

**EXECUTIVE COMMITTEE**

**Decision**

**Applicable to the procurement of goods, services and works financed by contributions of the Government of the Grand Duchy of Luxembourg or other donors and for which the Luxembourg Agency for development Cooperation (Lux-Development) acts as awarding authority**

**The Lux-Development executive committee,**

Considering the international commitments to which the Grand Duchy of Luxembourg has subscribed;

Considering the international agreements on the environment, sustainable development and combating climate change;

Considering the covenant between the State of the Grand Duchy of Luxembourg and the Luxembourg Agency for development Cooperation “Lux-Development”;

Considering the articles of association of the Luxembourg Agency for development Cooperation “Lux-Development”;

Considering the regulations of the executive committee of Lux-Development;

Considering the delegation of validation and signature authority for contractual commitments for operating capital;

Considering the directive 2014/24/EU of the European Parliament and of the council of 26 February 2014 on public procurement and repealing directive 2004/18/EC;

Considering the law of the 08 April 2018 on public contracts;

Considering the procedures and models in the Lux-Development’s Quality Manual (QM).

**AND TAKING INTO ACCOUNT THE FOLLOWING:**

- (1) Article 1 of the covenant between the State and Lux-Development, stipulating that “in the framework of its development cooperation policy, the State entrusts the Agency with the implementation of bilateral development cooperation programmes” and that “in carrying out its tasks, the Agency complies with the political commitments made by the State at the international level”;
- (2) Article 18 of the covenant between the State and Lux-Development states that, “as part of its mandates, the agency respects, and ensures that are respected, the fundamental principles of the State’s public procurement legislation, namely equal treatment, non-discrimination, transparency and proportionality”;

- (3) The same article 18 of the covenant between the State and Lux-Development also provides that “in the case of contracts for which the authorities of the partner countries are the awarding authorities, the national standards in force in these countries shall apply, unless the parties have agreed to the application of other rules”;
- (4) With the agreement of the State of the Grand Duchy of Luxembourg, the Agency may be lead to implement bilateral development cooperation projects of other donors;
- (5) There is good cause to establish general regulations for the procurement of goods, services and works which comply with the above-mentioned commitments and other commitments that the Agency may take towards other donors.

**HEREBY DECIDES:**

Article 1

**General regulations**

The procurement of goods, services and works within the implementation of projects / programmes financed by contributions of the Government of the Grand Duchy of Luxembourg or other donors and for which Lux-Development acts as the awarding authority shall be governed by the general regulations “applicable to the procurement of goods, services and works financed by the contributions of the Government of the Grand Duchy of Luxembourg or other donors and for which the Luxembourg Agency for development Cooperation (Lux-Development) acts as awarding authority” hereinafter referred to as “general regulations”.

Article 2

**General conditions of contracts and model documents**

Contracts for goods, services and works financed by contributions of the Government of the Grand Duchy of Luxembourg (or other donors) and for which Lux-Development acts as awarding authority shall be governed by:

- a) the general conditions for goods, services and works contracts as approved by the executive committee and as they appear in the Lux-Development QM.
- b) the model documents for goods, services and works contracts as approved by the executive committee and as they appear in the Lux-Development QM.

Article 3

**Revision**

The general regulations, the general conditions of contracts and the model documents for goods, services and works contracts referred to in the previous article may be revised under the specified provisions for revisions of the Lux-Development QM.

Article 4

**Application**

The general regulations, the general conditions of contracts and the model documents for goods, services and works contracts referred to in the previous articles shall apply, directly or by extension, to all contracts financed by contributions of the Government of the Grand Duchy of Luxembourg or other donors for which Lux-Development is the awarding authority.

Where the partner countries' authorities, institutions or actors act as awarding authorities following agreements signed with donors or Lux-Development, the national standards in force in these countries apply, unless agreed otherwise. However, the principles of competitive tendering and equal treatment of economic operators, in a transparent, proportional and non-discriminatory manner shall apply.

**These general regulations come into force on 15.07.2024.**



In cases where contracts are awarded directly by authorities, institutions or actors from the partner countries, Lux-Development reserves the right to ensure that the applicable legal prescriptions and above-mentioned principles are complied with.

Article 5

**Implementing measures**

This Decision will be incorporated into the Lux-Development QM with the general regulations.

Dossiers for competitive tendering will be prepared at the programme and project level with the support and follow-up of the geographical representations and/or headquarters of Lux-Development.

Dossiers for competitive tendering thus prepared will be subject to controls to ensure compliance with the applicable prescriptions stipulated in the general regulations referred to by this decision.

The compliance controls will be carried out by the department of Procedures and compliance of acquisitions at Lux-Development headquarters, or by supervisory bodies appointed by Lux-Development.

The procurement procedures and financial commitments for the award and performance of goods, services and works contracts for which Lux-Development acts as the donor's representative will be authorised or signed by persons with sufficient validation or signature authority according to Lux-Development's delegation of validation and signature authority.

## GENERAL REGULATIONS

Applicable to the procurement of goods, services and works financed by the contributions of the Government of the Grand Duchy of Luxembourg or other donors and for which the Luxembourg Agency for development Cooperation (Lux-Development) acts as awarding authority

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## **GENERAL REGULATIONS**

Applicable to the procurement of goods, services and works financed by the contributions of the Government of the Grand Duchy of Luxembourg or other donors and for which the Luxembourg Agency for development Cooperation (Lux-Development) acts as awarding authority

### **1. PART I - BASIC RULES GOVERNING ALL PROCUREMENTS**

#### **1.1. INTRODUCTION**

All procurements financed by contributions of the Government of the Grand Duchy of Luxembourg (or other donors) and implemented by Lux-Development must obey the principles of transparency, proportionality, equal treatment and non-discrimination.

These acquisitions are set within the framework of bilateral and/or protocol agreements signed by the Government of the Grand Duchy of Luxembourg (or other donors) and the Government of the partner country. In these agreements, each party designates its implementing agency responsible for the implementation of the programme.

As part of these agreements, the Government of the Grand Duchy of Luxembourg (or other donors) undertakes to cofinance the implementation of projects or programmes, provided the clauses of the agreements and the implementation procedures agreed between the parties are complied with.

In this document, and in all other documents described hereafter, the term “donor’s representative” refers to Lux-Development.

These general regulations shall govern the award of contracts for the acquisition of goods, services and works financed by the contributions of the Government of the Grand Duchy of Luxembourg or other donors and for which Lux-Development is the awarding authority.

The general regulations contain the principles and conditions of participation in tenders as well as the principles and conditions of procurement.

A procurement is said to be under direct management of Lux-Development if it is implemented through Lux-Development’s internal agents and according to its own procedures.

In this first case, all contracts are to be made in the name and on behalf of the projects. For each contract, the two designated implementing agencies shall agree, at the beginning of each acquisition procedure, which of them shall act as the contracting authority on behalf of the project.

When procurements financed by the contributions of the Government of the Grand Duchy of Luxembourg (or other donors) are initiated by the authorities, institutions or actors of the partner countries as awarding authorities following agreements signed with Lux-Development, the contract award shall be governed by the procedures and procurement documents prescribed by the national legislation of the relevant partner country or by relevant internal procedures of which Lux-Development has had prior knowledge.

In this second case, all contracts are to be made in the name and on behalf of the agreed awarding authority and/or contracting authority of the relevant partner country. Procurement and implementation of these contracts shall be done without direct intervention of Lux-Development and without having the responsibility of the latter engaged. Control of administrative compliance only might be performed as foreseen in the agreements signed with Lux-Development.

However, the principles of competitive tendering, proportionality and treatment of economic operators on equal terms, in a non-discriminatory way and in all transparency, as stipulated in these present general regulations, remain applicable.

In any case, documents of competitive tendering must clearly state the source of financing, the awarding authority and the contracting authority.

As a consequence, the performance of contracts for the acquisition of goods, services and works financed by the Government of the Grand Duchy of Luxembourg (or other donors) shall be governed by:

- a) either the special conditions and the general conditions of contracts of Lux-Development’s QM applicable to each type of procurement for which the national implementing agency or Lux-Development is the contracting authority on behalf of the project;
- b) or the special and general conditions prescribed by the national legislation of the partner country concerned.

The Tender Dossier (TD) applicable to each procurement must comprise all contractual clauses of an administrative, financial, legal and technical nature relating to the performance of contracts.

The special conditions applicable to each contract comprise the necessary modifications to the general conditions, special contractual clauses, technical specifications and any other matter related to the contract.

Should an awarding or a contracting authority fail to adhere directly or by extension to the procurement measures provided for in these general regulations and in the applicable special and general conditions of contracts, Lux-Development acting as the donor’s representative reserves the right to suspend, withhold or recover funding for the contracts under suspicion.

In all procurement related matters that are not covered by these general regulations, the national law of the awarding authority shall apply.

## **1.2. ELIGIBILITY FOR CONTRACTS**

The provisions governing who may participate in tender procedures and contracts are termed “eligibility criteria”.

### **1.2.1. Rules on nationality and origin**

Participation in tender procedures and in the award of contracts financed by contributions of the Grand Duchy of Luxembourg (or other donors) shall be open on equal terms and without distinction of origin to any economic operators.

By economic operator, it is understood: any natural or legal person or public entity, or any group of such persons and/or entities, including any temporary association of companies, which offers to carry out works, supply goods or provide services.

### **1.2.2. Grounds for exclusion from contracts**

Economic operators are not entitled to participate in competitive tendering or be awarded contracts where:

- a) they are bankrupt, insolvency or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended or ceased business activities or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they are the subject of proceedings for a declaration of bankruptcy, for winding-up, for administration by the courts, for an arrangement with creditors or for any similar procedure provided for in national legislation or regulations;
- c) they have been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata;
- d) they have been convicted of an offence concerning environmental crimes or acts against environmental regulations and legislations (regardless of the country), by a judgment which has the force of res judicata;
- e) they have been convicted by a final judgment for conduct related to corruption and corruption of foreign public officials;
- f) they have not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country where they are established;
- g) they have not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country where they are established;
- h) they are guilty of serious misrepresentation in supplying the information required by the Contracting Authorities as a condition of participation in a tender procedure or contract;

- i) they are or have been declared in breach of contract for failure to comply with their contractual obligations in connection with another contract concluded with the same contracting authority or in the framework of another contract financed by contributions of the Grand Duchy of Luxembourg;
- j) they are prohibited from participating in calls for tenders from other donors or are barred from public procurement in one of the partner countries;
- k) they have been subject of a final judgment or a final administrative decision for conducts related to a criminal organisation;
- l) they have been subject of a final judgment or a final administrative decision concerning the establishment of an entity with the intention of tax evasion, social or other legal obligations applicable according to the legal provisions of the country where it is established or those of the country of the contracting authority;
- m) they are in one of the situations allowing exclusion referred to in article 1.9. “Ethics clauses” in connection with the tender or contract;
- n) they have been subject of a final judgment or final administrative decision for human rights violations, including but not limited to child labour and other forms of human trafficking.

If the signatory of this statement of good standing is in one of the situations of exclusion mentioned above, he must indicate the corrective measures he has taken to put it right in order to demonstrate his reliability.

A case-by-case analysis will be carried out by the evaluation committee to determine whether it is legitimate to continue the procedure with this tenderer.

### **1.2.3. Participation on equal terms**

The partner countries and the donor’s representative shall take the necessary measures to ensure the broadest participation possible on equal terms in invitations to tender for goods, services and works contracts, including, as appropriate, measures to:

- a) ensure publication of invitations to tender in the written media, the Internet and/or any other appropriate information media;
- b) eliminate discriminatory practices or technical specifications which might deter broad participation on equal terms;
- c) ensure that all award criteria are specified in the TD;
- d) ensure that the selected tender complies with the requirements of the TD and meets the award criteria stated therein.

### **1.3. STANDARD PROCUREMENT PROCEDURES**

The basic principle governing procurement is competitive tendering. The purpose is twofold:

- a) to ensure the transparency of operations;
- b) to obtain the desired quality of goods, services or works at the best possible price.

There are several different procedures for awarding contracts, each allowing for a different degree of competition. The thresholds and categories of the various modalities relating to the competitive tendering procedures and advertisement of goods, services and works tenders are given in appendix 1 "Acquisition categories, thresholds and summary of applicable standard procedures".

#### **1.3.1. Open procedure**

Procedure in which any economic operator or group of such persons may submit a tender, following publication of a tender notice.

The open procedure involves an open invitation to take part in competitive tendering. The procurement is given adequate publicity through the publication of a tender notice on the Internet, in the partner country's national and/or local newspapers and in any other appropriate media.

Under the open procedure, any economic operator wishing to tender receives, upon request, the TD (which may have to be paid for), in accordance with the arrangements laid down in the tender notice. These entities must give their correct identity and contact details at the time they request/receive the TDs so that the awarding authority can pass on to them any amendments to the TD. Entities submitting a tender that have not communicated their identity and contact details to the awarding authority may not hold the latter if their tender is rejected for failing to comply with the specifications of the TD and any amendments to the TD communicated to the tenderers.

The choice of the awardee is made when tenders are examined. The procurement is awarded by conducting the selection procedure (i.e. verification of the eligibility and of the financial, economic, technical and professional capacity of tenderers) and the award procedure (i.e. comparison of tenders), in accordance with article 1.6. "Selection and award criteria".

No negotiation is allowed.

#### **1.3.2. Restricted procedure with publication**

Procedure in which only the candidates invited by the awarding authority following the publication of a tender notice/Call for Expressions of Interest (C-EOI), may submit a tender.

Under the restricted procedure with publication, the awarding authority invites a limited number of candidates to tender. Before launching the tender procedure, it draws up a shortlist of candidates selected as a result of their qualifications on the basis of a published tender notice/C-EOI.

The selection procedure, by which the long list (all candidates responding to the published notice) is cut down to a shortlist, involves examining responses to a tender notice published on the Internet, in the partner country's national and/or local newspapers and in any other appropriate media.

In the second stage of the procedure, the awarding authority invites tenders from shortlisted candidates only, sending them the TD. The successful tenderer is chosen by the award procedure once the tenders have been analysed (see article 1.6. "Selection and award criteria").

No negotiation is allowed.

#### **1.3.3. Simplified restricted procedure**

Procedure in which only the candidates invited by the awarding authority may submit a tender, without any prior publication of a tender notice.

Under the simplified restricted procedure, the awarding authority, after having verified the interest, availability and capacity of the candidates, draws up a shortlist composed of at least three candidates who will receive the TD. At the end of the procedure, the awarding authority selects the most economically advantageous tender.

Negotiation is allowed, subject to three conditions:

- i) that the initial terms and conditions of the tender are not significantly altered;
- ii) that the modifications only relate to adjustments to administrative, technical or financial aspects of the tenders, and do not substantially change the tender(s) received;
- iii) that the principles of transparency, proportionality, equal treatment and fair competition are abided by.

Subject to these conditions, the evaluation committee may, if it deems it necessary, enter into negotiations with (i) the sole tenderer that has submitted an offer, or (ii) the tenderer that, under the terms of the TD, has submitted the highest ranked offer, or (iii) tenderers that have submitted tenders which are substantially compliant and most economically advantageous provided that there are no fully compliant and economically advantageous offers.

For reasons of transparency, there must always be a written record of such negotiations, which must include, as a minimum, written acceptance by the successful tenderer of the conditions finally negotiated, before the contract is signed. The evaluation reports submitted to the donor's representative shall always contain a summary of the main points of negotiations.

#### 1.3.4. Prudent purchasing

The person responsible for the purchase seeks to identify the most economically advantageous provider and, depending on the amount, proceeds either directly or after requesting at least three different quotations, with the purchase order in a prudent manner, respecting the principles of sound economic management of public funds.

Negotiation is recommended when circumstances allow it, in order to obtain the most economically advantageous tender.

For reasons of transparency, the different steps of such a purchase shall always be documented in writing on file.

#### 1.4. EXCEPTIONAL PROCUREMENT PROCEDURES

A number of situations may require the awarding authority to depart from the normal procedures set out above. The various exceptional procedures are listed below.

##### 1.4.1. Negotiated procedure

Procedure in which the awarding authority, without prior publication of a tender notice, consults the candidate(s) of its choice and negotiates the terms and conditions of the performance with one or more of them.

All contracts, irrespective of their value or type, may be awarded by negotiated procedure, after written prior agreement from the donor's representative.

The negotiated procedure must remain an exception to the rule and must be previously approved in writing by the donor's representative.

In general, the negotiated procedure can be used in the following exceptional cases:

a) for the award of contracts:

- where unforeseeable events oblige the contracting authority to act with an urgency incompatible with the periods laid down for the standard procedures. The circumstances invoked to justify extreme urgency must in no way be attributable to the contracting authority;
- where a new contract has to be concluded after early termination of an existing contract;
- where performance of the contract is exclusively reserved for the holders of patents or licences to use patents;
- where the nature or particular characteristics of goods so warrant;

- where a tender procedure has been unsuccessful, i.e. where not qualitatively or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the awarding authority may enter into negotiations with tenderer(s) that have participated in the tender procedure, abiding strictly by the conditions set out in article 1.8. "Cancellation of a procurement procedure";
- where the contract concerned follows a design competition and must, under the rules applying, be awarded to the or a winner of the competition. In the latter case, all winners of the competition must be invited to participate in the negotiations;
- more specifically:
  - i) goods contracts: for additional deliveries by the original supplier intended either as partial replacement of goods or installations in day-to-day use or as an extension of existing goods or installations, where a change of supplier would oblige the recipient to acquire goods having different technical features which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance;
  - ii) services contracts: for services consisting in the repetition of similar services already provided and for which a new competitive bidding would present a major inconvenience, provided that the initial procurement had been awarded following the adequate procedure in regard of the total budget of the services;
  - iii) works contracts: for new works consisting in the repetition of similar works already executed and for which a new competitive bidding would present a major inconvenience, provided that the initial procurement had been awarded following the adequate procedure in regard of the total budget of the works.
- b) for complementary or additional performances to contracts which, following unforeseen circumstances, have become necessary for the performance of the contract on condition that:
  - the complementary/additional part cannot be technically or economically separated from the main contract without causing a major inconvenience for the contracting authority and is strictly necessary for its completion;
  - the financial increase does not exceed 50% of the value of the initial contract. Where several successive modifications are made, this limit applies to the value of each modification. Successive modifications must not be intended to circumvent advertising and competitive bidding requirements.

#### **1.4.2. Single source procedure**

The single source procedure is a simplified restricted procedure without publication where the shortlist is composed of a sole candidate.

All contracts, irrespective of their value or type, may be awarded by a single source procedure, after written prior agreement from the donor's representative.

The use of the single source procedure is limited to the exceptional cases listed under article 1.4.1.

#### **1.4.3. Competitive negotiated procedure**

When a country or zone is in a crisis or fragile situation (conflicts, post-conflicts, repeated cycles of violence, natural disasters, etc.) or when financed by an emergency fund, it may be necessary to adapt the procurement process to the urgency of the needs and the economic reality of the country or zone concerned.

The primary purpose of these contracts is to contribute to the restoration of essential services such as public services, utilities, communications, housing and vital supplies resulting from disasters or conflicts. They primarily aim at the supply, installation and commissioning of goods, as well as some very urgent civil works.

In such situations, the awarding authority may use flexible procedures regardless of the amount or type of contracts in order to conclude most economically advantageous contracts while ensuring the shortest possible delivery periods and respecting sound economic management of public funds. In essence, these mechanisms allow the application of derogatory, accelerated and simplified measures, mainly the simplified restricted procedure, prudent purchasing or direct implementation through specialised agencies, thereby enabling rapid, flexible and effective interventions.

The use of such procedures is limited to cases where the justification for a crisis/fragile situation is undeniable, and procurement must take place within a defined and commonly accepted framework, with the most formal competition possible. Therefore, the prior approval of the donor's representative and, where applicable, the donor is required.

#### **1.4.4. Competitive dialogue**

Competitive dialogue is an exceptional procedure in which the awarding authority conducts a dialogue with the candidates admitted to this procedure with a view to developing one or more solutions suited to its needs and on the basis of which the selected candidates will be invited to submit an offer.

This exceptional procedure is generally used where the awarding authority is not in a position to define, with sufficient precision prior to the tendering procedure, the suitable solution(s) to meet its needs.

All procurements, irrespective of their value or type, may be awarded through competitive dialogue, with the prior written agreement of the donor's representative.

Following a tender notice in which it makes known its needs and requirements, the awarding authority opens a dialogue with the selected candidates, the purpose of which is to identify and define the means to be used to best meet its needs. During this dialogue, the awarding authority can discuss all aspects of the procurement with the selected candidates.

During the dialogue, the awarding authority ensures equal treatment for all candidates. In particular, it does not, in a discriminatory manner, provide information that may benefit certain candidates over others.

The awarding authority shall continue the dialogue until it is able to identify the solution(s), after having compared them, that are likely to meet its needs.

After having declared the conclusion of the dialogue and informed the candidates, the awarding authority invites them to submit their final offer on the basis of the solution(s) chosen and specified at the end of the dialogue.

The awarding authority shall evaluate the final offers received on the basis of the award criteria set out in the TD and shall select the most economically advantageous tender.

#### **1.4.5. Special procedures**

The donor's representative may draw up and document so-called "special" procedures for specific acquisitions with special characteristics. This is particularly the case for the acquisition of formulation and evaluation services as well as for vehicles and subscriptions fees.

### **1.5. TENDERING ARRANGEMENTS**

#### **1.5.1. General**

The arrangements for competitive tendering and advertising contracts for goods, services and works depend on the cost estimate and the thresholds set out in appendix I "Acquisition categories, thresholds and summary of applicable standard procedures".

In the case of mixed contracts covering a combination of goods, services and works, the awarding authority, in agreement with the donor's representative, determines the procurement procedure to be used. This will depend on which of the components (goods, services or works) predominates, an assessment which will be made on the basis of its value and strategic importance relative to the procurement as a whole.

No procurement may be artificially split simply to evade compliance with the procedures set out in these general regulations. If there is any doubt about how to estimate the value of the contract, the awarding authority must consult the donor's representative on the matter before launching the tender(s).

For each tender, received offers are evaluated by an evaluation committee. As a general rule, representatives of the two implementing agencies, the national agency of the partner country and the donor's representative, are members of these evaluation committees. The participation of the representative of the national agency of the partner country entails the partner country's approval on the recommendation made by the committee.

Whatever the procedure used, the evaluation committee must ensure that conditions are such as to allow fair competition. Wherever there is an obvious and significant disparity between the prices proposed and the services offered by a tenderer, or a significant disparity in the prices proposed by the various tenderers, the evaluation committee must carry out checks and request any additional information necessary. The evaluation committee must keep such additional information confidential. Tenderers must routinely state that their financial offers cover all their costs, including overheads.

### **1.5.2. Sub-contracting**

Subcontracting with other economic operators may be authorised by the awarding authority in the TD on condition that it is clearly specified by the tenderer in the tender, that the subcontractor satisfies the eligibility conditions specified in article 1.2. "Eligibility for contracts" and the conditions specified in article 1.9. "Ethics clauses", and that the subcontracting is not an excessive proportion of the tender.

### **1.5.3. Approval of the partner country on awards**

Where no representative of the partner country can be made available to participate in the evaluation committee, the latter shall inform the representative of the partner country, for approval, of the amount and identity of the tenderer proposed to be awarded the contract (as well as the experts proposed in case of services). This request for approval does not constitute a request to approve the entire evaluation carried out by the evaluation committee in all its details.

The representative of the partner country may not refuse to give his approval except in case of duly motivated and justified reasons and communicated in writing to the donor's representative within five working days from the date of the request for approval.

## **1.6. SELECTION AND AWARD CRITERIA**

### **1.6.1. General**

Whether contracts are awarded by open, restricted or simplified restricted procedure, the following stages are always performed:

- a) selection procedure based on selection criteria published in the tender notice or in the TD:
  - i. verification of the eligibility of tenderers or candidates as laid down in article 1.2. "Eligibility for contracts";
  - ii. verification of the financial and economic capacities of tenderers or candidates;
  - iii. verification of the legal capacity of tenderers or candidates;
  - iv. verification of the technical and professional capacities of tenderers or candidates.

The tender notice or the TD must specify the reference criteria for these verifications.

- b) comparison of tenders on the basis of the award criteria stipulated in the tender notice or TD, using price and other pre-established criteria enabling the most economically advantageous tender to be identified.

Offers are also verified to ensure that they satisfy all conditions, procedures and specifications of the TD without substantially departing from or attaching restrictions to them. Substantial departures or restrictions are those which affect the scope, quality or execution of the contract, differ widely from the terms of the TD, limit the rights of the awarding authority or the tenderer's obligations under the contract or distort competition.

Under the open procedure, both stages a) and b) are carried out when offers are examined.

Under the restricted and simplified restricted procedure, stage a) is carried out during a first phase, when applications are examined (drawing-up of a shortlist), and stage b) during the second phase (tender), when offers are examined.

The person from the donor's representative who carries out the compliance verification of the award proposal must not be a member, for the same contract, of the evaluation committee.

### **1.6.2. Cases of abnormally low tenders**

The evaluation committee may, if it deems it necessary or at the request of the donor's representative, ask the tenderers to justify their prices, in particular if there is an obvious and significant disparity between the prices of the tenders received or between the prices of the tenders and the cost estimate.

A disparity is significant if an offer deviates by more than 15% from the arithmetic average of the prices of all tenders received, excluding the highest and the lowest tenders (this rule is not applicable if fewer than five compliant tenders have been received).

The price justification shall be made by means of an analysis of unit prices and costing factors or according to a methodological scheme to be communicated to the tenderer by the evaluation committee.

The request for a price justification is to be made in writing. The time limit granted to justify its price must be reasonable in order to enable the tenderer to provide the requested justification.

The evaluation committee may exclude offers of tenderers:

- a) whose answers do not sufficiently prove that their prices are well-founded;
- b) whose answers demonstrate that the tenderer does not make any profit;
- c) whose answers contain erroneous information;
- d) whose answers are not received within the set time limit.

### **1.7. TENDER WITH SUSPENSIVE CLAUSE**

In exceptional and duly justified cases, tenders may be launched with a "suspensive clause". This means that the tender is launched before an administrative, technical or financial condition is fulfilled, as for example the financing decision of the donor or the signature of a bilateral agreement with the partner country.

The existence of a suspensive clause must be explicitly mentioned in the tender notice.

The procurement will not be awarded and hence, the tender procedure will have to be cancelled if the suspensive clause is not waived during the validity period of the offers.

Application of a suspensive clause must be duly justified and requires the prior approval of the donor's representative.

### **1.8. CANCELLATION OF A PROCUREMENT PROCEDURE**

If a tender procedure is cancelled, all tenderers must be notified in writing and as soon as possible of the reasons for the cancellation. Cancellation may occur where:

- a) the tender procedure has remained unsuccessful, i.e. no qualitatively or financially worthwhile tender has been received or there is no offer at all;
- b) where all compliant and technically responsive tenders exceed the financial resources available;
- c) the economic or technical data of the contract must be fundamentally altered;
- d) exceptional circumstances, or force majeure, render normal performance of the project or implementation of the contract impossible;
- e) where there have been serious irregularities in the procedure, in particular where these have prevented normal competition.

After cancelling a tender procedure, the awarding authority may decide:

- a) to launch a new tender, possibly using a different procedure, provided that the basic principles of competitive tendering are abided by;
- b) to open negotiations with the tenderers who submitted substantially compliant tenders, provided that the original provisions of the TD are not substantially altered;
- c) not to award any contract.

Whatever the case, the final decision is taken by the awarding authority after consultation with the contracting authority and the donor's representative.

### **1.9. ETHICS CLAUSES**

Any attempt by a candidate or tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the committee, the awarding authority or the donor's representative before or during the tender procedure or the tender evaluation will lead to the rejection of its application or tender and may result in administrative sanctions.

Without the donor's representative's prior written authorisation, a contractor and its staff or any other company with which the contractor is associated or linked may not, even on an ancillary or subcontracting basis, provide other services, carry out works or supply equipment for the project if there's an obvious conflict of interest.

When submitting an application or a tender, the candidate or tenderer must declare that he is affected by no potential conflict of interest, and that he has no particular link with other tenderers or parties involved in the project. Should such a situation arise during the performance of the contract, the contractor must immediately inform the contracting authority and the donor's representative.

The contractor must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He must refrain from making public statements about the project or the contract without the contracting authority's prior approval. He may not commit the contracting authority in any way without its prior written consent.

For the duration of the contract, the contractor and his staff must respect human rights and undertake not to offend the political, cultural and religious mores of the partner country.

The contractor may accept no payment connected with the contract other than that provided for therein. The contractor and his staff must not exercise any activity or receive any advantage inconsistent with their obligations to the contracting authority.

The contractor and his staff are obliged to maintain professional secrecy for the entire duration of the contract and after its completion. All reports and documents received or prepared by the contractor are confidential.

The contract shall govern the contracting parties' use of all reports and documents prepared, received or shared by them during the execution of the contract.

The contractor shall refrain from any relationship likely to compromise its independence or that of his staff. If the contractor ceases to be independent, the contracting authority, after appropriate consultation with the donor's representative, may, for any damages thus suffered, terminate the contract without further notice and without the contractor having any claim to compensation.

The donor's representative reserves the right to suspend or cancel the financing of contracts through the contributions of the Government of the Grand Duchy of Luxembourg (or other donors) if corrupt practices of any kind are discovered at any stage of a procurement process and if the awarding authority and/or the contracting authority fail to take appropriate measures to remedy the situation. For the purposes of this provision, "corrupt practices" are the offer of a bribe, gift, gratuity or commission to any person as an incentive or reward for performing or refraining from any act relating to the award of a contract or implementation of a contract already concluded with the contracting authority.

More specifically, all TDs and contracts for goods, services and works must include a clause stipulating that tender will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses.

Such unusual commercial expenses are understood as commissions that are neither mentioned in the main contract nor referenced properly in secondary contracts. These expenses also include any commissions for services not rendered, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commissions paid to a company, which has every appearance of being a front company.

The contractor undertakes to provide the donor's representative on request with all supporting evidence regarding the conditions under which the contract is being executed.

Failure to comply with one or more of the ethics clauses may result, depending on the seriousness of the facts observed, in the termination of the contract and even in the exclusion of the contractor from other contracts financed by the Government of the Grand Duchy of Luxembourg or other donors.

#### **1.10. ENVIRONMENTAL PROTECTION**

The award of contracts of goods, services and works financed on the contributions of the Government of the Grand Duchy of Luxembourg or other donors and for which Lux-Development is the awarding authority is set in the broader development policy of the Luxembourg Government according to which the environment must imperatively be taken into account for any development that wants to be sustainable.

Within the framework of procurement, Lux-Development acting as awarding authority can require that particular conditions related to environmental protection and climate change be included in the TD. Environmental clauses thus concerned will always have to be clearly indicated in the tender notices or in the general conditions.

These clauses will aim at promoting sustainable energies and clean technologies as much as the transfer of these technologies and the access to environmental information in the partner countries.

Consequently, the award of contracts might be refused if a given contract is likely to negatively impact on the environment and the ecosystems of the partner country, this in order to avoid all intervention that could be harmful to the environment.

#### **1.11. DATA PROTECTION**

The personal data mentioned or relating to these procurement procedures, are processed in accordance with the European regulation 2016/0679.

The tenderer or any other person whose personal data is processed by the data manager in the context of a procurement procedure has specific rights explained in the privacy policy available at the following address: [https://cdn.luxdev.lu/cdn/ff/oMpMg77cbda90VPD18f2785GgEDhY5mOgwh\\_aF9Nyf8/1744968615/public/upload/media/document/2025-04/2025\\_RGPD\\_UK%201\\_0.pdf](https://cdn.luxdev.lu/cdn/ff/oMpMg77cbda90VPD18f2785GgEDhY5mOgwh_aF9Nyf8/1744968615/public/upload/media/document/2025-04/2025_RGPD_UK%201_0.pdf)

If you have any questions about the processing of your personal data, please contact the data controller at the following e-mail address: [rgpd@luxdev.lu](mailto:rgpd@luxdev.lu).

#### **1.12. APPEALS**

Where a tenderer or a candidate believes to have been adversely affected by an error or irregularity allegedly committed as part of a procurement or award procedure or believes the procedure was vitiated by any maladministration, he may file a complaint with the awarding authority.

The complaint shall be substantiated, and its sole objective shall not be to obtain a second evaluation for no reason other than disagreement with the outcome of procedure.

The complaint must be made in writing directly to the project/programme exercising responsibility over the concerned procedure, which shall endeavour to investigate the complaint and respond to it within 14 days from the date of receipt. If the plaintiff is not satisfied with the answer received, he may refer to Lux-Development's relevant geographical representative. The latter (or his delegate) shall endeavour to respond within the same period of 14 days.

As a third and last resort, should the plaintiff remain unsatisfied with the explanations received, he may submit the complaint to Lux-Development headquarters in Luxembourg via postal mail or by e-mail, who will respond within 21 days of the date of receipt of the complaint.

In the event that the procedure outlined herein fails to resolve the dispute, the plaintiff may subsequently and insofar as the relevant conditions are met, exercise legal options foreseen under the law of the Grand-Duchy of Luxembourg before the Luxembourg City courts.

#### **1.13. EXECUTION MODALITIES**

In the framework of the contract execution, several different modalities can be used, including:

### 1.13.1. Framework contracts

The framework contract allows the contracting authority to conclude a certain number of contracts over a given period of time without launching a new procurement procedure for each of them.

Under this procedure, the awarding authority launches a call for tenders, usually under an open or a restricted procedure with publication (depending on whether it is a goods, services or works contract) and establishes, on the basis of the framework-offers received, a list of contractors which may be consulted for the provision of defined goods, services or works for a maximum period to be defined, generally from three to five years. The tender may, where appropriate, consist of several lots.

In some cases and depending on the type of service required, list of contractors may contain only one entity.

All contracts, irrespective of their value or type, may be awarded by a framework contract procedure, after prior written agreement of the donor's representative.

For each specific contract (carried out by the issue of a purchase order), the awarding authority invites the holder(s) of the framework contract to submit a tender. To this end, the awarding authority draws up the terms of reference and the profile of the requested experts (in the case of a framework contract for services) or the technical specifications and quantities (in the case of a framework contract for the provision of goods or works). The consulted contractor(s) shall in return submit a tender and a price in accordance with their framework contract.

In the event of a multi-awardee framework contract, proposals will be, either evaluated with the most economically advantageous tender being retained or be

subject to a cascade or rotation mechanism. These procedures will be defined in the TD.

In the case of a single awardee, the proposal will be evaluated to determine whether it meets the requirements of the specific procurement.

The retained proposal will be the subject of a purchase or work order.

### 1.13.2. Procurement with firm or optional tranches

In a procurement with tranches, the extent of the need to be met is known as soon as the procurement is awarded. What is unknown in a procurement with tranches is whether or not the optional tranches will be carried out, often due to financial reasons (availability of funds).

Procurements can therefore be divided into tranches in the form of a firm tranche and one or more optional tranches. A optional tranche is similar to an option, which is usually confirmed by a service order during the performance of the contract. The conditions for confirming each optional tranche, and the determination of the tranches' content, are precisely defined precisely in the TD.

### 1.13.3. Renewable contracts

A contract may allow for one or more renewals, provided that its characteristics remain unchanged and that the tender was carried out taking into account its total duration. Unless otherwise stipulated, the renewal of the contract is tacit and cannot be opposed by the contractor.



## GENERAL REGULATIONS

### (GOODS)

Applicable to the procurement of goods, services and works financed by the contributions of the Government of the Grand Duchy of Luxembourg or other donors and for which the Luxembourg Agency for development Cooperation (Lux-Development) acts as awarding authority

## 2. PART II - SPECIFIC RULES GOVERNING ACQUISITION GOODS

### 2.1. INTRODUCTION

Contracts for the acquisition of goods concern the design, manufacture, delivery, assembly and commissioning of goods, materials and equipment together with any other tasks specified in the contract, e.g. maintenance, repairs, training and after-sales services.

“Supplier” describes any economic operator furnishing goods, materials and equipment. A supplier submitting a tender is known as a “tenderer” and one applying to take part in a simplified restricted procedure as a “candidate”.

The contracting authority, mutually agreed on by the appointed implementing agencies, and always specified in the tender notice, is the authority empowered to conclude the contract on behalf of the project.

The project management prepares and transmits the TDs to the donor’s representative for approval in writing before the launch of the procedure. On the basis of the decisions thus approved and in consultation and close cooperation with the donor’s representative, the awarding authority launches the tenders and receives the offers on behalf of the project.

All offers are evaluated by an evaluation committee that is, in general, designated by mutual agreement between representatives of the two implementing agencies, the national agency of the partner country and the donor’s representative. However, it is mandatory for the donor’s representative to be represented when tenders are opened and evaluated, or the procedure may be invalidated.

The project management submits the evaluation committee’s report to the donor’s representative for approval. The report contains the result of the examination of the tenders and a contract award proposal.

Once written approval has been received, the contracting authority signs the contracts in the name of and on behalf of the project.

As a general rule, the donor’s representative is the contracting authority in the name of and on behalf of the projects.

### 2.2. APPLICABLE PROCUREMENT PROCEDURES FOR THE ACQUISITION OF GOODS

#### 2.2.1. Standard procedures

##### Open procedure (with mandatory publication)

The rule for the procurement of goods of **category A** is the open tender procedure with mandatory publication of a tender notice and which is described below.

##### Simplified restricted procedure (without publication)

The general rule for the procurement of goods of **category B** is the simplified restricted procedure (consultation of at least three suppliers, with no publication) and which is described below.

##### Prudent purchasing

The general rule for the acquisition of goods of **category C** is the prudent purchasing procedure, which is described below.

#### 2.2.2. Exceptional procedures

The exceptional procurement procedures described in article 1.4. of part I may be used under specific conditions and with the agreement of the donor’s representative. As these procedures are exceptional, they are not detailed in parts II, III and IV of these general regulations. The general principles set out in article 1.4. shall apply.

### 2.3. OPEN PROCEDURE

#### 2.3.1. General

In order to ensure the broadest participation possible in competitive tendering and the requisite transparency, a tender notice must be published for every open tender procedure.

Tender notices shall be published in the national press of the partner country, on the Internet and when adequate in any other appropriate media (international press for instance). The publication on the Internet and where necessary in the international press shall be carried out by the donor’s representative. Local publication shall be arranged by the donor’s representative and/or by project management.

Depending on the context the dematerialization of the procedures will be preferred.

The notice published locally must contain the same information than those published on the Internet and in the international press and they shall preferably be published simultaneously.

Depending on the context the dematerialization of the procedures will be preferred.

The notice must identify clearly, precisely, and completely the contracting authority and the subject of the contract. Interested suppliers may obtain the TD (for free or against a flat fee) from the contact address given in the tender notice. In addition, the TD may be made available for free consultation at the address given in the tender notice.

### **2.3.2. Drafting and content of the TD**

It is vital that tender documents be carefully drafted not only for the sound functioning of the procurement procedure but also for the proper execution of the contract.

These documents must therefore contain all the provisions and information that tenderers need to prepare their tenders: instructions, documents to provide, cases of non-compliance, award criteria, etc.

Responsibility for drawing up the TD falls to the project management. The awarding authority issues the TD to interested suppliers only upon written request. The dossier must contain the following documents:

- instructions to tenderers, which must include, among other items, i) the type of contract, ii) the selection and award criteria, iii) whether variants are authorised, iv) the provisions relating to subcontracting, and v) the currency;
- the general conditions for goods contracts implemented by Lux-Development;
- the special conditions, which amplify, supplement or derogate from the general conditions and, where they conflict, override them;
- the technical appendices, containing drawings, technical specifications and provisional timetable for performance;
- bill of prices (for completion by the tenderers) and price schedule;
- tender letter;
- contract model;
- models for bank guarantees (or from similar institutions)<sup>1</sup> for:
  - the tender guarantee, the advance repayment guarantee, and the performance guarantee (10% of the contract value).

Unless warranted by the nature of the contract, technical specifications mentioning products of a given brand or origin and thereby favouring or excluding certain products are prohibited. However, where products cannot be described in a sufficiently clear or intelligible manner, they may be identified by their commercial name provided that it is stated that equivalent goods are also accepted.

### **2.3.3. Selection and award criteria**

The selection criteria concern, among others, the tenderer's capacity to execute the contract as may be demonstrated through contract references of similar nature executed in previous years, and other criteria that may be specified in the TD as well as the compliance of the technical proposal with the provisions of the TD. In certain cases, where the procurement includes works or installation services, the TD may include additional selection criteria concerning the tenderer's technical capacity or the quality of after-sales services or proposed trainings.

Following the selection and thereby the rejection of all non-compliant offers, the criterion for award is in general the tender price but other criteria could be added. The award will be made to the most economically advantageous tender.

### **2.3.4. Additional information during the procedure**

The TD should be clear enough to prevent tenderers from having to request additional information during the procedure. If the awarding authority, with the consent of the donor's representative, either on its own initiative or in response to a request from a tenderer, provides additional information on the TD, it must send such information in writing to all tenderers at the same time.

Tenderers may submit questions in writing as per the conditions and timeline set out in the TD. The awarding authority must reply to all tenderers' questions within a reasonable timeframe before the deadline for submission of tenders.

If, during the procedure, the awarding authority deems it necessary to amend the TD, it shall, after approval of the donor's representative, communicate this information to all tenderers at the same time and, if necessary, amend the deadline for the submission of tenders.

### **2.3.5. Deadline for submission of tenders**

Tenders must reach the awarding authority at the electronic or postal address and, at the very latest, the date and time indicated in the TD. The period for submission must be sufficient to guarantee the quality of tenders and so permit truly competitive tendering.

Experience shows that too short a period prevents suppliers from tendering or causes them to submit incomplete or ill-prepared tenders be it administratively, technically or financially.

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<sup>1</sup> See appendix 4

The minimum period between the date of publication of the tender notice and the deadline for submission of tenders is 30 days. In exceptional cases, and with the prior approval of the donor's representative, periods may be shorter.

Tenders received after the deadline will not be taken into account irrespective of the date of dispatch or the reason for the delay and even if the delay is not attributable to the tenderer.

### **2.3.6. Period during which tenders are binding**

Tenderers are bound by their tenders for the period specified in the TD. This period must be sufficient to allow the awarding authority to examine the tenders, approve the contract award proposal, notify the successful tenderer and for the contracting authority to conclude the contract. The period of validity of tenders is fixed at 120 days from the deadline for submission of tenders.

In exceptional cases, before the period of validity expires, the awarding authority may ask tenderers, without compelling them, to extend the period for a specific number of days.

The successful tenderer must maintain his tender for a further 60 days from the date of notification of award.

### **2.3.7. Submission of tenders**

Depending on the indications given in the tender dossier, tenders may be submitted:

- in paper format. In which case each technical and financial offers must be placed inside a single sealed envelope/parcel bearing:
  - the address for submission of tenders indicated in the TD,
  - the reference of the TD to which the tenderer is responding,
  - where applicable, the numbers of the lots tendered for,
  - the words “not to be opened before the tender opening session” written in the language of the TD.

In electronic format:

- to the e-mail address indicated in the TD for the submission of tenders (no other address may receive the tender(s));
- the subject of the e-mail must specify the reference of the tender notice, the name of the tenderer and, if applicable, the lot numbers for which the tender is being submitted.

### **2.3.8. Opening of tenders**

On receipt of tenders, the awarding authority or the project management must register them and provide a receipt stating the place, date and time of receipt for tenders delivered by hand. Envelopes must remain sealed and be kept in a safe place until they are opened.

In case of electronic submission, the tenders must not be opened prior to the scheduled tender opening date. An electronic acknowledgement of receipt shall also be sent in case of electronic submission.

Tenders are opened by a committee made up of at least three persons. The donor's representative must always be part of the committee.

The opening committee opens the tenders during a public session at the place and time indicated in the TD.

During the opening session, the committee merely states the tenderers' names, the amount of tenders and whether they are generally complete, without deciding on their compliance.

Only tenders received by the date and time indicated in the TD may be considered.

In case of paper format submission, envelopes received open or unsealed shall be immediately returned to the given tenderer(s) present at the public tender opening session but shall not be returned to tenderer(s) not present.

In the case of electronic submissions, electronic tenders that do not include the mandatory information specified in article 2.3.7. will not be opened.

Apart from cases of envelopes received open or unsealed which are returned to the tenderer(s) present at the opening session, no tender that has been received shall be returned to tenderers. Possible tender guarantees will be returned at a later stage.

A report to be signed by all committee members is made on the public tender opening session and shall state:

- the date, time and place of the session;
- the people present at the session;
- the names of the tenderers who have replied within the deadline;
- whether submission of the tender was made in paper format or electronically;
- in case of paper format submission, whether tenders have been received in open or unsealed envelopes (and, if applicable, whether tenders have been returned to the tenderers at the public opening session);
- in case of electronic submission, whether tenders have been received without the mandatory information specified in article 2.3.7.;
- the names of tenderers whose tender did not contain the tender guarantee if required;
- whether the original tenders have been duly signed;
- the amounts of tenders;
- the names of any tenderers who withdrew their tenders;
- any declarations made by the tenderers.

The tender opening report shall be made available only to tenderers who request it in writing.

### 2.3.9. Evaluation of tenders

Tenders are evaluated by an evaluation committee which possesses the technical and administrative expertise required to give an informed opinion on the tenders. It must be composed of at least three voting evaluators, a chairperson and a secretary. The roles of chairperson and secretary may be filled by the voting evaluators or by additional non-voting members. The committee must be made up in such a way as to guarantee the confidentiality and impartiality required for the procedure. A declaration of impartiality and confidentiality must be signed by all members of the committee. The donor's representative must be part of the evaluation committee.

After convening in plenary session and before conducting the evaluation, the chairperson of the committee ensures that all voting evaluators are familiar with the evaluation criteria set out in the TD to make sure that tenders are evaluated by the different evaluators in a consistent manner.

Before conducting the detailed technical evaluation of the tenders, the evaluation committee checks in plenary session that they comply with the administrative criteria set out in the TD.

Thereafter, each of the voting evaluators shall examine in a closed session outside of the group session each technical selection criteria for each administratively compliant tender and the detailed content of the technical proposals. Following their individual examinations, they shall meet as a committee (with the chairperson and secretary) and shall compare the results of their evaluations. The evaluation committee rules on the technical admissibility of each tender and classifies the tenders in two categories: technically substantially compliant or technically substantially non-compliant. For each point of non-compliance, the committee's evaluation report must contain an explanation for the nature of the non-compliance. Where contracts include after-sales service and/or training, the technical quality of such services is also assessed during the technical evaluation.

A tender is deemed to be compliant if it satisfies all the conditions, procedures and specifications of the TD without substantially departing from or attaching restrictions to them. Substantial departures or restrictions are those which affect the scope, quality or execution of the contract, differ widely from the terms of the TD, limit the rights of the contracting authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply. Tenders which do not comply with the TD must be rejected by the evaluation committee and may not subsequently be made compliant by undergoing corrections or having discrepancies or restrictions removed.

The chairperson of the committee must ensure the coherence of the evaluation between the individual evaluators and avoid concluding the evaluation with unresolved large differences, which would thus skew the final result of the evaluation.

Once the technical evaluation has been completed, the evaluation committee checks that the tenders contain no arithmetic errors. Any arithmetic error is corrected without rejecting the concerned tender.

If, in the course of this financial evaluation, one or more tenders appear abnormally low, the evaluation committee may reject them by motivated decision only after having requested in writing the justifications it deems appropriate and verified the justifications provided. Article 1.6.2. specifies the course of action in the event of discrepancies between tenders. This decision and its justification must be part of the evaluation report.

### 2.3.10. Contract award

#### 2.3.10.1. Choice of contractor

The contract is awarded on the basis of the criteria set out in the TD to the most economically advantageous tender.

If the selected tender exceeds the available funds for the contract, the evaluation committee provides an explanation and a recommendation in the evaluation report that will be submitted to the donor's representative.

Moreover, where two tenders are equivalent, preference shall be given:

- a) to the tenderer of a partner country; or
- b) if no such tender is forthcoming, to the tenderer who:
  - is a consortium or grouping of economic operators from the partner country; or
  - permits the best possible use of the physical and human resources of the partner country; or
  - offers the greatest subcontracting possibilities to economic operators from the partner country.

The entire evaluation procedure must be recorded in an evaluation report to be signed by all the members of the evaluation committee. This report must state why tenders were deemed administratively non-compliant and/or technically substantially non-compliant, how they fell short of the technical specifications laid down and must contain a recommendation. The evaluation report is transmitted to the donor's representative for approval.

The donor's representative shall give its approval in writing for the contract award proposal, provided the following conditions are fulfilled:

- equal conditions of participation and exclusion as well as proportionality, non-discrimination and transparency have been respected;
- the selected tender meets all selection criteria stated in the TD;
- the selected tender is the most economically advantageous within the TD requirements;
- the selected tender does not exceed the funds available for the contract.

Where the conditions are not fulfilled and/or the price of the selected tender exceeds the funds available for the contract, the donor's representative shall take the necessary decisions.

The entire evaluation procedure, including notification of the successful tenderer, must be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer might be unable to maintain its tender if the evaluation procedure takes too long.

The entire evaluation procedure is strictly confidential. The evaluation committee's decisions are collective, and its deliberations must remain secret. The members of the committee are bound to secrecy and sign a declaration of impartiality and confidentiality.

The evaluation reports in particular, are for internal use only and may be divulged neither to tenderers nor to any party outside the authorised departments of the concerned partner country, the donor's representative and the supervisory authorities.

#### 2.3.10.2. Contract award notification

After the donor's representative has given its formal written approval and before the period of validity expires, the awarding authority notifies the successful tenderer in writing that its tender has been accepted. It must also send the other tenderers a standard letter informing them that their tenders have been unsuccessful.

The awarding authority is not bound to state the reasons for its choice nor to reply in detail to oral or written questions from the tenderers regarding the outcome of the tender procedure.

Once the contract has been signed, the donor's representative publishes the results of the tender procedure (contract award notice) on the Internet and where appropriate in any other media. Award notices state the date of award of the contract, the name of the successful tenderer and the contract amount.

#### 2.3.10.3. Signing of the contract

Once signed by the contracting authority the contract is sent to the successful tenderer, who must countersign it within 30 days of receipt. The signed contract is only valid after receipt of the performance guarantee. Failure to provide the performance guarantee within the specified timeframe is a reason for cancellation of the award of the contract, seizure of the tender guarantee if required in the TD and termination of the contract if it is already signed.

The contract must be dated. It cannot cover earlier services or enter into force before the date on which it is signed by the parties. The parties are bound by the contract from the moment it is signed, hence the importance of carefully selecting the date.

## **2.4. SIMPLIFIED RESTRICTED PROCEDURE**

In the simplified restricted procedure, the awarding authority draws up, without publication, a shortlist of at least three suppliers and prepares the TD. Since the principle of competitive tendering is still applicable, especially with regard to the proper management of public funds, the consultation of fewer than three suppliers require the prior written consent of the donor's representative and is an exception to the rule; in all cases it must be duly substantiated.

The interest and availability of the candidates to be included in the shortlist must be confirmed and their capacity to execute the procurement verified. The shortlist thus established must be justified in a report and must receive, as well as the TD, the prior written approval of the donor's representative.

The selected candidates receive the TD including the selection and award criteria, the technical and administrative specifications and a draft contract. The awarding authority must be scrupulous in ensuring that the same information is transmitted to the various candidates so that it can best inform them of the procurement conditions without discrimination and obtain comparable tenders. A tender guarantee is not mandatory but may be required.

Tenders must reach the awarding authority at the electronic or postal address, and, at the very latest, the date and time indicated in the TD. A sufficient deadline from the date of dispatch of the TD must be granted to the candidates for the preparation of their tenders.

The evaluation committee must be composed of three voting members including a chairperson, a secretary and at least one evaluator, who must be an expert in the given field. The donor's representative must be part of the committee. As a general rule, tender opening sessions are public while tender evaluation sessions are never public.

Otherwise, the simplified restricted procedure is similar to that described for the open procedure with publication.

Following the same principles as those set out for the open procedure with publication, the entire evaluation procedure is strictly confidential. The decisions by the evaluation committee are collective and its decisions are kept secret. The members of the committee have a duty to abide by this confidentiality and must sign a declaration of impartiality and confidentiality.

If the awarding authority does not receive at least one valid tender, the procedure must be cancelled and, if necessary, re-launched.

Negotiation is allowed. The conditions for negotiating are set out in article 1.3.3. of part I.

The evaluation committee draws up an evaluation report of the tenders received, and where applicable of the tenders finally negotiated, specifying the technical compliance and contractual conditions contained in the tenders and submits the award proposal to the donor's representative for written approval before signing the contract. The report submitted to the donor's representative shall always contain a record of the main points of the negotiations.

**2.4.1. PRUDENT PURCHASING PROCEDURE**

The person responsible for the purchase seeks to identify the most economically advantageous tender and, depending on the amount, proceeds either directly or after requesting at least three different quotations, in a prudent manner, respecting the principles of sound economic management of public funds.

Negotiation is recommended where circumstances allow it, in order to obtain the most economically advantageous tender.

For the sake of transparency, the various stages of such a purchase must always be documented, in writing, in the tender file.



## GENERAL REGULATIONS

### (SERVICES)

Applicable to the procurement of goods, services and works financed by the contributions of the Government of the Grand Duchy of Luxembourg or other donors and for which the Luxembourg Agency for development Cooperation (Lux-Development) acts as awarding authority

## 3. PART III - SPECIFIC RULES GOVERNING ACQUISITION OF SERVICES

### 3.1. INTRODUCTION

Service procurements concern the provision of services. This type of procurement covers a wide range of services, from intellectual services such as studies to technical assistance, but also material services, such as cleaning.

The service provider is any economic operator offering services. Service providers that participate in a restricted or simplified procedure shall be called "candidates". Service providers submitting a tender shall be called "tenderers".

The contracting authority, mutually agreed by the appointed implementing agencies, and always specified in the tender notice, is the authority empowered to conclude the contract on behalf of the project.

The project management prepares and transmits the shortlists and the TDs to the donor's representative for written approval before the launch of the procedure. On the basis of the decisions thus approved and in consultation and close cooperation with the donor's representative, the awarding authority launches the tenders and receives the offers on behalf of the project.

All offers are evaluated by an evaluation committees that is, in general, designated by mutual agreement between representatives of the two implementing agencies, the national agency of the partner country and the donor's representative. However, it is mandatory for the donor's representative to be represented when tenders are opened and evaluated, or the procedure may be invalidated.

The project management submits the evaluation committee's report to the donor's representative for approval. The report contains the result of the examination of the tenders and a contract award proposal.

Once written approval has been received, the contracting authority signs the contracts in the name of and on behalf of the project.

As a general rule, the donor's representative is the contracting authority in the name of and on behalf of the projects for services contracts of category A.

### 3.2. APPLICABLE PROCUREMENT PROCEDURES FOR THE ACQUISITION OF SERVICES

#### 3.2.1. Standard procedures

##### Restricted procedure with publication

The general rule for the procurement of services of **category A** is the restricted tender procedure with publication, and which is described below.

##### Simplified restricted procedure (without publication)

The general rule for the procurement of services of **category B** is the simplified restricted procedure (consultation of at least three service providers, with no publication) and which is described below.

##### Prudent purchasing

The general rule for the acquisition of services of **category C** is the prudent purchasing procedure, which is described below.

#### 3.2.2. Exceptional procedures

The exceptional procurement procedures described in article 1.4 of part I may be used under specific conditions and with the agreement of the donor's representative. As these procedures are exceptional, they are not detailed in parts II, III and IV of these general regulations. The general principles set out in article 1.4 shall apply.

### 3.3. RESTRICTED PROCEDURE WITH PUBLICATION

#### 3.3.1. General

In order to ensure the broadest participation possible in competitive tendering and the requisite transparency, restricted tenders must be subject to publication of the notice of C-EOI.

The C-EOI shall be published in the national press of the partner country, on the Internet and when adequate in any other appropriate media (international press for instance). The publication on the Internet and where necessary in the international press shall be carried out by the donor's representative. Local publication shall be arranged by the donor's representative and/or by project management.

The notice of C-EOI published locally must contain the same information than those published on the Internet and in the international press and they shall preferably be published simultaneously.

The notice of C-EOI must state clearly, precisely, and completely the contracting authority and the subject of the contract. Furthermore, this notice or the dossier must specify the maximum budget available for the intended services and the forecast timetable of procurement steps, such as the execution period or the scheduled date for the start of the services.

It must provide potential service providers with the information they need to determine their capacity to fulfil the procurement in question.

The selection criteria specified in the dossier for C-EOI must be worded clearly and unambiguously, must be easy to verify on the basis of the information submitted, and must make it possible to come to a clear decision as to whether a candidate satisfies any given selection criterion.

The time allowed for candidates to submit their applications must be sufficient to permit proper competition. The minimum deadline for submitting expressions of interest is 30 days from the date of the first publication of the notice. However, in specific cases and with the donor's representative's prior agreement, a shorter preparation period may be authorised.

### **3.3.2. Establishment of the shortlist**

Interested service providers (individually or as grouping) shall submit their application with the information required in the dossier for C-EOI, so that their capacity to fulfil the procurement in question can be assessed.

The shortlist committee shall be composed of at least three voting evaluators, a chairperson and a secretary. The roles of chairperson and secretary may be filled by the voting evaluators or by additional non-voting members. The committee must be made up in such a way as to guarantee the confidentiality and impartiality required for the procedure. All members of the committee must sign a declaration of impartiality and confidentiality. The donor's representative must be part of the committee.

The selection procedure involves:

- drawing up the long list, including all received applications;
- excluding ineligible candidates (see article 1.2 "Eligibility for contracts") and candidates falling into one of the situations described in article 1.9 "Ethics clauses";
- applying the selection criteria specified in the dossier for C-EOI, without any alteration. These criteria should, essentially, make it possible to:
  - i) verify the legal capacity of the candidates;
  - ii) verify that the candidates' financial situation (financial and economic capacity) is sound, as may be evidenced by, for example, balance sheets and turnovers over the previous years;

- iii) verify the candidates' technical and professional capabilities, demonstrated by (a) where applicable, the candidates' average annual staffing levels and the importance and professional experience of their management staff and (b) contract references of similar services rendered in previous years.

After examination of the expressions of interest received in reply to the published notice, the service providers offering the best guarantees of satisfactory performance of the procurement will be shortlisted. The shortlist should contain a minimum of three candidates and a maximum of eight (unless written derogation by the donor's representative). Every notice of C-EOI should specify the maximum and minimum number of candidates to be shortlisted. If the number of eligible candidates fulfilling the selection criteria is greater than the maximum number set, the best candidates shall be chosen.

The shortlist thus established must be justified in a report and must, as well as the TD, be approved in writing by the donor's representative.

Once a shortlist has been approved by the awarding authority and the donor's representative, shortlisted service providers or consortia may no longer form alliances nor modify their composition for the procurement in question.

Candidates who are selected will receive a letter of invitation to tender and the TD. At the same time, the final shortlist will be posted on the Internet.

### **3.3.3. Drafting and content of the TD**

It is vital that tender documents be carefully drafted not only for the sound functioning of the procurement procedure but also for the proper execution of the contract.

These documents must therefore contain all the provisions and information that invited candidates need to prepare their tenders: instructions, documents to provide, cases of non-compliance, evaluation criteria and their weightings, award criteria, stipulations regarding subcontracting, etc.

The project management shall be responsible for drawing up the TD. After approval of the donor's representative, the awarding authority will send only to the shortlisted candidates a letter of invitation to tender accompanied by the approved TD comprising the following documents:

- instructions to tenderers, which must include, among other items: (i) the type of contract, (ii) the award criteria and their weightings, (iii) the possibility and the calendar for interviews, (iv) whether variants are authorised, (v) the provisions relating to subcontracting (vi) the maximum budget available for the procurement and (vii) the currency;
- the shortlist of candidates (stipulating that they cannot form alliances);
- the general conditions for service contracts implemented by Lux-Development;

- the special conditions, which amplify, supplement or derogate from the general conditions and, where they conflict, override them;
- terms of reference indicating the provisional timetable for the services and forecast dates for which the main experts must be available;
- bill of prices (for completion by the tenderers);
- tender letter;
- contract model;
- models for bank guarantees (or from similar institutions)<sup>2</sup> for payment of advances.

### 3.3.4. Selection and award criteria

The criteria for the award of the procurement serve to identify the most economically advantageous tender. These criteria cover both the technical criteria for the evaluation of the technical quality as well as the financial criteria including the price of the tender.

The technical criteria allow the quality of technical offers to be assessed. The two main types of technical criteria are the methodology, and the curriculum vitae of the experts proposed. The technical criteria may be divided into subcriteria. The methodology, for example, may be examined in the light of the understanding of the terms of reference, the optimum use of the technical and professional resources available in the partner country, the work schedule, the appropriateness of the resources to the tasks, the support proposed for experts in the field, etc. CVs may be awarded points for such criteria as qualifications, professional experience, geographical experience, language skills, etc.

Each criterion is allotted a number of points out of 100 distributed between the different sub criteria. Their respective weightings depend on the nature of the services required and are determined on a case-by-case basis in the TD.

The points must be related as closely as possible to the terms of reference describing the services to be provided and refer to parameters that are easy to identify in the tenders and, if possible, quantifiable.

The TD must contain details of the technical evaluation grid, with its criteria and sub criteria and their weightings.

### 3.3.5. Additional information during the procedure

The TD should be clear enough to prevent candidates invited to tender from having to request additional information during the procedure. If the awarding authority, with the donor's representative's consent, either on its own initiative or in response to the request of a candidate, provides additional information on the TD, it must send such information in writing to all other candidates at the same time.

Candidates may submit questions in writing as per the conditions and timeline set out in the TD. The awarding authority must reply to all tenderers' questions within a reasonable timeframe before the deadline for submission of tenders.

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<sup>2</sup> See appendix 4

If, during the procedure, the awarding authority, deems it necessary to amend the TD, it shall, after approval of the donor's representative, communicate this information to all tenderers at the same time and, if necessary, amend the deadline for the submission of tenders.

### 3.3.6. Deadline for submission of tenders

Tenders must reach the awarding authority at the electronic or postal address and, at the very latest, the date and time indicated in the letter of invitation to tender. The period for submission must be sufficient to guarantee the quality of tenders and so permit truly competitive tendering. Experience shows that too short a period prevents candidates from tendering or causes them to submit incomplete or ill-prepared tenders, be it administratively, technically or financially.

The minimum period between the dispatch of the letter of invitation to tender and the deadline for submission of tenders is 30 days. However, in specific cases and with the prior approval of the donor's representative, periods may be shorter.

Tenders received after the deadline will not be taken into account irrespective of the date of dispatch or the reason for the delay and even if the delay is not attributable to the tenderer.

### 3.3.7. Period during which tenders are binding

Tenderers are bound by their tenders for the period specified in the letter of invitation to tender. This period must be sufficient to allow the awarding authority to examine tenders, approve the contract award proposal, notify the successful tenderer and for the contracting authority to conclude the contract. The period of validity of tenders is fixed at 120 days from the deadline for the submission of tenders.

In exceptional cases, before the period of validity expires, the awarding authority may ask tenderers, without compelling them, to extend the period for a specific number of days.

The successful tenderer must maintain his tender for a further 60 days from the date of notification of award.

### 3.3.8. Submission of tenders

Depending on the indications contained in the TD, tenders can be submitted in either paper format or electronically.

In either case, tenders must be submitted in accordance with **the double envelope** system, whether in paper format or electronically as follows:

**Paper format submission:** the tender must be received in an outer parcel or envelope containing two separate, sealed envelopes, one bearing the words envelope A "Technical offer" and the envelope B "Financial offer".

The outer envelope should bear:

- the address for submission of tenders specified in the TD;
- the reference of the TD to which the tenderer is responding;
- where applicable, the numbers of the lots tendered for;
- the words “Not to be opened before the tender opening session” in the language of the TD.

Electronic format submission: the tender must be sent in two separate emails each containing one or more files in the most common formats. In order to ensure the confidentiality of the financial offers during the technical evaluation, the technical and financial offers shall be addressed separately to the distinct email addresses communicated in the TD (no other email addresses shall be considered for the reception of the offer(s)) as follows:

- a first email containing the technical proposal marked “technical proposal”, and including the procurement’ number, the tenderer’s name and, if applicable, the lot number for which the tender is submitted;
- a second email containing the financial proposal marked “financial proposal” and including the procurement’ number, the tenderer’s name and, if applicable, the lot number for which the tender is submitted;
- each document and/or file must bear the reference of the procurement as well the tenderer’s name in its title.

Any infringement of these rules (e.g. unsealed envelopes or references to price in the technical offer) is to be considered a breach of the rules and will result in the rejection of the tender.

### **3.3.9. Opening of tenders**

On receipt of tenders, the awarding authority or the project management must register them and provide a receipt giving the place, date and time of receipt for those delivered by hand. The envelopes containing the tenders must remain sealed and be kept in a safe place until they are opened.

In case of electronic submission, the tenders must not be opened prior to the scheduled tender opening date. An electronic acknowledgement of receipt shall also be sent in case of electronic submission.

As a general rule, opening sessions for services tenders are not public.

Services tenders are opened and evaluated by a single committee which possesses the technical and administrative expertise required to give an informed opinion on the tenders. It must be composed of at least three voting evaluators, a chairperson and a secretary. The roles of chairperson and secretary may be filled by the voting evaluators or by additional non-voting members. The committee must be made up in such a way as to guarantee the confidentiality and impartiality required for the procedure. A declaration of impartiality and confidentiality must be signed by all members of the committee. The donor’s representative must be part of the committee.

Only tenders received by the closing date and time indicated in the tender dossier will be considered for evaluation.

In case of paper format submission, envelopes received open or unsealed will not be considered for evaluation. No tender shall be returned to the concerned tenderer(s). Possible tender guarantees will be returned at a later stage.

In the case of electronic submissions, electronic tenders that do not include the mandatory information specified in article 3.3.8. will not be opened.

Initially, only the technical offers are opened. The sealed envelopes containing the financial offers are kept unopened by the awarding authority.

A report to be signed by all committee members is made on the non-public tender opening session and shall state:

- the date, time and place of the session;
- the people present at the session;
- whether submission of the tender was made in paper format or electronically;
- in case of paper format submission, whether tenders have been received in open or unsealed envelopes and the names of the tenderers;
- in case of electronic submission, whether tenders have been received without the mandatory information specified in article 3.3.8.;
- the names of the tenderers who submitted tenders within the stipulated deadline;
- whether tenders were submitted using the double-envelope system;
- whether the originals of the tenders were duly signed;
- the names of any tenderers who withdrew their tenders.

The tender opening report shall be made available only to tenderers who request it in writing.

### **3.3.10. Evaluation of tenders**

#### 3.3.10.1. Evaluation of technical offers

Before conducting the detailed technical evaluation of tenders, the evaluation committee checks in plenary session that they comply with the administrative criteria set out in the TD.

Thereafter, the chairperson of the committee ensures that all voting evaluators are familiar with the evaluation criteria set out in the TD to make sure that tenders are evaluated by the different evaluators in a consistent manner.

The committee then proceeds with the evaluation of the technical offers, the financial offers remaining sealed. The voting evaluators receive copies of the technical offers. When evaluating technical offers, which each evaluator does in a closed session outside the group session, each evaluator gives to each technical offer a number of points out of a maximum of 100 points in accordance with the technical evaluation grid (setting out the technical criteria, subcriteria and weightings) laid down in the TD (see article 3.3.4. "Selection and award criteria"). In no circumstances may the committee or its members change the technical evaluation grid communicated to the tenderers in the TD.

Where the content of a tender is incomplete or deviates substantially from one or more of the technical evaluation criteria laid down in the TD, the tender is given no technical score and will be eliminated in the plenary session.

If the TD expressly permits variants, such variants are evaluated separately.

On completion of the technical evaluation, the committee meets again in plenary session and the points given by each evaluator for each criterion are compared. Besides the numerical notation, an evaluator must explain the reasons for his choice and defend his technical points before the committee. The committee discusses each technical offer, and each evaluator allots it a final notation. The aggregate final notation is the arithmetic average of the individual notations.

The chairperson of the committee must ensure the coherence of the evaluation between the individual evaluations and avoid concluding the evaluation with unresolved large differences between individual points by criterion or between individual notations.

If interviews were foreseen in the TD, the committee may, after writing up its provisional conclusions and before definitively concluding its evaluation of the technical offers, decide to interview the proposed expert(s) in technically compliant tenders. In this case the experts are interviewed by the committee, preferably collectively in the case of a team, at intervals close enough to permit comparison. Interviews must follow a standard format agreed beforehand by the committee and applied to all experts or teams called to interview. Tenderers must be given at least ten days advance notice of the date and time of the interview. Where a tenderer is prevented from attending an interview by force majeure, he is given another appointment.

On completion of these interviews, the evaluation committee, without modifying either the composition or the weighting of the criteria laid down in the technical evaluation grid, decides whether it is necessary to adjust the notations of the experts who have been interviewed. Any adjustments must be substantiated.

This procedure entails considerable costs both for tenderers and the contracting authority and should therefore be used with restraint. It must be recorded in a report, which may lead to the revision of the initial technical evaluation of the tender. The donor's representative must consent to the need for interviews. If the interviews are considered necessary, the indicative timetable for these interviews must be given in the TD.

Once the committee has established each technical offer's final notation (the arithmetical average of the points given by each evaluator), any tender falling short of the technical acceptability threshold specified in the TD, usually 70/100, is automatically rejected. If no tender achieves the set technical acceptability threshold, the tender procedure is declared unsuccessful.

The committee considers only tenders that have obtained the technical acceptability threshold. Of these tenders, the best technical offer receives a technical score of 100. The others are allotted technical scores calculated as follows:

Technical score = (technical points of the tender in question / technical points of the best tender) x 100.

#### 3.3.10.2. Evaluation of financial offers

Upon completion of the technical evaluation, the envelopes containing the financial offers for tenders which were not eliminated during the technical evaluation are opened by the committee in session. The committee checks that the mandatory documents have been provided and that the financial offers contain no arithmetic errors. Any arithmetic error is corrected without rejecting the concerned tender.

Comparison of the financial offers takes account of all contract expenses (fees, direct or lump-sum costs, etc.) with the exception of reimbursable expenses (repayable on presentation of supporting documents). The TD classifies these costs and includes a bill of prices. The committee must nevertheless check the compliance of this classification and correct it where necessary. Fees are set by the tenderer alone.

Financial offers (including reimbursable costs) that exceed the maximum budget allocated for the procurement are eliminated.

The lowest financial offer receives a financial score of 100. The others are allotted scores calculated as follows:

Financial score = (lowest financial offer/financial offer being considered) x 100.

If, in the course of this financial evaluation, one or more tenders appear abnormally low, the evaluation committee may reject them by motivated decision only after having requested in writing the justifications it deems appropriate and verified the justifications provided. Article 1.6 specifies the course of action in the event of discrepancies between tenders. This decision and its justification must be part of the evaluation report.

### **3.3.11. Contract award**

#### **3.3.11.1. Choice of contractor**

The most economically advantageous tender is established by weighing technical quality against price on a basis pursuant to the formula determined in the TD.

The resulting technical and financial scores are then added together, and the procurement is awarded to the tender achieving the highest final score.

Where two tenders are equivalent, preference shall be given:

- a) to the tenderer of a partner country; or
- b) if no such tender is forthcoming, to the tenderer who:
  - is a consortium or grouping of economic operators from the partner country; or
  - permits the best possible use of the physical and human resources of the partner country; or
  - offers the greatest subcontracting possibilities to economic operators and firms from the partner country.

The entire evaluation procedure (technical and financial evaluation) must be recorded in an evaluation report to be signed by all members of the evaluation committee. The report shall mention the tenderers' points and scores, the reasons for this grading and substantiate why rejected offers did not obtain the required minimum score, as well as a contract award proposal. The report is transmitted to the donor's representative for approval.

The donor's representative shall give its approval in writing, provided the following conditions are fulfilled:

- equal conditions of participation and exclusion as well as proportionality, non-discrimination and transparency have been respected;
- the selected tender meets all selection criteria stated in the TD;
- the tender selected is the most economically advantageous tender according to the provisions of the TD.

Where the conditions are not fulfilled, the donor's representative makes a decision and informs the evaluation committee.

The entire evaluation procedure, including notification of the successful tenderer, must be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer might be unable to maintain its tender (availability of experts) if the evaluation procedure takes too long.

The entire evaluation procedure, from the drawing-up of the shortlist to the notification of the successful tenderer, is strictly confidential. The evaluation committee's decisions are collective, and its deliberations must remain secret. The committee members are bound to secrecy and sign a declaration of impartiality and confidentiality. The evaluation reports in particular are for internal use only and may be divulged neither to tenderers nor to any party outside the authorised departments of the concerned partner country, the donor's representative and the supervisory authorities.

#### **3.3.11.2. Contract award notification**

After the donor's representative has given its formal written approval and before the period of validity of tenders expires, the awarding authority notifies the successful tenderer in writing that its tender has been accepted. It must also send the other candidates a standard letter informing them that their tenders have been unsuccessful, referring to the scores obtained by the candidate involved and by the successful tenderer.

The awarding authority is not bound to state the reasons for its choice nor to reply in detail to oral or written questions from the tenderers with regard to the result of the tender procedure.

None of the tenders received will be returned to tenderers.

Once the contract has been signed, the donor's representative publishes the result of the tender procedure (contract award notice) on the Internet and where appropriate in any other media. Award notices state the date of award of the contract, the name of the successful tenderer, as well as the contract amount.

#### **3.3.11.3. Signing of the contract**

Once signed by the contracting authority, the contract is sent to the successful tenderer, who must countersign and return it within 30 days of receipt.

The contract must be dated. It cannot cover earlier services or enter into force before the date on which it is signed. The parties are bound by the contract from the moment it is signed. Hence the importance of carefully selecting the date.

### **3.4. SIMPLIFIED RESTRICTED PROCEDURE**

In the simplified restricted procedure, the awarding authority draws up, without publication, a shortlist of at least three service providers and prepares the TD. Since the principle of competitive tendering is still applicable, especially with regard to the proper management of public funds, the consultation of fewer than three service providers requires the prior written consent of the donor's representative and is an exception to the rule; in all cases it must be duly substantiated.

The interest and availability of the candidates to be included on the shortlist must be confirmed and their capacity to execute the procurement verified. The shortlist thus established must be justified in a report and must receive, as well as the TD, the prior written approval of the donor's representative.

The selected candidates receive the TD comprising the selection and award criteria, the terms of reference and a draft contract. The awarding authority must be scrupulous in ensuring that the same information is transmitted to the various candidates so that it can best inform them of the procurement conditions without discrimination and obtain comparable tenders. A tender guarantee is not mandatory but may be required.

Tenders must reach the awarding authority at the electronic or postal address, and no later than the date and time indicated in the TD. A sufficient deadline from the date of dispatch of the TD must be granted to the candidates for the preparation of their tenders.

The evaluation committee must be composed of three voting members including a chairperson, a secretary and at least one evaluator, who must be an expert in the field. The donor's representative must be part of the committee. Tender opening and evaluation sessions are not public.

Otherwise, the simplified restricted procedure is similar to that described for the restricted procedure with publication.

Following the same principles as those set out for the restricted procedure with publication, the entire evaluation procedure up to notification to the successful tenderer is strictly confidential. The decisions by the evaluation committee are collective and its decisions are kept secret. The members of the committee have a duty to abide by this confidentiality and must sign a declaration of impartiality and confidentiality.

If the awarding authority does not receive at least one valid tender, the procedure must be cancelled and, if necessary, re-launched.

Negotiation is allowed. The conditions for negotiating are set out in article 1.3.3 of part I.

The evaluation committee draws up an evaluation report of the tenders received, and where applicable of the tenders finally negotiated, specifying the technical compliance and contractual conditions contained in the tenders and submits the award proposal to the donor's representative for written approval before signing the contract. The report submitted to the donor's representative shall always contain a record of the main points of the negotiations.

In the interest of transparency, such negotiations should always be recorded in writing, at least in the form of a written acceptance by the chosen service provider of the conditions finally negotiated, before the contract is signed.

**3.5. PRUDENT PURCHASING PROCEDURE**

The person responsible for the purchase seeks to identify the most economically advantageous service provider and, depending on the amount, proceeds either directly or after requesting at least three different quotations, with the purchase order in a prudent manner, respecting the principles of sound economic management of public funds.

Negotiation is recommended where circumstances allow it, in order to obtain the most economically advantageous tender.

In the interest of transparency, the various stages of such a purchase must always be documented in writing in the file.



## GENERAL REGULATIONS

### (WORKS)

Applicable to the procurement of goods, services and works within the context of execution of programmes financed by the contributions of the Government of the Grand Duchy of Luxembourg or other donors and for which the Luxembourg Agency for development Cooperation (Lux-Development) acts as awarding authority

## 4. PART IV - SPECIFIC RULES GOVERNING ACQUISITION OF WORKS

### 4.1. INTRODUCTION

Works contracts are concluded for the execution of works or the building of infrastructure.

“Contractor” describes any economic operator carrying out the works. A contractor submitting a tender is known as a ‘tenderer’ and one applying to take part in a simplified restricted procedure as a “candidate”.

The contracting authority, mutually agreed by the appointed implementing agencies, and always specified in the tender notice, is the authority empowered to conclude the contract on behalf of the project.

The project management prepares and sends the TDs to the donor’s representative for written approval before the launch of the procedure. On the basis of decisions thus approved and in consultation and close cooperation with the donor’s representative, the awarding authority launches the tenders and receives the offers on behalf of the project.

All offers are evaluated by an evaluation committee that is, in general, designated by mutual agreement between representatives of the two implementing agencies, the national agency of the partner country and the donor’s representative. However, it is mandatory for the donor’s representative to be represented when tenders are opened and evaluated, or the procedure may be invalidated.

The project management submits the evaluation committee’s report to the donor’s representative for approval. The report contains the result of the examination of the tenders and a contract award proposal.

Once written approval has been received, the contracting authority signs the contracts in the name of and on behalf of the project.

Apart from exceptions, the national implementing agency of the partner country shall be the contracting authority on behalf of the project for works contracts.

### 4.2. APPLICABLE PROCUREMENT PROCEDURES FOR THE ACQUISITION OF WORKS

#### 4.2.1. Standard procedures

##### Open procedure

The rule for the procurement of works of **category A** is the open tender procedure with publication of a tender notice, and which is described below.

##### Simplified restricted procedure

The general rule for the procurement of works of **category B** is the simplified restricted procedure (consultation of at least three companies, with no publication) and which is described below.

##### Prudent purchasing

The general rule for the acquisition of works of **category C** is the prudent purchasing procedure, which is described below.

#### 4.2.2. Exceptional procedures

The exceptional procurement procedures described in article 1.4 of part I may be used under specific conditions and with the agreement of the donor’s representative. As these procedures are exceptional, they are not detailed in parts II, III and IV of these general regulations. The general principles set out in article 1.4 shall apply

### 4.3. OPEN PROCEDURE

#### 4.3.1. General

In order to ensure the broadest participation possible in competitive tendering and the requisite transparency, a tender notice must be published for every open tender procedure.

Tender notices shall be published in the national press of the partner country, on the Internet and when adequate in any other appropriate media (international press for instance). The publication on the Internet and where necessary in the international press is carried out by the donor’s representative. Local publication shall be arranged by the donor’s representative and/or by project management.

The notice published locally must contain the same information than those published on the Internet and in the international press and they shall preferably be published simultaneously.

The notice must identify clearly, precisely, and completely the contracting authority and the subject of the contract.

Interested economic operators may obtain the TD from the contact address stated in the tender notice.

#### **4.3.2. Drafting and content of the TD**

It is vital that tender documents be carefully drafted not only for the sound functioning of the procurement procedure but also for the proper execution of the contract.

These documents must therefore contain all the provisions and information that tenderers need to prepare their tenders: instructions, documents to provide, cases of non-compliance, award criteria, etc.

Responsibility for drawing up the TD falls to the project management. The awarding authority issues the TD previously approved by the donor's representative to interested companies only upon written request. The dossier must contain the following documents:

- instructions to tenderers, which must include, among other items, i) the type of contract, ii) the selection and award criteria, iii) whether variants are authorised, iv) the provisions relating to subcontracting, and v) the currency;
- the general conditions for works contracts implemented by Lux-Development;
- the special conditions, which amplify, supplement or derogate from the general conditions and, where they conflict, override them;
- the technical appendices, containing drawings, technical specifications and provisional timetable for performance;
- bill of prices (for completion by the tenderers) and breakdown of costs;
- tender letter;
- contract model;
- models for bank guarantees (or from similar institutions)<sup>3</sup> for:
  - the tender guarantee,
  - the advance repayment guarantee,
  - the performance guarantee (10% of the contract value).

#### **4.3.3. Selection and award criteria**

The selection criteria concern, among others, the tenderer's capacity to execute the contract, as may be demonstrated through contract references of similar works executed in previous years, and other criteria that may be specified in the TD as well as the compliance of the technical proposal with the provisions of the TD.

Following the selection and thereby the rejection of all non-compliant offers, the sole criterion for award is the tender price.

#### **4.3.4. Additional information during the procedure**

The TD should be clear enough to prevent tenderers from having to request additional information during the procedure. If the awarding authority, with the consent of the donor's representative, either on its own initiative or in response to a request from a tenderer, provides additional information on the TD, it must send such information in writing to all other tenderers at the same time.

Tenderers may submit questions in writing as per the conditions and timeline set out in the TD. The awarding authority must reply to all tenderers' questions within a reasonable timeframe before the deadline for submission of tenders.

If, during the procedure, the awarding authority deems it necessary to amend the TD, it shall, after approval of the donor's representative, communicate this information to all tenderers at the same time and, if necessary, amend the deadline for the submission of tenders.

#### **4.3.5. Deadline for submission of tenders**

Tenders must reach the awarding authority at the electronic or postal address and, at the very latest, the date and time indicated in the TD. The period for submission must be sufficient to guarantee the quality of tenders and so permit truly competitive tendering. Experience shows that too short a period prevents contractors from tendering or causes them to submit incomplete or ill-prepared tenders be it administratively, technically or financially.

The minimum period between the date of publication of the tender notice and the deadline for submission of tenders is 30 days. In exceptional cases, and with the prior approval of the donor's representative, periods may be shorter.

Tenders received after the deadline will not be taken into account irrespective of the date of dispatch or the reason for the delay and even if the delay is not attributable to the tenderer.

#### **4.3.6. Period during which tenders are binding**

Tenderers are bound by their tenders for the period specified in the TD. This period must be sufficient to allow the awarding authority to examine the tenders, approve the contract award proposal, notify the successful tenderer and for the contracting authority to conclude the contract. The period of validity of tenders is fixed at 120 days from the deadline for submission of tenders.

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<sup>3</sup> See appendix 4

In exceptional cases, before the period of validity expires, the awarding authority may ask tenderers, without compelling them, to extend the period for a specific number of days.

The successful tenderer must maintain his tender for a further 60 days from the date of notification of award.

#### **4.3.7. Submission of tenders**

Depending on the indications given in the tender dossier, tenders may be submitted:

- in paper format. In which case each technical and financial offers must be placed inside a single sealed envelope/parcel bearing:
  - the address for submission of tenders indicated in the TD;
  - the reference of the TD to which the tenderer is responding;
  - where applicable, the numbers of the lots tendered for;
  - the words “not to be opened before the tender opening session” written in the language of the TD.
- In electronic format:
  - to the e-mail address indicated in the TD for the submission of tenders (no other e-mail address may receive the tender(s));
  - the subject of the e-mail must specify the reference of the tender notice, the name of the tenderer and, if applicable, the lot numbers for which the tender is being submitted.

#### **4.3.8. Opening of tenders**

Upon receipt of tenders, the awarding authority or the project management must register them and provide receipt of delivery stating the place, date and time for tenders delivered by hand. Envelopes must remain sealed and be kept in a safe place until they are opened.

In case of electronic submission, the tenders must not be opened prior to the scheduled tender opening date. An electronic acknowledgement of receipt shall also be sent in case of electronic submission.

Tenders are opened by a committee made up of at least three persons. The donor's representative must always be part of the committee.

The opening committee opens the tenders during a public session at the place and time set in the TD.

During the opening session, the committee merely states the tenderers' names, the amount of tenders and whether they are generally complete, without deciding on their compliance.

Only tenders submitted in sealed envelopes and received by the date and time indicated in the TD may be considered.

In case of paper format submission, envelopes received open or unsealed shall be immediately returned to the given tenderer(s) present at the public tender opening session but shall not be returned to tenderer(s) not present.

In the case of electronic submissions, electronic tenders that do not include the mandatory information specified in article 4.3.7. will not be open

Apart from cases of envelopes received open or unsealed which are returned to the tenderer(s) present at the opening session, no tender that has been received shall be returned to tenderers. Possible tender guarantees will be returned at a later stage.

A report to be signed by all committee members is made on the public tender opening session and shall state:

- the date, time and place of the session;
- the people present at the session;
- the names of the tenderers who have replied within the deadline;
- whether submission of the tender was made in paper format or electronically;
- in case of paper format submission, whether tenders have been received in open or unsealed envelopes (and, if applicable, whether tenders have been returned to the tenderers at the public opening session);
- in case of electronic submission, whether tenders have been received without the mandatory information specified in article 4.3.7.;
- the names of tenderers whose envelopes did not contain the tender guarantee if required;
- whether tenders have been duly signed;
- the tender amounts;
- the names of any tenderers who withdrew their tenders;
- any declarations made by the tenderers.

The tender opening report shall be made available only to tenderers who request it in writing.

#### **4.3.9. Evaluation of tenders**

Tenders are evaluated by an evaluation committee that possesses the technical and administrative expertise required to give an informed opinion on the tenders. It must be composed of at least three voting evaluators, a chairperson and a secretary. The roles of chairperson and secretary may be filled by the voting evaluators or by additional non-voting members. The committee must be made up in such a way as to guarantee the confidentiality and impartiality required for the procedure. A declaration of impartiality and confidentiality must be signed by all members of the committee. The donor's representative must be part of the evaluation committee.

After convening in plenary session and before conducting the evaluation, the chairperson of the committee ensures that all voting evaluators are familiar with the evaluation criteria set out in the TD to make sure that tenders are evaluated by the different evaluators in a consistent manner.

Before conducting the detailed technical evaluation of the tenders, the evaluation committee checks in plenary session that they comply with the administrative criteria set out in the TD.

Thereafter, each of the voting evaluators shall examine in a closed session outside the group session each technical selection criteria for each administratively compliant tender and the detailed content of the technical proposals. Following their individual examinations, they shall meet as a committee (with the chairperson and secretary), and shall compare the results of their evaluations. The evaluation committee rules on the technical admissibility of each tender and classifies the tenders in two categories: technically compliant or technically non-compliant. For each point of non-compliance, the committee's evaluation report must contain an explanation for the nature of the non-compliance.

A tender is deemed to be compliant if it satisfies all the conditions, procedures and specifications in the TD without substantially departing from or attaching restrictions to them. Substantial departures or restrictions are those which would affect the scope, quality or implementation of the contract, differ widely from the terms of the TD, limit the rights of the contracting authority or the tenderer's obligations under the contract or distort competition for tenderers whose tenders do comply. Tenders which do not comply with the TD must be rejected by the evaluation committee and may not subsequently be made compliant by undergoing corrections or having discrepancies or restrictions removed.

The chairperson of the committee must ensure the coherence of the evaluation between the individual evaluators and avoid concluding the evaluation with unresolved large differences, which would thus skew the final result of the evaluation.

Once the technical evaluation has been completed, the evaluation committee checks that the tenders contain no arithmetic errors. Any arithmetic error is corrected without rejecting the concerned tender.

If, in the course of this financial evaluation, one or more tenders appear abnormally low, the evaluation committee may reject them by motivated decision only after having requested in writing the justifications it deems appropriate and verified the justifications provided. Article 1.6 specifies the course of action in the event of discrepancies between tenders. This decision and its justification must be part of the evaluation report.

#### **4.3.10. Contract award**

##### 26.10.1. Choice of contractor

All non-compliant tenders having already been eliminated, the choice of the successful tender corresponds to the most economically advantageous tender on the basis of the criteria set out in the TD. Price is a mandatory award criterion. This tenderer will be declared the winner of the contract, subject to the condition that its tender is within the funds available for the contract.

If the selected tender exceeds the funds available for the contract, the evaluation committee provides an explanation and a recommendation in the evaluation report that will be submitted to the donor's representative.

Moreover, where two tenders are equivalent, preference shall be given:

- a) to the tenderer of a partner country; or
- b) if no such tender is forthcoming, to the tenderer who:
  - is a consortium or grouping of economic operators from the partner country; or
  - permits the best possible use of the physical and human resources of the partner country; or
  - offers the greatest subcontracting possibilities to economic operators from the partner country.

The entire evaluation procedure must be recorded in an evaluation report to be signed by all the members of the evaluation committee. This report must state why tenders were deemed administratively or technically non-compliant, how they fell short of the technical specifications laid down and must contain a recommendation. The evaluation report is transmitted to the donor's representative for approval.

The donor's representative shall give its approval in writing for the procurement award proposal, provided the following conditions are fulfilled:

- equal conditions of participation and exclusion as well as proportionality, non-discrimination and transparency have been respected;
- the selected tender meets all selection criteria stated in the TD;
- the selected tender is the lowest priced of those that are compliant with the requirements of the TD;
- the selected tender does not exceed the funds available for the contract.

Where the conditions are not fulfilled, the donor's representative makes a decision and informs the evaluation committee.

Where the price of the selected tender exceeds the funds available for the contract, the donor's representative shall take the necessary decisions.

The entire evaluation procedure, including notification of the successful tenderer, must be completed while the tenders are still valid. It is important to bear in mind that the successful tenderer might be unable to maintain its tender if the evaluation procedure takes too long.

The entire evaluation procedure up to the notification of the successful tenderer is strictly confidential. The evaluation committee's decisions are collective, and its deliberations must remain secret. The members of the committee are bound to secrecy and sign a declaration of impartiality and confidentiality.

The evaluation reports in particular are for internal use only and may be divulged neither to tenderers nor to any party outside the authorised departments of the concerned partner country, the donor's representative and the supervisory authorities.

#### 4.3.10.2. Contract award notification

After the donor's representative has given its formal written approval and before the period of validity expires, the awarding authority notifies the successful tenderer in writing that its tender has been accepted. It must also send the other tenderers a standard letter informing them that their tenders have been unsuccessful. This letter states whether tenders were compliant or not.

The awarding authority is not bound to state the reasons for its choice nor to reply in detail to oral or written questions from tenderers with regard to the result of the tender procedure.

Once the contract has been signed, the donor's representative publishes the results of the tender procedure (contract award notice) on the Internet and where appropriate in any other media. Award notices state the date of award of the contract, the name of the successful tenderer and the contract amount.

#### 4.3.10.3. Signing of the contract

Once signed by the contracting authority the contract is sent to the successful tenderer, who must countersign it within 30 days of receipt. The signed contract is not valid until the receipt of the performance guarantee. Failure to provide the performance guarantee within the specified timeframe is a reason for cancellation of the award of the contract, seizure of the tender guarantee if required in the TD and termination of the contract if it is already signed.

The contract must be dated. It cannot cover earlier services nor enter into force before the date on which it is signed by the parties. The parties are bound by the contract from the moment it is signed, hence the importance of carefully selecting the date.

### **4.4. SIMPLIFIED RESTRICTED PROCEDURE**

In the simplified restricted procedure, the awarding authority draws up, without publication, a shortlist of at least three contractors and prepares the TD. Since the principle of competitive tendering is still applicable, especially with regard to the proper management of public funds, the consultation of fewer than three contractors requires the prior written consent of the donor's representative and is an exception to the rule; in all cases it must be duly substantiated.

The interest and availability of the candidates to be included in the shortlist must be confirmed and their capacity to execute the contract is verified. The shortlist thus established must be justified in a report and must receive, as well as the TDs, the prior written approval of the donor's representative.

The selected candidates receive the TD including the selection and award criteria, the technical and administrative specifications and a draft contract. The awarding authority must be scrupulous in ensuring that the same information is transmitted to the various candidates so that it can best inform them of the procurement conditions without discrimination and obtain comparable tenders. A tender guarantee is not mandatory but may be required.

Tenders must reach the awarding authority at the electronic or postal address, and, at the very latest, the date and time indicated in the TD. A sufficient deadline from the date of dispatch of the TD must be granted to the candidates for the preparation of their tenders.

The evaluation committee must be composed of three voting members including a chairperson, a secretary and at least one evaluator, who must be a professional. The donor's representative must be part of the committee. As a general rule, tender opening sessions are public while tender evaluation sessions are never public.

Otherwise, the simplified restricted procedure is similar to that described for the open procedure with publication.

Following the same principles as those set out for the open procedure with publication, the entire evaluation procedure up to notification to the successful tenderer is strictly confidential. The decisions by the evaluation committee are collective and its decisions are kept secret. The members of the committee have a duty to abide by this confidentiality and must sign a declaration of impartiality and confidentiality. Their identity shall also remain confidential.

If the awarding authority does not receive at least one valid tender, the procedure must be cancelled and, if necessary, re-launched.

Negotiation is allowed. The conditions for negotiating are set out in article 1.3.3. of part I.

The evaluation committee draws up an evaluation report of the tenders received, and where applicable of the tender finally negotiated, specifying the technical compliance and contractual conditions contained in the tenders and submits the award proposal to the donor's representative for written approval before signing the contract. The report submitted to the donor's representative shall always contain a record of the main points of the negotiations.

### **4.5. PRUDENT PURCHASING**

The person responsible for the purchase seeks to identify the most economically advantageous provider and, depending on the amount, proceeds either directly or after requesting at least three different quotations, with the purchase order in a prudent manner, respecting the principles of sound economic management of public funds.

Negotiation is recommended where circumstances allow it, in order to obtain the most economically advantageous offer.

In the interest of transparency, the various stages of such a purchase must always be documented in writing in the file.



**Acquisition categories, thresholds and summary of applicable standard procedures<sup>4</sup>**

	ACQUISITION TYPES		
	GOODS	SERVICES	WORKS
<b>Category A</b>	<p><b>X &gt; EUR 100,000</b></p> <p><u>Open procedure</u></p> <p>Mandatory publication in the local press and on LuxDev's website.</p> <p>Full TD</p> <p>Deadline for tender submission: minimum 30 days following the first publication.</p>	<p><b>X &gt; EUR 100,000</b></p> <p><u>Restricted procedure with publication</u></p> <p>Mandatory publication of an C-EOI in the local press and on LuxDev's website.</p> <p>Full TD</p> <p>Deadline for submission of expressions of interest: minimum 30 days following the first publication.</p> <p>Three to eight service providers invited.</p> <p>Deadline for tender submission: minimum 30 days following the invitation to tender.</p>	<p><b>X &gt; EUR 100,000</b></p> <p><u>Open procedure</u></p> <p>Mandatory publication in the local press and on LuxDev's website.</p> <p>Full TD</p> <p>Deadline for tender submission: minimum 30 days following the first publication.</p>
<b>Category B</b>	<p><b>EUR 10,000 &lt; X &lt;= EUR 100,000</b></p> <p><u>Simplified restricted procedure</u></p> <p>Publication: non mandatory.</p> <p>Abridged TD</p> <p>Deadline for tender submission: on a case-by-case basis.</p> <p>Consultation of minimum three suppliers (only one if justified).</p>	<p><b>EUR 10,000 &lt; X &lt;= EUR 100,000</b></p> <p><u>Simplified restricted procedure</u></p> <p>Publication: non mandatory.</p> <p>Abridged TD</p> <p>Deadline for tender submission: on a case-by-case basis.</p> <p>Consultation of minimum three service providers (only one if justified).</p>	<p><b>EUR 10,000 &lt; X &lt;= EUR 100,000</b></p> <p><u>Simplified restricted procedure</u></p> <p>Publication: non mandatory.</p> <p>Abridged TD</p> <p>Deadline for tender submission: on a case-by-case basis.</p> <p>Consultation of minimum three contractors (only one if justified).</p>
<b>Category C</b>	<p><b>X &lt;= EUR 10,000</b></p> <p><u>Prudent purchasing</u></p> <p>Publication: non mandatory.</p> <p>Deadline for tender submission: on a case-by-case basis.</p> <p>Contract letter / purchase order.</p>	<p><b>X &lt;= EUR 10,000</b></p> <p><u>Prudent purchasing</u></p> <p>Publication: non mandatory.</p> <p>Deadline for tender submission: on a case-by-case basis.</p> <p>Contract letter / purchase order.</p>	<p><b>X &lt;= EUR 10,000</b></p> <p><u>Prudent purchasing</u></p> <p>Publication: non mandatory.</p> <p>Deadline for tender submission: on a case-by-case basis.</p> <p>Contract letter / purchase order.</p>

<sup>4</sup> Under specific conditions, exceptional procedures may be used with the prior written agreement of the donor's representative. For internal use, detailed instructions on the procurement steps concerning acquisitions categories and procedures are available in different documents on the Agency's QM among which the synoptic table for procurement compliance in the framework of projects.

**Abridged TD:** short version of the TD, usually prepared by the project management and sent to the donor's representative for approval before the launch of the tender procedure, which contains all the documents required for the preparation and submission of a tender. Applies mainly to acquisitions of category "B".

**Awarding authority:** entity responsible for the procurement procedure, ensuring compliance with the rules and principles applicable to this procedure and final decision on the award of the contract. Where Lux-Development acts as a awarding authority, the rules and principles of the general regulations shall apply.

**Call for Expressions of Interest (C-EOI):** prequalification procedure with publication inviting providers to express their interest for the provision of services specified in a notice of C-EOI. Providers selected as a result of this procedure are retained on a shortlist of candidates to be invited to submit a tender on the basis of a TD.

**Candidate:** any economic operator thereof applying to take part in a restricted or simplified procedure.

**Conflict of interests:** any event exercising influence on a candidate, tenderer or contractor and likely to compromise the impartial and objective performance of a contract. A conflict of interest may arise, inter alia, from economic interests, political or national affinities, family or sentimental ties, or any other relationship or common interest. These considerations also apply to the potential subcontractor and the staff of the candidate, tenderer or contractor.

**Contracting authority:** the legal person governed by public or private law, or administration, which concludes a contract for the acquisition of goods, services or works in the name and on behalf of the project.

**Day:** calendar day, unless stated otherwise.

**Donor:** the Government of the Grand Duchy of Luxembourg or any other government or entity that finances a project implemented by Lux-Development.

**Donor's representative:** the Luxembourg Agency for development Cooperation, Lux-Development.

**Economic operator:** any natural or legal person or public entity, or any group of such persons and/or entities, including any temporary association of companies, which offers to carry out works, supply goods or provide services for an execution of a contract.

**Evaluation committee:** committee composed of members in possession of the technical and administrative expertise required to give an informed opinion on the quality and compliance of given tenders, and including representatives of the two implementing agencies of a given project.

**Exceptional procedures:** procurement procedures described in the general regulations, and which may be used under specific conditions only and with the agreement of the donor's representative.

**General conditions:** the general contractual provisions setting out the administrative, financial, legal and technical clauses governing the performance of contracts.

**General cooperation agreement:** basic agreement signed by the State of the partner country and the Government of the Grand Duchy of Luxembourg (or other donor), laying down the general framework for the joint implementation of development cooperation projects.

**Goods acquisition:** contract concluded between an economic operator and the contracting authority for the purchase, hire or hire-purchase of goods. It may also cover associated services such as installation, maintenance, repairs, training and after-sales service, in connection with the provision of goods.

**Implementing agencies:** legal person governed by public or private law, or an administration, designated in the project's bilateral agreement by the two partner States and representing them for the implementation of the project.

**Lux-Development or LuxDev:** the Luxembourg Agency for development Cooperation.

**Mixed acquisition:** contract concluded between, on the one hand, an economic operator and, on the other hand, the contracting authority, comprising at least two different types of service (goods, services or works).

**Most economically advantageous tender:** the best tender by the criteria laid down in the TD, e.g. quality, technical properties, aesthetic and functional qualities, after-sales service and technical assistance, delivery date, performance period or price. These criteria must be published in the tender notice or stated in the TD.

**Open procedure:** procedure in which any economic operator thereof may submit a tender in response to a tender notice.

**Opening committee:** committee made up of members responsible for opening tenders and including representatives of the two implementing agencies of a given project.

**Partner country:** the State which has signed a general cooperation agreement and a project's bilateral agreement with the Government of the Grand Duchy of Luxembourg (or other donor), for the benefit of which the project is implemented.

**Project (or programme):** set of activities subject to a project bilateral agreement and whose objectives, activities and results are described in a project technical and financial document forming an integral part of the bilateral agreement.

**Project's bilateral agreement:** agreement signed by the partner countries that are signatories of the general cooperation agreement, laying down the content and terms and conditions of implementation that are specific to a project.

**Project management:** dual supervision of the project constituted by the chief technical advisor (or similar function) under direct contract with the donor's representative, and the national project manager / director, designated by the implementing agency of the partner country.

**Quality Manual (QM):** The QM is an instrument required by the ISO 9001 norm specifying the quality management system of an organisation. For LuxDev, the QM takes the form of an intranet accessible to the entire staff and where are available, all models, guidelines, instructions and procedures specific to the Agency.

**Restricted procedure with publication:** procedure in which only candidates selected following the publication of a tender notice and invited by the contracting authority, may submit a tender based on the TD.

**Services acquisition:** contract for the provision of services. This category of contract covers a wide range of services, from intellectual services such as studies or technical assistance, to material services such as cleaning

**Shortlist committee:** committee composed of members in possession of the technical and administrative expertise required to give an informed opinion on the establishment of a given shortlist, and including representatives of the two Implementing agencies of a given project.

**Simplified restricted procedure:** procedure in which only candidates invited by the awarding authority may submit tenders based on an abridged TD.

**Special conditions:** the special provisions laid down by the contracting authority that amend or complete the general conditions of contract.

**Subcontracting:** the operation whereby an economic operator subcontracts, under its own responsibility, all or part of the performance of a contract to another economic operator, called a subcontractor.

**Successful tenderer (awardee):** the tenderer selected at the end of a procurement procedure for the award of the contract.

**Time limits:** given periods start on the day following the act or event which serves as the starting point for the calculation of those periods.

**Technical specifications:** in the context of goods and works contracts, the document drawn up by the contracting authority and defining its requirements and all the technical specifications applicable to the goods or works of a contract.

**Tender Dossier (TD):** dossier, usually prepared by the project management and sent to the donor's representative for approval before the launch of the procedure and containing all the documents needed to prepare and submit a tender. Applies mainly to acquisitions of category "A".

**Tenderer:** any economic operator or group thereof submitting a tender with a view to concluding a contract.

**Terms of reference:** the document drawn up by the contracting authority setting out its requirements and/or objectives in respect of the provision of services, specifying, where relevant, the methods and resources to be used and/or results to be attained.

**Variant:** alternative proposals to one or more positions in the procurement's specifications, responding to different execution possibilities. They are only taken into consideration if expressly requested by the awarding authority.

**Works acquisition:** contract concluded between the economical operator and the contracting authority for the performance of works or the building of an infrastructure.



1. Predetermined price contracts may be of one of the following types:
  - a) “lump sum” contracts, where an all-in price shall cover the whole of the goods, services and works which are the subject of the contract;
  - b) unit price contracts, where the goods, services and works shall be broken down on the basis of the bill of quantities, and the proposed unit prices shall be indicated;
  - c) “cost-plus” contracts, where the goods, services and works shall be priced on the basis of actual costs plus overheads and profits;
  - d) “composite” contracts, where prices shall be fixed using at least two of the predetermined pricing methods;
  - e) provisional price when, in the exceptional cases provided below, contracts are awarded without a prior determination of the prices but after consultation and agreement between the contracting authority, the donor’s representative and the tenderer, and paid for in the agreed manner.
2. Provisional price contracts may only be made:
  - a) where the procurement is of a complex nature or involves new techniques presenting considerable technical uncertainties and which needs to start before all conditions of execution can be determined;
  - b) in the event of exceptional and unforeseeable circumstances, such as where the procurement is urgent or the nature and means of execution are difficult to determine.
3. except for provisional price contracts, contracts shall be awarded on the basis of predetermined prices. These prices may be lump sums or unit prices.
4. the instructions to tenderers shall:
  - a) state the type of price of the contract;
  - b) for cost-plus contracts, state the rules for calculating the costs, overheads and profit;
  - c) for composite contracts, state the methods which are to be used for calculating amounts to be paid under the contract.



Procurement procedures and contract conditions for which Lux-Development acts as awarding authority may foresee the use of four types of guarantees:

- tender guarantees;
- performance guarantees;
- advance repayment guarantees;
- retention guarantees.

All guarantees must be unconditional and payable without dispute upon receipt of the first written demand from the beneficiary.

During a procurement procedure, tenderers may be required to provide a tender guarantee, and selected contractors may be required to provide a performance guarantee.

#### **Tender guarantee**

1. A Tender guarantee may be required for goods and works contracts. In this case, the TD shall specify the amount of this guarantee which shall in principle not be less than 1% of the amount of the tender but shall in no case exceed 2%.
2. As a general rule, the tender guarantee shall be provided by a bank or an insurance company, accepted by the donor's representative, otherwise it may be refused. The guarantee shall be in strict compliance with the model included in the TD that is to say that the guarantee shall be independent and payable without contestation on first demand and shall be valid during the entire period of validity of the tender.
3. Any tender not accompanied by an acceptable tender guarantee when required shall be rejected.
4. The tender guarantee of the successful tenderer shall be released when the tenderer has signed the contract and has provided the required performance guarantee, to the satisfaction of the contracting authority and the donor's representative.

The tender guarantees of unsuccessful tenderers shall be released at the award notification and not later than 90 days after the expiration of the tender validity period.

5. The tender guarantee may be called on without formal notice:
  - a. where a tenderer withdraws his tender during the period of validity of his tender;
  - b. where the successful tenderer fails to sign the contract and to provide the required performance guarantee.

#### **Performance guarantee**

1. Unless otherwise stipulated in the TD, the successful tenderer for a goods or works contract shall, within 30 days of receipt of the notification of award provide to the contracting authority a performance guarantee in the form specified in the general conditions.
2. If the successful tenderer fails to comply with the requirements of article 1 above, this shall constitute sufficient grounds for the cancellation of the contract award, the termination of the contract if the latter is already signed and the forfeiture of the tender guarantee if required in the TD.
3. The performance guarantee shall be provided in the form of a guarantee issued by a bank, or an insurance company accepted by the donor's representative, otherwise it may be refused. The guarantee shall be in strict compliance with the model included in the TD that is to say that the guarantee shall be independent and payable without contestation on first demand and shall be valid at least 90 days after the provisional acceptance.

#### **Advance Reimbursement Guarantee (ARG)**

1. Unless otherwise provided in the TD and the contract, the contractor may be entitled to an advance payment against presentation of an ARG. The latter must be in the form of a guarantee issued by a bank, or an insurance company accepted by the donor's representative, otherwise it may be refused. The guarantee shall be in strict compliance with the model included in the TD that is to say that the guarantee shall be independent and payable without contestation on first demand.

The maximum amount of the advance and its respective guarantee depend on the type of the procurement:

- up to 60% of the value of the contract for goods;
  - up to 20% of the value of the contract for works and services.
2. The guarantee shall be released within 90 days from the date of the emission of the provisional acceptance certificate for the goods or upon its full reimbursement by the contractor.

**Retention guarantee**

1. Unless otherwise stipulated in the TD, the contractor may provide a retention guarantee in order to obtain full payment of his invoices (without the normal 10% retention on each invoice). This must be in the form of a guarantee issued by a bank or an insurance company accepted by the donor's representative, otherwise it may be refused. The guarantee shall be in strict compliance with the model included in the TD that is to say that the guarantee shall be independent and payable without contestation on first demand.
2. The retention clause applies implicitly or explicitly to all procurement types and categories. The retention guarantee shall be released no later than 90 days upon the final acceptance.

