalf of the Contracting Authority by the person authorized in accordance with the authorization guidelines of the program.

The Contract shall be forwarded to the construction company by fax or e-mail. The construction company shall return the contract by fax with all pages duly signed. Alternatively the construction company can be invited to sign the contract at the Contracting Authority’s office.

#### **Step 8: Letter to all unsuccessful contractors - Negotiated procedure**

Once the contractor has returned the purchase order or contract duly signed, the Procurement Officer shall submit a Notification Letter to all unsuccessful tenderers informing them of the result of the tender, i.e. name of successful contractor and the total contract amount.

#### **Step 9: Award Notice - Negotiated procedure**

An award notice shall be published on the website of the organization or otherwise.

Publication of the Award notice can be exempted if the Contracting Authority considers a public notice on a contract award might endanger the organization’s safety or harm its interests.

The Contracting Authority shall take notice of any specific donor requirements for publishing an award notice.

The award notice should include information on: a) Description of service, b) name of contractor, c) contract value, c) source of funding, and d) date of contract.

## Step 10: Administration of the works contract and Inspection of the works – Negotiated Procedure

Administration of a works contract and inspection of the works require a particular expertise in this area: for example, the "measurement" of the works and the determination that the works can be considered "completed" cannot be left to someone else than an engineer (or a project manager having adequate qualifications).

### 9.4 Legal risks and necessary precautions for works contracts

Construction can involve particularly high legal risks, because of the following factors:

- 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 around building permits and authorizations
- and, in particular, uncertainty about the legal status of the lands where buildings are to be constructed.

When considering a construction project, the following precautions are therefore recommended:

1. Construction projects should only be undertaken by or in collaboration with **partners with an established record** and expertise in construction.
2. A **local engineer** should be hired or project manager with necessary construction experience appointed – this BEFORE the start of the procurement procedure, so he can be involved in the preparation of the works contract and the technical specifications, and he can participate in the procedure for the procurement of the works.
3. International **technical assistance** should be obtained when local capacity is lacking, e.g. obtain an opinion from an international engineer on the necessary technical specifications of the works.
4. A **legal opinion** from a reputable law firm in the country where the works are to be constructed should be obtained at the project feasibility stage, to ensure that:
  - all necessary **authorizations and building permits** can be obtained on time and without major uncertainties
  - there is **valid and official title to the land** in the name of the legal person/authority who is involved in the project and willing to put its land at disposal of the works/or who is recipient of the works (e.g. municipal authority) – ensure necessary official approvals have been given and there are appropriate legally binding commitments from the owner of the land
  - mandatory **applicable laws and regulations in the country of execution** are known in advance and incorporated in the conditions of contract
  - the legal length of the **defects liability period** is established
  - appropriate insurance coverage is provided for in the proposed contract and legally enforceable in the country of execution

4. An **insurance company** should be contacted in advance to determine what kind of insurance coverage will be available locally, at which price and under which conditions.

#### **Complexity of contractual provisions and administration of the works contract**

Because of the inherent risks of construction activities, a works contract is necessarily a “heavy”, complicated contract, which strives at distributing risks, rights, obligations and liabilities of the parties. The GTC for Works Contracts shall be inspired by internationally recognized practices, terms and clauses in the construction business. The administration of a works contract requires a particular expertise in this area and cannot be left to someone else than an engineer or a project manager having adequate qualifications (for example, the “measurement” of the works and the determination that the works can be considered “completed”). A well-qualified engineer should not have difficulties in understanding the standard contractual clauses and in taking all necessary dispositions (issuance of instructions, notices, certificates) to ensure a proper execution of the works. Entering into the proper service contract with an engineer for that purpose is therefore also crucial.

A difficult part in the administration of a works contract is the determination of “interim payments” due to the Contractor, based on the measurement of the works.

## 10. Cash based transfers

In recent years the use of cash based transfers to beneficiaries has become an increasingly important alternative to in-kind transfers. These instruments offer greater choice to beneficiaries and help to foster dignity in the receipt of assistance. Moreover cash based transfers may have a particular value in assisting the transition towards recovery and development in support of protecting or restoring livelihoods. Cash and voucher projects can help to revitalize local economies providing local traders with the incentive to trade with beneficiary communities and to develop local markets.

This is recognised by ECHO, which strongly promotes experimenting with cash based transfers. Therefore ECHO has issued specific funding guidelines in March 2009: The use of cash and vouchers in humanitarian crises<sup>17</sup>. The text in this chapter is based on these guidelines. Implementing Partners that consider the use of these instruments are recommended to read the full text of these guidelines, also when the intervention will not be funded by ECHO.

### Terminology

The terms “Cash” and “Voucher” can be used to apply to a wide array of instruments. In the context of this chapter the terms are used to refer to a restricted number of tools where the cash or voucher is given to individuals, households or communities.

**Cash transfers:** *“The provision of money to individuals or households, either as emergency relief intended to meet their basic needs for food and non-food items, or services, or to buy assets essential for the recovery of their livelihoods.”*

If the beneficiaries are required to fulfil a specific obligation or activity (such as attending school, plant seed, establish a livelihood, demobilize, etc.) to receive the transfer, then this is described as a conditional cash transfer. Examples include: Cash for Work (CFW) where payment is made for work on public or community works programmes, or repatriation grants to facilitate return of IDPs or refugees to areas of origin.

Grants paid to beneficiaries without the beneficiary having to do anything specific to receive the benefit are described as unconditional cash transfers.

Therefore, conditionality refers to what beneficiaries are required to do to receive the transfer, and not to conditions on how they subsequently use the resources.

**Vouchers:** Vouchers provide access to pre-defined commodities or services. They can be exchanged in designated shops or in fairs and markets. The vouchers may be denominated either in cash, commodity or service value. These are described respectively as value-based, commodity-based or service-based vouchers. Combined vouchers also exist.

Vouchers have been most commonly used to provide access to seeds and livestock.

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<sup>17</sup> [http://ec.europa.eu/echo/files/policies/sectoral/ECHO\\_Cash\\_Vouchers\\_Guidelines.pdf](http://ec.europa.eu/echo/files/policies/sectoral/ECHO_Cash_Vouchers_Guidelines.pdf)

### Cash based transfers and procurement

In case of cash based transfers the procurement of supplies as such is not realised by the Implementing Partner but by the beneficiaries themselves. This will lead to reducing cost of procurement and logistics by the Implementing Partner. On the other hand the choice between in-kind transfers and cash based transfers is a choice that can be compared to the choice made in a procurement process: cost efficiency is an important argument but it has to be compared to other arguments.

The choice has to be made when submitting a proposal.

### Cash based transfers as an alternative for in-kind transfers

Traditionally in-kind assistance, through the provision of commodities and services, has dominated humanitarian aid. More recently there has been a growing interest in the use of cash or vouchers as an alternative or complementary means of increasing access to necessary commodities and services.

Several factors are supporting this trend: markets in developing countries function better than they used to, food systems are more integrated, the pace of urbanization is accelerating and basic financial services are increasingly diffused, including in the rural areas. Furthermore, the reduced availability of grain on the world market encourages the further consideration of cash-based programming.

The key issues that need to be considered in comparing the relevance of cash, vouchers and in-kind transfers which are in essence quite different instruments, are summarized below:

- a) Cost-effectiveness: In principle, whether a cash-based (i.e. cash transfers and vouchers) or in-kind distribution is more cost-effective will depend on the prices of goods or services in local markets, compared to the price it would cost an aid agency to deliver them. Cash-based programmes are likely to have lower transport and logistics costs, but there may be higher administrative costs.
- b) Market impacts: Any kind of resource transfer may impact on markets and local economies, and in deciding whether to provide cash or in-kind assistance these impacts need to be assessed. For cash-based transfers the main risk could be causing, or contributing to, inflation in the prices of key goods.
- c) Flexibility: Competing issues need to be considered in deciding on the most appropriate degree of beneficiary choice. Greater choice fosters dignity and allows beneficiaries to meet their most pressing needs. Conversely, a restricted type of transfer may be more directly linked to a specific objective, for example providing food of a specific nutritional composition.
- d) Targeting: Targeting remains a problematic issue for all kinds of transfers, cash, vouchers and in-kind. There is a delicate balance to be struck between inclusion and exclusion errors, and the costs of the targeting exercise compared to losses incurred through poorly targeted resources. The need for stringent targeting arrangements for cash has been highlighted, given the attractiveness of the resource. Self-targeted transfers – for example conditional transfers dependent on work – may be simpler to target than unconditional transfers.
- e) Corruption and security risks: Cash may be more attractive than in-kind assistance, and so particularly prone to being captured by elites, to diversion or to seizure by armed groups. The attractiveness of cash may create risks both for staff transporting cash and for recipients once they have received it even if there are ways of distributing it that reduce possible security



risks. However, cash can also be easier to hide and thus could turn out to be a safe modality as compared with more highly visible commodities.

- f) **Skills and capacity:** Implementing cash and voucher projects requires different types of skills and capacity from managing in-kind transfers. If logistics are often simpler, there is a need for additional administrative and finance capacity. Assessments and monitoring need to include analysis of markets and distribution networks.

Cash-based transfers may also complement in-kind assistance. Therefore, cash should not necessarily be seen as a replacement for other forms of aid, but may be an additional, complementary instrument. Depending on the situation, the use of cash, vouchers and in-kind transfers may be phased or integrated.

In order to make an informed choice on the best form of resource transfer (cash, voucher or in-kind), it is necessary to ensure that any proposal is supported by an analysis of the most appropriate and feasible type of transfer to meet identified needs.

Most of the elements of the comparative analysis of cash or voucher proposals are shared with in-kind projects. However, a pre-requisite for cash-based programming is to determine whether the local market can supply the required quantity and quality of commodities and services.

ECHO provides the following table to facilitate the choice between alternative modalities of transfer to beneficiaries:

<b>Table B 13. Additional criteria for comparing alternative transfer modalities</b>			
<b>Issue</b>	<b>Cash</b>	<b>Vouchers</b>	<b>In-kind</b>
Cost	<p>Are there savings on delivery, distribution and logistics costs?</p> <p>How much does it cost beneficiaries to access markets?</p> <p>Can the response be mobilized faster?</p>	<p>Are there savings on delivery, distribution and logistics costs?</p> <p>How high are the administrative costs?</p> <p>Will the establishment of the system delay the start-up and timeliness of the response?</p>	<p>Are there savings on commodity costs through bulk purchases?</p> <p>What are the costs of procurement and transportation?</p> <p>What proportion of the commodities may be sold to meet other needs?</p>
Market impacts	<p>What are the possible positive secondary impacts on the local markets and economy?</p> <p>Is there a risk of a supply failure affecting beneficiaries?</p> <p>May inflation erode the purchasing power of beneficiaries?</p>	<p>What are the possible positive secondary impacts on the local markets and economy?</p> <p>Could the market benefits be monopolised by a few suppliers?</p> <p>Is there a risk of a supply failure affecting beneficiaries?</p>	<p>Does this address an availability problem?</p> <p>Are local purchases used to support local markets?</p> <p>Is there a risk of undermining local production and markets, especially if transfers are sold by beneficiaries?</p>

	Could the intervention have inflationary impacts, with negative consequences for non beneficiary consumers?	May inflation erode the purchasing power (for value-based vouchers) or require supplier agreements to be renegotiated (commodity or service-based vouchers)?	
Flexibility	How important is it for beneficiaries to have high flexibility and individual choice in the use of resources?  Can the necessary quality of commodities or services be assured?  May the cash be used for unintended or 'anti-social' uses?	How important is it to restrict the commodity or service provided to meet specific project objectives?  What is the risk that the specified commodities or services may not meet priority needs?	How important is it to restrict the commodity or service provided to meet specific project objectives?  What is the risk that the specified commodities or services may not meet priority needs?
Targeting	Is it harder to target women or most vulnerable people such as the elderly?  May child-headed households be excluded if the transfer is made through formal banking channels?	Is it easier to target a voucher than cash?	Is it easier to target an in-kind transfer than cash?
Security	Are security risks to agency staff and beneficiaries heightened due to the attractiveness of cash?  Can new transfer mechanisms reduce the visibility of the transfer and lower the security risk?	Are security risks to agency staff and beneficiaries lowered by the use of vouchers?	Are security risks to agency staff and beneficiaries lowered by in-kind distributions?
Corruption	Is there a heightened risk of theft and corruption?	Is there a lower theft risk for vouchers?  Could the redeeming outlets attract corruption?	What are the corruption risks at distribution points?  What are the corruption risks at other stages (e.g. contracting)?

## 11. Grants

### 11.1 Introduction

A grant is a direct financial contribution, by way of donation, in order to finance:

- either an action intended to help achieve an objective forming part of the donor's policy;
- or the functioning of a body which pursues an aim of interest to the donor or has an objective forming part of its policy.

In other words, it is a payment of a non-commercial nature by the Contracting Authority to a specific beneficiary to implement an action intended to help achieve an objective forming part of its policy.

The body signing a grant contract is known as the grant beneficiary and should not be confused with the final beneficiary of the operation nor with the target group.

Grants should be distinguished from other legal commitments treated in this manual. A grant contract can be distinguished from a procurement contract in a number of ways:

- A grant is made for an operation which is proposed to the Contracting Authority by a potential beneficiary (an "applicant") and falls within the normal framework of the beneficiary's activities. This is in contrast to a procurement contract, in which the Contracting Authority draws up the terms of reference for a project it wants to be carried out.
- A grant beneficiary is responsible for implementing the operation and retains ownership of its results. By contrast, under a procurement contract, it is the Contracting Authority which owns the results of the project and closely supervises its implementation.
- A grant beneficiary generally contributes to the financing of the action. In the case of procurement contracts, however, the contractor does not normally contribute financially.
- Grant beneficiaries are generally non-profit-making.
- The grant is expressed by way of a percentage and a maximum amount of the eligible costs of the action actually incurred by the beneficiary. The contribution may further be limited by a percentage of the total accepted costs of the action. The amount of a procurement contract, on the other hand, represents a price fixed in accordance with competitive tendering rules.

In this manual two specific situations will be dealt with:

- An Implementing Partner of ICCO is granting at its turn other organisations (section 11.2)
- ICCO is involved in the distribution of funds provided by other donors, for example in managing a basket fund (section 11.3)

## **11.2 Granting by Implementing Partners (Sub grants)**

In some projects (funding agreements) between ICCO and an Implementing Partner it is agreed that the Implementing Partner at its turn award grants to third parties.

The maximum amount of financial support that can be paid to third parties by an Implementing Partner is € 100.000 with a maximum of € 10.000 per each third party.

The Implementing Partner remains responsible for the justification of the expenditure. It has to establish rules and procedures with the third party enabling the Implementing Partner to fulfil ICCO's requirements regarding both narrative and financial reporting.

If the intervention by the Implementing Partner requires financial support to be given to third parties (sub-granting), it may be given on the condition that the financial support is not the primary aim of the intervention and that the conditions for the giving of such support are strictly defined in the grant contract.

The grant contract must therefore specify:

- the minimum and maximum amounts of financial support that can be paid to a third party and criteria for determining the exact amount;
- the different types of activities that may receive such financial support on the basis of a fixed list.

### **11.3 Distribution by ICCO of funds provided by other donors**

ICCO may have the role to manage a fund provided by one or more other donors in a specific country. In those cases ICCO will apply the procedures described in this section. The award of grants will be subject to the principles of programming, transparency and equal treatment of applicants. Grants may not be awarded retrospectively and the budget of the fund may not be exceeded. Moreover the specific objectives and procedures of the concerned donor(s) have to be taken into account.

Programming: ICCO will define a programme establishing the objectives to which the proposals by applicants have to contribute and the timeframe for the proposed interventions.

Transparency: the availability of grants must be publicised widely and in an easily accessible way. The programme will be implemented through the publication of calls for proposals save in duly substantiated exceptional cases of urgency or where the characteristics of the beneficiary make it the sole choice for a given action. All grants awarded in the course of a financial year will be published annually with due observance of the requirements of confidentiality and security.

Equal treatment: the grant award process must be completely impartial. This means notably that the proposals must be evaluated by an Evaluation Committee, with the advice of assessors where appropriate, using the published eligibility and evaluation (selection and award) criteria.

Non-retroactivity: grants may, as a rule, only cover costs incurred after the date on which the grant contract is signed. A grant may be awarded for an action which has already begun only where the applicant can demonstrate the need to start the action before the contract is signed.

Procurement of services, supplies or works for a grant-funded action: if the implementation of an action involves the procurement of services, supplies or works by the grant beneficiary, the contract award procedures specified in this manual must be applied for each procurement contract.

#### **11.3.1 Selection of the award procedure**

The usual award procedure for grants is the publication of a Call for Proposals, a procedure that can be compared to the open tender procedure for procurement. Only in the circumstances mentioned below a **direct award** (can be compared with single quote procedure for procurement):

- In duly substantiated exceptional cases of urgency, i.e., where unforeseeable events oblige the Contracting Authority to act with an urgency incompatible with the periods laid down for Call for Proposals procedures. The circumstances cited as grounds for extreme urgency must in no way be attributable to the Contracting Authority (e.g., imminent expiry of the financing agreement).
- Where the grant is awarded to a body with a de jure or de facto monopoly, duly substantiated in the award decision. For these purposes, "de facto" or "de jure" monopoly means that the beneficiary, which may be a consortium:
  - has exclusive competence in the field of activity and/or geographical area to which the grant relates pursuant to any applicable law; or
  - is the only organisation (i) operating or (ii) capable of operating in the field of activity and/or geographical area to which the grant relates by virtue of all considerations of fact and law.
- In case of grants of a low amount: the maximum size of each grant to be awarded within the program is less or equal to € 10,000.

In all other cases, in order to ensure the widest possible participation and the requisite transparency, Guidelines for applicants must be published for every Call for Proposals.

### 11.3.2 Steps in open award procedure for grants

<b>Table B14 Open grants award procedure in steps</b>			
<b>Step</b>	<b>What has to be done</b>	<b>Who is responsible</b>	<b>Description</b>
1	Programming	Program Manager	Establish objectives of the program and criteria for the applicants
2	Drafting Guidelines for applicants	Program Manager	Preparing documentation on background, objectives, criteria and procedure for this Call for Proposals
3	Publication Call for Proposals	Program Manager	Publish on ICCO's website and other media
4	Information Session(s)	Program Manager	Clarification and response to questions of potential applicants
5	Receipt of Proposals	Program Manager	Till deadline save the proposals
6	Evaluation of Proposals	Evaluation Committee	Administrative check followed by analysis of proposals, using evaluation grid
7	Award Grants	Program Manager	Award contracts to successful applicants

8	Publication of award	Program Manager	Publish on ICCO's website and other media
9	Management of grants	Program Officer and Finance Officer	Payments and monitoring and evaluation

**Step 1: Programming – grants procedure**

Together with the donor(s) that provide the funds ICCO will define a program to be funded. The background (problem of the beneficiaries that should be solved) is described and the objectives of the program are established. The eligibility criteria for applicants and the selection and award criteria are developed.

Moreover decisions are taken regarding the selection of members for the Evaluation Committee and the details of the evaluation procedure.

It should be decided as well if the call for proposals will be open or restricted. An open call means that applicants will have to submit a full proposal directly. A restricted call means that applicants will have to submit a concept note only. Thereafter the pre-selected organizations are invited to submit a full proposal.

**Step 2: Drafting Guidelines – grants procedure**

It is good practice to include an application form in the Guidelines for Applicants in order to standardize the required information, which will facilitate the evaluation. The Guidelines for Applicants (which include the Application Form and other annexes) explain the purpose of the Call for Proposals, the rules regarding the eligibility of applicants and partners, the types of action and costs which are eligible for financing, and the evaluation (selection and award) criteria. They also contain instructions on how to fill in the application form, what to annex to it and what procedures to follow for applying. They give information on the evaluation process that will follow (including an indicative timetable) and the contractual conditions which will apply to successful applicants.

The guidelines must be published and any modification must be published as well. The information published will become binding on the Evaluation Committee once the date for submission has elapsed.

The Application Form to be completed by the applicants comprises the following parts:

- information about the action proposed, including its budget
- information about the applicant
- information about any partners

The eligibility criteria shall determine the conditions for participating in a call for proposals. Those criteria shall be established with due regard for the objectives of the action and shall comply with the principles of transparency and non-discrimination. The eligibility criteria relate to two different aspects:

- Eligibility of the applicant: this refers to the applicant's legal and administrative status

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

The evaluation criteria consist of selection and award criteria, all of which are defined in the evaluation grids.

- The selection criteria are used to assess the applicant's financial and operational capacity to complete the proposed action: the applicant must have stable and sufficient sources of funding to maintain its activity throughout the period during which the action is being carried out and to participate, where appropriate, in its funding. Applicants and their partners must also have the necessary professional competencies and qualifications to complete the proposed action.
- The award criteria are used to assess the quality of proposals against the set objectives and priorities, so that grants are awarded to the actions which maximise the overall effectiveness of the call for proposals. They should enable the Contracting Authority to select proposals which it can be confident will comply with its objectives and priorities. The award criteria relate, in particular, to the relevance of the action and its compatibility with the objectives of the grant programme under which the Call for Proposals is being financed, to the quality, expected impact and sustainability of the action, and to its cost-effectiveness.

### **Step 3                    Publication Call for Proposals – grants procedure**

The Guidelines are published on the Internet and in any other appropriate media (specialised press, local publications, etc.). They should also be available in hard copy from the Contracting Authority. They should be available in the languages appropriate to the context of the Call for Proposals.

### **Step 4                    Information Session(s) – grants procedure**

It is also advisable, after the launch of the call for proposals, to organise one or more information sessions which all the potential applicants can attend. Such information sessions should take place at the latest 21 days before the submission deadline. Any presentation/documentation to be delivered in the information session will also be uploaded at least on the website where the call was published.

During the time between publication and the deadline for the submission of proposals, and in addition to the eventual information session(s) mentioned, applicants should be able to ask questions to help them fill in the form and put together their applications. The Contracting Authority should therefore provide a contact point to which questions may be addressed. Applicants may submit questions in writing up to 21 days before the deadline for the submission of proposals. The Contracting Authority must reply to all such questions at least 11 days before the deadline for submission of proposals. In the interest of equal treatment of applicants, the Contracting Authority cannot give a prior opinion on the eligibility of an applicant, a partner, an action or specific activities.

In the interests of transparency and equal opportunity, the answer provided to one applicant on points which may be of interest to the other applicants should be made available to all the others.

The way to achieve this is to publish on the Internet a table of questions and answers provided. This must be updated regularly until 11 days before the deadline for submission of proposals.

#### **Step 5            Receipt of proposals – grants procedure**

The deadline for submission must be long enough to allow for high-quality proposals. Experience shows that too short a deadline may prevent would-be applicants from submitting proposals or cause them to submit incomplete or ill-prepared proposals.

Consider a minimum period between the date of publication of the Guidelines and the deadline for submission of proposals of 90 days. When the maximum size of each grant to be awarded within the programme is less or equal to € 100,000, a minimum period of 60 days is reasonable.

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

#### **Step 6            Evaluation of Proposals – grants procedure**

As agreed upon with the donor(s) that provide the funds – see step 1 above – an evaluation committee shall be formed. There may be a distinction in roles between voting members and assessors. Assessors can have tasks in the administrative check or the evaluation of proposals, but they only give advice. It should be clarified beforehand how many voting members or assessors (1 or 2) have to analyse each proposal.

Each member of the Evaluation Committee has to sign a declaration to confirm the absence of conflict of interest (Annex 1 to this manual).

All proposals received should be opened in an opening session at which the registration details will be checked and completed and the proposals numbered.

The registration of concept notes/proposals should contain the following information:

- registration number of concept note/proposal
- date of submission
- the applicant's name and address.

For each proposal,

- the original is kept safely in the archives of the Contracting Authority;
- the copies are distributed to the evaluators and, where applicable, to the assessors.

The proposals having met the deadline are then subject to an administrative check, that may be carried out by voting members of the Evaluation Committee or by one or more assessors.

After the administrative check the proposals shall be distributed to voting members or assessors for analysis. The time needed for this analysis should correspond to the time mentioned in the



Guidelines for applicants. It is the responsibility of voting members to complete an evaluation grid for each proposal. This evaluation grid reflects the criteria for selection and award as mentioned in the Guidelines for applicants.

The Evaluation Committee's decisions are taken independently and in an advisory capacity. The Evaluation Committee must ultimately draw up a list of the proposals selected for financing, indicating the score obtained by each proposal, the amount of the proposed grant and the proportion of the eligible costs it is proposed to finance. Subject to the following considerations, this list is made up of the proposals obtaining the best scores, ranked by order, within the limits of the funds available under the call for proposals.

- The Committee may not allocate all the available funds if it finds that there are too few proposals of the quality required to receive a grant.
- The Committee may draw up a list by subject or geographical area specified in the Guidelines for Applicants.
- The Committee may reject a proposal if it has selected another which is of a similar nature but has been awarded a higher score.

The Committee may furthermore draw up, in the same conditions, a reserve list comprising a limited number of proposals having obtained the best scores after those selected for financing. This reserve list is valid during the period mentioned in the evaluation report.

The final Evaluation Report, covering the eligibility verification, is drawn up following the final meeting of the Evaluation Committee. It comprises the minutes of the evaluation sessions and must be signed by all members of the Evaluation Committee.

#### **Step 7            Award Grants – grants procedure**

ICCO as Contracting Authority has the final responsibility for awarding grants. The award decision contains the subject and overall amount of the decision, the approved evaluation report and, where appropriate, the grounds for the decision by the Contracting Authority to depart from the recommendations made by the Evaluation Committee.

The entire procedure, from the drawing-up of the Call for Proposals to the selection of successful applicants, is confidential. The Evaluation Committee's decisions are collective and its deliberations must remain secret.

After the Contracting Authority has given its official approval to the final list of grants to be awarded, it notifies the successful applicants in writing that their applications have been selected. It must also send the unsuccessful applicants a standard letter informing them that they have not been selected and specifying the reasons. The letters to the successful applicants must be sent within 15 days of the award decision and letters to the unsuccessful applicants within a further 15 days of that.

In preparing grant contracts for each of the successful applicants on the final list, ICCO will apply its usual procedure.

#### **Step 8            Publication of Award – grants procedure**

Once the contracts have been signed, the Contracting Authority prepares a notice of award. It will be published on the media as mentioned in the Guidelines for Applicants including at least on ICCO's website.

The publication mentions the successful applicants and the values of the awarded grants. This obligation can be waived if publication of the information may threaten the safety of the beneficiaries or harm their business interests.

#### **Step 9                    Management of grants – grants procedure**

The management of the grants including payments, receiving reports and giving feedback, is not different from the usual grant management by ICCO and is described in the concerned procedures of ICCO.

## 12. Procurement Documentation

### Documentation of accounting and procurement

The application of the correct procurement method has to be properly documented. In case of an audit it has to be easy to find the documents that justify that the necessary steps in the procedure have been taken, in other words to 'follow the audit trail'.

For the accounting of an organization the main justifying document is the invoice. It shows that the payment was due. Procurement takes place before the invoice is received; the invoice is the document issued by the supplier that should be compared with the purchase order or contract that is issued by the Contracting Authority and signed by the supplier.

For most organizations there is no automatic link between the accounting and the procurement files. The most logic link is the invoice. Per project the Contracting Authority can number the invoices (its own number, apart from the number given by the supplier) and ensure that in any project procurement documents can be traced by invoice number.

An Implementing Partner that has a digital accounting system but a hardcopy registration of justifying documents, is advised to attach the procurement documents to the invoice. An alternative may be to have separate files for purchase orders and / or quotations, but then the link with the invoice has to be easy traceable.

### Need for procurement documentation

When the single quote procedure has been applied it should be proven:

- That prices have been consulted to ensure that a reasonable price has been paid
- That a purchase order has been used for procurement with a value of at least € 2,000.

When the negotiated procedure has been applied it should be proven:

- That at least 3 potential suppliers or contractors have been approached and how they have responded (formal quotations or correspondence with the required content)
- That the purchase has been confirmed by the Contracting Authority (formal purchase order or correspondence with the required content)

When the open tender procedure has been applied the full process from publication of the tender via receipt of tenders and an evaluation of the bids to the award of a contract has to be documented. This means many documents per tender and therefore filing in hardcopy is practical.

Tracing of the documents will be easier since the number of tenders is much smaller than the cases where the negotiated procedure has been applied.

The Contracting Authority must keep procurement documents in proper order. Procurement files shall be kept for at least 5 years (7 years for projects funded by the European Union).

## **How to keep the Procurement files?**

### General Procurement file

For all procurement (Supply, Services and Civil works), reference to a procurement plan shall be made and a general procurement file shall be made with

- Application and budget
- Procurement plan and updates
- Distribution plan (if necessary)
- Declaration of impartiality and confidentiality
- General Advertisement
- Correspondence with donor on procurement related issues

### Single quote:

- Procurement request
- Quotations
- Purchase order
- Invoice/receipt

(If the supplier is unable to produce a receipt then the Contracting Authority may draft a receipt on behalf of the supplier or seller stating description, quantity and price and obtain seller's signature and/or thumb impression as an unofficial receipt.

- (for supplies only) Shipping documents (if the supplies are sent by a forwarder). In case the local forwarder is unable to provide a waybill, you must issue a Delivery Note which shall be signed by the carrier)
- (for supplies only) Proof of receipt/delivery note (if Supplies are sent by a forwarder)

### Negotiated procedure

- Short list of the suppliers/consultants/contractors
- RFP or RFQ (Request for Proposal or Request for Quotation) - proof that you have invited minimum 3 suppliers simultaneously, such as print of e-mails, fax or receipts if hand delivered
- Copy of proposal from all suppliers – if some suppliers/consultants have declined, the reason shall be noted in the file
- Evaluation grid
- Letter to unsuccessful tenderers
- Purchase order
- (for supplies only) Shipping documents incl. invoice, packing list, waybill/BL/AWB
- (for supplies only) Proof of receipt/inspection/delivery note (if collected by own vehicle a note shall be made in the file)

### Open Tenders and Restricted Tenders

Due to the amount of documentation for Open Tenders we recommend that the procurement file will be divided into two or three (unless it is a very small procurement, which can be filled in one file)

A. The **Master file** will typically have the following content

1. Tender dossier
2. Proof of advertisement (copy from the newspaper and the other sources)
3. (Documentation for pre-qualification round incl. evaluation report and short list, if restricted method is used)
4. Record of receipt of tenders
5. Minutes from tender opening
6. Evaluation report
7. Letter of Award
8. Letter to unsuccessful tenderers
9. Award notice

The tenders received and the winning tender, may be filed in the Master file if space is available. Otherwise the tenders will be filed separately.

B. The **Suppliers file I** will typically have the following content

- Letter of award (original).
- Contract or purchase order and the winning tender
- Copy of Advance pre-financing guarantee (if applicable)
- Payment documents
- Correspondence

C. The **Suppliers file II** (only applicable for supply contracts) will typically have the following content

- Copies of the shipping documents
- Supplies received Notes
- Insurance claims (if any)
- Customs declaration
- Copy of acceptance certificate (if required)
- Additional correspondence

The files shall be adjusted to include specific documentation as required in the tender and contract conditions.

## 13. Transport

In some cases transport of supplies up to the place where they have to be used or distributed, is provided by the supplier. In these cases the transport is part of the supply contract. In other cases the Contracting Authority receives – and becomes owner of – the supplies when they enter into the country or when they leave the warehouse of the supplier. In these cases it will need the service of a transport firm and has to award a freight contract, being a type of service contract (see section 8).

This section has been developed to assist the procurement officer with the most common terms and definitions in respect to transport of goods and definitions, which are used in the RFQ (Request for Quotations), tender dossier and supply contracts.

This chapter describes:

1. Consideration before deciding on mode of transport
2. Mode of transport and documents
3. How to calculate weight and volume
4. The most commonly used Incoterms – which are necessary to understand when issuing a RFQ, tender dossier and supply contracts. (see Annex 4, Incoterms)

### 13.1 Consideration before deciding on mode of transport

#### 1. Type of goods

Some goods require a short transport time due to limited shelf life, some need a refrigerated transport as temperature sensitive (a refrigerated transport can both be - / + degrees). Some goods may be classified as dangerous goods and special rules apply.

#### 2. Different types of transport

As described above the type of goods may limit the options you have when deciding on the mode of transport. If the goods do not limit the options, consider the **transport time** for each mode of transport and calculate the **costs** for the different types of transport.

Also consider the **route of the shipment** – some sea ports are often congested and the goods may be delayed for several weeks. Goods often need to transit other countries before reaching the destination. Be aware of delays at transit points and be aware of the **documentation** required at the transit points.

#### 3. Pre-shipment inspections

In some countries (many African countries) the government requires that all goods have been inspected by an international inspections company prior to shipment.

#### 4. Transport Insurance

In case the transport is not covered by the Contracting Authority's transport insurance agreement – it is recommended that an offer for transport insurance is collected from both the insurance company and the forwarder.

## 5. Clearing agent in receiving country

Before you book a transport ALWAYS check the following with a local import clearing agent:

- 1) documents required to custom clear the specific product (no. of copies and originals) (type of documents that can be required is: Bill of Lading or Air Way Bill, Invoice, Packing list, embargo papers, certificate of origin, GMO-certificate, IMCO documents, import license etc.)
- 2) time required to clear the goods
- 3) time to obtain import license (and documents required for this purpose)
- 4) Price from the agent for his service

Before goods are shipped to a specific country it is very important that you have ensured that all necessary documents are in order and that you have obtained an import license if required.

Some cases of DCA's practice:

Case – Airfreight to Burundi:

Satellite communication equipment was sent to Burundi by airfreight – the clearing agent was unable to clear the goods as an import license was required. The Authorities denied issuing the license. It took 14 months before the program managed to obtain the import license and get the goods cleared.

Case – Container transport to Angola:

A Container with different items was shipped to Angola, Luanda. The goods could not be cleared upon arrival due to problems with documentation. As a result demurrage was charged. As the consignee did not have additional funds to pay for the demurrage (demurrage is charged for each day the container is stored in the port) the container could not be cleared and additional demurrage costs were applied.

## 13.2 Type of transport and documents

<b>Table B15 Documents per type of transport</b>	
	<b>Shipping document issued by carrier</b>
Sea freight	Bill of Lading (B/L)
Air freight	Air Way bill (AWB)
Road transport	CMR freight letter
Railway	Waybill
Combined transport	Combined bill of Lading

### Bill of Lading

Bills of lading are contracts between the owner of the goods and the carrier. There are two types. A straight bill of lading is non-negotiable. A negotiable or shipper's order bill of lading can be bought, sold, or traded while goods are in transit and is used for many types of financing transactions. The customer needs the original as proof of ownership to take possession of the goods.

A person in possession of an original Bill of Lading can claim the goods – it is therefore important that all originals are kept in a safe place.

### **Air Way Bill**

An AWB is a bill of lading which covers both domestic and international flights transporting goods to a specified destination. Technically, it is a non-negotiable instrument of air transport which serves as a receipt for the shipper, indicating that the carrier has accepted the goods listed therein and obligates itself to carry the consignment to the airport of destination according to specified conditions.

Normally AWB refers to the Air Waybill issued by carrying airlines and also called Master Air Waybill (MAWB) which comes with three digits of numeric airline identification codes issued by IATA to non-U.S. based airlines. Air Transport Association of America to U.S. based airlines. However, air freight forwarders also issue HAWB (House Air Waybill) to their customers for each of the shipments.

### **Railway bill**

Freight document that indicates goods have been received for shipment by rail. A duplicate is given to the shipper as a receipt for acceptance of the goods. (When the railway is used in connection with combined transport, the freight document will be a Combined bill of Lading)

### **CMR**

CMR is short for “Convention for the transportation contract for international road freight”. The CMR freight letter is used for international road transport.

### **Combined Bill of Lading**

It is carriage of goods by at least two different modes of transport, from a place at which the goods are taken in charge to a place designated for delivery.

It can be a combination of road, rail, inland waterway, sea or air. In this respect, only one bill of lading is issued to cover the whole journey which is called 'Combined Bill of Lading'.

### **13.3 How to calculate weight and volume**

Depending on the mode of transport, the weight is calculated on the following basis:

<b>Table B16 Calculation of weight of transport</b>		
	<b>Volume in CBM</b>	<b>Weight in KGS</b>
Air freight	1	167
Sea freight	1	1,000
International Road transport	1	333
Domestic transport	1	300
Railway	1	Normally 300, but depending on the country of operation



Example:

If you have 5 parcels with the following dimensions: Length 70cm x height 60cm x width 50 cm = 0,21 cbm per parcel. Total CBM for 5 parcels is  $0,21 \times 5 = 1,05$  **CBM**

a. The actual unit weight of each parcel is 5 kg, total weigh is  $5 \times 5\text{kg} = 25\text{kg}$ .

b. To identify the shipping weight for airfreight – you must multiply the total volume with 167 (as per the above table). In this case the shipping weight is  $1,05 \text{ CBM} \times 167 = 175,35 \text{ kg}$ . Consequently the payable weight is 175,35 kg and the actual weight is only 25 kg. It is always the highest weight that is the payable weight.

### 13.4 INCO terms

The INCO terms are intended primarily to clearly communicate the tasks, costs and risks associated with the transportation and delivery of goods. They specify what are the responsibilities of the seller and of the buyer and at which moment the supplies become property of the buyer; at that moment the buyer bears the risk.

It is an advantage for the Contracting Authority to postpone this moment and to make the seller bear the risks as much as possible. But of course this will make the contract more expensive.

Bids of various suppliers can only be compared when the INCO terms are clearly mentioned.

The possible INCO terms are explained in annex 4 to this manual.

## 14. Stock Management

This manual gives rules and procedures for a fair and efficient procurement. After the procurement the supplies shall be used in a fair and efficient way to achieve the objectives of the intervention. This includes:

- Fair and efficient stock management
- Fair and efficient distribution of supplies that have to be distributed
- Fair and efficient use of supplies that have to be used (e.g. for construction)

Goods that are not directly used or distributed will be stocked, e.g. in a warehouse. Per type of goods a record shall be kept, digital or on paper. The record shall mention the quantities that enter and that leave the warehouse and the balance. Justifying documents shall be filed when the goods leave the warehouse.

At least once a year – but preferable more frequent – an inventory shall be made to verify per type of goods if the actual balance corresponds to theoretical balance, the one on the record.

The reasons for deviation shall be investigated.

When the goods are used, it shall be verified if this use is efficient as well. Compare for example the number of bags of cement that have been used with the number of constructions that have been realised.