



Corporate Support Department

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# **Working with EIOPA**

## **A Guide to Procurement**

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## 1. Disclaimer

This document is designed to guide prospective tenderers through the procurement process – from necessary qualifications and minimum requirements to the award of the contract. The guide aims to provide general information and answer the most common questions. Its goal is not to address specific circumstances or any particular entity or individual.

Information in this guide is subject to change. The laws and regulations this guide is based on can be found at the end of this document. Please consult these and the procurement documents in case you have a specific question this guide can't answer or you wish to make sure that a particular section of this document is up to date.

Information on currently **active procurement procedures** can be found on **EIOPA's** website: <https://eiopa.europa.eu/about-eiopa/procurement>

You can find further information not included in this guide in the procurement documents of each tendering procedure. This guide strives to complement the information you can find on our website and in the specific procurement documents.. The information in the procurement documents always takes precedence over the information found in this guide.

## 2. Who can submit a tender?

All natural and legal persons falling under the scope of the EU treaties are eligible to submit a tender. If the tender is submitted as a consortium of companies, each of the companies involved in the tender must be registered in the EU. Companies established in third countries (non-EU countries) are not eligible to participate in the procurement process unless otherwise stated in the procurement documents.

The rules regarding economic operators from third countries can be found in Articles 119 and 120 of the Financial Regulation.

Intergovernmental organisations, such as the World Bank or United Nations, are generally ineligible as they don't fall under the scope of the EU treaties.

### **For prospective tenderers from the UK:**

Please be aware that after the UK's withdrawal from the EU, the rules of access to EU procurement procedures of prospective tenderers established in third countries may apply to prospective tenderers from the UK, depending on the outcome of the negotiations. In case such access is not provided by legal provisions in force, prospective tenderers from the UK could be rejected from the procurement procedure.

### **2.1. Consortium of companies**

A joint tender is a tender submitted by two or more economic operators. Unless stated otherwise in the tender specifications, joint tenders are welcome.

Especially for tenders that cover a range of services or goods, separate economic operators may choose to band together and submit a tender that includes their combined services or supplies. There is no specific legal form that is required to submit a joint tender; the operators can be in a permanent legal grouping or band together only to satisfy the technical and/or financial requirements described in the tender specifications.

If you choose to submit a tender together with one or more other economic operators, each of the operators must be eligible. The tender must clearly indicate who will be in charge of which parts of the tender. Furthermore, the consortium must pick a contract leader who will act as the point of contact for **EIOPA**. This person will need to be authorised by each of the legal entities involved in the tender, and must possess a power of attorney to prove his or her authorisation.

The chosen consortium leader will also be the person signing the contract. There is only one contract; the consortium is jointly and severally liable for the services or goods provided as a whole. It is not possible to sign more than one contract, or to limit liability for each operator in the consortium. Requests of that nature in a tender will be disregarded. **EIOPA** further reserves the right to reject a tender with such statements based on non-compliance with the tender specifications.

There may be no change in the consortium after the signature. **EIOPA** reserves the right to terminate the contract if such violations are found.

**Exclusion criteria:** Each entity will be evaluated separately to ensure they meet the exclusion criteria. If one of the entities in the consortium does not meet the exclusion criteria, the consortium as a whole is not eligible to submit a tender.

**Selection criteria:** The consortium will be evaluated in its entirety to ensure the selection criteria are met.

**Award criteria:** The tender will be evaluated in its entirety to ensure the award criteria are met.

### **3. What are the different types of contract?**

There are a number of different contracts offered through the procurement procedure, based on the value, repetitiveness and type of services or goods required. The following contracts are those most commonly used.

#### **3.1. Direct contract**

A direct contract can be used for services as well as goods. It is typically used if the precise volume and timing of the delivery can be defined at the outset. A direct contract is typically used for supplies or services that are only needed once.

Once the direct contract has been signed, it can be implemented immediately without the need for further formalities or procedures.

Example: Development of graphic design and consumer testing in a number of Member States of the European Union was purchased through a direct contract.

#### **3.2. Framework contract**

A framework contract can be used for services as well as goods. It is typically used if the exact volume and timing of the delivery cannot be defined at the outset. It can be used for repetitive services and supplies, such as office supplies or cleaning services.

The exact volumes and timing of the deliveries will be laid down in *specific contracts* or *order forms* after the framework contract has been signed. The *specific contracts* and *order forms* are based on the conditions laid out in the framework contract; those conditions are not subject to change and each subsequent delivery must adhere to them.

Example: A framework contract is entered with a company that provides different types of trainings, in order to provide trainings when necessary.

There are several different types of framework contracts. In order to find out which one applies to a specific procurement procedure, please read through the procurement documents.

## **4. What are the different types of procurement procedures?**

As well as different types of contracts, there are also different procedures of procurement depending on several factors as outlined below.

### **4.1. Open procedure**

The open procedure may be used for any contract.

The procedure is started by publishing the contract notice in the Official Journal<sup>1</sup>. Active procurement procedures are easily accessible via EIOPA's website or TED (Tenders Electronic Daily)<sup>2</sup>. Procurement documents for all active procedures are available on TED also.

There is only one step in the open procedure; any economic operator eligible to submit a tender can participate.

The tenderers are furthermore invited to attend the opening session, which is public in this procedure.

### **4.2. Restricted procedure**

The restricted procedure may be used for any contract.

Just like the open procedure, it starts with the publication of the contract notice in the Official Journal. Together with the contract notice, **EIOPA** makes the procurement documents available in electronic format.

However, the restricted procedure has two steps rather than one.

During the first step, only the exclusion and selection criteria are evaluated. Any eligible entity may participate in the first step.

When **EIOPA** has evaluated all participants, invitations are sent out to those participants that meet the criteria. Only the participants that receive an invitation may submit a tender that will be evaluated in the second part of the procedure – the evaluation of the award criteria.

A restricted procedure is commonly used if a large number of tenders is expected; to avoid that tenderers who don't meet the selection criteria make an unnecessary effort in preparing a tender; to know the maximum number of tenders in advance (to plan the evaluation accordingly); for security or confidentiality; or if a site visit is necessary before the tenders can be submitted.

### **4.3. Negotiated procedure**

The negotiated procedure may be used for contracts with an estimated value equal to or below EUR 144,000<sup>3</sup>.

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<sup>1</sup> <http://eur-lex.europa.eu/oj/direct-access.html>

<sup>2</sup> <http://www.ted.europa.eu/TED/misc/chooseLanguage.do>

<sup>3</sup> The thresholds mentioned in the document may be revised every two years; they are applicable from 1<sup>st</sup> of January of even years.

In this procedure, **EIOPA** makes a list of potential contractors based on **EIOPA's** needs and the contractors' field of activity. Ex-ante publicity must be published on the website, allowing prospective tenderers to express interest. The potential contractors are then invited to submit a tender.

Only the tenders submitted by the invited candidates are evaluated. The conditions of the tenders might be negotiated in order to improve their quality. These negotiations must be on equal terms for all tenderers.

#### **4.4. Competitive procedure with negotiation**

The competitive procedure with negotiation is very similar to the restricted procedure.

The contract notice is published in the Official Journal, during the first step, only the exclusion and selection criteria are evaluated. **EIOPA** sends invitations to those participants that meet the criteria and only those participants may submit a tender.

The difference between the restricted procedure and the competitive procedure with negotiation is the negotiation taking place after the tenders have been submitted. Specifically the financial and technical offers are open to negotiations in this procedure.

This procedure may only be used under specific circumstances and will be announced in the contract notice.

#### **4.5. Call for expressions of interest**

**EIOPA** may publish a call for expression of interest on the **EIOPA** website and in the Official Journal to establish either a list of pre-selected candidates or a list of vendors. Interested economic operators may reply to this call and to express their interest.

List of pre-selected candidates: only those candidates that meet the announced exclusion and selection criteria are included in the list. Once a need arises, all candidates are invited to submit a tender.

List of vendors: Any economic operator that expressed interest is included in the list. Once a need arises, all vendors are invited to submit a tender.

The call for expressions of interest is valid for up to four years from the date on which the call is published in the Official Journal. Anyone who is interested may apply/register to the list at any time during this period, except the last three months.

## **5. What should I consider before I submit a tender?**

It is important to read the contract notice and the procurement documents (invitation, tender specifications and draft contract) thoroughly before preparing a tender to save time and effort for both the prospective tenderer and the contracting authority.

Apart from the minimum requirements and criteria already mentioned, there are several other points to consider before submitting a tender.

### **5.1. Value**

The value of the contract listed in the procurement documents is an estimate. Due to the nature of procurement, an exact price can typically not be named. That means that the estimated price listed isn't the actual value of the contract, it is an estimate.

Tenders that offer the desired services or supplies for more than the maximum value estimated will typically be rejected due to non-compliance with the financial specifications.

Tenders that offer the desired services or supplies for less than the maximum value estimated may be considered (if all the other requirements are met) and may be awarded the contract. If that is the case, the price specified on the tender will be paid, not the estimated value of the contract.

## **5.2. Lots**

A procurement procedure may be divided into lots; it will be announced explicitly in the contract notice if that is the case.

Typically, procurement procedures are divided into lots to make the procedure accessible for a wider range of economic operators. It allows entities that excel in one of the lots but cannot offer services or supplies for a different lot to join the procedure whereas they would have failed the minimum requirements had the procedure not been divided.

Tenderers can submit tenders for one or more lots. They cannot divide the lots further and only submit a partial tender for a lot. Furthermore, a tender for one of the lots must not depend on being awarded a different lot. Those actions do not comply with the tender specifications part of the procurement documents and are grounds for rejection.

## **5.3. Derivation from requirements**

There may be no derivations from financial or technical standards unless explicitly stated otherwise. If a tender departs from the requirements, **EIOPA** may either disregard or reject the derivation without further evaluation based on non-compliance with the tender specifications.

Furthermore, a tender that does not meet the minimum requirements will not be evaluated further.

## **6. How do I submit a tender and what are the consequences?**

The specifications for submitting a tender can be found in the procurement documents, specifically the invitation to tender and the tender specifications. Please read these documents thoroughly before submitting your tender and make sure that it does not stray from the specifications listed there.

### **6.1. Protection of personal data & confidentiality**

Personal data will be processed pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Unless indicated otherwise, your replies to the questions and any personal data requested are required to evaluate your tender in accordance with the specifications of the invitation to tender and will be processed solely for that purpose by EIOPA's Executive Director acting as data controller.

Details concerning the processing of your personal data are available on the website of EIOPA<sup>4</sup>.

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<sup>4</sup> <https://eiopa.europa.eu/about-eiopa/procurement>

Your personal data may be registered in the Early Detection and Exclusion System (EDES) if you are in one of the situations mentioned in Article 106 of the Financial Regulation<sup>5</sup>

For more information, please see: [here](#)

## **6.2. Contact between EIOPA and tenderers**

Should additional information be needed before the closing date for tender submission, the prospective tenderers may contact **EIOPA** as specified in the procurement documents (invitation to tender). The request for additional information must be received by EIOPA at least six working days prior to the closing date. **EIOPA** is not bound to reply to requests made less than six working days prior to the closing date.

Any information given to one tenderer will be given to all other tenderers in an identical manner. The additional information should be regarded as part of the procurement documents.

After the closing date for tender submission, **EIOPA** may contact the tenderer to request correction of obvious clerical errors in the tender. The tender may be rejected if the correction contradicts the original tender or modifies its overall terms.

## **6.3. Acceptance of terms and conditions**

By submitting a tender for a procurement procedure, the tenderer accepts all the terms and conditions stated in the procurement documents and waives their own terms of business. Any disclaimer to the contrary will be disregarded by **EIOPA**, and **EIOPA** may reject the tender without further information based on non-compliance with the tender specifications part of the procurement documents.

## **6.4. Period of validity and modifications**

Typically, tenderers will be bound to their tender for **six months** counting from the closing date for tender submissions, unless stated otherwise in the tender specifications. The tender cannot be modified after submission unless the changes regard administrative issues such as a changed bank account. The deadlines and other contract specifications are binding. If they are not respected, the tenderer may have to pay liquidated damages to **EIOPA**.

## **6.5. No obligation on EIOPA to award**

A procurement procedure serves the purpose of awarding a contract to a tenderer after evaluation. However, EIOPA may not award a contract at all for a number of reasons, or cancel the procedure before the contract could be awarded. Any publication does not mean EIOPA is obligated to award the contract, nor is EIOPA liable for compensation in any such circumstances.

## **7. Evaluation and results**

Depending on the value of the contract and the procurement procedure, submitted tenders will be evaluated by a committee or by the procurement team.

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<sup>5</sup> For more information, see the privacy statement on: [http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/legal\\_entities/legal\\_entities\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm)), or [http://ec.europa.eu/budget/explained/management/protecting/protect\\_en.cfm](http://ec.europa.eu/budget/explained/management/protecting/protect_en.cfm) )

## 7.1. Opening of tenders

For contracts with a value of more than EUR 144,000, **EIOPA** appoints an *opening committee* to open the tenders. If the tender was submitted in an open procedure, a representative of each tenderer may be present during the opening. Further details about the opening of tenders are provided in the invitation letter for the specific procurement procedure.

During the opening session, each tender is checked for compliance with the submission requirements, specifically whether the closing date for the reception of tenders was respected and whether the tenders were protected until the official opening. Tenders that do not comply with those requirements may be rejected without further evaluation. An opening report will be sent to a tenderer only upon request.

## 7.2. Evaluation of tenders

For contracts with a value of more than EUR 144,000, **EIOPA** appoints an *evaluation committee*. The evaluation committee must work under confidentiality and without conflicts of interests; to ensure these conditions are met, each member of the committee must sign a Declaration on their Honour.

Only the tenders that comply with the requirements assessed during the opening of the tenders are further evaluated. The evaluation takes place in steps, and only those tenders meeting the requirements of the first step will be admitted to the second step, etc.

The following steps do not have to be performed in the order they are listed here, however the order stated in this guide is the most commonly used one.

The first step is the assessment against the **exclusion criteria**. The exclusion criteria determine the eligibility of a participant. They are set out in Article 106<sup>6</sup> of the Financial Regulations and include:

1. tenderers that are bankrupt, subject to insolvency or winding-up procedures, in arrangement with creditors, whose assets are being administered by a liquidator or a court, whose business activities are suspended or who are in a similar situation provided for under national laws or regulations;
2. tenderers that are in breach of their obligations relating to the payment of taxes or social security contributions;
3. tenderers that have been guilty of grave professional misconduct;
4. tenderers that have been guilty of fraud, corruption, participation in a criminal organisation, money laundering or terrorist financing, terrorist-related offences or offences linked to terrorist activities, child labour or other forms of human trafficking;
5. tenderers that have shown deficiencies in complying with main obligations in the performance of a contract financed by the budget;
6. tenderers that have committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95.

Additionally, tenderers must not be subject to a conflict of interests and must not be guilty of presenting false information or failing to provide information. In order to provide evidence for this step, tenderers must submit a Declaration of Honour with their tenders for contracts with a value above EUR 15,000.

Those tenders that have not been excluded move on to the next stage of assessment, where the **selection criteria** is evaluated. The committee evaluates the economic

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<sup>6</sup> [http://ec.europa.eu/smart-regulation/evaluation/docs/syn\\_pub\\_rf\\_mode\\_en.pdf](http://ec.europa.eu/smart-regulation/evaluation/docs/syn_pub_rf_mode_en.pdf)

and financial capacity as well as the technical and professional capacity of each tenderer. The documents necessary for this step are stated in the tender specifications and must be submitted together with the tender.

The third and final step of the evaluation is the assessment of the **award criteria**. The specific award criteria are stated in the tender specifications and no other criteria must be used during the assessment.

No matter which order is chosen during the evaluation process, each tender must meet the minimum requirements or it cannot be considered for the award of the contract and will be rejected without further evaluation.

The quality of the tender is evaluated first, as stated in the tender specifications. Each tender must meet the minimum quality requirement necessary to satisfy **EIOPA's** needs. Weightings might be assigned to each criterion, and each tender will be assigned an overall quality score at the end of the evaluation which determines whether the tender meets the minimum quality threshold.

Those tenders that meet the minimum requirements of the technical evaluation will then undergo a financial evaluation. Any tenders exceeding the maximum budget as specified in the procurement documents may be eliminated.

Finally, the tender that offers the best value for money will be identified by comparing the overall quality score to the price. Typically, the tender with the best value for money will be awarded the contract.

If the procurement documents do not state that the tender, with the best value for money will be chosen, instead the tender with the lowest price will be identified and awarded the contract, as long as all the minimum requirements are met.

The tender specifications further specify the criteria used in each of the steps and should be consulted for more details.

### **7.3. Results**

The **authorising officer** decides to whom the contract should be awarded based on the results of the evaluation committee's proposal. Once the decision has been made, every tenderer in the procurement procedure will simultaneously receive a notification via e-mail.

A **standstill period** of at least ten calendar days counting from the dispatch of the notification letters must pass before the contract can be signed. If a contract is signed before the waiting period is over, it is considered null and void. The waiting period allows the unsuccessful tenderers the chance to request additional information.

Once the contract is signed, an **award notice** must be published to the Official Journal if the contract value exceeds the threshold; the award notice must include a summary of the procurement procedure. Contracts below the threshold must be published on **EIOPA's** website in a list of contracts concluded in the previous year whose values lay between EUR 15,000 and EUR 144,000.

## **8. Legal Framework**

**EIOPA** is an autonomous EU Agency and therefore has its own Financial Regulation and Financial Implementing Rules.

The **European Insurance and Occupational Pensions Authority** adopted by analogy the Title V "Procurement" of the Financial Regulation applicable to the general budget of the Union and its rules of application - Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012, as

amended by Regulation (EU, Euratom) 2015/1929<sup>7</sup> of the European Parliament and of the Council of 28 October 2015 and Commission Delegated Regulation (EU) No 1268/2012<sup>8</sup> of 29 October 2012, as amended by Commission Delegated Regulation (EU) 2015/2462 of 30 October 2015.

General questions related to **EIOPA** procurement procedures should be addressed to [procurement@eiopa.europa.eu](mailto:procurement@eiopa.europa.eu).

## 9. Useful links

**EIOPA** Procurement:

<https://eiopa.europa.eu/about-eiopa/procurement>

**EIOPA** Privacy Statement:

<https://eiopa.europa.eu/Publications/Administrative/EIOPA%2015%20325%20privacy%20statement%20for%20procurement%20final.pdf>

**TED** (Tenders Electronic Daily):

<http://www.ted.europa.eu/TED/misc/chooseLanguage.do>

**EUROPA website** (EU tenders and contracts):

[https://europa.eu/european-union/topics\\_en](https://europa.eu/european-union/topics_en)

**European Commission** (Information for contractors):

[http://ec.europa.eu/budget/contracts\\_grants/info\\_contracts/index\\_en.cfm](http://ec.europa.eu/budget/contracts_grants/info_contracts/index_en.cfm)

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<sup>7</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2015:286:FULL&from=FR>

<sup>8</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL\\_2015\\_342\\_R\\_0002&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_342_R_0002&from=EN)