

Note 1:

This cover page is only for the purposes of identifying this document. The above heading provides information on the type of document, its title, the process of which it forms part and the date of the current version. This page is not part of the general regulations.

Note 2:

These general regulations constitute the regulatory basis applicable to the award of acquisition (procurement) contracts for which LuxDev acts as awarding authority. It is supplemented and specified by the “Synoptic table for procurement compliance in the framework of projects” and the different models, templates and guidelines available in the Quality Manual. In case of conflict between the latter and the text of the general regulations, the text of the general regulations shall prevail.

Note 3:

Pages should be printed double-sided. Have a thought for our forests - have a thought for the Earth!

MANAGEMENT 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 LUXDEV MANAGEMENT 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 management 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 25 June 2009 on public contracts of the Luxembourg State;

Considering the procedures and models in the Lux-Development's Quality Manual.

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 activities, including those carried out in the name and on behalf of the partner countries, the Agency complies and ensures the compliance with the requirements of the community legislation and the principles of the State's legislation governing the award of public contracts".

- (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 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 management committee and as they appear in the Lux-Development Quality Manual.
- b) The model documents for goods, services and works contracts as approved by the management committee and as they appear in the Lux-Development Quality Manual.

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 Quality Manual.

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, proportionality and treatment of economic operators on equal terms, in a non-discriminatory way and in all transparency shall still apply.

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 Quality Manual 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 Acquisition Procedures and Contracts (APC) 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.

These general regulations come into force on 01.01.2018.

Director General of Lux-Development. **Manuel TONNAR**

Deputy Director General of Lux-Development. **Robert DE WAHA**

Director - Programmes of Lux-Development. **Max GLESENER**

Director Human Resources of Lux-Development. **Véronique SOTIL**



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

TABLE OF CONTENTS

PART I: BASIC RULES GOVERNING ALL CONTRACTS	5
1. INTRODUCTION	5
2. ELIGIBILITY FOR CONTRACTS	6
2.1. Rules on nationality and origin	6
2.2. Grounds for exclusion from contracts	6
2.3. Participation on equal terms	6
3. STANDARD PROCUREMENT PROCEDURES	7
3.1. Open procedure	7
3.2. Restricted procedure with publication	7
3.3. Simplified restricted procedure	7
3.4. Prudent purchasing	7
4. EXCEPTIONAL PROCUREMENT PROCEDURES	8
4.1. Negotiated procedure	8
4.2. Single source procedure	8
4.3. Framework contract	8
4.4. Crisis and fragile situations, emergency assistance and humanitarian aid	9
4.5. Competitive dialogue	9
4.6. Special procedures	10
5. TENDERING ARRANGEMENTS	10
5.1. General	10
5.2. Sub-contracting	10
5.3. Approval of the partner country on awards	10
6. SELECTION AND AWARD CRITERIA	10
6.1. General	10
6.2. Cases of abnormally low tenders	11
7. TENDER WITH SUSPENSIVE CLAUSE	11
8. CANCELLATION OF A PROCUREMENT PROCEDURE	11
9. ETHICS CLAUSES	11
10. ENVIRONMENTAL PROTECTION	12
11. APPEALS	12
PART II: SPECIFIC RULES GOVERNING GOODS ACQUISITION CONTRACTS	13
12. INTRODUCTION	13
13. APPLICABLE PROCUREMENT PROCEDURES FOR THE ACQUISITION OF GOODS	13
13.1. Standard procedures	13
13.2. Exceptional procedures	13
14. OPEN PROCEDURE WITH PUBLICATION	13
14.1. General	13
14.2. Drafting and content of the tender dossier	14
14.3. Selection and award criteria	14
14.4. Additional information during the procedure	14
14.5. Deadline for submission of tenders	14
14.6. Period during which tenders are binding	15
14.7. Submission of tenders	15
14.8. Opening of tenders	15
14.9. Evaluation of tenders	15
14.10. Contract award	16

15. SIMPLIFIED RESTRICTED PROCEDURE	17
16. PRUDENT PURCHASING PROCEDURE	17
<u>PART III: SPECIFIC RULES GOVERNING SERVICES ACQUISITION CONTRACTS</u>	<u>18</u>
17. INTRODUCTION	18
18. APPLICABLE PROCUREMENT PROCEDURES FOR THE ACQUISITION OF SERVICES	18
18.1. Standard procedures	18
18.2. Exceptional procedures	19
19. RESTRICTED PROCEDURE WITH PUBLICATION	19
19.1. General	19
19.2. Establishment of the shortlist	19
19.3. Drafting and content of the tender dossier	20
19.4. Selection and award criteria	20
19.5. Additional information during the procedure	20
19.6. Deadline for submission of tenders	20
19.7. Period during which tenders are binding	21
19.8. Submission of tenders	21
19.9. Opening of tenders	21
19.10. Evaluation of tenders	21
19.11. Contract award	23
19.12. Provision and replacement of experts	23
20. SIMPLIFIED RESTRICTED PROCEDURE	24
21. PRUDENT PURCHASING PROCEDURE	25
<u>PART IV: SPECIFIC RULES GOVERNING WORKS ACQUISITION CONTRACTS</u>	<u>26</u>
22. INTRODUCTION	26
23. APPLICABLE PROCUREMENT PROCEDURES FOR THE ACQUISITION OF WORKS	26
23.1. Standard procedures	26
23.2. Exceptional procedures	26
24. OPEN PROCEDURE WITH PUBLICATION	26
24.1. General	26
24.2. Drafting and content of the tender dossier	27
24.3. Selection and award criteria	27
24.4. Additional information during the procedure	27
24.5. Deadline for submission of tenders	27
24.6. Period during which tenders are binding	27
24.7. Submission of tenders	28
24.8. Opening of tenders	28
24.9. Evaluation of tenders	28
24.10. Contract award	29
25. SIMPLIFIED RESTRICTED PROCEDURE	30
26. PRUDENT PURCHASING	30

Appendices:

Appendix 1: Acquisition categories, thresholds and summary of applicable standard procedures

Appendix 2: Definitions

Appendix 3: Types of prices

Appendix 4: Guarantees

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

PART I: BASIC RULES GOVERNING ALL CONTRACTS

1. INTRODUCTION

All contract awards 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 contracts are part of the framework of bilateral project or programme 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 project or 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 contract 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.

Where contracts financed by the contributions of the Government of the Grand Duchy of Luxembourg (or other donors) are awarded by the authorities, institutions or actors of the partner countries as awarding authorities following agreements signed with Lux-Development, the awards 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 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 Quality Manual applicable to each type of contract 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 applicable to each contract 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 amendments 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.

2. ELIGIBILITY FOR CONTRACTS

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

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 legal entities including:

- Companies or firms, public bodies or bodies with public participation;
- Cooperative societies, non-governmental organisations, non-profit organisations or other legal persons governed by public or private law;
- Joint ventures or consortia of such legal entities.

2.2. Grounds for exclusion from contracts

Legal entities 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 are guilty of serious professional misconduct proven by any means which the contracting authorities can justify;
- 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 9 (ethics clauses) in connection with the tender or contract.

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.

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 tender dossier;
- d) Ensure that the selected tender complies with the requirements of the tender dossier and meets the award criteria stated therein.

As a general rule, apart from exceptional cases, only organisations with comparable status may compete for contracts (e.g. care shall be taken not to allow private organisations to compete with public bodies and/or non-profit organisations and/or non-governmental organisations). Exceptions to this rule shall be clearly indicated in the relevant procurement notices.

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".

3.1. Open procedure

Procedure in which any legal person or group of such persons may submit a tender, following publication of a procurement notice.

The open procedure involves an open invitation to take part in competitive tendering. The contract is given adequate publicity through the publication of a procurement 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 legal person wishing to tender receives, upon request, the tender dossier (which may have to be paid for), in accordance with the arrangements laid down in the procurement notice. These entities must give their correct identity and contact details at the time they request/receive the tender dossiers so that the contracting authority can pass on to them any amendments to the tender dossier. Entities submitting a tender that have not communicated their identity and contact details to the contracting authority may not hold the contracting authority responsible if their tender is rejected for failing to comply with the specifications of the tender dossier and any amendments to the tender dossier communicated to the tenderers.

The choice of the contractor is made when tenders are examined. The contract 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 6, "Selection and award criteria".

No negotiation is allowed.

3.2. Restricted procedure with publication

Procedure in which only the candidates invited by the contracting authority following the publication of a procurement notice/call for expressions of interest, may submit a tender.

Under the restricted procedure with publication, the contracting 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 procurement notice/call for expressions of interest.

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 procurement 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 contracting authority invites tenders from shortlisted candidates only, sending them the tender dossier. The successful tenderer is chosen by the award procedure once the tenders have been analysed (see article 6, "Selection and award criteria").

No negotiation is allowed.

3.3. Simplified restricted procedure

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

Under the simplified restricted procedure, the contracting authority, after having verified the interest, availability and capacity of the candidates included in the shortlist, consults at least three candidates on the basis of an abridged tender dossier. At the end of the procedure, the contracting authority selects the economically most 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 tender dossier, has submitted the highest ranked offer, or (iii) tenderers that have submitted tenders which are substantially compliant and economically most 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.

3.4. Prudent purchasing

The person responsible for the purchase seeks to identify the economically most advantageous provider and proceeds directly 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 economically most advantageous offer.

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

4. EXCEPTIONAL PROCUREMENT PROCEDURES

4.1. Negotiated procedure

Procedure in which the contracting authority, without prior publication of a procurement 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 every award of a contract by negotiated procedure 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 performances are being provided by public entities or non-profit institutions or associations. Non-profit institutions or associations cannot automatically be presumed to be contractors with no profit motive, and cannot therefore always be dealt with through a negotiated procedure - the latter is admissible only where the aim of the contract is not motivated by economic or commercial considerations, and would include cases in which the action is institutional in nature or sought, for example, to provide individuals with social assistance;
- Where a tender procedure has been unsuccessful, i.e. where no qualitatively or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the contracting authority may enter into negotiations with tenderer(s) that have participated in the tender procedure, abiding strictly by the conditions set out in article 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 contract 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 contract had been awarded following the adequate procedure in regard of the total budget of the works.

b) For complementary or additional performances to contracts already in implementation (amendments to on-going 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 aggregate value of the complementary/additional part does not exceed 50% of the value of the main contract (unless prior written derogation from the donor's representative).

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 4.1.

4.3. Framework contract

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.

In this procedure, the contracting authority launches a tender, 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 of three to five years. The tender may, where appropriate, consist of several lots.

In some cases and depending on the requested goods, services or works, the 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 written prior agreement of the donor's representative.

For each specific contract (order, mission or mobilisation), the contracting authority invites contractors selected on the list (or the sole contractor) to submit a proposal within the limits of their framework contract. To this end, the contracting authority issues them the terms of reference and the profile of the requested experts (in the case of a framework contract for the provision of 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 proposal and a price in accordance with their framework contract.

In the case of several contractors, proposals will be evaluated and the economically most advantageous proposal will be retained. In the case of a single contractor, the proposal will be evaluated to determine whether it meets the requirements of the specific contract.

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

Where there are several entities in the list of contractors, the contracting authority may consult them all or on an alternate basis laid down in the framework contract in order to ensure equitable access to the specific contracts.

4.4. Crisis and fragile situations, emergency assistance and humanitarian aid

When a country or zone is in a crisis or fragile situation (conflicts, post-conflicts, repeated cycles of violence, natural disasters, etc.), 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 contracting 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.

4.5. Competitive dialogue

Competitive dialogue is an exceptional procedure in which the contracting 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 contracting 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 contracts, irrespective of their value or type, may be awarded through competitive dialogue, with the prior written agreement of the donor's representative.

Following a procurement notice in which it makes known its needs and requirements, the contracting 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 contracting authority can discuss all aspects of the contract with the selected candidates.

During the dialogue, the contracting 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 contracting 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 contracting 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 contracting authority shall evaluate the final offers received on the basis of the award criteria set out in the tender dossier and shall select the most economically advantageous tender.

4.6. 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.

5. TENDERING ARRANGEMENTS

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 contracting 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 contract as a whole.

No contract 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 contracting 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.

5.2. Sub-contracting

Subcontracting with other companies may be authorised by the contracting authority on condition that it is clearly specified by the tenderer in the tender, that the subcontractor satisfies the eligibility conditions specified in article 2 "Eligibility for contracts" and the conditions specified in article 9 "Ethics clauses", and that the subcontracting is not an excessive proportion of the tender. This proportion and whether or not one single sub-contractor may appear in more than one offer must be specified in the tender dossier.

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.

6. SELECTION AND AWARD CRITERIA

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 procurement notice or in the tender dossier:
 - Verification of the eligibility of tenderers or candidates as laid down in article 2 "Eligibility for contracts";
 - Verification of the financial and economic capacities of tenderers or candidates;
 - Verification of the technical and professional capacities of tenderers or candidates.

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

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

Offers are also verified to ensure that they satisfy all conditions, procedures and specifications of the tender dossier 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 tender dossier, limit the rights of the contracting 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.

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 fifteen percent (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 tenders:

- a) Whose answers do not sufficiently prove that their prices are well-founded;
- b) Whose price shall be deemed insufficient if, all costs and expenses deducted, no profit remains for the tenderer;
- c) Whose answers contain erroneous information;
- d) Whose answers are not received within the set time limit.

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 procurement notice.

The contract 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.

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 have been 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 contracting 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 tender dossier are not substantially altered;
- c) Not to award any contract.

Whatever the case, the final decision is taken by the contracting authority with the agreement of the donor's representative.

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 contracting 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 tender dossiers 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.

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 tender dossiers. Environmental clauses thus concerned will always have to be clearly indicated in the procurement notices or in the terms and 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.

11. 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.



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

PART II: SPECIFIC RULES GOVERNING GOODS ACQUISITION CONTRACTS

12. 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 legal person 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 procurement notice, is the authority empowered to conclude the contract on behalf of the project.

The project management prepares and transmits the tender dossiers 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 contracting 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.

13. APPLICABLE PROCUREMENT PROCEDURES FOR THE ACQUISITION OF GOODS

13.1. 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 procurement 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.

13.2. Exceptional procedures

The exceptional procurement procedures described in article 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 4 shall apply.

14. OPEN PROCEDURE WITH PUBLICATION

14.1. General

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

Procurement 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.

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.

It is to be noted that an open tender procedure published locally shall, in principle, provide all eligible suppliers with the same opportunities to participate as local suppliers. Any condition seeking to restrict artificially the participation of eligible non-local suppliers is not desirable (e.g. obliging such firms to be registered in the partner country or to have performed contracts there in the past, etc.). The donor's representative shall issue prior approvals to derogations to this rule in writing.

Interested suppliers may obtain the tender dossier (for free or against a flat fee) from the contact address given in the procurement notice. In addition, the tender dossier may be made available for free consultation at the address given in the procurement notice.

14.2. Drafting and content of the tender dossier

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 tender dossier falls to the project management. The contracting authority issues the tender dossier previously approved by the donor's representative 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 proportion of subcontracting if authorised, 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)¹ for:
 - The tender guarantee (1 to 2% of the contract's cost estimate),
 - The advance repayment guarantee, and
 - The performance guarantee (10% of the contract value).

¹ See Appendix 4

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.

14.3. 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 tender dossier as well as the compliance of the technical proposal with the provisions of the tender dossier. In certain cases, where the contract includes works or installation services, the tender dossier 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 sole criterion for award is in general the tender price but can also be the economically most advantageous tender in cases where complex additional services are requested if specified as such in the tender dossier.

14.4. Additional information during the procedure

The tender dossier should be clear enough to prevent tenderers from having to request additional information during the procedure. If the contracting 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 tender dossier, 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 tender dossier. The contracting authority must reply to all tenderers' questions within a reasonable timeframe before the deadline for submission of tenders.

If, during the procedure, the contracting authority deems it necessary to amend the tender dossier, 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.

14.5. Deadline for submission of tenders

Tenders must reach the contracting authority at the address and, at the very latest, the date and time indicated in the tender dossier. 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.

The minimum period between the date of publication of the procurement 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.

14.6. Period during which tenders are binding

Tenderers are bound by their tenders for the period specified in the tender dossier. This period must be sufficient to allow the contracting authority to examine the tenders, approve the contract award proposal, notify the successful tenderer and conclude the contract. The period of validity of tenders is fixed at 90 days from the deadline for submission of tenders.

In exceptional cases, before the period of validity expires, the contracting 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.

14.7. Submission of tenders

Technical and financial offers must be placed inside a single sealed envelope/parcel bearing:

- The address for submission of tenders indicated in the tender dossier;
- The reference of the tender dossier 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 tender dossier.

14.8. Opening of tenders

On receipt of tenders, the contracting 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.

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 tender dossier.

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 tender dossier may be considered.

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.

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 persons present;
- The names of the tenderers who have replied within the deadline;
- 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);
- If applicable, the names of tenderers whose envelopes did not contain any tender guarantee;
- 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.

14.9. 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 tender dossier 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 tender dossier.

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 tender dossier 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 tender dossier, 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 tender dossier 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 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.

14.10. Contract award

14.10.1. Choice of contractor

- a) Price is the sole criterion for awarding goods contracts not involving additional complex services. All non-compliant tenders having already been eliminated, the choice of the successful tender corresponds to the lowest substantially compliant tender, that is to say the tender with the lowest financial offer of those tenders that have been evaluated as substantially compliant during the technical evaluation. This tenderer is awarded the contract subject to the condition that its tender is within the funds available for the contract;
- b) Where a goods contract includes additional complex services such as extensive after-sales services and/or comprehensive training for several personnel members, the technical evaluation must take account of the quality of such services. To this end, the quality of services may be evaluated according to additional criteria set out in the tender dossier. All non-compliant offers having already been eliminated, the contract is awarded either to the lowest substantially compliant tender or the tender that is economically most advantageous in terms of technical quality of the services offered and the price proposed, subject to the condition that the tender is within the funds available for the contract.

In either case, 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 companies and firms 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 companies and firms 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 within 10 working days, 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 tender dossier;
- The selected tender is the lowest-priced of those that are substantially compliant with the requirements of the tender dossier;
- 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 within 15 working days from the date of receipt of the evaluation report. 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. Their identity shall also remain confidential.

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.

14.10.2. Contract award notification

After the donor's representative has given its formal written approval and before the period of validity expires, the contracting 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 (substantially) compliant or not.

The contracting 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.

14.10.3. 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 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.

15. SIMPLIFIED RESTRICTED PROCEDURE

In the simplified restricted procedure, the contracting authority draws up, without publication, a shortlist of at least three suppliers and prepares the tender dossier. 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 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 verified. The shortlist thus established must be justified in a report and must receive, as well as the tender dossier, the prior written approval of the donor's representative.

The selected candidates receive the tender dossier including the selection and award criteria, the technical and administrative specifications and a draft contract. The contracting 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 contract conditions without discrimination and obtain comparable tenders. A tender guarantee is not mandatory, but may be required.

Tenders must reach the contracting authority at the address, and, at the very latest, the date and time indicated in the tender dossier. A sufficient deadline from the date of dispatch of the tender dossier 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 contracting 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 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.

16. PRUDENT PURCHASING PROCEDURE

The person responsible for the purchase seeks to identify the economically most advantageous goods and proceeds directly 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 economically most advantageous offer.

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

PART III: SPECIFIC RULES GOVERNING SERVICES ACQUISITION CONTRACTS

17. INTRODUCTION

Technical and economic cooperation in the framework of the development cooperation policy involves recourse to outside expertise through services contracts, most of them for studies or technical assistance.

Study contracts include studies for the formulation and preparation of projects, feasibility studies, economic and market studies, technical studies, evaluations and audits.

Study contracts generally specify an obligation of results, i.e. the contractor must provide a given product regardless of the technical and operational means implemented to achieve the specified result. These are, therefore, lump-sum contracts and the contractor will be paid only if the specified results are achieved.

Technical assistance contracts are used where a service provider is called on to play an advisory role, to manage or supervise an activity, to provide the experts specified in the contract or to acquire goods, services or works for and on behalf of the contracting authority, or to supervise and control the performance of contracts.

Technical assistance contracts often only specify the means, i.e. the contractor is responsible for performing the tasks entrusted to him in the terms of reference and ensuring the quality of the services provided. Payment for these contracts is dictated by the resources and services actually provided. The contractor does, however, have a duty of care under the contract: he must warn the contracting authority in good time of anything that might affect the proper execution of the contract.

Some services contracts may, however, combine both types, implying both an obligation of means and an obligation of results.

The service provider is any legal person 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".

In case of recruitment of a natural person (individual consultant), Lux-Development's Human Resources' recruitment procedures apply.

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

The project management prepares and transmits the shortlists and the tender dossiers 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 contracting 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 for services contracts.

Services contracts for audit, formulation, evaluation, long-term expertise (where the contract is concluded through a consulting firm), provision of works design and supervision, as well as framework contracts, are always concluded by the donor's representative.

18. APPLICABLE PROCUREMENT PROCEDURES FOR THE ACQUISITION OF SERVICES

18.1. Standard procedures

Restricted procedure with mandatory publication

The general rule for the procurement of services of **category A** is the restricted tender procedure with mandatory 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.

18.2. Exceptional procedures

The exceptional procurement procedures described in article 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 4 shall apply.

19. RESTRICTED PROCEDURE WITH PUBLICATION

19.1. General

In order to ensure the broadest participation possible in competitive tendering and the requisite transparency, restricted tenders must be subject to publication of a call for expressions of interest.

The call for expressions of interest 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 call for expressions of interest 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 call for expressions of interest 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 activities. It must provide potential service providers with the information they need to determine their capacity to fulfil the contract in question. The selection criteria specified in the dossier for expressions of interest 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.

It is to be noted that a notice for expressions of interest published locally shall, in principle, provide all eligible service providers with the same opportunities to participate as local service providers. Any condition seeking to restrict artificially the participation of eligible non-local service providers is not desirable (e.g. obliging such service providers to be registered in the partner country or to have performed contracts there in the past, etc.). The donor's representative shall issue prior approvals to derogations to this rule in writing.

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.

19.2. Establishment of the shortlist

Interested service providers (individually or as grouping) shall submit their application with the information required in the dossier for expressions of interest, so that their capacity to fulfil the contract 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 2 "Eligibility for contracts") and candidates falling into one of the situations described in article 9 "Ethics clauses";
- Applying the selection criteria specified in the dossier for expressions of interest, without any alteration. These criteria should, essentially, make it possible to:
 - i) 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;
 - ii) 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 contract 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 call for expressions of interest 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 tender dossier, be approved in writing by the donor's representative.

Once a shortlist has been approved by the contracting authority and the donor's representative, shortlisted service providers or consortia may no longer form alliances or establish subcontracting relations between each other, nor modify their composition for the contract in question.

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

19.3. Drafting and content of the tender dossier

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 tender dossier. After approval of the donor's representative, the contracting authority will send only to the shortlisted candidates a letter of invitation to tender accompanied by the approved tender dossier 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 proportion of subcontracting if authorised, (vi) the maximum budget available for the contract 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)² for payment of advances.

19.4. Selection and award criteria

The criteria for the award of the contract serve to identify the economically most 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 (CV) 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 subcriteria. Their respective weightings depend on the nature of the services required and are determined on a case-by-case basis in the tender dossier.

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 tender dossier must contain details of the technical evaluation grid, with its criteria and subcriteria and their weightings.

19.5. Additional information during the procedure

The tender dossier should be clear enough to prevent candidates invited to tender from having to request additional information during the procedure. If the contracting 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 tender dossier, 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 tender dossier. The contracting authority must reply to all tenderers' questions within a reasonable timeframe before the deadline for submission of tenders.

If, during the procedure, the contracting authority, deems it necessary to amend the tender dossier, 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.

19.6. Deadline for submission of tenders

Tenders must reach the contracting authority at the 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.

² See Appendix 4

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.

19.7. 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 contracting authority to examine tenders, approve the contract award proposal, notify the successful tenderer and conclude the contract. The period of validity of tenders is fixed at 90 days from the deadline for the submission of tenders.

In exceptional cases, before the period of validity expires, the contracting 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.

19.8. Submission of tenders

Tenders must be submitted in accordance with the double envelope system, i.e. in an outer parcel or envelope containing two separate, sealed envelopes, one bearing the words "Envelope A - technical offer" and the other "Envelope B - financial offer".

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.

This system enables the technical offer and the financial offer to be evaluated successively and separately: it ensures that the technical quality of a tender is considered independently of the price.

The outer envelope should bear:

- The address for submission of tenders specified in the tender dossier;
- The reference of the tender dossier 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 tender dossier.

19.9. Opening of tenders

On receipt of tenders, the contracting 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.

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 submitted in sealed envelopes and received by the date and time indicated in the tender dossier will be considered for the evaluation. The committee must reject tenders whose envelopes have been received opened or unsealed. No tender shall be returned to the concerned tenderers. Possible tender guarantees will be returned at a later stage.

Initially, only the technical offers are opened. The sealed envelopes containing the financial offers are kept unopened by the contracting 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 persons present;
- Whether tenders have been received in open or unsealed envelopes and the names of these tenderers;
- 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.

19.10. Evaluation of tenders

19.10.1. 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 tender dossier.

Thereafter, the chairperson of the committee ensures that all voting evaluators are familiar with the evaluation criteria set out in the tender dossier 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 tender dossier (see article 19.4. "Selection and award criteria"). In no circumstances may the committee or its members change the technical evaluation grid communicated to the tenderers in the tender dossier.

In practice, it is recommended that evaluators distribute points for a given criterion one after another for all tenders, rather than scoring each tender for all criteria before moving on to the next tender. Where the content of a tender is incomplete or deviates substantially from one or more of the technical evaluation criteria laid down in the tender dossier, the tender is given no technical score and will be eliminated in the plenary session.

If the tender dossier 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 tender dossier, the committee may, after writing up its provisional conclusions and before definitively concluding its evaluation of the technical offers, decide to interview the key members of the team of experts proposed 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 10 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. The indicative timetable for these interviews must be given in the tender dossier.

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 tender dossier, 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.

19.10.2. 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 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 tender dossier 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 contract 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 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.

19.11. Contract award

19.11.1. Choice of contractor

The economically most advantageous tender is established by weighing technical quality against price on a basis generally set to 80/20. This is done by multiplying:

- The final technical scores by 0.8;
- The financial scores by 0.2.

The resulting technical and financial scores are then added together, and the contract 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 companies and firms 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 companies 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 within 10 working days, 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 tender dossier;
- The tender selected is the economically most advantageous tender according to the provisions of the tender dossier.

Where the conditions are not fulfilled, the donor's representative makes a decision within 15 working days from the date of receipt of the evaluation report.

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. Their identity shall also remain confidential.

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.

19.11.2. Contract award notification

After the donor's representative has given its formal written approval and before the period of validity of tenders expires, the contracting 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 contracting 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.

No offer will be returned to tenderers. This also applies to unopened financial envelopes.

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.

19.11.3. 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.

19.12. Provision and replacement of experts

Where the contract involves the provision of technical assistance staff, the contractor is bound to provide the experts specified in the tender. This specification may take various forms. The contract identifies and names, in all cases, the main experts to be provided by the contractor.

Should a tenderer and/or proposed experts deliberately conceal the fact that all or some of the team proposed in the tender are unavailable from the date specified in the tender dossier for the start of the assignment, they may be excluded from the tender procedure by the committee. Should the contracting authority and the donor's representative learn that such facts have been concealed after the contract has been awarded, they may decide either to cancel the award of the contract and recommence the tender procedure or to award the contract to the second-ranked tenderer. Such behaviour may lead to a tenderer's exclusion from other contracts financed by contributions from the Government of the Grand Duchy of Luxembourg (or other donors).

However, the contract must not only identify the key staff to be provided but also specify the qualifications and experience required of them. This is important if the contractor wishes to replace staff after the contract has been signed. This situation may arise before performance of the contract has even begun or while it is in progress. In both cases, the contractor must first obtain the written approval of the contracting Authority and the donor's representative by substantiating his request for replacement. The contracting authority has 15 days from the date of receipt of the request in which to reply.

The contractor must, on its own initiative, propose a replacement where:

- a) A member of staff dies, falls ill or suffers an accident;
- b) It becomes necessary to replace a member of staff for any other reasons beyond the contractor's control (e.g. resignation, etc.).

In the course of performance, the contracting authority may, with the donor's representative's consent, make a written, substantiated request for a replacement, if it considers that a member of staff is incompetent or unsuitable for the purposes of the contract.

Where a member of staff has to be replaced, the replacement must possess at least equivalent qualifications and experience and his remuneration may in no circumstances exceed that of the expert replaced. Where the contractor is unable to provide a replacement possessing equivalent qualifications and/or experience, the contracting authority may either terminate the contract, if it feels that its performance is jeopardised, or, if it feels that this is not the case, accept the replacement, in which case the latter's fees are to be negotiated downwards to reflect the proper level of remuneration.

Any additional expenses resulting from the replacement of staff are borne by the contractor. Where an expert is not replaced immediately and sometime elapses before the new expert takes up his position, the contracting authority may ask the contractor to assign a temporary expert to the contract pending the new expert's arrival or to take other steps to bridge the gap. Whatever the case may be, the contracting authority will make no payment for the period of absence of the expert or his replacement (whether temporary or permanent).

20. SIMPLIFIED RESTRICTED PROCEDURE

In the simplified restricted procedure, the contracting authority draws up, without publication, a shortlist of at least three service providers and prepares the tender dossier. 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 contract verified. The shortlist thus established must be justified in a report and must receive, as well as the tender dossier, the prior written approval of the donor's representative.

The selected candidates receive the tender dossier comprising the selection and award criteria, the terms of reference and a draft contract. The contracting 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 contract conditions without discrimination and obtain comparable tenders. A tender guarantee is not mandatory, but may be required.

Tenders must reach the contracting authority at the address, and, at the very latest, the date and time indicated in the tender dossier. A sufficient deadline from the date of dispatch of the tender dossier 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. 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. Their identity shall also remain confidential.

If the contracting 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 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.

21. PRUDENT PURCHASING PROCEDURE

The person responsible for the purchase seeks to identify qualified service providers able to offer services at competitive prices, and proceeds directly with their contractualisation 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 economically most advantageous offer.

For reasons of transparency, the different steps of such contractualisation shall always be documented on file.



GENERAL REGULATIONS

(WORKS)

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

PART IV: SPECIFIC RULES GOVERNING WORKS ACQUISITION CONTRACTS

22. INTRODUCTION

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

“Contractor” describes any legal person 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 procurement notice, is the authority empowered to conclude the contract on behalf of the project.

The project management prepares and sends the tender dossiers 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 contracting 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.

23. APPLICABLE PROCUREMENT PROCEDURES FOR THE ACQUISITION OF WORKS

23.1. Standard procedures

Open procedure with mandatory publication

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

Simplified restricted procedure (without publication)

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.

23.2. Exceptional procedures

The exceptional procurement procedures described in article 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 4 shall apply

24. OPEN PROCEDURE WITH PUBLICATION

24.1. General

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

Procurement 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 companies may obtain the tender dossier from the contact address stated in the procurement notice. Because of their size and printing costs, tender dossiers for works may be charged for a flat fee. In addition, the tender dossier is available for free consultation at the address stated in the procurement notice.

24.2. Drafting and content of the tender dossier

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 tender dossier falls to the project management. The contracting authority issues the tender dossier 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 allowed, iv) the proportion of subcontracting if authorised, 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)³ for:
 - The tender guarantee (1 to 2% of the contract's cost estimate),
 - The advance repayment guarantee,
 - The performance guarantee (10 % of the contract value).

24.3. 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 tender dossier as well as the compliance of the technical proposal with the provisions of the tender dossier.

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

24.4. Additional information during the procedure

The tender dossier should be clear enough to prevent tenderers from having to request additional information during the procedure. If the contracting 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 tender dossier, 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 tender dossier. The contracting authority must reply to all tenderers' questions within a reasonable timeframe before the deadline for submission of tenders.

If, during the procedure, the contracting authority deems it necessary to amend the tender dossier, 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.

24.5. Deadline for submission of tenders

Tenders must reach the contracting authority at the address and, at the very latest, the date and time indicated in the tender dossier. 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 procurement 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.

24.6. Period during which tenders are binding

Tenderers are bound by their tenders for the period specified in the tender dossier. This period must be sufficient to allow the contracting authority to examine the tenders, approve the contract award proposal, notify the successful tenderer and conclude the contract. The period of validity of tenders is fixed at 90 days from the deadline for submission of tenders.

In exceptional cases, before the period of validity expires, the Contracting 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 See appendix 4

24.7. Submission of tenders

Technical and financial offers must be placed inside a single sealed envelope/parcel bearing:

- The address for submission of tenders indicated in the tender dossier;
- The reference of the tender dossier 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 tender dossier.

24.8. Opening of tenders

Upon receipt of tenders, the contracting 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.

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 tender dossier.

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 tender dossier may be considered.

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.

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 persons present;
- The names of the tenderers who have replied within the deadline;
- 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);
- If applicable, the names of tenderers whose envelopes did not contain any tender guarantee;
- 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.

24.9. 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 tender dossier 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 tender dossier.

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 tender dossier 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 tender dossier, 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 tender dossier 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 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

24.10. Contract award

24.10.1. Choice of contractor

Price is the sole award criterion for works contracts. All non-compliant tenders having already been eliminated, the choice of the successful tender corresponds to the lowest compliant tender, that is to say the tender with the lowest financial offer of those tenders that have been evaluated as technically compliant during the technical evaluation. This tenderer is awarded 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 companies and firms 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 companies and firms 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 contract award proposal within 10 working days, 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 tender dossier;
- The selected tender is the lowest-priced of those that are compliant with the requirements of the tender dossier;
- 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 within 15 working days from the receipt of the evaluation report. 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. Their identity shall also remain confidential.

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.

24.10.2. Contract award notification

After the donor's representative has given its formal written approval and before the period of validity expires, the contracting 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 contracting 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.

21.10.3. 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 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.

25. SIMPLIFIED RESTRICTED PROCEDURE

In the simplified restricted procedure, the contracting authority draws up, without publication, a shortlist of at least three contractors and prepares the tender dossier. 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 verified. The shortlist thus established must be justified in a report and must receive, as well as the tender dossiers, the prior written approval of the donor's representative.

The selected candidates receive the tender dossier including the selection and award criteria, the technical and administrative specifications and a draft contract. The contracting 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 contract conditions without discrimination and obtain comparable tenders. A tender guarantee is not mandatory, but may be required.

Tenders must reach the contracting authority at the address, and, at the very latest, the date and time indicated in the tender dossier. A sufficient deadline from the date of dispatch of the tender dossier 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 contracting 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 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.

26. PRUDENT PURCHASING

The person responsible for the purchase of works seeks to identify qualified contractors able to offer competitive prices, and proceeds directly with their contractualisation 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 economically most advantageous offer.

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



APPENDIX 1: ACQUISITION CATEGORIES, THRESHOLDS AND SUMMARY OF APPLICABLE STANDARD PROCEDURES⁴

	ACQUISITION TYPES		
	GOODS	SERVICES	WORKS
Category A	<p>X > 100 000 EUR</p> <p><u>Open procedure</u></p> <p>Mandatory publication in the local press and on LuxDev's website.</p> <p>Full tender dossier.</p> <p>Deadline for tender submission: minimum 30 days following the first publication.</p>	<p>X > 100 000 EUR</p> <p><u>Restricted procedure with publication</u></p> <p>Mandatory publication of an call for expressions of Interest in the local press and on LuxDev's website.</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>Full tender dossier.</p> <p>Deadline for tender submission: minimum 30 days following the invitation to tender.</p>	<p>X > 100 000 EUR</p> <p><u>Open procedure</u></p> <p>Mandatory publication in the local press and on LuxDev's website</p> <p>Full tender dossier</p> <p>Deadline for tender submission: minimum 30 days following the first publication</p>
Category B	<p>10 000 EUR < X ≤ 100 000 EUR</p> <p><u>Simplified restricted procedure</u></p> <p>Publication: non mandatory.</p> <p>Abridged tender dossier.</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>10 000 EUR < X ≤ 100 000 EUR</p> <p><u>Simplified restricted procedure</u></p> <p>Publication: non mandatory.</p> <p>Abridged tender dossier.</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>10 000 EUR < X ≤ 100 000 EUR</p> <p><u>Simplified restricted procedure</u></p> <p>Publication: non mandatory.</p> <p>Abridged tender dossier.</p> <p>Deadline for tender submission: on a case-by-case basis.</p> <p>Consultation of minimum three contractors (only one if justified).</p>
Category C	<p>X ≤ 10 000 EUR</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>X ≤ 10 000 EUR</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>X ≤ 10 000 EUR</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>

⁴ 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 Quality Manual among which the "Synoptic table for procurement compliance in the framework of projects".

APPENDIX 2: DEFINITIONS

Abridged tender dossier: short version of the tender dossier, 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 coordination of a 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: prequalification procedure with publication inviting providers to express their interest for the provision of services specified in a notice of call for expressions of interest. Providers selected as a result of this procedure are retained on a shortlist of candidates to be invited to submit an offer on the basis of a tender dossier.

Candidate: any legal person or group 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.

Economically most advantageous tender: the best tender by the criteria laid down for the contract in question, 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 procurement notice or stated in the tender dossier.

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 contract: a contract between a supplier and the contracting authority for the purchase, lease, 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 contract: a contract between the contracting authority and a service provider, supplier or construction firm covering two or more of the following: goods, services or works.

Open procedure: procedure in which any legal person or group thereof may submit a tender in response to a procurement 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: The quality manual 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 procurement notice and invited by the contracting authority, may submit a tender based on the tender dossier.

Services contract: a contract between the contracting authority and a service provider for the provision of services such as studies or technical assistance.

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 contracting authority may submit tenders based on an abridged tender dossier.

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

Study contract: a services contract between a service provider and the contracting authority dealing with, for example, studies for the identification and preparation of projects, feasibility studies, economic and market studies, technical studies, evaluations and audits.

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 assistance contract: a services contract between a service provider and the contracting authority in cases where the service provider is called on to play an advisory role, as well as cases where it is called on to manage or supervise an activity or to provide the experts specified in the contract.

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: 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 legal person 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.

Works contract: a contract between a construction firm and the contracting authority for the performance of works or the building of an infrastructure.



APPENDIX 3: TYPES OF PRICES

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 with an addition for overheads and profits;
 - d) "Composite" contracts, where prices shall be fixed using at least two of the predetermined pricing methods;
 - e) Provisional price contracts where 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 manner agreed.
2. Provisional price contracts may only be made:
 - a) Where the contract 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 contract 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.



APPENDIX 4: GUARANTEES

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 upon 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. Unless otherwise provided for in the tender dossier, each tenderer for goods and works contracts must provide a guarantee for its tender. The tender dossier 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. In exceptional cases, it can be provided in the form of a banker's draft, a certified cheque, a bond provided by an insurance company, an irrevocable letter of credit or a cash deposit made with the donor's representative. Acceptable forms are to be specified in the tender dossier. If the tender guarantee is to be established in the form of a bank guarantee, it shall be delivered 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 tender dossier 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 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 provided by the tender dossier, the successful tenderer for a goods or works contract shall, within 30 days of receipt of the notification of award from the contracting authority 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.
3. As a general rule, the performance guarantee shall be provided in the form of a guarantee issued by a bank or an insurance company. In exceptional cases, it can be provided in the form of a banker's draft, a certified cheque, a bond provided by an insurance company, an irrevocable letter of credit or a cash deposit made with the Donor's Representative. Acceptable forms are to be specified in the tender dossier or in the contract. If the guarantee is established in the form of a bank guarantee, it shall be delivered 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 tender dossier 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.

