

## 7 SERVICE CONTRACTS

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

A Service Contract covers all intellectual and non-intellectual services other than those covered by Supply Contracts, Works Contracts and Property Contracts. Some examples of service contracts are:

- A Study Contract with the identification and preparation of projects, feasibility studies, technical studies and audits.
- A Technical Assistance Contract where the contractor is called on to play an advisory role or to manage or supervise a project.
- Freight Contracts covering transport of goods from one site to another, unless the freight is included in the Supply Contract.
- A Rental Contract for a vehicle with a driver. Rental of a vehicle without driver is considered a Supply Contract as is rental of equipment and venues.

Service contracts involving the processing of personal data of data subjects residing in the EU shall meet the EU General Data Protection Regulation (GDPR). The Contracting Authority is obliged to enter into a Data Processing Agreement with the data processor (Candidate) who processes personal data on behalf of the Contracting Authority irrespective of the location of the data processor. It is important that the Contracting Authority continuously checks whether the data processor complies with the requirements of the regulation, puts in place security measures to take care of the registrations of the data subject, and imposes the same requirements on subcontractors processing personal data on behalf of the data processor.

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

SERVICES		
EUR 300 - 9,999	Simple Procedure	See section 7.1
EUR 10,000 - 149,999	Negotiated Procedure	See section 7.2
EUR 150,000 - 299,999	Local Open Tender	See section 7.3
Above EUR 300,000	International Open Tender	See section 7.4

### The use of Service Procedure with Open Budget

Due to the principle of competition, the Procurement Manual does not generally allow the procurement budget to be shared with candidates. However, under the below specific circumstances the manual makes an exception, as it is advantageous to the outcome of the procurement procedure, that the Contracting Authority informs the candidates of the total budget available. This procedure is called 'Open Budget' and is an option for Simple, Negotiated and Open Tender Service Procedures, only.

The Open Budget should be carefully set to ideally exclude those candidates whose bids are excessive, but not discourage those candidates whose quality would offer good value for money.

The candidates compete on price and quality and the Contracting Authority will as always ask the candidates to provide their best technical and financial offer. However, with the candidates' knowledge of the budget, a likely consequence may be that the financial offers will be similar and close to the Open Budget, thus resulting in a situation where the candidates in effect are competing on quality alone and therefore predominantly on the technical aspect of the proposals.

The Contracting Authority will award the Contract to the candidate with the highest ranked score based on a set of carefully pre-defined criteria as well as technical and financial weights. Consequently, a Service Procedure with Open Budget follows the usual Step Guides for the Simple, Negotiated and Open Tender Procurement Procedures as outlined below, with the only difference that the budget is open to the candidates.

The procedure is undertaken by disclosing the available budget in the TOR in the Request for Proposal. A Service Procedure with Open Budget is reserved for procurement of services e. g. communications, design and consultancies under the following circumstances:

- **Multiple solutions and scope adjustments accepted.** Where the Contracting Authority finds it unsuitable to determine a single solution and is willing to adjust its requirements to the services offered. This is typically for assignments that can be carried out in substantially different ways, where proposals will not be comparable or offers are at risk to exceed the budget. Examples are services for management advice or studies, where the value of the services depends on the quality of the analysis, a design assignment, or an IT solution (e.g. a new intranet or a new server set-up or a new office set-up) where the Contracting Authority would like to receive proposals for different solutions, and to receive relevant proposals within the available budget it is useful to inform of the financial framework.
- **Limited market knowledge.** Where the Contracting Authority has limited knowledge in the field of expertise or where it may prove difficult for the Contracting Authority to describe what the service should entail. Consequently, a market survey is difficult to conduct, and the Contracting Authority is in doubt as to what the market has to offer. An example could be where an advertising agency's input is essential to the Contracting Authority's proposal content and solution description, and to be able to design something relevant and adequate, the advertising agency must know the value of the proposal component.
- **Complex or innovative requirement.** Where the Contracting Authority has a complex or highly specialized assignment for which it is difficult to define a precise TOR, and for which the Contracting Authority expects the consultants to demonstrate innovation in their proposals. Knowing the financial framework allows the candidates a better opportunity to offer a creative and distinctive solution that may prove superior to the solution that the Contracting Authority could sketch.
- **High value contracts.** Where the contract value is substantial (above EUR 50,000), the economy is very important, and the budget is non-negotiable.

#### **Ethical Considerations**

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

publishing the COC nationally. For more information on ethical procurement principles and implementation, see section 1.2 and 1.2.1.

### The use of the Standard Templates for Service Contracts

In SER 2, SER 2-1, SER 2-2 you will find the standard templates for Service Contracts including templates for Framework and Open Budget procedures. The templates are to be used for entering Service Contracts with consultants, procurement agents, inspection agents, auditors, universities, research institutions, NGOs and individuals for the carrying out of a wide range of activities such as policy advice; organisational development; studies, appraisals and evaluations; audits; management; procurement services; social and environmental studies as well as identification, preparation and implementation of projects.

In the context of a construction project (Works), the Service Templates 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 these cases the specific contract included in SER 1 shall be used because of the specificity of the engineering services required, and the necessary link to the Works Contract.

Note that the templates (SER 1, SER 2, SER 2-1 and SER 2-2) are not appropriate for other kinds of services, which do not involve the provision of “intellectual” services. This could be contracts for transport, financial services, cleaning services, etc. Should the standard templates for Service Contracts not fulfil your needs, in some cases the standard templates for Supplies can be used or please contact the ProLog Unit for advice.



Learn how to use and fill in the SER 2 in the e-training number 6: [Guide to SER 2: Request for Proposal](#).

## 7.1 THE SIMPLE PROCEDURE

The Simple Procedure is the simplest Procurement Procedure. This procedure is applicable within the threshold of EUR 300 - 9,999.

For the Simple Procedure it shall be documented that the price of the procured service corresponds with or is lower than the market price while meeting the TOR. To establish this, several methods exist. It is possible to collect written proposals or refer to recent contracts from the past 12 months. The advantages of written proposals are many. They evidence what has been offered, thereby reducing misunderstandings and are easy to document. Alternatively, the method can be verbally collected proposals documented in a Note to File. Regardless of the method chosen, a minimum of three prices must be collected, TOR must be available and documented in the procurement file.

Before the procurement process is initiated, please ensure that all members of the Procurement Committee sign the Declaration of Impartiality and Confidentiality (GEN 2-1). Furthermore, please ensure that the mandatory general Advertisement of Business Opportunities (GEN 8) was published. For more information on the general Advertisement of Business Opportunities, see section 4.11.1.

### Step Guide:

# 1

## Purchase Request with Terms of Reference



Identify the service(s) to be procured from the Procurement Plan and draft the TOR using SER 2-3: Terms of Reference.

Procurement starts with the completion and authorization of the Purchase Request



Form GEN 1-1. The Purchase Request originates outside the Procurement Department and programme staff are usually in charge of drafting the TOR.

The Purchase Request identifies the TOR of the services, ensures sufficient budget and requests the procurement responsible staff to procure the services.

Clear, adequate and well-defined TOR is a prerequisite for receiving proposals matching the requirements and the budget. Please refer to section 4.12.2 when drafting the TOR.

Establish if the content of the TOR qualifies for the use of Open Budget and decide if the procedure will use Open Budget.

**NOTE:** If a candidate assists with input to the technical specifications, the candidate is excluded from participating in that procedure.



#### **MANDATORY TEMPLATE**

GEN 1-1: Purchase Request Form

#### **SUPPORT TEMPLATE**

SER 2-3: Terms of Reference



Learn more about drafting TORs in e-training number 6. [Guide to SER 2: Request for Proposal](#)

## 2

### Collect Proposals



Approach the candidate(s) for a written or non-written proposal, search the internet for the best price and quality or refer to recent contracts to ensure that the price corresponds with the present market price or lower. Make sure to have at least three prices or proposals for comparison and file the collected prices or proposals in the procurement file.



Although optional, it is recommended to use a written RFP, applying SER 2. The use of the RFP prevents misunderstandings and ensures that all the required information is collected. The written form is also a reminder to specify ethical criteria in the TOR or contract conditions.



If a non-written proposal is collected the Procurement Committee shall make a written note of the price, name of candidate, description of service and note the date. This note shall be filed in the procurement file. At this stage, it is also important to communicate the ethical principles and standards to the candidates.



#### **SUPPORT TEMPLATE**

SER 2: Request for Proposal

SER 2-1: Request for Proposal for Framework Contract

SER 2-2: Request for Proposal for Open Budget



Knowledge on how to use and fill in the template is found in e-training number 6. [Guide to SER 2: Request for Proposal](#)

## 3

### Evaluate and Select Candidate



Evaluate the proposals and select the candidate offering the best price meeting the TORs. Issue a Note to File with a justification for the selection of the candidate. As an alternative to a Note to File, for evaluation purposes it may be useful to apply the SER 3 Evaluation Grid for Negotiated Procedure.

Before issuing the Contract, please verify the selected candidate(s)'s eligibility as per DCA Counter Terrorism Policy, by checking the UN Security Council, EU and donor required sanctions lists.



#### **SUPPORT TEMPLATE**

SER 3: Evaluation Grid for Negotiated Procedure

## **4**

### **Issue Contract**



After selecting the best proposal, the contract shall be issued by the Procurement Committee applying SER 4. Check if the contract must be adapted to existing legislation, traditions or requirements, as appropriate and incorporate in the contract all agreements reached with the selected candidate. Please do not delete or make alteration to the GTC.



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



Before signing the contract the Procurement Committee shall ensure:

- That adequate and exact reference is made in the contract to the relevant RFP or proposal
- That the contractor acknowledges the GTC and the COC without exceptions or amendments
- For new contractors, make sure that sufficient references and company data have been collected

If the contractor cannot accept the GTC, the Procurement Committee shall decline that proposal and continue the process with another candidate.



#### **MANDATORY TEMPLATE**

SER 4: Contract

SER 4-1: Framework Contract

## **5**

### **Receive and Inspect**



Ensure that the services completed, inspected and received comply with the contract. Issue a Completion Certificate or file other relevant documentation as proof of receipt of the services e.g. a report or adapt SUP 13 to the needs. The Contracting Authority shall follow up on the timely delivery and satisfactory quality of the received services.



#### **SUPPORT TEMPLATE**

SUP 13: Goods Received Note



### **DOCUMENTATION IN THE PROCUREMENT FILE**

- Declaration of Impartiality and Confidentiality

- Purchase Request
- Terms of Reference
- Proof of minimum 3 prices/proposals
- Evaluation and justification for selection of supplier
- Contract
- Copy of invoice
- Proof of receipt of the service(s)
- Note to File, if relevant

## 7.2 THE NEGOTIATED PROCEDURE

The Negotiated Procedure is more formal than the Simple Procedure. This procedure is applicable within the threshold of EUR 10,000 – 149,999 and requires that a minimum of three candidates are invited simultaneously to submit a proposal based on a RFP. The contract shall be awarded to the most compliant candidate. It is mandatory to publish an Award Notice for contracts above EUR 30,000 and Letters to all unsuccessful candidates shall always be submitted. The Negotiated Procedure is less formal than a Local Open Tender and gives the opportunity to negotiate the terms of the contract.

Before the procurement process is initiated, please ensure that all members of the Procurement Committee sign the Declaration of Impartiality and Confidentiality (GEN 2-1). Furthermore, please ensure that the mandatory general Advertisement of Business Opportunities (GEN 8) was published. For more information on the general Advertisement of Business Opportunities, see section 4.11.1.

### Step Guide:

1

#### Purchase Request with Terms of Reference



Identify the service(s) to be procured from the Procurement Plan and draft the TOR using SER 2-3: Terms of Reference.



Procurement starts with the completion and authorization of the Purchase Request Form GEN 1-1. The Purchase Request originates outside the Procurement Department and programme staff are usually in charge of drafting the TOR.

The Purchase Request identifies the TOR of the services, ensures sufficient budget and requests the procurement responsible staff to procure the services.

Clear, adequate and well-defined TOR is a prerequisite for receiving proposals matching the requirements and the budget. Please refer to section 4.12.2 when drafting the TOR.

Establish if the content of the TOR qualifies for the use of Open Budget and decide if the procedure will use Open Budget.

**NOTE:** If a candidate assists with input to the technical specifications, the candidate is excluded from participating in that procedure.



#### MANDATORY TEMPLATE

GEN 1-1: Purchase Request Form

#### SUPPORT TEMPLATE

SER 2-3: Terms of Reference



Learn more about drafting TORs in e-training number 6. [Guide to SER 2: Request for Proposal](#)

## 2

### Prepare Shortlist



Prepare a shortlist with a minimum of three candidates applying GEN 13. It is recommended to include 4-8 candidates to ensure that a minimum of three proposals are collected. For more information on sourcing candidates see section 4.11.2.



At this stage it is recommended to collect general information on sector and country specific ethical risks to identify potential risks related to procuring the service in question. Include the information in the sourcing decisions and further in drafting the RFP. See section 1.2.1 for implementation of the ethical procurement principles.



#### MANDATORY TEMPLATE

GEN 13: Shortlist of Suppliers/Candidates and Receipt Form

## 3

### Draft Request for Proposal



Carefully prepare the RFP applying the template in SER 2, SER 2-1 or SER 2-2 and approach the candidates for a proposal. The RFP shall be forwarded simultaneously (on the same day) to all the shortlisted candidates. This is to ensure that all candidates are given an equal amount of time to prepare and submit their proposal.



When preparing the RFP consider all the articles and options and decide on:

#### Deadline

Decide on the deadline for receipt of proposals. It is recommended to allow the bid flow to be a minimum of two weeks.



#### Open Budget

Establish if the content of the TOR qualifies for the use of Open Budget and decide if the procedure will use Open Budget. If yes, please use SER 2-2 Request for Proposal for Open Budget.



#### Type of Remuneration

The Service Contract may be a 'global price' contract, a 'fee-based' contract or a mix of the two. One of the three options must be chosen in article A.6 Financial Proposal of the RFP and in article B.5 Remuneration of the Draft Contract.



For the global price the Contracting Authority pays the candidate according to the delivery of certain output(s), e.g. reports, workshops, etc. The global price includes all costs and is a total price. A major advantage of the global price contract is the simplicity of its administration. The Contracting Authority having only to be satisfied with the outputs without monitoring the staff inputs or the reimbursable expenses. Studies are usually carried out on a global price basis e.g. surveys, master plans, simple feasibility and engineering studies.

In fee-based contracts remuneration is based on (i) agreed unit rates for the candidate's staff multiplied by the actual time spent by the staff in executing the assignment, and (ii) reimbursable expenses using actual expenses or agreed unit prices. This type of contract is heavy on administration and requires the Contracting

Authority to closely supervise and monitor the Contractor. 'Fee-based' contracts are used for assignments for which remuneration is being determined based on the time spent by the Contractor in carrying out the services. Such contracts are recommended when the scope of the services cannot be established with enough precision, or the duration and quantity of services depend on variables that are beyond the control of the contractor.

### **Evaluation Criteria**

Article A.11 of the RFP instructs the candidates of the technical and financial criteria, which the Procurement Committee will use for the evaluation of the proposals. Furthermore, it informs the candidates of the weights assigned to the technical and financial scores. Finally, the article details how the Procurement Committee will weigh the various technical criteria.

For the technical evaluation criteria, defined in the table in article A.11, it is important to note that these are suggested criteria and it is the responsibility of the Procurement Committee to modify these to match the requirements of the contract in question. To assist the evaluation process, please define unambiguous and measurable evaluation criteria. The technical score is the sum of the points each candidate has obtained for each technical criterion. The Contracting Authority has the right to discard technical offers scoring below a certain number of points. This is to safeguard the procedure against low quality offers.

Examples of technical evaluation criteria could be; the candidate's experience in the field of assignment, the candidates' general academic qualifications and specific experience in the region/country of the assignment, the adequacy of the proposed methodology and the work plan in responding to the TOR, the candidate's availability and the required time to perform the services, CSR related policies and certifications, etc.

The financial evaluation criteria are predefined in article A.11 as the formula  $Sf = 100 \times Fm/F$  ( $Sf$  is the financial score of a proposal;  $Fm$  is the lowest price; and  $F$  is the price of the proposal under evaluation). This formula cannot be changed. During the evaluation in Step 4, the Procurement Committee applies this formula to calculate a financial score for each proposal received. Please note that the overall score links directly to the award criteria in article A.12 of the RFP.

### **Donor Requirements**

Please take note of specific donor requirements such as requirements to origin and nationality, exclusivity clauses, publication rights, visibility, right to audit, exclusion and eligibility clauses, preference criteria, etc., which might require amendment of the RFP.



### **Ethical Criteria**

It is recommended to collect general information on sector and country specific ethical risks to identify potential risks related to procuring the service in question. Is there a need to include specific criteria to ethical procurement issues in the RFP such as certifications (or equivalent proof of compliance to ethical criteria) or the inclusion of specific terms related to e.g. environmental or social performance?

### **Bank Guarantees**

Will a prepayment guarantee, or a performance guarantee be required? For more information on bank guarantees, see section 9.3. The standard RFP does not contain provisions in respect of such guarantees since it is uncommon that they are required



for Service Contracts. However, it may be relevant to require in the case of a high value contract.

#### Follow Up

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



#### MANDATORY TEMPLATE

SER 2: Request for Proposal

SER 2-1: Request for Proposal for Framework Services

SER 2-2: Request for Proposal for Open Budget



Learn more about drafting TORs in e-training number 6. [Guide to SER 2: Request for Proposal](#)

## 4

### Register Proposals and Initiate Evaluation



Upon receipt of the proposals register the date and time of receipt in GEN 13. The Procurement Committee initiates the evaluation, utilising the Evaluation Grid in SER 3. Make sure all the evaluation criteria, defined in the RFP, are applied to the Evaluation Grid before evaluation starts.



Proposals shall be ranked according to their combined technical and financial scores using the weighting of the technical proposal and the financial proposal predefined in the RFP send to the candidates.



Please note that candidates who have not submitted their proposals before the deadline shall not be considered.

#### Evaluation Challenges

In case all candidates have offered prices above the budget or the TOR needs to be changed or adjusted, it is not necessary to issue a new RFP. Instead the candidates can be contacted in writing with the amendments, the new deadline and a revised quotation requested.

If less than three proposals have been received, and if some candidates have declined to submit a proposal, the Contracting Authority can proceed with the best offer provided that the general procurement principles are met. E.g. it shall be ensured that enough candidates were shortlisted, that all candidates have been given enough time to submit a proposal, and that all candidates have acknowledged receipt of the RFP. If it is not possible to find a minimum of three qualified candidates in the market, it is important to survey broader e.g. markets in neighbouring districts and countries. Please see section 4.11.2 for how to source new candidates. Lack of candidates in the local market is not sufficient grounds for proceeding with less than three proposals.



#### MANDATORY TEMPLATE

SER 3: Evaluation Grid for Negotiated Procedure

GEN 13: Shortlist of Suppliers/Candidates and Receipt Form

## 5

**Interview and Negotiation****Interview**

The candidates who are deemed Administratively Compliant in Part A of the Evaluation Grid, can be invited for an interview. This is not a requirement, but it is recommended. After the interviews the Procurement Committee has the possibility to change the scores in the Evaluation Grid. There is a separate column in the Evaluation Grid for this purpose.



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

**Negotiation**

The Procurement Committee has the option to negotiate the terms of the contract, and it is recommended to do so. There are no specific procedures on negotiations except that the general procurement principles shall always be respected and negotiations shall not entail any substantial deviation from the terms and conditions of the RFP. The main purpose of negotiation is to obtain better conditions in terms of technical quality, implementation period, price, payment conditions etc.

Negotiations may however have the purpose of reducing the scope of the services or revising other terms of the contract in order to reduce the proposed remuneration. This may be necessary when the prices proposed exceed the limits of the funds available to the Contracting Authority. In this case, all candidates involved should be invited to participate in the negotiations and to potentially submit a new proposal.

The negotiations can be done by email, phone or at a meeting. A written summary shall be prepared, filed and submitted to the candidate.

When negotiating the terms, consider how requirements on e.g. delivery times and price may affect the candidates' ability to comply with the ethical principles and standards.

**MANDATORY TEMPLATE**

SER 3: Evaluation Grid for Negotiated Procedure

## 6

**Select Candidate and Issue Contract**

Finalize evaluation and select the best and most compliant candidate whose proposal has been determined to be substantially responsive to the requirements of the RFP and has obtained the highest overall score. This provided further that the candidate has also been determined to fulfil the eligibility and non-exclusion criteria including the selected candidate(s)'s eligibility as per DCA Counter Terrorism Policy, by checking the UN Security Council, EU and donor required sanctions lists.



After selecting the winning candidate, the Procurement Committee issues the contract applying SER 4. Check if the standard contract must be adapted to national legislation, traditions or requirements. Incorporate all agreements reached with the selected candidate in the contract and never delete or make alterations to the GTC.



The contract shall be forwarded unsigned to the selected candidate and returned signed to the Contracting Authority. Only thereafter shall the contract be signed by



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

Before signing the Contract the Procurement Committee shall ensure:

- That adequate and exact reference is made in the Contract to the relevant RFP
- That the candidate acknowledges the GTC and the COC without exceptions or amendments
- For new contractors, make sure that satisfactory references and company data have been collected

**NOTE:** If the selected candidate cannot accept the GTC, the Procurement Committee shall decline the proposal and continue the process with another candidate.



**MANDATORY TEMPLATE**

SER 3: Evaluation Grid for Negotiated Procedure

SER 4: Contract

SER 4-1: Framework Contract

## 7

### Send Letter to Unsuccessful Candidates



Once the selected contractor has returned the contract duly signed, a letter shall be sent to the unsuccessful candidates informing them of the result of the procedure i.e. the name of successful contractor, the total contract amount and the scores as per the Evaluation Grid. Apply SER 5



**MANDATORY TEMPLATE**

SER 5: Letter to Unsuccessful Candidates

## 8

### Publish Award Notice



For contracts above EUR 30.000 it is mandatory to publish an Award Notice applying GEN 17. The Award Notice shall be published in a suitable media where candidates will notice the information and on the Contracting Authority's website. The purpose of a public announcement is to meet the principle of transparency with the added benefit of attracting new candidates. Thus, the Award Notice is useful and recommended for all contracts.

For situations where the Procurement Committee finds that posting an Award Notice will bring project staff, beneficiaries, the project or the winning contractor at risk, the Procurement Committee may refrain from posting an Award Notice, see blanket derogation (k). This shall be duly documented.

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



**MANDATORY TEMPLATE**

GEN 17: Award Notice (optional below EUR 30,000)

## 9

### Receive and Inspect

Ensure that the services completed, inspected and received comply with the contract. Issue a Completion Certificate or file other relevant documentation as proof of receipt



of the services e.g. a report or adapt SUP 13 to the needs. The Contracting Authority shall follow up on the timely delivery and satisfactory quality of the received services.



#### **SUPPORT TEMPLATE**

SUP 13: Goods Received Note



#### **DOCUMENTATION IN THE PROCUREMENT FILE**

- Declaration of Impartiality and Confidentiality
- Purchase Request
- Shortlist of Suppliers/Candidates and Receipt Form
- Request for Proposal
- Proposals Received
- Evaluation grid for Negotiated Procedure
- Contract
- Letter to Unsuccessful Candidates
- Copy of invoice
- Award Notice (optional below EUR 30.000)
- Proof of receipt of the service(s)
- Note to File, if relevant

## **7.3 THE LOCAL OPEN TENDER PROCEDURE**

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

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

A Tender Dossier shall be drafted and forwarded to interested candidates who then can submit a tender. After the deadline of receiving tenders, they shall be opened and announced in the optional presence of all interested tenderers. Evaluation of the tenders is undertaken by the Procurement Committee based on a clearly predefined evaluation grid and the most compliant tenderer is awarded the contract. A public Award Notice is mandatory and letters to all unsuccessful tenderers shall be submitted.

As the commercial risks for high value purchases are increased, consider the use of prepayment, tender and performance guarantees. For more information on financial guarantees, see section 9.3.

Before the procurement process is initiated, please ensure that all members of the Procurement Committee sign the Declaration of Impartiality and Confidentiality (GEN 2-1). Furthermore, please ensure that the mandatory general Advertisement of Business Opportunities (GEN 8) was published. For more information on the general Advertisement of Business Opportunities, see section 4.11.1.

### **Step Guide:**



#### **Purchase Request with Terms of Reference**

Identify the service(s) to be procured from the Procurement Plan and draft the TOR



using SER 2-3: Terms of Reference.



Procurement starts with the completion and authorization of the Purchase Request Form GEN 1-1. The Purchase Request originates outside the Procurement Department and programme staff are usually in charge of drafting the TOR.

The Purchase Request identifies the TOR of the services, ensures sufficient budget and requests the procurement responsible staff to procure the services.

Clear, adequate and well-defined TOR is a prerequisite for receiving proposals matching the requirements and the budget. Please refer to section 4.12.2 when drafting the TOR.

Establish if the content of the TOR qualifies for the use of Open Budget and decide if the procedure will use Open Budget.

**NOTE:** If a candidate assists with input to the technical specifications, the candidate is excluded from participating in that procedure.



#### **MANDATORY TEMPLATE**

GEN 1-1: Purchase Request Form

#### **SUPPORT TEMPLATE**

SER 2-3: Terms of Reference



Learn more about drafting TORs in e-training number 6. [Guide to SER 2: Request for Proposal](#)

## 2

### **Draft Tender Dossier**



Carefully prepare the Tender Dossier, applying SER 6. Please note that SER 6 is applicable to a one time purchase as well as a framework contract. Please follow the instructions in the document and customize the document to one or the other option. When preparing the Tender Dossier consider all the articles and options and decide on:



#### **Deadline**

Decide on the deadline for receipt of proposals. The bid flow shall be minimum 21 days.



#### **Timetable for Tender Procedure**

Tenderers shall be informed of the planned timetable for the further tender procedure, incl. clarifications, deadline, tender opening date, etc.



#### **Organisation and Methodology**

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

#### **Open Budget**

Establish if the content of the TOR qualifies for the use of Open Budget and decide if the procedure will use Open Budget in SER 6-1: Tender Dossier for Open Budget.



### Type of Remuneration

The Service Contract may be a 'global price' contract, a 'fee-based' contract or a mix of the two. One of the three options must be chosen in article A.6 Financial Proposal of the RFP and in article B.7 Remuneration of the Draft Contract.



For the global price the Contracting Authority pays the candidate according to the delivery of a defined output, e.g. reports, workshops etc. The global price includes all costs and is a total price. An advantage of the global price contract is the simplicity of its administration. The Contracting Authority having only to be satisfied with the outputs without monitoring the staff inputs or the reimbursable expenses. Studies are usually carried out on a global price basis e.g. surveys, master plans, economic, sector, simple feasibility and engineering studies.



In fee-based contracts remuneration is based on (i) agreed unit rates for the candidates' staff multiplied by the actual time spent by the staff in executing the assignment, and (ii) reimbursable expenses using actual expenses and/or agreed unit prices. This type of contract is heavy on administration and requires the Contracting Authority to closely supervise and monitor the Contractor. 'Fee-based' contracts are used for assignments for which remuneration is being determined based on the time spent by the Contractor in carrying out the services. Such contracts are recommended when the scope of the services cannot be established with satisfactory precision, or the duration and quantity of services depend on variables that are beyond the control of the contractor.

### Evaluation Criteria

Article A.11 of the RFP instructs the candidates of the technical and financial criteria, which the Procurement Committee will use for the evaluation of the proposals. Furthermore, it informs the candidates of the weights assigned to the technical and financial scores. Finally, the article details how the Procurement Committee will weigh the various technical criteria.

For the technical evaluation criteria, defined in the table in article A.11, it is important to note that these are suggested criteria and it is the responsibility of the Procurement Committee to modify these to match the requirements of the contract in question. To assist the evaluation process, please define unambiguous and measurable evaluation criteria. The technical score is the sum of the points each candidate has obtained for each technical criterion. The Contracting Authority has the right to discard technical offers scoring below a certain number of points. This is to safeguard the procedure against low quality offers.

Examples of technical evaluation criteria could be the candidate's experience in the field of assignment, the candidate's general academic qualifications and specific experience in the region/country of the assignment, the adequacy of the proposed methodology and the work plan in responding to the TOR, the candidate's availability and the required time to perform the services, CSR related policies and certifications etc.

The financial evaluation criteria are predefined in article A.11 as the formula  $Sf = 100 \times Fm/F$  ( $Sf$  is the financial score of a proposal;  $Fm$  is the lowest price; and  $F$  is the price of the proposal under evaluation). This formula cannot be changed. During the evaluation in Step 4, the Procurement Committee applies this formula to calculate a financial score for each proposal received.

Please note that the overall score links directly to the award criteria in article A.12 of the RFP.

#### Donor Requirements

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

#### Ethical Criteria

It is recommended to collect general information on sector and country specific ethical risks to identify potential risks related to procuring the service in question. Is there a need to include specific criteria to ethical procurement issues in the RFP such as certifications (or equivalent proof of compliance to ethical criteria) or the inclusion of specific terms related to e.g. environmental or social performance?

#### Bank Guarantees

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

#### Special Conditions

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



#### MANDATORY TEMPLATE

SER 6: Tender Dossier incl. Framework Contract

SER 6-1: Tender Dossier for Open Budget



E-training number 6. [Guide to SER 2: Request for Proposal](#) covers some of the articles which are also part of SER 6. Use the training as a reference tool to gain knowledge about how to use and adapt the articles in the tender Dossier.

## 3

### Publish Tender Notice



Draft the Tender Notice applying GEN 11. The Tender Notice shall as a minimum describe the service to be procured (incl. the essential TOR), the rules governing the submission and presentation of tenders, the exclusion, selection and award criteria, and where and when the Tender Dossier can be collected.



Interested tenderers shall be given a minimum of 21 days to submit a tender from the date of publishing the Tender Notice until deadline. The bid flow of 21 days may be longer depending on the nature of the service.

The Tender Notice shall be published in the country of operation in suitable media e.g. newspapers, websites as well as media required by donor. To provide eligible candidates in the country of operation with equal business opportunities, the Procurement Committee is encouraged to submit the Tender Notice directly to a broad list of candidates who could be interested in participating in the tender process.

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

**NOTE:** The Tender Dossier shall be available on the date of publishing the Tender Notice.



**MANDATORY TEMPLATE:**

GEN 11: Tender Notice

## 4

### Submit Tender Dossier



Within 1-2 days of the Tender Dossier being requested it shall be submitted to interested suppliers. At this stage it is also important to communicate the ethical principles and standards to the suppliers.

Use GEN 13 to keep a record of the date the Tender Dossier was submitted and to whom. Identify each tenderer by a number.



Should the Contracting Authority require an amendment to the Tender specifications or TOR, please also use GEN 14 to communicate to all tenderers interested in participating in the tender procedure. Tenderers may submit questions and clarifications in writing according to date specified in the time table A.4 in the Tender Dossier. Information regarding interpretation of the Tender Dossier shall be requested in writing only. Tenderers are not allowed to approach the Contracting Authority for oral clarification. Clarifications to the Tender Dossier shall be documented in GEN 14 and shared with all tenderers interested in participating in the tender procedure.

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

**NOTE:** Tenderers shall never pay for costs in relation to the tender process and it is not acceptable procurement practice to sell the Tender Dossiers against a 'tender document fee'.



**MANDATORY TEMPLATE:**

GEN 13: Shortlist of Suppliers/Candidates and Receipt Form

GEN 14: Tender Amendments, Questions and Answers

## 5

### Receive Tenders



For each tender received, the date and time of receipt shall be registered in GEN 13, including name of the person who received the tender. All received tenders shall be kept unopened in a secure place until the tender opening session.

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



**MANDATORY TEMPLATE:**

GEN 13: Shortlist of Suppliers/Candidates and Receipt Form

## 6

### Conduct Tender Opening Session

Conduct a tender opening session where all tenderers who has submitted a tender





are invited to participate. Tenders shall be opened at the announced time, place and date in the presence of tenderers who choose to attend. The names of the tenderers and prices are read aloud and registered in GEN 15-3, and tenderers who participate are registered in GEN 15-2.

For guidance on how to prepare and conduct the tender opening session please refer to GEN 15-1: Tender Opening Checklist.



**MANDATORY TEMPLATE:**

GEN 15-2: List of Participants

GEN 15-3: Tender Opening

**SUPPORT TEMPLATE:**

GEN 15-1: Tender Opening Checklist

## 7

### Ensure Administrative Compliance



After the tender opening the Procurement Committee shall carry out administrative compliance check of the received tenders. Fill in section A of SUP 5: Evaluation Grid for Open Tender. This is a preliminary examination of all tenders and not an evaluation of the actual proposals.



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

- Was the tender received before the deadline?
- Are the required no. of copies supplied?
- Is the Tender Submission Form completed and duly signed?
- Are requirements to origin and nationality respected (if required)?
- Are all the requested documents submitted and properly signed e.g. certification, references, bank guarantees, the Tender Submission Form etc. The required documents are listed under "instructions to tenderers" in the Tender Dossier.

Tenders which do not comply shall be rejected and the reason for rejection shall be stated in section A of SUP 5.



**MANDATORY TEMPLATE**

SER 7: Evaluation Grid for Open Tender

## 8

### Evaluate and Select Tenderer



After ensuring administrative compliance, each member of the Procurement Committee shall receive a copy of the compliant tenders for evaluation and analysis. This evaluation shall be done in private and each member shall fill in part B and C of the Evaluation Grid in SER 7. Tenderers are not allowed to be present. Make sure all the evaluation criteria, defined in the Tender Dossier are applied to the Evaluation Grid before evaluation starts.



After the individual evaluations the Procurement Committee meets and discusses their individual evaluations, drafts a joint Evaluation Grid (SER 7), ranks proposals and selects the winning tenderer. The joint Evaluation Grid shall clearly document why the winning proposal was selected and shall be signed by all members of the Procurement Committee. Tenderers cannot attend this meeting.



Before issuing the Contract, please verify the selected candidate's eligibility as per DCA Counter Terrorism Policy, by checking the UN Security Council, EU and donor required sanctions lists.

#### Clarifications

During the evaluation it may be necessary to obtain clarification from a tenderer. Depending on the type and complexity of the clarification, the tenderer can be invited for an interview or be asked to provide clarifications by email. For email communication, please allow the tenderer sufficient time and do stipulate a deadline.

If the clarifications are best obtained through an interview, the Procurement Committee has the possibility to change the scores in the Evaluation Grid. There is a separate column in the Evaluation Grid for this purpose.

#### Evaluation Challenges

- If there is a need to amend the technical specifications described in the Tender Dossier, either by reducing or increasing the minimum requirements, the tender process shall be cancelled and a new procedure initiated, starting from step 1. The deadline for submitting tenders can be reduced from 21 to 15 days or less, depending on the complexity. This emphasises the importance of drafting a clear TOR and evaluation criteria from the outset of the procurement process.
- If all financial offers exceed the budget substantially, the cause for this can either be change in the market price, minimum technical requirements are too high, etc. The reason for the high offers shall be clarified. Proceed as described in the above case scenario if changes to the technical specifications are needed.
- If less than three tenders have been received, it is acceptable to proceed with the best tender provided that general procurement principles are met, incl. proper advertisement. If there is a need to make substantial changes to the contract terms e.g. TOR, the tender process shall be cancelled and a new process initiated, starting from step 1. If no tenders are received a new tender procedure shall also be initiated. Please analyse the possible reason for the lack of tenders and implement the findings in the new Tender Notice and the Tender Dossier.



#### MANDATORY TEMPLATE

SER 7: Evaluation Grid for Open Tender

## 9

### Issue Contract and Send Letter of Acceptance



The Procurement Committee sends a Letter of Acceptance to the selected tenderer, applying GEN 16, and issues the contract applying the template in the Tender Dossier (part B of SUP 3). Check if the standard contract must be adapted to national legislation, traditions or requirements. Incorporate all agreements reached with the selected supplier in the contract and never delete or make alterations to the GTC.



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



Before signing the Contract the Procurement Committee shall ensure:

- That adequate and exact references are made in the contract to the tender
- That the tenderer acknowledges the GTC and the COC without exceptions or amendments

- For new suppliers, make sure that satisfactory references and company data have been collected

**NOTE:** If the selected tenderer cannot accept the GTC the Procurement Committee shall decline the bid and continue the process with another tenderer.



**MANDATORY TEMPLATE**

SER 6: Tender Dossier (incl. Contract)  
GEN 16: Letter of Acceptance

## 10

### Send Letter to Unsuccessful Tenderers



After the contract has been signed, the Procurement Committee shall submit a notification letter to the unsuccessful tenderers notifying them of the result of the tender process. Use the template in SER 5.



**MANDATORY TEMPLATE**

SER 5: Letter to unsuccessful Candidates

## 11

### Publish Award Notice



It is mandatory to publish an Award Notice, applying GEN 17. The Award Notice shall be published in a suitable media where suppliers will notice the information and on the Contracting Authority's website. The purpose of a public announcement is to meet the principle of transparency with the added benefit of attracting new suppliers. Thus, the Award Notice is useful and recommended for all contracts.

For situations where the Procurement Committee finds that posting an Award Notice will bring project staff, beneficiaries, the project or the winning contractor at risk, the Procurement Committee may refrain from posting an Award Notice, see blanket derogation (k). This shall be duly documented.

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



**MANDATORY TEMPLATE:**

GEN 17: Award Notice

## 12

### Receive and Inspect



Ensure that the services completed, inspected and received comply with the contract. Issue a Completion Certificate or file other relevant documentation as proof of receipt of the services e.g. a report or adapt SUP 13 to the needs. The Contracting Authority shall follow up on the timely delivery and satisfactory quality of the received services.



**SUPPORT TEMPLATE**

SUP 13: Goods Received Note



### DOCUMENTATION IN THE PROCUREMENT FILE

- Declaration of Impartiality and Confidentiality

- Purchase Request
- Tender Dossier
- Tender Notice
- Shortlist of Suppliers/Candidates and Receipt Form
- Tenders received
- Amendments, Questions and Answers
- Tender Opening Minutes (Checklist, List of Participants, Tender Opening)
- Evaluation Grid for Open Tender
- Contract and Letter of Acceptance
- Letter to Unsuccessful Candidates
- Copy of Invoice
- Award Notice
- Proof of receipt of the service(s)
- Note to File, if relevant

## 7.4 THE INTERNATIONAL OPEN TENDER PROCEDURE

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

As the commercial risks for high value purchases are increased, consider the use of prepayment, tender and performance guarantees. For more information on financial guarantees, see section 9.3.

Before the procurement process is initiated, please ensure that all members of the Procurement Committee sign the Declaration of Impartiality and Confidentiality (GEN 2-1). Furthermore, please ensure that the mandatory general Advertisement of Business Opportunities (GEN 8) was published. For more information on the general Advertisement of Business Opportunities, see section 4.11.1.

### Step Guide:

**1-2**

#### Purchase Request with Terms of Reference and Tender Dossier

Follow step 1-2 in the Local Open Tender Procedure in section 7.3:

- Raise a Purchase Request
- Draft technical specifications
- Draft Tender Dossier

**3**

#### Publish Tender Notice Internationally



The Tender Notice shall be published in relevant regional and international media and shall as a minimum describe the services to be procured including the essential TOR, the rules governing the submission and presentation of tenders, the exclusion, selection and award criteria, and where and when the Tender Dossier can be collected.



Interested Tenderers shall be given a minimum of 30 days to submit a tender from the date of publishing the Tender Notice. The bid flow of 30 days may be longer depending on the nature of the supplies. Tenderers may submit a bid from the day of publishing the Tender Notice until the deadline.



The Tender Notice shall be published in suitable procurement media e.g. newspapers, websites and media required by donor in the country of operation and internationally. Examples of websites for Tender Notice publication are [Relief Web](#), [UN Development Business](#), [dqMarket tenders worldwide](#) or [Ted tenders electronic](#) [dailyted.europa.eu](#)



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

**NOTE:** The Tender Dossier shall be available on the date of publishing the Tender Notice.



**MANDATORY TEMPLATE:**  
GEN 11: Tender Notice

## 4

### From Submitting Tender Dossier to Receipt

Follow step 4-12 in the Local Open tender Procedure in section 7.3:

- Submit Tender Dossier
- Receive Tenders
- Conduct tender opening sessions
- Ensure administrative compliance
- Evaluate and select tenderer
- Issue contract and send Letter of Acceptance
- Send Letter to Unsuccessful Tenderers
- Publish Award Notice
- Receive and Inspect



### DOCUMENTATION IN THE PROCUREMENT FILE

- Declaration of Impartiality and Confidentiality
- Purchase Request
- Tender Dossier
- Tender Notice
- Shortlist of Suppliers/Candidates and Receipt Form
- Tenders received
- Amendments, Questions and Answers
- Tender Opening Minutes (Checklist, List of Participants, Tender Opening)
- Evaluation Grid for Open Tender
- Contract and Letter of Acceptance
- Letter to Unsuccessful Candidates
- Copy of Invoice
- Award Notice
- Proof of receipt of the service(s)
- Note to File, if relevant

## 7.5 LEGAL ASPECTS – EMPLOYMENT CONTRACTS VERSUS SERVICE CONTRACTS

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

the distinction between a Service Contract and an Employment Contract. Some generally accepted criteria to determine the existence of an employment relationship are:

- A relationship of subordination usually with one employer, only
- The technical and functional integration of the worker into the productive and organisational structure of the client e.g. the Contracting Authority determines the working hours, reimburses expenses in connection with the job and the employee has the right to give notice
- The exercise of managerial and disciplinary powers that is to be found, strictly speaking, only in a subordinate - or an employment relationship
- The commercial risk relating to the activity, resting finally with the Contracting Authority
- The form of payment as a salary on a monthly basis or similar unlinked to a direct result

Under several national systems, the distinction is fundamental because of a rigid labour law, which imposes strict dismissal procedures on employment contracts, and provide limited possibilities for entering into fixed-term contracts. When operating in a country with a rigid labour law, Contracting Authorities shall be careful never to sign a contract which could be qualified by a project country court as an Employment Contract. The risks are the inability to terminate the relationship at the end of the services or project, a costly dismissal procedure; or the application of labour law protective provisions in favour of the employee.

The Service Contract (SER 4) excludes any link of subordination between the Contracting Authority and a service provider and places the responsibility of the outcome of the Service on the Service Provider.