



European Investment Fund

EIF Procurement Guide

Policy for the procurement of services, supplies and works by the EIF

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1. GENERAL

1.1 INTRODUCTION

- a) The European Investment Fund (hereinafter the **“the EIF”** or **“the Fund”**), as a financial body of the EU and EIB Group’s specialist provider of SMEs risk finance across Europe is, in its dealings with external providers, committed to respecting the fundamental EU principles regarding public procurement, such as the principles of equal treatment, non-discrimination and transparency. The Fund considers that, as a general rule, these principles can be best implemented by competition among qualified tenderers and by a selection based both on cost and quality considerations.
- b) Accordingly, in full respect of the tasks and activities assigned to it by the Treaty on the Functioning of the European Union, the Fund acts in principle in accordance with European Union law on public procurement, in particular the directives dealing with public procurement as amended from time to time.
- c) Even though these directives are not applicable as such to the EIF, they provide an appropriate reference for establishing the Fund’s procedures and, for this reason, the EIF Board of Directors approved the EIF Procurement Guide on 14 December 2009¹, aligning its rules on own account procurement with the directive 2004/18/EC, which was valid at that time².
- d) Public procurement law at EU level was changed by the adoption of directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement (hereinafter **“the Directive”**) which shall in future be the main legal basis, as amended from time to time, for EIF procurement, complemented with more detailed provisions addressing the EIF specific activities and needs.
- e) As the Directive does not cover all aspects relevant to EIF procurement needs, the provisions of the Directive are complemented by additional provisions, in particular concerning:
 - i. procurements below thresholds,
 - ii. exclusion resulting from the specific situation of the EIF as a financial institution,
 - iii. remedies according to directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (hereinafter **“the Remedies Directive”**);
- f) In addition to the aforesaid, the EIF will have regard to the case law of the EU Court of Justice interpreting the Directive and the Remedies Directive as well as other best practices which might be relevant.
- g) The above mentioned principles and procedures are incorporated in the present EIF Procurement Guide (hereinafter **“the Guide”**), which aim is to set out the procedures to be followed by the EIF when procuring:
 - services, supplies and works for its own account, as well as
 - technical assistance services³ provided by external service providers inside or outside the EU under third party mandates (see sub-section 7.5).These procedures apply also every time that the Fund is involved in the procurement irrespective of whether it pays for the value of the relevant services, supplies or works or not, unless the EIF has satisfied itself that in the procurement of the said services, supplies or works an acceptable level of fair competition is guaranteed.
- h) The Fund is aware of the increased possibilities offered by the Directive in terms of new purchasing techniques and electronic procurement and it intends, to the extent possible, to promote the use of them.
- i) The Guide is designed to provide general information on procurement procedures managed by the EIF and it does not address specific terms and conditions of any particular contract that the Fund may conclude.

¹ Note to the EIF Board of Directors, Document 09/065.

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

³ Pursuant to Article 2(2) and 28 of its Statutes, the EIF may engage in activities aimed at pursuing its objectives, provided that they are compatible with its task, that they are entered in separate accounts and that they are adequately remunerated.

- j) For the avoidance of doubt, the Guide does not apply to:
 - i. contracts awarded by the European Investment Bank⁴ (hereinafter “the EIB” or “the Bank”) on behalf of the EIF in the frame of the Framework Agreement signed between the two institutions on 16 December 2016, where the EIB’s Internal Procurement Guide is in force;
 - ii. services, supplies or works provided to any incorporated vehicle entered into, managed or advised by the EIF, unless such services, supplies or works are provided to the EIF in the context of its contractual obligations as manager/adviser;
 - iii. the selection of financial intermediaries in the context of EIF’s operational activity, including under mandates;
 - iv. Legal services sought in connection with EIF activities, save that the retention of such services shall be governed by the EIF policy on the Retention and Management of External Legal Counsel⁵.
- k) The EIF Board of Directors approved this Guide on 14 June 2017⁶ whereby the entry into force and period of effectiveness shall be as defined in sub-section 9.1.

1.2 INTERPRETATION

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

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

- e) The Guide also sets out additional provisions [as indicated in sub-section 1.1 e)] beyond the ones stemming directly from the Directive which are nevertheless necessary for ensuring that EIF

⁴ European Investment Bank, being the major shareholder of the EIF (currently 59.8%).

⁵ The current EIF policy on the Retention and Management of External Legal Counsel shall be updated, as soon as reasonably practicable, to take account of any relevant processes and procedures to be agreed at the EIB for the retention of external counsel.

⁶ Note to the EIF Board of Directors, Document 17/167

procurement regime is not only compliant with the principles and procedures developed at EU level in respect of public procurement but also fit for purpose of EIF's needs.

2. EIF PROCUREMENT RULES, PRINCIPLES AND PROCEDURES

2.1 SUBJECT MATTER AND SCOPE

Article 1, paragraphs 1 and 2 of the Directive shall apply.

2.2 DEFINITIONS

In this Guide, whenever the terms 'bodies governed by public law', 'public contracts', 'public works contracts', 'work', 'public supply contracts', 'public service contracts', 'economic operator', 'tenderer', 'candidate', 'procurement document', 'ancillary purchasing activities', 'procurement service provider', 'written' or 'in writing', 'electronic means', 'life cycle', 'design contests', 'innovation', 'label' and 'label requirements' are being used, Article 2, para 1, lit (4) to (13), respectively lit (15) and (17) to (24) shall apply.

In the context of this Guide, the term 'public contracts' is sometimes also simply referred to as "**contract(s)**". In those cases, the meaning of contract(s) includes public contracts, framework agreements, Annex XIV contracts and dynamic purchasing systems.

2.3 MIXED PROCUREMENT

Article 3 shall apply in its entirety.

2.4 THRESHOLDS

2.4.1 **Threshold for public works contracts**⁷

Article 4, paragraph a) shall not apply and the threshold shall be set at EUR 2,500,000 net of VAT, which is not subject to revision as per sub-section 2.4.4.

2.4.2 **Threshold for public supply and service contracts**

Article 4, paragraph c) shall apply.

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

Article 4, paragraph d) shall apply.

2.4.4 **Revision of thresholds**

Aforesaid thresholds, except the one stated in sub-section 2.4.1, shall be updated in line with Article 6 and revised thresholds shall automatically apply to the EIF in accordance with the corresponding European Commission's publications in the Official Journal of the European Union⁸.

2.5 METHODS FOR CALCULATING THE ESTIMATED VALUE OF PROCUREMENT

Article 5 shall apply in its entirety.

2.6 EXCLUSIONS

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

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

2.6.2 **Specific exclusions for service contracts**

Within the scope of this Guide as set out in Section 1 above, Article 10 shall apply in its entirety. However, before entering into public contracts for the acquisition or rental of land, existing buildings or other immovable property or concerning rights thereon, the EIF shall carry out a market analysis, whereby the procedure set out in sub-section 2.6.5 shall apply mutatis mutandis.

⁷ The threshold of EUR 2,500,000 net of VAT is being set in order to align with EIB practices, based on historic decisions.

⁸ The threshold for public supply and service contracts under 2.4.2 is currently EUR 209,000 net of VAT (cf. Commission Delegated Regulation (EU) 2015/2170 of 24 November 2015 entered into force on 1st January 2016) and the threshold for public service contracts for social and other specific services (Annex XIV) under 2.4.3 is currently EUR 750,000 net of VAT.

2.6.3 Service contracts awarded on the basis of an exclusive right

Article 11 shall apply in its entirety.

2.6.4 Public contracts between entities within the public sector

Article 12 shall apply in its entirety.

2.6.5 Contracts pertaining to the functioning and status of the EIF

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

2.6.5.2 Irrespective of the contract value, the type of contract, the number of candidates and the availability of alternatives, a market analysis may be conducted in the following ways, under the supervision of the EIF's Procurement Service:

- a) Passive desk research, or
- b) Active consultations with pre-selected candidates.

2.7 SPECIFIC SITUATIONS

2.7.1 Contracts subsidised by contracting authorities

Article 13 shall apply in its entirety.

2.7.2 Research and development services

Article 14 shall apply in its entirety.

2.8 PRINCIPLES OF PROCUREMENT

Article 18 shall apply in its entirety.

2.9 ECONOMIC OPERATORS

Article 19 shall apply in its entirety.

2.10 CONFIDENTIALITY

Article 21 shall apply in its entirety.

2.11 RULES ON COMMUNICATION

Article 22 with the exception of paragraph 7 shall apply, whereby the EIF aims to adhere to any delegated acts adopted by the European Commission in this regard.

2.12 NOMENCLATURES

Article 23, paragraph 1 shall apply.

2.13 CONFLICTS OF INTEREST

Article 24 shall apply in its entirety.

2.14 ACCESS TO EIF CONTRACTS

Article 25 shall not apply, however the EIF may decide at its own discretion, depending on its needs, whether or not it will enter into service contracts with economic operators from outside the European Union for works, supplies, and services.

2.15 PROCUREMENT PROCEDURES ABOVE THRESHOLDS

The EIF may apply the following procedures, as regulated in the Directive, for procurements with a value net of VAT estimated to be equal to or greater than the thresholds set at sub-section 2.4:

2.15.1 Open Procedure

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

2.15.2 Restricted Procedure

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

2.15.3 Competitive procedure with negotiation

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

2.15.4 Competitive Dialogue

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

2.15.5 Innovation Partnership

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

2.15.6 Use of the negotiated procedure without prior publication

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

2.16 JOINT PROCUREMENT

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

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

2.17 INTERINSTITUTIONAL PROCUREMENT

- a) Whenever a procurement procedure for a contract is carried out by an EU-Institution as listed in Article 13 of the Treaty on European Union which is in the interest of the EIF and if the EIF, through the EIB or otherwise, is invited by the EU-Institution it may decide to participate in such interinstitutional procurement. If such EU-Institution asks to be remunerated for the provisions of its purchasing activities, the EIF may award a service contract without applying the procedures provided for in this Guide.

- b) Should the EIF decide to participate in interinstitutional procurement, the EIF's Procurement Service shall be responsible for coordinating the participation in such interinstitutional procurements with the EIB.

3. TECHNIQUES AND INSTRUMENTS FOR ELECTRONIC AND AGGREGATED PROCUREMENT

3.1 FRAMEWORK AGREEMENTS

Article 33 shall apply in its entirety.

3.2 DYNAMIC PURCHASING SYSTEM

Article 34 shall apply in its entirety.

3.3 ELECTRONIC AUCTIONS

Article 35 shall apply in its entirety.

3.4 ELECTRONIC CATALOGUES

Article 36 shall apply in its entirety.

4. CONDUCT OF THE PROCEDURE

4.1 PREPARATION

4.1.1 Preliminary market consultations

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

4.1.2 Prior involvement of candidates or tenderers

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

4.1.3 Technical specifications

Article 42 and Annex VII shall apply in their entirety.

4.1.4 Labels

Article 43 shall apply in its entirety.

4.1.5 Tests reports, certification and other means of proof

Article 44, paragraphs 1 and 2 shall apply.

4.1.6 Variants

Article 45 shall apply in its entirety.

4.1.7 Division of contracts into lots

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

4.1.8 Tender guarantees

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

4.1.9 Setting time limits

Article 47 shall apply in its entirety.

4.2 PUBLICATION AND TRANSPARENCY

4.2.1 Call for competition

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

- 4.2.2 **Prior information notices**
Article 48 shall apply in its entirety.
- 4.2.3 **Contract notices**
Article 49 shall apply in its entirety.
- 4.2.4 **Contract award notices**
Article 50 shall apply in its entirety;.
- 4.2.5 **Form and manner of publication of notices**
Article 51 shall apply in its entirety, whereby the EIF will use the standard forms (as amended from time to time) established by the European Commission.
- 4.2.6 **Electronic availability of procurement documents**
Article 53 shall apply in its entirety.
- 4.2.7 **Invitations to candidates**
Article 54 and Annex IX shall apply in their entirety. In addition, the invitation to submit a tender, to participate in the dialogue, or to confirm interest may contain information as given in:
 - a) sub-section 6.4 concerning subcontracting;
 - b) sub-section 6.3 concerning price revision;
 - c) sub-sections 4.1.8 and 6.2 concerning guarantees.

4.3 CHOICE OF CANDIDATES OR TENDERERS

- 4.3.1 **General principles**
Article 56 paragraphs 1, 2 (except the last sentence) and 3 shall apply. The EIF aims to adhere to any amendments to Annex X effected by the European Commission.
- 4.3.2 **Exclusion grounds**
Article 57 shall apply in its entirety. The EIF shall pay particular attention to third party compliance in this regard in order to ensure the integrity of economic operators working with the EIF.
- 4.3.3 **Selection criteria**
Article 58 shall apply in its entirety.
- 4.3.4 **European single document**
Article 59 with the exception of paragraph 3 and the last sentence of paragraph 2 shall apply. The EIF will use the standard form (as amended from time to time) established by the European Commission.
- 4.3.5 **Means of proof**
Article 60 with the exception of paragraph 5 shall apply.
- 4.3.6 **Online repository of certificates (e-Certis)**
The EIF may make use of the online repository of certificates (e-Certis) according to Article 61.
- 4.3.7 **Quality assurance standards and environmental management standards**
Article 62 with the exception of paragraph 3 shall apply.
- 4.3.8 **Reliance on the capacity of other entities**
Article 63 shall apply in its entirety.
- 4.3.9 **Opening of tenders and requests to participate**
 - 4.3.9.1 With the exception of contracts below EUR 35,000 (see sub-section 7.4), tenders and requests to participate shall be opened by an opening committee appointed for this purpose. The opening committee shall be made up of at least three persons guaranteeing the absence of conflicts of interest.
 - 4.3.9.2 The members of the committee shall sign the written record of the opening of tenders/requests to participate received, which shall identify those tenders/requests to participate which comply with the requirements of the procurement documents and those which do not, and which shall give grounds on which tenders/requests to participate were rejected for non-compliance.
 - 4.3.9.3 The content of the written record of the opening shall be made available to economic operators who submitted a request to participate or tender. In addition, where the

contract is awarded under price or cost only criterion, the prices/cost quoted in the tenders satisfying the requirements shall be made available.

4.3.10 Committee for the evaluation of tenders and requests to participate

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

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

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

4.3.11 Contacts between EIF and candidates/tenderers

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

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

a) at the instance of tenderers, communicate additional information solely for the purpose of clarifying the nature of the contract, such information to be communicated on the same date to all tenderers who have asked for the procurement documents;

b) at its own instance, if it discovers an error, a lack of precision, an omission or any other type of clerical defect in the text of the procurement documents, provide updated information in a manner identical with that applicable in respect of the original invitation to tender.

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

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

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

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

4.4 REDUCTION OF NUMBERS OF CANDIDATES, TENDERS AND SOLUTIONS

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

Article 65 shall apply in its entirety.

4.4.2 Reduction of the number of tenders and solutions

Article 66 shall apply in its entirety.

5. AWARD OF THE CONTRACT / CANCELLATION OF PROCEDURES

5.1 AWARD OF CONTRACT

5.1.1 Contract award criteria

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

5.1.2 **Life-cycle costing**

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

5.1.3 **Abnormally low tenders**

Article 69, with the exception of paragraph 5, shall apply in its entirety, however without the EIF being required to inform the European Commission as foreseen by paragraph 4.

5.1.4 **Award Decision**

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

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

5.1.5 **Standstill period before concluding the contract**

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

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

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

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

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

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

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

5.1.6 **Conclusion of contract**

With the exception of payments against invoices equal to or less than EUR 3,000, contracts are to be concluded in writing. If justified by the subject matter of the procurement, the creation of a purchase order is deemed sufficient. The performance of a contract may not start before the contract is concluded.

5.2 **CANCELLATION OF PROCEDURES**

The EIF may, before a public contract or framework agreement is concluded, cancel the procurement procedure without the candidates or tenderers being entitled to claim any compensation. The decisions shall be justified and be brought to the attention of the candidates or tenderers according to sub-section 5.1.4.

6. CONTRACT'S PERFORMANCE

6.1 CONDITIONS FOR PERFORMANCE OF CONTRACTS

Article 70 shall apply in its entirety.

6.2 GUARANTEES

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

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

6.3 PRICE REVISION

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

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

6.4 SUBCONTRACTING

Article 71 shall apply in its entirety.

6.5 MODIFICATION OF CONTRACTS DURING THEIR TERM

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

6.6 SUSPENSION IN THE EVENT OF ERRORS OR IRREGULARITIES

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

6.7 TERMINATION OF CONTRACTS

Article 73 shall apply in its entirety.

7. PARTICULAR PROCUREMENT REGIMES

7.1 PROCUREMENT OF SOCIAL AND OTHER SPECIFIC SERVICES ABOVE THE THRESHOLD OF SUB-SECTION 2.4.3

7.1.1 Award of contracts for social and other specific services

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

7.1.2 Publication of notices

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

7.1.3 Principles of awarding Annex XIV contracts

- 7.1.3.1 With regard to the award of Annex XIV contracts, the EIF shall use the open or the restricted procedure. However, the EIF may determine a different procedure in cases,

where the specificities of the services in question require so in line with the below sub-sections.

- 7.1.3.2 Such procedures shall be at least sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators.
- 7.1.3.3 In particular, where, in accordance with sub-section 7.1.2, a contract notice or prior information notice has been published in relation to a given procurement, the EIF shall, except in the circumstances mentioned in paragraph 7.1.3.4, conduct the procurement, and award any resulting Annex XIV contract, in conformity with the information contained in the notice regarding:
 - a) conditions for participation,
 - b) time limits for contacting the contracting authority, and
 - c) the award procedure to be applied.
- 7.1.3.4 The EIF may, however, conduct the procurement, and award any resulting Annex XIV contract, in a way which is not in conformity with that information, but only if all the following conditions are met:
 - a) the failure to conform does not, in the particular circumstances, amount to a breach of the principles of transparency and equal treatment of economic operators;
 - b) the EIF has, before proceeding in reliance on sub-paragraph a)
 - i. given due consideration to the matter,
 - ii. concluded that sub-paragraph (a) is applicable,
 - iii. documented that conclusion and the reasons for it in a note to file, and
 - iv. informed the participants of the respects in which the EIF intends to proceed in a way which is not in conformity with the information contained in the notice.
- 7.1.3.5 In paragraph 7.1.3.4 b)iv., “participants” means any economic operators which have responded to the notice and have not been informed by the EIF that they are no longer under consideration for the award of an Annex XIV contract within the scope of the procurement concerned.
- 7.1.3.6 All time limits imposed on economic operators for the purposes of sub-section 7.1, whether for responding to a contract notice or taking any other steps in the relevant procedure, shall be reasonable and proportionate.
- 7.1.3.7 Without prejudice to the generality of paragraph 7.1.3.1, and subject to the other requirements of sub-section 7.1, the EIF may apply procedures which correspond (with or without variations) to procedures, techniques or other features provided for in sub-section 2.15, as well as procedures which do not.
- 7.1.3.8 In relation to the award of Annex XIV contracts, EIF may take into account any relevant considerations, including
 - a) the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;
 - b) the specific needs of different categories of users, including disadvantaged and vulnerable groups;
 - c) the involvement and empowerment of users; and
 - d) innovation.

7.2 PROCUREMENT OF SOCIAL AND OTHER SPECIFIC SERVICES BELOW THE THRESHOLD OF SUB-SECTION 2.4.3

Annex XIV contracts below the threshold of sub-section 2.4.3 may be awarded in line with sub-section 7.4 below. For the avoidance of doubt, sub-section 2.5 (methods for calculating the estimated value of procurement) shall apply.

7.3 RULES GOVERNING DESIGN CONTESTS

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

7.4 PROCUREMENTS BELOW THRESHOLDS

7.4.1 General

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

7.4.1.2 The main features described in sections 1 to 6 and 8, with the exception of sub-section 2.6.5, shall apply, *mutatis mutandis*, but taking into consideration the principle of proportionality, to the procurement of low value contracts not covered by the provisions of the Directive. However, even taking into consideration the principle of proportionality, modifications to contracts below thresholds may not alter their overall nature. Where several successive modifications are made, the aggregated value must not exceed 50% of the value of the original contract.

7.4.2 Direct negotiation

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

7.4.3 Negotiated procedure without publication

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

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

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

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

7.4.4 Other procurement procedures below thresholds

The EIF may use for awarding contracts not exceeding the thresholds stated in sub-sections 2.4.1 and 2.4.2 any other procurement procedure for awarding contracts below thresholds by analogy provided they are foreseen in the applicable financial/procurement regimes of other EU-Institutions as per Article 13 of the Treaty on European Union, irrespective of the actual thresholds applied by these EU-Institutions.

7.5 PROCUREMENT OF TECHNICAL ASSISTANCE SERVICE CONTRACTS

7.5.1 General

For the award of service contracts in the context of technical assistance, the provisions of this Guide shall apply, except as otherwise provided in this section. In particular, the award decision shall be made by the EIF in accordance with the rules stated in paragraph 5.1.4.1 unless specified otherwise in a contractual arrangement between the EIF and the mandator.

7.5.2 Inapplicability

Sub-sections and paragraphs 2.3, 2.4.1, 2.4.3, 2.4.4, 2.6.5, 2.16, 2.17, 7.1, 7.2, 7.3, 7.4.3.1a) and 7.4.3.2 shall not apply.

7.5.3 Derogations

7.5.3.1 EIF may use formats different from the European Single Procurement Document as per sub-section 4.3.4.

7.5.3.2 Committees for opening and evaluating tenders and requests to participate as per sub-sections 4.3.9 and 4.3.10 shall only be required for technical assistance service contracts with values above EUR 50,000.

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

7.5.3.4 Technical assistance service contracts may be awarded by way of direct negotiation according to sub-section 7.4.2 when the value of the technical assistance contract does not exceed EUR 50,000.

7.5.3.6 Technical assistance service contracts with values of more than EUR 50,000 but less than EUR 209,000 may be awarded by way of a negotiated procedure without publication below thresholds as defined in sub-section 7.4.3 whereby the consultation of at least three candidates is sufficient and whereby paragraph 2.15.6 shall not apply.

8. GOVERNANCE

8.1 INDIVIDUAL REPORTS ON PROCEDURES FOR THE AWARD OF CONTRACTS

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

8.2 DISPUTE RESOLUTION

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

9. FINAL PROVISIONS

9.1 ENTRY INTO FORCE AND PERIOD OF EFFECTIVENESS

This policy shall enter into force on 14 June 2017 and shall repeal and replace the *EIF Guide for Procurement, version December 2009* and shall remain in effect for an indefinite period of time until it will be repealed and replaced by a new guide on EIF procurement as per future decisions by the EIF Board of Directors.

9.2 TRANSITIONAL PROVISION

- a) Procurement procedures that were started before the entry into force of this Guide shall be completed in accordance with the *Guide for Procurement, version December 2009* (as per sub-section 9.1). For the purpose of this provision, a tender procedure is deemed to be started on the day on which the contract notice was sent to the Official Journal or, in cases where no such notice is required, on the day when the EIF invited one or several market operators to submit a tender.
- b) If, after the entry into force of this Guide, contracts are to be modified during their term (as per sub-section 6.5) the modification shall be subject to this Guide even though the original contract was awarded pursuant to the *Guide for Procurement, version December 2009* or any of its preceding versions.

10. ANNEXES TO THE DIRECTIVE

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

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

Annex XII	Means of proof of selection criteria
Annex XIV	List of social and other specific services

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