

PART III: PROCUREMENT IN THE CONTEXT OF PROJECTS FINANCED BY THE NORWEGIAN MINISTRY OF FOREIGN AFFAIRS

1 GENERAL PRINCIPLES

- 1.1 If the implementation of a Project requires procurement of services or goods by the Grant Recipient, the contract must be awarded to the most economically advantageous tender (the tender offering the best price-quality ratio), as evaluated against the award criteria listed in the tender documents.
- 1.2 Contracts must be awarded in accordance with procurement rules and procedures:
 - ensuring sufficient transparency, fair competition and adequate ex-ante publicity;
 - ensuring equal treatment, proportionality and non-discrimination;
 - avoiding conflicts of interests throughout the entire procurement procedure.
- 1.3 Contracts must not be split artificially to circumvent procurement thresholds.
- 1.4 This Part III sets out the minimum procedures to be followed, but does not preclude the Grant Recipient from applying alternative procedures providing an even higher degree of competition.
- 1.5 The Norwegian Ministry of Foreign Affairs (MFA) may carry out ex post checks on the Grant Recipient's compliance with the rules set forth in this Part III. Failure to comply with these rules would render the related expenditure ineligible for MFA funding and may lead to withholding funds or claim for repayment in accordance with Article 17 of the General Conditions / Part II of this Agreement.
- 1.6 The Procurement Provisions of this Part III shall apply mutatis mutandis to any procurements to be carried out by the Grant Recipient's affiliated entity(ies) or cooperation partners.
- 1.7 Any monetary amounts referred to in this Part III are amounts excluding VAT.

2 ELIGIBLE TENDERERS

- 2.1 Participation in tender procedures administered by the Grant Recipient shall be open on equal terms to all natural and legal persons. Tenderers must state their nationality in their tenders by presenting proof of nationality under their national legislation. Tenderers must also provide information on their legal form and ownership structure.

Part III

- 2.2 Candidates or tenderers shall not make use of child labour or forced labour and/or practise discrimination and they shall respect the right to freedom of association and the right to organise and engage in collective bargaining, in accordance with the core conventions of the International Labour Organization (ILO).
- 2.3 Candidates or tenderers shall be excluded from participation in a procurement procedure if:
- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - b) they or persons having powers of representation, decision-making or control over them have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;
 - c) they have been guilty of grave professional misconduct proven by any means which the Grant Recipient can justify;
 - d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established, or with those of the country of the Grant Recipient(s) or those of the country where the contract is to be performed;
 - e) they or persons having powers of representation, decision making or control over them have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such illegal activity is detrimental to the MFA's financial interests.
- 2.4 Candidates or tenderers must confirm in writing that they are not in one of the situations listed above.
- 2.5 Points 2.3 (a) to (d) do not apply to the purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.
- 2.6 Contracts may not be awarded to candidates or tenderers which, during the procurement procedure:
- a) are subject to a conflict of interests;
 - b) are guilty of misrepresentation in supplying the information required by the Grant Recipient as a condition of participation in the tender procedure or fail to supply this information.

3 COMMON PROCUREMENT RULES

- 3.1 The tender documents must be drafted in accordance with best international practice. If they do not have their own tender documents, Grant Recipients may voluntarily use the models published in the Practical Guide on the EuropeAid website (PRAG). The MFA will not publish notices and tender documents issued by the Grant Recipient(s).
- 3.2 The Grant Recipient shall take into account the potential environmental impact of any planned procurements.
- 3.3 All invitations to submit tenders shall include a clause stating that offers will be rejected if any illegal or corrupt practises have taken place in connection with the award. All contracts concluded under the Project shall contain a clause stating that the Grant Recipient may terminate the contract if it finds that illegal or corrupt practises have taken place in connection with the contract award or the execution of the contract.
- 3.4 The time-limits for receipt of tenders and requests to participate must be sufficient to allow interested parties a reasonable and appropriate period to prepare and submit their tenders.
- 3.5 An evaluation committee must be set up to evaluate applications and/or tenders of a value of NOK 500 000 or more on the basis of the exclusion, selection and award criteria published by the Grant Recipient(s) in advance in the tender documents. This committee must have an odd number of members, at least three, with all the technical and administrative capacities necessary to give an informed opinion on the tenders.
- 3.6 For contracts with a value exceeding NOK 100 000, the Grant Recipient shall compile a written record with documentation of all assessments and decisions during all steps of the procurement process from the planning stage until the signing of the contract. Upon request by the MFA, the Grant Recipient will deliver the written record to the MFA and grant the MFA access to all relevant information and documentation related to its procurement practises and any specific procurements carried out under the Project.

4 SPECIFIC RULES FOR SERVICE CONTRACTS¹

Service contracts from NOK 2 500 000 and above

- 4.1 The contract must be awarded by means of an international restricted tender procedure following publication of a procurement notice.

¹ Definitions of different types of contracts and procedures can be found in 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.

Part III

- 4.2 The procurement notice shall be published in all appropriate media, in particular on the Grant Recipient's web site, in the international press and the national press of the country in which the Project is being carried out, and in any other relevant specialist periodicals. It must state the number of candidates which will be invited to submit tenders within a range of four to eight candidates, and must be sufficient to ensure genuine competition.
- 4.3 All would-be service providers fulfilling the conditions referred to in article 2 above may take part, but only candidates satisfying the published selection criteria and invited in writing by the Grant Recipient may submit a tender.

Service contracts from NOK 500 000 to less than NOK 2 500 000

- 4.4 The contract must be awarded by means of a competitive negotiated procedure with or without publication, in which the Grant Recipient consults at least three suppliers of its choice and negotiates the terms of the contract with one or more of them.

Service contracts of less than NOK 500 000:

- 4.5 The contract may be awarded using procedures established by the Grant Recipient, while respecting the rules and principles laid down in articles 1 to 3 of this Part III.

5 SPECIFIC RULES FOR SUPPLY CONTRACTS²

Supply contracts from NOK 2 500 000 and above

- 5.1 The contract must be awarded by means of an international open tender procedure following publication of a procurement notice.
- 5.2 The procurement notice is to be published in all appropriate media, in particular on the Grant Recipient's web site, in the international press and the national press of the country in which the Project is being carried out, and in any other relevant specialist periodicals.
- 5.3 Any would-be supplier which fulfils the conditions referred to in article 2 may submit a tender.

Supply contracts from NOK 800 000 to less than NOK 2 500 000

² Definitions of different types of contracts and procedures can be found in 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.

Part III

5.4 The contract must be awarded by means of an open tender procedure published locally: the contract notice is published in all appropriate media at least in the country in which the Project is being carried out.

5.5 A local open tender procedure must provide other eligible suppliers with the same opportunities as local firms.

Supply contracts from NOK 500 000 to less than NOK 800 000

5.6 The contract must be awarded by means of a competitive negotiated procedure with or without publication of a contract notice. The Grant Recipient consults at least three suppliers of its choice and negotiates the terms of the contract with one or more of them.

Supply contracts of less than NOK 500 000

5.7 The contract may be awarded using procedures established by the Grant Recipient, while respecting the rules and principles laid down in articles 1 to 3 of this Part III.

6 SPECIFIC RULES FOR PUBLIC WORKS CONTRACTS³

Public works contracts from NOK 40 000 000 and above

6.1 The contract must be awarded by means of an international open tender procedure following publication of a contract notice.

6.2 The procurement notice is to be published in all appropriate media, in particular on the Grant Recipient's web site, in the international press and the national press of the country in which the Project is being carried out, and in any other relevant specialist periodicals.

6.3 Any contractor which fulfils the conditions referred to in article 2 above may submit a tender.

Public works contracts from NOK 2 500 000 to less than NOK 40 000 000

6.4 The contract must be awarded by means of an open tender procedure published locally: the procurement notice is published in all appropriate media at least in the country in which the Project is being carried out.

6.5 A local open tender procedure must provide other eligible contractors with the same opportunities as local firms.

³ Definitions of different types of contracts and procedures can be found in 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.

Public works contracts from NOK 500 000 to less than NOK 2 500 000

- 6.6 The contract must be awarded by means of a competitive negotiated procedure with or without publication, in which the Grant Recipient consults at least three contractors of its choice and negotiates the terms of the contract with one or more of them.

Public works contracts of less than NOK 500 000

- 6.7 The contract may be awarded using the procedures established by the Grant Recipient(s), while respecting the rules and principles laid down in sections 1 to 3 of this Part III.

7 USE OF NEGOTIATED PROCEDURE

- 7.1 The Grant Recipient may use the negotiated procedure on the basis of a single tender in the following cases:
- a) where, for reasons of extreme urgency brought about by events which the Grant Recipient could not have foreseen, the procedures referred to in articles 2-5 cannot be applied. The circumstances invoked to justify extreme urgency must be documented and must in no way be attributable to the Grant Recipient.
 - b) for the purposes of humanitarian aid and civil protection operations or for crisis management aid. Crisis situations may be invoked only when they have been formally recognised by the MFA. The MFA will inform the Grant Recipient(s) if a crisis situation has been declared and the period for which the declaration will be in force.
 - c) where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field;
 - d) where contracts extend on-going activities:
 - (i) not included in the main service contract which have become necessary to perform the contract for unforeseen circumstances, and provided that the additional service cannot be technically and economically separated from the principal contract without serious inconvenience for the Grant Recipient(s) and the aggregate amount of additional services does not exceed 50 % of the value of the principal contract; or
 - (ii) which consist in the repetition of similar services entrusted to the contractor providing services under the initial contract, provided that:

Part III

- (a) a contract notice was published for the first service and the possibility of using the negotiated procedure for new services for the project and the estimated cost were clearly indicated in the contract notice published for the first service; and
 - (b) the extension of the contract for a value and duration does not exceed the value and the duration of the initial contract.
- e) for additional deliveries by the original supplier intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the Grant Recipient to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance;
- f) for additional works not included in the initial contract concluded which have, through unforeseen circumstances, become necessary for carrying out the works and on condition that such works cannot be technically or economically separated from the main contract without serious inconvenience for the Grant Recipient(s) and on the condition that, although separable from the performance of the original contract, are strictly necessary for its completion and where the aggregate value of contracts awarded for additional works does not exceed 50 % of the value of the principal contract.;
- g) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the Grant Recipient may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, provided that the initial terms of the tender procedure are not substantially altered;
- h) where the contract concerned follows a contest and must, under the rules applying, be awarded to the winner of the contest or to one of the winners of the contest, in which case, all winners shall be invited to participate in the negotiations;
- i) where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider;
- j) where warranted by the nature or particular characteristics of the supplies, for example, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents;
- k) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the MFA / Norway or the Grant Recipient country so requires;
- l) for contracts in respect of supplies quoted and purchased on a commodity market;

Part III

- m) for contracts in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law;
- n) where a new contract has to be concluded after early termination of an existing contract. Such a decision has to be substantiated by reason of non-performance by the supplier or by reasons for termination similar to the grounds for exclusions as mentioned in section 2.3 above.

8 SPECIAL CASES

- 8.1 Different rules than those specified in this Part III may apply in the following cases, with the exception of section 1 and the rules on nationality provided for in section 2, which always apply.

Co-financing

- 8.2 When the Project is co-financed by several donors and one of the other donors, who acts as the lead donor for the Project, imposes procurement rules on the Grant Recipient(s) that differ from those set out in articles 3 to 7, the Grant Recipient(s) may apply these rules, if they offer guarantees equivalent to internationally accepted standards. Where its pillars have been positively assessed the relevant rules are considered equivalent. If the lead donor's rules do not offer equivalent guarantees, or in specific cases, the MFA and the Grant Recipient will agree on the use of other procurement procedures offering such guarantees. In this case, the rules to be followed are set forth in the Special Conditions.

Public administrations of an EEA country

- 8.3 Where the Grant Recipient(s) or an affiliated entity is a contracting authority and/or a contracting entity within the meaning of the EU Directives applicable to procurement procedures, it must apply the relevant provisions of those texts, in preference to the rules set out in this Part III.

Non-Governmental Organisations (NGOs)

- 8.4 Where the Grant Recipient(s) or an affiliated entity is a NGO, it may apply its own procurement rules if a prior positive assessment of the relevant rules has shown that they offer guarantees equivalent to internationally accepted standards. If the rules do not offer equivalent guarantees, or in specific cases, the MFA and the Grant Recipient will agree on the use of other procurement procedures offering such guarantees. In this case, the rules to be followed are set forth in the Special Conditions.