EUROPEAN FOREST INSTITUTE

PROCUREMENT RULES

The EFI Procurement rules have come into force on this day.

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SECTION I – GENERAL

ARTICLE 1 APPLICABILITY

1.1. Applicability

These rules shall be followed when purchasing or renting services, goods or works ("procurement") at the European Forest Institute ("EFI"), as per the EFI Engagement Framework.

Section II regulates procurement with a value of no more than EUR 100,000, framework contracts, procurement following unsuccessful tendering, and publication of information.

Section III regulates procurement with a value exceeding EUR 100,000.

Section IV regulates modifications of contracts.

Section V contains final provisions.

1.2. Exemption

These rules shall not apply to procurement for the following types of contracts:

(i) Employment contracts, pursuant to the EFI Staff regulations

(ii) Contract as Special adviser, pursuant to the rules on Special adviser to the European Forest Institute

(iii) Contract as In-house Consultant, pursuant to the EFI rules for engagement of In-House Consultants

(iv) Contracts which only can be concluded with a particular economic operator:

- for reasons of intellectual property rights,
- due to the economic operator having a monopoly standing, or
- due to requirements in funding agreements or by decision of a trust fund steering committee.

(v) Contracts for Real estate rental, Off-the-shelf software solutions, Insurance, Electricity and water, Arbitration, Financial services, Audit, and Legal advice or representation.

The above contracts can only be concluded if approved by the Director, or a person with delegated authority.

The reasons why a particular economic operator has been contracted and how value for money has been ensured must be documented.

These rules shall not apply to costs incurred as part of duty travel. Costs for duty travel is regulated in the EFI travel instructions.

ARTICLE 2 BASIC PRINCIPLES

The main objectives and the principles that are to be followed in procurement are to ensure transparency of operations, to obtain the desired quality of services, supplies or work at the best possible price, to ensure the equality of the economic operators, and to promote effective competition.

All procurement activities must be based on an absolute need and careful planning. Procurement risks should be identified, and attempts made to manage them. It is useful to make a calculation of the total costs and attained benefits.

The purpose of the procurement planning is to provide foresight on what kind of contracts are required to enable the planned operations, to prioritise the presented procurement needs in order to provide optimal support for the implementation of tasks and meeting the performance target, and to define product groups included in framework agreements. Carefully prepared procurement also helps in gaining an overall picture of the procurement activities.

Environmental considerations shall to the greatest extent possible be taken into account when procuring.

To facilitate the procurement of services and goods, procurement process descriptions have been made available on the EFI intranet procurement site. It is recommended, but not mandatory, to follow these procurement process descriptions.

When considering the engagement of a contractor for an assignment, the following have to be taken into account:

i. Contracts and amendments to contracts cannot be made retroactively. Staff members are responsible for ensuring that the planning and process of contracting takes place in advance of the work starting.

ii. Contractors should, as a main rule, be engaged at an all-inclusive fee meaning that travel and other costs are included in the fee.

   - An all-inclusive fee can indicate the part that is meant to cover travel and/or other costs
   - Reimbursement of costs is to be avoided, and is only to be used when called for by the particular complexity of a certain assignment; when applicable, reimbursement will be up to a maximum sum stated in the contract
   - An explanation on the need for reimbursement of costs, instead of engaging at an all-inclusive fee, must be submitted together with the purchase request

iii. In principle, EFI should not separately arrange and pay to external service providers for travel and accommodation for a contractor. However, if it is decided to make such separate arrangements, these costs must be indicated in the purchase request.

iv. A contractor can work without a fee, only getting per diem and/or cost reimbursements, but the reason for this should be explained in the purchase request. The purchase request will then be for the value of the per diem and costs

ARTICLE 3 CONFLICT OF INTERESTS

A person who is subject to a conflict of interests shall not participate in any part of the procurement process.

There is a conflict of interests where the impartial and objective exercise of the functions of any person is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or shared interest with another party.

A person becoming subject to a conflict of interests during a procurement process shall not take any further part in the process, and a new person shall be appointed in accordance with the applicable provisions.

ARTICLE 4 VALUE OF THE CONTRACT

The calculation of the estimated value of procurement shall be based on the total amount payable, net of value added tax. This calculation shall take account of any form of options and any foreseen renewals of a contract.

Procurement can be divided into lots. The value of the procurement shall then be calculated as the total value of all such lots.

The value of a contract without end date shall be calculated as the monthly value multiplied with 48.

The value of a framework agreement shall be calculated as its estimated value over its lifetime.

No procurement may be divided into lots or calculated using artificial methods with the intention of excluding it from the scope of certain parts of these rules. It is however recognized that it might be difficult for EFI to foresee the full extent of its procurement needs and possible amendments to a contract.

All sums stated in these rules are excluding value added tax (VAT).

ARTICLE 5 EXCLUSION FROM ACCESS TO FUNDING

For procurement with a value of more than EUR 5,000 it shall be ensured that economic operators are excluded from funding if they or a person having powers of representation, decision-making or control over them or a member of their administrative, management or supervisory body have been the subject of a final judgment or of a final administrative decision for any of the following reasons:

- bankruptcy, insolvency or winding-up procedures
- breach of obligations relating to the payment of taxes or social security contributions
- grave professional misconduct, including mis-representation
- fraud
- corruption
- conduct related to a criminal organisation
- money laundering or terrorist financing
- terrorist offences or offences linked to terrorist activities
- child labour and other trafficking in human beings
- irregularity
- creating or being a shell company

Before an economic operator is excluded from funding according to the preceding, it shall be given a chance to submit its observations and clarifications to EFI, subject to a deadline as decided by EFI.

ARTICLE 6 ARCHIVING

Documentation relating to procurement can be archived and stored electronically. In such case, the corresponding physical papers do not have to be archived and stored.

SECTION II – DIRECT CONTRACTING

ARTICLE 7 SIMPLIFIED PROCEDURES (≤ EUR 5,000)

7.1. Lower value

For procurement with a value of EUR 600 or less, the following procedure shall apply:

- Staff members do not need to request approval of the purchase in advance of the procurement.
- The procuring staff member shall seek to obtain value for money, but it is not required to obtain any documentation demonstrating this.

A written contract or similar documentation is not required. As this is an internal approval process no appeals or claims can be made by external parties.

7.2. Higher value

For procurement with a value of more than EUR 600 but not more than EUR 5,000, the following procedure shall apply:

A staff member wanting to procure shall request approval, using a system designated by EFI, from the cost center/project manager, or another EFI staff member appointed for this purpose by the Director. Requests from the cost center/project manager, or other EFI staff member specifically appointed to approve requests, shall be decided on by that person's supervisor.

Approval shall be made using the system designated by EFI.

The procuring staff member shall seek to obtain value for money and shall document in writing the efforts made in this respect.

A written contract or similar documentation is not required.

As this is an internal approval process no appeals or claims can be made by external parties.

ARTICLE 8 STANDARD PROCEDURE (EUR 5,000 ≤ EUR 50,000)

Applicability

For procurement with a value of more than EUR 5,000 but not more than EUR 50,000 the procedure in this article shall apply.

Request and 1st approval

A staff member wanting to procure shall request approval, using a system designated by EFI, from the cost center/project manager, or another EFI staff member appointed for this purpose by the Director. Requests from the cost center/project manager, or other EFI staff member specifically appointed to approve requests, shall be decided on by that person's supervisor. The person deciding on approval is hereinafter referred to as the 1st Approver.

The procurement request shall be submitted using a system designated by EFI.

The procurement request shall, to ensure value for money, include comparisons, written quotes or comparable documentation from three different economic operators, or justification why less than three comparisons, quotes or comparable documentation have been obtained.

The 1st Approver shall, before approving a procurement request, ensure the following:

- it is defined what is being procured and for what purpose it is procured
- three comparisons, written quotes or comparable documentation have been obtained, or an acceptable justification as to why less than three comparisons, written quotes, or comparable documentation have been obtained
- the procurement provides value for money. In case the request contains less than three comparisons, written quotes, or comparable documentation an explanation on how value for money has been ensured must be included
- all applicable rules and contractual provisions have been complied with
- the procurement is within budget, or that the Director or an EFI staff member appointed for this purpose by the Director has approved that the budget can be exceeded.

2nd approval

If the procurement request is approved, 1st Approver shall send the request and the documentation for approval to a person appointed for this purpose by the Director. This person is referred to as the 2nd Approver.

At the 2nd Approver's request, the 1st Approver shall provide clarifications and additional information needed.

The 2nd Approver may approve the procurement request if the procurement is within budget, or an EFI staff member appointed for this purpose by the Director has approved the budget to be exceeded.

Contract

A written contract or similar documentation is required for all procurement undertaken under this article.

Concluding provision

As this is an internal approval process no appeals or claims can be made by external parties.

ARTICLE 9 EXTENDED PROCEDURE (EUR 50,000 ≤ EUR 100,000)

Applicability

For procurement with a value of more than EUR 50,000 but not more than EUR 100,000, an extended procedure shall be applied.

Request and 1st approval

A staff member wanting to procure shall request approval, using a system designated by EFI, from the cost center/project manager, or another EFI staff member appointed for this purpose by the Director. Requests from the cost center/project manager, or other EFI staff member specifically appointed to approve requests, shall be decided on by that person's supervisor. The person deciding on approval is hereinafter referred to as the 1st Approver.

The procurement request shall be submitted using a system designated by EFI.

The procurement request shall, to ensure value for money, include written quotes or comparable documentation from three different economic operators, or justification why less than three written quotes or comparable documentation have been obtained.

The 1st Approver shall, before approving a procurement request, ensure the following:

- it is defined what is being procured and for what purpose it is procured
- three written quotes or comparable documentation have been obtained, or an acceptable justification as to why less than three quotes have been obtained
- the procurement provides value for money. In case the request contains less than three, written quotes, or comparable documentation, an explanation on how value for money has been ensured must be included
- all applicable rules and contractual provisions have been complied with
- the procurement is within budget, or that the Director or an EFI staff member appointed for this purpose by the Director has approved that the budget can be exceeded

If the procurement request is approved it shall be sent, together with the above indicated documentation, by the 1st Approver for authorisation. The request shall be sent to a person appointed for this purpose by the Director, using a system designated by EFI.

Authorisation

Authorisation of the procurement shall be taken by the Director, or by an EFI staff member appointed for this purpose by the Director, hereinafter referred to as Authoriser.

The Authoriser may request clarifications and additional information as needed.

The Authoriser may authorise the procurement if:

- the request and applicable documentation has been submitted or is otherwise found available
- the procurement is within budget, or Authoriser approves that the budget can be exceeded

The Authoriser may, when substantiated, decide not to authorise a request. A decision not to authorise is always substantiated in cases when a procurement request should not have been approved.

Authorisation can be made conditional.

The decision authorising procurement shall be documented.

Contract

A written contract or similar documentation is required for all procurement undertaken under this article.

Concluding provision

As this is an internal approval process no appeals or claims can be made by external parties.

ARTICLE 10 FRAMEWORK CONTRACTS PROCEDURE

Use of framework contract

EFI occasionally has the need to secure the capacity and availability of a contractor without initially committing to any certain quantities in relation to the procurement.

To address such circumstances, for procurement with a value of not more than EUR 100,000, a Framework contract can be concluded following the procedure in this article.

The Framework contract will, in a broad way, define services, goods, or works to be procured, and serve as a platform for committing to individual assignments as required.

The more specific details on an individual assignment under the Framework contract are established in assignment requests.

The Framework contract will provide the conditions for assignment, most notably a price mechanism.

The Framework contract can only be used for assignments where the price mechanism is fixed amount payment per assignment, or payment per a defined unit.

Cost reimbursement and payment of per diem cannot be agreed under a Framework contract.

Framework contracts can be set up with one or more contractors.

Setting up the Framework contract

A terms of reference for services or works or similar document for goods is required for the Framework contract.

The following must be taken into account in setting up the terms of reference (or similar document as applicable) for the Framework contract:

- Enough details to allow for well-informed and comparable quotes by potential contractors
- Information on the general process for performing the assignment, e.g. timeline for submission of material, deadline for draft, deadline for final version following review/feedback
- Mechanisms on how to request and accept an individual assignment e.g. the option for a service provider to decline an individual assignment, and deadline for the accepting a request for service
- Duration
- As required, specify required competences and team compositions
- Whether the tasks/services may be subcontracted by contractor

For costs under the Framework contract the following must be addressed:

- A cost ceiling, i.e. the total maximum amount that EFI might come to pay a contractor for the services following requests for services
- Whether the payment is subject to value-added tax (VAT)
- For individual assignments, whether to pay fixed all-inclusive sums, per hour, word or other defined unit
- The period for which the price mechanism is valid

Decision on Framework contract

A request for a framework contract must contain three written quotes, or comparable documentation, or justification why less than three written quotes or comparable documentation have been obtained.

Framework contracts will be decided in accordance with the following:

- For Framework contract with a cost ceiling of not more than EUR 5,000:

  (i) Request by the staff member, using a system designated by EFI, followed by approval by cost center/project manager (or supervisor, if the request is done by cost center/project manager), hereinafter referred to as 1st Approver.

  1st Approver will ensure that applicable rules and contractual provisions have been complied with, and may request clarifications and additional information as needed.

- For Framework contract with a cost ceiling of more than EUR 5,000 but not more than EUR 50,000:

  (i) Request by the staff member, using a system designated by EFI, followed by approval by 1st Approver.

  1st Approver will ensure that applicable rules and contractual provisions have been complied with, and may request clarifications and additional information as needed.

  (ii) 1st Approver shall send the request and the documentation for approval to a person appointed for this purpose by the Director. This person is referred to as the 2nd Approver.

  At the 2nd Approver's request, the 1st Approver shall provide clarifications and additional information needed.

  The 2nd Approver may approve the procurement request if the procurement is within budget, or an EFI staff member appointed for this purpose by the Director has approved the budget to be exceeded.

- For Framework contract with a cost ceiling of more than EUR 50,000 but not more than EUR 100,000:

  (i) Request by the staff member, using a system designated by EFI, followed by approval by cost center/project manager (or supervisor, if the request is done by cost center/project manager)

  (ii) Request submitted by cost center/project manager (or supervisor, if requested by cost center/project manager), using a system designated by EFI, to a person appointed for this purpose by the Director

  Authorisation shall be taken by the Director, or by an EFI staff member appointed for this purpose by the Director, hereinafter referred to as Authoriser.

  The Authoriser may request clarifications and additional information as needed.

  The Authoriser may authorise if:

  - the request and applicable documentation has been submitted or is otherwise found available
  - the procurement is within budget, or the Authoriser approves that the budget can be exceeded

  The Authoriser may, when substantiated, decide not to authorise a request. A decision not to authorise is always substantiated in cases when a request should not have been approved.

  Authorisation can be made conditional.

  The decision authorising procurement shall be documented.

A Framework contract must always be concluded in writing.

<u>Assignment requests</u>

Before a contractor can be contacted with an assignment request, the internal process stated below must be followed.

An assignment request must be submitted to the cost centre manager (supervisor if the cost centre manager is the contract manager), using the designated system, addressing at least the following (if not agreed in the Framework contract):

- Specific tasks, outputs or quantity
- Deadlines/timetable
- Cost, based on the price mechanism established in the Framework contract
- Reporting requirements, if any

- Numbering request to separate it from other assignment requests

For individual assignments of no more than 5,000 euro:

- the approval of an assignment request will be considered by the cost centre manager (supervisor if the cost centre manager is the contract manager).

For individual assignments of more than 5,000 euro:

- the approval of an assignment request will be considered by (1) the cost centre manager (or supervisor as applicable) as well as (2) by a person appointed for this purpose by the Director. The request will be sent using a system designated by EFI.

The assignment request can be approved if within budget, and the person considering the approval may for this purpose request clarifications. Assignment requests exceeding budget can be approved an EFI staff member appointed for this purpose by the Director.

The cost for an individual assignment under a Framework contract may not exceed 50,000 euro.

ARTICLE 11 DIRECT PROCEDURE

Applicability

The direct procedure for procurement may, regardless of the value of the procurement, be used following a tender process having been conducted in accordance with section III if in that tender process:

- no tender was received before the deadline;
- no tender fulfilling the minimum criteria was received before the deadline:
- no qualitatively acceptable tender was received before the deadline;
- all qualitatively acceptable tenders received exceeded the financial resources available; or
- no requests for participation was received before the deadline.

provided that the description of what is to be procured is not substantially altered, and that the value does not exceed the maximum value of the contract as stated for in the unsuccessful tender process.

Request

Head of the procuring unit may request use of the direct procedure. Such a request shall be in writing and be addressed to a person appointed to receive it by the Director.

The decision authorising the use of the direct procedure is taken by the Director or by an EFI staff member appointed for this purpose by the Director.

If use of the direct procedure is authorised, Head of the procuring unit may submit a procurement request to a person appointed for this purpose by the Director, using a system designated by EFI.

The procurement request shall include:

- quotes or comparable documentation in writing from three different economic operators, or acceptable justification why less than three quotes or comparable documentation have been obtained
- documentation clarifying how value for money has been ensured
- statement certifying that
    - all applicable contractual provisions are being complied with
    - all required funds are available

Authorisation

A decision authorising the procurement shall be taken by the Director, or by an EFI staff member appointed for this purpose by the Director, hereinafter referred to as Authoriser.

The Authoriser may authorise the procurement if the required documentation has been submitted or is otherwise found available.

Additional information and clarifications shall be provided if so requested by the authorisation committee.

The Authoriser may, when substantiated, decide not to authorise a request. A decision not to authorise is always substantiated in cases when a procurement request should not have been approved.

Authorisation can be made conditional.

The decision authorising procurement shall be documented.

Contract

Following authorisation, a written contract or similar documentation is required.

The economic operator shall, before being engaged by EFI for the assignment, be able to show that it meets the requirements stated in article 5, as well as any other requirement specified by EFI. EFI may ask the economic operator for official documents from the authorities in the country where it is established that none of the cases specified in article 5, or otherwise specified by EFI, applies to it. In case no official documents from the authorities in the country where it is established regarding this can be obtained by the economic operator the Head of the procuring unit may decide on other appropriate documentation to be submitted.

Concluding provision

As this is an internal approval process there is no appeals or claims can be made by external parties.

ARTICLE 12 PUBLICATION OF INFORMATION

12.1. Low value contracts

Information on procurement in accordance with article 7-10 does not have to be published, unless otherwise required in a funding agreement.

12.2. High value contracts

Information on procurement in accordance with article 11 shall be published if the value of the contract exceeds 100,000 euro or otherwise due to provisions in a funding agreement.

At least the following information will be published: name and domicile of contractor, information on the services, goods or works, and value of the contract.

Information according to the preceding shall be published annually by 31 March the year following the year of the contract entering into force.

Information shall be published on www.efi.int and may also be published elsewhere if so decided by the Head of the procuring unit.

12.3. Exemption from requirement to publish information

EFI may decide to not publish information in accordance with the preceding if so required due to reasons of confidentiality and security, if publishing the information would threaten the rights and freedom of an individual or harm a contractor's commercial interest, or to safeguard EFI's legitimate interests.

SECTION III – TENDERING

ARTICLE 13 TENDERING (EUR 100,000 <)

For procurement with a value of more than 100,000 euro, a contract shall be issued following the procedures in this section III.

Candidate Tenderer shall mean an economic operator, or where applicable a consortium of economic operators, having requested to participate in the restricted procedure

Tenderer shall mean an economic operator, or where applicable a consortium of economic operators, having submitted a tender in a tender process

The term *economic operator* shall equally cover natural and legal persons.

Any reference in these rules to an *Invitation to tender* shall be deemed to also constitute a reference to an *Invitation to request participation* unless the context clearly indicates otherwise.

ARTICLE 14 PROCUREMENT MANAGER

For any contract to be tendered, the Director or an EFI staff member appointed for this purpose by the Director shall appoint a Procurement Manager.

Only an EFI staff member can be appointed as Procurement Manager.

When needed, the Procurement Manager may be replaced. Although the Procurement Manager is replaced, the tender process does not have to be cancelled or redone.

ARTICLE 15 NON-DISCRIMINATION

All economic operators shall always be treated equally and in a non-discriminatory way.

Information relating to a tender, or a planned tender, may not be disclosed to any economic operator in a way that would compromise or risk compromising the equal and non-discriminatory treatment of other economic operators.

Before launching a tender procedure, market consultations may be conducted with a view to preparing the tender, provided that such consultations do not have the effect of distorting competition and do not result in a violation of the principles of non-discrimination and transparency.

ARTICLE 16 ELIGIBILITY

16.1. General

The tender process shall, subject to the more specific provisions of these rules and instructions in the invitation to tender, be open equally to any economic operator authorized to perform contracts under national law. EFI may exceptionally, if so required to fulfil the purpose of the tender for a specific tender process, decide that only certain types of economic processors may submit a tender.

EFI may, in the Invitation to tender, further specify eligibility requirements for a tender process.

EFI may, for an economic operator that has been found misrepresenting information relating to eligibility requirements, decide to exclude the economic operator from the tender process.

16.2. Consortia

Consortia of economic operators are allowed to submit tenders, unless otherwise exceptionally decided to fulfil the purpose of a specific tender process. Submission of tender by a consortium may be made subject to requirements as decided by EFI and stated in the Invitation to tender.

A consolidated assessment shall be made for all members of a consortium.

Economic operators in a consortium assume joint and several liability towards EFI for the performance of the contract as a whole.

EFI may require the economic operators to sign a consortium agreement or otherwise to assume a particular legal form.

16.3. Subcontracting

Tenderers are allowed to use resources which are not the Tenderer's own but belong to one or more other economic operators (subcontracting) to perform the contract, subject to requirements as decided by EFI and stated in the Invitation to tender.

Where it cannot be established by EFI that the tenderer actually has available to it the resources which belong to one or more other economic operators and which are necessary for the performance of the contract, EFI may disregard these resources when evaluating the tender or request to participate.

16.4. Exclusion from participation

Any economic operator shall, to be eligible to participate in any tender process, be able to show that it meets the requirements stated in article 5, as well as any other requirement specified by EFI. EFI may ask the economic operator for official documents from the authorities in the country where it is established that none of the cases specified in article 5, or otherwise specified by EFI, applies to it. In case no official documents from the authorities in the country where it is established regarding this can be obtained by the economic operator the Procurement Manager may decide on other appropriate documentation to be submitted.

ARTICLE 17 CRITERIA

17.1. Minimum criteria

For all tender procedures minimum capacity levels may be established, below which a tender or request to participate shall be rejected. These may relate to technical, financial or professional capacity needed to perform a contract.

17.2. Selection criteria

For the restricted procedure, selection criteria shall be established, on the basis of which the Candidate Tenderers are selected to be invited to submit tenders.

The selection criteria shall consist of criteria that allow for scoring. The Candidate Tenderers to be invited will then be chosen based on that scoring.

17.3. Award criteria

For all procedures award criteria shall be established, that shall be used when evaluating and comparing the tenders in the evaluation procedure to decide who shall be awarded the contract.

The award of a contract shall be based on the most economically advantageous tender; this may be established through price only, or price together with technical quality criteria.

The relative weighting given to each of the criteria chosen to determine the most advantageous tender shall be established as part of the tender specifications. These weightings can be expressed as minimum-maximum levels.

ARTICLE 18 PROCEDURES

18.1. General

For tender processes, the Procurement Manager shall decide on one of the tender procedures below to be used.

18.2. Open procedure

Under the open procedure any interested economic operator may submit a tender.

A Contract notice shall be published. EFI may publish pre-notifications.

An Invitation to tender may be sent to economic operators from whom receiving a tender is desired.

The Invitation to tender shall be sent to any economic operator that so requests.

18.3. Restricted procedure

The restricted procedure may be used where the number of participants needs to be restricted and distinct reasons for such a restriction exists. EFI shall decide on a maximum number of economic operators to invite to tender. At least three economic operators shall be invited to tender.

For the purpose of restricting the number of potential Tenderers, selection criteria shall be established to decide which Candidate Tenderers shall be invited to tender.

Any economic operator may request to participate but only those invited by EFI through an Invitation to tender may submit a tender.

A Contract notice shall be published. EFI may publish pre-notifications.

The Invitation to request participation may be sent to economic operators from whom receiving a request to participate is desired. An Invitation to request participation shall be sent to any economic operator that so requests.

18.4. Procedure for framework contract

A framework contract is an agreement between EFI and one or more economic operators, the purpose of which is to establish the terms governing how specific contracts may be awarded during a given period; a specific contract being a contract under which the economic operator performs tasks.

Awards of specific contracts may be based on the award criteria laid down in the framework contract or be done through a reopening of competition with the economic operators that are party to the framework contract.

The framework contract may establish a pricing mechanism, which means that the pricing is not fixed but that the pricing instead will be determined in a certain way during the period of the framework contract. The framework contract can also establish a mechanism for defining the scope and types of services, works and/or supplies to be further defined in specific contracts.

The term of a framework contract may not exceed four years unless there are exceptional circumstances. A specific contract, awarded subject to the rules on reopening of competition below, may be in force up to six months beyond the expiry date of the framework contract itself.

Awarding a framework contract shall be done using the open or restricted procedure.

ARTICLE 19 TENDER SPECIFICATIONS

The tender specifications shall be decided by the Procurement Manager.

The tender specifications shall be as detailed as possible and shall at least contain information on:

- The terms of reference or technical or other specification
- The criteria applicable to the different stages of the tender process and the relative weighting given to the criteria
- The model contract, unless otherwise exceptionally decided by the Procurement Manager

The terms of reference and technical or other specification must be drawn up in writing, and be sufficiently clear, in order to enable submission of commensurate and mutually comparable tenders and requests to participate.

The Procurement Manager may, at any time, decide to amend or modify the Tender Specifications. Such amendments and modifications shall be communicated in the same way as the tender specifications it is amending or modifying were communicated.

ARTICLE 20 INVITATIONS

20.1. Invitation to tender

The content and sending of the Invitation to tender shall be decided by the Procurement Manager.

The Invitation to tender shall include:

- The tender specifications
- Information on submission of tenders
- Terms and conditions for submission of tenders

The Invitation to tender can be separated into several documents.

If an Invitation to request participation has previously been sent, EFI may restrict the Invitation to tender to only include information on how to submit the tender and any other information regarding the tender procedure.

20.2. Invitation to request participation

An Invitation to request participation is to be used only in the restricted procedure.

The content and sending of the Invitation to request participation shall be as decided by the Procurement Manager.

The Invitation to request participation shall include:

- The tender specifications
- Information regarding documentation to be included in the request to participate
- Information on submission of the request to participate

The Invitation to request participation can be separated into several documents.

20.3. Modifications and amendments to the invitation

The Procurement Manager may, at any time, decide to amend or modify an Invitation to tender.

Such amendments and modifications shall be communicated in the same way as the Invitation to tender it is amending or modifying was communicated.

ARTICLE 21 CONTRACT NOTICE

The content and publishing of the Contract notice shall be decided by the Procurement Manager.

The Contract notice shall contain:

- Basic information concerning the object of the tender
- Time limits for submission of tenders/requests to participate and for submission of questions
- Applicable procedure
- Information on how to receive an Invitation to tender
- A reference to the EFI procurement rules

Where publication of the Contract notice is required by these rules, it shall be published at www.efi.int. It may also be published in other appropriate media.

The Procurement Manager may, at any time, decide to amend or modify the Contract notice. Such amendments and modifications shall be communicated in the same way as the Contract notice it is amending or modifying were communicated.

ARTICLE 22 TIME LIMITS

The time limits for submitting tenders and requests to participate shall be as stated in the Contract notice and Invitation to tender, but as a minimum the following time limits shall apply:

PROCEDURE	TIME LIMITS
Open	30 calendar days from publishing the Contract notice for economic operators to submit a tender.
Restricted	21 calendar days from publishing the Contract notice for economic operators to request to participate. 30 calendar days from dispatch of the Invitation to tender for selected Candidate Tenderers to submit a tender.

The Procurement Manager may, at any time, extend the time limits as indicated in the Contract notice and Invitation to tender.

Such extension shall be communicated in the way as the Contract notice and Invitation to tender whose time limits it is extending were communicated.

ARTICLE 23 EVALUATION

23.1. General

EFI may reject any tender not submitted in accordance with instructions given by EFI.

The Procurement Manager and the Evaluation committee may decide to:

- allow correction of a manifest written error or erroneous calculation or some other manifest error in the tender or request to participate
- request clarifications regarding a submitted tender or request to participate
- request submission of additional supporting administrative documentation.

Additional supporting documentation may not be requested, not provided, in relation to the technical or financial proposal.

23.2. The evaluation procedure

i. Registration of tenders/requests to participate

ii. Opening of tenders/requests to participate

iii. Inspection of compliance with eligibility requirements, minimum criteria, and other requirements as decided in the Invitation to tender

iv. Evaluation of the requests to participate with regard to the selection criteria, and further selection of the Candidate Tenderers to invite to tender

v. Evaluation of the tenders with regard to the award criteria

23.3. The Evaluation committee

23.3.1. General

An Evaluation committee shall be established with the purpose of handling the evaluation procedure, unless no tender was received before the deadline for submission of tenders. When establishing the Evaluation committee, consideration shall be given to ensure that there is enough time to conduct the evaluation properly and in accordance with these rules.

The Evaluation Committee may use its discretion to decide whether a tender or request to participate is submitted in accordance with the instructions given by EFI, and whether or not it will still be considered during the rest of the evaluation process.

The Evaluation committee can convene although not physically present on the same location, e.g. through video or telephone conference. The Evaluation committee members shall attend all meetings.

23.3.2. Composition

The Evaluation committee shall be composed of the following members:

- The Procurement Manager, acting as non-voting chairperson, responsible for coordinating the work of the Evaluation committee.
- A non-voting secretary, appointed by the Procurement Manager, responsible for the administrative tasks related to the work of the Evaluation committee. The secretary shall be an EFI staff member. The Procurement Manager may, instead of appointing a non-voting secretary, perform the administrative tasks related to the work of the Evaluation committee.
- An uneven number of voting members, at least three, appointed by the Procurement Manager. A majority of the voting members shall be EFI staff members. All voting members must have the appropriate technical competence and language skills needed for the evaluation.

23.3.3. Voting

When voting is called for in the Evaluation committee, each voting member shall have one vote. Decisions shall be made by a majority of votes.

23.4. Tender opening and inspection committee

The Procurement Manager can decide that tasks under article 23.2 i-iii shall be performed by a tender opening and inspection committee, created for this sole purpose, consisting of at least two persons that shall be EFI staff members. The Tender opening and inspection committee shall be independent from the Evaluation committee.

The tender opening and inspection committee shall report in writing to the Evaluation committee on its findings.

The tender opening and inspection committee is a non-voting body. All members are allowed to state their findings in the report to the evaluation committee.

If a member of the tender opening and inspection committee considers it necessary to request clarifications or to allow a Tenderer or Candidate Tenderer to correct a manifest written error or erroneous calculation or some other manifest error in the tender or request to participate, it shall notify the Procurement Manager.

23.5. Observers

Observers may take part in the tender process. All such observers shall be bound by confidentiality and shall for this purpose sign a non-disclosure agreement, unless bound by other confidentiality arrangements towards EFI, covering their role as Observer, as well as any other commitment EFI requires.

Any disputes between EFI and a person being an observer shall be handled according to the EFI dispute settlement rules,

23.6. Evaluation report

The Evaluation committee shall compile an evaluation report, which shall be a record of the tender opening and evaluation procedure.

The evaluation report shall always contain a record of the time of the meeting, an assessment of the eligibility of the tenders, information on the application of criteria, and a recommendation on decisions.

The evaluation report shall also contain information on how the Invitation to tender has been published and to which economic operators it has been sent.

Where the direct procedure has been used in the tender process the evaluation report shall contain an explanation on the use of that procedure.

The evaluation report shall be signed by the secretary and be approved by the chairperson. A record of the approval shall be kept.

23.7. Confidentiality

The meetings of the Evaluation committee shall be closed, and its members bound by professional confidentiality. Members of the Evaluation committee, that are not EFI staff members, shall sign a non-disclosure commitment unless bound by other confidentiality arrangements towards EFI, covering their role as Member of the Evaluation Committee.

The meetings of the Tender opening and inspection committee shall be closed, and its members bound by professional confidentiality.

All tenders must be kept confidential and safe to avoid unauthorised access to them.

The content of the evaluation report shall remain confidential. The Director or a person with delegated authority may decide that the contents of the evaluation report, or parts of it, can be disclosed. This obligation of confidentiality is without prejudice to the disclosure of information in the tender decision.

The Procurement Manager shall be immediately notified if there is reason to suspect that the confidentiality or safekeeping of the tenders has been compromised.

Any disputes between EFI and a non-EFI staff member of the Evaluation committee shall be handled according to the EFI dispute settlement rules.

23.8. Declaration on absence of conflict of interests

The Procurement Manager, all other members of the Evaluation committee, and all members of a tender opening and inspection committee sign a declaration confirming the absence of conflict of interests.

ARTICLE 24 ABNORMALLY LOW TENDERS

For tenders where the financial component appears to be abnormally low it can be presumed that EFI cannot rely upon performance of a contract, in a manner promised by the tender, for the whole duration of the contract.

For such a tender, EFI shall request clarifications and explanations from the Tenderer.

The tender may be rejected if the Tenderer cannot provide clarifications and explanations to the satisfaction of EFI, or does not answer in the time period given by EFI.

ARTICLE 25 CANCELLING THE TENDER PROCESS

EFI may decide to cancel the tender process at any stage before a contract has been signed by both EFI and the successful Tenderer, if the decision is substantiated. If the tender process is divided into lots, a single lot may be cancelled.

A decision to cancel the tender process is always substantiated when:

- There have been irregularities in the tender process
- No tenders have been received before the deadline for submission
- No qualitatively acceptable tender has been received
- All qualitatively acceptable tenders received exceed the financial resources available
- All tenders received are rejected or not further considered
- The financial or technical conditions have been fundamentally altered
- Exceptional circumstances render normal performance of the contract impossible

After cancelling the tender process, EFI may still decide to launch a new tender process with the same tender specifications.

A decision to cancel the tender process may be taken by the Procurement Manager if no tender was received before the deadline for submission.

If tenders have been received by the deadline for submission only the Director, or a person with authority as delegated by the Director, may decide to cancel the tender process.

The decision to cancel the tender process shall be made in writing.

EFI shall not be liable to pay damages to any economic operator because of cancellation of the tender process.

An economic operator that starts activities prior to a contract entering into force cannot hold EFI liable for any consequences should EFI cancel the tender process.

ARTICLE 26 POST TENDER NEGOTIATIONS

The Procurement Manager can decide to initiate post tender negotiations when it has been established by the Evaluation committee which Tenderer has submitted the most economically advantageous tender. Post tender negotiations can be conducted to identify whether any improvements in this tender are possible.

If improvements in the submitted tender can be achieved, they shall be confirmed by the Tenderer in a revised tender to be submitted, incorporating the negotiated changes, within a deadline set by EFI.

The revised tender shall be accepted by the Evaluation Committee. If the revised tender cannot be accepted, or if a revised tender is not submitted within the deadline, a decision to award in accordance with original tender shall be made.

The post tender negotiations and the outcome thereof shall be documented in the evaluation report, and must show:

- the justification for initiating the negotiations
- the aim of the negotiations
- the record of all exchanges, written and verbal, between EFI and the Tenderer

ARTICLE 27 DECISION

After the Evaluation committee has evaluated all tenders and finalized the evaluation report a tender decision shall be made by the Director, or a person with delegated authority, in writing,. The tender decision may not be made by a person having taken part in the evaluation.

The tender decision shall be either to award the contract or to cancel the tender process, as well as other matters as applicable.

A decision to award a contract shall, as applicable, at least contain:

- Name of Tenderer awarded the contract
- Value of tender submitted by Tenderer awarded the contract
- Details on the application of the award criteria, including sub-criteria
- Decisions and grounds on rejections of tenders and requests to participate, as well as selection of Candidate Tenderers
- The procedure regarding a claim for damages, if claiming damages is possible under these rules

A decision to cancel a tender process shall contain the reasons for the decision.

The Director or a person with delegated authority may, when substantiated, change the decision to award the contract, up until the contract has been signed by both EFI and the successful Tenderer.

If the awarded contract is not signed by the successful Tenderer within a time limit set by EFI, EFI may, in a new decision, reject that tender and award the contract to the Tenderer having submitted the most economically advantageous tender.

EFI shall not be liable to pay compensation to any economic operator on the basis of a decision to change the award of a contract, or on the basis of rejection due to a failure of the Tenderer to sign the awarded contract.

ARTICLE 28 NOTIFICATION, PUBLICATION AND REQUEST FOR INFORMATION

29.1. Notification of the tender decision

The tender decision shall be sent to all Tenderers and Candidate Tenderers within 30 calendar days of being signed.

EFI may choose to send a notification containing only part of the information in the tender decision, if disclosing the tender decision would be contrary to the interests of EFI, or would harm legitimate business interests of economic operators, or would distort fair competition between economic operators. Such a notification shall – if the contract was awarded – however always contain information on the name of Tenderer awarded the contract, value of tender submitted by Tenderer awarded the contract, details on the application of the award criteria, including sub-criteria, and the procedure regarding a claim for damages, if claiming damages is possible under these rules.

29.2. Publication of notice

EFI shall, in those tender processes where a Contract notice has been published:

- When a contract has been awarded: within 48 calendar days of the award, publish an official notice regarding the award.

  The award notice shall contain the name and domicile of the Tenderer awarded the contract, information on the the object of the tender, and value of tender submitted by Tenderer awarded the contract.

- When the tender process has been cancelled: publish an official notice regarding the cancellation

EFI may decide not to publish information in accordance with the above due to reasons of confidentiality and security, if publishing the information would threaten the rights and freedom of an individual or harm a contractor's commercial interest, or to safeguard EFI's legitimate interests.

The official notice shall be published in the same way as the Contract notice for the tender process in question.

29.3. Request for information

If requested by a Tenderer or Candidate Tenderer within 30 calendar days of EFI sending the tender decision awarding a contract, EFI shall provide the requesting Tenderer or Candidate Tenderer with information on the application of the criteria for that Tenderer's

or Candidate Tenderer's tender as well as information on the characteristics and relative advantages of the tender awarded the contract.

EFI shall provide the information with 30 calendar days of receiving the request.

ARTICLE 29 CLAIMS FOR DAMAGES

30.1. Claims

No appeals are available against any decision made by EFI under these rules.

Unsuccessful Tenderers and Candidate Tenderers not being invited to tender may, within 21 calendar days of EFI publishing the award of the contract according to article 28.2., initiate proceedings for claiming damages in accordance with article 29.3.

For contracts awarded following reopening of competition under a procedure for framework contract, unsuccessful Tenderers may, within 21 calendar days of EFI notifying the award of the contract according to article 28.1., claim damages in accordance with article 29.3.

Where the Tenderer or Candidate Tenderer is comprised of a consortium of economic operators, the consortium members may only make a joint claim under these rules.

All claims shall be initiated and handled in accordance with the EFI Dispute settlement rules.

30.2. Inadmissible claims

Economic operators who would have been acting as subcontractors in a resulting contract may not claim damages.

Damages cannot be claimed when EFI has cancelled a tender process.

A claim for damages cannot be based on EFI's choice of tender procedure.

30.3. Damages

EFI shall compensate damages caused through procedural irregularities having substantially negatively affected the complaining party's possibility to be awarded the contract.

When determining the amount of the damages the nature of the procedural irregularities, whether the complaining party has contributed to the damage, and other circumstances shall be taken into account.

Damages shall in any event only cover a complaining party's direct losses due to costs reasonably incurred for preparation and submission of the tender and shall not cover a complaining party's potential profit that could have resulted from implementation of the contract. In no event shall EFI be liable for payments exceeding EUR 30,000 for damages granted under these rules.

SECTION IV – MODIFICATIONS OF CONTRACTS

ARTICLE 30 MODIFICATIONS OF CONTRACTS

Modification means any change to the agreed terms of a contract.

Modifications of contracts procured under these rules are allowed under the following conditions:

a) where the possibility for modifications, which may include additional procurement, irrespective of their monetary value, have been provided for in the initial contract. Such provisions shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used.

b) for additional procurement that is not provided for in the contract, and where a change of contractor is not possible or would not provide value for money. Increases in value may not cumulatively exceed half of the principal contract value.

c) where a new contractor, as a consequence of universal or partial succession, following corporate restructuring, including takeover, merger, acquisition or insolvency, replaces the existing contractor, provided that value for money is ensured, and that for tendering, the new contractor fulfils any minimum and selection criteria established as part of a tender process.

d) where the modifications, irrespective of their value, are not substantial. For this purpose, a substantial modification is at least when:

   - the modification introduces conditions rendering the contract materially different in character;
   - the modification changes the economic balance of the contract agreement in favour of the contractor; or
   - a new contractor replaces the existing contractor in other cases than those provided for under point (c).

Modification of a contract is never allowed where the modification alters the overall nature of the contract or would circumvent the application of these rules.

The rules in section II are not applicable to modifications of contracts, with the following exceptions: for modification of a contract resulting in exceeding the maximum threshold value allowed by the article under which the contract was concluded, the applicable procedure in section II has to be followed. A contract concluded under article 7-10 can in no case be amended to provide for a value exceeding 100,000 euro.

The rules in section III are not applicable to modifications of contracts.

The cost centre/project manager is authorised to decide on modification of a contract. The decision shall contain the grounds on which it is based.

All decisions, and grounds for the decisions, regarding modifications of contracts must be documented.

SECTION V – FINAL PROVISIONS

ARTICLE 31 AMENDMENTS TO THE PROCUREMENT RULES

The Director decides on amendments to these rules.