

CORPORATE

EIB's Corporate & Technical Assistance Procurement Guide

July 2017



European
Investment
Bank

The EU bank 



EIB's Corporate & Technical Assistance Procurement Guide

Guide for the procurement of services, supplies, works
and concessions managed by the EIB

July 2017

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1 General

1.1 Introduction

- a) The European Investment Bank (hereinafter the “**the EIB**” or “**the Bank**”) as the European Union’s financing institution is, in its dealings with external providers, committed to respecting the fundamental EU principles regarding public procurement, such as the principles of equal treatment, non-discrimination and transparency. The Bank considers that, as a general rule, these principles can be best implemented by competition among qualified tenderers and by a selection based both on cost and quality considerations.
- b) Accordingly, in full respect of the tasks and activities assigned to it by the Treaty on the Functioning of the European Union, the Bank acts in principle in accordance with Community law on public procurement, in particular the directives dealing with public procurement as amended from time to time.
- c) Even though these directives are not applicable as such to the EIB, they provide an appropriate reference of establishing the Bank’s procedures and for this reason the Management Committee decided on 07 July 2004¹ that “*the principles and procedures developed at EU level in respect of public procurement shall be followed by the Bank, subject to certain adaptations*”. Consequently the EIB based its rules on own account procurement on the directive 2004/18/EC which was valid at that time².
- d) Public procurement law at EU level was changed by the adoption of directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (hereinafter “**the Directive**”) which shall in future be the main legal basis, as amended from time to time, for EIB’s internal procurement. In response to these changes, the Bank adopted in 2016 the EIB’s “**Corporate Procurement Guide**”³.
- e) As the Directive does not cover all aspects relevant for procurements managed by EIB, the provisions of the Directive are complemented by additional provisions, in particular concerning
- i. procurements below thresholds,
 - ii. exclusion resulting from the specific situation of the EIB as a bank,
 - iii. remedies according to Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (hereinafter “**the Remedies Directive**”);
 - iv. concession according to Directive 2014/23/EU of the European Parliament and of the Council of 26 February on the award of concession contracts (hereinafter “**the Concessions Directive**”)
- f) In addition to the aforesaid, the EIB will have regard to the case law of the EU Court of Justice interpreting the Directive, the Remedies Directive and the Concessions Directive as well as other best practices which might be relevant.
- g) The above mentioned principles and procedures are incorporated in the present EIB’s Corporate & Technical Assistance Procurement Guide (hereinafter “**the Guide**”).
- h) The purpose of the Guide is to set out the procedures to be followed by the EIB when procuring
- services, supplies, works and concessions for its own account, as well as
 - technical assistance services⁴ provided by external service providers inside or outside the EU under third party mandates.

¹ Note to the Management Committee, ref: SG-JU/ACF-IP/2004-1438/TP/sb.

² Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

³ Note to the Management Committee, ref: OCCO/2016-0034/DW-ad, JU/CORP/PDA/2016-0882/WK.

⁴ Pursuant to Article 18(7) of the EIB Statute, as a complement to its lending activity, EIB may provide technical assistance services in accordance with the terms and conditions set out by its Board of Governors, in compliance with its Statute. They form an integral part of the EIB Group’s Lending, Blending, and Advising strategy. Such technical assistance services, also called “advisory services” include all expert advice and expertise-based tasks delivered by the EIB Group and, when necessary, by external service providers managed by staff of the EIB Group.

These procedures apply also every time that the Bank is involved in the procurement irrespective of whether it pays for the value of the relevant services, supplies works or concessions or not, unless the EIB has satisfied itself that in the procurement of the said services, supplies or works an acceptable level of fair competition is guaranteed.

- i) The Bank is aware of the increased possibilities offered by the Directive in terms of new purchasing techniques and electronic procurement and it intends, to the extent possible, to promote the use of them.
- j) The Guide is designed to provide general information on procurement procedures managed by EIB and it does not address specific terms and conditions of any particular contract that the Bank may conclude.
- k) For the avoidance of doubt, the Guide does not cover procurement for EIB-financed projects. The Bank's policy, the applicable legal framework and the arrangements to be made by promoters and borrowers for procuring required services, supplies and works for such projects are explained in the *EIB Guide to Procurement*, available on the Bank's website.
- l) The EIB's Management Committee approved this Guide on 19 July 2017⁵ whereby the entry into force and period of effectiveness shall be as defined in point 9.1.

1.2 Interpretation

- a) As the Directive is addressed to EU Member States not all of its provisions are relevant for procurements managed by EIB. For ease of reference, the Guide refers to and, if necessary supplements all relevant articles of the Directive that shall be directly applicable. This however shall not prevent the EIB from having recourse to those articles not referred to in this Guide (e.g. for interpretation purposes) after this Guide entered into force.
- b) If the Guide makes reference to articles without stating the legal source it shall be deemed to be referring to the Directive [point 1.1 d)]. References made to other legal sources, which are nevertheless important for the proper functioning of EIB Procurement, will be explicitly named.
- c) All references to articles/annexes of the Directive are to be taken to be made to the article/annex including any amendments (i.e. dynamic references).
- d) If the referenced articles/annexes of the Directive make use of the below terms they shall have in the context of the Guide the following meaning:

Terminology used in the Directive	Meaning in the Guide
Contracting authority(ies)	Means the EIB which may comprise other entities in case of joint procurement such as the European Investment Fund ("EIF").
Member State	Means the EIB when the Directive specifically authorises Member States to permit or interdict something. In other cases the meaning Member States remains unchanged (to be verified on a case by case basis).
National law	Shall mean any set of internal rules of the EIB.
Cross-references between Articles of the Directive	Such references shall be deemed to made to the corresponding provision (if any) inclusive of any modifications made by the Guide (<i>for example, references in the Directive to Article 4, threshold amounts shall be read as being made to point 2.4.</i>)

- e) The Guide also sets out additional provisions [as indicated in points 1.1 e)] beyond the ones stemming directly from the Directive which are nevertheless necessary for ensuring that EIB's Corporate & Technical Assistance procurement regime is not only compliant with the principles and procedures developed at EU level in respect of public procurement, but also fit for purpose for EIB's needs.

⁵ Note to the Management Committee, ref: SG/AS/CPCM/2017-635/SB/ec; JU/CORP/PTA/WK/2017-1113; OCCO/2017-0071/DW.

2 EIB Procurement rules, principles and procedures

2.1 Subject matter and scope

Article 1, paragraphs 1 and 2 shall apply.

2.2 Definitions

2.2.1 'Bodies governed by public law'

Article 2, para 1, lit (4) shall apply.

2.2.2 'Public contracts'

Article 2, para 1, lit (5) shall apply. In the context of this Guide sometimes also simply referred to as "**contract(s)**". In those cases the meaning of contract(s) includes public contracts, framework agreements, Annex XIV contracts and dynamic purchasing systems.

2.2.3 'Public works contracts'

Article 2, para 1, lit (6) shall apply.

2.2.4 'A work'

Article 2, para 1, lit (7) shall apply.

2.2.5 'Public supply contracts'

Article 2, para 1, lit (8) shall apply.

2.2.6 'Public service contracts'

Article 2, para 1, lit (9) shall apply.

2.2.7 'Economic operator'

Article 2, para 1, lit (10) shall apply.

2.2.8 'Tenderer'

Article 2, para 1, lit (11) shall apply.

2.2.9 'Candidate'

Article 2, para 1, lit (12) shall apply.

2.2.10 'Procurement document'

Article 2, para 1, lit (13) shall apply.

2.2.11 **'Ancillary purchasing activities'**

Article 2, para 1, lit (15) shall apply.

2.2.12 **'Procurement service provider'**

Article 2, para 1, lit (17) shall apply.

2.2.13 **'written' or 'in writing'**

Article 2, para 1, lit (18) shall apply.

2.2.14 **'Electronic means'**

Article 2, para 1, lit (19) shall apply.

2.2.15 **'Life cycle'**

Article 2, para 1, lit (20) shall apply.

2.2.16 **'Design contests'**

Article 2, para 1, lit (21) shall apply.

2.2.17 **'Innovation'**

Article 2, para 1, lit (22) shall apply.

2.2.18 **'Label'**

Article 2, para 1, lit (23) shall apply.

2.2.19 **'Label requirements'**

Article 2, para 1, lit (24) shall apply.

2.3 **Mixed Procurement**

Article 3 shall apply in its entirety.

2.4 **Thresholds**

2.4.1 **Threshold for public works contracts⁶**

Article 4, paragraph a) shall not apply and the threshold shall be set at EUR 2,500,000 not subject to revision as per point 2.4.4.

⁶ Having regard to notes to the Management Committee SG-JU/ACF-IP/2004-1961/TP/sb of 23 September 2004 and SCC/BLD/ASA/2009-0569 of 09 July 2009 concerning the decrease of the threshold for works.

2.4.2 Threshold for public supply and service contracts

Article 4, paragraph c) shall apply. *[Editorial note: this threshold is currently EUR 214 000]*

2.4.3 Threshold for public service contracts for social and other specific services (Annex XIV)

Article 4, paragraph d) shall apply. *[Editorial note: this threshold is currently EUR 750 000]*

2.4.4 Revision of thresholds

Aforesaid thresholds, except the one stated in point 2.4.1, shall be updated in line with Article 6 and revised thresholds shall automatically apply to the EIB in accordance with the corresponding European Commission's publications in the Official Journal of the European Union.

2.5 Methods for calculating the estimated value of procurement

Article 5 shall apply in its entirety.

2.6 Exclusions

2.6.1 Public contracts awarded and design contests organised pursuant to international rules

Article 9 with the exception of the last sentence of paragraph 1 shall apply.

2.6.2 Specific exclusions for service contracts

Article 10 shall apply in its entirety. However, before entering into public contracts for the acquisition or rental of land, existing buildings or other immovable property or concerning rights thereon the EIB shall carry out a market analysis, whereby the procedure set out in point 2.6.5 shall apply mutatis mutandis.

2.6.3 Service contracts awarded on the basis of an exclusive right

Article 11 shall apply in its entirety.

2.6.4 Public contracts between entities within the public sector

Article 12 shall apply in its entirety.

2.6.5 Contracts pertaining to the functioning and status of the EIB

2.6.5.1 For reasons pertaining to the functioning and status of the EIB as a financing institution of the EU, application of the provisions of the Directive may not be considered to be appropriate in respect of certain types of contract, the estimated value of which may be equal to or exceed the thresholds mentioned in point 2.4. In such cases, the Bank may decide to opt for a different procedure. In doing so, however, and in keeping with the overriding concern for best value for money, the award of such contracts will be effected following an appropriate market analysis and in accordance with the fundamental principles of equal treatment and transparency. In deciding whether alternatives are available on acceptable terms, the Bank takes account of its objective needs and performance standards, in relation to the scope and nature of the contract to be awarded. Market analysis in this regard must not be confused with preliminary market consultation as per point 4.1.

- 2.6.5.2 A market analysis may be, irrespective of the contract value, the type of contract, the number of candidates and the availability of alternatives, conducted in the following ways:
- a) Passive desk research, or
 - b) Active consultations with pre-selected candidates, which are to be carried out under the supervision of the EIB's Procurement Service.

2.7 Specific Situations

2.7.1 Contracts subsidised by contracting authorities

Article 13 shall apply in its entirety.

2.7.2 Research and development services

Article 14 shall apply in its entirety.

2.8 Principles of Procurement

Article 18 shall apply in its entirety.

2.9 Economic Operators

Article 19 shall apply in its entirety.

2.10 Confidentiality

Article 21 shall apply in its entirety.

2.11 Rules on communication

Article 22, paragraphs 1, 2, 3, 4, 5 and 6 shall apply, whereby the EIB aims to adhere to any delegated acts adopted by the European Commission in this regard.

2.12 Nomenclatures

Article 23, paragraph 1 shall apply.

2.13 Conflicts of interest

Article 24 shall apply in its entirety.

2.14 Access to EIB contracts

Article 25 shall not apply, however the EIB may decide at its own discretion on a case-by-case basis whether or not it grants to works, supplies, services and economic operators from outside the European Union treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the European Union.

2.15 Procurement procedures above thresholds

The EIB may apply the following procedures as regulated in the Directive:

2.15.1 Open Procedure

Article 26 paragraph 2 in conjunction with Article 27 in its entirety shall apply.

2.15.2 Restricted Procedure

Article 26 paragraph 2 in conjunction with Article 28 with the exception of paragraph 4 shall apply.

2.15.3 Competitive procedure with negotiation

Article 26 paragraph 4 in conjunction with Article 29 in its entirety shall apply.

2.15.4 Competitive Dialogue

Article 26 paragraph 4 in conjunction with Article 30 in its entirety shall apply.

2.15.5 Innovation Partnership

Article 26 paragraph 3 in conjunction with Article 31 in its entirety shall apply.

2.15.6 Use of the negotiated procedure without prior publication

Article 26 paragraph 6 in conjunction with Article 32 in its entirety shall apply, however without requiring the EIB to send reports to the European Commission. In addition, the EIB may use the negotiated procedure regardless of the estimated value of the contract, in case of services provided by an international organisation where it cannot participate in competitive procedures according to its statute or act of establishment.

2.16 Joint Procurement

The EIB recognises the principle of joint procurement as foreseen in Article 38 and will make use of it as follows:

- a) Where a contract is of interest to the EIB, the EIF or similar entities established by the EIB after the Guide entered into force and whenever there is a possibility for realising efficiency gains, the EIB and the EIF or similar entities may seek to carry out the procurement procedure on a joint basis.
- b) Where a contract is for the EIB's own account and necessary for the implementation of a joint operation between the EIB and one or more contracting authorities from EU-Member States, EEA States, EFTA States, EU candidate countries or third countries, the procurement procedure may be carried out jointly by the EIB and the contracting authorities. Where the share pertaining to or managed by the aforesaid contracting authority of the total estimated value of the contract is equal or above 50%, or in other duly justified cases, the EIB may decide that the procedural rules applicable to the contracting authority shall apply, provided they apply standards which offer adequate equivalence to internationally accepted standards, especially relating to transparency, non-discrimination and prevention of conflicts of interest.
- c) The EIB and the contracting authorities concerned by the joint procurement procedure shall agree in particular upon the practical modalities for the evaluation of requests for participation or the tenders, the award of the contract, the law applicable to the contract and the competent court for hearing disputes.

2.17 Interinstitutional Procurement

- a) Whenever a procurement procedure for a contract is carried out by an EU-Institution as listed in Article 13 of the Treaty on European Union which is in the interest of the EIB and if the EIB is invited by the EU-Institution it may decide to participate in such interinstitutional procurement. If such EU-Institution asks to be remunerated for the provisions of its purchasing activities, the EIB may award a service contract without applying the procedures provided for in this Guide.
- b) Should the EIB decide to participate in interinstitutional procurement the EIB's Procurement Service shall be responsible for coordinating the participation in such interinstitutional procurements.

3 Techniques and instruments for electronic and aggregated procurement

3.1 Framework Agreements

Article 33 shall apply in its entirety.

3.2 Dynamic Purchasing System

Article 34 shall apply in its entirety.

3.3 Electronic Auctions

Article 35 shall apply in its entirety.

3.4 Electronic Catalogues

Article 36 shall apply in its entirety.

4 Conduct of the procedure

4.1 Preparation

4.1.1 Preliminary market consultations

Article 40 shall apply in its entirety, whereby market consultations are not be confused with market analysis according to point 2.6.5.

4.1.2 Prior involvement of candidates or tenderers

Article 41 shall apply in its entirety, whereby the measures taken shall be documented in the individual reports required by point 8.1.

4.1.3 Technical specifications

Article 42 and Annex VII shall apply in their entirety.

4.1.4 **Labels**

Article 43 shall apply in its entirety.

4.1.5 **Tests reports, certification and other means of proof**

Article 44, paragraphs 1 and 2 shall apply.

4.1.6 **Variants**

Article 45 shall apply in its entirety.

4.1.7 **Division of contracts into lots**

Article 46, paragraphs 1, 2 and 3 shall apply, whereby the EIB has decided not to render it obligatory to award contracts in the form of separate lots as foreseen by paragraph 4.

4.1.8 **Tender guarantees**

If deemed appropriate and proportionate, the EIB may require tenderers to lodge a security in advance as a guarantee that the bids made will not be withdrawn.

4.1.9 **Setting time limits**

Article 47 shall apply in its entirety.

4.2 **Publication and transparency**

4.2.1 **Call for competition**

Article 26, paragraph 5 shall apply, whereby the EIB does not foresee the use of prior information notices for restricted or competitive procedures with negotiation. When awarding contracts concerning countries outside the EU calls for competition may in addition to an OJEU publication be published in the official gazette of the country concerned or any other appropriate media. The format of these calls for competition may differ from the ones listed in points 4.2.2, 4.2.3. and 4.2.4.

4.2.2 **Prior information notices**

Article 48 shall apply in its entirety.

4.2.3 **Contract notice**

Article 49 shall apply in its entirety.

4.2.4 **Contract award notice**

Article 50 shall apply in its entirety; however the EIB will not send grouped notices on a quarterly basis as foreseen in paragraph 2.

4.2.5 Form and manner of publication of notices

Article 51 shall apply in its entirety, whereby the EIB will use the standard forms (as amended from time to time) established by the European Commission.

4.2.6 Electronic availability of documents

Article 53 shall apply in its entirety.

4.2.7 Invitations to candidates

Article 54 and Annex IX shall apply in their entirety. In addition, the invitation to submit a tender, to participate in the dialogue, or to confirm interest may contain information as given in

- a) point 6.4 concerning subcontracting;
- b) point 6.3 concerning price revision;
- c) points 4.1.8 and 6.2 concerning guarantees.

4.3 Choice of Candidates or tenderers

4.3.1 General principles

Article 56 paragraphs 1, 2 (except the last sentence) and 3 shall apply. The EIB aims to adhere to any amendments to Annex X effected by the European Commission.

4.3.2 Exclusion grounds

Article 57 shall apply in its entirety. The EIB shall pay particular attention to third party compliance in this regard in order to ensure the integrity of economic operators working with the EIB.

4.3.3 Selection criteria

Article 58 shall apply in its entirety.

4.3.4 European single document

Article 59 paragraphs 1, 4, 5 and 6 shall apply in their entirety. The EIB will use the standard form (as amended from time to time) established by the European Commission.

4.3.5 Means of proof

Article 60 paragraphs 1, 2, 3 and 4 shall apply.

4.3.6 Online repository of certificates (e-Certis)

The EIB may make use of the online repository of certificates (e-Certis) according to Article 61.

4.3.7 Quality assurance standards and environmental management standards

Article 62, paragraphs 1 and 2 shall apply.

4.3.8 **Reliance on the capacity of other entities**

Article 63 shall apply in its entirety.

4.3.9 **Opening of tenders and requests to participate**

4.3.9.1 With the exception of contracts below EUR 35 000, tenders and requests to participate shall be opened by an opening committee appointed for this purpose. The opening committee shall be made up of at least three persons guaranteeing the absence of conflicts of interest.

4.3.9.2 The members of the committee shall sign the written record of the opening of tenders/requests to participate received which shall identify those tenders/requests to participate which comply with the requirements of the procurement documents and those which do not, and which shall give grounds on which tenders/requests to participate were rejected for non-compliance.

4.3.9.3 The content of the written record of the opening shall be made available to economic operators who submitted a request to participate or tender. In addition, where the contract is awarded under price or cost only criterion, the prices/cost quoted in the tenders satisfying the requirements shall be made available.

4.3.10 **Committee for the evaluation of tenders and requests for participate**

4.3.10.1 All requests to participate and tenders for contracts with a value of equal to or above EUR 35 000 and declared as compliant with the opening requirements by the opening committee, shall be evaluated on the basis of the criteria provided in the procurement documents by an evaluation committee appointed for this purpose. However, the EIB may decide that the evaluation committee is to evaluate and rank the tenders on the basis of the award criteria only and that the exclusion and selection criteria are to be evaluated by other appropriate means guaranteeing the absence of conflicts of interests.

4.3.10.2 The evaluation committee shall be made up of at least three persons guaranteeing the absence of conflicts of interest.

4.3.10.3 Outside experts may be appointed to assist the committee as observers provided it is ensured these experts have no conflicts of interest.

4.3.11 **Contacts between EIB and candidates/tenderers**

Contacts between the EIB and candidates/tenderers during the procurement procedure may take place, by way of exception, under the conditions set out below:

4.3.11.1 Before the closing date for submission of tenders or requests to participate the EIB may:

- a) At the instance of tenderers, communicate additional information solely for the purpose of clarifying the nature of the contract, such information to be communicated on the same date to all tenderers who have asked for the procurement documents;
- b) At its own instance, if it discovers an error, a lack of precision, an omission or any other type of clerical defect in the text of the procurement documents, provide updated information in a manner identical with that applicable in respect of the original invitation to tender.

4.3.11.2 Without prejudice to Article 56, paragraph 3, if, after the tenders or requests to participate have been opened, some clarification is required in connection with a tender/request to participate, or if obvious clerical errors must be corrected, the EIB may contact the tenderer/candidate, although such contact may not lead to any alteration of the terms of the tender/request to participate. The single point of contact shall be the Bank's Procurement Service.

4.3.11.3 In every case where contact has been made a record shall be kept in the individual report as per point 8.1.

4.3.11.4 Requests to participate and tenders which do not satisfy all the essential requirements set out in the procurement documents shall be eliminated. However, the evaluation committee may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within the time limits it specifies. Requests to participate and tenders which are not excluded and which meet the selection criteria shall be considered admissible.

4.3.11.5 In the case of abnormally low tenders the evaluation committee shall request any relevant information concerning the composition of the tender as per point 5.1.3.

4.4 Reduction of numbers of candidates, tenders and solutions

4.4.1 Reduction of the number of otherwise qualified candidates to be invited to participate

Article 65 shall apply in its entirety.

4.4.2 Reduction of the number of tenders and solutions

Article 66 shall apply in its entirety.

5 Award of the Contract / Cancellation of procedures

5.1 Award of contract

5.1.1 Contract award criteria

Article 67 shall apply in its entirety. The EIB may use price or cost only as the sole award criterion without any restrictions.

5.1.2 Life-cycle costing

Article 68 shall apply in its entirety. Furthermore, the EIB will adhere to any update to Annex XIII made by the European Commission.

5.1.3 Abnormally low tenders

Article 69, paragraphs 1, 2, 3 and 4 shall apply, however without the EIB being required to inform the European Commission as foreseen by paragraph 4.

5.1.4 Award Decision

5.1.4.1 The Director of the Requesting Department, or the representative authorised by him, shall decide to whom the contract is to be awarded based on the recommendation of the evaluation committee and in compliance with the selection and award criteria laid down in advance in the procurement documents. In exceptional circumstances duly justified and documented, the Director of the Requesting Department, or the representative authorised by him, may overrule the recommendation of the evaluation committee, following consultation with the Group Chief Compliance Officer and the General Counsel.

5.1.4.2 With regard to informing candidates and tenderers of decisions made, Article 55 shall apply in its entirety.

5.1.5 Standstill period before concluding the contract

5.1.5.1 The EIB shall not conclude the contract, covered by the Directive, with the successful tenderer until a 15 calendar day standstill period has elapsed.

5.1.5.2 The 15 calendar day standstill period shall run from the day after the simultaneous dispatch of the notifications to successful and unsuccessful tenderers.

5.1.5.3 Where a fax or electronic means are used for the dispatch of the notifications to successful and unsuccessful tenderers the standstill period shall be 10 calendar days.

5.1.5.4 If necessary, the EIB may suspend the conclusion of the contract for additional examination if this is justified by the requests or comments made by unsuccessful or aggrieved tenderers or candidates or by any other relevant information received. The requests, comments or information must be received during the standstill period. In the case of suspension all the candidates or tenderers shall be informed within three working days following the suspension decision.

5.1.5.5 Except in the cases provided for below, any contract concluded before the expiry of the standstill period shall be null and void.

5.1.5.6 The standstill period shall not apply in the following cases:

- a) Open, restricted, and competitive procedures with negotiation after publication of a contract notice where only one tender has been submitted;
- b) Contracts based on a framework agreement;
- c) If the Directive does not require prior publication of a contract notice in the Official Journal of the European Union.

5.1.6 Conclusion of contract

With the exception of payments against invoices equal to or less than EUR 3 000, contracts are to be concluded in writing. If justified by the subject matter of the procurement the creation of a purchase order is deemed sufficient.

The performance of a contract may not start before the contract is concluded.

5.2 Cancellation of procedures

The EIB may, before a public contract or framework agreement is concluded, cancel the procurement procedure without the candidates or tenderers being entitled to claim any compensation.

The decisions shall be justified and be brought to the attention of the candidates or tenderers according to point 5.1.4.

6 Contract performance

6.1 Conditions for performance of contracts

Article 70 shall apply in its entirety.

6.2 Guarantees

Other than in the case of procurements below threshold, the EIB may, if it deems it appropriate and proportionate on a case-by-case basis and subject to risk analysis, require contractors to lodge a guarantee in order to:

- a) Ensure full performance of the contract; or
- b) Limit the financial risks connected with payment of pre-financing.

6.3 Price revision

The procurement documents shall clearly state whether a firm, non-revisable price must be quoted. If that is not the case, the procurement documents shall lay down the conditions and/or formulae for revision of prices during the lifetime of the contract. In such cases the EIB shall take particular account of:

- a) The object of the procurement procedure and the economic situation in which it is taking place;
- b) The type of tasks and contract and their duration;
- c) Its financial interests.

6.4 Subcontracting

Article 71 shall apply in its entirety.

6.5 Modification of contracts during their term

Article 72 shall apply in its entirety. The notice of modification of contract as per Article 72, paragraph 1, last sentences shall be published in the Official Journal of the European Union only if the modification of the contract or framework agreement exceeds the thresholds of point 2.4.

6.6 Suspension in the event of errors or irregularities

Contracts may be suspended in order to verify whether presumed substantial errors or irregularities e.g. fraud have occurred. If they are not confirmed, performance of the contract shall resume as soon as possible. A substantial error or irregularity shall be any infringement of a provision of a contract or regulation resulting from an act or omission which causes or might cause a loss to the EIB's budget or harm EIB's reputation.

6.7 Termination of contracts

Article 73 shall apply in its entirety.

7 Particular procurement regimes

7.1 Procurement of social and other specific services above the threshold of point 2.4.3

7.1.1 Award of contracts for social and other specific services

As foreseen in Article 74, public contracts for social and other specific services listed in Annex XIV (hereinafter "**Annex XIV contracts**") shall be awarded in accordance with the below stated provisions where the value of such contracts is equal to or greater than the threshold indicated in point 2.4.3.

7.1.2 Publication of notices

Article 75 shall apply in its entirety, whereby the EIB will use the standard forms (as amended from time to time) established by the European Commission.

7.1.3 Principles of awarding Annex XIV contracts

7.1.3.1 The EIB shall determine the procedures that are to be applied in connection with the award of Annex XIV contracts, and may take into account the specificities of the services in question.

7.1.3.2 Such procedures shall be at least sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators.

7.1.3.3 In particular, where, in accordance with point 7.1.2, a contract notice or prior information notice has been published in relation to a given procurement, the EIB shall, except in the circumstances mentioned in point 7.1.3.4, conduct the procurement, and award any resulting Annex XIV contract, in conformity with the information contained in the notice regarding:

- a) conditions for participation,
- b) time limits for contacting the contracting authority, and
- c) the award procedure to be applied.

7.1.3.4 The EIB may, however, conduct the procurement, and award any resulting Annex XIV contract, in a way which is not in conformity with that information, but only if all the following conditions are met:

- a) the failure to conform does not, in the particular circumstances, amount to a breach of the principles of transparency and equal treatment of economic operators;
- b) the EIB has, before proceeding in reliance on sub-paragraph a)
 - i. given due consideration to the matter,
 - ii. concluded that sub-paragraph (a) is applicable,
 - iii. documented that conclusion and the reasons for it in a note to the file, and
 - iv. informed the participants of the respects in which the EIB intends to proceed in a way which is not in conformity with the information contained in the notice.

7.1.3.5 In point 7.1.3.4 (b)(iv), "participants" means any economic operators which have responded to the notice and have not been informed by the EIB that they are no longer under consideration for the award of an Annex XIV contract within the scope of the procurement concerned.

7.1.3.6 All time limits imposed on economic operators for the purposes of point 7.1, whether for responding to a contract notice or taking any other steps in the relevant procedure, shall be reasonable and proportionate.

7.1.3.7 Without prejudice to the generality of paragraph 7.1.3.1, and subject to the other requirements of point 7.1, the EIB may apply procedures which correspond (with or without variations) to procedures, techniques or other features provided for in point 2.15, as well as procedures which do not.

7.1.3.8 In relation to the award of Annex XIV contracts, EIB may take into account any relevant considerations, including

- a) the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;
- b) the specific needs of different categories of users, including disadvantaged and vulnerable groups;
- c) the involvement and empowerment of users; and
- d) innovation.

7.2 Procurement of social and other specific services below the threshold of point 2.4.3

Annex XIV contracts below the threshold of point 2.4.3 may be awarded after a market analysis has been carried out whereby the procedure set out in point 2.6.5 shall apply *mutatis mutandis*. For the avoidance of doubt point 2.5 (methods for calculating the estimated value of procurement) shall apply.

7.3 Rules governing design contests

Articles 78, 79, 80, 81, 82 shall apply in their entirety, whereby the EIB will use the standard forms (as amended from time to time) established by the European Commission (Article 79 paragraph 4).

7.4 Procurements below thresholds

7.4.1 General

7.4.1.1 Procurements below the thresholds for public works, supply and service contracts referred to in points 2.4.1 and 2.4.2, shall be deemed as low value contracts and may be awarded by the below listed procedures.

7.4.1.2 The main features described in points 1 to 6 and 8 above apply, *mutatis mutandis*, but taking into consideration the principle of proportionality, to the procurement of low value contracts not covered by the provisions of the Directive. However, even taking into consideration the principle of proportionality, modifications to contracts below thresholds may not alter their overall nature. Where several successive modifications are made, the aggregated value must not exceed 50% of the value of the original contract.

7.4.2 Direct negotiation

Works, supplies and services contracts with a very low value of less than EUR 35 000 may be awarded on the basis of a single tender following a negotiated procedure without prior publication of a contract notice.

7.4.3 Negotiated procedure without publication

7.4.3.1 A negotiated procedure without prior publication of a contract notice with consultation of at least five candidates may be used for

- a) works contracts with a value of equal to or above the threshold stated in points 2.4.2 but not exceeding the threshold stated in point 2.4.1.
- b) supplies and services contracts with a value of equal to or above EUR 35 000 but not exceeding the threshold stated in point 2.4.2.

7.4.3.2 Works contracts with a value of equal to or above EUR 35 000 but not exceeding the threshold stated in point 2.4.2 may be awarded by a negotiated procedure without prior publication of a contract notice with consultation of at least three candidates.

7.4.3.3 If, following consultation of the candidates, the EIB receives only one tender that is administratively and technically valid and meets the award criteria, the contract may be awarded to this tenderer.

7.4.4 Other procurement procedures below thresholds

The EIB may use for awarding contracts not exceeding the thresholds stated in points 2.4.1 and 2.4.2 any other procurement procedure for awarding contracts below thresholds by analogy provided they are foreseen

in the applicable financial/procurement regimes of other EU-Institutions as per Article 13 of the Treaty on European Union, irrespective of the actual thresholds applied by these EU-Institutions.

7.4.5 Procurements for external offices in third countries

Contracts concerning goods, services or works below thresholds for EIB external offices located in non-EU-Member States may be awarded after a market analysis has been carried out whereby point 2.6.5 shall apply mutatis mutandis.

7.5 Award of concession contracts

The award of concession contracts shall follow the principles set out in Concessions Directive, which shall be applied to all EIB concessions of a value equal to or greater than the threshold set out in point 2.4.2. whereby the duration of concessions shall not exceed five years, save in exceptional cases duly justified, in particular by the subject of the concession. Concessions procedures may be cancelled in accordance with point 5.2.

7.6 Award of technical assistance services contracts

7.6.1 General

For the award of service contracts in the context of technical assistance the provisions of this Guide shall apply, except as otherwise provided in this chapter.

7.6.2 Non-applicability

Points 2.4.1, 2.4.3, 2.6.5, 2.16, 2.17, 7.1, 7.2, 7.3, 7.4.3.1a), 7.4.3.2 and 7.5 shall not apply.

7.6.3 Derogations

7.6.3.1 EIB may use formats different from the European Single Procurement Document as per point 4.3.4.

7.6.3.2 Committees for opening and evaluating requests to participate and tenders as per points 4.3.9 and 4.3.10 shall be the same and shall be required for technical assistance service contracts

- a) concerning projects located outside the European Union with values above or equal to EUR 50 000;
- b) concerning projects located inside the European Union with values above or equal to EUR 35 000.

Outside experts as referred to in point 4.3.10.3 may be appointed as evaluators provided it is ensured that these experts have no conflict of interest.

7.6.3.3 The single point of contact as referred to in point 4.3.11.3 shall be the Bank's Procurement Service responsible for Technical Assistance.

7.6.3.4 The award decision as per point 5.1.4.1 is taken by the Head of Division in charge of Technical Assistance Procurement, or the representative authorised by him.

7.6.3.5 Technical assistance service contracts concerning projects located outside the European Union with a value of less than EUR 50 000 may be awarded by way of direct negotiation according to point 7.4.2.

Notwithstanding the above the direct award threshold of point 7.4.2 shall apply to technical assistance service contracts concerning projects located inside the European Union.

- 7.6.3.6 Technical assistance service contracts concerning projects located outside the European Union with values of equal to or above EUR 50 000 but not exceeding the threshold referred to in point 2.4.2, may be awarded by way of a negotiated procedure without publication below thresholds according to point 7.4.3.

Notwithstanding the above point 7.4.3 in conjunction with point 7.6.2 shall apply to technical assistance service contracts concerning projects located inside the European Union.

8 Governance

8.1 Individual reports on procedures for the award of contracts

Article 84 shall apply in its entirety, with the exception of paragraph 3. In the case of a procurement procedure launched on an interinstitutional/joint basis, the EIB may refer to the written records of the contracting authority responsible for the interinstitutional/joint procurement procedure.

8.2 Dispute resolution

The court competent for hearing disputes shall be the European Court of Justice.

9 Final provisions

9.1 Entry into force and period of Effectiveness

This Guide shall enter into force on 19 July 2017 and shall repeal and replace the *Corporate Procurement Guide, version May 2016* and shall remain in effect for an indefinite period of time until it will be repealed and replaced by a new guide on corporate & technical assistance procurement as per future decisions by the Management Committee.

9.2 Transitional provision

- a) Procurement procedures that were started before the entry into force of this Guide shall be completed in accordance with the *Corporate Procurement Guide, version May 2016* (as per point 9.1). For the purpose of this provision a tender procedure is deemed to be started on the day on which the contract notice was sent to the Official Journal or, in cases where no such notice is required, on the day when the EIB invited one or several market operators to submit a tender.
- b) If, after the entry into force of this Guide, contracts are to be modified during their term (as per point 6.5) the modification shall be subject to this Guide even though the original contract was awarded pursuant to the *Corporate Procurement Guide, version May 2016*, the *Guide for Procurement, version October 2014* or any of its preceding versions.

10 Annexes to the Directive

The following annexes to the Directive shall form an integrated part of the Guide:

Annex II	Construction related definitions
Annex IV	Requirements relating to the electronic receipt of tenders
Annex V	Information to be included in notices
Annex VI	Information to be included in electronic auctions
Annex VII	Definition of certain technical specifications
Annex VIII	Features concerning publication
Annex IX	Contents of invitations to submit a tender, to participate in the dialogue or to confirm interest
Annex X	Applicable international social and environmental conventions
Annex XII	Means of proof of selection criteria
Annex XIV	List of social and other specific services

CORPORATE

EIB's Corporate & Technical Assistance Procurement Guide

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