



Guide to the European Community rules for awarding procurement contracts financed by the IPA Adriatic CBC Programme

Version 2

Joint Technical Secretariat



The Programme is co-funded by the European Union, Instrument for Pre-Accession Assistance (IPA)

ONE SINGLE SET OF RULES

*From the Letter of the DG Regional Policy to the Managing Authority
No. 004484 as of 29.05.2009.*

"One of the main reasons behind the choice of the single set of rules was the dissatisfaction of the Member States with the system applicable in the past to CBC programmes between beneficiary third countries and Member States, for which different instruments (e.g. Interreg/Phare), thus different set of rules, were applicable on each side of the border.

*IPA CBC represents a radical improvement compared to the sub-standard situation of previous cross-border cooperation at EU external borders. **A single set of rules** – including in terms of procurements – **applicable on both sides of the borders and to all beneficiaries** is the cornerstone of the IPA CBC approach, which can ensure **genuinely joint cross-border cooperation activities**.*

Putting into question this essential aspect would result in falling back to the previous unsatisfactory situation where each side was implementing its own part of the programme/projects under different, unrelated rules.

Furthermore, the application of one single set of rules presents several advantages such as increased transparency and fair competition between bidders, harmonized rules with same principles and thresholds applying to all of the geographical areas and programmes operating under the instrument, with clear improvements in terms of facilitating controls and certifying expenditures."

THE LEGAL FRAMEWORK

- **Council Regulation (EC) No. 1085/2006**
- **Commission Regulation (EC) No. 718/2007** (art. 121).

- **Regulation (EU, Euratom) No. 966/2012** of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (*hereinafter referred to in "Financial Regulation"*)
- **Commission Delegated Regulation (EU) No. 1268/2012 of 29 October 2012** on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (*hereinafter referred to in "Rules of application of the Fin. Reg."*).

- **Commission Decision C(2013) 1171 final of 5.3.2013** repealing Decision C(2007) 2034 on the rules and procedures applicable to service, supply and works contracts financed by the general budget of the European Union for the purposes of cooperation with third countries.

Member States are also obliged to respect **EU Directives 2004/17/EC and 2004/18/EC**.

Even though directives are not directly applicable like the regulations, but through implementing acts of the Member States, they are compulsory in all their elements. For public procurement, directives 2004/17/EC and 2004/18/EC (as applied in the national legislations) bound all Member States, in particular above the EU thresholds set by these directives.

Under EU thresholds, national procedures (where in force) apply as well as **general principles** (e.g. value for money, transparency, equal treatment of the bidders, etc.).



DEFINITIONS (i) - Art.121 Rules of application of the Fin. Reg.

Building contracts

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

Supply contracts

Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products. A contract for the supply of products and, incidentally, for siting and installation shall be considered a supply contract.

Work contracts

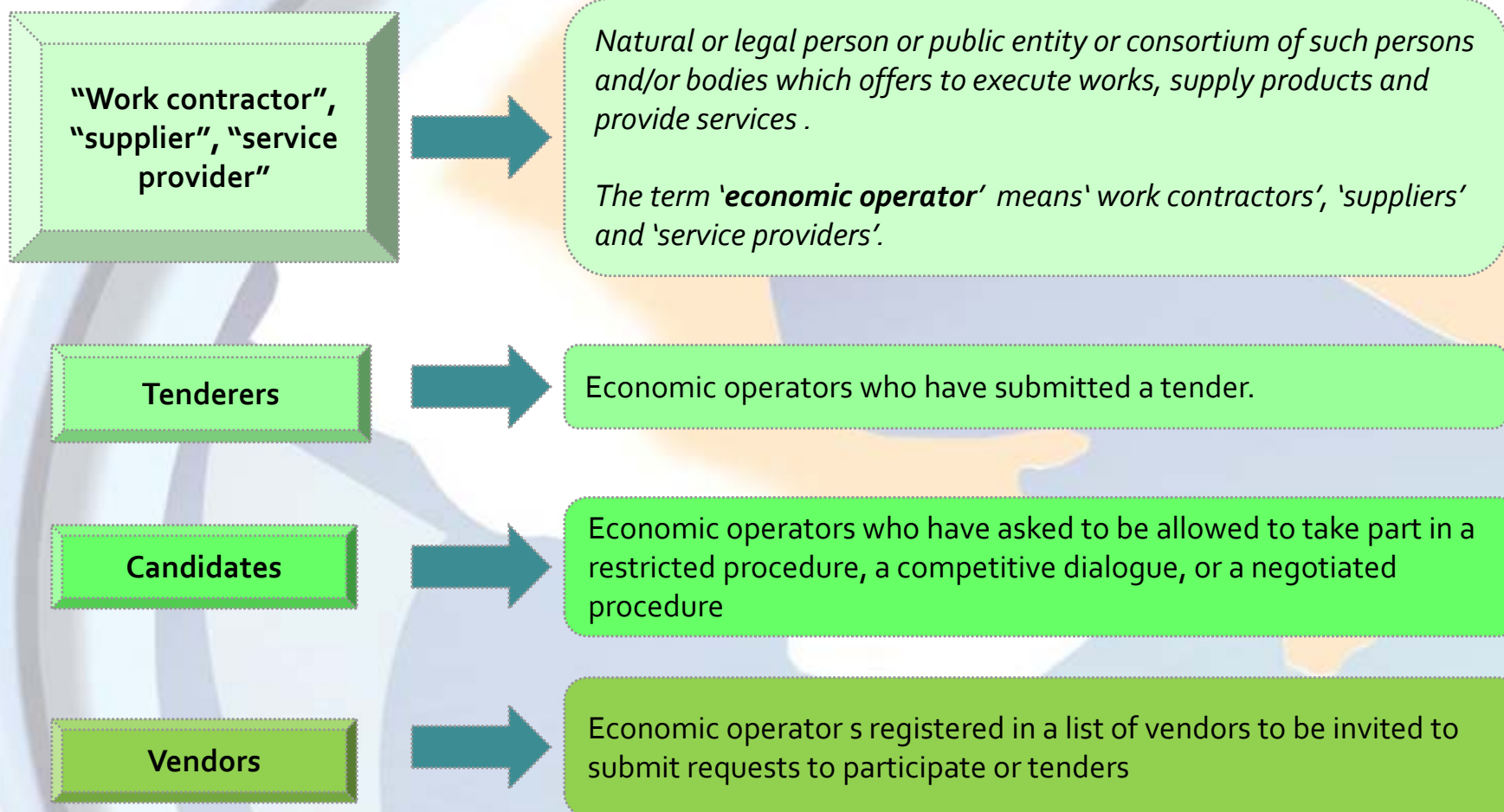
Works contracts cover either the execution, or both the execution and design, of works or a work related to one of the activities referred to in Annex I to Directive 2004/18/EC or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A 'work' shall mean the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.

Service contracts

Service contracts cover all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and building contracts.

A contract covering two or more types of procurement (works, services or supplies) shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract in question.
In the case of mixed contracts consisting of **services and supplies**, the main object shall be determined by a comparison of the values of the respective services or supplies.

DEFINITIONS (ii) - Art.121 Rules of application of the Fin. Reg.



GENERAL PRINCIPLES - *The rules of nationality and origin*

Reg. (EC) 1085/2006, Art. 19

RULE OF NATIONALITY

Participation in tender procedures administered by the Beneficiary is open on equal terms to all natural persons who are nationals of or legal persons established in:

- a) a Member State of the European Union;
- b) a Member State of the European Economic Area;
- c) an official candidate country or potential candidate that is a beneficiary of the Instrument for Pre-Accession Assistance;
- d) a country covered by a European Commission decision establishing reciprocal access to external aid.

This rule does not apply to the experts proposed by the service providers taking part in the calls for tenders or in the service contracts financed by the grant, who may be of any nationality.

RULE OF ORIGIN

All supplies and materials purchased under a contract financed under the Regulation (EC) 1085/2006 **must originate** from the Community or a country eligible according to paragraphs 1 or 2 of art. 19 afore mentioned.

GENERAL PRINCIPLES - *Exclusion criteria (I)*

Grounds for exclusion from participation in procurement procedures (Financial Regulation, Art. 106)

Candidates, tenderers or applicants will 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;*
- b) *they, or persons having powers of representation, decision making or control over them, have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of res judicata; (i.e. against which no appeal is possible);*
- c) *they have been guilty of grave professional misconduct proven by any means which the Contracting Authority can justify, including by decisions of the European Investment Bank and international organisations;*
- d) *they are not in compliance with their 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, or persons having powers of representation, decision making or control over them, have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such an illegal activity is detrimental to the EU's financial interests;*
- f) *they are currently subject to an administrative penalty referred to in Article 109(1) of the Financial Regulation.*

GENERAL PRINCIPLES – *Exclusion criteria (I-continue)*

Grounds for exclusion from participation in procurement procedures (continue)

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

Points (b) and (e) do not apply when the candidates or tenderers can demonstrate that adequate measures have been adopted against the persons having powers of representation, decision making or control over them who are subject to the judgement referred to in points (b) or (e).

Points (a), (c) and (d) do not apply if duly justified by the Contracting Authority in negotiated procedures where it is indispensable to award the contract to a particular entity for technical or artistic reasons or for reasons connected with the protection of exclusive rights.

Candidates or tenderers shall certify that they are not in one of the situations listed above. However, the contracting authority may refrain from requiring such certification for very low value contracts

GENERAL PRINCIPLES – *Exclusion criteria (II)*

Exclusion criteria applicable during the procurement procedure (Financial Regulation, Art. 107)

Contracts may not be awarded to candidates, applicants or tenderers who, during the procurement or grant award 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 exclusion situations for this procurement or grant award procedure.

GENERAL PRINCIPLES – *Language to be used*

NO SPECIFIC RULE IS ESTABLISHED ABOUT THE LANGUAGE TO BE USED IN PROCUREMENT PROCEDURES.

The Practical Guide to contract procedures for European Union external actions (so called "PRAG") only mentions that *"if the supporting documents **are not written in one of the official languages of the European Union, a translation into the language of the procedure** must be attached. Where the documents are in an official language of the European Union other than the one of the procedure, **they have to be accepted**. It is, however, strongly recommended that a translation into the language of the procedure be provided, in order to facilitate the evaluation of the documents"*.

In order to ensure a **"fair and transparent" competition** in all the Programme area, which implies that all interested and eligible bidders should be able to participate, ***the use of the Programme official language (English) increases the possibility for tenderers from different countries to be properly informed.***

Many participating countries have anyway the ***obligation to publish call for tenders and tender dossiers in the national language*** within their national systems and a good compromise could be that the national language accompanies a translation in English.

Nonetheless, the binding principles set in the financial regulation about ***efficiency and effectiveness*** of the action financed by EU budget should also not be forgotten: i.e. in case of tenders of small amounts, as the costs for translation might even exceed the value of the contract, or of small values deliveries of supplies-services which might be even more efficient if originating from local tenderers.

PROCEDURES – Art. 127 Rules of application of the Fin. Reg.

Contracts shall be awarded by call for tender, using the open, restricted or competitive negotiated procedure

Open procedure

All economic operators may submit a tender.

Restricted procedure

All economic operators may ask to participate but only candidates satisfying the selection criteria and invited simultaneously and in writing by the contracting authority may submit a tender.

Competitive negotiated procedure

The contracting authority shall consult tenderers of its choice who satisfy the selection criteria and negotiate the terms of the contract with one or more of them.

PROCEDURES – *Negotiated procedure/single tender procedure (i)*

A contract may be **awarded directly** in the following circumstances:

- when the contract to be concluded does not exceed EUR 20 000 (using the '*single tender procedure*');
- in **exceptional and duly justified cases**, where the factual or legal circumstances described in Articles 266, 268 and 270 of the Rules of application of the Financial Regulation are met. No specific threshold applies in such cases.

For services and supplies, payments for **amounts less than or equal to EUR 2500** may consist simply in payment against invoices without prior acceptance of a tender.

PROCEDURES – Use of negotiated procedure for Service contracts

Article 266 of the Rules of application of the Financial Regulation

(a) for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them;

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

(c) for services which are an extension of services already started, subject to the following conditions (Art. 266.2, lett a and b):

1. **additional services not covered by the principal contract** but which, as a result of unforeseen circumstances, have become necessary (max. 50% of the value of the principal contract);
2. **additional services consisting in the repetition of similar services** entrusted to the contractor providing services under a first contract (the extension of the contract is for a value and duration not exceeding the value and the duration of the initial contract);

(d) where the tender procedure or the attempt to use a framework contract has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered;

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

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

(g) for contracts declared to be secret, or for contracts whose performance must be accompanied by **special security measures** or when the protection of the essential interests of the Union or the beneficiary country so requires;

(h) where a new contract has to be concluded after early termination of an existing contract.

PROCEDURES – *Use of negotiated procedure for Supply contracts*

Article 268 of the Rules of application of the Financial Regulation

- (a) for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them;*
- (b) where warranted by the **nature or particular characteristics of the supplies**, for example, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents;*
- (c) for **additional deliveries** by the original supplier intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance;*
- (d) where the **tender procedure has been unsuccessful**, that is where no qualitatively or financially worthwhile tender has been received;*
- (e) for **contracts declared to be secret**, or for contracts whose performance must be accompanied by **special security measures** or when the protection of the essential interests of the Union or the beneficiary country so requires;*
- (f) for contracts in respect of supplies quoted and purchases on a commodity market;*
- (g) for contracts in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law;*
- (h) where a **new contract has to be concluded after early termination of an existing contract**.*

PROCEDURES – *Use of negotiated procedure for Works contracts*

Article 270 of the Rules of application of the Financial Regulation

- (a) *for **reasons of extreme urgency** brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them;*
- (b) *for **additional works** not included in the initial contract concluded but which have, through unforeseen circumstances, become necessary for carrying out the work described therein, subject to the following conditions (Art. 270.2, lett a, b and c):*
 - 1. *where such works cannot be technically or economically separated from the main contract without serious inconvenience for the contracting authority;*
 - 2. *where such works, although separable from the performance of the original contract, are strictly necessary for its completion;*
 - 3. *where the aggregate value of contracts awarded for additional works does not exceed 50 % of the value of the principal contract.*
- (c) *where the **tender procedure has been unsuccessful**, that is where no qualitatively and/or financially worthwhile tender has been received;*
- (d) *for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the Union or the beneficiary country so requires;*
- (e) *where a new contract has to be concluded after early termination of an existing contract.*

PROCEDURES - Financial thresholds

- ✓ The thresholds given in the table are based on the maximum budget for the contract in question (including any co-financing, but VAT excluded).
- ✓ Where contracts are subdivided in lots, the value of each lot is taken into account when calculating the overall threshold.
- ✓ Contracts must not be split artificially to circumvent the procurement thresholds.

FINANCIAL THRESHOLDS AND RELATED TENDERING PROCEDURES

(amount are expressed in EUR)

SERVICES	≥ € 300 000 - International restricted tender procedure or - International open tender procedure	< € 300 000 but > € 20 000 Framework contracts or Competitive negotiated procedure		≤ € 20 000 <i>Single tender</i> <i>For service and supply contracts, a payment may be made against invoice without prior acceptance of a tender if the expenditure is ≤ EUR 2 500</i>
SUPPLIES	≥ € 300 000 International open tender procedure	< € 300 000 but ≥ € 100 000 Local open tender procedure	<€ 100 000 but > € 20 000 Competitive negotiated procedure	
WORKS	≥ € 5 000 000 - International open tender procedure or - International restricted tender procedure	< € 5 000 000 but ≥ € 300 000 Local open tender procedure	< € 300 000 but> € 20 000 Competitive negotiated procedure	

PROCEDURES - SERVICE CONTRACTS –

Definitions (art. 291 of the Rules of application of the Financial Regulation)

Service contracts shall comprise study and technical assistance contracts.

A **study contract** is a service contract concluded between a supplier and the contracting authority which includes studies for the identification and preparation of projects, feasibility studies, economic and market studies, technical studies and audits.

A **technical assistance contract** is where the supplier is called on to play an advisory role, to manage or supervise a project or to provide the consultants specified in the contract.

PROCEDURES - SERVICE CONTRACTS –

Procedures for awarding (Art. 265 of the Rules of application of the Financial Regulation)

≥ € 300 000



A) International open tender procedure

B) International restricted tender procedure:

- At least 4 candidates shall be invited.
- Only candidates satisfying the selection criteria can be invited to submit tenders.

For both A) and B): the contract notice shall be published at least in the *Official Journal of the European Union* and *on the internet* for international calls for tender.

< € 300 000 but >
€ 20 000



Competitive negotiated procedure.

- At least 3 tenderers shall be included in the list of candidates to be invited.
- Tenderers may be chosen from an appropriately advertised list of vendors drawn up following a call for expression of interest (valid for no more than five years from the date of advertisement).

(art. 265.6 of the Rules of application of the Financial Regulation) The tender offering **best value for money** shall be selected using an **80/20 weighting distribution** between technical quality and price.

For that purpose:

- (a) the score awarded to the **technical bids** shall be multiplied by **0,80**;
- (b) the score awarded to the **price bids** shall be multiplied by **0,20**.

PROCEDURES - SUPPLY CONTRACTS –

Procedures for awarding (Art. 267 of the Rules of application of the Financial Regulation)

≥ € 300 000



International open tender procedure

The contract notice shall be published at least in the *Official Journal of the European Union* and on the internet for international calls for tender.

< € 300 000 but >
€ 100 000



Local open invitation.

The contract notice shall be published in the *official gazette of the recipient State* or in any equivalent publication for local invitations to tender.

< € 100 000 but >
€ 20 000



Competitive negotiated procedure.

At least 3 suppliers shall be included in the list of candidates to be invited.

(art. 267.6 of the Rules of application of the Financial Regulation)

In the case of a supply contract not involving after-sales service, **the sole award criterion shall be price.**

Where proposals for **after-sales service or for training** are particularly significant, the tender offering either the lowest price or best value for money shall be chosen, with due account for the technical quality of the service offered and the price quoted.

PROCEDURES - WORKS CONTRACTS –

Procedures for awarding (Art. 269 of the Rules of application of the Financial Regulation)

≥ € 5 000 000



A) International open tender procedure

B) International restricted tender procedure

For both A) and B): the contract notice shall be published at least in the *Official Journal of the European Union* and *on the internet* for international calls for tender.

< € 5 000 000 but
> € 300 000



Local open invitation

The contract notice shall be published in the *official gazette of the recipient State* or in any equivalent publication for local invitations to tender.

< € 300 000 but >
€ 20 000



Competitive negotiated procedure.

At least 3 contractors shall be included in the list of candidates to be invited.

ADVERTISING (Art. 264 of the Rules of application of the Financial Regulation)

The **prior information notice for international calls for tender** shall be sent to the Publications Office as early as possible for supply and service contracts and as quickly as possible after the decision authorising the programme for works contracts.

The **award notice** shall be sent when the contract is signed except where, if still necessary, the contract was declared secret or where the performance of the contract must be accompanied by special security measures, or when the protection of the essential interests of the European Union, or the beneficiary country so requires, and where the publication of the award notice is deemed not to be appropriate.

TIME LIMITS FOR PROCEDURES - Art. 275 Rules of application of the Fin. Reg.

International restricted procedure

The time limit for receipt of requests to participate shall be **no less than 30 days** from the date on which the contract notice is published.
The period between the date on which the letter of invitation is sent and the final date for the receipt of tenders shall be **no less than 50 days**.

International open procedure

The time limits for receipt of tenders, running from the date on which the contract notice is sent, shall be at least:
(a) **90 days for works contracts**;
(b) **60 days for supply contracts**.

Local open procedure

The time limits for receipt of tenders, running from the date when the contract notice is published, shall be at least:
(a) **60 days for works contracts**;
(b) **30 days for supply contracts**.

Competitive negotiated procedure

Candidates shall be allowed **at least 30 days** from the date of dispatch of the letter of invitation to tender in which to submit their tenders.

- For **service contracts**, the minimum time between the date of dispatch of the letter of invitation to tender and the final date for receipt of tenders shall be 50 days.
- Time limits are always expressed in **calendar days** and, in certain exceptional cases, **other time limits** may be authorised.

TENDER DOCUMENTS (Artt. 138 and 273 of the Rules of application of the Financial Regulation)

GENERAL TENDER DOCUMENTS (Art. 138)

1. The **invitation** to tender or to negotiate
2. The **specification** or a document describing the needs and requirements of the contracting authority or the reference for the internet address at which such specification or document can be consulted .
3. The **draft contract** based on the model contract

SPECIFIC TENDER DOCUMENTS (Art. 273)

1. **Instructions** to tenderers.
2. **Shortlist of candidates selected** (for service contracts only).
3. **General conditions** and **specific conditions** which amplify, supplement or derogate from the general conditions.
4. For service contracts: **terms of reference** indicating the planned timetable for the project and dates from which it is planned that the principal experts must be available. For supply and work contracts: **technical annexes** containing plans, technical specifications and the planned timetable for performance of the contract.
5. **Price schedule** and, for supply and work contracts, also **breakdown of prices**.
6. **Tender form, contract form** and, if applicable, **bank or similar guarantee form** .

GUARANTEES *(Artt. 163 and 274 of the Rules of application of the Financial Regulation)*

Advance guarantees shall be denominated in euro or in the currency of the contract they cover

TENDER GUARANTEE

*for supply or work contracts
only*

- ✓ **1-2%** of the overall value of the contract.
- ✓ It shall be retained if the tender is subsequently withdrawn from the competition
- ✓ It shall be released when the contract is signed

PERFORMANCE GUARANTEE

*for supply or work contracts
only*

- ✓ **5-10%** of the total value of the contract (*on the basis of objective criteria such as the type and value of the contract*).
- ✓ it must be required when the following thresholds are exceeded:
 - EUR 345 000 for work contract;
 - EUR 150 000 for supply contract.
- ✓ The guarantee shall remain **valid at least until final acceptance of the supplies and works**.
- ✓ If the contract is not properly performed the entire guarantee shall be retained.

THE EVALUATION COMMITTEE (Art. 190 of the Rules of application of the Financial Regulation)

COMPOSITION

It shall be composed by an odd number of members (at least 3 members).

All the members shall have the technical and administrative expertises to assess the tenders and none of them must fall in any situation of conflict of interest with tenders.

The obligation to establish an evaluation committee **may be waived** for procedures with a **value less than or equal to EUR 20 000**.

TASKS

The evaluation committee shall **evaluate and rank** all requests to participate and tenders declared as satisfying the requirements on the basis of the exclusion, selection and award criteria.

The evaluation committee **may ask** candidates or tenderers **to supply additional material or to clarify the supporting documents** submitted in connection with the exclusion, selection and award criteria, within the time limit they specify and having respect to the principle of equal treatment.

In the case of abnormally low tenders as referred to in Art. 151 of the Rules of application of the Financial Regulation, the committee shall ask for the necessary clarifications concerning the composition of the tender.

EXAMPLE OF ASSESSMENT WITH THE "BEST VALUE FOR MONEY" PRINCIPLE

	<i>Maximum score</i>	<i>Tender 1</i>	<i>Tender 2</i>	<i>Tender 3</i>
Evaluation Committee member "A"	100	55	88	84
Evaluation Committee member "B"	100	60	84	82
Evaluation Committee member "C"	100	59	82	90
Total technical score	300	174	254	256
Medium score (arithmetic mean = scores/3)	≥ 80	58,00	84,67	85,33
Technical score %	100%	Rejected	99,22% (84,67/85,33)	100%
Financial bid amount		Not admitted	€ 951.322	€ 1.060.452
Financial score %	100%		100%	89,71% (951.322/1.060.452)
Threshold for abnormal tender	See the national criterion			
Technical score x 0,80	80		79,38%	80,00%
Financial score x 0,20	20		20,00%	17,94%
Total score	100%		99,38%	97,94%
Final ranking list		Rejected	1	2

EXAMPLE OF ASSESSMENT WITH THE "LOWEST PRICE" PRINCIPLE

<i>List of the goods requested</i>	<i>Quantity</i>	<i>Technical specifications</i>	<i>Tenderer 1</i>		<i>Tenderer 2</i>		<i>Tenderer 3</i>	
Article A	1	....	YES	€ 450.000	YES	€ 420.000	YES	€ 500.000
Article B	1	....	YES	€ 300.000	NO	€ 300.000	YES	€ 300.000
Article C	1	....	YES	€ 201.322	YES	€ 201.322	YES	€ 260.452
Total goods requested/offered	3		3		2		3	
Technical assessment			compliant		Non -compliant		compliant	
Financial bid amount	Maximum amount of tender		€ 951.322		€ 931.322		€ 1.060.452	
Threshold for abnormal bid	See the national criterion							
Financial score %	100%		100%		Non- admitted		89,71%	
Final ranking list			1		Rejected		2	