

Procurement by Non-Governmental Organisations in the context of Sida-financed projects/programmes, version of 2013

1. General principles

If the implementation of a Project/programme requires procurement by the Cooperation Partner, the contract must be awarded to the tenderer with the most economically advantageous tender (i.e. the tender offering the best price-quality ratio), or, in case of supply contracts not involving after-sales service, the sole award criterion should be the price. Contracts must be awarded in accordance with transparency and fair competition avoiding any conflicts of interest. Contracts must not be split artificially to circumvent procurement thresholds.

To this end, the Cooperation Partner must comply with the rules set out in sections 2 to 6 below, subject to section 7. These lay down the minimum procedures to be followed and it is not precluded that other procedures offering more competition are utilised.

Sida will carry out ex post checks on the Cooperation Partner's compliance with these rules. Failure to comply with these rules would render the related expenditure ineligible for Sida funding.

2. Eligibility for contracts

2.1 Nationality

Participation in tender procedures administered by the Cooperation Partner is open on equal terms to all natural and legal persons.

2.2 Grounds for exclusion from participation in procurement

Candidates or tenderers will be excluded from taking part in a procurement procedure if:

- (1) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or

are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

- (2) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;
- (3) they have been guilty of grave professional misconduct proven by any means which the Cooperation Partner can justify;
- (4) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Cooperation Partner or those of the country where the contract is to be performed;
- (5) they or persons having powers of representation, decision making control over them have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity detrimental to Swedens/Sidas financial interests;

Candidates or tenderers must certify that they are not in one of the situations listed above.

Points (1) to (4) do not apply to the purchase of supplies on particularly advantageous terms from either a supplier which is definitely winding up its business activities, or the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

2.3 Exclusion from award of contracts

Contracts may not be awarded to candidates or tenderers which, during the procurement procedure:

- (a) are subject to a conflict of interests;
- (b) are guilty of misrepresentation in supplying the information required by the Cooperation Partner as a condition of participation in the contract procedure or fail to supply this information.

3. Common procurement rules

The tender documents must be drafted according to best international practice.

Sida will not publish notices and tender documents issued by the Cooperation Partner.

The time-limits for tenders must be long enough to give interested parties a reasonable and appropriate period to prepare and submit their tenders.

An evaluation committee must be set up to evaluate tenders on the basis of the exclusion, selection and award criteria published by the Cooperation Partner in advance in the tender documents. This committee must have an odd number of members, at least three, with all the technical and administrative capacities necessary to give an informed opinion on the tenders.

4. Specific rules for procurement of service contracts

4.1 Contracts from € 300 000 and above

Service contracts from € 300 000 and above must be awarded by means of a tender procedure following publication of a procurement notice.

The procurement notice is to be published in all appropriate media, in particular on the Cooperation Partner's web site, in the international press and the national press of the country in which the Project/Programme is being carried out, or in other specialist periodicals. It must state the number of candidates which will be invited to submit tenders within a range of four to eight candidates, and must be sufficient to ensure genuine competition.

All would-be service providers fulfilling the conditions referred to in section 2 may take part but only candidates satisfying the published selection criteria and invited in writing by the Cooperation Partner may submit a tender.

4.2 Contracts of less than € 300 000 but more than € 60 000

Such contracts must be awarded by means of a competitive negotiated procedure without publication, in which the Cooperation Partner consults at least three service providers of its choice and negotiates the terms of the contract with one or more of them.

4.3 Contracts of € 60 000 or less

For services of a value of € 60 000 or less, the procedures established by the Cooperation Partner may be used, while respecting the rules and principles laid down in articles 1, 2 and 3 of this annex.

5. Specific rules for supply contracts (goods)

5.1 Contracts from € 300 000 and above

Supply contracts (goods) worth € 300 000 and above must be awarded by means of an international open tender procedure following publication of a procurement notice.

The procurement notice is to be published in all appropriate media, in particular on the Cooperation Partner's web site, in the international press and the national press of the country in which the Project/Programme is being carried out, or in other specialist periodicals.

Any would-be supplier which fulfils the conditions referred to in section 2 may submit a tender.

5.2 Contracts between € 100 000 and less than € 300 000

Such contracts are awarded by means of an open tender procedure published locally: the procurement notice is published in all appropriate media but only in the country in which the Project/Programme is being carried out.

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

5.3 Contracts of less than € 100 000 but more than € 60 000

Such contracts must be awarded by means of a competitive negotiated procedure without publication, in which the Cooperation Partner consults at least three suppliers of its choice and negotiates the terms of the contract with one or more of them.

5.4 Contracts of € 60 000 or less

For supply contracts of € 60 000 or less, the procedures established by the Cooperation Partner may be used, while respecting the rules and principles laid down in articles 1, 2 and 3 of this annex.

6. Use of negotiated procedure

The Cooperation Partner may decide to use a negotiated procedure on the basis of a single tender in the following cases:

- (a) for the purposes of humanitarian aid and civil protection operations or for crisis management aid. Crisis situations may be invoked only when they have been formally recognised by Sida. Sida will inform the Cooperation Partner if a crisis situation has been declared and the period for which the declaration will be in force.
- (b) in which the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field;
- (c) in which contracts extend on-going activities:
 - (i) not included in the main service contract which have become necessary to perform the contract for unforeseen circumstances, and provided that the additional services cannot be technically and economically separated from the main contract without serious inconvenience for the Cooperation Partner and the aggregate amount of additional services does not exceed 50% of the value of the principal contract; or,
 - (ii) which consist in the repetition of similar services entrusted to the contractor providing services under the main contract, provided that:
 - (a) a contract notice was published for the first service and the possibility of using the negotiated procedure for new services for the Project/Programme and the estimated cost were clearly indicated in the contract notice published for the first service; and
 - (b) the extension of the contract for a value and duration not exceeding the value and the duration of the main contract.
- (d) for additional deliveries by the original supplier intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the Cooperation Partner to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance;
- (e) in which the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the Cooperation Partner may negotiate with one or more tenderers of its choice, from among those that took part in the tender procedure, provided that the initial terms of the tender procedure are not substantially altered;

- (f) where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider;
- (g) where warranted by the nature or particular characteristics of the supplies, for example, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents;
- (h) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of Sweden/Sida or the partner country so requires;
- (i) for contracts in respect of supplies quoted and purchased on a commodity market;
- (j) for contracts in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law;
- (k) where a new contract has to be concluded after early termination of an existing contract. Such a decision has to be substantiated by reason of non-performance by the supplier or by reasons for termination similar to grounds for exclusion as mentioned under section 2.2.

7. Special cases

Different rules than those specified in this annex may apply in the following cases, with the exception of the principles described in section 1 which always apply.

7.1 Central Buying Offices

Where the Cooperation Partner uses a central buying office as service provider, it must be selected in conformity with the procedures set out above for service contracts.

This central buying office applies the rules imposed on the Cooperation Partner.