



# PROCUREMENT MANUAL

EIT Urban Mobility - Mobility for more liveable urban spaces

EIT Urban Mobility

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# 0. Summary of revisions

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# 1. Introduction

This Procurement Manual explains the tendering and contracting procedures applying to all EIT Urban Mobility (hereinafter referred to as 'EIT UM') procurement procedures.

This Manual provides users with the comprehensive information necessary to undertake procurement procedures from the very first steps to the award, through signing and the implementation of contracts. The annexes/templates cover all stages of supplier selection and the contracting.

EIT UM is not considered to be a 'Contracting Authority' by the 2014/24/EU Directive, as EIT UM is neither a 'Contracting Authority' nor a 'Body governed by public law' by definition. Therefore, EIT UM applies its own procurement manual for procuring goods and services.

According to the Article 2 of the Directive 'Contracting Authorities' means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law.

'Bodies governed by public law' means bodies that have all of the following characteristics:

- (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- (b) they have legal personality; and
- (c) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;'

EIT UM is not a 'Contracting Authority' by definition. In addition, it is not considered as a 'Body governed by public law' because of the following reasons: EIT UM does not fulfil criterion (a), i. e. it is not considered as an entity of non-commercial tasks in the general interest, because it is not a non-profit organization, takes part and quite active in the competitive market, applies criteria of return on investment, efficiency and profitability, in addition thereto, bears the economic risks of its activities.

When a private law body fails to fulfil one of the conditions, it could not be qualified by the definition.

This Manual, however, is fully complied with the EIT Guidelines, taking into consideration all its requirements and as such the substantive requirements of the EU public procurement law.

As significant amount of grant contributed by the EIT, the Manual shall be read and applied in compliance with the Partnership Agreement (PA) and the Model Grant Agreement (MGA).

## 2. Key message of Urban Mobility KIC

### 1. EIT Urban Mobility – the European innovation community to educate and inspire mobility solutions for 21st century cities – re-imagining public spaces

EIT Urban Mobility (hereinafter referred to as: EIT UM) is a European Innovation Community that brings together key players across the whole value chain of Mobility and facilitates collaboration between cities, industry, academia, research & innovation to solve the most prevalent challenges of our cities and accelerate transition to mobility for more liveable urban spaces in the cities of Europe and beyond.

### 2. We engage people, connect communities, accelerate market opportunities, educate students and professionals

In our unique challenge-driven approach we focus on challenges of cities to develop and deploy solutions for the Mobility of people, goods and waste, that solve real problems and create real impact for cities and citizens. We facilitate a continuous knowledge exchange within and across our Community

- to define the most important challenges of European cities and steer our Community' activities in the areas of innovation, education and business creation, identify good practices and
- to create and disseminate high-impact solutions and good practices that can be deployed and scaled to our cities in Europe and the world.

### 3. EIT Urban Mobility – Europe’s driver for knowledge and innovation in mobility

In our strategic approach to creating impact, we act within the **extended knowledge triangle** to identify barriers and change levers, align focus areas and set mid- to long-term targets. At EIT Urban Mobility, we take on the urban mobility challenges by following a highly integrated approach. We facilitate ongoing exchange of knowledge within our community and beyond, and steer high-impact solutions that can be deployed and scaled up in cities in Europe and further afield.

- **The Academy** – building capacities: access to the right talent and mind-set are a precondition of innovation performance. The Academy is set out to overcome disciplinary fragmentation in the education system. Intersectoral, interdisciplinary, international and entrepreneurial formats for student and professional education foster holistic understanding of urban mobility and nurture the talent needed to solve future challenges.
- **Innovation** – creating options: our Innovation programme focuses on innovation projects that are challenge-driven, market-based and solution-oriented. Interdisciplinary teams including cities, industry, academia, research & innovation, start-ups develop the integrated urban mobility of tomorrow and test them in real-life environments.
- **Impact Ventures** – accelerating opportunities: to accelerate innovative ideas to market and strengthen the competitiveness of the European Mobility industry, we support and accelerate start-ups. Through the Business Creation programme, startups are provided access to customers, partners, infrastructure and finance on a European scale.

Innovation is not only technological innovation, but also societal, improving institutional cooperation and social interaction in a governance process. Private businesses, large and small, public authorities, the academic world, students and citizens, they all must be brought in to achieve the transformational change needed in urban mobility. EIT UM will unlock the full potential and accelerate the transition to sustainable Mobility for liveable urban spaces.

# 3. General principles of procurement

## 1. Equal treatment

Equal treatment requires that comparable situations are not treated differently and that different situations are not treated similarly unless such a difference or similarity in treatment can be justified objectively.

Equal treatment principle implies that all economic operators are subject to the same rules and conditions in the course of the procurement procedure and have the certainty that the rules apply to everybody in the same way.

Equal treatment principle has to apply to all the stages of the tendering procedure and not only from the time when a supplier submits a tender. This principle requires a transparent and objective approach throughout the procurement process, including in all communications with candidates and tenderers. Such communications shall ensure equal access and take place in written form to be able to demonstrate equal treatment. All competitors must have equal opportunity to compete for the contract.

## 2. Non-discrimination

This principle prohibits any discrimination on grounds of nationality, meaning that all participants should be treated in the same manner, unless the difference is objectively justified (Discrimination on grounds of nationality includes any difference in treatment on the ground of the nationality or place of establishment of the tenderer, or the origin of the goods.). Both direct and indirect discrimination is prohibited.

EIT UM must remain non-biased and impartial towards all participants.

The non-discrimination principle entails – including but not limited to – the following:

- a) non-discriminatory description of the subject matter of the contract

*o The description of the characteristics required of a product or service should not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production unless such a reference is justified by the subject matter of the contract and accompanied by the words "or equivalent".*

b) equal access for economic operators from all Member States

c) mutual recognition of diplomas, certificates and other evidence of formal qualifications

*o Documents from other Member States offering an equivalent level of guarantee have to be accepted.*

c) appropriate time limits

*o Time-limits for submission of offers should be long enough to allow undertakings from other Member States to make a meaningful assessment and prepare their offer.*

### **3. Proportionality**

This principle means that any qualifications and/or subject matter requirements must not be disproportionate or excessive and must have a natural relation to the goods or services being procured and any qualifications and/or subject matter requirements do not go beyond what is necessary in order to achieve that objective.

### **4. Transparency**

Transparency in the context of supplier selection processes refers to the ability of all interested parties to know and understand the actual methods and processes by which contracts are awarded and managed (it entails the publication of request for proposals on the internet, on EIT UM's website).

The principle of transparency also entails that the procurement rules need to be defined in advance in a transparent manner, so that all participants are aware and have certainty that these rules apply to everybody in the same way, ensuring respect of the equal treatment principle.

EIT UM should provide consistent information to all tenderers on procurement opportunities, methods for tendering, specifications, as well as selection and award criteria.

All stages of the procedure should be duly documented.

## **5. Best value for money**

The ultimate purpose of sound procurement is to obtain maximum value for money (i.e. high-quality goods and services at reasonable cost). Awarding a contract based on best value for money means that the contract shall be awarded to the “most economically advantageous tender (MEAT)”. Therefore, value may imply more than just price; quality issues also need to be addressed.

Best value for money is one of the main principles to be fully considered by the FPA and SGA.

## **6. Competition**

Procurement procedures are to be opened up to competition.

Therefore, contracting authorities may not use procurement procedures in such a way as to prevent, restrict, distort or artificially narrow competition. Competition is a key requirement for ensuring compliance with the best value for money principle, the greater the competition, the better the chances to have lower price and higher value.

Competition can be ensured by means of the advertising the requirements of the procedure and by ensuring that an adequate number of tenderers can participate in procurement procedures.

## **7. Conflicts of interest**

Having as reference the best practices in EU procurement the concept of conflicts of interest covers at least any situation where persons of the contracting entity who are involved in the conduct of the procurement procedure influence or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure.

Conflict of interest may arise in all procedural stages.

It should be presumed that there is a conflict of interest if any of those mentioned above (i.e. who are involved in the conduct of the procurement procedure and may have a direct or an indirect financial, economic or other personal interest relating to the outcome of the procedure)

- a) participate in the procurement procedure as a candidate or a tenderer;
- b) a member, an executive officer, a member of the supervisory board, a manager or an employee of an organization that is a candidate or a tenderer in the procurement procedure;
- or relative(s) of the persons referred to in a) and b).

The participation of any person (organisation) in the procedure

- from whom EIT UM requested information for the market research/preliminary market research related to the given contract, or for the assessment of the estimated value of the contract, without the indication of the starting date of the procurement

does not qualify as a conflict of interest, on condition that, those persons (organizations) were not given any information beyond the data disclosed to all tenderers or candidates by EIT UM during the procurement procedure.

*A 'conflict of interest' could exist if shared interests:*

- influenced the contract's/subcontract's selection/award procedure;
- influenced the contract's/subcontract's price and this does not correspond to the market price or

- affected the contracting entity's action's performance, as measured by the appropriate quality standards.

*These interests may be:*

- economic interests (e.g. unjustified and preferential contracts or subcontracts with connected companies (not based on best value for money, technical merit, etc.)
- political or national affinity (e.g. beneficiaries or third parties are chosen, or research-related decisions are adopted, based on political considerations, connections or national affinity)
- family or emotional ties (e.g. contracts or subcontracts made with family members for their benefit)

A conflict of interest occurs when the impartial and objective exercise of the functions of the contracting entity, or observance of the principles of competition, non-discrimination against or equality of treatment of candidates, tenderers, contractors is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a beneficiary.

A conflict of interest may also arise where, for instance, a member of the evaluation committee or someone in EIT UM or others involved in the procedure themselves, or others, unjustified direct or indirect advantages by influencing the outcome. **If this situation happens or if there is a risk that this situation may happen, the person has the obligation to inform its hierarchy in writing, and the hierarchy will decide the appropriate action.**

Avoiding conflict of interest:

- There should be no overlap between the subgrantees and the subcontractors in the implementation of the EIT-funded activities. Limited exceptions to this principle are allowed subject to a case-by-case assessment – in this case relevant tasks need to be clearly distinguished, and the general and specific eligibility rules of the GA need to be respected.

- Due to inherent conflict of interests, CLCs and other affiliated entities may not participate in the implementation as subcontractors. As a rule, the same principle shall apply to core EIT UM partner organisations with an active role in the EIT UM governance.

Cases where an expert or company attempts to obtain information leading to an unfair advantage in subsequent or related procedures or attempts to influence the decision-making process of EIT UM, or enters into agreement with other economic operators with the aim of distorting competition are rather to be treated as grave professional misconduct and are a basis to reject/exclude the economic operator concerned.

The Contracting Entity should do their best to avoid conflicts of interest.

## 8. Other general rules

### 8.1 Abnormally low price:

- If the price or costs proposed in the proposal appear to be abnormally low in relation to the supplies or services, EIT UM should require economic operators to explain the reasons of it.
- The explanations may in particular relate to the followings:
  - the economics of the manufacturing process or of the services provided,
  - the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services,
  - the originality of the supplies or services proposed by the tenderer,
  - the possibility of the tenderer obtaining State aid.
- EIT UM shall assess the information provided by consulting the tenderer. If there is doubt as to acceptability of the explanation, the contracting entity shall have the right to request supplementary explanation from the tenderer. The proposal may only be rejected on the grounds of abnormally low price, if the evidence supplied does not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to in this point.

### 8.2 Advertising on TED (Tenders Electronic Daily)

- Above the threshold EUR 216.001 Pre-Qualification Notice and Request for Proposals should be advertised on TED (beside EIT UM's website) by means of TED eNotices ;
- For the purposes of using eNotices, a profile on eNotices should be created. In the PQN and RFP it should be indicated that EIT UM is not a contracting authority, and reference should be provided to the relevant parts of the Procurement Policy as published on EIT UM's website.

### 8.3 Appeal/complaint:

- Appeal/complaint is meant to be an individual remedy against any of EIT UM's decision(s) during the procurement procedure. See the detailed rules in Step 6 at every threshold.
- Appeals/complaints are handled by the Evaluation Committee in cooperation with the head of the Legal Department.

### 8.4 Award criteria

- Award criteria are the evaluation criteria upon which the quality of each proposal will be evaluated and awarded in the supplier selection procedure. Award criteria are set procedure by procedure in the tender documentation.
- The aim of award criteria is to identify the most economically advantageous tender.
- Only those tenders that meet the minimum levels of technical and financial capacity and expertise, as defined in the selection criteria are evaluated in accordance with the award criteria.
- Award criteria shall be considered to be linked to the subject-matter of the contract.
- No other award criteria can be used in the procedure other than those that are predefined during the preparation of the procedure and stipulated, included in the request for proposal.
- Award criteria must be precise, objective, non-discriminatory and not prejudicial to fair competition.

### 8.5 Contract Award Notice:

- in case of high value (EUR 140.001-216.000) and EU value procurements (above EUR 216.001) a Contract Award Notice should be published on EIT UM's website and/or TED (using TED eNotices)

- Contract Award Notice contains information on the results of the procurement procedure and are published after the conclusion of the contract
- information to be included in the Contract Award Notice is to be found in Annex 1 of this Manual

#### *8.6 Contract duration:*

- The duration of a contract shall be defined by considering the market conditions
- The duration of any contract concluded as a result of a procurement procedure is maximum 4 years
- Indefinite contracts and contracts for more than 4 years shall be avoided

#### *8.7 Estimated value of procedures*

- The estimated value of the procedure is the highest estimated amount of the product/service usually based on a market research or based on knowledge of the available prices.
- It is calculated during the preparation of the procedure, and it is a projected amount based on the needs and the conditions of the relevant market. It is generally not identical to the financial cover of the procedure (the budget available for the procurement). The estimated value is based on careful planning, research and previous experience and knowledge. The budget available is more like a maximum amount available to implement the project.
- Market research must be conducted, documented and available upon request. Acceptable sources may include web research, AI-based assessments, and other relevant materials.
- The estimated value of a procurement is the full estimated contract amount that can be offered in general on the relevant market, at the time of the initiation of the selection procedure. It is to be calculated net of VAT.
- In case it is hard or even close to impossible to identify the estimated value, use the preliminary market research as tool. In case the estimated value is hard to identify, please choose the highest possible threshold that fits your need.
- The full consideration should include the value of any optional parts (additional services, spare parts or fulfilment of additional services needed) in case the selection process contains such elements.
- When determining the total value of the procurement, it is important to assess the procurements carried out at the same time or relatively close to each other in time and having similarities in their subject matter. Similarity can be established if the purchase of two or more subject-matters serves the same purpose, i. e. the purpose for which they are intended to be used is identical or similar.

- For example, supply of a range of food or various pieces of office furniture. Or if the contracting entity plans to purchase office paper, such as envelopes, memorandum pads, notebooks, etc., they can be considered as same or similar subject-matters. In terms of services, similarity can be established if the subject-matter of the procedures is e.g. to prepare the building permit drawings for various buildings by firms acting on the same market area.
- Where the proposed work or provision of services or acquisition of similar supplies may result in contracts awarded in the form of several lots (i.e. partial deliveries for the same direct purpose, or for the same / similar supplies) and realised through more than one contract, the total estimated value of all such lots shall be taken into account for the calculation of the estimated procurement value. If the aggregate estimated value of all the lots is equal to or exceeds the procurement thresholds, the procurement regime for higher value procurements shall apply to the awarding of each lot.
- In the case of a fixed-term supply or service contracts, the estimated value should be the total contract value for the total duration of the supply or service contract. So, if a service contract to be concluded is for a maximum of 4 years, the estimated value of the procedure should be the total value for the full term of the service contract.
- In case of framework agreements, the estimated value of the procurement shall be the estimated highest aggregated value of all the contracts to be concluded during the period on the basis of the agreement. Again, in the case of framework agreements, the maximum duration of the contract can only be 4 years.
- In case of special services like insurance, lease, office space rent or utilities or other fixed long-term contracts, the estimated value of the procurement procedure shall be total planned duration multiplied by the yearly or monthly fee for the services. In case the initiator plans to procure for an initial 1-year duration and only later realizes that there is a need to extend the contract duration, the estimated value shall be the original duration. The original contract shall be extended according to the contract modification terms detailed in the relevant section of the Manual.
- If you have several contracts with the same supplier (e.g. official supplies) for the same subject-matter than the total amount of the estimated value shall be the total value of the same subject contract within the same financial year. To estimate the total value of the procedure you should carry out a proper planning in the beginning of the financial year.

#### *8.8 Evaluation committee:*

- Evaluation Committee is a board set up by EIT UM of at least three members, who jointly have the professional competence for the assessment and evaluation of tenders
- Evaluation Committee members will be appointed by the initiator ensuring the right competence of each member and their lack of conflict of interest.

- The members of the Evaluation Committee should have combined technical, procurement, legal and financial knowledge for the evaluation of the tenders
- The tasks of the Evaluation Committee are
  - to check the formal requirements and minimum requirements of the tenders,
  - to perform the selection and the evaluation of the award criteria and
  - to prepare a proposal for the decision on the award of the contract for EIT UM's decision-making body of by arranging a tender evaluation report

#### *8.9 Internal control system:*

- EIT UM applies the 4-eyes principle and segregate the duties in a way that the persons conducting the procurement process, signing the contract and approving the contract implementation are different, or these steps shall require separate checks.

#### *8.10 Market research:*

- Market research is a survey or an assessment of the market relevant to the given contract in order to check the conformity to the market (in order to familiarise with the market situation, e.g. to assess the availability of potential candidates/tenderers, and to assess the available products and delivery conditions) and to create proper pre-qualification/qualification criteria for the procedure and also in order to determine the estimated value of the procedure
- Market research is made by the procurement initiator as one of the first steps of the procurement procedure in the preparatory phase – during this survey, a number of market actors are selected to send them a short email with not confidential information about the details of the future procurement and the given contract as well as to ask them to send you a rough estimate of the value of the procurement
- The purpose of the research is to provide justification of the selection of the shortlisted firms
- In case of low value or middle value procedures, Requests for Proposals are sent to the required number of invited tenderers, as identified by means of documented market research
- The method (e.g. desk-based research, analysis of previous procurements, etc.) and the outcome of market research shall be documented

#### *8.11 Organisation and governance:*

- EIT UM employs at least one dedicated full-time in-house procurement officer(s) in order to conduct procurements in an efficient and effective way. The procurement officer(s)

has been trained and possess in-depth knowledge and practical expertise in procurement, including public procurement.

- The procurement capacity of the EIT UM ensures compliance with the procurement requirements at the EIT UM level and effectively supervises the implementation of the EIT UM Procurement Policy at the level of the CLCs and other affiliated entities.
- The EIT UM procurement officer(s) are committed to fostering procurement knowledge and compliance across the organisation.
- To support the procurement knowledge and compliance across the organisation
  - Mandatory formal training sessions are delivered on a yearly basis, to employees and KIC partners.
  - Training Material (video, PowerPoint, etc.), in addition to the procurement manual is provided to new starters.
  - The procurement capacity remains accessible and is available to provide guidance or support to any employee upon request, promoting a consistent and well-informed approach to procurement throughout the organisation

#### *8.12 Record keeping and storing documents:*

- EIT UM securely stores in a centralised, controlled digital repository, all procurement documentation. This documentation is only accessible by the procurement capacity, and the relevant committee members involved in each process (individually by process).
- The repository not only stores the documentation relevant to the procured processes, but also contains the following documents:
  - Procurement Manual
  - Manual summary
  - Templates:
    - T\_1 request for proposal document
    - T\_2 Tender evaluation report template
    - T\_3 Notification letter – Winning tenderer
    - T\_4 Notification letter\_2nd best tenderer
    - T\_5 Notification letter – non-winning tenderer
    - T\_6 Tender submission form
    - T\_7 Tenderer’s declaration form
    - T\_10 Service agreement template
    - T\_11 PQN template
    - T\_12 PQ evaluation report
    - T\_14 Notification letter selected PQ
    - T\_15 Notification letter – non-selected PR

- Besides this storage system, Procurement Manual is available on the intranet of EIT UM.

#### *8.13 Selection criteria for prequalification*

- The selection criteria for prequalification concern the minimum qualifications of the tenderer/candidate to perform the contract (capability to perform the contract and financial-economic-technical ability) according to its content
- The contracting entity must draw up clear and non-discriminatory selection criteria for the purpose of assessing that the tenderer has sufficient financial, economic, technical or professional capacity to implement the tasks described in the contract
- Selection criteria are linked to the assessment of the tenderers' capability to perform the contract
- Selection criteria may relate to the followings: suitability to pursue the professional activity; economic and financial standing; technical and professional ability
- The chosen criteria should be proportionate and may not go beyond the scope of the contract
- Regarding economic and financial standing, the contracting entity may require, in particular, that economic operators have a certain minimum yearly turnover, including a certain minimal turnover in the area covered by the contract.
- Regarding technical and professional ability, the contracting entity may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard. The contracting entity may require, in particular, that economic operators have a sufficient level of experience demonstrated by suitable references from contracts performed in the past.

#### *8.14 Specific types of procurement procedures:*

- [See these types of procedures in Annex 2](#)

#### *8.15 Standstill period*

- The standstill period provides for a short pause in the procedures between the point when the contract award decision is notified to bidders, and the final contract conclusion, during which time suppliers can challenge the decision.
- See the length of these periods in the Table summarising the procedures and thresholds and in Step 6 in every threshold.

## 4. Supplier selection procedure in general

### Which supplier selection procedure to apply?

The basic means of awarding contracts is competitive tendering. The purpose of competitive tendering is twofold:

- to ensure that the operations comply with the awarding principles; and
- to obtain the quality of services, supplies or works wanted, at the best possible price.

There are several different procurement procedures, each allowing a different degree of competition. The applicable standard procedures are summarized in the table below.

The thresholds given in the below table are based on the maximum budget for the contract in question. All thresholds are net of VAT taking into consideration when calculating the estimate value of the contract as indicated in the article 5 of the directive Directive 2014/24/EU of the European Parliament and of the council of 26 February 2014. Where contracts are subdivided into lots, the value of all lot are summed up to be included as the overall estimated value of the supplier selection procedure when calculating the overall threshold. All basic principles must be complied with (including the eligibility, exclusion and selection criteria), regardless of which procedure is used. Projects must not be split artificially to circumvent the procurement thresholds.

### *Procedures in low value items – under EUR 15.001*

The basic principles to be followed:

- The procurement initiator should ensure the best value for money principle based on the his/her knowledge and experience of the market, there is no additional supporting documentation required to prove this.
- The procurement initiator should make sure that there is no actual or potential conflict of interest with any potential supplier. In case there is he/she must declare it and he/she immediately should withdraw from the procedure or select different supplier(s) to avoid conflict of interest.
- All purchasing steps can be carried out on the local language of the market from where the product/service is purchased.
- Written contract is required to be drafted and signed above EUR 5000, below – in normal cases– the oral agreement with the supplier and the invoice combined shall serve as the contract terms. However, it is allowed to use a written contract form in these procedures as well (recommended the EIT UM 's own contract form or EIT UM's own terms and conditions + supplier's own contract form).

Artificial narrowing of competition and slicing of budget:

- It is important to note that the absence of competition cannot be the result of an artificial narrowing down of the parameters of the procurement.
- It is also important that the budget cannot be sliced into smaller amounts to avoid any threshold or to choose a lower threshold to have simpler procedure than required.

The procedure between EUR 1 – 5000

The initiator of this procedure shall be the procurement initiator from EIT UM. The procurement initiator shall identify the need, select the supplier from the market, the service/product is supplied and an invoice is submitted. The invoice shall work as a written agreement and at the same time the proof of delivery of the service/product.

Optional: If there is a need for requesting a quotation from the selected supplier, the procurement initiator can ask a quotation from the supplier via email. If the quotation is accepted by EIT UM, the service/product can be supplied, then the supplier should submit the invoice relating to the service/product supplied. The invoice shall work as a written agreement and at the same time the proof of delivery of the service/product.

The procedure between EUR 5001 – 15.000

The initiator of this procedure shall be the procurement initiator from EIT UM. The procurement initiator shall identify the need, select the supplier from the market, the service/product is supplied and an invoice is submitted.

A written contract is required to be drafted and signed in this threshold. The procurement initiator is allowed to use either the template available at EIT UM or the one provided by the supplier supplemented with the EIT UM's own terms and conditions. But a written contract needs to be concluded and signed prior to the order is placed.

The invoice shall work as the proof of delivery of the service/product. The supplier shall sign and date the contract first and return it to EIT UM for the signature of thereof.

Optional: If there is a need for requesting a quotation from the selected supplier. If the quotation is accepted by EIT UM, a written contract is required to be drafted and signed. The procurement initiator is allowed to use either the template available at EIT UM or the one provided by the supplier supplemented with EIT UM's own terms and conditions. But a written contract needs to be concluded and signed prior to the order is placed. The supplier shall sign and date the contract first and return it to EIT UM for the signature thereof.

Once the service/product is supplied, the supplier has to submit the invoice.

**Summary of the procedures above EUR 15.001**

There are two types of procedures designed depending on the thresholds: procedure between EUR 15.001-60.000 and procedure between EUR 60.001-140.000.

**Summary of the procedure between EUR 15.001-60.000:**

Procedure between EUR 15.001-60.000 is a one-stage procedure. This procedure could optionally be conducted as an open procedure where all the interested suppliers can submit a proposal ('open call') or in a way when the procurement initiator selects at least 3 suppliers from the market based on his/her knowledge of the market. The latter is a brief market research (e.g.: desk-based research, analysis of previous procurements, etc.). As an outcome, the initiator selects at least 3 suppliers of the market and invites them to the procedure to submit a proposal. Prior to the launch of the procedure the procurement initiator needs to consult with the designated member of the management of EIT UM about what option to be chosen.

In case of selecting the suppliers from the market, the selection is done by the procurement initiator of EIT UM based on his/her knowledge of the market. However, simple justification is required for the selection. In this case only the selected potential suppliers can be invited to participate in the procedure and submit a proposal; the Request for Proposal is sent to the selected suppliers by email.

In case there is an open call, the Request for Proposal should be published on EIT UM's website. EIT UM can hold negotiations during the procedure, if necessary, but all the basic principles have to be respected during the negotiation (see Section 3. A written contract is required to be drafted and signed in this threshold (recommended EIT UM's own contract form or EIT UM's own terms and conditions + supplier's own contract form). The language of the procedures should be as basic rule: English, exception from this rule can only be granted by EIT UM.

**Summary of the procedure between EUR 60.001-140.000:**

**Procedure between EUR 60.001-140.000 is a one-stage procedure.** This procedure could optionally be conducted as an open procedure where all the interested suppliers can submit a proposal ('open call') or in a way when the procurement initiator selects at least 5 suppliers from the market based on his/her knowledge of the market (conducting a brief market research), and as

an outcome selects at least 5 suppliers based on his/her knowledge of the market, and invites them to the procedure to submit a proposal. Prior to the launch of the procedure, the procurement initiator needs to consult with the designated member of the management of EIT UM about what option to be chosen.

In case of selecting the suppliers from the market justification is required, and background documentation needs to be collected to back up the reasons of selection. In this case only the selected potential suppliers can be invited to participate in the procedure and submit a proposal; the Request for Proposal is sent to the selected suppliers by email.

In case there is an open call, the Request for Proposal should be published on EIT UM's website.

EIT UM can hold negotiations during the procedure, if necessary, but all the basic principles have to be respected during the negotiation (see Section 3). A written contract (EIT UM's own contract form or detailed contract conditions as part of a tender dossier) is required to be drafted and signed in this threshold. The language of the procedures should be as basic rule: English, exception from this rule can only be granted by EIT UM.

*Summary of the procedure between EUR 140.001-216.000:*

**Procedure between EUR 140.001-216.000 could optionally be a one-stage or a two-stage procedure.** If the procedure is conducted as a one-stage procedure, it is an open procedure where all the interested suppliers can submit a proposal ('open call'). In case of a two-stage procedure the first stage is the pre-qualification stage, the second stage is the tendering stage. Prior to the launch of the procedure the procurement initiator needs to consult with the designated member of the management of EIT UM about what option to be chosen.

In case there is an open call, the Request for Proposal should be published on EIT UM's website.

In case of a two-stage procedure, in the course of the pre-qualification stage a Pre-Qualification Notice should be published on EIT UM's website and all suppliers interested in the procedure should download it. In this first stage the applicants are not allowed to submit an offer. Only those applicants who meet the pre-qualification requirements shall be invited to submit a bid. In the second stage a Request for Proposal is to be sent to the qualified applicants.

**In this type of procedure negotiation is not allowed with the tenderers.**

Between these thresholds EIT UM is only allowed to negotiate with the tenderers in a competitive procedure with negotiation. Competitive procedure with negotiation is similar to the two-stage open procedure, the only difference is that in case of competitive procedure with negotiation EIT UM is required to indicate the intention of negotiation in the notice launching the procedure (in this case in the Pre-qualification Notice) which should state the grounds for the use of the negotiated procedure.

EIT UM may conduct a negotiated procedure in the following cases:

- the needs of EIT UM may only be satisfied by adjusting, tailoring ready-made solutions which are immediately available on the market;
- the subject-matter of the public contract includes design or innovative solutions;
- the most favourable tender cannot be selected without prior negotiations because of specific circumstances related to the nature, complexity of the contract, its legal and financial terms;
- the technical specifications cannot be established by EIT UM with sufficient precision in accordance with one of the following references: standards, European Technical Assessment, common technical specifications or technical references; or
- the previously conducted open procedure failed because all the tenders submitted were invalid.

A written contract (EIT UM's own contract form or detailed contract conditions as part of a tender dossier) is required to be drafted and signed in this threshold. The language of the procedures is English, exception from this rule can only be granted by EIT UM.

Time limits for this procedure as a general rule are as follows: in case of an open call 15 days for submitting a proposal. In case of a two-stage procedure, 15 days for submitting the applications and 15 days for submitting the tenders (in case of urgency at least 5 days should be given to the candidates to submit an application and at least 5 days for the second stage).

#### Summary of the procedure above EUR 216.001

**Procedure above EUR 216.001** could optionally be a one-stage or a two-stage procedure. If the procedure is conducted as a one-stage procedure, it is an open procedure where all the interested suppliers can submit a proposal ('open call'). In case of a two-stage procedure the first stage is the pre-qualification stage, the second stage is the tendering stage. Prior to the launch of the procedure the procurement initiator needs to consult with the designated member of the

management of EIT UM about what option to be chosen.

In case there is an open call, the Request for Proposal should be published on TED (using TED eNotices) and EIT UM's website.

In case of a two-stage procedure in the course of the pre-qualification stage a Pre-Qualification Notice should be published on TED (using TED eNotices) and EIT UM's website and all suppliers interested in the procedure should download it. In this first stage the applicants are not allowed to submit an offer. Only those applicants who meet the pre-qualification requirements shall be invited to submit a bid. In the second stage a Request for Proposal is to be sent to the qualified applicants.

**In this type of procedure negotiation is not allowed with the tenderers.**

Between these thresholds EIT UM is only allowed to negotiate with the tenderers in a competitive procedure with negotiation. Competitive procedure with negotiation is similar to the two-stage open procedure, the only difference is that in case of competitive procedure with negotiation EIT UM is required to indicate the intention of negotiation in the notice launching the procedure (in this case in the Pre-qualification Notice) which should state the grounds for the use of the negotiated procedure.

EIT UM may conduct a negotiated procedure in the following cases:

- the needs of EIT UM may only be satisfied by adjusting, tailoring ready-made solutions which are immediately available on the market;
- the subject-matter of the public contract includes design or innovative solutions;
- the most favourable tender cannot be selected without prior negotiations because of specific circumstances related to the nature, complexity of the contract, its legal and financial terms;
- the technical specifications cannot be established by EIT UM with sufficient precision in accordance with one of the following references: standards, European Technical Assessment, common technical specifications or technical references; or the previously conducted open procedure failed because all the tenders submitted were invalid.

A written contract (EIT UM's own contract form or detailed contract conditions as part of a tender dossier) is required to be drafted and signed in this threshold. The language of the procedure is English.

Time limits for this procedure as a general rule are as follows: in case of open call 30 days for submitting a proposal. In case of a two-stage procedure 30 days for submitting the applications and 30 days

for submitting the tenders (in case of urgency at least 15 days should be given to the candidates to submit an application and at least 15 days for the second stage).

#### Summary of the Direct Award procedure

The direct award is a procedure with only one supplier being a **one-stage procedure** and may only be used in exceptional cases (the cases where this procedure can be applied is detailed under the relevant section of this Manual).

If all criteria for application are met, this procedure can be applied in any of the thresholds except in the one above EUR 216.001. Due to the specific nature of the procedure, always consult with EIT UM's designated representative or procurement manager prior to initiating this procedure.

The procedural steps are the same as with the procedure applicable between EUR 15.001 – 60.000. In order to carry out this exceptional procedure, full justification should be provided on why only one supplier can fulfil the need, and what the exact reason(s) for avoiding competition is(are). The language of the procedures should be as basic rule: English, exception from this rule can only be granted by EIT UM.

Table summarising the procedures and thresholds

Type of procurement	Threshold	Type of procedure	Justification of selection	How many proposals needed	Deadline for submission	Deadline for clarification before submitting the proposal	Deadline for submitting missing information	Deadline for clarification after submitting the proposal	Written Contract	Deadline for concluding the contract	Deadline for submitting an appeal (standstill period)
Procedures in low value items	EUR 1 - 5.000	-	-	-	-	-	-	-	-	-	-
	EUR 5.001 - EUR 15.000	-	-	-	-	-	-	-	Yes	-	-
Procedures in middle and high value items	EUR 15.001 - 60.000	Open call or One-stage Restricted	In case of one-stage restricted procedure, simple justification	At least 3	at least 7 days	-	at least 1 day	optional	Yes	3 days	at least 3 days
	EUR 60.001 - 140.000	Open call or One-stage Restricted	In case of one-stage restricted procedure, substantial justification and background documentation	At least 5	at least 10 days	-	at least 1 day	optional	Yes	3 days	at least 3 days



	EUR 140.001 - 216.000	Open call or Two-stage restricted (Stage 1 open, Stage 2 restricted)	In case of a two-stage restricted procedure, Pre-Qualification	At least 3-5 (it depends on how many suppliers answer the pre-qualification notice or the Request for Proposals)	Stage 1 – 15 days (can be shortened to 5 days) Stage 2 – 15 days (can be shortened to 5 days)	-	at least 1 day (in both stages)	optional	Yes (EIT UM's own contract form or detailed contract conditions as part of a tender dossier)	5 days	at least 5 days
	above EUR 216.001	Open call or Two-stage restricted (Stage 1 open, Stage 2 restricted)	In case of a two-stage restricted procedure, Pre-Qualification	At least 3-5 (it depends on how many suppliers answer the pre-qualification notice or the Request for Proposals)	Stage 1 – 30 days (can be shortened to 15 days) Stage 2 – 30 days (can be shortened to 15 days)	-	at least 1 day (in both stages)	optional	Yes (EIT UM's own contract form or detailed contract conditions as part of a tender dossier)	10 days	at least 10 days

<b>Direct Award</b>	any except in the one above <u>EUR 216.001</u>	One-stage Restricted	full justification and background documentation	1	at least 3 days	-	at least 1 day	optional	Yes	3 days	at least 3 days
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# 5. Detailed presentation of the steps of the procedure between EUR 15.001 – 60.000

## 1. Step: Selecting at least 3 suppliers

The initiator of the supplier selection shall be the procurement initiator from EIT UM. The procurement initiator should conduct a brief market research (e.g.: desk-based research, analysis of previous procurements, etc.), and as an outcome selects at least 3 suppliers of the market.

During the selection, the initiator can rely on his/her previous contractors, information from other colleagues, recommendations and also from internet search. All information received regarding potential suppliers to be included on the list shall be screened in relation to the project size and complexity. The initiator should be able to provide justification why she/he thinks the selected 3 suppliers are able to provide the requested service, that information should be included in the supplier selection evaluation report.

For selecting the 3 potential suppliers and to secure that they are able and willing to participate in a tender procedure, phone calls can be done by the procurement initiator.

*However, it is important to note the below rules:*

During this call **you can** disclose information regarding:

- the timing of the procedure;
- basic information about the task;
- planned duration of the contract.

But **in no way you can** disclose information regarding:

- the detailed project description;
- award criteria;
- detailed organization of work;
- budget;
- evaluation of proposals;
- and any other information that might affect the principles of equal treatment and fair competition.

Once the selection of 3 potential suppliers is done, the initiator should make sure that there is no actual

or potential conflict of interest with any potential supplier. In case there is he/she must declare it and he/she immediately should withdraw from the procedure or select different supplier(s) to avoid the conflict of interest.

In case the procedure is conducted as an open procedure the Request for Proposal should be published on EIT UM's website and all the interested suppliers can submit a proposal.

## 2. Step: Compilation of the tender dossier

After the selection of at least 3 potential suppliers for bidding, the next step is to compile a simple supplier selection document that will include the following:

- a request for proposal document – **Template T\_1**;
- draft contract form – **Template T\_10** (or at least the terms of conditions of EIT UM + supplier's own contract form).

The language of the procedure should be **as basic rule: English**, exception from this rule can only be granted by EIT UM.

## 3. Step: Launching the procedure

To launch the procedure, the request for proposal together with recommended parts shown above are sent by email to the potential suppliers (the terminology for them during the procedure shall be: tenderer(s)). The request for proposals document – **Template T\_1** must determine the deadline for submitting the proposals. The deadline is → **not less than 7 days** from the sending out of the request for proposals, **in case there is an open call, from the date when the Request for Proposal was published on EIT UM's website.**

In case the procedure is conducted as an open procedure the Request for Proposal should be published on EIT UM's website and all the interested suppliers can submit a proposal.

In case the requested service/supply of product is simpler, the procurement initiator can set a shorter deadline but needs provide justification for the shortening to EIT UM.

In case all 3 supplier submit their proposals earlier, from the date of the last submitted proposal, the evaluation can start. In case of an open call, proposals shall not be opened before the deadline expires.

## 4. Step: Detailed process of proposal submission and evaluation

### 4.1 Nomination and task of the tender evaluator or evaluation committee

EIT UM's procurement initiator sets up an Evaluation Committee (hereinafter referred to as: EC) of three members, who jointly have the professional competence for the evaluation and assessment of

the proposals.

Evaluators shall have the technical and administrative ability to give an informed opinion on the proposals. Their identity is confidential, so it should not be revealed to the tenderers.

Anybody participating in the evaluation who has or might have any actual or potential conflict of interest with any potential supplier must declare it and immediately be withdrawn from the EC. The declaration on lack of conflict of interest is included in the tender evaluation report (Template T\_2) and should be signed by the all member(s) of the EC.

#### 4.2 Submission of tenders

Proposals must be emailed to EIT UM within the deadline for submitting proposals (7 days from the date when the Request for Proposal was sent to the selected 3 tenderers or in case there is an open call, from the date when the Request for Proposal was published on EIT UM's website). All proposals received after the deadline **should be rejected**.

The inbox where all proposals are compiled is only accessible to the procurement officer, who neither open nor read any proposals before the deadline is expired.

#### 4.3 Detailed evaluation of proposals

Timely received proposals submitted by the tenderers shall be examined, evaluated and compared in accordance with the criteria set out in the tender dossier and the contract shall be awarded to the highest ranked tenderer.

##### Stage 1 – Conformity with formal requirements of the instructions to tenderers

Proposals received after the time limit set for the submission of tenders shall be deemed invalid. A proposal is considered to be conforming in administrative terms if it satisfies all the formal requirements set out in the request for proposals. The formal requirements for tenderers are described in the request for proposals document – Template T\_1. The conformity of the submitted proposals shall be checked as the 1<sup>st</sup> step of evaluation and should be recorded in section 5 of the Tender evaluation report – Template T\_2

Where information or documentation submitted by the tenderers are or appears to be incomplete or erroneous or where specific documents are missing, the Evaluation Committee may request the tenderer concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit (time limit should be set according to the complexity of the missing information/document and the estimated time needed to supply that information/document, it is also important to take into consideration any weekends/holidays when giving the deadline). During this stage, all tenderers having missing information are requested to supply within a predefined time limit (usually minimum of 1 day). Only missing information or document can be supplied at this stage, no technical evaluation of the proposals is to be done at this

stage.

*Stage 2 – Negotiation regarding the technical and financial solutions/proposals (this stage is optional)*

All proposals that are fully compliant with the formal requirements – meaning stage 1 is completed, all missing formally required information is supplied – would move to stage 2.

In this stage, the evaluator(s) review the detailed proposals of the tenderers assessing the technical content.

In this stage, EIT UM can call the tenderers for round(s) of negotiations – but all tenderers have to be called and participate, equal treatment needs to be secured throughout the entire procedure.

*Areas in which negotiations can be held:*

- In case it is identified that the scope of services or technical specification issued by EIT UM is not detailed, complete or some areas are lacking crucial information to complete the procedure;
- All submitted prices are above the planned budget or considered high and it is everyone's interest to finish the procedure with success – in that case, price negotiation can take place. During a price negotiation, all tenderers are called to lower their prices by the same deadline in a written form.

**Negotiation is not necessary to be carried out.** In cases where all the proposals are clear and no need to clarify the proposed technical proposal or the price or there is no need to have price reduction, negotiation stage can be left out.

In case there is a negotiation stage: *You can organize as many rounds as you need in order to reach the highest quality of bids and the best price, the following sequence is put as an example, feel free to adjust to your needs.*

**The recommended sequence of negotiations:**

- During the negotiation, each tenderer can have the session separately or to save time, you can also organize joint sessions.
- During the negotiation, the Evaluation Committee shall indicate which areas of the proposals are to be adjusted. Certain time shall be given to the tenderers to either confirm it during the negotiation or submit it in written form within a short time to the Evaluation Committee.
- In case there was a deadline for adjustment of the proposals, after the expiration, the Evaluation Committee shall assess the content and performs the final technical evaluation of the proposals.
- After each stage of negotiation, Evaluation Committee must prepare the minutes of the negotiation and the members have to sign it (details of the negotiation can also be incorporated into the Tender evaluation report). These minutes shall be annexed to the tender evaluation report.

Stage 3 – Final stage – evaluation of proposals (scoring, writing strengths and weaknesses, determining the winner)

The Evaluation Committee shall complete the final scoring of the proposals. All tenderers deemed compliant shall be evaluated and compared against the contract award criteria specified in the tender dossier.

All scores shall be put into the Tender evaluation report (Template T\_2) under section 9. In this table you are required to include your detailed justification for the scores given to each section of the award criteria for each tenderer and record it under the column (Rational for scores). The Evaluation Committee shall select the economically most compliant proposal (best value for money).

Once the winner is selected – the one that has the highest aggregate scores summed from technical and financial scores – shall be proposed for the contract. You will need to also provide a short summary for the choice of the winning proposal from the rational of scores.

After the completion of the procedure the tender evaluation report (Template T\_2) shall be fully completed. In the tender evaluation report, you are required to include also the justification regarding the choice of 3 potential tenderers under section 1.

## 5. Step: Notification of award

Prior to making the decision on the selection of the most successful tenderer, all the evaluation documentation need to be double checked in line with the ‘four-eye principle’. After making the decision on the selection, EIT UM has to inform the winner and the other tenderers in writing of the results of the procedure as soon as possible after the decision (recommended to be completed within 5 days) (Templates T\_3, T\_4, T\_5.). *It is strongly recommended that you send as an annex to the letter to the winner either the draft contract form or the contract terms.*

The notification letter should include the following: the outcome of the procedure; the winning tenderer; the reasons for the award decision based on the results of the evaluation; information on how to request further information or file a complaint.

## 6. Step: ‘Appeal/Complaint’

Tenderers believing that they have been harmed by an error or irregularity during the award process (as part of a selection or procurement procedure, or that the procedure was vitiated by any maladministration) may file a complaint. Appeals should be addressed to EIT UM.

→ You have to allow at least 3 days for the possibility of complaints therefore, the contract should not be signed immediately after the notification of the winner. It means that in case of a complaint filed, the contract signature shall be suspended. This is called a standstill period.

The complaint should be substantiated and its sole subject shall not be to obtain a second evaluation for no reason other than the complainant disagrees with the final award decision. The complainant shall state in his application to EIT UM if the procedural action deemed unlawful, furthermore, his recommendations, remarks, and the data and facts supporting his opinion and he shall also refer to the documents, if any, supporting such data and facts.

The complaint should be dispatched to EIT UM by email. EIT UM shall inform the complainant by email about its standpoint regarding the complaint not later than three days after reception of it.

Possible outcomes of the procedure could be:

- reject the complaint as not being founded;
- or accept the complaint and re-evaluate the proposal(s) and form a new decision.

In case a complaint contains allegations of fraud or corruption, it shall be handled in line with the Anti-Fraud Policy.

## 7. Step: Signature of the contract

The selected tenderer shall sign and date the contract first and return it to EIT UM (recommended to be completed within 3 days) for the signature of EIT UM. Failure of the winner to comply with this requirement may constitute grounds for annulling the decision to award the contract. In this event, EIT UM may award the tender to the second best or cancel the tender procedure.

## 8. Step: Contract modification

Modifications to the contract resulting in a *minor change* of the initial contract should always be possible *without the need to carry out a new supplier selection procedure*.

As a general rule, *a new procurement procedure is required in case of a substantial change to the initial contract or framework agreement*. A modification is considered to be substantial 'where it renders the contract or the framework agreement materially different in character from the one initially concluded'. In any event, a modification shall be considered to be substantial where one or more of the following conditions are met:

- the modification introduces conditions which, had they been part of the initial procurement procedure, it would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;
- the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or

- framework agreement;
- the modification extends the scope of the contract or framework agreement considerably;
  - where a new contractor replaces the one to which EIT UM had initially awarded the contract (subject to limited exceptions provided for in the EU public procurement directive).

**General rules for contract modifications**

**Modifications can be carried out where all of the following conditions are fulfilled:**

- the need for modification has been brought about by circumstances which a diligent contracting entity **could not foresee**;
- **the modification does not alter the overall nature of the contract**;
- **any increase in price is not higher than 50 % of the value of the original contract**. Where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this provision.

*In addition, contracts may be modified without a new procurement procedure in any of the following cases:*

**(a)** where the modifications (regardless of their monetary value) have been provided for in the initial request for proposals procedure in clear, precise and unambiguous clauses, which may include price revision clauses, or options;

**(b)** for additional services or supplies by the original contractor that have become necessary and that were not included in the initial procurement; where a change of contractor:

- cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and
- would cause significant inconvenience or substantial duplication of costs for the contracting entity,

*provided that the increase in price does not exceed 50 % of the value of the original contract;*

**(c)** where a new contractor replaces the one to which the contracting entity had initially awarded the contract as a consequence of either:

- an unequivocal review clause or option in conformity with point (a);
- universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract.

(d) where the modifications (regardless of their value) **are not substantial, not more than 10% of the contract value,** the modification shall be carried out by an administrative step (mutual information of both parties, and acknowledgment of EIT UM).

Any modification above 10% of the contract value should be signed by all parties in accordance with the original contract. The template should follow the original contract template and should refer to the amended articles only. Whenever there are successive modifications – they should be numbered as ‘contract amendment No. 1 etc. Justification for the modification should be documented by the procurement initiator and added to the procurement documentation/purchase order

## 6. Detailed presentation of the steps of the procedure between EUR 60.001 – 140.000

### 1. Step: Selecting at least 5 suppliers

The initiator of the supplier selection shall be the procurement initiator from EIT UM. The procurement initiator conducts a brief market research, and as an outcome selects at least 5 suppliers based on his/her knowledge of the market.

During the market research, the initiator can rely on his/her previous contractors, information and recommendations of other colleagues, internet search, analysis of previous procurements, etc.. All information received regarding potential suppliers to be included on the list shall be screened in relation to the project size and complexity. The initiator should be able to provide justification and documentation (previous references, internet information etc.) why she/he thinks the selected 5 suppliers are able to provide the requested service. All the supporting documentation should be collected and included in the supplier selection documentation for future evidence for audits. Justification should be part of the tender evaluation report.

For selecting the 5 potential suppliers and to secure that they are able and willing to participate in a tender procedure, phone calls can be done by the procurement initiator.

However, it is important to note the below rules:

During this call **you can** disclose information regarding:

- the timing of the procedure;
- basic information about the task;
- planned duration of the contract.

But **in no way you can** disclose information regarding:

- the detailed project description;
- award criteria;
- detailed organization of work;
- budget;
- evaluation of proposals;

- and any other information that might affect the principles of equal treatment and fair competition.

Once the selection of 5 potential suppliers is done, the initiator should make sure that there is no actual or potential conflict of interest with any potential supplier. In case there is he/she must declare it and he/she immediately should withdraw from the procedure or select different supplier(s) to avoid the conflict of interest.

In case the procedure is conducted as an open procedure the Request for Proposal should be published on EIT UM's website and all the interested suppliers can submit a proposal.

## 2. Step: Compilation of the tender dossier

After selecting at least 5 potential suppliers for bidding, the next step is to compile a simple supplier selection document that will include the following:

- a request for proposal document – **Template T\_1**;
- a draft contract form – **Template T\_10** (EIT UM's own contract form).

The language of the procedure should be **as basic rule: English**, exception from this rule can only be granted by EIT UM.

## 3. Step: Launching the procedure

To launch the procedure, the request for proposal together with recommended parts shown above are sent by email to the potential suppliers (the terminology for them during the procedure shall be: tenderer(s)). The request for proposals document – **Template T\_1** must determine the deadline for submitting the proposals. The deadline in principle is → **not less than 10 days** from the sending out of the request for proposals, **in case there is an open call, from the date when the Request for Proposal was published on EIT UM's website.**

In case the procedure is conducted as an open procedure the Request for Proposal should be published on EIT UM's website all the interested suppliers can submit a proposal.

In case the requested service/supply of product is simpler, the procurement initiator can set a shorter deadline but needs provide justification for the shortening to EIT UM.

In case all 5 supplier submit their proposals earlier, from the date of the last submitted proposal, the evaluation can start. In case of an open call, proposals shall not be opened before the deadline expires.

## 4. Step: Detailed process of proposal submission and evaluation

### 4.1 Nomination and task of the tender evaluator or evaluation committee

EIT UM's procurement initiator sets up an Evaluation Committee (hereinafter referred to as: EC) of three members, who jointly have the professional competence for the evaluation and assessment of the proposals.

Evaluators shall have the technical and administrative ability to give an informed opinion on the proposals. Their identity is confidential, so it should not be revealed to the tenderers.

Anybody participating in the evaluation who has or might have any actual or potential conflict of interest with any potential supplier must declare it and immediately withdraw from the EC. The declaration on lack of conflict of interest is included in the tender evaluation report (Template T\_2) and should be signed by the all member(s) of the EC.

#### 4.2 Submission of tenders

Proposals must be emailed to EIT UM within the deadline for submitting proposals (10 days from the date when the Request for Proposal was sent to the selected 5 tenderers or in case there is an open call, from the date when the Request for Proposal was published on EIT UM's website). All proposals received after the deadline **should be rejected**.

The inbox where all proposals are compiled is only accessible to the procurement officer, who neither open nor read any proposals before the deadline is expired.

#### 4.3 Detailed evaluation of proposals

Timely received proposals submitted by the tenderers shall be examined, evaluated and compared in accordance with the criteria set out in the tender dossier and the contract shall be awarded to the highest ranked tenderer.

##### Stage 1 – Conformity with formal requirements of the instructions to tenderers

Proposals received after the time limit set for the submission of tenders shall be deemed invalid. A proposal is considered to be conforming in administrative terms if it satisfies all the formal requirements set out in the request for proposals.

The formal requirements for tenderers are described in the request for proposals document – Template T\_1. The conformity of the submitted proposals shall be checked as the 1<sup>st</sup> step of evaluation and should be recorded in section 5 of the Tender evaluation report – Template T\_2.

Where information or documentation submitted by the tenderers are or appears to be incomplete or erroneous or where specific documents are missing, the EC may request the tenderer concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit (time limit should be set according to the complexity of the missing information/document and the estimated time needed to supply that information/document, it is also important to take into consideration any weekends/holidays when giving the deadline). During this stage, all tenderers having missing information are requested to supply within a predefined time limit (usually minimum of 1 day). Only missing information or document can be supplied at this stage, no technical evaluation of the proposals is to be done at this stage.

##### Stage 2 – Negotiation regarding the technical and financial solutions/proposals (this stage is optional)

All proposals that are fully compliant with the formal requirements – meaning stage 1 is completed, all missing formally required information is supplied – would move to stage 2.

In this stage, the evaluator(s) review the detailed proposals of the tenderers assessing the technical content.

In this stage, EIT UM can call the tenderers for round(s) of negotiations – but all tenderers have to be called and participate, equal treatment needs to be secured throughout the entire procedure.

*Areas in which negotiations can be held:*

- In case it is identified that the scope of services or technical specification issued by EIT UM is not detailed, complete or some areas are lacking crucial information to complete the procedure;
- All submitted prices are above the planned budget or considered high and it is everyone's interest to finish the procedure with success – in that case, price negotiation can take place. During a price negotiation, all tenderers are called to lower their prices by the same deadline in a written form.

**Negotiation is not necessary to be carried out.** In cases where all the proposals are clear and no need to clarify the proposed technical proposal or the price or there is no need to have price reduction, negotiation stage can be left out.

In case there is a negotiation stage: *You can organize as many rounds as you need in order to reach the highest quality of bids and the best price, the following sequence is put as an example, feel free to adjust to your needs.*

**The recommended sequence of negotiations:**

- During the negotiation, each tenderer can have the session separately or to save time, you can also organize joint sessions.
- During the negotiation, the EC shall indicate which areas of the proposals are to be adjusted. Certain time shall be given to the tenderers to either confirm it during the negotiation or submit it in written form within a short time to the EC.
- In case there was a deadline for adjustment of the proposals, after the expiration, the EC shall assess the content and performs the final technical evaluation of the proposals.
- After each stage of negotiation, EC must prepare the minutes of the negotiation and the members have to sign it (details of the negotiation can also be incorporated into the Tender evaluation report). These minutes shall be annexed to the tender evaluation report.

*Stage 3 – Final stage – evaluation of proposals (scoring, writing strengths and weaknesses, determining the winner)*

The EC shall complete the final scoring of the proposals. All tenderers deemed compliant shall be evaluated and compared against the contract award criteria specified in the tender dossier.

All scores shall be put into the Tender evaluation report (Template T\_2) under section 9. In this table you are required to include your detailed justification for the scores given to each section of the award

criteria for each tenderer and record it under the column (Rational for scores). The EC shall select the economically most compliant proposal (best value for money).

Once the winner is selected – the one that has the highest aggregate scores summed from technical and financial scores – shall be proposed for the contract. You will need to also provide a short summary for the choice of the winning proposal from the rational of scores.

After the completion of the procedure the tender evaluation report (Template T\_2) shall be fully completed. In the tender evaluation report, you are required to include also the justification regarding the choice of 3 potential tenderers under section 1.

## 5. Step: Notification of award

Prior to making the decision on the selection of the most successful tenderer, all the evaluation documentation need to be double checked in line with the ‘four-eye principle’. After making the decision on the selection, EIT UM has to inform the winner and the other tenderers in writing of the results of the procedure as soon as possible after the decision (recommended to be completed within 5 days) (Templates T\_3, T\_4, T\_5). *It is strongly recommended that you send as an annex to the letter to the winner either the draft contract form or the contract terms.*

The notification letter should include the following: the outcome of the procedure; the winning tenderer; the reasons for the award decision based on the results of the evaluation; information on how to request further information or file a complaint.

## 6. Step: ‘Appeal/Complaint’

Tenderers believing that they have been harmed by an error or irregularity during the award process (as part of a selection or procurement procedure, or that the procedure was vitiated by any maladministration) may file a complaint. Appeals should be addressed to EIT UM.

→ You have to allow at least 3 days for the possibility of complaints therefore, the contract should not be signed immediately after the notification of the winner. It means that in case of a complaint filed, the contract signature shall be suspended. This is called a standstill period.

The complaint should be substantiated and its sole subject shall not be to obtain a second evaluation for no reason other than the complainant disagrees with the final award decision. The complainant shall state in his application to EIT UM if the procedural action deemed unlawful, furthermore, his recommendations, remarks, and the data and facts supporting his opinion and he shall also refer to the documents, if any, supporting such data and facts.

The complaint should be dispatched to EIT UM by email. EIT UM shall inform the complainant by email about its standpoint regarding the complaint not later than three days after reception of it.

Possible outcomes of the procedure could be:

- reject the complaint as not being founded;

- or accept the complaint and re-evaluate the proposal(s) and form a new decision.

In case a complaint contains allegations of fraud or corruption, it shall be handled in line with the Anti-Fraud Policy.

## 7. Step: Signature of the contract

The selected tenderer shall sign and date the contract first and return it to EIT UM (recommended to be completed within 3 days) for the signature of EIT UM. Failure of the winner to comply with this requirement may constitute grounds for annulling the decision to award the contract. In this event, EIT UM may award the tender to the second best or cancel the tender procedure.

## 8. Step: Contract modification

Modifications to the contract resulting in a *minor change* of the initial contract should always be possible *without the need to carry out a new supplier selection procedure*.

As a general rule, *a new procurement procedure is required in case of a substantial change to the initial contract or framework agreement*. A modification is considered to be substantial 'where it renders the contract or the framework agreement materially different in character from the one initially concluded'. In any event, a modification shall be considered to be substantial where one or more of the following conditions is met:

- the modification introduces conditions which, had they been part of the initial procurement procedure, it would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;
- the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
- the modification extends the scope of the contract or framework agreement considerably;
- where a new contractor replaces the one to which EIT UM had initially awarded the contract (subject to limited exceptions provided for in the EU public procurement directive).

### General rules for contract modifications

Modifications can be carried out where all of the following conditions are fulfilled:

- the need for modification has been brought about by circumstances which a diligent contracting entity could not foresee;
- the modification does not alter the overall nature of the contract;

- **any increase in price is not higher than 50% of the value of the original contract.** Where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this provision.

*In addition, contracts may be modified without a new procurement procedure in any of the following cases:*

(a) where the modifications (regardless of their monetary value) have been provided for in the initial request for proposals procedure in clear, precise and unambiguous clauses, which may include price revision clauses, or options;

(b) for additional services or supplies by the original contractor that have become necessary and that were not included in the initial procurement; where a change of contractor:

- cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and
- would cause significant inconvenience or substantial duplication of costs for the contracting entity,

*provided that the increase in price does not exceed 50 % of the value of the original contract;*

(c) where a new contractor replaces the one to which the contracting entity had initially awarded the contract as a consequence of either:

- an unequivocal review clause or option in conformity with point (a);
- universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract.

(d) where the modifications (regardless of their value) **are not substantial, not more than 10% of the contract value,** the modification shall be carried out by an administrative step (mutual information of both parties, and acknowledgment of EIT UM).

Any modification above 10% of the contract value should be signed by all parties in accordance with the original contract. The template should follow the original contract template and should refer to the amended articles only. Whenever there are successive modifications – they should be numbered as ‘contract amendment No. 1 etc. Justification for the modification should be documented by the procurement initiator and added to the procurement documentation/purchase order.

## 7. Detailed presentation of the steps of the procedure between EUR 140.001 – 216.000

This procedure could optionally be a one-stage or a two-stage procedure. If the procedure is conducted as a one-stage procedure, it is an open procedure where all the interested suppliers can submit a proposal ('open call'). In case of a two-stage procedure the first stage is the pre-qualification stage, the second stage is the tendering stage. Prior to the launch of the procedure the procurement initiator needs to consult with the designated member of the management of EIT UM about what option to be chosen.

In case there is an open call, the Request for Proposal should be published on EIT UM's website.

In case of a two-stage procedure in the course of the pre-qualification stage a Pre-Qualification Notice should be published on EIT UM's website and all suppliers interested in the procedure should download it. In this first stage the applicants are not allowed to submit an offer. Only those applicants who meet the pre-qualification requirements shall be invited to submit a bid. In the second stage a Request for Proposal is to be sent to the qualified applicants.

### **In these types of procedures negotiation is not allowed with the tenderers.**

In this threshold EIT UM is only allowed to negotiate with the tenderers in a competitive procedure with **negotiation**. Competitive procedure with negotiation is similar to the two-stage open procedure, the only difference is that in case of competitive procedure with negotiation EIT UM is required to indicate the intention of negotiation in the notice launching the procedure (in this case in the Pre-qualification Notice) which should state the grounds for the use of the negotiated procedure.

### **EIT UM may conduct a negotiated procedure in the following cases:**

- the needs of EIT UM may only be satisfied by adjusting, tailoring ready-made solutions which are immediately available on the market;
- the subject-matter of the public contract includes design or innovative solutions;
- the most favourable tender cannot be selected without prior negotiations because of specific circumstances related to the nature, complexity of the contract, its legal and financial terms;
- the technical specifications cannot be established by EIT UM with sufficient precision in accordance with one of the following references: standards, European Technical Assessment, common technical specifications or technical references; or

the previously conducted open procedure failed because all the tenders submitted were invalid.

### *1. Step: Select the type of the procedure*

#### **A) Open call:**

In case there is an open call, the Request for Proposal should be published on EIT UM's website and all the interested suppliers can submit a proposal.

Time limit for this procedure as a general rule are as follows: 15 days for submitting the proposals.

In the course of the procedure EIT UM should make sure that there is no actual or potential conflict of interest with any potential supplier. In case there is he/she must declare it and he/she immediately should withdraw from the procedure or select different supplier(s) to avoid the conflict of interest.

In this procedure procedural steps of 2. Step – 8. Step should be applied accordingly.

#### **B) Two-stage procedure:**

This two-stage procedure consists of a pre-qualification stage (Stage 1) and a tendering stage (Stage 2). In the course of the pre-qualification stage a Pre-Qualification Notice should be published on EIT UM's website and all suppliers interested in the procedure should download it. In this first stage the applicants are not allowed to submit an offer. Only those applicants who meet the pre-qualification requirements shall be invited to submit a bid. In the second stage a Request for Proposal is to be sent to the qualified applicants.

#### **The Pre-Qualification Stage – Stage 1 of the procurement procedure:**

A Pre-Qualification Notice (Template T\_11) is published on EIT UM's website, and all suppliers interested in the procedure should download it. All of the applications having been submitted shall participate in the evaluation.

During the pre-qualification stage only the professional capacity will be examined, in that stage the applicants are not allowed to submit an offer.

It is recommended to define the qualification criteria in a way that at least 3-5 suppliers will be able to submit an application.

During the pre-qualification stage EIT UM will evaluate the Pre-qualification Applications based on the requirements set out in the Pre-Qualification Notice and establish a list of potential Tenderers based on the professional capacity presented. All the information has to be incorporated in a Pre-Qualification Evaluation Report (Template T\_12).

Only those applicants who meet the requirements shall be invited to submit a proposal.

Time limits for this procedure as a general rule are as follows: 15 days for submitting the applications and 15 days for submitting the tenders (in case of urgency at least 5 days should be given to the candidates to submit an application and at least 5 days for the second stage).

During the pre-qualification EIT UM should make sure that there is no actual or potential conflict of interest with any potential supplier. In case there is he/she must declare it and he/she immediately should withdraw from the procedure or select different supplier(s) to avoid the conflict of interest.

#### *Notification of the applicants*

After making the decision on the selection, EIT UM has to inform the shortlisted applicants and the other applicants in writing of the results of the selection as soon as possible after the decision (recommended to be completed within 5 days). (See Templates T\_14; T\_15)

#### *Appeal against EIT UM's decision on the shortlisted applicants*

Applicants believing that they have been harmed by an error or irregularity during the pre-qualification process (as part of a selection or procurement procedure, or that the procedure was vitiated by any maladministration) have the opportunity to file a complaint. Appeals should be addressed to EIT UM.

→ You have to allow at least 3 days for the possibility of complaints therefore, the tendering stage should not be launched by EIT UM immediately after the selection and notification of suppliers to be invited to the tendering stage.

For launching and assessing the appeals the 7. Step's rules of this chapter apply.

## 2. Step: Compilation of the tender dossier – Stage 2 of the procurement procedure (tendering stage)

After selecting at least 5 potential suppliers for tendering, the next step is to compile the supplier selection document that will include the following:

- Request for proposal document – Template T\_1;
- Draft contract form (EIT UM 's own contract form) – Template T\_10
- Tenderers' declaration form – Template T\_7

The language of the procedure should be as basic rule: English, exception from this rule can only be granted by EIT UM.

### 3. Step: Launching the procedure

To launch the procedure, the Request for Proposal (Template T\_1) – together with recommended parts shown above – needs to be sent to the qualified applicants (the terminology for them during the procedure shall be: tenderer(s)) by email.

The invited tenderers have the opportunity to ask for clarification/additional information from EIT UM before the deadline for submission on the basis of Request for Proposal document.

EIT UM should provide clarification in reasonable time, but not later than 2 days before the expiry for submission. During clarification, all communication shall be done by email to all invited firms at the same time to ensure equal opportunities for the potential tenderers. All information shall be disclosed to all tenderers necessary to provide a fully compliant proposal. No other form or stage of communication is allowed.

If a potential tenderer attempts to use other forms of communication, their tender may be rejected from the tender procedure. Any tenderer seeking to arrange individual meetings with EIT UM concerning this contract during the tender period may be excluded from the tender procedure.

The Request for Proposal determines the deadline for submitting a proposal. The deadline in principle is → not less than 15 days from sending out of the Request for Proposals, in case there is an open call, from the date when the Request for Proposal was published on EIT UM's website.

In case the procedure is conducted as an open procedure the Request for Proposal should be published on EIT UM's website all the interested suppliers can submit a proposal.

In case of urgency or the requested service is simpler, EIT UM can set a shorter deadline but needs provide justification for the shortening. However, in this case at least 5 days should be given to the tenderers to submit a bid.

In case all invited suppliers submit their proposals earlier than the deadline, after receiving and registering the last proposal, the evaluation can start.

## 4. Step: Detailed process of tender submission and evaluation

### 4.1 Nomination and task of the tender evaluator or evaluation committee

EIT UM sets up an evaluation committee (hereinafter referred to as: EC) of at least three members who jointly have the professional competence for the evaluation and assessment of the proposals. Every member shall have reasonable command of English (or special cases the language in which the proposals are submitted and the procedure is carried out). Evaluators shall have the technical and administrative ability to give a formed opinion on the proposals. Their identity is confidential, so it

should not be revealed to the tenderers.

Anybody participating in the evaluation who has or might have any actual or potential conflict of interest with any potential tenderer must declare it and be immediately withdrawn from the evaluation committee. The declaration on lack of conflict of interest is included in the tender evaluation report (Template T\_2) and should be signed by the all member(s) of the EC.

#### **4.2 Submission of proposals**

Proposals must be emailed to EIT UM within the deadline (15 days from the date when the Request for Proposal was sent to the selected 5 tenderers or in case there is an open call, from the date when the Request for Proposal was published on EIT UM's website) for submitting proposals. All proposals received after the deadline should be rejected.

The inbox where all proposals are compiled is only accessible to the procurement officer, who neither open nor read any proposals before the deadline is expired.

#### **4.3 Detailed evaluation of proposals**

Timely received proposals submitted by the tenderers shall be examined, evaluated and compared in accordance with the criteria set out in the tender dossier and the contract shall be awarded to the highest ranked tenderer.

##### Stage 1 – Conformity with formal requirements of the request for proposal

Proposals received after the time limit set for the submission of proposals shall be deemed invalid. A proposal is considered to be conforming in administrative terms if it satisfies all the formal requirements set out in the Request for Proposals.

The formal requirements for tenderers are described in the Request for Proposals document – Template T\_1. The conformity of the submitted proposals shall be checked as the 1<sup>st</sup> step of evaluation and should be recorded in section 5 of the Tender evaluation report – Template T\_2.

Where information or documentation submitted by the tenderers are or appears to be incomplete or erroneous or where specific documents are missing, the evaluation committee may request the tenderer concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit (time limit should be set according to the complexity of the missing information/document and the estimated time needed to supply that information/document, it is also important to take into consideration any weekends/holidays when giving the deadline). During this stage, all tenderers having missing information are requested to supply within a predefined time limit (usually minimum of 1 day). Only missing information or document can be supplied at this stage, no technical evaluation of the proposals is to be done at this stage.

##### Stage 2 – evaluation of proposals (scoring, writing strengths and weaknesses, determining the winner)

The EC shall complete the final scoring of the proposals. All tenderers deemed compliant shall be evaluated and compared against the contract award criteria specified in the Request for Proposals.

All scores shall be put into the tender evaluation report template (Template T\_2) under section 8.

In this table you are required to include your detailed justification for the scores given to each section of the award criteria for each tenderer and record it under the column (Rational for scores). The EC shall select the economically most compliant proposal (best value for money).

Once the winner is selected – the one that has the highest aggregate scores summed from technical and financial scores –, it shall be proposed for the contract. You will also need to provide a short summary for the choice of the winning proposal from the rational of scores.

After the completion of the procedure the tender evaluation report (Template T\_2) shall be fully completed.

Rules of conducting a Negotiated procedure:

EIT UM may conduct a negotiated procedure in the following cases:

- the needs of EIT UM may only be satisfied by adjusting, tailoring ready-made solutions which are immediately available on the market;
- the subject-matter of the public contract includes design or innovative solutions;
- the most favourable tender cannot be selected without prior negotiations because of specific circumstances related to the nature, complexity of the contract, its legal and financial terms;
- the technical specifications cannot be established by EIT UM with sufficient precision in accordance with one of the following references: standards, European Technical Assessment, common technical specifications or technical references; or the previously conducted open procedure failed because all the tenders submitted were invalid.

In case of a Negotiated procedure EIT UM is required to follow the provisions of this chapter. The only difference is that in competitive procedure with negotiation EIT UM is required to indicate the intention of negotiation in the Pre-qualification Notice which should also state the grounds for the use of the negotiated procedure.

**In Negotiated procedure negotiations take place between Stage 1 (Conformity with formal requirements of the Request for Proposal) and Stage 2 (evaluation of proposals – scoring, writing strengths and weaknesses, determining the winner). In this case the numbering of Stage 2 will be changed to Stage 3.**

After having checked the conformity with formal requirements of the Request for Proposal EIT UM can call the tenderers for round(s) of negotiations – only those tenderers can be called to participate

in the rounds of negotiations whose initial tender has been deemed fully compliant with the formal requirements in Stage 1.

During negotiations equal treatment needs to be secured throughout the entire procedure. EIT UM can organize as many rounds as it needs in order to reach the highest quality of bids and the best price, the following sequence is put as an example, feel free to adjust to your needs.

#### **The recommended sequence of negotiations:**

- During the negotiation, each tenderer can have the session separately or to save time, you can also organize joint sessions.
- During the negotiation, the EC shall indicate which areas of the proposals are to be adjusted. Certain time shall be given to the tenderers to either confirm it during the negotiation or submit it in written form within a short time to the EC.
- In case there was a deadline for adjustment of the proposals, after the expiration, the EC shall assess the content and performs the final technical evaluation of the proposals.
- After each stage of negotiation, EC must prepare the minutes of the negotiation and the members have to sign it. These minutes shall be annexed to the tender evaluation report.

## **5. Step: Notification of award**

Prior to making the decision on the selection of the most successful tenderer, all the evaluation documentation need to be double checked in line with the ‘four-eye principle’. After making the decision on the selection, EIT UM has to inform the winner and the other tenderers in writing of the results of the procedure as soon as possible after the decision (recommended to be completed within 5 days). (See Templates T\_3; T\_4, T\_5). *It is strongly recommended that you send as an annex to the letter to the winner either the draft contract form or the contract terms.*

The notification letter should include the following: the outcome of the procedure; the winning tenderer; the reasons for the award decision based on the results of the evaluation; information on how to request further information or file a complaint.

## **6. Step: ‘Appeal/complaint’**

Tenderers believing that they have been harmed by an error or irregularity during the award process (as part of a selection or procurement procedure, or that the procedure was vitiated by any maladministration) may file a complaint. Appeals should be addressed to EIT UM .

→ You have to allow at least 5 days for the possibility of complaints therefore, the contract should not be signed by EIT UM immediately after the notification of the winner. It means that in case of a complaint filed, the contract signature shall be suspended. This is called a standstill period.

The complaint should be substantiated and its sole subject shall not be to obtain a second evaluation for no reason other than the complainant disagrees with the final award decision. The complainant shall state in his application to EIT UM if the procedural action deemed unlawful, furthermore, his recommendations, remarks, and the data and facts supporting his opinion and he shall also refer to the documents, if any, supporting such data and facts.

The complaint should be dispatched to the contracting entity by email. EIT UM shall inform the complainant by email about its standpoint regarding the complaint not later than three days after reception of it. Possible outcomes of the procedure could be:

- reject the complaint as not being founded;
- or accept the complaint and re-evaluate the proposal(s) and form a new decision.

In case a complaint contains allegations of fraud or corruption, it shall be handled in line with the Anti-Fraud Policy.

## 7. Step: Signature of the contract

The selected tenderer shall sign and date the contract first and return it to EIT UM within 5 days for the signature of the Managing Authority. Failure of the winner to comply with this requirement may constitute grounds for annulling the decision to award the contract. In this event, EIT UM may award the tender to the second best or cancel the tender procedure. It is important to note that after the notification of award, the appeal process starts (5 days) and during that period the contract cannot be signed – the right to appeal as a basic right of all tenderers.

## 8. Step: Contract modification

Modifications to the contract resulting in a *minor change* of the initial contract should always be possible *without the need to carry out a new supplier selection procedure*.

As a general rule, *a new procurement procedure is required in case of a substantial change to the initial contract* or framework agreement. A modification is considered to be substantial ‘where it renders the contract or the framework agreement materially different in character from the one initially concluded’. In any event, a modification shall be considered to be substantial where one or more of the following conditions is met:

- the modification introduces conditions which, had they been part of the initial procurement procedure, it would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have

attracted additional participants in the procurement procedure;

- the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
- the modification extends the scope of the contract or framework agreement considerably;
- where a new contractor replaces the one to which EIT UM had initially awarded the contract (subject to limited exceptions provided for in the EU public procurement directive);
- where the modification exceeds 50% of the contract value.

### General rules for contract modifications

Modifications can be carried out where all of the following conditions are fulfilled:

- the need for modification has been brought about by circumstances which a diligent contracting entity **could not foresee**;
- **the modification does not alter the overall nature of the contract**;
- **any increase in price is not higher than 50% of the value of the original contract**. Where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed to circumventing this provision.

*In addition, contracts may be modified without a new procurement procedure in any of the following cases:*

(a) where the modifications (regardless of their monetary value) have been provided for in the initial request for proposals procedure in clear, precise and unambiguous clauses, which may include price revision clauses, or options;

(b) for additional services or supplies by the original contractor that have become necessary and that were not included in the initial procurement; where a change of contractor:

- cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and
- would cause significant inconvenience or substantial duplication of costs for the contracting entity,

*provided that the increase in price does not exceed 50 % of the value of the original contract;*

(c) where a new contractor replaces the one to which the contracting entity had initially awarded the contract as a consequence of either:

- an unequivocal review clause or option in conformity with point (a);
- universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract.

(d) where the modifications (regardless of their value) **are not substantial, not more than 10% of the contract value,** the modification shall be carried out by an administrative step (mutual information of both parties, and acknowledgment of EIT UM).

Any modification above 10% of the contract value should be signed by all parties in accordance with the original contract. The template should follow the original contract template and should refer to the amended articles only. Whenever there are successive modifications – they should be numbered as ‘contract amendment No. 1 etc. Justification for the modification should be documented by the procurement initiator and added to the procurement documentation/purchase order.

# 8. Detailed presentation of the steps of the procedure above EUR 216.001

## 1. Step: Select the type of the procedure

This procedure could optionally be a one-stage or a two-stage procedure. If the procedure is conducted as a one-stage procedure, it is an open procedure where all the interested suppliers can submit a proposal ('open call'). In case of a two-stage procedure the first stage is the pre-qualification stage, the second stage is the tendering stage. Prior to the launch of the procedure the procurement initiator needs to consult with the designated member of the management of EIT UM about what option to be chosen.

In case there is an open call, the Request for Proposal should be published on TED (using TED eNotices) and EIT UM's website.

In case of a two-stage procedure in the course of the pre-qualification stage a Pre-Qualification Notice should be published on TED (using TED eNotices) and EIT UM's website, and all suppliers interested in the procedure should download it. In this first stage the applicants are not allowed to submit an offer. Only those applicants who meet the pre-qualification requirements shall be invited to submit a proposal. In the second stage a Request for Proposal is to be sent to the qualified applicants.

**In these types of procedures negotiation is not allowed with the tenderers.**

In this threshold EIT UM is only allowed to negotiate with the tenderers in a competitive procedure with negotiation. Competitive procedure with negotiation is similar to the two-stage open procedure, the only difference is that in case of competitive procedure with negotiation EIT UM is required to indicate the intention of negotiation in the notice launching the procedure (in this case in the Pre-qualification Notice) which should state the grounds for the use of the negotiated procedure.

EIT UM may conduct a negotiated procedure in the following cases:

- the needs of EIT UM may only be satisfied by adjusting, tailoring ready-made solutions which are immediately available on the market;
- the subject-matter of the public contract includes design or innovative solutions;

- the most favourable tender cannot be selected without prior negotiations because of specific circumstances related to the nature, complexity of the contract, its legal and financial terms;
- the technical specifications cannot be established by EIT UM with sufficient precision in accordance with one of the following references: standards, European Technical Assessment, common technical specifications or technical references; or

the previously conducted open procedure failed because all the tenders submitted were invalid.

#### **A) Open call:**

In case there is an open call, the Request for Proposal should be published on TED (using TED eNotices) and EIT UM's website, and all the interested suppliers can submit a proposal.

Time limit for this procedure as a general rule are as follows: 30 days for submitting a proposal.

In the course of the procedure EIT UM should make sure that there is no actual or potential conflict of interest with any potential supplier. In case there is he/she must declare it and he/she immediately should withdraw from the procedure or select different supplier(s) to avoid the conflict of interest.

In this procedure procedural steps of 2. Step – 8. Step should be applied accordingly.

#### **B) Two-stage procedure:**

This two-stage procedure consists of a pre-qualification stage (Stage 1) and a tendering stage (Stage 2). In the course of the pre-qualification stage a Pre-Qualification Notice should be published on TED (using TED eNotices) and EIT UM's website, and all suppliers interested in the procedure should download it. In this firststage the applicants are not allowed to submit an offer. Only those applicants who meet the pre- qualification requirements shall be invited to submit a bid. In the second stage a Request for Proposals to be sent to the qualified applicants.

##### **The Pre-Qualification Stage – Stage 1 of the procurement procedure:**

A Pre-Qualification Notice (Template T\_11) is published on TED (using TED eNotices) and EIT UM's website, and all suppliers interested in the procedure should download it. All the applications having been submitted shall participate in the evaluation.

During the pre-qualification stage, only the professional capacity will be examined, in that stage the applicants are not allowed to submit an offer.

It is recommended to define the qualification criteria in a way that at least 3-5 suppliers could submit an application.

During the pre-qualification stage EIT UM will evaluate the Pre-qualification Applications based on the requirements set out in the Pre-Qualification Notice and establish a list of potential Tenderers based on the professional capacity presented. All the information has to be incorporated in a Pre-Qualification Evaluation Report (Template T\_12).

Only those applicants who meet the requirements shall be invited to submit a proposal.

Time limits for this procedure as a general rule are as follows: in case of a two-stage procedure 30 days for submitting the applications and 30 days for submitting the tenders (in case of urgency at least 15 days should be given to the candidates to submit an application and at least 15 days for the second stage).

In the course of the pre-qualification EIT UM should make sure that there is no actual or potential conflict of interest with any potential supplier. In case there is he/she must declare it and he/she immediately should withdraw from the procedure or select different supplier(s) to avoid the conflict of interest.

#### *Notification of the applicants*

After making the decision on the selection, EIT UM has to inform the shortlisted applicants and the other applicants in writing of the results of the selection as soon as possible after the decision (recommended to be completed within 5 days). (See Templates T\_14; T\_15)

#### *Appeal against EIT UM's decision on the shortlisted applicants*

Applicants believing that they have been harmed by an error or irregularity during the pre-qualification process (as part of a selection or procurement procedure, or that the procedure was vitiated by any maladministration) have the opportunity to file a complaint. Appeals should be addressed to EIT UM.

→ You have to allow at least 5 days for the possibility of complaints therefore, the tendering stage should not be launched by EIT UM immediately after the selection and notification of suppliers to be invited to the tendering stage.

For launching and assessing the appeals the 7. Step's rules of this chapter apply.

## 2. Step: Compilation of the tender dossier – Stage 2 of the procurement procedure (tendering stage)

After selecting at least 5 potential suppliers for tendering, the next step is to compile the supplier selection document that will include the following:

- Request for proposal document – Template T\_1;
- Draft contract form (EIT UM's own contract form) – Template T\_10
- Tenderers' declaration form – Template T\_7

The language of the procedure should be as basic rule: English, exception from this rule can only be granted by EIT UM.

### 3. Step: Launching the procedure

To launch the procedure, the Request for Proposal (Template T\_1) – together with recommended parts shown above – needs to be sent to the qualified applicants (the terminology for them during the procedure shall be: tenderer(s)) by email.

The invited tenderers have the possibility to ask for clarification/additional information from EIT UM before the deadline for submission on the basis of Request for Proposal document.

EIT UM should provide clarification in reasonable time, but not later than 2 days before the expiry for submission. During clarification, all communication shall be done by email to all invited firms at the same time to ensure equal opportunities for the potential tenderers. All information shall be disclosed to all tenderers necessary to provide a fully compliant proposal. No other form or stage of communication is allowed.

If a potential tenderer attempts to use other forms of communication, their tender may be rejected from the tender procedure. Any tenderer seeking to arrange individual meetings with EIT UM concerning this contract during the tender period may be excluded from the tender procedure.

The Request for Proposal determines the deadline for submitting a proposal. The deadline in principle is → not less than 30 days from sending out of the Request for Proposals, in case there is an open call, from the date when the Request for Proposal was published on TED (using TED eNotices) and EIT UM's website.

In case of urgency or the requested service is simpler, EIT UM can set a shorter deadline but needs provide justification for the shortening. However, in this case at least 15 days should be given to the tenderers to submit a bid.

In case all invited suppliers submit their proposals earlier than the deadline, after receiving and registering the last proposal, the evaluation can start.

### 4. Step: Detailed process of tender submission and evaluation

#### 4.1 Nomination and task of the tender evaluator or evaluation committee

EIT UM sets up an evaluation committee (hereinafter referred to as: EC) of at least three members who jointly have the professional competence for the evaluation and assessment of the proposals. Every member shall have reasonable command of English (or special cases the language in which the proposals are submitted and the procedure is carried out). Evaluators shall have the technical and administrative ability to give a formed opinion on the proposals. Their identity is confidential, so it should not be revealed to the tenderers.

Anybody participating in the evaluation who has or might have any actual or potential conflict of interest with any potential tenderer must declare it and be immediately withdrawn from the EC. The

declaration on lack of conflict of interest is included in the tender evaluation report (Template T\_2) and should be signed by the all member(s) of the EC.

#### 4.2 Submission of proposals

Proposals must be emailed to EIT UM within the deadline (30 days from the date when the Request for Proposal was sent to the selected 5 tenderers or in case there is an open call, from the date when the Request for Proposal was published on TED (using TED eNotices) and EIT UM's website) for submitting proposals. All proposals received after the deadline should be rejected.

The inbox where all proposals are compiled is only accessible to the procurement officer, who neither open nor read any proposals before the deadline is expired.

#### 4.3 Detailed evaluation of proposals

Timely received proposals submitted by the tenderers shall be examined, evaluated and compared in accordance with the criteria set out in the tender dossier and the contract shall be awarded to the highest ranked tenderer.

##### *Stage 1 – Conformity with formal requirements of the request for proposal*

Proposals received after the time limit set for the submission of proposals shall be deemed invalid. A proposal is considered to be conforming in administrative terms if it satisfies all the formal requirements set out in the Request for Proposals.

The formal requirements for tenderers are described in the Request for Proposals document – Template T\_1. The conformity of the submitted proposals shall be checked as the 1<sup>st</sup> step of evaluation and should be recorded in section 5 of the Tender evaluation report – Template T\_2.

Where information or documentation submitted by the tenderers are or appears to be incomplete or erroneous or where specific documents are missing, the EC may request the tenderer concerned to submit, supplement, clarify or complete the relevant information or documentation within an

appropriate time limit (time limit should be set according to the complexity of the missing information/document and the estimated time needed to supply that information/document, it is also important to take into consideration any weekends/holidays when giving the deadline). During this stage, all tenderers having missing information are requested to supply within a predefined time limit (usually minimum of 1 day). Only missing information or document can be supplied at this stage, no technical evaluation of the proposals is to be done at this stage.

Stage 2 – evaluation of proposals (scoring, writing strengths and weaknesses, determining the winner)

The EC shall complete the final scoring of the proposals. All tenderers deemed compliant shall be evaluated and compared against the contract award criteria specified in the Request for Proposals.

All scores shall be put into the tender evaluation report template (Template T\_2) under section 8.

In this table you are required to include your detailed justification for the scores given to each section of the award criteria for each tenderer and record it under the column (Rational for scores). The EC shall select the economically most compliant proposal (best value for money).

Once the winner is selected – the one that has the highest aggregate scores summed from technical and financial scores –, it shall be proposed for the contract. You will also need to provide a short summary for the choice of the winning proposal from the rational of scores.

After the completion of the procedure the tender evaluation report (Template T\_2) shall be fully completed.

Rules of conducting a Negotiated procedure:

EIT UM may conduct a negotiated procedure in the following cases:

- the needs of EIT UM may only be satisfied by adjusting, tailoring ready-made solutions which are immediately available on the market;
- the subject-matter of the public contract includes design or innovative solutions;
- the most favourable tender cannot be selected without prior negotiations because of specific circumstances related to the nature, complexity of the contract, its legal and financial terms;
- the technical specifications cannot be established by EIT UM with sufficient precision in accordance with one of the following references: standards, European Technical Assessment, common technical specifications or technical references; or
- the previously conducted open procedure failed because all the tenders submitted were invalid.

In case of a Negotiated procedure EIT UM is required to follow the provisions of this chapter. The only

difference is that in competitive procedure with negotiation EIT UM is required to indicate the intention of negotiation in the Pre-qualification Notice which should also state the grounds for the use of the negotiated procedure.

**In Negotiated procedure negotiations take place between Stage 1 (Conformity with formal requirements of the Request for Proposal) and Stage 2 (evaluation of proposals – scoring, writing strengths and weaknesses, determining the winner). In this case the numbering of Stage 2 will be changed to Stage 3.**

After having checked the conformity with formal requirements of the Request for Proposal EIT UM can call the tenderers for round(s) of negotiations – only those tenderers can be called to participate in the rounds of negotiations whose initial tender has been deemed fully compliant with the formal requirements in Stage 1.

During negotiations equal treatment needs to be secured throughout the entire procedure. EIT UM can organize as many rounds as it needs in order to reach the highest quality of bids and the best price. The below sequence is put as an example, feel free to adjust it to your needs.

**The recommended sequence of negotiations:**

- During the negotiation, each tenderer can have the session separately or to save time, you can also organize joint sessions.
- During the negotiation, the EC shall indicate which areas of the proposals are to be adjusted. Certain time shall be given to the tenderers to either confirm it during the negotiation or submit it in written form within a short time to the EC.
- In case there was a deadline for adjustment of the proposals, after the expiration, the EC shall assess the content and performs the final technical evaluation of the proposals.
- After each stage of negotiation, EC must prepare the minutes of the negotiation and the members have to sign it. These minutes shall be annexed to the tender evaluation report.

## 5. Step: Notification of award

Prior to making the decision on the selection of the most successful tenderer, all the evaluation documentation need to be double checked in line with the ‘four-eye principle’. After making the decision on the selection, EIT UM has to inform the winner and the other tenderers in writing of the results of the procedure as soon as possible after the decision (recommended to be completed within 5 days). (See Templates T\_3; T\_4, T\_5). *It is strongly recommended that you send as an annex to the letter to the winner either the draft contract form or the contract terms.*

The notification letter should include the following: the outcome of the procedure; the winning tenderer; the reasons for the award decision based on the results of the evaluation; information on how to request further information or file a complaint.

## 6. Step: 'Appeal/Complaint'

Tenderers believing that they have been harmed by an error or irregularity during the award process (as part of a selection or procurement procedure, or that the procedure was vitiated by any maladministration) may file a complaint. Appeals should be addressed to EIT UM.

→ You have to allow at least 10 days for the possibility of complaints therefore, the contract should not be signed by EIT UM immediately after the notification of the winner. It means that in case of a complaint filed, the contract signature shall be suspended. This is called a standstill period.

The complaint should be substantiated and its sole subject shall not be to obtain a second evaluation for no reason other than the complainant disagrees with the final award decision. The complainant shall state in his application to EIT UM if the procedural action deemed unlawful, furthermore, his recommendations, remarks, and the data and facts supporting his opinion and he shall also refer to the documents, if any, supporting such data and facts.

The complaint should be dispatched to the contracting entity by email. EIT UM shall inform the complainant by email about its standpoint regarding the complaint not later than three days after reception of it. Possible outcomes of the procedure could be:

- reject the complaint as not being founded;
- or accept the complaint and re-evaluate the proposal(s) and form a new decision.

In case a complaint contains allegations of fraud or corruption, it shall be handled in line with the Anti-Fraud Policy.

## 7. Step: Signature of the contract

The selected tenderer shall sign and date the contract first and return it to EIT UM within 10 days for the signature of EIT UM. Failure of the winner to comply with this requirement may constitute grounds for annulling the decision to award the contract. In this event, EIT UM may award the tender to the second best or cancel the tender procedure. It is important to note that after the notification of award,

the appeal process starts (10 days) and during that period the contract cannot be signed – the right to appeal as a basic right of all tenderers.

## 8. Step: Contract modification

Modifications to the contract resulting in a *minor change* of the initial contract should always be possible *without the need to carry out a new supplier selection procedure*.

As a general rule, *a new procurement procedure is required in case of a substantial change to the initial contract or framework agreement*. A modification is considered to be substantial ‘where it renders the contract or the framework agreement materially different in character from the one initially concluded’. In any event, a modification shall be considered to be substantial where one or more of the following conditions is met:

- the modification introduces conditions which, had they been part of the initial procurement procedure, it would have allowed for the admission of other candidates than those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;
- the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
- the modification extends the scope of the contract or framework agreement considerably;
- where a new contractor replaces the one to which EIT UM had initially awarded the contract (subject to limited exceptions provided for in the EU public procurement directive);
- where the modification exceeds 50% of the contract value.

*Contracts may be modified without a new procurement procedure in any of the following cases:*

(a) where the modifications (regardless of their monetary value) have been provided for in the initial request for proposals procedure in clear, precise and unambiguous clauses, which may include price revision clauses, or options;

(b) for additional services or supplies by the original contractor that have become necessary and that were not included in the initial procurement; where a change of contractor:

- cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and

- would cause significant inconvenience or substantial duplication of costs for the contracting entity,

*provided that the increase in price does not exceed 50 % of the value of the original contract;*

(c) where all the following conditions are fulfilled:

- the need for modification has been brought about by circumstances which a diligent contracting entity could not foresee;
- the modification does not alter the overall nature of the contract;
- any increase in price is not higher than 50 % of the value of the original contract. Where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed to circumventing this provision.

(d) where a new contractor replaces the one to which the contracting entity had initially awarded the contract as a consequence of either:

- an unequivocal review clause or option in conformity with point (a);
- universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract.

(e) where the modifications (regardless of their value) **are not substantial, not more than 10% of the contract value,** the modification shall be carried out by an administrative step (mutual information of both parties, and acknowledgment of EIT UM).

Any modification above 10% of the contract value should be signed by all parties in accordance with the original contract. The template should follow the original contract template and should refer to the amended articles only. Whenever there are successive modifications – they should be numbered as ‘contract amendment No. 1 etc. Justification for the modification should be documented by the procurement initiator and added to the procurement documentation/purchase order.

## 9. Direct award procedure

(Negotiated procedure without prior publication – this procedure can be applied in any of the thresholds except above EUR 216.001)

### 1. Step: To provide sound justification for the selection of this procedure

***This type of procedure can only be selected if one of the below services or supplies are listed or can be interpreted as part of them:***

a. *Where the supply of goods or services can be supplied only by a particular supplier for any of the following reasons:*

- the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
- competition is absent for technical reasons;
- for securing the protection of exclusive rights, including intellectual property rights;

***But it is important to note that the absence of competition cannot be the result of an artificial narrowing down of the parameters of the procurement.***

Examples:

- procuring special IT services:
    - e.g. establishment of a system using special software;
    - construction of an internet infrastructure by a certain internet service provider (only one provider can establish the internet in that area);
    - specialized scientific equipment or newly invented application or software which is inevitable for the implementation of the project;
  - attending special conferences or events that are unique in EIT UM's business cannot be acquired through normal competition (thematic field, participating prospects etc.);
  - there is a necessity to use specific know-how, tools or means in the procedure which only one economic operator has at its disposal;
- b. *where no tenders or no suitable tenders or no applicants or no suitable applicants have been submitted in response to a Request for Proposal or a Pre-qualification Notice, provided that the initial conditions of the contract are not substantially altered;*
- c. *in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by EIT UM, the time limits for the basic procedures cannot be complied with;*

- d. *for public supply contracts where the products involved are manufactured purely for the purpose of research, experimentation, study or development;*
- e. *for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige EIT UM to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance (the duration of such contracts as well as that of recurrent contracts, shall not, as a general rule, exceed three years);*
- f. *for new services consisting in the repetition of similar services entrusted to the supplier to which EIT UM awarded an original contract, provided that such services are in conformity with a basic project for which a contract was awarded following a Request for Proposal, the possible use of the negotiated procedure without prior publication was indicated as soon as the first project was put up for tender and the total estimated cost of subsequent services was taken into consideration when calculating the estimated value of procurement;*
- g. *for supplies quoted and purchased on a commodity market;*
- h. *for the purchase of supplies or services on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations;*
- j. *for public service contracts, where the contract concerned follows a design contest and is to be awarded, under the rules provided for in the design contest, to the winner or one of the winners of the design contest;*

→ Prior to the launch of the procedure, EIT UM needs to be consulted and should agree on the choice of the procedure. After the agreement of EIT UM please follow the steps below:

The initiator of the supplier selection shall be the procurement initiator from EIT UM. The procurement initiator shall select 1 supplier.

The initiator needs to collect and document detailed justification regarding the choice of this procedure. This justification has to be included in the tender evaluation report.

Once the justification for the selection of sole potential supplier is done, the procurement initiator should make sure that there is no actual or potential conflict of interest with the potential supplier. In case there is he/she must declare it and he/she immediately should be withdrawn from the procedure to avoid conflict of interest. In this case, a new initiator should carry out the procedure.

## 2. Step: Compilation of the tender dossier

After selecting the sole potential supplier for bidding, the next step is to compile a simple supplier selection document that will include the following:

- a Request for Proposal document;
- a draft contract form (EIT UM's own contract form or EIT UM's own terms and conditions +supplier's own contract form).

The language of the procedure should be as basic rule: English, exception from this rule can only be granted by EIT UM.

## 3. Step: Launching the procedure

To launch the procedure, the Request for Proposal together with recommended parts shown above are sent by email to the potential supplier. The request for proposal document must determine the deadline for submitting the proposals. The deadline is → **not less than 3 days** from the sending out of the Request for Proposal.

In case the requested service/supply of product is simpler, the procurement initiator can set a shorter deadline but needs provide justification for the shortening to EIT UM.

In case the supplier submits his/her proposal earlier, the evaluation can start immediately.

## 4. Step: Detailed process of proposal submission and evaluation

### 4.1 Nomination and task of the tender evaluator or evaluation committee

The EC in this procedure means **a 3-member evaluation committee** (hereinafter referred to as: EC). Anybody participating in the evaluation who has or might have any actual or potential conflict of interest with any potential supplier must declare it and immediately withdraw from the EC. The declaration on lack of conflict of interest is included in the tender evaluation report and should be signed by the all member(s) of the EC.

### 4.2 Submission of the proposal

The proposal must be emailed to EIT UM within the deadline for submitting the proposal (**at least 3 days from the sending out to the selected tenderer**). If the proposal is received after the deadline it **should be rejected**.

### 4.3 Detailed evaluation of the proposal

Only the timely received proposal submitted by the tenderer shall be examined, evaluated and compared in accordance with the criteria set out in the Request for Proposal and the contract shall be awarded to the bidder if all criteria are met.

#### Stage 1 – Conformity with formal requirements of the request for proposal

In case the proposals are received after the time limit set for the submission of tender shall be deemed invalid. A proposal is considered to be conforming in administrative terms if it satisfies all the formal requirements set out in the request for proposal. The formal requirement for the tenderer is described in the Request for Proposal document. The conformity of the submitted proposal shall be checked as the 1<sup>st</sup> step of evaluation and should be recorded in section 5 of the tender evaluation report.

Where information or documentation submitted by the tenderer is or appears to be incomplete or erroneous or where specific documents are missing, the EC may request the tenderer to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit (time limit should be set according to the complexity of the missing information/document and the estimated time needed to supply that information/document, it is also important to take into

consideration any weekends/holidays when giving the deadline). During this stage, the tenderer having missing information are requested to supply within a predefined time limit (usually minimum of 1 day). Only missing information or document can be supplied at this stage, no technical evaluation of the proposals is to be done at this stage.

#### Stage 2 – Negotiation regarding the technical and financial solutions/proposals

The proposal that are fully compliant with the formal requirements – meaning stage 1 is completed, all missing formally required information is supplied – can move to stage 2.

In this stage, the evaluator(s) review the detailed proposal of the tenderer assessing the technical content.

In this stage, the contracting entity calls the tenderer for round(s) of negotiations.

#### Areas in which negotiations can be held:

- In case it is identified that the scope of services or technical specification issued by the contracting entity is not detailed, complete or some areas are lacking crucial information to complete the procedure;
- The submitted price is above the planned budget or considered high and it is everyone's

interest to finish the procedure with success – in that case, price negotiation can take place. During a price negotiation, the tenderer is called to lower his/her price by a given deadline in a written form.

*You can organize as many rounds as you need in order to reach the highest quality of the bid and the best price, the following sequence is put as an example, feel free to adjust to your needs.*

#### The recommended sequence of negotiation:

- During the negotiation, the EC shall indicate which areas of the proposal is to be adjusted. Certain time shall be given to the tenderer to either confirm it during the negotiation or submit it in written form within a short time to the EC.
- In case there was a deadline for adjustment of the proposal, after the expiration, the EC shall assess the content and performs the final technical evaluation of the proposals.
- After each stage of negotiation, EC must prepare the minutes of the negotiation and the members have to sign it (details of the negotiation can also be incorporated into the Tender evaluation report. These minutes shall be annexed to the tender evaluation report.

#### Stage 3 – Final stage – evaluation of the proposal

The EC shall complete the final evaluation of the proposal. Only if the tenderer is deemed compliant shall be evaluated and compared against the contract award criteria specified in the tender dossier.

As there is only one tenderer, no scores are given. After the completion of the procedure, the tender evaluation report shall be fully completed. In the tender evaluation report, you are required to include also the justification regarding the choice of the sole tenderer under section 1.

## 5. Step: Notification of award

After making the decision on the result, EIT UM shall inform the winner. Prior to that step, the internal approval process of contracting has to be completed (all signatures have to be acquired).

*It is strongly recommended that you send as an annex to the letter to the winner either the draft contract form or the contract terms.*

## 6. Step: 'Appeal/Complaint'

If the tenderer believes that he/she has been harmed by an error or irregularity during the award process (as part of a selection or procurement procedure, or that the procedure was vitiated by any maladministration) may file a complaint. Appeals should be addressed to EIT UM.

→ You have to allow at least 3 days for the possibility of complaints therefore, the contract should not be signed immediately after the notification of the winner. It means that in case of a complaint filed, the contract signature shall be suspended. This is called a standstill period.

In case a complaint contains allegations of fraud or corruption, it shall be handled in line with the Anti-Fraud Policy.

## 7. Step: Signature of the contract

The selected tenderer shall sign and date the contract first and return it to EIT UM (recommended to be completed within 3 days) for the signature of EIT UM. Failure of the winner to comply with this requirement may constitute grounds for annulling the decision to award the contract. In this event, EIT UM may cancel the tender procedure.

## 8. Step: Contract modification

Modifications to the contract resulting in a *minor change* of the initial contract should always be possible *without the need to carry out a new supplier selection procedure*.

As a general rule, *a new procurement procedure is required in case of a substantial change to the initial contract or framework agreement*. A modification is considered to be substantial 'where it renders the contract or the framework agreement materially different in character from the one initially concluded'. In any event, a modification shall be considered to be substantial where one or more of the following conditions is met:

- the modification introduces conditions which, had they been part of the initial procurement procedure, it would have allowed for the admission of other candidates than

- those initially selected or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;
- the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
  - the modification extends the scope of the contract or framework agreement considerably;
  - where a new contractor replaces the one to which EIT UM had initially awarded the contract (subject to limited exceptions provided for in the EU public procurement directive).

### ***General rules for contract modifications***

Modifications can be carried out where all of the following conditions are fulfilled:

the need for modification has been brought about by circumstances which a diligent contracting entity **could not foresee**;

- the modification does not alter the overall nature of the contract;
- any increase in price is not higher than 50 % of the value of the original contract. Where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this provision.

*In addition, contracts may be modified without a new procurement procedure in any of the following cases:*

(a) where the modifications (regardless of their monetary value) have been provided for in the initial request for proposals procedure in clear, precise and unambiguous clauses, which may include price revision clauses, or options;

(b) for additional services or supplies by the original contractor that have become necessary and that were not included in the initial procurement; where a change of contractor:

- cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and
- would cause significant inconvenience or substantial duplication of costs for the contracting entity,

*provided that the increase in price does not exceed 50 % of the value of the original contract;*

(c) where a new contractor replaces the one to which the contracting entity had initially awarded the contract as a consequence of either:

- an unequivocal review clause or option in conformity with point (a);
- universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract.

(d) where the modifications (regardless of their value) **are not substantial, not more than 10% of the contract value**, the modification shall be carried out by an administrative step (mutual information of both parties, and acknowledgment of EIT UM).

Any modification above 10% of the contract value should be signed by all parties in accordance with the original contract. The template should follow the original contract template and should refer to the amended articles only. Whenever there are successive modifications – they should be numbered as ‘contract amendment No. 1 etc. Justification for the modification should be documented by the procurement initiator and added to the procurement documentation/purchase order.

## 10. Procedural steps for concluding a framework agreement

### *General rules*

A framework agreement means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. The term of a framework agreement shall not exceed four years, save in exceptional cases duly

justified, in particular by the subject of the framework agreement. Framework agreements are regulated in Article 33 of Directive 2014/24/EU.

Commonly, framework agreements are used to procure supplies/works/services **for which contracting authorities have a repeated need**. A standard subject matter of a framework agreement may be for example stationary, computers or maintenance services, cleaning services for universities in a particular region, office supplies for city councils or the construction of a particular part of a road – **and in particular, where contracting authorities do not know the exact timing or quantity of their requirements**.

Framework agreement is a specific procurement method that is used to create an “umbrella” agreement with supplier(s). The agreement sets out general terms and conditions upon which multiple call-offs will be established and the more specific issues (timing, price or quantity of the requirements) will be agreed upon when orders are placed.

Framework agreement as a specific procurement method can be applied at the following thresholds: EUR 60.001-140.000, EUR 140.001-216.000 and above EUR 216.001. Framework agreement cannot be applied through Direct Award procedure.

## 1. Types of framework agreements

- *single-supplier framework agreements – the framework agreement is concluded with one tenderer*
  - *if the framework agreement sets out all terms of the contract(s), the contract(s) based on the framework agreement can be concluded through a direct purchasing order placed by the contracting authority (according to the terms set in the framework agreement);*
  - *if the framework agreement sets out all terms of the contract(s), the contracts can also be concluded through a written consultation with the supplier, requesting the supplier to supplement its tender as necessary, provided that this option is laid down in the framework agreement as well as previously in the relevant procurement procedure (in*

the RfP) – *in case of a written consultation with the supplier the supplier shall submit a tender which is similar to or more favourable than the terms of the framework agreement;*

- *if the framework agreement does not set out all terms of the contract(s), the contract(s) can be concluded through a written consultation with the supplier; in this case in the invitation for consultation, the tenderer shall be invited by the contracting authority to complement its original tender; the supplements to be taken into consideration by the tenderer shall be laid down by the contracting authority in the invitation for consultation – in the course of the written consultation with the supplier the supplier shall submit a tender which is similar to or more favourable than the terms of the framework agreement.*

- *multi-supplier framework agreements*

- *if the framework agreement sets out all terms of the contract(s), the contract(s) based on the framework agreement can be concluded through a direct purchasing order placed by the contracting authority with the tenderer(s) selected pursuant to the objective criteria established in the framework agreement (according to the terms set in the framework agreement); in this case the framework agreement shall specify the objective criteria for determining which of the economic operators to the framework agreement shall perform them; the latter conditions shall be indicated in the RfP for the framework agreement;*
- *if the framework agreement sets out all terms of the contract(s), the contracts can also be concluded with reopening of competition amongst the parties to the framework agreement provided that this possibility has been stipulated in the RfP for the framework agreement.*

*The choice of whether specific works, supplies or services shall be acquired following a reopening of competition or directly on the terms set out in the framework agreement shall be made pursuant to objective criteria, which shall be set out in the RfP for the framework agreement. In this case the RfP also has to specify which terms may be subject to reopening of competition.*

- *where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, through reopening competition amongst the parties to the framework agreement.*

The main rules of concluding a framework agreement are summarised as follows:

- EiT UM has to apply a procurement procedure for concluding a framework agreement;
- the estimated value of the procurement for concluding a framework agreement has to be the maximum estimated value, net of VAT, of all the contracts envisaged for the total term of the framework agreement;
- the term of a framework agreement should not exceed 4 years, except in exceptional cases duly justified, in particular by the subject of the framework agreement;
- contracts based on a framework agreement may under no circumstances entail substantial modifications to the terms laid down in that framework agreement;
- *in case of single-supplier framework agreements*, contracts shall be awarded within the limits and the terms defined in the framework agreement; the contracting authority may consult the economic operator in writing, requesting it to supplement its tender if necessary;
- *in case of multi-supplier framework agreements*, for each contract, the winner may be selected without a new competition (if the framework agreement sets out all terms of the contract(s) - selection is based on original tenders) or through a partial or full reopening of competition (“mini-tender” procedure);
- as a framework agreement is also considered to be a contract, the rules for modifying the agreement are the same as described in the Manual as ‘Contract modification – Step 8’.

### ***Detailed rules***

Framework agreement as a specific procurement method can be applied at the following thresholds: EUR 60.001-140.000, EUR 140.001-216.000 and above EUR 216.001. Framework agreement cannot be applied through Direct Award procedures.

### *Procedural steps to follow in order to conclude a framework agreement*

Contracting authority can choose the following procedures to conclude a framework agreement described in the Manual:

- procedure between EUR 60.001-140.000;
- procedure between EUR 140.001-216.000;
- procedure above EUR 216.001.

**However, bear in mind that in terms of framework agreement the estimated value of the procedure has to be the maximum estimated value (net of VAT) of all the contracts envisaged for the total term of the framework agreement.**

Once a procedure is chosen, the contracting authority needs follow the steps of that procedure as described in this Manual. The procedural steps are the same except that at the end of the procedure a framework agreement will be concluded not a 'simple contract'.

### *While preparing the procedure*

A set of basic items needs to be defined during the design of the framework agreement, e.g.:

- determine the subject matter;
- agree on the main terms;
- determine the quality (minimum technical specifications);
- determine whether the framework is single supplier or multi – supplier and if the latter the, number of suppliers it intends to include;
- the duration of the framework;
- an estimate of the total value of purchases expected to be made for the duration of the framework;
- choose a procurement procedure;

- divide into lots (if necessary);
- define the qualification and awarding criteria – *in case of multi-supplier framework agreements when there is a reopening of competition* amongst the parties to the framework agreement, the award criteria of the ‘mini tender procedure’ should be the same as the criteria in the RfP for the framework agreement; the contracting authority can alter the award criteria in the ‘mini tender procedure’ provided that these criteria have already been defined in the RfP for the framework agreement and these criteria are part of the framework agreement as well;
- in case of multi-supplier framework agreements, in the framework agreement it also has to be specified which terms may be subject to reopening of competition.

It is also recommended to create a template to be used for all framework agreements as an official framework agreement summary form which includes the most important information concerning the framework agreement.

## 2. Summary of a single-supplier framework agreement:

This would involve sending an RfP to the suppliers or publishing an RfP depending on the type of procurement procedure. The RfP should indicate the intention to set up a single-supplier framework, inviting tenders and awarding all contracts under the framework to the most suitable tenderer selected on the basis of the award criteria described in the RfP.

The terms and criteria for award of contracts would be precisely formulated and published in the RfP.

*If the framework agreement sets out all terms of the contract(s), the contract(s) based on the framework agreement can be concluded through a direct purchasing order placed by the contracting authority. In this case there is no scope to supplement or amend the initial tender.*

*If the framework agreement sets out all terms of the contract(s), and the contracts are to be concluded through a written consultation with the supplier, the supplier is required to supplement its tender. This*

new tender should be similar to or more favourable than the terms of the framework agreement. The framework agreement shall also specify which terms may be subject to written consultation.

*If the framework agreement does not set out all terms of the contract(s), the contract(s) can be concluded through a written consultation with the supplier. In the course of the written consultation in the invitation for consultation the supplier shall be invited by the contracting authority to complement its original tender. The supplements to be taken into consideration by the tenderer shall be laid down by the contracting authority in the invitation for consultation. In the course of the written consultation with the supplier the supplier should submit a tender which is similar to or more favourable than the terms of the framework agreement. The framework agreement shall also specify which terms may be subject to written consultation.*

### **3. Summary of a multi-supplier framework agreement:**

To launch this procedure an RfP is to be sent to the suppliers or to be published on the EiT UM's website depending on the type of procurement procedure. The RfP should indicate the intention to set up a multi-supplier framework indicating the relevant number of participants to be selected on the basis of the award criteria. In setting up multiple-supplier frameworks, a minimum of three participants must be included (provided that there is at least this number of qualified tenderers).

*If the framework agreement sets out all terms of the contract(s), the contract(s) based on the framework agreement can be concluded through a direct purchasing order placed by the contracting authority with the tenderer(s) selected pursuant to the objective criteria established in the framework agreement. In this case the framework agreement shall specify the objective criteria for determining which of the suppliers to the framework agreement shall perform them. The latter conditions shall be indicated in the RfP for the framework agreement.*

The terms for awarding further contracts under the framework would have to be set out in the RfP, e.g. possible use of mini-competition and the award criteria for mini – competition, etc., as follows:

*If the framework agreement sets out all terms of the contract(s), the contracts can also be concluded with reopening of competition amongst the parties to the framework agreement provided that this possibility has been stipulated in the RfP for the framework agreement.*

*The choice of whether specific works, supplies or services shall be acquired following a reopening of competition or directly on the terms set out in the framework agreement shall be made pursuant to objective criteria, which shall be set out in the RfP for the framework agreement. In this case the RfP also has to specify which terms may be subject to reopening of competition.*

*Where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, through reopening competition amongst the parties to the framework agreement.*

#### *Detailed rules for reopening the competition*

The contracting authority shall send an invitation to the suppliers in writing (an RfP), at the same time to all suppliers that concluded the framework agreement. No other supplier may be involved in this part of the procedure.

The RfP should include the following elements:

- name and address, telephone number as well as e-mail address of the contracting authority;
- reference to the RfP announcing or launching the procedure to be conducted for the framework agreement and the date of its publication or when it was sent to the suppliers;
- reference to the concluded framework agreement;
- the subject-matter and quantity of the specific procurement;
- determination of the contract (whether it is a contract for services or supplies);
- term of the contract or time limit for performance of the contract;
- place of performance/delivery;
- time limit for submission of the tender, the address(email) used for the submission of tenders
- time of opening the tenders and its place;
- any other information necessary for the submission of the tender, as regards, where appropriate, the accessibility of further procurement documents;
- validity period of the tender;

- award criteria and method.

The contracting authority may apply award criteria other than those applied in the procedure conducted for the framework agreement, provided that those criteria have already been specified in the RfP for the framework agreement and those criteria are included in the framework agreement as well.

Suppliers may only submit tenders which are similar to the contents of the framework agreement or which are more advantageous for the contracting authority compared to the contents of the framework agreement.

As for the rules of opening of tenders, evaluation of tenders, notifying the suppliers, signing the contract and modifying the contract, the rules of Step 4 – Step 8 are to be applied accordingly as these steps are described in the Manual taking the threshold of the procedure for concluding the framework agreement into consideration.

# Annex I

1. Name, address and contact details of the contracting entity
2. Type of contracting entity and main activity exercised
3. Where appropriate, indication whether the contracting entity is a central purchasing body or that any other form of joint procurement is involved
4. CPV codes
5. NUTS code for the main place of delivery or performance in supply and service contracts (place of performance)
6. Description of the procurement, information about lots (if appropriate) - subject-matter and quantity of the procurement concerned
7. Type of award procedure; in the case of negotiated procedure without prior publication, justification
8. Information on the evaluation of tenders (award criteria, weightings and scores)
9. Date of the conclusion of the contract(s)
10. Number of tenders received
11. Name, address of the successful tenderer(s)
12. Information on value of the contract/lot, information about subcontracting
13. Information about the appeal process
14. Any other relevant information

# Annex II

## 1. Competitive Dialogue

- Competitive dialogue in practice may occur - in particular - in case of complex and high value infrastructure projects
- This procedure is meant to facilitate complex procurements, where the contracting entity knows what the result is it wants to achieve in awarding a contract, but does not know how best to achieve it
- The procedure consists of 3 stages: Stage 1 Pre-qualification, Stage 2 Dialogue with the candidates, Stage 3 Tendering:
  - in Stage 2 (Dialogue with the candidates) - the dialogue between the contracting entity and the candidates should be on the followings: determining the subject matter of the procurement, the type and the terms and conditions of the contract
  - for conducting the dialogue, the rules of negotiation are to be applied
  - in the Dialogue phase there are no offers, only “proposals for solution”

## 2. Innovation Partnership

- The aim of this procedure is to develop an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works. In the centre of the procedure there are needs that cannot be satisfied with existing solutions
- The procedure consists of 2 stages: Stage 1 - Procedural stage, Stage 2 - Contractual stage
  - Stage 1 (Procedural stage) – the aim of this stage is to conclude an innovation partnership agreement; in this phase the rules of the competitive procedure with negotiation are to be applied and the contract establishing the innovation partnership is to be awarded using the criteria of the best price-quality ratio; innovation partnership agreement can be concluded with one or more economic operators
  - Stage 2 (Contractual stage) – this is the stage of the research and development process (when the partner(s) develop the innovative product, service or works in collaboration

with the contracting authority) as well as the purchase which are subject to the terms and conditions specified in the innovation partnership agreement (concluded in Stage 1)

### 3. Framework agreement

- Procurements can be carried out through a framework agreement
- Framework agreement is often used when a contracting entity has recurring or continuing needs to purchase certain particular products or services - for example stationary, computers or maintenance services - and in particular, where the contracting entity does not know the exact timing or quantity of their requirements
- Framework agreement is to be concluded by conducting a procurement procedure; subsequently, contracts can be concluded on the basis of the framework agreement with the tenderers participating in the framework agreement
- Contracts based on a framework agreement may under no circumstances entail substantial modifications to the terms laid down in that framework agreement
- Framework agreement can be signed with one (single-supplier framework) or more (multi-supplier framework) economic operators
- In case of single-supplier framework contracts shall be awarded within the limits and the terms of the framework agreement. The contracting authority may consult the economic operator in writing, requesting it to supplement its tender if necessary
- In case of multi-supplier framework, for each contract, the winner may be selected without a new competition (based on original tenders) or through a partial or full reopening of competition ("mini-tender" procedure)
- The term of a framework agreement may not exceed 4 years
- The estimated value of procurement shall be the maximum estimated value, net of VAT, of all the contracts envisaged for the total term of the framework agreement

### 4. Electronic procurement processes:

#### 4.1 Dynamic purchasing systems

- The contracting entity may create a dynamic purchasing system (DPS) for the implementation of its commonly used public procurements

- DPS can be divided into more categories – in this case each category has its own selection criteria;
- DPS is open throughout the validity of the DPS to any economic operator that satisfies the selection criteria;
- Admission to the DPS is subject to the rules on the pre-qualification stage of a two-stage procedure, while the implementation of the procurement in the DPS is subject to the rules on the tendering stage of a two-stage procedure.

#### 4.2 Electronic auctions

- New prices concerning certain quantifiable elements of tenders can be presented by tenderers through electronic auction;
- Electronic auction begins after the evaluation of tenders, provided that, it has been indicated previously in the RfP that electronic auction would be held.