



**Council of the European Union**

General Secretariat

Directorate-General for Organisational Development and Services

Directorate Finance

Procurement Coordination Unit

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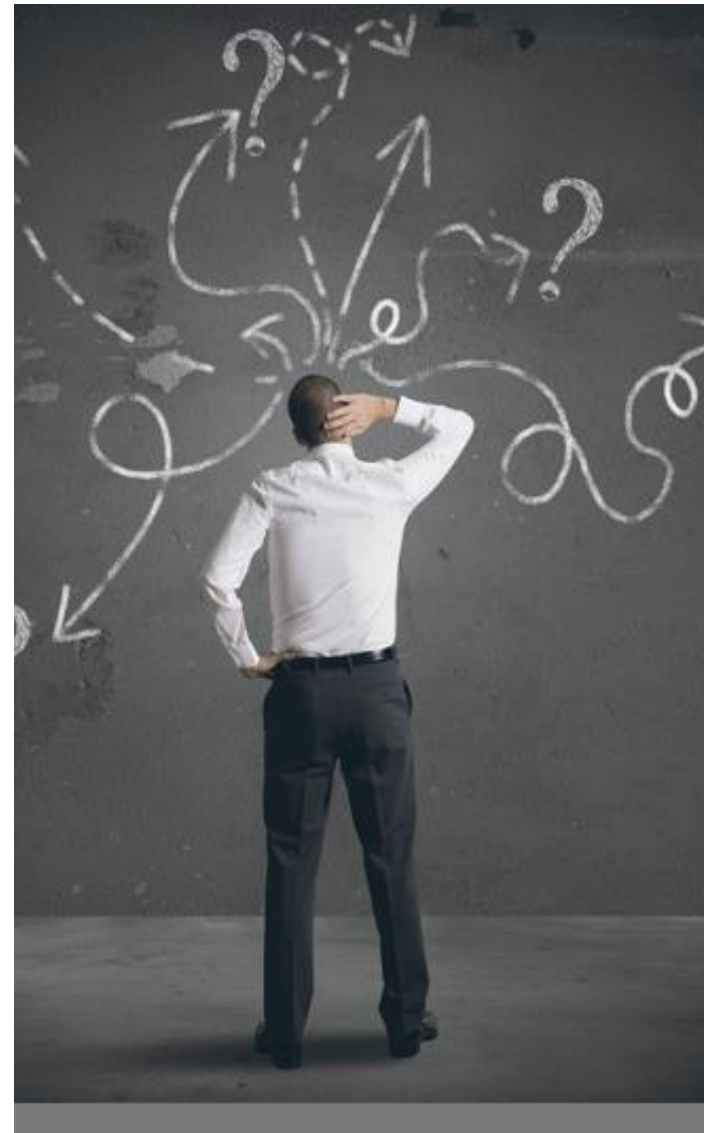
## Specificity of the procurement rules

EU Institutions and Agencies, focus on the specificities of the BEREC Office



# Overview of content

- Thresholds, description of procedures, with emphasis on open and negotiated procedures
  - Regulatory requirements;
  - Opportunity considerations (Market);
  - Fit for purpose choices (Agency)
- Tenders, minimum requirements, evaluation
  - Obligatory steps and conditions
  - Clarification exchanges
  - Evaluation report content
- Award of the tender
  - Pre- and post-award requirements
- Model contracts, specific and general conditions
  - Simple, Framework and Direct contracts (+ Purchase orders, Specific contracts)



## A. Thresholds, description of procedures, with emphasis on open and negotiated procedures

- The regulatory basis is the Directive 2014/24/EU on public procurement, the EU Financial Regulation (2018/1046) – Title VII and Annex I, or a combination of both.
- *The actually applicable thresholds for determination of the type of procurement procedure to be used, as well as the terminology of those procedure types - which differs between the national and the EU level - will be shown in a later presentation on the agenda.*
- For the EU Institutions and Agencies, such as the Council of the EU or the BEREC Office, the most commonly used types are:
  - the **open** procedure;
  - the **restricted** procedure;
  - the **negotiated** procedure;
  - the **competitive** procedure **with negotiation**.



# A.1 Open procedure (1)

- Regulatory requirements
  - = **Publication** of a Contract Notice and of a Contract Award Notice in the OJEU and TED (where the value is  $\geq 144\ 000$  EUR for supplies and services or  $5\ 548\ 000$  EUR for works);
  - = **Time limit** for receipt of tenders: no less than **37 days** from the day following dispatch of the contract notice;
  - = **Simultaneous publication** of all documents related to the Invitation to tender, in the working language(s) of the contracting authority;
  - = **Public opening** to be foreseen and announced in the Invitation to tender: it must be a few days after the time limit, to ensure all offers have been received;
  - = If lowest price is the sole award criterion, the total prices included in all tenders received must be **read out during the opening session**, independently of how many and which tenderers are represented;
  - = **Exchange of clarifications** during the procedure must be made in a transparent and formal way, ensuring equal treatment among tenderers;
  - = All tenderers to be **informed simultaneously and individually** of the outcome of the procedure, including as regards the applicable standstill period and the means to contest the decision reached.



# A.1 Open procedure (2)

- **Opportunity considerations (Market)**

= Winning a tender procedure launched by an Agency (or Institution) of the EU is a **valuable asset** in the company's commercial portfolio;

= Besides, it opens up opportunities for getting known to other interested such bodies and their stakeholders, thereby **increasing market exposure** and chances for rewarding contracting; in some cases, this might involve useful partnerships with other market actors;

= Despite a reasonable degree of necessary “bureaucratic” approach in handling a contractual relationship, EU bodies are generally **safe/reliable counterparts**, paying fully and timely and using up to a maximum the finally calculated value of the contract.



# A.1 Open procedure (3)

- **Fit for purpose choices (Agency)**

= Procedure to be prepared thoroughly, based on realistic and sensible estimation of needs and assessment of expectations;

= Contract type foreseen and possible specific provisions to be in line with market's reality, capacity and expected evolution;

= Besides publishing a Contract Notice in the OJEU and TED and having the call posted on the Agency's website, would any further dissemination measure(s) stimulate the interest of economic operators in the sector concerned?

= Given the large geographical scope (EU + EEA + candidate countries + parties to the GPA (WTO)), should the tender specifications be leveraged to cater for equal treatment of candidates independently of location and for safe award to a possible remote winning tenderer?

= Depending on the nature and scope of the envisaged contract's subject-matter, would external expertise be required to assist the Evaluation Committee in drawing the best conclusions?



## A.2 Restricted procedure (1)

- Regulatory requirements

- = **Publication** of a Contract Notice and of a Contract Award Notice in the OJEU and TED (where the value is  $\geq 144\,000$  EUR for supplies and services or  $5\,548\,000$  EUR for works);
- = **Two-step procedure**: a) (Open) Invitation to participate; [Evaluation and Selection of candidates' applications]; b) Invitation to tender to those selected;
- = **Minimum number of candidates**: 5; if not reached, procedure to be stopped and relaunched (usually as negotiated addressing the candidates with acceptable applications);
- = **Time limit** for receipt of requests to participate: no less than 32 days from the day following dispatch of the contract notice; **Time limit** for receipt of tenders: no less than 30 days from the day following dispatch of the contract notice;
- = **Two separate evaluations**, each to be properly documented and concluded by the appointed Committee: a) evaluation of the exclusion and selection criteria and of the applicable minimum requirements; [Invitation to tender addressed only to those selected]; b) evaluation of the award criteria: technical (if required) and financial, based on the corresponding offers submitted by the invited tenderers;
- = Requirements regarding **exchange of clarifications** and **simultaneous individual notifications**: same as for the open procedure, for both stages.



## A.2 Restricted procedure (2)

- Opportunity considerations & Fit for purpose choices

= Considering that a restricted procedure starts off as an open one, the same general opportunity considerations for the market and fit for purpose choices for the Agency apply.

= However, two further, non-regulatory considerations may play a role in the Agency's choice:

- a) The time-and-effort factor:

- an open procedure costs 37 days in time for receipt of the tenders, while a restricted one costs 62 (30+32) days for receipt of applications to participate and then of tenders;

- an open procedure requires one documented evaluation while a restricted two; the same holds for the notifications;

- however, in an open procedure the Committee has to do the whole, time-consuming evaluation (exclusion/selection and award criteria) for all acceptable tenders submitted, while in a restricted the possibly long/complex award criteria evaluation is made only for the selected/invited candidates' offers;

- these elements taken together, the Agency decides based on its (best) estimation of the market's response: if it expects a large number of tenders, it is in its interest to run a restricted procedure; if the expected number is reasonably small (e.g. up to 10 tenders) the choice of an open procedure seems more interesting on time-and-effort grounds.





## A.2 Restricted procedure (3)

### b) The confidentiality-and-security factor:

- if a **on-the-spot visit** is to be foreseen to allow potential tenderers to understand or measure better the particularities of the call for tenders' subject, the Agency can hardly take the risk of an open procedure, due to uncontrolled attendance;

- if a **restricted procedure** is chosen on those grounds, the **extra time-and-effort** required from the staff involved to cover the **on-the-spot visit(s)**, including drafting and transmitting related records, must also be considered along that resulting from the procedure itself.

**Understanding from the market** of this kind of necessary concerns for the Agency as contracting authority would greatly facilitate building a **positive partnership attitude** by:

- on one hand, **reducing the sensation of excessive/useless bureaucracy**,
- and on the other, **increasing willingness to respect and follow through the**, necessarily well considered, requirements and instructions regarding the procedure.

Moreover, the Agency may decide to launch a **call for expression of interest** to either **pre-select candidates** to be invited to submit tenders for future restricted invitations or collect a **list of vendors** to be invited to submit requests to participate or tenders. In such case, interested economic operators can only benefit from being registered in such list which has a **maximum validity of 4 years** (registration may take place at any time during that period, with the exception of its 3 last months).



## A.3 Negotiated procedure (1)

- Preliminary remarks
- To start with, it should be noted that the terminology is somehow *misleading*: very often, a procedure titled “negotiated” does not in fact involve any negotiation at all...
- Indeed, negotiated procedures are mainly used for very low (up to EUR 15,000), low (up to EUR 60,000) and middle value contracts (up to EUR 144,000). And in most cases, with the obvious exception of the last category, the sole award criterion is the (lowest) price.
- In such circumstances, the tenderer who submits the best price (or, for middle value contracts, possibly the most economically advantageous offer) is awarded the contract without further ado.
- Exceptionally, negotiation may be required if the submitted best price is above the relevant estimates (and therefore budgetary planning) of the Agency, or if two tenderers come up with exactly the same (best) price – in either of those cases the tenderer(s) concerned might be invited to submit a better price.
- So in reality the basic characteristic of a negotiated procedure is not that it will (necessarily) include a “negotiation” stage, but rather that it is addressed to a limited part of the relevant market that has been specified in advance by the Agency on the basis of (as far as possible) objective criteria.
- The above also holds for the regulatory/obligatory recourse to a negotiated procedure that follows an unsuccessful (no tenders) or unfruitful (no suitable tenders) open or restricted procedure that was initially published.



## A.3 Negotiated procedure (2)

- Regulatory requirements
- Generally, negotiated procedures (with the exception of those concerning very low value contracts) must be advertised by “appropriate means” – which may take the form of effective ex ante publicity on the internet or a contract notice. This does not apply though to negotiated procedures following on failed open or restricted ones.
- The Agency must invite at least all economic operators who have expressed interest following ex ante publicity or prospection of the market (for building contracts) or a design contest.
- The minimum number of candidates (invited economic operators) is 5 for middle value contracts and 3 for low value contracts. No minimum for very low value contracts.
- If the number of candidates meeting the selection criteria is below the above minima, the Agency may continue the procedure with the candidates with the required capacities, but may not include other economic operators not part of the (initial) procedure.
- Provided the Agency has indicated in the procurement documents that it will use that option, it may apply the specified award criteria in successive stages of negotiation in order to reduce the number of tenders to be negotiated. Equal treatment for all tenderers must be ensured throughout.



## A.3 Negotiated procedure (3)

- **Opportunity considerations (Market)**
- The particularity of a negotiated procedure for an economic operator is that it **receives an individual invitation** with all related/necessary material, knowing that the same has been sent to a **small number of comparable operators** in the specific market concerned.
- This makes the task of **taking the chance to win a EU contract easier**, moreover in a usually faster and simpler procedure that does not require heavy investment in time and effort.
- The company can rightly assume that the other (few) economic operators invited are **active in the same (local, regional, national) area**, and for that reason known to or identified by the Agency; therefore they are at the same time **its own immediate competitors**.
- In these circumstances, submitting a (good) offer and taking effectively part in the procedure offers **reasonable chances to beat the competition** and gain a commercial advantage over it. And even if this does not happen, the correct participation ensures that the Agency will **include the economic operator in the next invitation** on the same or a similar subject (whereby the experience gained from the previous participation can be used for **doing better and eventually winning this time round**).
- To the contrary, **ignoring the invitation or doing a poor job in presenting an offer**, can only be **harmful to the future prospects of collaboration with the Agency** – and from then on with a number of stakeholders who are interested in or aware of the Agency's contracting experiences.



## A.3 Negotiated procedure (4)

- **Fit for purpose choices (Agency)**
- With the exception of the situations **resulting from a failed open or restricted procedure** (where new/unknown economic operators may appear), all other cases where a negotiated procedure may be used can make the subject of **appropriate preparedness** on the side of the Agency.
- Indeed, for needs regarding provision of services, supplies, and even works, of occasional nature and of relatively low contract values (below the Directive and FR thresholds), the Agency can **hold ready registers of economic operators** who might be able to respond to the corresponding negotiated procedures to be launched.
- These may be the result of keeping **due track of participations in similar procedures in the past** and of **frequently updated market research** to identify significant departures or new arrivals in each market sector concerned. Considering the **discretionary power** of the Agency in setting up the invitation lists, possible – objectively supported – **negative experiences** with particular suppliers may be taken into account for non inclusion.
- In case the specific list for the market sector to which a new negotiated procedure is insufficient, **ad hoc market research** should take place and its **results documented** before use.
- For **recurrent needs for the foreseeable future**, an open or restricted procedure for a **Framework or a Multiannual Direct contract** should be considered, whereby economic operators of a larger size and from a wider geographical scope may usefully take part.



# A.4 Competitive procedure with Negotiation

- Special characteristics
- The competitive procedure with negotiation, a recent feature of the EU FR, is in fact a combination of a restricted and a negotiated procedure:
  - = it follows the two-step approach of the former (starting with an open invitation after publication of a contract notice, and following with specific invitation to the selected candidates only – allowing also for on-the-spot visits), and
  - = allows for negotiation of the initial and any subsequent tenders in order to improve their content; however, the minimum requirements and the criteria specified in the procurement documents as well as the final tenders are not subject to negotiation.
- It may be used in a number of particular situations, most common of which being:
  - = for concession contracts;
  - = for service contracts referred to in ANNEX XIV to Directive 2014/24/EU (among which: health, social & related; administrative, social, educational, healthcare & cultural; hotel & restaurant; legal; postal services; ...);
  - = as a follow-up to open or restricted procedures for which only irregular or unacceptable tenders were submitted.
- The minimum number of candidates is 3.



# B. Tenders, minimum requirements, evaluation

- General remarks
- Already at the stage of the contract notice (if one is published in the OJEU and TED) or the ex ante publicity (for negotiated procedures), the Agency sets out all the important characteristics of the call for tenders and of the expected contract.
- Soon after they have been informed in that way, potentially interested economic operators are able to consult the whole related documentation electronically.
- The package includes documents intended for the clear understanding of the subject and scope of the call (Tender - incl. Technical - Specifications, proposed MoU - if applicable -, factual Annexes and descriptions/plans, model contract) and a number of documents to be duly filled by the tenderers and included in the tender to be submitted (of which, crucially, the financial offer – on the proper template).
- If the procedure is to be run in stages (e.g. restricted or competitive with negotiation), the stage at which each set of documents must be submitted is clearly indicated.
- Whether the Evaluation Committee decides to follow the “old” (classic) sequence ‘exclusion criteria -> selection criteria -> minimum requirements -> technical offer (if required) -> financial offer’ or the newly introduced by the EU FR “no particular order” approach, tenderers must ensure completeness of their tender since the start of the procedure (or of the actual stage where applicable).



# B1. Obligatory steps and conditions

- On the side of the Agency, the next step after the publication of the tender documentation (or its sending to selected potential tenderers) is the **reception and simultaneous opening of all tenders submitted**. Whether public (in open procedures) or not, the opening session is **duly documented** and the relevant record is **signed by the Committee members**.
- Tenders that are **not compliant with the instructions** or which prove to have been **submitted (not received) after the set deadline**, are declared “unacceptable”, rejected and left out from the procedure. The properly submitted tenders **pass on** to the evaluation stage.
- If the “**classic**” sequence of evaluation steps is followed, the corresponding documents submitted by all tenderers are examined/analysed and the result (including possible justified rejection) is **documented at each step**. In the case of the “**no particular order**” scenario, exclusion might only occur **once all documents of a particular tenderer** have been examined/analysed. That option is of course conditioned by the **existence or not of a “quality threshold”** to be reached for the financial tender to be evaluated; in such case, at least the **evaluation of the technical offer** included in the tender must **precede that of the financial offer**.
- The **evaluation criteria** set out in the tender documentation **may in no way be altered**. If a clause appears to the Evaluation Committee to pose a problem and require solution, the related decision **may not be such as to bear prejudice to any tenderer**; it should be properly recorded and the tenderers must be simultaneously informed accordingly.





## B2. Clarification exchanges

- Throughout the procedure, and in fact since its publication (or sending to selected potential tenderers), clarification exchanges are **allowed and are usually beneficial for both sides** - provided they abide by the relevant rules, which are clearly set out (in a standardised way) in the Invitation to tender.
- Before the deadline for tender submission, the Agency may **inform potential tenderers of any change** that has become necessary after publication of the call, by way of correction or addendum to the tender documentation; if this happens **too close to the tender submission deadline** and its nature is such that might affect tender preparation, the deadline may have to be **extended accordingly**.
- During the same tender preparation period, **potential tenderers may ask clarification questions** of an administrative or technical nature, or signal to the Agency possible errors or deficiencies or contradictions in the tender documentation. Provided these are asked **up to 6 days before the deadline**, the Agency **must reply** swiftly, effectively (resolving the issue) and transparently to any such query.
- Based on related remarks included in the Record of Opening, or on observations during a particular evaluation stage, the Agency may ask by way of clarification a tenderer to **deliver an additional/more recent certificate or a more complete explanation** of a point in its tender, without this altering or supplementing **in any significant way** the initial tender. Such addition constitutes then **integral part of the tender** – and of the contract, should that tenderer win it.
- At any time during **evaluation**, the Agency may also inform tenderers of important **relevant developments**.



# B3. Evaluation report content

- The Evaluation report is obviously a key tool in any procurement procedure, as it not only summarizes the whole process from receiving the opened tenders to reaching a conclusion but also makes an award recommendation to the competent authorising officer of the Agency.
- The content of the report though, besides helping the authorising officer reach the relevant decision after having grasped all important elements of the process, fulfils two further roles:
  - = it allows proper drafting of the necessary award, and in particular non award, letters to the tenderers that took part in the process, and replying thereafter to their possible further information questions or complaints;
  - = it serves the purpose of providing to subsequently intervening internal control and audit (internal or external) bodies, the European mediator and even courts (in case an unsuccessful/unhappy tenderer takes that step) a well documented and sequenced description of all stages of the procedure on the basis of which to reach sound conclusions.
- The EU FR describes the requirements for the content and signature process of the report, but without a relevant model. I am happy to observe, and must declare, that the model Evaluation report used by the BEREC Office is the best, clearest and most comprehensive one I have ever seen: everything is there, in its proper order, in full details. Practically, each of its 10 topics (Contract references -> Working method -> ... -> Score and ranking -> Award), includes a Table to be filled.
- Tenderers taking part in calls launched by the Agency must feel well reassured that the job is done very professionally and properly, and that the grounds on which the competent authorising officer reaches the award decision are fully transparent and steady.



# C. Award of the tender

## Pre- and post-award requirements (1)

- **C1. General remarks**

- A **good procurement** procedure is not judged as such only because there has been effective competition or the contract was awarded to a strong and reliable partner. **The quality, and the satisfaction left behind** by the procedure on both sides involved, stem also from a number of other parameters: **how much effort** was invested in preparing and running it on the side of the Agency, **how much resource (and cost) intensive** was the preparation of the tender and its subsequent follow-up by the tenderers, **how smooth and helpful** the exchanges involved have been, etc.
- Of course, the **verification of the legality and regularity** of all aspects of the procedure is the job of **competent control and/or audit instances** that will review it ex post and may express their own satisfaction or otherwise; but the actual positive, mutually rewarding and in the end appreciated course of the procedure is conditional on the **patient and constructive attitude of the two sides**. Abiding by, and properly responding to, **pre- and post-award requirements** of the procedure is key to seamlessly collaborating in the common benefit.

- **C2. Pre-award requirements**

- The tender documentation, as published (or sent, in the case of a negotiated procedure) by the Agency, includes **a substantial number of requests** to the interested economic operators/potential tenderers. Some of those refer to **ready documents** (either of internal or external to the tenderer origin) to be submitted, while others refer to **due filling/completing by the tenderer of various forms** (usually Annexes) **attached to the Invitation to tender**: Declaration on honour on exclusion criteria and selection criteria; Minimum requirements compliance table; Index of content of the technical offer; Financial offer template (usually on Excel); etc.



# C. Award of the tender

## Pre- and post-award requirements (2)

- **C2. Pre-award requirements (cont.)**

- Absence of one or more of these documents may **already be spotted at the tender opening session**. If not, such absence, or the incomplete/inappropriate filling of a template, or the outdated character of a document, will be observed **during the various evaluation stages**.
- The tenderer concerned will be **duly notified at the proper time**, and requested to **redress the situation** (unless the Committee considers that such late submission would constitute an alteration of the offer and thus lead to its rejection).
- When so requested, the tenderer must **react swiftly** (within the deadline set) and **effectively** (providing the right material), as the Committee **might not offer a second chance** due to time constraints or in order to ensure equal treatment of all tenderers.
- **Reminder:** the **no exclusion/selection criteria** allow the Agency to have a “backward look” at the tenderer: **what it has achieved to date** that is relevant/useful for our purposes; the **award criteria** constitute a “forward look”: **what the tenderer is able to do for us now**, in the context of our envisaged contract... If prospective tenderers **understand this logic**, their preparedness and willingness to respond to all Agency’s requests will **enhance along with their chances of success!**

- **C3. Post-award requirements**

- In **normal circumstances**, the tenderer whom the Evaluation Committee recommended for contract award will effectively receive a “positive” (award notification) letter.



## C. Award of the tender

### Pre- and post-award requirements (3)

- **C3. Post-award requirements (cont.)**

- Besides informing about the possibly applicable **standstill period** (of 10-15 days) before contract signature and of the fact that until contract signature the Agency may either **abandon the procedure or cancel the award procedure**, the letter requests the prospective contractor to submit, as soon as feasible, all documents required to support the tenderer's statements in the **Declaration on honour regarding the exclusion criteria**.
- This is due to the fact that, at the tendering stage, the tenderer must have **ticked appropriately the numerous boxes** of the Declaration on honour, but has only submitted **documentary evidence in regard to the selection criteria** - the related documents having then been subject to evaluation. However, the Agency has **not required evidence** of not being subject to any of the **exclusion criteria**, but has accepted in good faith that the box-ticking of the tenderer is sincere and correct.
- So, at contract award stage, **these evidences are required before confirmation of award**, and the fact that they are submitted at that stage ensures they are **reasonably recent** (dating from 6 months earlier at most). Obviously, **failure to provide** will lead the Agency to reconsider its decision and either award the contract to another successful tenderer (normally the next on the ranking) or terminate the procedure as unfruitful.
- Once the Agency has **reviewed and found satisfactory** the thus submitted documents, it will proceed to **transmission to the awardee of the contract to be signed**, expecting its swift response in view of signing itself as last and so conclude successfully the procurement procedure. In the case of a **winning consortium**, and depending on its legal form and inside arrangements, all members **may be required to sign** at that stage.



## D. Model contracts, specific and general conditions (1)

- D1. Types of contracts
- Three main types of contracts are used in the context of the EU FR for the purchase of services, supplies or works, each with a few possible variations:
  - = simple contract (normally of a duration up to 2 years)
  - = framework contract (normally with a duration of 4 years) – in abbreviation FWC
  - = direct contract (usually short duration, but long in case of a multiannual contract).
- The last two types of contracts are implemented by means of Purchase Orders, of a maximum duration of one year, or in some cases of FWCs also by means of ad hoc Specific contracts.
- While the contracts as such are signed by both sides on paper (or, if the related infrastructure so allows, electronically) once and remain unaltered until the end of their life - except for amendments made as required in line with relevant standard provisions -, Purchase Orders may change content, scope and remit according to the evolving needs of the Agency, provided these are duly foreseen in the FWC or in the multiannual direct contract.
- These Purchase Orders, which are also signed by both sides, are often produced by a electronic system (e.g. ABAC, SAP) and directly linked to corresponding budgetary commitment, the duration of which may not exceed one year (budgetary principle of annuality).
- Standardised models for all types of contracts, elaborated and adapted periodically by the European Commission are used by the Agency, subject to a few minor allowed specificities that are duly integrated.



## D. Model contracts, specific and general conditions (2)

- D2. The value as criterion for the type of contract
- Usually – but not necessarily – contracts with up to “low” value (EUR 60,000) are simple ones, as their duration is relatively short and their scope fairly standard.
- Contracts of “middle value” may be simple or FWC or (multiannual) direct, but tend to be of one of the latter two types because the upper limit of the range (EUR 144,000) is quite considerable.
- As for values above the Directive’s thresholds, they support almost exclusively FWCs or (multiannual) direct contracts, as the high amounts involved allow the coverage of comprehensive or complementary needs of the Agency (or are imposed by them).
- D3. The variations of FWCs and direct contracts
- A FWC may be a simple or a multiple one: in the latter case, more than one successful tenderers have been awarded the FWC or part of it and have become related contractors.
- If the procedure for concluding the FWC contained Lots, no single (common) FWC is signed; each Lot makes the subject of a separate FWC and is signed with the corresponding awardee – even if the same tenderer has also been awarded one or more other Lot(s) under the same procedure.





## D. Model contracts, specific and general conditions (3)

- D3. The variations of FWCs and direct contracts (cont.)
- Independently of the Lots option, and along with it, the Agency may choose to provide for the FWC as a whole or for some of the Lots (if applicable) the “cascade” or the “reopening of competition” system for awarding future related Purchase Orders or specific contracts. Even a mixed system may be foreseen.
- Under the “cascade” scheme, the various (at least 3) FWC contractors are ranked in accordance with their final evaluation score. The Purchase Order or specific contract is addressed to the first in line; in case of declared inability or refusal on its side, the second ranked is invited to take the task, and so on until acceptance.
- Under the “reopening of competition” scheme, each Purchase Order or specific contract makes the subject of a mini-competition (kind of a negotiated procedure) whereby all FWC contractors (under the specific Lot, if applicable) are invited to submit an ad hoc technical offer and/or price under conditions of equal treatment; award of the Purchase Order or specific contract is made to the FWC contractor who best fulfils the set award criteria (or criterion, if it is only the lowest price) – which must have been foreseen in the FWC itself.
- If however it is so foreseen in the FWC, only some Purchase Orders or specific contacts are awarded in this way, the others being awarded directly to the FWC contractor whose particular capacities best match the Agency’s need(s) concerned. The FWC is then termed as “with partial reopening of competition”.





## D. Model contracts, specific and general conditions (4)

- D3. The variations of FWCs and direct contracts (cont.)
- As regards the **direct contracts**, they **do not afford the existence of more than one contractor**. Indeed, contrary to FWCs which may cover a variety of services or supplies or works covering both continuous and random related needs of the Agency, **direct contracts concern one single (though possibly multi-faceted) subject and permanent provision by the same contractor is a strong requirement - if not a must.**
- The appreciation of the **long perspective for standardised coverage of the same, practically unaltered need**, may lead the Agency to opt for a **multiannual direct contract**. In such case, the related **Purchase Orders, normally of annual duration, are fairly standard and identical** (though inflation over the years and possible unforeseen circumstances must be taken into account in the formulation of the contract's provisions and the relevant budgetary planning).
- A **multiannual direct contract** must include **a few special provisions** that are not present in a simple direct contract:
  - = a) the **annual amount** the contractor is entitled to be paid;
  - = b) the **maximum amount** covering all purchases under the contract, for its maximum duration;
  - = c) the **price revision clause**;
  - = d) the **way in which the yearly total price will be paid** (full prepayment? payment in fixed - e.g. monthly - instalments?);
  - = e) (ideally) the **payment modalities** in case the Agency is for part of a certain year **under the “provisional twelfths” regime** due to no timely adoption of the general EU budget.



## D. Model contracts, specific and general conditions (5)

- D4. The provisions of the contracts and their variability
- Any kind of Agency's contract typically includes three distinct, though interrelated parts: the Special conditions; the General conditions; and the Annexes (for FWCs, the first of these being the model Purchase Order) - which are of informative nature and may include any MoU possibly agreed among the parties.
- The main differences between the first two parts are:
  - = their variability: the Special conditions are adaptable (within limits) in relation to various aspects of particular nature or interest, and moreover include a number of clauses that can only be duly filled just before contract award as they refer to the identity, data and financial offer of the winning tenderer; the General conditions to the contrary "may not be touched", the only possibility to derogate from them or render a number of them "not applicable" as required being to formulate appropriately some existing Special conditions or to insert additional ones;
  - = their purpose: the Special conditions lay down all the particularities of the contract in question, while the General ones describe what applies to practically all contracts issued by the EU administration in regard to the numerous and varied subjects covered.
- Considering the order of priority of the various contractual provisions as set out in Article 1, where the Special conditions are at the top, it is obvious that anything crucial to be settled, including integration of contractor's reasoned and acceptable remarks, must appear there.



# MY CONTACT DATA

(for any follow-up question)

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