**CHECKLIST FOR PROCUREMENT NEGOTIATED PROCEDURE WITHOUT PUBLICITY**

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| **Name of the controller** |  |
| **Institution / Audit firm** |  |

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| --- | --- |
| **Project number and title:** |  |
| **Name of beneficiary:** |  |
| **Is it a joint procurement with other project beneficiaries?[[1]](#footnote-1)** | Yes  No |
| **In case of joint procurement, which beneficiary is leading the procedure?** |  |
| **Description or name of the purchase and code of budget line** |  |
| **Type of procurement** | Service  Supply  Works  Mixed (indicate the types and the dominant one) |
| **Is the procedure using any of the following options? [[2]](#footnote-2)** | Electronic auctions  Electronic catalogues |
| **Currency of the procedure** | [EUR] [national currency] |
| **Estimated value in national currency, if it is the currency of the procedure** |  |
| **Estimated value in EUR at the time of launch of the procedure[[3]](#footnote-3), if procedure in national currency** |  |
| **Date of launch of the procedure** |  |
| **Date of signature of contract** |  |
| **Contract number** |  |
| **Name of the contractor** |  |
| **Actual contractual value (in the currency of the procedure)** |  |

|  |  |
| --- | --- |
| **Date of request for examination:** |  |
| **General remarks (if any)** |  |

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| --- | --- | --- | --- |
| **#** | **Checks** | **Yes/No/N.A.** | **Comments** |
| **1** | **Choice of procedure** | | |
| A | Is the nature of the contract correct? (service, supply, works or mixed) |  |  |
| B | In case of mixed contract, is the contract awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject matter of the contract in question? |  |  |
| C | Is the choice of type of procedure (negotiated procedure without publicity) correct according to point 8 of Annex II? |  |  |
| **2** | **Preparation and procurement documents** | | |
| A | Did the beneficiary conduct a preliminary market consultation with a view to preparing the procedure? |  |  |
| B | Did the procurement documents specify the subject matter of the procurement by providing a description of its needs and the characteristics required for the works, supplies or services to be bought? |  |  |
| C | In case of joint procurement not leaded by the beneficiary, did the controller of the lead beneficiary identify any irregularity in the procedure? |  |  |
| D | Do the procurement documents include the invitation to tender, the tender specifications and the draft contract? |  |  |
| E | Do the procurement documents | | |
| specify the rules governing the submission of tenders, including in particular the conditions to maintain them confidential until opening, the closing date and time for receipt and the address to which they are to be sent or delivered or the internet address in case of electronic submission? |  |  |
| state that submission of a tender implies acceptance of the terms and conditions set out in the procurement documents and that such submission binds the contractor to whom the contract is awarded during performance of the contract? |  |  |
| specify the period during which a tender will remain valid and shall not be modified in any respect? |  |  |
| forbid any contact between the contracting authority and the tenderer during the procedure, save, exceptionally, under the conditions laid down in point 23 of Annex II, and, where provision is made for an on-the-spot visit, specify the arrangements for such a visit? |  |  |
| specify the means of proof for compliance with the time limit for receipt of tenders? |  |  |
| state that submission of a tender implies acceptance of receiving notification of the outcome of the procedure by electronic means? |  |  |
| the exclusion and selection criteria? |  |  |
| the award criteria and their relative weighting or, where weighting is not possible for objective reasons, their decreasing order of importance, which shall also apply to variants? |  |  |
| the technical specifications referred to in point 16 of Annex II? |  |  |
| if variants are authorised, the minimum requirements which they must meet? |  |  |
| the requirement to indicate in which country the tenderers are established and to present the supporting evidence normally acceptable under the law of that country? |  |  |
| in the case of electronic catalogues, information on the electronic equipment used and the technical connection arrangements and specifications needed? |  |  |
| G | Does the draft contract | | |
| specify the liquidated damages for failure to comply with its clauses? |  |  |
| specify the details which must be contained in invoices and in the relevant supporting documents? |  |  |
| specify the competent court for hearing disputes? |  |  |
| specify that the contractor shall comply with applicable obligations in the fields of environmental, social and labour law established by European Union law, national law, collective agreements or by the international social and environmental conventions listed in Annex X to [Directive 2014/24/EU](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024)? |  |  |
| specify whether the transfer of intellectual property rights will be required? |  |  |
| state that the price quoted in the tender is firm and non-revisable, or lay down the conditions or formulas for revision of prices during the lifetime of the contract? |  |  |
| take particular account of the subject matter of the procurement and the economic situation in which it is taking place, the type of contract and tasks and its duration, the financial interests of the beneficiary, if a revision of prices is set out? |  |  |
| H | Did the technical specifications shall include the characteristics required for works, supplies or services, including minimum requirements, so that they fulfil the use for which they are intended? |  |  |
| I | Did the characteristics in the technical specifications include, as appropriate[[4]](#footnote-4): | | |
| the quality levels? |  |  |
| environmental performance and climate performance? |  |  |
| for purchases intended for use by natural persons, the accessibility criteria for people with disabilities or the design for all users, except in duly justified cases? |  |  |
| the levels and procedures of conformity assessment? |  |  |
| performance or use of the supply? |  |  |
| safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production processes and methods? |  |  |
| for works contracts, the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the contracting authority is in a position to prescribe under general or specific regulations in relation to the finished works and to the materials or parts which they involve? |  |  |
| J | Did technical specifications refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trademarks, patents, types or a specific origin or production with the effect of favouring or eliminating certain products or economic operators? |  |  |
| If yes, is it justified because a sufficiently detailed and intelligible description of the subject matter of the contract is not possible? |  |  |
| If yes, is the refence accompanied by the words ‘or equivalent’? |  |  |
| **4** | **Exclusion, selection and award criteria** | | |
| A | Do the procurement documents request a declaration on honour signed and dates, by which the tenderer declares and evidences the absence of an exclusion situation in accordance with Article 137 of the Financial Regulation? |  |  |
| B | Do the procurement documents include the selection criteria, the minimum levels of capacity and the evidence to prove that capacity? |  |  |
| Are the above-mentioned requirements proportionate to the subject matter of the contract? |  |  |
| C | Do the procurement documents request a declaration on honour stating that the tenderer fulfils the selection criteria? |  |  |
| D | To ensure that the economic operators possess the necessary economic and financial capacity, does the beneficiary require a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract; information on their annual accounts showing ratios between assets and liability and/or an appropriate level of professional risk indemnity insurance? |  |  |
| Does the minimum yearly turnover exceed two times the estimated annual contract value? |  |  |
| If yes, is it duly justified linked to the nature of the purchase and explained in the procurement documents? |  |  |
| If ratios between assets and liability are required, are the methods and criteria for such rations explained in the procurement documents? |  |  |
| Do the procurement documents define the evidence to be provided by an economic operator to demonstrate its economic and financial capacity, in particular one or more of the following documents: appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance; financial statements or their extracts for a period equal to or less than the last three financial years for which accounts have been closed; a statement of the economic operator’s overall turnover and, where appropriate, turnover in the area covered by the contract for a maximum of the last three financial years available? |  |  |
| E | Do the procurement documents define the evidence to be provided by an economic operator to demonstrate its technical and professional capacity, in particular one or more of the following documents? | | |
| for works, supplies requiring siting or installation operations or services, information on the educational and professional qualifications, skills, experience and expertise of the persons responsible for performance. |  |  |
| a list of the principal supplies delivered in the past three years, with the sums, dates and clients, public or private accompanied upon request by statements issued by the clients. |  |  |
| a list of the works carried out in the last five years, accompanied by certificates of satisfactory execution for the most important works. |  |  |
| a statement of the technical equipment, tools or the plant available to the economic operator for performing a service or works contract. |  |  |
| a description of the technical facilities and means available to the economic operator for ensuring quality, and a description of available study and research facilities. |  |  |
| a reference to the technicians or technical bodies available to the economic operator, whether or not belonging directly to it, especially those responsible for quality control. |  |  |
| in respect of supplies: samples, descriptions or authentic photographs or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products clearly identified by references to technical specifications or standards |  |  |
| for works or services, a statement of the average annual manpower and the number of managerial staff of the economic operator for the last three years. |  |  |
| an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract. |  |  |
| an indication of the environmental management measures that the economic operator will be able to apply when performing the contract. |  |  |
| F | Do the procurement documents require the provision of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards? |  |  |
| If yes, do they refer to the European Union Eco-Management and Audit Scheme or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council or other environmental management standards based on the relevant European or international standards by accredited bodies? |  |  |
| G | Do the quality criteria for award include elements such as technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics, production, provision and trading process and any other specific process at any stage of the life cycle of the works, supplies or services, organisation of the staff assigned to performing the contract, after-sales service, technical assistance or delivery conditions such as delivery date, delivery process and delivery period or period of completion? |  |  |
| H | Do the procurement document set the lowest price method? |  |  |
| If not, do they specify the relative weighting[[5]](#footnote-5) for each criterion chosen to determine the most economically advantageous tender? |  |  |
| Does the weighting applied to price or cost in relation to the other criteria result in the neutralisation of price or cost? |  |  |
| If weighting is not possible for objective reasons, do the procurement documents indicate the criteria in decreasing order of importance? |  |  |
| I | Do the procurement documents lay down a minimum level of quality? |  |  |
| J | Do the procurement documents set the life-cycle costing method? |  |  |
|  | If yes, do the procurement documents indicate the data to be provided by the tenderers and the method which will be used to determine the life-cycle costs on the basis of those data? |  |  |
|  | If yes, do the procurement documents indicate that the life-cycle costs shall cover parts or all of the following costs: costs related to acquisition, costs of use, such as consumption of energy and other resources, maintenance costs, end-of-life costs, such as collection and recycling costs, costs attributed to environmental externalities? |  |  |
|  | If the cost for environmental externalities is included, does the method used for its assessment fulfil the following conditions: it is based on objectively verifiable and non-discriminatory criteria, it is accessible to all parties and economic operators can provide the required data with a reasonable effort? |  |  |
|  | If the tender includes the promotion of clean and energy-efficient road transport vehicles, do the procurement documents apply the mandatory methods for the calculation of life-cycle costs provided for in Article 6 of the [Directive 2009/33/EC](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L0033)? |  |  |
| **5** | **Submission, evaluation and award criteria** | | |
| A | Is the time for submission of tenders adequate? |  |  |
| B | Did the beneficiary communicate additional information about the procurement documents before the time limit of submission of tenders? |  |  |
| If yes, was information provided disclosed and available to all tenderers? |  |  |
| Did the beneficiary keep record in the procurement file of any contact with tenderers after the time limit for submission of tenders? |  |  |
| C | Did the beneficiary reject any tender for the reasons in point 24.3 of Annex II? |  |  |
| Did the beneficiary consider any tender as irregular for the reasons in point 24.4 of Annex II? |  |  |
| Did the beneficiary consider any tender as unacceptable for the reasons in point 24.5 of Annex II? |  |  |
| Did the beneficiary release the tender guarantees, if requested, of the rejected, irregular and unacceptable tenders, after having provided the information on the outcome of the procedure? |  |  |
| D | Did the beneficiary release the tender guarantees, if requested, of the admissible tenders, after the contract is signed? |  |  |
| E | Did the evaluation committee identify abnormally low tenders? |  |  |
| If yes, did the beneficiary request in writing details of the constituent elements of the price or costs and give the tenderer to present its observations[[6]](#footnote-6)? |  |  |
| Did the beneficiary reject the abnormally low tenders where evidence supplied does not satisfactorily account for the low price or costs proposed? |  |  |
| Did the beneficiary reject the abnormally low tenders where it is established that the tender is low because it does not comply with applicable obligations in the fields of environmental, social and labour law? |  |  |
| F | Is there an evaluation report dated and signed by the members of the evaluation committee? |  |  |
| Does the evaluation report contain the minimum information required by point 26.2 of Annex II? |  |  |
| Did the beneficiary take its award decision following the provisions in point 26.3 of Annex II? |  |  |
| Was the contract awarded on the basis of the notified selection and award criteria?[[7]](#footnote-7) |  |  |
| Did the economic operator (the tenderer) rely on the capacities of other entities? |  |  |
| If yes, did the beneficiary verify that they fulfil the selection criteria?[[8]](#footnote-8) |  |  |
| Did the economic operator intend to rely on subcontractors representing a significant part of the contract?[[9]](#footnote-9) |  |  |
| If yes, did the beneficiary verify if the subcontractors fulfil the selection criteria? |  |  |
| If the entities on which the economic operator relies or the subcontractors representing a significant part of the contract do not fulfill the selection criteria, did the beneficiary required to replace them? Do the new entities or subcontractors fulfil the requirements? |  |  |
| If the economic operator did not provide the certificates referred to in point 4.F of this checklist, did the beneficiary accept other evidence of equivalent environmental management measures?[[10]](#footnote-10) |  |  |
| G | Did the beneficiary inform the tenderers whose tenders are rejected of the grounds on which the decision was taken, as well as the duration of the standstill period?[[11]](#footnote-11) |  |  |
| Did any compliant tenderer request in writing the information mentioned in point 27.2 of Annex II? |  |  |
| If yes, did the beneficiary send the requested information within the deadlines and using the means indicated in point 27.4 of Annex II? |  |  |
| If certain information was withheld, were the reasons in line with those mentioned in point 27.2 of Annex II? |  |  |
| H | Did the beneficiary inform, simultaneously and individually, by electronic means of decisions reached concerning the outcome of the procedure as soon as possible after the stages mentioned in point 27.3 of Annex II, including the provision therein indicated? |  |  |
| I | Did the beneficiary cancel the procurement procedure? |  |  |
| If yes, was the decision duly justified and brought to the attention of the tenderers? |  |  |
| **6** | **Contract performance** | | |
| A | Did the performance start after the contract was signed? |  |  |
| B | Did the beneficiary modify the contract without a procurement procedure? |  |  |
| If yes, is the contract modified according to one of the cases indicated in point 30.3 of Annex II? |  |  |
| If yes, does the modification alter the subject matter of the contract? |  |  |
| C | Did the beneficiary request a performance guarantee?[[12]](#footnote-12) |  |  |
| If yes, is the amount up to a maximum 10% of the total value of the contract? |  |  |
| Was the guarantee released partially or fully upon provisional acceptance of the works, supplies or complex services? |  |  |
| Was the guarantee fully released after final acceptance of the works, supplies or complex services within the period specified in the contract? |  |  |
| Is the period specified in the contract up to 90 calendar days for technical services or actions which are particularly complex to evaluate and for which payment depends on the approval of a report or a certificate or up to 60 calendar days for all other contracts for which payment depends on the approval of a report or a certificate or up to 30 calendar days for all other contracts? |  |  |
| D | Did the beneficiary constitute a retention money guarantee by deductions from interim payments or by deduction from the final payment?[[13]](#footnote-13) |  |  |
| If yes, is the amount up to a maximum 10% of the total value of the contract? |  |  |
| Is the amount of the retention guarantee proportionate to the risks identified in relation to the performance of the contract, considering its subject matter and the usual commercial terms applicable in the sector concerned? |  |  |
| Was the retention guarantee used where a performance guarantee had been requested and not released? |  |  |
| Was the retention guarantee replaced at the request of the contractor by a guarantee issued by a bank or by an authorised financial institution or by a joint and several guarantee of the contractor and a third party? |  |  |
| Was the retention guarantee released after the expiry of the contractual liability period? |  |  |
| Was it released within a period subject to the time limits set out in paragraph 2 and to be specified in the contract? |  |  |

1. According to point 13 of Annex II [↑](#footnote-ref-1)
2. According to point 10 o 11 of Annex II [↑](#footnote-ref-2)
3. Use the Exchange rate in [Inforeuro](https://commission.europa.eu/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-inforeuro_en) of the month of the launch of the procedure [↑](#footnote-ref-3)
4. According to point 16.2 of Annex II, “the characteristics [...] may include, as appropriate” the items listed in this checklist. Therefore, they are optional. [↑](#footnote-ref-4)
5. The weightings may be expressed as a range with an appropriate maximum spread [↑](#footnote-ref-5)
6. See point 25.1 of Annex II. [↑](#footnote-ref-6)
7. See point 17.1 of Annex II. [↑](#footnote-ref-7)
8. See point 17.6 & 17.7 of Annex II. [↑](#footnote-ref-8)
9. See point 17.7 of Annex II. [↑](#footnote-ref-9)
10. See point 20.4 of Annex II. [↑](#footnote-ref-10)
11. Standstill period shall have a duration of 10 days when using electronic means of Communication and 15 days when using other means. [↑](#footnote-ref-11)
12. See point 30.2 of Annex II. [↑](#footnote-ref-12)
13. See point 30.3 of Annex II. [↑](#footnote-ref-13)