



Evaluation Criteria Training for promoters

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**Projects Directorate –
Procurement Office**

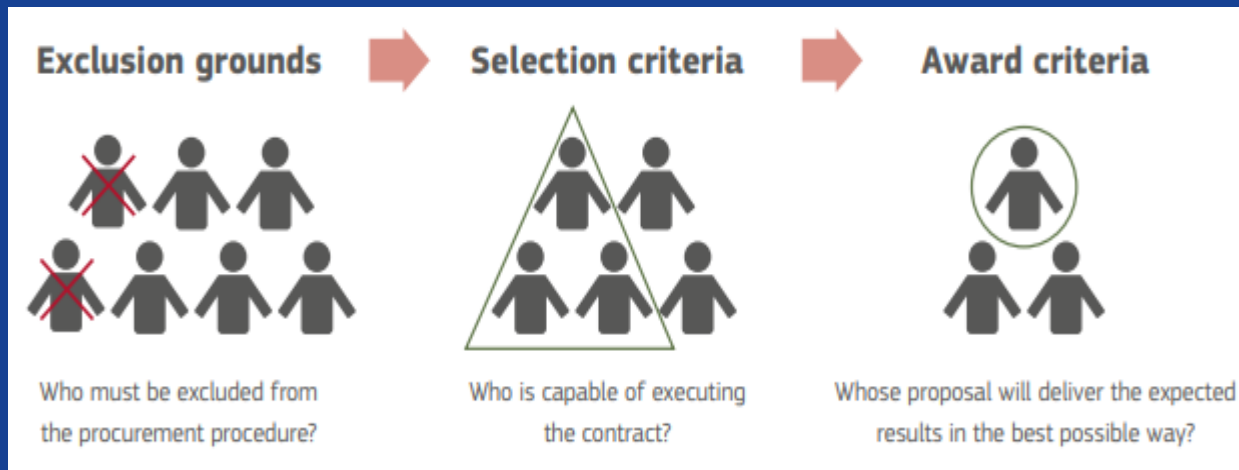
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A. Introduction

Distinctions and Purposes of Criteria Types



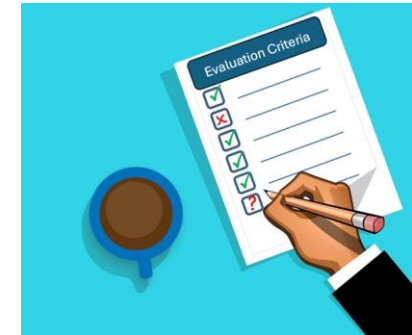
Source: [Inforegio](#) - *Public Procurement - Guidance for practitioners (2018)*

- The criteria should be objective and measurable to facilitate a fair comparison of bids.
- Should align with the principle of proportionality, meaning that the criteria should be relevant and proportionate to the subject matter of the contract.

Criteria - Principles

- ✓ **Must be:** Related to the subject matter, objective, proportional, quantified, fair, clear
- ✓ **Evaluation criteria could consider:**
 - Minimum technical requirements
 - Price: corrected for arithmetical errors, taxes and incoterms as needed
 - (Life cycle) cost
 - Any other (evaluated) cost related to omission or minor deviations

Not be changed once has been advertised and notification sent to the tenderers. If changes become necessary, all those who bought the TD/PQD or prequalified/shortlisted must be notified of the changes.





B. Subject Matter of the Contract



What is Subject-matter and why is important?

What is?

The **subject-matter** of a contract defines which goods, services or works the promoter aims to procure. At this stage, along with definition of the subject, shall be determined its implementation duration and value.

Why is Important?

- ✓ Determines which criteria can be included into the technical specifications and selection/award criteria;
- ✓ Allows to select the correct procurement procedure and contract type;
- ✓ Provides the opportunity to include sustainable criteria by linking the subject matter with sustainable considerations.
- ✓ Tip: Include sustainable objectives in the contract title:
Example: *“Procurement Contract for Renewable Energy Solutions and Sustainable Infrastructure Development”*



C. Exclusion Grounds



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zone**

Exclusion Grounds

Exclusion grounds, unlike selection and award criteria, are limited. We cannot invent new ones!

We can divide exclusion grounds in two types:

- Mandatory exclusion grounds, that the EIB requires to be applied.
- Discretionary exclusion grounds, additional exclusion grounds that are up to the contracting authority to implement or not.

Mandatory Exclusion Grounds

EIB does not accept that tenderers are in some situations and therefore must be excluded.

❖ Sanctions:

- The GtP foresees EU and UN sanctions as mandatory exclusion grounds.
- Other sanctions may be applicable for the specific project.

❖ Exclusions

- EIB has an Exclusion Policy, under which can exclude entities that have committed Prohibited Conduct from any EIB financed project, including in procurement.



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Other grounds for non-eligibility

- There are additional reasons why a company may not be eligible to participate that are not necessarily exclusion grounds but function in the same way.
- These are:
 - Country eligibility: in some cases EIB may restrict eligibility to nationals of certain countries (usually when using third party resources)
 - Conflict of Interest: tenderers may be disqualified on the basis of conflict of interest if it cannot be remediated.
 - Prohibited Conduct: if a tenderer engages in prohibited conduct during the procurement process, the EIB may require the promoter to remediate the situation, usually by disqualifying the tenderer.

Discretionary Exclusion Grounds

There are other valid reasons to exclude tenderers, that the EIB will not require to have in all cases.

- ❖ These grounds are not listed in the GtP, but we use the grounds in EU Law as guidance for what is acceptable.
 - ❖ All potential exclusion grounds are exhaustively listed in article 57 of directive 2014/24/EU
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- ❖ These include:
 - Non-payment of taxes or social security contributions
 - Non-compliance with environmental or social law
 - Bankruptcy
 - Grave professional misconduct
 - Persistent non-performance in previous contracts



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Means of proof

Exclusion grounds must be conclusively proven before they can be applied

Any offence must be proven as the result of a final judgement with binding effect.

Non-performance of previous contracts must be documented and resulted in termination of a contract.

Prohibited conduct must be concluded from an investigation by EIB.

Tenderers must have the possibility to explain why they are not in such situation, (e.g. conflict of interest).

Tenderers may (and will) challenge exclusion decisions, so these must be taken very carefully.



D. Selection Criteria

Selection Criteria

Objective: *Identify qualified tenderers capable of delivering the contract and expected results*

- ❖ Selection Criteria usually should assess:
 1. **Suitability to pursue professional activity;**
 2. **Economic and financial capacity;**
 3. **Technical and professional ability**

- ❖ Selection Criteria must be:
 - Aligned with EU Treaty principles: transparency, equal treatment and non-discrimination;**
 - Proportionate to the contract;**
 - Drafted in a clear and simple manner – not ambiguous**





1. Suitability to pursue professional activity

- Relates to the legal ability of the tenderer to perform the works and services or provide the needed goods.
- Promoters may require tenderers to be listed in a professional or trade register.
- For service contracts, tenderers may need specific authorizations or memberships to perform the service. Promoters can ask them to prove they have these authorizations or memberships.

Example for a Works Contract: The tenderer must provide evidence of its registration for the performance of construction works. This includes documentation confirming its enrollment in the relevant professional or trade register within its country of establishment.

1. Suitability to pursue professional activity – National Licenses

National Licenses



In some countries, the national law requires a number of national licenses for individuals and companies to execute certain contracts. This may be allowed under the TD's if:

- ✓ Foreign companies/individuals can obtain such licenses, without significant obstacles and in a timely manner; and
- ✓ Such licenses are not a requirement to participate in the tender; and
- ✓ Such licenses are only required from the winning tenderer



In this case, the tender documents should contain the wording that the winning tenderer will be allowed sufficient time to obtain the licence(s), and any delays caused in the issuance of the licences beyond the control of the winning tenderer cannot be a reason for cancellation of award and will not impose any damage or penalties to the winning tenderer.



2. Economic and financial capacity

Relates to the requirements needed to ensure tenderers have the financial capacity to perform the contract.

- Promoters may require tenderers to have a **minimum yearly turnover**, including a specific turnover in the contract area.
- Promoters might also ask for annual accounts showing **financial ratios**, like assets to liabilities, and require professional risk indemnity insurance.
- The minimum yearly turnover **should not exceed twice the contract's estimated value, unless there are duly justified special risks.**
- Financial ratios can be considered **if the methods and criteria are clearly specified, transparent, and fair.**
- If the contract is divided into lots, **these rules apply to each lot.** Promoters can set turnover requirements based on groups of lots if multiple lots are awarded to one tenderer.
- **For Works contracts**, its usual to require that tenderers must have enough liquid assets, unencumbered real assets, lines of credit, and other financial resources (excluding any advance payments) to cover the **construction cash flow** needs estimated at Euros X for the contract, after accounting for other commitments.



2. Economic and financial capacity

Example: *Works Contract with an estimated value of 100 millions, to be implemented in 24 months.*

Annual Turnover Criteria:

Minimum average annual construction turnover of 50 million Euros calculated as total certified payments received for contracts in progress and/or completed within the last 5 years, divided by five years.

Tip: Construction market is volatile, therefore is advisable to formulate the criterion as “average” and include a considerable number of years.

Required Cashflow

The Applicant shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as 16 millions Euros for the subject contract(s) net of the Applicants other commitments

2. Economic and financial capacity – Mistakes to avoid

- **Disproportionate economic and financial requirements which lead to limiting competition.** *Example: “Required an average annual turnover of 5M Euros for a contract estimated at 5M euros to be implemented over four years”*
- **Use of ambiguous language.** *Example: “The tenderer must demonstrate a soundness financial position” without including the assessment method or which financial ratios will be assessed”*
- *Economic and financial capacity requirements such as Cash-Flow requirements are more important for Works Contracts due to its specific nature*





3. Technical and Professional Ability

Relates to requirements needed to ensure that tenderers possess the **necessary human and technical resources and experience** to perform the contract to an appropriate quality standard.

- ❖ **Human and Technical Resources:**

 - Key Personnel Qualifications and Experience

 - Access to Key Equipment to implement the contract

- ❖ **Experience:**

 - General Experience

 - Specific Experience



3. Technical and Professional Ability

Example:

Key Personnel: Graduate Civil Engineer, with 10 years of relevant experience and 5 years experience in managing similar works as those of this contract

Key Equipment: The tenderer shall own, or have assured access to the following key items of equipment : Hot asphalt mixing plant; Minimum capacity: 100 t/h, less than 50km distance from the Site

General Experience: Experience under construction contracts in the role of prime contractor, JV member, subcontractor, or management contractor for at least the last 5 years, starting 1st January 2018.

Specific Experience: Evidence that it has successfully completed minimum one (1) contract in the past 8 years (since January 2010) for construction or reconstruction of hospitals or clinical-medical centres or hotels or congress centers or shopping malls or office buildings , in the value of minimum EUR 50,000,000 and minimum 40,000 m2 gross area.

Goods Contracts: Manufacturer Authorization in case the tenderers is not producing the goods.



Sustainable Selection Criteria

The selection criteria related to technical and professional ability provides the greatest opportunity to include sustainable related requirements.

- ✓ Determine which sustainable selection criteria are most pertinent to include, considering the contract requirements and the profile and capacity/experience of the market.
- ✓ Any decision to include sustainable considerations should be informed by an adequate market analysis to understand the market readiness for SPP.
- ✓ Integrate sustainable selection criteria with other tender criteria/requirements to ensure they complement each other.
- ✓ Remember that selection criteria must be linked to the subject matter of the contract. This is important in the case of sustainable criteria.
- ✓ It is sometimes more appropriate to assess certain sustainable aspects as part of the award criteria rather than as selection criteria



Sustainable Selection Criteria

Some examples:

- ✓ To verify that the chosen bidder possesses the required environmental expertise and capacity to execute the contract with environmental considerations, the presence of an environmental management system, such as ISO 14001, can be used as a selection criterion. Please remember to always use the wording “or equivalent” when referring to standards;
- ✓ Past experience and evidence of internal mechanisms to deal with gender-related issues, such as gender violence and discrimination in the workplace;
- ✓ Require bidders to submit equality pay certification;
- ✓ Previous experience in implementing sustainable construction practices, such as using secondary materials and improving resource efficiency;
- ✓ Requiring bidders to hold social certifications such as SA8000 or equivalent.



Selection Criteria – some other points

- ✓ After the procurement documents are published, only minor adjustments to the main selection criteria are allowed;
- ✓ Significant changes to the criteria may require the cancellation of the procurement procedure;
- ✓ The selection criteria can be assessed via:
 - “pass” or “fail” requirements;
 - weighting system;
 - assessment methodology, for more complicated contracts
- ✓ Selection of tenderers and the award of the contract are two different stages in the procurement process. **Selection is about determining which tenderers are qualified to perform the contract to be awarded based on the pre-established selection criteria;**
- ✓ Selection Criteria must be published in the procurement notice;
- ✓ Criteria used as selection cannot be used as Award Criteria.



Selection Criteria – mistakes to avoid

- ✓ Requiring past references for previous works that are significantly higher in value and scope than the contract being tendered, unless justified and non-discriminatory;
- ✓ Requesting a long number of proposed personnel – Remember: shall be only requested key personnel;
- ✓ Requesting a long list of equipment, such as regular trucks, which may not be considered key equipment;
- ✓ Requesting compliance with a particular professional standard without using the wording 'or equivalent' ;
- ✓ Requiring qualifications or professional certificates for key staff, that are recognized in the promoter's country at the time of tender submission may be challenging for foreign bidders to meet within a limited timeframe – *see slide 13*;



Selection Criteria – Exercise

Construction of a Motorway Segment in the value of 300 Million Euros, to be executed in 36 months, and which will include the construction of a tunnel with 800 m

Please provide your proposals for selection criteria to address:

- Suitability to pursue professional activity;
- Financial and Economic Capacity;
- Technical and Professional Ability: Key Personnel, Key Equipment, General Experience, Specific Experience
- Sustainable Selection Criteria?



E. Award Criteria



Award Criteria

Lowest price vs MEAT

- Lowest price of the compliant and technically responsive tenders

OR

- Most Economically Advantageous Tender (MEAT), with criteria specific to the contract including price, payment terms, delivery times, environmental characteristics, operating costs, maintenance costs, etc.

Criteria must be indicated in the notice and quantified in tender documents. It must be applied in full without omission or addition.



Choosing Award Criteria

When to do lowest price?

- When what we are buying is well specified, the requirements are simple and no modifications can be accepted.
- Best option for simple works where the design is complete and there is little room for innovation.
- Examples: minor road works, off the shelf supplies, standardised equipment.

Any other situation, use MEAT!



How to use MEAT

MEAT is another way of saying Value for Money

- Criteria used need to be:
 - Objective
 - Quantifiable
 - Related to the subject matter
 - Criteria can be categorised:
 - Cost related
 - Non cost related
- Select carefully which technical specifications are minimum requirements and which ones can be evaluated with a score.
 - Be careful: you may end up with an offer you cannot refuse.



Cost related criteria

- Cost related criteria are the easiest to use, as they are easy to quantify.
 - These relate to costs that go beyond the cost of purchase.
 - Globally covered by Life Cycle Cost.
 - If they can be measured directly, they should be measured directly.
 - Example: losses in a transformer
 - If they cannot be measured:
 - Estimate them independently
 - Make them contractually binding
- Evaluation criteria that are not binding are very dangerous: contractor may not comply with them.



Non-Cost related criteria (I)

Sometimes referred to as "Merit points" or "Rated criteria"

- Harder to apply, as they are hard to quantify objectively
 - quality
 - technical merit
 - aesthetic and functional characteristics
 - delivery date
 - after-sales services
- Unavoidable in some procurements (consultancy services)
- As far as possible an evaluation methodology should be set at the same time as the criterion is set
- Focus on key criteria rather than having a large number
- Weighting is essential to have a good value for money.



Non-Cost related criteria (II)

- Usually best used in combination with a minimum requirement.
 - Example: equipment must be delivered at the latest in X months, additional points for early delivery.
 - Example: Key personnel must have at least 10 years experience, additional points for more experience.
- Should be thought through and consider the actual value for money.
- If minimum requirements are not clear, it may be better to allow variants rather than have a very complex evaluation.
- If not well weighted, tenderers will find the way to game the system.



Sustainable Award Criteria

Needs to be linked with the subject-matter of the contract:

award criteria cannot relate to general corporate policies or practices, but must be specific to the goods, services or works being purchased (at any stage of their life cycle).

Sustainable Award Criteria needs to :

- not give the contracting authority an unrestricted freedom of choice.
- be explicitly mentioned in the contract notice and tender documents, together with their weighting and any sub-criteria.
- not be previous used as selection/qualification criteria.
- comply with the fundamental principles of EU law.



Sustainable Award Criteria - Examples

- ✓ In Spain, in the Basque Country, at least 5% of the points awarded under the award criteria must relate to gender equality.
- ✓ Preference to companies that commit to employ more women in their workforce.
- ✓ Building's energy and environmental sustainability certification
- ✓ Award points to tenderers that achieve more than 30% by value of recycled content and/or by-products for the main building elements. The recycled content is calculated as an average mass balance of recycled materials.
- ✓ Award points if bidders commit to employing % of workers from a disadvantage group
- ✓ Awarding points for components which carry a specific social or ethical label/certification



F. Consultancy Services



Consultancy Services – REOI Stage

- ✓ In line with Section 4 of the EIB GtP, open or restricted procedures are the default procurement procedures for the selection of consultancy services;
- ✓ Due to the specific nature of such procurement, the Bank finds the **use of Restricted Procedure more efficient** than Open;
- ✓ In a Restricted Procedure, the promoter undertakes a prequalification or **Request for Expression of interest (REOI) and then issues the RFP (Request for Proposals) only to those prequalified**
- ✓ **At REOI phase only the eligibility, qualifications and experience of the firm; such as core business and years in business, relevant experience, technical and managerial capability of the firm shall be assessed;**
- ✓ **Qualifications and experience of the Key experts shall not be evaluated at shortlisting stage and the CVs shall not be required. This is reserved for the RFP stage.**



Consultancy Services – RFP Stage

- ✓ At RFP Stage shall be used criteria to ensure that the proposal selected for contract award will offer the best quality for the services required. Criteria used at REOI stage shall not be included at RFP stage;
- ✓ Criteria may include:
 - the consultant’s specific experience;
 - the understanding of the terms of reference and scope of the services;
 - the methodology proposed for the services;
 - the qualifications and experience of key personnel who will render the services;
 - international, regional and local experience; and
 - the proposed work programme
- ✓ Price may be considered a factor for Contract Award , but it should have less weight than the other factors.
- ✓ Weights for each criteria and sub-criteria need to be published and included in the RFP.

Thank You!
Questions?

