



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR HUMANITARIAN AID AND CIVIL PROTECTION - ECHO

Guidelines for the award of Procurement Contracts within the
framework of Humanitarian Aid Actions financed by the
European Union

("Humanitarian Aid Guidelines for Procurement")

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PREFACE

The award of contracts in the implementation of humanitarian Actions has to comply with the principles governing humanitarian aid and also has to take into consideration the context within which these humanitarian Actions are implemented. The European Commission, therefore, recognising the specificities of humanitarian aid procurement, has in place rules which impose supplementary obligations in some cases while allowing for more flexible procedures when justified in other cases.

Procurement of supplies and services is an essential function in the achievement of the objectives of humanitarian aid Actions. It is crucial to the effectiveness and speed of response for major humanitarian programs in sectors such as health, food, shelter, water and sanitation. Moreover, a significant percentage of the funds managed by humanitarian organisations are put to use through procurement processes. Procurement must be performed bearing in mind the timeliness of the response and the quality/safety of the purchased goods and services as well as the need for equal treatment and appropriate controls.

Given the critical importance and impact of procurement, humanitarian organisations funded by the EU must establish well-documented and organised procurement processes that incorporate sound financial and management practices and ensure visibility and scrutiny of procurement processes. In addition, humanitarian aid often has to deal with emergency situations where well-prepared and specific guidelines should help to conduct procurement more smoothly and effectively. When procuring goods and services humanitarian organisations funded by the EU are responsible for the integrity of the procurement processes used and are accountable towards the various stakeholders, including beneficiaries of the aid, donors and contractors. They have to guarantee that the funds available are used correctly and effectively. These Guidelines provide a description of the guiding principles which govern the award of contracts in humanitarian Actions funded, in whole or in part, by the European Union.

The award of procurement contracts in the framework of humanitarian operations share the same financial objectives and principles as those governing the award of any other procurement contract funded with a contribution of the European Union. Contracts shall be awarded to the bidder offering the best value for money, in procurement procedures free of any interference due to a situation of conflict of interest or unethical behaviour. In addition, procurement procedures in humanitarian aid must comply with the Mandatory Principles of Ethical Procurement, Transparency, Proportionality, equal treatment and non-discrimination (Chapter 2). However, these Humanitarian Aid Guidelines for Procurement differ from other Commission guidelines and procedures as they have taken into consideration a number of exigencies specific to procurement operations in the framework of humanitarian Actions.

DG ECHO hopes that the Guidelines will serve as a reference for the development of common terminology and standards among humanitarian organisation in receipt of EU Funds and will contribute to spreading good practices in the award of procurement contracts. Nevertheless, these Guidelines do not substitute the humanitarian organisations' own procurement rules and procedures and should not be considered as a procurement manual. Where humanitarian actors already have well-developed and detailed rules and manuals which respect the requirements established by EU humanitarian aid law, DG ECHO considers that these Guidelines do not override such rules. Furthermore, because of the variety of operational needs and requirements, specific questions are bound to arise that cannot all be covered here in what, by nature, are only general guidelines. Specific procurement questions may be addressed to DG ECHO's competent unit, ECHO/B/2, which will provide a written reply. The Guidelines may be reviewed in order to update their content and to incorporate any questions of general interest which may emerge.

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1. INTRODUCTION

1.1 Legal Background and Status of the Guidelines

DG ECHO's partner Humanitarian Organisations ("**Partners**") and recognised HPCs vary considerably, both in size and activities however, in order to be eligible for EU funding, the procurement practices of all Contracting Authorities (including Partners, Implementing Partners or HPCs – see *Procurement Glossary, Annex I*) have to comply with internationally recognised procurement principles and best practices. These Guidelines aim to help Contracting Authorities comply with their commitments by addressing common yet complex issues which may occur in the course of procurement of Humanitarian Aid.

These Guidelines are required by Annex IV¹ to the Framework Partnership Agreement². This Annex on "*Rules and procedures applicable to property, supply, works and service contracts awarded within the framework of humanitarian Actions financed by the European Communities*" ("**Annex IV**") states that:

"The European Commission's Directorate General for Humanitarian Aid ("ECHO") will publish 'Guidelines for the award of procurement contracts within the framework of Humanitarian Aid Actions financed by the European Community'. The Guidelines do not replace the existing Annex IV but complement and develop certain of its Chapters in order to provide Contracting Authorities with practical assistance in preparing and implementing the procurement procedures referred to in Annex IV. It is clear however from the wording of Annex IV that in certain cases, the text of the Guidelines shall be mandatory.

Annex IV expressly states that "*Contracting Authorities implementing Actions subject to an "A" control mechanism are required to strictly conform to the procedures established in the Humanitarian Aid Guidelines for Procurement.*" Furthermore, Annex IV stipulates that the "*...procedure for the assessment and control of Humanitarian Procurement Centres*" shall be detailed in these Guidelines. Annex IV also mentions that its provisions on General Rules and Procurement Procedures in Chapter 3, applicable to procurement above €60,000 for Actions subject to the A-Control mechanism, shall be further developed in detail in the Guidelines and that all those provisions "*...must be applied in conjunction with*"... these Guidelines.

The purpose therefore of these Guidelines is to address the issues which Annex IV identified as either requiring development or clarification and in doing so to inform those implementing humanitarian aid Action of the Mandatory Principles, General Rules and Procedures and Special Rules that govern the procurement of goods, works, services and property contracts when aid is funded in whole or in part by a contribution of the European Union's general budget or from the European Development Fund ("**EDF**")³.

The drafting of Guidelines under Annex IV necessarily draws from and refers to the principles and procedures contained in the following legal and procedural instruments:-

¹ Commission decision C/2207/5682 of 20/11/2007 on the rules and procedures applicable to property, supply, works and service contracts awarded within the framework of humanitarian actions financed by the European Communities.

² Text available at: http://ec.europa.eu/echo/files/about/actors/fpa/2010/annex_IV_rules_procedures_en.pdf

³ All references to the funding of humanitarian Actions by the European Union in this text include the resources allocated from the EDF to the financing of humanitarian aid.

(i) Humanitarian Aid Regulation, 1996

The humanitarian aid operations of the European Union is governed by Council Regulation (EC) 1257/96, on Humanitarian Aid⁴ ("**Humanitarian Aid Regulation**") and, when applicable, by the specific provisions of the Cotonou Agreement⁵. The Regulation sets out the principles and objectives of the action of the EU. Article 14 of the Regulation on Humanitarian Aid empowers the Commission to "*appraise, decide upon and administer, monitor and assess operations under this Regulation according to the budgetary and other procedures in force, and in particular those laid down in the Financial Regulation applicable to the General Budget of the European Communities.*"

(ii) The Financial Regulation and the Implementing Rules

The financial principles and general procedures ruling the funding of humanitarian aid Actions by the EU are found in the Financial Regulation applicable to its general budget⁶ ("**Financial Regulation**") and in the detailed rules for its implementation ("**Implementing Rules**")⁷. Both texts include detailed provisions concerning the award of procurement contracts applicable to humanitarian aid Actions funded, in whole or in part, by ECHO.

Annex IV makes express reference to both the Financial Regulation and the Implementing Rules and a particular reference to Articles 184 (2) and 238 (2) & (3) of the Implementing Rules which, recognising the particular requirements of Humanitarian aid, mandate the European Commission to adopt "specific procurement procedures" and "special rules" for awarding contracts in the framework of humanitarian Actions and establish the principles upon which the Commission should base these specific procedures.

(iii) Framework Partnership Agreements

Based on the above-mentioned EU Acts, ECHO, establishes specific contractual instruments for the implementation and administration of humanitarian Actions financed by the European Union. These procedures are laid down in the Framework Partnership Agreement ("**FPA**") with Humanitarian Organisations and in the Framework Partnership Agreement with International Organisations. Humanitarian Actions implemented by the United Nations are subject to the implementing modalities of the Financial and Administrative Framework Agreement concluded between the European Union and the United Nations ("**FAFA**").

The FPAs define the procedures and rules to be followed in the implementation of humanitarian aid Actions funded, in whole or in part, by the European Union. Annex IV establishes the procedures to be followed for the award of procurement contracts.

(iv) Other Reference Documents

- *Vademecum* on Public Procurement in the Commission (January 2010);
- Practical Guide to Contractual Procedures for EC external action (December 2008);
- Review of Quality Assurance Mechanisms for Medicines and Medical Supplies in Humanitarian Aid (DG ECHO 06/2006);

⁴ Text available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996R1257:EN:HTML>

⁵ ACP-EU Partnership Agreement signed in Cotonou on 23 June 2000, Articles 72 and 73.

⁶ OJ L 248, 16.9.2002, p. 1, as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ L 390, 30.12.2006, p. 1).

See consolidated version: <http://eur-lex.europa.eu/LexUriServ/site/en/consleg/2002/R/02002R1605-20070101-en.pdf>.

⁷ OJ L 357, 31.12.2002, p. 1, as amended by Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005 (OJ L 201, 2.8.2005, p. 3), by Commission Regulation (EC, Euratom) No 1248/2006 of 7 August 2006 (OJ L 227, 19.8.2006, p. 3) and by Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007 (OJ L 111, 28.4.2007, p. 13). See consolidated version:

<http://eur-lex.europa.eu/LexUriServ/site/en/consleg/2002/R/02002R2342-20070501-en.pdf>.

- Questionnaire for the assessment of compliance with criteria for Joint Management;
- UN Procurement Practitioner’s Handbook;
- World Bank Procurement procedures literature and guidelines; and
- Procurement procedures provided by some NGO-partners after revision of their procedures or during the assessment exercises.

1.2 Structure of the Guidelines

In order to facilitate the use of these Guidelines, their structure follows closely that of Annex IV as far as possible:

“Introduction”: presents the purpose, scope, structure of the Guidelines and refers to the relevant legislation;

“Mandatory Principles”: sets out the Mandatory Principles which apply to all procurement including that conducted by DG ECHO's partner humanitarian organisations ("**Partners**") subject to either an "A" or "P" Control Mechanism, an Implementing Partner or a Humanitarian Procurement Centre ("**HPC**");

“General Rules and Procedures”: presents the different kind of contracts and the applicable procedures. This chapter spells out the obligatory procedures which apply to Actions subject to an “A” Control Mechanism; and which any such Partner or related Implementing Partner operating in this framework must observe.

“Special Rules”: presents the procedure which may be applied by all Contracting Authorities (Partners, Implementing Partners or HPCs) when awarding contracts within the framework of Urgent Actions and includes provisions on the procurement of medical equipment, medicines and food. This Chapter explains the concept of stockpiling and contains the special procedures applicable to Framework Contracts and purchases from HPCs.

“Annexes” – These Annexes include a Procurement Glossary, a sample Declaration of ethical and regular activity for Candidates and Tenderers, advice on risk assessment and management and a sample declaration for members of evaluation committees.

1.3 Scope and Applicability of the Guidelines

Throughout these Guidelines the term 'procurement' is used in its broadest sense. It relates to the general process of committing expenditure to purchasing goods, services or works. Procurement could be defined as the process of acquiring goods, works and services. It covers activities necessary for the purchase or rental of goods, services and other requirements such as works and property. The overall process includes all functions from planning, identification of needs, sourcing and solicitation of offers, award of contracts and contract administration, ensuring the delivery and receipt of the goods, works or services, up to the award of the contract. In short, these Guidelines cover all procurement stages, from the definition of needs to award of the contract.

All Contracting Authorities are strongly advised to read through the Guideline carefully BEFORE launching a procurement procedure and to consider the advice and tips contained in Annex 3 on due diligence and risk management which includes a handy table on tips to follow before launching procurement procedures.

These Guidelines are issued under Annex IV which governs the award of procurement contracts by all contracting authorities in the framework of the implementation of humanitarian aid Actions, fully or partially, funded by ECHO and therefore its scope is limited to procurement within the framework of these Actions.

These Guidelines apply to the award of procurement contracts required for the implementation of humanitarian action as provided in the Financing Agreement concluded between the Partner and the European Commission. In accordance with the Humanitarian Aid Regulation⁸, the European Union can finance humanitarian aid Actions implemented by Non-Governmental Organisations⁹, International Organisations and Agencies¹⁰, Specialized Agencies of the Member States and by the Commission Services¹¹.

Annex IV, and accordingly these Guidelines, apply, in whole or in part to a given procurement procedure depending on the following factors:

- *The nature of the provisions.* Provisions of a general nature, such as the Mandatory Principles and the Final Provisions, (Chapters 2 and 5 of Annex IV), or the provisions setting up ECHO specific rules, such as the Special Rules, (Chapter 4 of Annex IV), are applicable to all the Actions funded by the European Union.
- *The nature of the Contracting Authority.* When the Action is implemented by a Partner subject to the "P" Control mechanism, a Specialised Agency of a Member State, or an UN agency or International Organisation, and subject to an assessment of the equivalence of procedures with those of the Commission, the rules and procedures followed for the award of procurement contracts will be those of the Contracting Authority. This is without prejudice to the need for compliance with the Mandatory Principles and, where relevant, the Special Rules.
- *The Control mechanism applicable to the Action.* In accordance with paragraph 3.1 of Annex IV, Contracting Authorities awarding contracts in an Action under the "A" Control mechanism must follow the General Rules and Procedures set in Chapter 3 of Annex IV.
- *The amount of the contract to be awarded.* These Guidelines develop further the existing general rules and procedures and which, in terms of Annex IV, are **obligatory** when awarding contracts above €60,000 in Actions under the "A" Control mechanism. Based on the Mandatory Principles of Transparency and Proportionality these Guidelines also include a reference to the procedures for the award of contracts of a value of less than €60,000 and offer recommended procedures to better ensure compliance in practice with these Mandatory Principles.

As previously mentioned, the aim of these Guidelines is to facilitate compliance with the legal requirements in EU legislation and DG ECHO recognises that, in certain cases, alternative approaches to achieving the same requirements may be justified or necessary. These Guidelines, therefore, **do not** substitute the humanitarian organisations' own procurement rules and procedures and should not be considered as an overarching procurement manual. Where humanitarian actors already have well-developed and detailed internal procurement manuals and guidelines which respect the requirements established by EU humanitarian aid law, including Partners operating under the "P" Control mechanism, United Nations agencies or other International Organisations, these Guidelines do not attempt to override such procedures.

8 Council Regulation (EC, Euratom) No 1257/96 of 20 June 1996 concerning humanitarian aid, OJ L 163, 02.07. 1996.

9 Subject to the compliance with a number of pre-requisites; cf. Article 7 (1) (2) of Regulation 1257/96.

10 Cf. Article 8 of the Humanitarian Aid Regulation

11 Cf. Article 9 of the Humanitarian Aid Regulation

The applicability of the Guidelines does not depend on the level of funding, may it be full or partial funding, by ECHO as long as it is the single largest donor for the concerned Action. However, Contracting Authorities may apply different rules and procedures for the award of procurement contracts funded by earmarked contributions by other donors on condition of ensuring the compliance with the Mandatory Principles and, when relevant, the Special Rules.

The scope of procurement in these Guidelines is limited to commercial activities. It does not include grants, inter-agency agreements or partnerships between Partners and their Implementing Partners (see Table 2, below)

The Guidelines do not apply to procurement contracts concluded by Contracting Authorities in the framework of external actions financed by EuropeAid Cooperation Office, ("AIDCO") or other Services of the European Commission. AIDCO has drawn up a series of specific standard contracts and procedures presented in the *Practical Guide to contract procedures for EC external actions*.

The rights and obligations of the Contracting Authority and the contractors which arise from the conclusion of a particular procurement contract are governed by the terms of the contracts concluded by them and by the bidding documents, and not by these Guidelines. It is the responsibility of the Contracting Authority to include in these contracts the required provisions for ensuring the compliance with the obligations required for receipt of EU funds.

The Agreements concluded for the financing of individual Actions govern the legal relations between ECHO, and the Partner. No party other than the parties to the Agreement shall derive any rights there from or have any claim to the Agreement's proceeds.

Table 1 - When Do the Guidelines apply?

	Chapter of Annex IV & Guidelines	"A" Control Mechanism	"P" Control Mechanism
If the humanitarian Action is funded by ECHO as the single largest donor.	Chapter 2 - The Mandatory Principles apply to the whole Action and all related activity.	Compulsory	Compulsory
If the Action is implemented under an "A" Control mechanism.	Chapter 3 - The General Rules & Procurement Procedures apply.	Compulsory	Not Applicable
If the contract is awarded in the implementation of an Urgent Action.	Chapter 4 – The Special Rules granting flexibility in Urgent Actions apply.	Applicable	Applicable
If the contract involves the purchase of pharmaceutical products or medical devices.	Chapter 4 – The Special Rules on pre-qualification and quality assurance of pharmaceutical products and medical devices apply (Paragraphs 4.3 (a) – (f) & (g)).	Compulsory ¹²	Compulsory
If the contract involves the purchase of food.	Chapter 4 – The Special Rules on Food aid procurement and procedures apply.	Compulsory	Compulsory
If Pre-established stocks are being used for the Action.	Chapter 4 – The Special Rules extending the Mandatory Principles to Pre-established Stocks apply.	Applicable	Applicable

¹² In Practical terms this means that the Special Rules on the procurement of pharmaceutical products and medical devices derogate from the General Rules & Procurement Procedures usually applicable to Partners subject to an A Control Mechanism (para 3.6) adopting instead a Negotiated Procedure regardless of the value of the contract.

If a Framework Contract is concluded.	Chapter 4 - The Special Rules on Framework Contracts apply.	Applicable	Applicable
If a Partner places a purchase order with a Humanitarian Procurement Centre.	Chapter 4 – The Special Rules granting flexibility in placing orders with HPCs apply with derogate from the generally prescribes procurement procedures.	Applicable	Applicable

(i) Employment contracts vs. Service Contracts

Unlike service contracts, employment contracts fall outside the scope of these Guidelines. Confusion between an *employment contract* and a contract for the *provision of services* can lead to difficult legal situations, since the link between the Contracting Authority and the contractor can sometimes be misinterpreted as an employment contract.

The following elements could imply an employment relationship:

- the existence of a *hierarchical link*, whether formal (clauses in a contract or references in specifications) or *de facto* (authorisation of leave or organisation of working time, attendance requirements, services provided expressed in terms of hours per month, taking instructions from and reporting to a “hierarchical superior”, etc.);
- payment for services comparable to a *salary* (fixed monthly amount instead of payments for individual specifically defined tasks);
- the nature of the tasks actually performed (as opposed to the description of the service “purchased” under the procurement procedure); and
- the duration and *continuous nature* of the services.

Using terminology loosely can also create a false impression as to the nature of the contractual link: a service provider operating under a service contract is not “recruited”, does not have a “job”, is not paid a “salary”, does not “take leave” and does not “resign”. All these terms imply paid employment, and hence obligations for the Contracting Authority as an employer, rather than merely a party to a contract for the provision of a service.

Consequently, special attention must be paid to these aspects when drawing up invitations to tender and contract documents and during actual performance of the contract.

(ii) Implementing Partners vs. Contractors

The scope of these Guidelines is limited to commercial activities such as those between a Partner or an HPC and a contractor (usually a supplier of goods or services). Therefore, inter-agency agreements and partnerships or Memoranda of Understanding (“**MoUs**”) between Partners and their Implementing Partners fall outside the scope of these Guidelines. However, the line differentiating a contractor from an Implementing Partner is not always easy to draw.

The agreements and MoUs concluded between an ECHO's Partner and its own partners, known as Implementing Partners, are considered direct financial contributions in order to finance the real costs derived from the participation in the implementation of a humanitarian Action and must exclude any profit-making aim. The MoU concluded may include a delegation of powers by which the Partner entrusts the Implementing Partner with a defined degree of discretion. Regardless of the extent of the delegated powers the Partner remains fully accountable towards DG ECHO for the whole Action, including any actions or inactions of the Implementing Partner and must therefore clearly define and

ensure appropriate supervision of the Implementing Partner's tasks (Articles 1.2 & 13 General Conditions).

On the other hand, in the case of a contract concluded between an ECHO Partner and a contractor the Partner obtains a product or service it needs in return for payment, being the costs established with the objective of obtaining a profit. Even in this situation, however the Partner must still ensure that contracts entered into with a contractor ensure the Partner's obligations towards ECHO by inserting appropriate provisions in the agreement (Articles 1.2 & 13 General Conditions).

Table 2: Distinction between Contractors and Implementing Partners

Partner	Contractors	Implementing Partners
Purpose	To acquire a good, service or works required for the implementation of the Action.	To secure the necessary local support and cooperation in the implementation of the humanitarian Action.
Selection procedure	Competitive or negotiated tendering procedures should always be used	Relations based on sharing of common values and objectives. Tendering procedure not required
Delegation of power	Contractors do not enjoy a discretionary margin for the execution of their contract. The Partner cannot delegate the execution of key elements of the Action to contractors.	Implementing Partners may enjoy a delegation of power from the Partner. Implementing Partners may implement key activities of the Action. The Partner, however, remains responsible towards DG ECHO for the actions of its Implementing Partner and has to put the appropriate supervision and monitoring systems into place.
Legal instrument	The result of a procurement procedure is a contract.	The rights and obligations of Implementing Partners are established in an agreement or in a MoU.
Profit	The contractor's remuneration normally includes an element of profit.	The agreements signed between the Partner and its Implementing Partner must not have the purpose or effect of producing a profit for either party.

2. MANDATORY PRINCIPLES

EU humanitarian aid is embedded in the right of people affected by humanitarian crises as a result of natural disasters, wars and outbreaks of violence, or other comparable exceptional circumstances, to international humanitarian assistance. It is guided by the respect of international law and the core humanitarian principles of humanity, impartiality, neutrality and independence.¹³ Respect for these principles should be accompanied by the observance of high procurement standards by all Partners (including their Implementing Partners) and HPCs as well as by their suppliers and other contractors.

This Chapter of the Guidelines presents the Mandatory Principles in Annex IV and a number of related matters on procurement in humanitarian aid Actions.

2.1 Scope and legal basis of the Mandatory Principles

The Mandatory Principles are, as their name suggests, obligatory for procurement in all Humanitarian Aid Actions, regardless of who is awarding the contract or conducting the procurement procedure and

¹³ The European Consensus on Humanitarian Aid, Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission (2008/C 25/01). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:025:0001:0012:EN:PDF>

regardless of the estimated value of the contract. In practical terms this means that the Mandatory Principles apply both to actions falling under the "A" and "P" Control mechanisms.

The formal conformity with the Mandatory Principles will be assessed by DG ECHO in order to determine the equivalence of the procurement procedures of the Partner with the EU's procedures and the Control mechanism that will be applied to individual Actions. The methodology put in place by DG ECHO is based on an assessment questionnaire and through subsequent verifications or audits. HPCs are also bound in their procurement activity to observe these Mandatory Principles and ECHO may verify this compliance by means of desk-reviews and on-site examinations.

Chapter 2 of Annex IV entitled Mandatory Principles draws upon the award principles for public contracts set in the Financial Regulation and Implementing Rules and adapts them to a humanitarian aid context.

Article 89 of the Financial Regulation sets the award principles ruling public procurement: **Transparency, Proportionality, Equal treatment and non-discrimination and Competition**¹⁴. The Implementing Rules, Article 184, adds certain obligations governing the award of contracts: **best value for money** and absence of **conflict of interest**. The procurement procedures followed by any Contracting Authority awarding procurement contracts necessary for the implementation of Actions financed by the EU's budget must be in conformity with these obligations and principles which apply *mutatis mutandis* to humanitarian aid Actions as explained in Annex IV and these Guidelines. Failure to comply with the Mandatory Principles is therefore sufficient ground for declaring the ineligibility of all costs associated to the contract in question.

Based upon the above points, Chapter 2 identifies the following main Mandatory Principles which each imply respect for certain related concepts and procedures which must all be observed by all actors at every stage of the procurement processes:

- (i) The Principle of Ethical Procurement;
- (ii) The Principle of Transparency in the Procurement process;
- (iii) The Principle of Proportionality between the procedures followed for awarding contracts and the value of the contracts; and
- (iv) The Principle of Equal treatment and non-discrimination of potential contractors and donors.

There is a strong interdependence between the different Mandatory Principles. The compliance with one principle reinforces or is a condition for the compliance with another. For instance, in order to maintain the Equal treatment and non-discrimination of potential contractors it is necessary to ensure open competition through the publication of pre-established and announced criteria for exclusion and selection (Principle of Transparency) and these procedures should be as simple and accessible as possible (Principle of Proportionality) for all to be able to participate and compete equally. Furthermore in offering equal chances to all potential contractors a level playing field must be ensured which necessarily excludes the existence of any fraud, corruption or conflict of interests (Principle of Ethical procurement).

Just as the Mandatory Principles are interdependent, they may sometimes overlap and result in an apparent conflict. **There is no hierarchy between the Mandatory Principles of procurement and**

¹⁴ Article 89(2) reads: "All procurement contracts shall be put out to tender on the broadest possible base, except when use is made of the negotiated procedure referred to in Article 91(1)(d)."

an integrated and coherent application of all the Mandatory Principles is necessary to overcome the potential conflicts among them. For instance, the principle of Transparency requires open tendering, where possible, involving broad advertisement, increasing costs and resulting in higher administrative effort, which could contradict the principle of Proportionality and reducing the effectiveness of the process. Therefore, a certain degree of flexibility and reaction capacity should be built into the system to overcome any conflict between procedures and priorities. Contracting authorities and those acting in or supporting the procurement function are in a special position of trust and must uphold high standards of professionalism to be able to solve any potential conflict between the respect of the Mandatory Principles and the humanitarian imperatives.

It is essential that steps taken and reasons for taking them are well documented and that this documentation is kept on file in case the process is later audited or reviewed or some dispute arises on the procurement procedures followed

2.2 The Principle of Ethical Procurement

For Contracting Authorities, Tenderers and Candidates to truly observe the highest ethical standards during the procurement and execution of contracts means that they must, to the greatest extent possible, ensure that their suppliers and contractors further down the supply chain also maintain high standards of Ethical procurement, treatment of workers and use of resources.

The maintenance of high ethical standards in humanitarian aid naturally also includes due regard to the respect of the consuetudinary principles of International Humanitarian Law. In the context of procurement particular reference may be made here to the principle of **impartiality**, meaning that the implementation of Actions must solely respond to identified needs, without discrimination of any kind; the principle of **independence**, which implies the autonomy of the humanitarian Action with regard to economic or other motivations as well as the principle of *neutrality* which means that, in order to continue to enjoy the confidence of all, humanitarian agencies may not take or appear to take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Ethical behaviour may seem like a wide concept, but in the field of procurement some ethical concepts and principles are particularly relevant:

- **Respect for rules and regulations:** rules have to be applied and interpreted in accordance with their intention. All persons involved in procurement should understand the rules and regulations pertaining to their function and respect the formal requirements imposed by them.
- **Integrity:** integrity refers to personal qualities such as honesty, truthfulness, fidelity, probity and freedom from corruption.
- **Impartiality and fairness:** These ethical values ensure the objectivity and lack of bias, the restrained and equitable adoption of decisions.
- **Due diligence:** Due diligence refers to carrying out duties professionally, carefully and thoroughly, going well beyond the minimum effort.
- **Avoidance of appearance of impropriety:** The public trust cannot be compromised. Employee behaviour should be regular and proper and should also be seen to be so. This places extra

responsibility on procurement professionals who must not only ensure that they act properly but must also strive to avoid even the appearance of impropriety.

(i) Ethical behaviour of the Contracting Authority

Ethical conduct is an ongoing process of self-regulation and reflection at every stage of the procurement process and the principle of Ethical Procurement applies to all Contracting Authorities equally, whether they are Partners (or Implementing Partners) or HPCs without distinction.

Partners manage funds provided in trust by public authorities and private individuals. These funds should be in the first instance at the benefit of the affected people of a crisis. This justifies the special demands placed on Partners in terms of the ethical behaviour expected of them.

HPCs also bind themselves to observe the highest ethical standards in the HPC Charter which they sign and which provides details on how this standard may be achieved in practice.

In order to ensure the highest standards of ethical behaviour throughout its organisation and, in particular, in the framework of procurement procedures, the Contracting Authority (Partner or HPC) should ensure that its policies and procedures include systems and mechanisms which enable it to

- Prevent, detect and sanction unethical practices; so as to mitigate any financial and reputational risk linked to unethical behaviour.
- Take prompt action in cases of unprofessional or unethical behaviour;
- Enforce policy to address possible conflicts of interest;
- Provide guidance to staff at all levels and promote the observance of Ethical procurement standards in all purchasing activity;
- Address the treatment of unethical personal financial gain and the acceptance of large or otherwise inappropriate gifts;
- Have, (in its internal procurement procedures, guidelines for tender documents, its standard tender and contractual documents etc), rules in place which prevent it from accepting any bid put forward by Tenderers or Candidates, or, where applicable, terminate their contract, if it is determined that they have engaged in corrupt, fraudulent, collusive or coercive practices.

Avoidance of Conflict of Interests

Annex IV provides that when contracts are awarded care must be taken to avoid any conflict of interests.

There is a situation amounting to conflict of interest¹⁵ where the impartial and objective exercise of the functions of a person involved in budget implementation, procurement, management, audit or control is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a third party. A conflict of interests may arise even in the case of honest and responsible staff members and, unless staff is trained or otherwise made aware of the issue, some members of staff may not even realise that the conflict exists.

15 Cf. Article 52.2 Financial Regulation and Article 34.1 of the Implementing Rules.

Rules defining and limiting conflict of interests situations are necessary to ensure that staff members of the Contracting Authority cannot use their functions or information obtained for professional reasons for private gain, financial or otherwise, or for private gain of any third party. For example, a conflict of interests shall be presumed to exist if a Candidate or Tenderer is a member of staff of the Partner or has an equivalent professional relation with the Partner. Another practical example of avoiding conflict of interests involved ensuring that that buying Agents or other service providers, providing Technical Assistance to the Contracting Authorities in a procurement procedure, are precluded from presenting bids for contracts to be awarded under that same procedure.

The Contracting Authority should have in place clear rules and guidance to staff on what to do in case they or one of their colleagues are in a situation of conflict of interests including whom they may ask for advise or disclose the conflict to in order to resolve or decide upon the potential problem and, where necessary, take the appropriate action. It is good practice that staff involved in the procurement process, including those participating in opening committee and evaluation committees sign formally in advance of their duties, a declaration of no conflict of interests.

On the basis of Article 2 of the General Conditions and paragraph 2.6 of Annex IV, all Partners shall inform ECHO immediately when confronted with a situation constituting or likely to entail a conflict of interest. If a Partner (whether subject to an "A" or "P" Control mechanism) fails to report any known situation of Conflict of interests or to adopt measures to address the situation of Conflict of interests, and without prejudice to the application of financial and administrative penalties, ECHO may terminate the Agreement with immediate effect. In addition, when the situation of conflict of interest arises with a contractor or Implementing Partner of the Partner, the Partner should be immediately informed so as to enable it to adopt measures to address the situation of conflict of interests. To this end appropriate provisions could be included by the Partner in the bidding documents and in the contractual instruments.

Gifts and gratuities

A common question related to conflict of interest situations is whether or not to accept gifts from existing or potential contractors, Candidates or Tenderers. Offering gifts to customers is sometimes seen as a common practice in the private sector.

Contractors often offer different types of gifts, for example perishable products, hospitality, free training courses or experiences like exhibitions, fair trades, and sometimes in kind donations, etc. that are related to the activity of the humanitarian organisation. Nevertheless, as a general rule, significant gifts and hospitality from suppliers cannot be accepted in order to maintain an atmosphere of honesty and integrity in affairs and to avoid unfair competition.

While each Partner remains best placed to manage how to deal with this issue, identifying which gifts are acceptable or not is not always easy so staff require adequate instructions. For example, training activities may be seen as beneficial for the organisation. A very careful review of the impact should be taken into account: would receiving the gift benefit one company over the others? Would acceptance be fair to the competitors? In cases where the content of such training / events is deemed appropriate and beneficial for the humanitarian organisation in a technical sense, self financial support, i.e. for travel expenses should be considered. Partners should therefore ensure that their staff dealing with procurement are aware of such practices and how where or to whom to turn for advice to avoid any inappropriate receipt of gifts.

Table 3 – Good Practice concerning the receipt of gifts and avoidance of conflicts of interests

If the gift is...	Then...
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Low value, e.g. pens, stationery, chocolates, etc.	Accept it and share it with the colleagues in your office
Relatively high value, (e.g. more than €25)	Accept it, inform your management and inform the supplier that it is put at the disposal of your organisation
High value, (e.g. more than €100)	Return it, and thank the supplier but say you are not allowed to accept it. An internal registry should be established to record significant gifts and their value.
Sent to staff members' private address	Return it and tell the contractor that it is unacceptable practice to send gifts to staff members' private addresses.
Invitations from (potential) contractors to work-related lunches, dinners, receptions	Can be accepted if the intention is to discuss questions in the interest of the Contracting Authority or as part of the staff member's official function
Invitations from (potential) contractors of a social kind and substantial hospitality (accommodation)	Should always be declined if not related to work.

Regularity of procurement procedures

Procurement is an activity that is potentially vulnerable to irregular and illegal activities such as fraud and corruption. Corruption and fraud in the Actions of Partners deplete funds intended for the achievement of the objectives of the Action directly damaging the interest of the beneficiaries. They undermine the effective functioning of the organisation and can jeopardize its existence.

Annex IV states that Contracting Authorities shall reject any bids put forward by tenderers or candidates, or, where applicable, terminate their contract, if it is determined that they have engaged in corrupt, fraudulent, collusive or coercive practices. Naturally the Contracting Authorities must also refrain from these practices and should, to the extent possible, ensure that none of their staff, associates, suppliers or other contractors engage in these irregular practices.

Individuals taking part in the procurement procedure should be accountable for their acts or omissions in the fulfilment of their duties and may be held personally responsible and financially liable for the consequences of professional wrongdoing, gross negligence or unethical behaviour. This is, of course, without prejudice to any applicable penal responsibilities arising in the country having criminal jurisdiction. Should irregular activity on the part of the contractor be confirmed, the Contracting Authority shall terminate the contract and inform the Commission immediately.

Corruption is the practice of offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the activities of the Contracting Authority in the competitive selection process or in contract execution. Corruption can follow a direct approach, such as cash payments to a staff member of the Partner, or an *indirect approach*, where the benefits are given to family members or paid to business in which the corrupt person has an interest. The benefits can also be offered for the future, such as offers of future employment.

Paragraph 2.6 of Annex IV defines **Fraudulent practice** as any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, the Contracting Authority to obtain a financial or other benefit or to avoid an obligation.

Collusion is the undisclosed arrangement between two or more Tenderers or Candidates designed to artificially alter the results of the tender procedure to obtain a financial or other benefit. Without knowledge of the contracting authorities, bidders coordinate their offers in order to establish prices at artificial, non-competitive levels.

Coercion means impairing or harming, or threatening to impair or harm, directly or indirectly, any participant in the tender process to influence improperly its activities.

In the event of being confronted by any these practices, without prejudice to its duty of due diligence and to the protection of its interest by all available means, Annex IV, paragraph 2.6 requires that the Partner inform ECHO immediately in writing providing all the relevant information.

Due Diligence and Risk Management

Ethical procurement goes beyond merely respecting the letter of the law, it involves observing the principles which underlie Humanitarian aid, respecting the dignity of the beneficiaries and their right to efficient aid and ensuring complete accountability to the donor. Due diligence involves carrying out duties professionally, carefully and thoroughly, going well beyond the minimum effort.

In order to be adequately diligent in procurement matters a Contracting Authority should be aware of the importance of good procurement planning and should have in place systems of identifying risks and managing them.

Chapter 2.8 of Annex IV makes it clear that the Contracting Authority cannot pass on its responsibilities to its contractors. Even where Implementing Partners or contractors are used by the Contracting Authority to carry out its contractual obligations – it is the Contracting Authority which remains solely responsible towards the European Commission as donor. The European Commission is not bound by contracts concluded by the Contracting Authority and recognises no contractual link between itself and the Contracting Authority’s contractors.

Whenever the Contracting Authority requires the assistance of a Buying Agent or an Implementing Partner for the organisation of procurement procedures, it assumes the full responsibility for the regularity of the procedures in question and has to deploy due diligence to guarantee the compliance with the rules and procedures applicable to the Contracting Authority by virtue of its agreement with DG ECHO.. For these reasons the Contracting Authority maintains a high responsibility for the actions of third parties and must consider this before entrusting them with tasks¹⁶.

Annex 3 to these Guidelines provides detailed advice to Contracting Authorities on Due Diligence Risk Management in Procurement and includes useful tools for procurement planning in practice.

(ii) Ethical behaviour of contractors

Traditional procurement focused upon value-for-money considerations such as, price, quality, availability, timely delivery, functionality. Humanitarian aid procurement involves looking beyond the traditional economic parameters and making decisions based on the whole life cost, the associated risks, measures of success and implications for society and the environment. Making decisions in this way requires setting procurement into a broader strategic context including a number of factors:

Working conditions: Once of the aspects of ethical procurement which Annex IV expressly mentions is that of the avoidance of Child Labour and the assurance of adequate working conditions. Procurement contracts awarded using EU funds should seek to support and encourage freedom of association and decent working conditions in the workplace and actively seek to avoid relationships with contractors that engage child labour, bondage or forced labour, or practice discrimination in the work-place. Working conditions should protect more vulnerable workers from exploitation or abuse of any sexual or other nature. The Contracting Authority must be sure that Candidates and Tenderers

¹⁶ For example, the Contracting Authority must verify the commercial information of any bid considered in a procurement procedure, such as the authentication of the bid itself and, where relevant, the verification of the quantity, technical characteristics and quality.

respect basic social rights and working conditions and do not procure goods or services from suppliers who use child labour or other exploitative practices. Other exploitative labour practices would include for example situations where the employer curtails the rights of freedom of association, collective bargaining or to join trade unions.¹⁷

Social Rights: Before awarding a procurement contract to a given contractor the Contracting Authority should consider the effects of that choice on issues such as poverty eradication, human rights, Fair-trade, sustainable development¹⁸ and inequality in the distribution of resources. For example in one situation it might be more ethical to procure locally to support the local economy and generate jobs while in another situation procuring locally would place an undue strain on limited local resources, such as water, or artificially inflate prices to the detriment of the local population.

Environmental aspects; Consideration should also be given to the effects on the environment that the assets, supplies and/or services may have, including, where possible, to the effects of waste management ("green procurement"¹⁹). A supplier's environmental performance as well as the sustainability of the delivered products and solutions should, where possible be included as criteria in the selection process and be considered during supplier assessment exercises.

Humanitarian Principle of Neutrality: Procurement decisions, including those linked to the transport of aid, must reflect and respect the humanitarian principle of neutrality particularly in any man-made disaster or conflict. For example dealing with a contractor with known links to one of the parties to a conflict, such as a company that supplies or transports arms or other supplies to a military actor or other combatant²⁰ could be a violation of the principle of neutrality and in any case would be unethical. Since certain commodities, such as precious minerals, diamonds, energy resources or other items which fuel, fund or facilitate armed conflict, can have such a destabilising effect in man-made conflicts, it may be unethical to contract services such as transport for humanitarian aid from a contractor known to transport these commodities and could moreover compromise the principle of neutrality. Likewise, in order to uphold this principle in the eyes of the victims of humanitarian crises and to void unnecessary confusion for them, the use of military or civil defence assets (e.g. helicopters & vehicles etc) to deliver humanitarian aid, particularly in man-made disasters, should be used as a last resort when comparable civilian alternatives cannot be found.²¹ This fundamental principle of neutrality in the implementation of humanitarian aid is supported by the more active concept of "Do No Harm" or conflict-sensitivity which states that humanitarian actors and, by extension all those involved in the delivery or transport of aid, should attempt to minimise the negative effects so that their interventions do not render civilians more vulnerable to attack, or bring unintended advantage to any military actors or other combatants. "Do No Harm" implies that potential unintended harmful effects of the humanitarian response (e.g. prolonging the conflict) or effects that promote inequity amongst recipients of aid should be identified from the initial stages of the programme design and should be pro-actively avoided²²

¹⁷ For more information on international standards on labour conditions please visit <http://www.ilo.org/global/lang-en/index.htm>

¹⁸ More on this matter may be found in the Commission communication of 5 May 2009 entitled "Contributing to Sustainable Development: The role of Fair Trade and non-governmental trade-related sustainability assurance schemes" (COM(2009)0215), Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0215:FIN:EN:PDF>

¹⁹ For more on the EU's initiatives on "green procurement" please visit: http://ec.europa.eu/environment/gpp/index_en.htm

²⁰ For more related information see Lexicon of key civil-military relations related terminology Prepared by VOICE EU civil-military relations working group March 2009 <http://www.ngovoice.org/documents/CIV%20-%20MIL%20LEXICON%20FINAL%20MAY%202009.pdf>

²¹ More information on the use of military and civil defence assets in disaster relief is available at <http://ochaonline.un.org/> in the section on Humanitarian Civil-Military Coordination.

²² Also referred to in Part 3.3 para 42 of The European Consensus on Humanitarian Aid, Joint Statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission (2008/C 25/01). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:025:0001:0012:EN:PDF>

Ethical Transport & Cargo: When awarding a procurement contract to a private company the Contracting Authority should consider, where possible, whether that contractor is also involved in or linked to illegal activities (e.g. arms, drug or people smuggling). For example it would be unethical to contract services such as transport for humanitarian aid from a contractor known to transport drugs, arms or other illicit or illegal supplies or which conducts clandestine or rendition flights which may be contrary to international humanitarian law. The growing awareness of the need to ensure ethical transport of aid is addressed in Annex 2 to these Guidelines and must be assessed by each Contracting Authority in light of the humanitarian imperative and the prevailing circumstances. In a number of countries the availability of cargo operators is limited due to security considerations therefore rather than setting fixed rules it is more relevant here to emphasise the importance of due diligence and cooperation/coordination between humanitarian actors to minimise the risk of EU funds being used to financially support businesses involved in unethical practices or even in violations of international human rights or humanitarian law.

Where an humanitarian organisation opts to use a broker or freight forwarder in order to arrange the transport of relief items it is important that the organisation as the Contracting Authority make it clear that the broker is expected to carry out due diligence on suppliers according to ethical considerations. A broker's ability to demonstrate it has an effective and public ethical policy in place could provide a concrete example of due diligence. This in itself does not absolve the Contracting Authority of doing its own checks, where necessary, to be satisfied that the broker has adequate ethical credentials or that ethical standards have been met in a particular transaction. If the Contracting Authority is relying on the supplier of the goods to arrange transportation, the supplier must be made aware of the ethical transport and cargo standards described above and included in Annex 2 to these Guidelines.

Since all contractors should adhere to the highest ethical standards, both **during the bidding process and throughout the execution of a contract** it is recommended that the Contracting Authority ask Candidates and Tenderers to submit a **formal declaration** accompanying their Tender or Offer:

- Undertaking to carry out their duties to the highest professional standards, in particular in terms of objectivity and impartiality and exclusively in the best interests of the Contracting Authority with no consideration linked to possibilities for future contracts;
- Guaranteeing that there is no Conflict of interest with other commitments or contracts recently concluded or to be concluded either individually or through any consortium to which the contractor might belong or through any subsidiary or related company;
- Ensuring the respect of social and environmental aspects as stated above (particularly on the point of Child Labour); and
- Stating that they are not in any of the situations of Exclusion as referred to in Article 93 and 94 of the Financial Regulation (see Exclusion Criteria, below).

Annex 2 to these Guidelines offers a sample Declaration of ethical and regular Activity which Contracting Authorities may choose to may ask Candidates or Tenderers to sign. It may be adapted according to the law governing the procurement contract, the type of relationship between the Contracting Authority and the signatory or the nature of the signatory (e.g. intermediary or broker).

2.3 The Principle of Transparency in the Procurement process

The principle of transparency could be defined as the unimpeded visibility and openness in all transactions, ensuring that all information on procurement procedures, opportunities and processes are clearly defined and made widely known and available. A transparent system increases the

possibility of detecting any deviations from fair and equal treatment, and therefore makes such deviations less likely to occur. Transparency thus protects the regularity of the procurement process.

(i) Transparency and Open Competition

For procurement procedures to be fair and offer equal treatment to potential contractors they need to be conducted in the spirit of transparency and open competition.

In the framework of public procurement, Article 89.2²³ of the Financial Regulation advocates the recourse to competitive procurement procedures. Whenever possible and advisable, advertisement of tendering opportunities should be done in an open and international manner. But the Financial Regulation also recognises the possibility of limiting and restricting competition when it could contradict the efficient use of resources or it will not be effective for producing results.

In the framework of humanitarian procurement, the principle of competition is fulfilled with fair and transparent procurement procedures rather than exclusively broadening the number of potential bidders. The principle of competition and the objective of broadening participation should be compatible with the wider objective of the humanitarian Action.

In practical terms Partners subject to an "A" Control mechanism fulfil their obligation towards transparent and open procurement by following the procedures established in Annex IV, Chapter 3.

Nevertheless, humanitarian imperatives may override the principle of competition in procurement transaction, for example, during humanitarian emergencies where open international competitive tendering may not reflect the best use of administrative resources to complete procurement within a reasonable period. These exceptional situations are sometimes catered for expressly by Annex IV itself which provides for more flexible procedures (see Chapter 4, Urgent Actions). As regards other exceptional situations that may arise in humanitarian operations Partners subject to a "P" Control mechanism should ensure that their procurement rules include rules on how to deal with such cases and Partners subject to a "A" Control mechanism should obtain the prior consent or exemption from DG ECHO (see Chapter 5 on Derogations).

(ii) Exclusion Criteria

Just as the principle of Transparency requires the establishment of clear Selection criteria (below), it also requires that interested parties be informed in advance of the Exclusion criteria. The announcement of this criteria offers equal treatment and ensures the regularity of the procurement procedure.

Candidates or Tenderers shall be excluded from participation in a procurement procedure if they fall under one of the situations described in Articles 93 and 96.2 (a) of the Financial Regulation supplemented by Articles 133 and 133 (a) of the Implementing Rules.

In particular, Article 93 of the Financial Regulation establishes that:

"1. Candidates or tenderers shall be excluded from participation in procurement procedures if:

(a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are 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;

²³ All procurement contracts shall be put out to tender on the broadest possible base, except when use is made of the negotiated procedure.

(b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;

(c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;

(d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;

(e) they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

(f) they are currently subject to an administrative penalty referred to in Article 96(1).

Points (a) to (d) of the first subparagraph shall not apply in the case of purchase of supplies on particularly advantageous terms from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law."

The situations of Exclusion as well as the procedure for the verification shall be explained in the tender documentation.

On the basis of Article 94 of the Financial Regulation, contracts may not be awarded to Candidates or Tenderers who, during the procurement procedure:

(a) are subject to a Conflict of interest;

(b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.

(c) find themselves in one of the situations of Exclusion, referred to in Article 93(1), for the procurement procedure in question.

In order for the Contracting Authority to ascertain that Candidates and Tenderers are not in any of the situations of Exclusion, it is strongly advised to request the Candidates or Tenderers to provide a formal declaration stating that they are not in any of the situations of Exclusion as referred to in Article 93 and 94 of the Financial Regulation. (See Annex 2 – Sample Declaration of for Candidates and Tenderers)

(iii) Selection Criteria

Tender documents shall define clear pre-established and non-discriminatory selection criteria²⁴. The selection criteria shall be applied in every procurement procedure for the purpose of assessing the financial, economic, technical and professional capacity of the Candidate or the Tenderer. Candidates and Tenderers must satisfy certain objectively justifiable minimum requirements, which include the legal capacity to enter into a contract, the necessary professional and technical competence, financial strength, plant, equipment and other physical facilities and qualified personnel to satisfy the requirements of the proposed work, service or supply. Any Tenderer or Candidate may be asked to prove that he is authorised to perform the contract under national law. The Contracting Authorities

24 Cf Article 97 Financial Regulation and Article 135 Implementing Rules Financial Regulation.

shall specify in the Contract Notice or in the invitation to negotiate the references chosen to test the status and the legal capacity of Tenderers or Candidates. The Contracting Authority may lay down minimum capacity levels below which bids will not be selected. Depending on the type of contract to be awarded the Contract Notice and the tender documents or invitation to negotiate shall clearly explain the:

Terms of Reference - These are requirements for a Service Contract which accurately define the characteristics of the service required with regard to the purpose for which it is intended and sets out conformity assessment procedures prescribed by a Contracting Authority. Reference to these should be included in the Contract Notice; or

Technical Specifications - These are the requirements for Supply and Works Contracts that:

- set out the characteristics of supplies to be procured, such as quality, performance, safety and dimensions, or the process and methods for their production, or the processes or methods for their provision, including any applicable administrative provisions;

- address terminology, symbols, packaging, marking or labelling requirements, as they apply to a supply or related services; or

- set out conformity assessment procedures prescribed by a Contracting Authority. The information requested by the Contracting Authority as proof of and the minimum capacity levels may not go beyond the subject of the contract and shall take account of the legitimate interests of the economic operators as regards in particular the protection of the firm's technical and business secrets.

The principle of Proportionality may justify the imposition of very high selection criteria for large contracts or for supplies such as pharmaceutical products or medical devices. In such cases the standard procedures are adjusted to make provision for the overriding need to secure reliable suppliers, high quality and safe products (see Chapter 4, Special Rules).

Furthermore, a Partner may explicitly prioritize in the selection criteria factors which are otherwise extraneous to the immediate procurement but that contribute to the achievement of the objectives of the Action, such as the support to local livelihoods, support to most vulnerable women-owned businesses or prioritising bids received from disadvantaged groups, etc. These selection criteria are part of the normal implementation of the humanitarian Action and can be accepted by the Commission on condition that the link between the objectives of the Action and the procurement strategy are clearly presented and reasoned.

Specifications may be stated as one or a combination of the following:

Specification	Description
Functional	Focuses on what the product or service is to do.
Performance	Describes what is to be achieved.
Technical	Defines exact design and details of the good, service or work.

In some cases, restrictive selection criteria (or a particular brand name) may be needed for ensuring compatibility with existing equipment or other equivalent circumstances. In that case the Contracting Authority has to document the justification in the tender file. When a brand name is cited for the purpose of defining standards, the specifications should clearly indicate that no particular preference will be given to the specified brand names when evaluating the offers, and it should be followed by

"or equivalent" to ensure that other brands are not discriminated against. In any case, minimum requirements have to be clearly stated in advance.

(iv) Award Criteria and Best Value for Money

Along with information on the Selection and Exclusion criteria, the principle of transparency requires that the Award Criteria also be set and communicated at the outset of the procurement procedure.

Annex IV, para 2.4 (b) states that the award criteria shall be weighted, meaning that it should be possible for the Tenderer or Candidate to understand the comparative importance of the different award criteria and to differentiate the more important from the less important criteria. This also makes it possible to assess the quality of the proposals submitted in the light of the objectives and priorities set.

The Contracting Authority should award the contract to the Tenderer or Candidate who has submitted the best tender or bid on the basis of the award criteria set out at the launch of the procurement procedure. The award criteria must be defined in such a way that it will be possible subsequently to carry out an evaluation that the contract was properly awarded.

In humanitarian aid actions, Annex IV, para 2.3 states that the award criteria published shall serve to identify the tender or bid offering best value for money, that is to say, the best price-quality ratio as referred to in the Implementing Rules.

Article 184 of the Implementing Rules establishes that "*... where implementation of the assisted actions requires the award of procurement contracts, beneficiaries of grants shall award the contract to the tender offering best value for money, that is to say, to the tender offering the best price-quality ratio, while taking care to avoid any conflict of interests.*"

Best value for money, is, therefore the **award criterion** to be applied for selecting the bid winning the contract. 'Best value for money' means selection of the bid which presents the optimum combination of factors such as appropriate quality, life-cycle costs and other parameters to best meet defined needs and objectives of the Action.

The most economically advantageous bid is not the same as the lowest price option. It requires an integrated assessment of technical, organisational, and pricing factors in light of their relative importance. Strategic objectives defined in the Action proposal should, equally, be taken into account with due regard to the Principle of Proportionality

Contracting authorities shall specify in the Contract Notice or in the call for expressions of interest or the invitation to submit a tender, the criteria relevant for assessing the quality of the bids submitted in the light of the objectives and priorities set.

Equally, the weighting that will apply to each of the criteria for determining Best value for money shall be specified in the Contract Notice or in the specification or in the descriptive document. That weighting may be expressed as a range. If, in exceptional cases, weighting is technically impossible the Contracting Authority shall merely specify the decreasing order of importance in which the criteria are to be applied.

(v) Respect of confidentiality

Details on pricing, proprietary data belonging to a supplier or trade secrets may be held confidential while still respecting the principle of Transparency. The duty of confidentiality pertains to all those involved in the procurement procedure including the Contracting Authority, members of any

Evaluation Committee and also the Tenderers or Candidates. Consequently this duty is referred to in both the sample declarations contained in Annexes 2 and 4 to these Guidelines.

Confidentiality needs extra consideration in the context of humanitarian procurement due to the delicate nature of the information that is handled in the framework of the humanitarian Action. Security considerations may overrule some aspects of external transparency, in particular publication requirements. The procedure for waiving transparency requirements on the basis of security considerations should be codified in the Partner's procurement rules, (including, when relevant, the procedure for seeking the donors' agreement) or covered by other procedures such as those waiving normal procedures in exceptional cases

Finally, disclosure of information linked to a procurement procedure has to be compatible with the humanitarian principle of neutrality, avoiding the provision of information that could be of any operational use to parties in conflict.

(vi) Right of access for the purposes of verifications and audits

Paragraph 2.10 of Annex IV establishes the right of access of the European Commission, or persons mandated by the European Commission, including the European Anti-Fraud Office (OLAF), and the Court of Auditors on documents and on the spot, over all Contracting Authorities and contractors who have received EU funds.

In accordance with the applicable regulatory provisions, the purpose of the verifications and audits is to control the legality and regularity of the procurement process, ensuring that the Partner respected the applicable procedures. Partners have the responsibility of facilitating the same access to third Parties without any direct contractual link with the Commission, contractors or implementing parties. To this end, the Contracting Authority shall provide complete information on the procurement procedures, documents, and abstain from any obstructive practice which could hamper the access or the exercise of the control.

The establishment of proper routines for documentation of the procurement process is the responsibility of the Partner and it should be ensured that the standard tender documentation and contractual instruments of the Partner include the necessary detail to show that it has duly performed its duties (e.g. where relevant provisions engaging the responsibility of the third Parties to observe the applicable rules).

Depending on the procedure followed, the value of the contracts and the nature of the products or services supplied procurement files should, where relevant, include the following information/documentation (in original and where necessary signed by the appropriate parties):

- Tender specifications and requirement definition (completed forms, notes, correspondence and communication with the Contracting Authority justification if brand name is used etc.)
- Sourcing information including justification of procurement method and type of competition
- Signed tender document, including attachments such as specifications, and proof of issuance (copies of cover letters, copies of e-mails, fax receipts, etc.)
- Corrections to tender documents, and any other clarifications and correspondence with suppliers
- Offers opening report
- All offers received (technical and financial)
- Evaluation report
- Minutes of clarifications (if any) and relevant communication with supplier
- Award decision
- Minutes of the award committee if applicable
- Original contract/PO

- Complaints and correspondence with contractor
- Amendments to contracts
- Any required progress reports and/or other proof of delivery of milestones as provided for in the contract
- Proof of receipt of goods, if relevant
- Receipt and inspection report, if relevant
- Acceptance report
- Certificate of final completion
- Proof of payment
- Supplier evaluation report

2.4 The Principle of Proportionality between the procedures followed for awarding contracts and the value of the contracts

Partners shall establish written procurement policies, rules and procedures which guarantee efficient and safe procurement, ensuring that procurement processes deliver goods, works or services in the right quantity and quality, in due time. Any budgetary commitment entered into by the Partner must be based on the principle of Sound Financial Management and, based on this principle in the Financial Regulation²⁵, the internal rules and procurement procedures of all ECHO's Partner humanitarian organisations shall be established with due regard to the following principles:

Economy – this requires that the resources used by the institution for the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price;

Efficiency – this is concerned with the best relationship between resources employed and results achieved; and

Effectiveness – this is concerned with attaining the specific objectives set and achieving the intended results.

The principle of Proportionality requires that procedures followed for awarding a contract must be proportionate to the value of the contracts; this generally means that the higher the value the higher the more demanding the procedures. Internal rules and procedures, including the proper implementation of the principles of economy, efficiency and effectiveness, have to be established having due regard to the amount of the contract and taking into account the overall costs of the procurement procedure versus the difficulty and risk associated with the contract. Clearly some lower- value contracts may still involve great risk hence adopting more stringent measures may be prudent and justified.

Generally speaking, however, the procurement rules should develop a system of **segregation of procurement functions** with clear demarcations of authority and responsibility. Such delegations should reduce administrative bottlenecks and provide increased responsiveness by locating decision making authority nearer to the activity. Delegations of procurement authority should include a clear reference to maximum amounts of individual contracts and a supervisory mechanism to confirm that the correct procedures have been followed. The identification and segregation of procurement functions should include clear job descriptions for the fulfilment of the procurement of specific supplies, such as medicines and food, which require adequate resources with the appropriate technical

²⁵ Article 27.2 of the Financial Regulation

qualifications in the organisation. Individuals holding procurement functions must be fully versed in their role within the procedure as well as in the limits of their responsibilities and authority. Individuals holding this function shall be accountable for their acts or omissions and liable in case of negligence or misconduct.

Procurement rules should provide for the **procedure for waiving standard practices** when the best interest of the Action so requires. Waiving procedures should take into account the value of the contract when identifying the appropriate level of authority for granting the derogation. In order to have in place the appropriate checks and balances, the decision to waive a procedure should be taken by a person other than the person who is to sign the procurement contract. Permitted exceptions to the rules should be kept to a minimum and be properly documented on file and communicated in the final financial report to DG ECHO. In case of A-Control mechanism, such an exception should be agreed upon beforehand and included in the derogation clause in Article 8.2 of the Grant Agreement.

Procurement policies, rules and procedure should be reviewed as necessary, following an appropriate review process and after informing DG ECHO of the outcome of the review.

2.5 The Principle of Equal treatment and non-discrimination of potential contractors and donors

The principles of equal treatment and non-discrimination refer both to the relations with potential bidders and with donors. These principles guarantee the fairness of the procurement process ensuring impartial and independent decisions, treating all suppliers and donors in the same way and applying the rules consistently to all.

(i) Equal Treatment of Candidates and Tenderers

As a general rule, in the framework of humanitarian procurement no restrictions should be placed on the procurement process limiting the pool of potential Tenderers and Candidates on the basis of their nationality or the country of origin of the supplies.

Article 2.5 of Annex IV states that “*Contracting Authorities shall apply the principle of untying of aid and endeavour to use local human and material resources whenever it is possible and pertinent*”. In certain situations, such as in the case of "high pressure" countries it may prove impossible to use local human and material resources.

In most cases any eligibility rules requiring a certain Nationality or Origin of Tenderers, Candidates or supplies are automatically **inapplicable** to humanitarian aid actions funded by DG ECHO and no special derogation clause is required.

The only exceptional case when it is necessary to expressly request a derogation from the applicable rules of Nationality & Origin arises in the context of Actions financed by the European Development Fund (EDF) within the framework of the Partnership Agreement between the EU and African Caribbean & Pacific States signed in Cotonou on 23 June 2000²⁶ ("**Cotonou Agreement**") as amended by the Luxembourg Agreement on 25 June 2005²⁷. Article 20 on "Eligibility" of Annex IV to the Cotonou Agreement sets, save where a derogation is granted, specific eligibility conditions which limit participation for the award of procurement contracts or grants financed by the EDF to natural and legal persons from ACP and EU States.

²⁶ Informal Consolidated text available at: http://ec.europa.eu/development/icenter/repository/Cotonou_EN_2006_en.pdf

²⁷ http://www.acpsec.org/en/conventions/cotonou/cotonou_revised_e.pdf

In such cases so as to ensure compliance with the principle of "untied aid", in line with the procedures for derogation in Article 22 of Annex IV of the Cotonou Agreement, ECHO shall, of its own accord, include a clause in Article 8.2 of the Grant Agreement expressly making reference to the derogation from the above-mentioned Eligibility rules of the Cotonou Agreement. This will ensure that all natural and legal persons may participate in procurement procedures initiated by the Partner in the implementation of the Grant agreement.

(ii) Equal Treatment of Donors

The principles of equal treatment and non-discrimination also apply in the relations of the Contracting Authority with its donors. In co-financed or Multi-donor Actions, the Partner shall ensure equal treatment to all financial contributions.

Partners should abstain from mixing Tied Aid (see Glossary) contributions with untied aid contributions in the same Action. Likewise, the compatibility of using earmarked contributions (See Glossary) with non-earmarked contributions in the same Action should be decided on a case-by-case basis. The analysis of compatibility between earmarked contributions and the principle of equal treatment of donors should be included in the procurement file.

Another concern in ensuring equal treatment of donors is related to visibility²⁸ and, when relevant, communication and information as foreseen in e.g. Article 4 of the General Conditions of the FPA and Article 11 of the FAFA

3. GENERAL RULES AND PROCEDURES

3.1 Scope of the Guidelines on the General Rules and Procedures

Paragraph 3.1 of Annex IV, states that the General Rules and Procedures "*...shall govern the award of procurement contracts by Contracting Authorities for Agreements of more than EUR 60,000 with an A-control mechanism, in line with Article 184.2 of the Implementing Rules.*

The provisions of this Chapter must be applied in conjunction with the "Humanitarian Aid Guidelines for Procurement".

From this is clear that the provisions in Chapter 3 of both Annex IV and this section of the Guidelines are obligatory in procurement contracts over EUR 60,000 with an "A" Control mechanism. However, in addition to explaining and establishing procedures obligatory in awards subject to "A" Control mechanism, this Section of the Guidelines also offers recommendations and guidance on all procurement contracts, including those concerning contracts below EUR 60,000. To the extent that this section of the Guidelines identifies minimum procurement standards of a general nature and reflects best practice in the field of procurement, even HPCs and Partners whose actions are subject to "P" Control mechanisms could draw suggestions from this Section or take it into consideration when implementing, interpretation or updating their own procurement rules.

This section of the Guidelines may therefore be divided into two main parts:

²⁸ For more information on DG ECHO's policy on visibility please visit:
http://ec.europa.eu/echo/about/actors/visibility_en.htm

- Guidance on procedures for the award of all procurement contracts (including, but not limited to, those below €60.000)
- Rules on procurement procedures for the award of contracts of an amount higher than €60.000 (obligatory for "A" Control mechanism contracts above €60.000)

In line with the principle of Proportionality one will note that the procedures required for procurement increase with the value of the award as do the levels of Transparency and hence the form of publication required. This means that the complexity of the procedure followed has to be in relation with the size of the contract.

In order to enhance the efficiency of procurement procedures, meaning to use the procedure that would require less administrative effort for the Contracting Authority while guaranteeing the compliance with the rules of Annex IV, Contracting Authorities should, where appropriate, consider using *Humanitarian Procurement Centres or Framework Contracts*.

3.2 Guidance on procedures for the award of all procurement contracts (including those below €60.000)

(i) The main elements of a contract

A Contract is an agreement between two or more persons intended to create a legal obligation between them and to be legally enforceable. A contract may be concluded in writing or orally however in commercial contracts like procurement contracts it is always advisable to ensure that some written evidence of the contract in case a dispute subsequently arises.

In order for any contract to be valid it must be based on a voluntary agreement between the parties on a binding promise. A procurement contract records the agreement of the parties in a commercial transaction in order to obtain against the payment of a given price the supply of products, the execution of works, the provision of services or the renting of properties.

Contracting Authorities considering launching a procurement procedure have to determine in the first place the object of the contract, i.e. its *subject, duration and value*. These characteristics will determine the type of contract and procurement procedure to be chosen.

Subject

Contracting authorities must give a clear, full and accurate description of the subject of the procurement. The technical content must be carefully set out, also indicating the estimated volume and type of contract. When applicable the relevant Incoterm (see Glossary) has to be mentioned in the subject of the contract. The object of the contract must include Technical Specifications or Terms of Reference setting out the characteristics of the supplies, services or works to be procured. These constitute the basis for the evaluation of offers. (See also Transparency and selection criteria)

Value

The estimated value of the contract must be based on the volume of the tasks, previous experience and/or market research and on an assessment of the difficulty of the particular delivery. It must be calculated without taxes and for the total duration of the contract. This estimate is made before the Contracting Authority launches the award procedure.

The estimated value of a contract may not be established in such a way as to circumvent the rules which apply to certain procurement procedures or above a certain threshold. Nor may a contract be split for that purpose.

It is necessary to take account of the whole picture when deciding on the estimated value of a contract. The following considerations must be taken into account when calculating the total value of a contract:

- the contractor's total estimated remuneration including reimbursement of certain types of expenses (for instance, travel and subsistence expenses);
- if the contract provides for options or possible renewal, the calculation must be based on the maximum amount authorised, including the options and renewal;
- for joint contracts or Hybrid Contracts (see Glossary) the total volume must be taken into account;
- the maximum value of all the contracts envisaged during the total lifetime of the framework contract is taken as the basis for calculating the total value of framework contracts.

There is an exception to this cumulative approach for procurement of fresh food (see also section 4.4).

In the case of service contracts which do not specify a total price the basis for calculating the estimated value is:

- in the case of fixed-term contracts: the total contract value for their duration;
- in the case of contracts for an indefinite period: the monthly value multiplied by 48.

Lots

In accordance with paragraph 3.4 of Annex IV: "*Where the subject of a contract is subdivided into several lots, even if each one will be subject of an individual contract, the value of all lots together must be taken into account for the overall evaluation of the applicable threshold*".

Contracts related to a set of homogeneous products or services and contracts for products or services serving a similar purpose, whose combined value or technical specifications are such that few operators would be able to provide them all in their entirety, should be split into lots.

Splitting into lots is also appropriate when the implementation of a given activity requires passing contracts for a contract is made up of a variety of products or services offered by companies operating in different sectors. Furthermore, it is advisable to split one procurement procedure into lots when delivery of the goods takes place over a long period of time and it is divided into several deliveries (for instance due to seasonal price changes).

Splitting into lots can increase competition and make it easier for small and medium-sized companies to participate. Consequently, whenever appropriate, technically feasible and cost-efficient, contracting authorities should envisage the possibility of identifying separate lots in procurement processes. These considerations should also be taken into account when deciding whether certain procurement procedures should be split into lots (each one of them being the object of an individual contract) or being the object of a single contract (including all the goods and services).

Duration

The contract will stipulate a limited period for implementation. Contracts may include a clause allowing them to be renewed, subject to certain conditions, usually at the end of the first year. In this case, and by analogy with framework contracts, the duration should not exceed a 5 years period taking the characteristics of humanitarian aid environment into account. The reference value of the contract, in order to establish the correct procurement procedure, has to be calculated in accordance.

(ii) Different parts of the contract document

A valid contract may take several different forms. Some parts of the contract are variable (e.g. special conditions, specific terms of the contract) and can include a number of mandatory and optional clauses.

Other parts of the contract will be standard, and all Contractual Authorities would be advised to have well-drafted **general terms and conditions** applicable to all their contracts establishing the general rights and obligations of the Parties which they can use as a template accordingly. These general terms and conditions should take into consideration the special nature, mission, interests and principles of the Contracting Authority.

In procurement contracts the Technical Specifications, Terms of Reference, bid and Contract Notices should be incorporated into the contract as annexes and form an integral part of the procurement contract. Contracts with different parts should include a provision setting up a hierarchy of its parts and establishing which part prevails in case of inconsistency between the different parts. .

In humanitarian aid actions funded by the EU contracts with suppliers for the provision of goods and/or services should at least specify:

- The standard and variable **terms and conditions of the procurement contract** (including methods of delivery including the location for the supply of goods or services, quality control checks and certification, inspection requirements, timescale, insurance, extent of the suppliers liability; Dispute settlement details (e.g. applicable law, which courts have jurisdiction etc); Any requirements concerning the sourcing of supplies and the point of delivery (for example local, regional or international purchase). All relevant technical specifications about the product or service to be supplied and agreed charges). These provisions should reflect the best practices in the sector, including reference to *Incoterms*, best practice in transport and storage, the inclusion of a delivery guarantee or the implications of the acceptance of *Force Majeure* (see below);
- The **winning bid** received from the successful Tenderer or Candidate since this document constitutes an integral part of the contract; and
- the necessary provisions in order to guarantee the **compliance with the obligations** of the Contracting Authority deriving from the Financing Agreement signed with ECHO²⁹ (e.g. certification by the supplier that they will not use child labour, that they are eligible under EU financial rules on corruption and conflict of interest etc – see Annex 2 to these Guidelines).

29 Cf. Article 1.2 of the General Conditions of the Agreement and paragraph 2.10 of Annex IV.

Incoterms

As per the Incoterm (see Glossary) condition applicable to the contract, the contractual provision should stipulate whether or not the supplier is bound to carry out the formalities relating to obtaining the export license, the in-transit customs arrangements and/or the import customs clearance formalities, bearing the related costs and charges.

Transport & Insurance

If transport is included in the contract the provisions should stipulate the means of transport used and related details or, if that is not yet possible, stipulate that the supplier shall notify the Contracting Authority promptly of the means of transport used, the loading dates, the expected date of arrival at the delivery place indicated in the contract, and any incident occurring while the goods are in transit.

Where the Incoterm specified in the Contract Notice or Invitation to Negotiate obliges the supplier to take out a transport insurance policy, the contract should indicate that this insurance shall be for at least the awarded tender amount and shall cover all risks associated with carriage and any other supply-related activity by the supplier up to the contractual stage of delivery specified. It shall also cover all costs of sorting, withdrawal or destruction of damaged goods, repacking, inspection and analysis of goods where the damage does not preclude their acceptance by the beneficiary.

In case of carriage and delivery by maritime transport the contract terms should indicate whether goods may be delivered in split consignments on more than one vessel.

In case of delivery by surface transport the contract terms should indicate whether goods may be delivered other than by the contractually agreed transport mode.

The contract should indicate that changes in the transport mode or in the delivery schedule at the requests of the supplier, other than being subject to the agreement in writing of the Contracting Authority, shall be conditional on the supplier bearing the additional costs that may arise.

The contract should indicate that the supplier shall bear all risks, including loss or deterioration, to which the goods may be subject until completion of the supply.

Force Majeure

The Contracting Authority may decide whether the supplier's failure to supply the goods or to fulfil one of his obligations may be due to force majeure. The Contracting Authority shall bear the costs resulting from a recognised case of force majeure.

Force Majeure can never be claimed in the case of failures attributable to the Contracting Authority and/or its subcontractors.

The Commission must be informed of the reasons for acceptance of a force majeure situation. Where duly justified and accepted by the Commission, costs incurred in a force majeure situation shall be eligible Direct Costs and be covered only within the limits of the amount envisaged in the Agreement signed with the Commission.

(iii) Procurement for awards under €60 000

The Commission does not request Contracting Authorities to follow a given procedure for the award of procurement contracts worth less than €60.000, (Paragraph 3.6 of Annex IV). This applies to Actions subject to either "A" or "P" Control mechanism. However, the procedure applied by the Contracting Authority has to comply in any case with the principles of Transparency; Proportionality

and Equal treatment and the criterion of Best Value for Money in the award of procurement contracts (Paragraph 2.3 of Annex IV). The requirement to check the exclusion criteria can be relaxed and the procurement documents can be shortened or simplified provided they include all the relevant elements necessary for Tenderer or Candidates to submit a bid. The Award criteria, which shall be weighted, must always be indicated.

As for use of electronic means, tender documents and negotiations of terms and conditions can be sent by e-mail in all cases.

It is recommended, wherever possible, to have either a clear purchase order or a written contract for each financial engagement. These need not be long or complicated document but just a statement of main elements of the procurement contract (see above). It is good practice that financial engagements of less significant amounts (below €2,000) are done just on the basis of an invoice.

It is also suggested to appoint an evaluation committee only for contracts above €2,000. The internal procedures of the Partner should clearly establish a system of empowerment for the signature award of contracts having due regard to their amount and a supervisory mechanism in order to ensure a robust internal control of the transactions. All award decisions have to be reasoned and supported by an appropriately documented procedure.

In this context 1 bid would seem reasonable for contracts under €10,000 while 2 or 3 bids would seem more appropriate for contracts above €10,000. In any case, the evaluation of proportionality must be determined by the Contracting Authority in light of its resources, the context of the procurement and its value. The Contracting authority must also retain the relevant documentation (whatever its form) proving that the application of the best value of money and absence of conflict of interests has been ensured.

In order to assess the compliance of the procedure used by the Contracting Authority with the Mandatory Principles, in particular the principles of Proportionality and Transparency, DG ECHO would recommend that for procurement under €60,000 Contracting Authorities consider using the negotiated procedure (see section below) which while not being too burdensome administratively still has the potential of securing good terms and conditions. This negotiated procedure may be based on one or more bids depending on the level of urgency, the market and the value of the contract. For example, if the Contracting Authority is particularly keen to secure the best value for money possible it should surely consider requesting two or more offers where feasible, on the other hand where the market is known to be limited it may not be worth while spending too much time trying to find several bids for a contract under €60,000.

3.3 Rules for the award of contracts of an amount higher than €60.000 (obligatory for "A" Control mechanism contracts above €60.000

(i) The different Procurement procedures

In a **Negotiated Procedure** the Contracting Authority invite, simultaneously and in writing the Candidates of its choice, generally not less than three, to negotiate the terms of the contract, (paragraph 3.5 (b) of Annex IV).

A variant of the Negotiated Procedure is the **Negotiated Procedure based on Pre-Qualification** which is used for pharmaceutical products and medical devices (see Chapter 4.3, below).

Contracting Authorities may, also exceptionally, place orders on the basis of a **Single Bid Negotiated Procedure** in which they invite in writing the Candidate of their choice (even just 1) to negotiate the

terms of the contract. The cases where this is possible in awards above €60,000 are listed expressly stated in Annex IV. This is the simplest form of procurement for contracts above €60,000, however, like in any other procedure, Single Bid Negotiated Procedures have to be appropriately documented and supported with a complete and accurate file for the purposes of verifications and audits.

An **Open Tender Procedure**, international or local, is a procedure in which all the interested economic operators get all the information they need for preparing a tender by means of international or local publication, respectively, and then the Contracting Authority evaluates all the tenders in one go and chooses the best one, (paragraph 3.5 (a) of Annex IV).

(ii) Different kinds of procurement

Paragraph 1.2 of Annex IV defines the different types of contracts as follows:

- *Property contracts* cover the rental of land, existing buildings or other real estate. Purchase of immovable assets can never be financed by the EU's contribution to an Action.
- *Supply contracts* cover the purchase, operational leasing, rental or hire purchase, with or without option to buy, of products. The delivery of products may in addition include sitting, installation and maintenance.
- *Works contracts* cover either the execution, or both the execution and design, of works or the realisation, by whatever means, of a work corresponding to the requirements specified by the Contracting Authority. A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient by itself to fulfil an economic or technical function.
- *Service contracts* cover all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and property contracts. Service contracts equally comprise *study and technical assistance contracts*.
 - A *Study contract* is a contract concluded which includes studies for the identification and preparation of projects, feasibility studies, technical studies and audits.
 - A *Technical Assistance* contract is a contract where the contractor is called on to play an advisory, to manage or supervise a project or to provide the consultancy specified in the contract.

A contract covering both works and services shall be considered a service contract whenever the value of the services in question exceeds that of the works included in the contract. The same principle shall apply to define the procurement procedure to be followed in other *Hybrid Contracts*, i.e. contracts having as object a combination of different types of contracts.

In accordance with paragraph 3.6 of Annex IV, contracting authorities awarding procurement contracts with a value of more than €60,000 in the framework of Actions under the "A" Control Mechanism, shall apply the following procurement procedures.

Table 4 - Procurement in Contracts over € 60.000

	Supply Contracts & Service Contracts	Works Contracts
	Estimated value of the contract	Estimated value of contract
Negotiated procedure (minimum of 3 Candidates)	€60,000 - € 150,000	€60,000- € 300,000

Open Tender with Local Publication (minimum of 21 days publication)	€ 150,000 - € 300,000	€ 300,000 - € 3,000,000
Open Tender with International Publication (minimum of 30 days publication)	€ 300,000 or more	€3,000,000 or more

(iii) The Negotiated Procedure

In accordance with paragraph 3.6 of Annex IV, a Negotiated Procedure may be used for procurements of a **value** above €60,000 but less than €150,000.

As defined in paragraph 3.5 (c) of Annex IV, the Negotiated Procedure requires the Contracting Authorities to invite simultaneously and in writing the Pre-Qualified Candidates selected to negotiate the terms of the contract.

This procedure starts with the written communication, also known as an **Invitation to Negotiate**, by which the Contracting Authority makes known to the Pre-Qualified Candidates selected its intention to launch the procurement procedure. This information must be the same for all Candidates and should include everything necessary for the Candidate to present an eligible offer and to ensure genuine competition and impartiality of the procurement procedure. It should include the same information as in a Contract Notice.

The Invitation to Negotiate shall contain the following information:

- subject of the procurement (Technical specifications or Terms of Reference);
- organisation of the procedure; (rules governing the submission and presentation of offers)
- methods of assessing offers (exclusion, selection and award criteria);
- deadline for submitting offers (usually not less than 2 weeks);
- date envisaged for adopting the award decision.

At least 3 Candidates should be invited to negotiate provided that a sufficient number satisfies the selection criteria – in any case genuine competition should be ensured. If less than 3 Candidates respond with offers by the deadline this has no bearing on the validity of the procurement process as long as the Contracting Authority ensures that a sufficient number of Candidates were invited to provide genuine competition.

The deadline for the submission of offers in a Negotiated Procedure must be long enough to allow interested parties a reasonable and appropriate time, taking particular account of the complexity of the contract. Annex IV does not fix a strict **time** requirement but it is clear that the time between the dispatch of the invitation to negotiate and the deadline for receipt of offers should be reasonable. This depends on the value of the contract and the nature of the goods or services but generally 10 working days would normally seem sufficient. If Candidates all have access to e-mail then it could be quicker if even one Candidate is located in a remote area more time may need to be allocated to all. Contracting authorities are advised to fix a clear time limit for the negotiation phase procedure, for instance 14 calendar days or 10 working days. If, apart from a date, a time is also indicated (e.g. by 5pm or 'end of business") it is prudent to explain which time zone is considered binding.

Compliance with the Mandatory Principles shall be ensured throughout the Negotiated Procedure.

Before the deadline for submissions expires the Contracting Authority should answer any requests for clarifications from Candidates in compliance with the principles of transparency and equal treatment. If several questions are received from Candidates it may be an indication that the Invitation to Negotiate could have been clearer. When questions are answered the response should be made available to all Candidates while keeping the identity of the inquirer anonymous. Ideally questions should be answered as soon as possible (i.e. a couple of working days max). Information requests received less than 5 days before the deadline may be legitimately rejected if they risk needlessly prolonging the procedure.

A mechanism for registering the exact date and time of receipt of offers should be established. The offers may be checked briefly but the in-depth assessment should only take place after the deadline set. Thereafter the exclusion criteria are checked to ensure that the Candidate is isn't excluded due to grounds of ineligibility or Conflict of interest etc. In justified circumstances Candidates can be asked for clarification or to correct clerical errors in their offers. In no circumstances, however, may the offers be substantially altered.

In practice, the Negotiated Procedure is conducted in a formal manner up to the submission of offers and then, where appropriate (in particular if the Contracting Authority considers that the offers can be improved), real negotiations can take place in a second stage.

In the second stage - the Contracting Authority must make sure that it negotiates the best technical and financial terms on the basis of the specifications and additional documents. On the basis of the offers received the Contracting Authority shall negotiate the terms of the contract with the Candidates that satisfied the eligibility and selection criteria. The aim of this is to obtain the best terms and price possible however the main Selection Criteria announced should not be substantially altered in order to ensure equal treatment to all Candidates.

Here the Contracting Authority has wide discretion to assess the selection criteria and procedures used, provided the principle of equal treatment and non-discrimination is fully observed. For example, it can use objective criteria such as the Candidates' experience in the sector in question, the extent and infrastructure of their economic activities and technical expertise.

A variant of the Negotiated Procedure is also referred to in paragraph 4.3 (g) of Annex IV in the context of Special Rules applicable for the procurement of pharmaceutical products and medical devices. When procuring pharmaceutical products and medical devices, by derogation to paragraph 3.6 of Annex IV and irrespective of the value of the contract to be awarded, the Contracting Authority shall launch a negotiated procedure only with pre-qualified candidates. In this case, although the Contracting Authority apparently has more flexibility on with whom to negotiate, the procedure based on pre-qualification limits the discretion of the Contracting Authority by defining certain minimum quality criteria based on international standards (see Chapter 4.3 below).

In all cases, Contracting Authorities must include in procurement file a reasoned justification of their choice of Candidate and an analysis of prices in the local market for comparable supplies, services or works.

Once the negotiation process has been concluded the final decision on the winning Candidate is taken. The Contracting Authority should take the award decision on the basis of the recommendation of an evaluation committee and will inform accordingly all the Candidates. To ensure transparency, an Award Notice should be sent to all Candidates to inform them of the outcome of the negotiations. This Notice should reflect the conclusions of the Award Decision and provide a summary of the reasons for the decision. Ideally and where time permits, after the Award Notice some time should be given to allow for the examination of complaints from unsuccessfully Candidates.

After the procurement procedure is complete and the procurement contract is awarded all appropriate documents, including e-mails and letters, which show how and why procurement decisions were taken as they were should be kept safely on file for 5 years for possible audits, verifications or on-site examinations.

Table 5 - Overview of the Negotiated Procedure

Step of the procedure	Short description, requirements, limitations or remarks	Time requirement and deadlines
Dispatch of Invitation/s to Negotiate.	Contracting Authority invites simultaneously & in writing (including e-mail or fax) the Candidates selected (at least 3 Candidates or enough to ensure genuine competition).	10 working days would normally seem sufficient as a deadline to receive offers from invited Candidates.
Clarifications, answers to questions	Response to any questions should be made available as soon as possible to all Candidates while keeping the identity of the inquirer anonymous.	Information requests received less than 5 days before the deadline may be legitimately rejected.
Receipt of offers	A mechanism for registering the exact date and time of receipt should be established.	Generally not earlier than 10 working days after dispatch of the Invitation to Negotiate.
Assessment of Eligibility & Selection Criteria	The exclusion criteria is checked to ensure that the Candidate is eligible and isn't excluded due to grounds of ineligibility or Conflict of interest etc.	Generally not earlier than 10 working days after dispatch of the Invitation to Negotiate.
Corrections to offers	Candidates may be asked for clarification or to correct clerical errors in their offers but offers may not be substantially altered.	
Negotiation stage	Contracting Authority negotiates the terms of the contract with the selected Candidates to obtain the best terms and price possible.	
Award Decision	Once the negotiation process has been concluded the final decision on the winning Candidate is taken.	
Award Notice	To ensure transparency, an Award Notice should be sent to all Candidates to inform them of the outcome of the negotiations.	
Signature of the contract	The contracts shall be signed on the basis of the terms and conditions negotiated with the winning Candidate.	After Award Notice - some time should be given for complaints from unsuccessfully Candidates.
Proper filing of the documentation	All appropriate documents to be kept safely on file for possible audits, verifications or on-site examinations.	To be kept for 5 years.

(iv) Negotiated procedure with a single tender ("Single Bid Negotiated Procedure")

This is a simplified and exceptional, procurement procedure used in the cases specifically listed in Annex IV. Here the Contracting Authority may award the contract above €60,000 on the basis of the bid offered by the single Candidate which it invited to negotiate, whatever the estimated amount of the contract (see Table 5 above).

The Contracting Authority must be able to demonstrate that it is in one of those situations by virtue either of the subject of the contract or of the circumstances. The reasons must be set out Contracting

Authority's decision awarding the contract. It is good practice to document these reasons before launching the negotiated procedure. Contracting authorities may place orders on the basis of a Single Bid Negotiated Procedure only in the following cases:

- Urgent Actions (see Chapter 4 of Guidelines) ;
- individual order forms on the basis of a Framework Contract (See Chapter 4 of Guidelines);
- purchases from Humanitarian Procurement Centres (See Chapter 4 of Guidelines);
- Contracts valued below €10,000 (Based on proportionality principle it would be disproportionate to have more burdensome procurement procedure);
- situations or contracts listed in paragraph 3.5 (c) of Annex IV:
 - Whenever no tenders/offers or no suitable tenders/offers have been submitted in response to an open or negotiated procedure after the initial procedure has been completed, provided that the original terms of the contract are not substantially altered.
 - Whenever, for technical or operational reasons or for reasons connected with the protection of exclusive rights, the contract can only be awarded to a particular economic operator.
 - For additional contracts consisting in the repetition/renewal of services, works or supplies entrusted to a contractor awarded an earlier contract in the same region, provided that the terms of the original contract are not substantially altered. The period elapsed from the award of the first contract shall not be longer than one year. Contracts can be renewed on these grounds for a maximum of two times.
 - For additional supplies, works and services not included in the initial contract which, due to unforeseen circumstances, have become necessary for the performance of the Action, provided that the aggregate amount of additional supplies, works or services does not exceed 50% of the value of the initial contract.
 - For Property contracts, whatever the estimated value of the contract and after prospecting the local market.
 - For particularly advantageous contractual terms (e.g. from supplier winding up business or from the receivers or liquidators of a bankruptcy, an arrangement with creditors etc.)

The Contracting Authority may negotiate the terms of the procurement contract with a single Candidate but must anyway make sure that these negotiations result in the best possible technical and financial terms on the basis of the specifications and additional documents. In order for the negotiation to be genuine and conducted with due diligence the Contracting Authority must obtain as much information about the subject-matter of the contract as possible in the time available (e.g. by conducting an analysis of prices in the local market for comparable supplies, services or works – even by, where possible, an internet search).

Furthermore, even in a Single Bid Negotiated Procedure, the following suggestions may be made:

- Document your procedure and handle through written communication the invitation to negotiate and the received offer.
- The invitation to negotiate should mention the subject of procurement, the deadline for submitting the offer,

- The award should take into consideration following principles:
 - If all other matters are equal the cheapest option should be chosen;
 - The decision should take into account the previous reliability record of the supplier;
 - The decision should take into account the ability of the supplier to guarantee the quality of the goods and services provided according to the specification required;
 - The relative ability of the supplier to provide a timely service should be considered;
 - The Mandatory Principles remain obligatory to every step of the Single Bid Negotiated Procedure.
- Effects of purchasing decisions upon local markets have equally to be considered. In-country purchase of goods and services is normally preferred. However under some circumstances large purchases – especially of food – can distort local markets at a provincial or national level, creating artificially high prices and reducing access to essential supplies or services for the local population.

(v) Open Tender Procedure

This procurement procedure provides all eligible prospective Tenderers with timely and adequate notification of a contractual authority's requirements and an equal opportunity to tender for the required goods and works.

Chapter 3 of Annex IV provides that open competitive bidding must be used by Contracting Authorities in non-Urgent Actions, whenever the value of the contract is more than €150.000 for a supply or service contract or more than €300.000 for a works contract.

The procedure starts with an advertisement, in the form of a **Contract Notice** describing the characteristics of the contract, published either in a periodical or other relevant mean of publication in the country of operation (local publication) or on the Contracting Authority's website or on a specialised Webpage and simultaneously in a periodical, or other relevant mean of publication, published at least in the country of operation (international publication). In any case and whatever mean of publication chosen, contracting authorities shall ensure that it is adequate to attract as many tenders as possible. The publication costs incurred by the Contracting Authority shall be direct eligible costs of the humanitarian aid Action funded by DG ECHO where this publication is directly linked to the procurement of supplies or services required for the implementation of that ECHO-funded Action.

The Contract Notice should give the following details:

- organisation launching the procedure;
- subject of the procurement (Technical Specifications or Terms of Reference);
- organisation of the procedure (rules governing the submission and presentation of tenders);
- methods of assessing offers (exclusion, selection and award criteria);
- how to obtain the tender documents from the Contracting Authority (e.g. if online – link to website should be given);

- deadline for submitting tenders ; and
- date of public opening.

It may also give information about the minimum economic, financial, technical and professional capacity required as a selection criterion and about the admissibility of variant solutions.

Since the main aim of the Contract Notice is to provide adequate publicity to all potential Tenderers it cannot possibly include all the information concerning the exclusion, selection and award criteria and the Technical Specifications or Terms of Reference (as mentioned in Annex IV, para 1.10). In order to keep publication costs reasonable it is sufficient that the Contract Notice makes a brief mention of the requirements but clearly explains the subject-matter, the deadline and where more information may be obtained. Full information about the subject of the procurement, conditions and procedure is to be placed online (with link to web-site indicated in Contract Notice) or else given upon request.

Likewise the complete set of **Tender documents** (including the invitation to tender; full specifications & model contract) should either be placed online, sent upon request or made available for collection by the economic operator who requests them within five days from the request in the official language of the country of operation or in the working language of the Partner. Depending on the applicable legislation, the Contracting Authority is not bound to reply to requests received less than five days before the deadline for submission. Any inconsistency in procedure documents should be avoided. Discrepancies between the Contract Notice and the tender documents, in particular, can give rise to the annulment of the procurement procedure.

In response to the Contract Notice and Tender Documents, any natural or legal person may submit a Tender. Compliance with the Mandatory Principles shall be ensured throughout the Open Tender Procedure.

Before the deadline for submissions expires the Contracting Authority should answer any **requests for clarifications** from Tenderers in compliance with the principles of transparency and equal treatment. Responses must be sent on the same day to all economic operators known to be interested and made available at the place where the specifications are published. Where possible should be sent not later than 5 calendar days before the deadline. Generally requests less than 5 days before the deadline do not have to be answered.

The mechanism for registering the exact date and time of receipt should be established. Tenders must be kept confidential until the public opening. Tenders are submitted in sealed envelopes and those sent by the deadline set shall be opened by the opening committee in public within a reasonable time after deadline for submitting offers, allowing tenders sent by mail to reach the Contracting Authority.

Having due regard to the amount of the contracts all tenders shall be assessed by an evaluation committee applying the exclusion, selection and award criteria separately. In justified circumstances Tenderers can be asked for clarification or to correct clerical errors. In no circumstances may the offers be altered.

The opening and evaluation committees may be made up of the same persons. Evaluation committees should include at least 3 members and they must ensure they have no conflict of interest and assess the offers on the basis of the Best value for money. They may be asked or may themselves choose to sign a declaration to this effect (see Annex 4 to these Guidelines).

The evaluation committee prepares a final report on the selection process including its recommendations for the award of the procurement contract. On this basis, the Contracting Authority

takes the award decision and sends notification to all the Tenderers by means of an Award Notice not later than one week after award decision is taken

A copy of the Award Notice may also be sent to ECHO with the final report. This is an optional step - but offers ECHO a good overview of procedure.

The contracts shall be signed on the basis of the terms and conditions negotiated with the winning Candidate, however, this should not be concluded until 7 calendar days after date of the Award Notice so as to Tenderers a minimum period for the consideration of any complaints.

All appropriate documents, including e-mails and letters, which show how and why procurement decisions were taken as they were should be kept safely on file for possible audits, verifications or on-site examinations.

Table 6 - Overview of the Open Tender Procedure

Step of the procedure	Short description, requirements, limitations or remarks	Time requirement
[optional] Pre-information notice	May be published on the web-site of the Contracting Authority at any time.	If possible, this information should be updated on web-site twice a year.
Contract Notice	Methods of publication of Contract Notice: Local publication: Contract Notice to be published in the country of operation. International publication: Contract Notice to be published at least on the webpage of the Contracting Authority & in other media in the country of operation.	Deadline for receipt of Tenders: Local Publication: minimum of 21 calendar days from date of Contract Notice. International Publication: minimum of 30 calendar days from date of Contract Notice.
Posting or Dispatch of Tender documents	All Tender documents should be available to all prospective Tenderers in full. Ideally these should be posted online & offer unrestricted, full, direct electronic access to the tender documents. Otherwise they must be dispatched to interested economic operators by whatever means agreed (e-mail; courier etc).	From publication of Contract Notice to deadline for submissions of Tenders. The documents must be sent within 5 calendar days of receiving the request. Reply mandatory if requested five days or more before the deadline for submission of offers
Clarifications, answers to questions	Responses should be sent as soon as possible and must be sent on the same day to all economic operators known to be interested and made available at the place where the specifications are published.	Where possible should be sent by Tenderers not later than 5 calendar days before the deadline.
Receipt of tenders	The mechanism for registering the exact date and time of receipt should be established. Tenders must be kept confidential until the public opening.	Postmark or deposit slip dated on the day of the deadline at the latest is satisfactory.
Public opening	Written record signed by opening committee members	Reasonable time after deadline for submitting offers, allowing tenders sent by mail to reach the Contracting Authority.

Step of the procedure	Short description, requirements, limitations or remarks	Time requirement
Evaluation of tenders	Evaluation committee evaluates Tenders on the basis of the exclusion, selection and award criteria.	
Corrections to Tenders	Tenderers may be asked for clarification or to correct clerical errors but Tenders may not be altered in substance.	
Award decision	Taken on the basis of recommendations by the evaluation committee in its report.	
Award Notice	Award Notice to be sent to all Tenderers. (may also be sent to ECHO with the final report - optional step - but offers ECHO a good overview of procedure).	Not later than one week after award decision is taken
Signature of the contract	The contracts shall be signed on the basis of the terms and conditions negotiated with the winning Candidate.	Minimum 7 calendar days after Award Notice – to allow for the consideration of any complaints.
Proper filing of the documentation	All appropriate documents (incl. e-mails and letters) to be kept safely on file for possible audits, verifications or on-site examinations.	To be kept for 5 years.

Table 7 - Overview of the different procurement procedures

<p>Procurement by an Open Tender Procedure</p> <p>Annex IV, para 3.5 (a)</p>	<p>Where the estimated value of the contract to be awarded is above €150,000 for supply & service contracts (or above €300,000 for works) the procurement should be made through an Open Tender procedure in which all interested economic operators may participate and submit a Tender. In certain defined cases (e.g. procurement in Urgent Actions or through HPCs) the <i>Single Bid Negotiated Procedure</i> may be used instead (see below).</p> <p>The Open Tender procedure is launched by the publication of an advertisement called a Contract Notice (indicating the rules governing the submission & presentation of tenders; the Exclusion, Selection & Award Criteria & the Technical specifications or Terms of Reference). An evaluation committee evaluates the tenders received on the basis of the published Exclusion, Selection and Award criteria. Once the outcome of the procedure has been determined all Tenderers shall be informed by means of an Award Notice.</p>						
<p>Annex IV, para 3.6</p>	<p>Estimated Value of the contract to be awarded determines the level of publication required :</p> <table border="1" data-bbox="1458 512 2085 584"> <thead> <tr> <th data-bbox="1458 512 1756 584">Supply & service contracts</th> <th data-bbox="1756 512 2085 584">Works contracts</th> </tr> </thead> <tbody> <tr> <td data-bbox="1458 584 1756 799"> <p>Between €150,000 & €300,000</p> </td> <td data-bbox="1756 584 2085 799"> <p>Between €300,000 & €3,000,000</p> </td> </tr> <tr> <td data-bbox="1458 799 1756 1050"> <p>€300,000 or more</p> </td> <td data-bbox="1756 799 2085 1050"> <p>€3,000.000 or more</p> </td> </tr> </tbody> </table>	Supply & service contracts	Works contracts	<p>Between €150,000 & €300,000</p>	<p>Between €300,000 & €3,000,000</p>	<p>€300,000 or more</p>	<p>€3,000.000 or more</p>
Supply & service contracts	Works contracts						
<p>Between €150,000 & €300,000</p>	<p>Between €300,000 & €3,000,000</p>						
<p>€300,000 or more</p>	<p>€3,000.000 or more</p>						
<p>With Local Publication</p> <p>Annex IV, para 3.3</p>	<p>When the estimated value of the contract requires local publication, the Contract Notice must be issued in a periodical published in the country of operation or, if this is not possible, by any other relevant means available.</p> <p>Time limit for receipt of Tenders = minimum 21 calendar days from the publication of the Contract Notice.</p>						
<p>With International Publication</p> <p>Annex IV, para 3.2</p>	<p>When the estimated value of the contract requires international publication, the Contract Notice must be published on a specialised website on the Internet or on the Contracting Authority's website <i>and</i> simultaneously in a periodical published at least in the country of operation or, if this is not possible, by any other relevant means available.</p> <p>Time limit for receipt of Tenders = minimum 30 calendar days from the publication of the Contract Notice.</p>						
<p>Procurement by the Negotiated Procedure</p>	<p>The negotiated procedure requires the Contracting Authority to invite simultaneously and in writing Candidates to negotiate the terms of the procurement contract. The number of Candidates to be invited depends on the estimated value of the contract or on the type of product being procured (e.g. Pharmaceuticals & Medical devices are subject to Special Rules). In any event, the number of Candidates invited should be sufficient to ensure genuine competition in the given circumstances.</p> <p>This procedure starts with a written communication or Invitation to Negotiate (containing the same information as a Contract Notice) sent to Candidates to inform them of the Contracting Authority's intention to launch procurement procedures. Once it has received the necessary amount of offers from the Candidates invited, which satisfy the selection criteria, the Contracting Authority may then negotiate the terms with one or more of the Candidates in order to obtain the best value for money possible.</p>						
<p>Based on 3 or more</p>	<p>When, based on the estimated value of the contract, Annex IV requires the use of the</p> <table border="1" data-bbox="1458 1390 2085 1425"> <thead> <tr> <th data-bbox="1458 1390 1756 1425">Supply and service</th> <th data-bbox="1756 1390 2085 1425">Works contracts</th> </tr> </thead> </table>	Supply and service	Works contracts				
Supply and service	Works contracts						

<p>bids</p> <p>Annex IV, para 3.5 (b)</p>	<p>Negotiated Procedure, the number of Candidates invited to negotiate should not be less than 3. If a sufficient number of Candidates to satisfy the selection criteria cannot be found an exception may be made, however, in any event, the number of Candidates invited shall be sufficient to ensure genuine competition.</p>	<p>contracts</p> <p>Between €60,000 & €150,000</p>	<p>Between €60,000 & €300,000</p>
<p>Based on 2 or more bids</p> <p>Recommended</p>	<p>When the estimated value of the contract is under €60,000 Annex IV does not require the use of any particular procedure, however where the value is still substantial (e.g. over €10,000) it is still recommended to use the Negotiated Procedure with at least 2 Candidates in order to try and obtain the best value for money. The aim is to retain some competition while, based on the principle of proportionality, checks on the Exclusion criteria may be relaxed; the documentation used may be simplified and there is no need for a formal evaluation committee.</p>		
<p>Based on 1 bid</p> <p>Annex IV, para 3.5 (c); 4.2; 4.6 & 4.7</p>	<p>"Single Bid Negotiated Procedure" – In the exceptional cases³⁰ listed below it is possible to award contracts based upon negotiation with a single Candidate:</p> <ul style="list-style-type: none"> • Urgent Actions (Annex IV Para 4.2); • Use of a Framework Contract (Annex IV, para 4.6); • Purchases from an HPC (Annex IV, 4.7); • Contracts valued below €10,000 (Based on proportionality principle it would be disproportionate to have more burdensome procurement procedure) • No suitable tenders/offers in response to an Open Tender or Negotiated Procedure (Annex IV; 3.5 (c), 1); • For technical or operational reasons or for the protection of exclusive rights (Annex IV; 3.5 (c), 2); • For the repetition of services, works or supplies linked to an earlier contract awarded not longer than one year ago (can only be renewed twice on these grounds) (Annex IV; 3.5 (c), 3); • For additional supplies, works and services not included in the initial contract not exceeding 50% of the value of the initial contract (Annex IV; 3.5 (c), 4); • For Property contracts after prospection of the local market (Annex IV; 3.5 (c), 5); or • For particularly advantageous contractual terms (e.g. from supplier winding up business or from the receivers or liquidators of a bankruptcy, an arrangement with creditors etc.) (Annex IV; 3.5 (c), 6). 		
<p>Based on Pre-Qualification</p>	<p>When procuring pharmaceutical products or medical devices the Special Rules in Chapter 4 of Annex IV provide an automatic exception to the normal procurement procedures irrespective of the value of the contract to be awarded. In this case the Contracting Authority must launch a Negotiated Procedure by</p>		

³⁰ The reasons for all procurement decisions should be documented and since these cases are considered exceptional they should be clearly documented together with proof of any internal authorisations or written instructions within the organisation providing a waiver from the general procurement practices.

Annex IV 4.3 (g)

inviting simultaneously and in writing only pre-qualified candidates meeting the set international standards. No minimum number of Candidates to invite is prescribed but whenever feasible the number of Candidates invited to negotiate shall be sufficient to ensure genuine competition.

4. SPECIAL RULES

4.1 Scope of the Special Rules

Special Rules present particular procedures for procurement in the context of Urgent Actions, Framework Contracts and purchases from HPCs which may be applied by all Contracting Authorities, independent of the Control mechanism applied, even when not foreseen in their procurement procedures. Furthermore, this Chapter develops the relevant provisions which must be applied by the Contracting Authority, regardless of the applicable Control Mechanism, for the procurement of medical equipment, medicines and food. Finally, this chapter explains the concept of using pre-established stocks.

4.2 Urgent Actions

Urgent Actions are those which meet immediate and unforeseeable humanitarian requirements generated by sudden natural or man-made disasters. Actions which have to start immediately and where delays in awarding procurement contracts would put the respect of the principles of humanitarian aid at risk can be considered as Urgent. The concept of urgency cannot be based on circumstances that can be attributed to the Contracting Authority.

In the framework of Urgent Actions, Contracting Authorities may place their orders, whatever the Estimated value of the contract, on the basis of a Single Bid Negotiated Procedure (see Chapter 3, above). Even though this simplified procurement applies in cases of Urgent Actions, respect of the Mandatory Principles remains obligatory.

These Actions must be identified in Article 8.3 of the Agreement as urgent. If not, partners using A-Control mechanism will have to request derogation from ECHO and Partners falling under the "P" Control mechanism will have to use appropriate derogation mechanisms in their own procurement procedures.

A number of questions may need to be addressed before initiating a Single Bid Negotiated Procedure in Urgent Actions:

- Do you know what, when and how goods, services and works will be required for the implementation of the Action?
- Does your organisation already have stocks of required supplies?
- Is there a Framework Contract that you can use?
- Do you envisage placing orders with an HPC?

If after this reflection, you need to initiate a Single Bid Negotiated Procurement procedure - this is a relatively simple procedure but the points listed in Chapter 3 of the Guidelines still need your attention.

4.3 Specific requirements for the procurement of pharmaceutical products and medical devices

Annex IV sets certain procedures in place aimed at safeguarding the quality and safety of pharmaceutical products and medical devices for human use procured by Contracting Authorities which should be the principle objective in any procurement exercise of these particular products.

It is necessary to underline the importance that DG ECHO attaches to an effective Quality Assurance of pharmaceuticals and medical devices used or distributed by Contracting Authorities for the implementation of Humanitarian Aid actions. Every activity in the procurement process should be carried out according the WHO standards and norms relating the quality assurance of pharmaceutical products which include Good manufacturing practices (GMP); Good distribution practices (GDP); Good storage practices (GSP); Good procurement practices based on the WHO's Model Quality assurance System for procurement agencies (MQAS).

In 2006, DG ECHO commissioned an independent Review of Quality Assurance Mechanisms for Medicines and Medical Supplies in Humanitarian Aid which was published as Guidelines available for public consultation.³¹

Particularly when buying products such as medicines the Partner should consider the use of HPCs to provide technical assistance or to supply pre-established stocks. This is advantageous, not only because Partners may apply the negotiated procedure with a Single Bid Negotiated Procedure to purchase from HPCs but the HPC assumes responsibility for ensuring high quality and genuine pharmaceutical products.

If no HPC is used the Partner must ensure that both pre-qualification of the supplier (including the manufacturing site in compliance of the International Norm ISO 9001:2008) and of the pharmaceutical product has been carried out based on the methodology and criteria outlined below.

(i) Pre-Qualification of pharmaceutical products and medical devices

Pharmaceutical products and medical devices procured by a Partner or HPC must be purchased on the basis of a **pre-qualification scheme**. Pre-Qualification of suppliers and their products involves screening both even before they are considered eligible for procurement in humanitarian aid Actions. Pre-qualification aims to make quality priority medicines available for the benefit of those in need.

Annex IV requires that the Pre-Qualification be implemented either by the World Health Organisation, (WHO); or a Stringent Regulatory authority; or a UN organisation; or a Non-Governmental Organisation, a Humanitarian Procurement Centre or a specialized commercial operator which meet WHO recommended norms and standards for carrying out pre-qualification.

The WHO has published a list of its prequalified medicinal products used for HIV/AIDS, malaria, tuberculosis and for reproductive health. These lists are already used by United Nations agencies — including UNAIDS and UNICEF — to guide their procurement decisions. . Contracting Authorities may therefore wish to consult the WHO's List of Prequalified Medicinal Products (<http://apps.who.int/prequal/>).

³¹ http://ec.europa.eu/echo/files/policies/evaluation/drugs_quality_guidelines.pdf

Since the WHO's List is currently limited to products related to HIV/AIDS, malaria, tuberculosis and for reproductive health, however, Contracting Authorities may also have to refer to other Pre-Qualification Schemes implemented by other above-mentioned entities which meet WHO recommended norms and standards for carrying out pre-qualification³².

Furthermore Annex IV gives more insight into the principles which should underlie any pre-qualification system used to procure pharmaceutical products and medical devices by a Contracting Authority:-

– reliance on the information supplied by the relevant National Drug Regulatory Authority;

For example, some of the WHO's Pre-Qualified products have been added to the list on the basis of:

- assessments and inspections conducted by the **USA's Food and Drug Administration (FDA)**. Provision is made for the exchange of relevant information between the US FDA and WHO (For more information see: <http://www.fda.gov/>); and

- assessments and inspections conducted by the **EU's European Medicines Agency (EMA)** according to Article 58. Article 58 of the European Commission (EC) regulation No. 726/2004 established a mechanism whereby the EMA may give a scientific opinion within the context of its cooperation with the WHO with respect to the evaluation of certain medicinal products for human use that are intended exclusively for markets outside the European Union. (For more information see: <http://www.emea.europa.eu/>)

– evaluation of product data and information submitted by manufacturers, including product formulation, manufacturing and test data and their results;

– general understanding of the production and quality control activities of the manufacturers and suppliers and of their commitment to the principles of Good Manufacturing Practices ("GMP");

GMPs are guidelines that outline the aspects of production that would affect the quality of a product. Many countries have legislation requiring that pharmaceutical and medical device companies must follow GMP procedures, and have created their own GMP guidelines that correspond with their legislation. Reference to GMPs in Annex IV or elsewhere does not necessarily restrict reference to any one set of GMP Guidelines, however the WHO's publications in this field are considered an authoritative reference point.

- assessment of consistency in the production processes and quality control activities through compliance with GMP, as described in the respective WHO publications and supplementary WHO GMP guidelines;

The WHO's version of GMP³³ is used by pharmaceutical regulators and the pharmaceutical industry in over one hundred countries worldwide, primarily in the developing world. The EU's GMP³⁴ (EU-

³² The WHO bases its pre-qualification programme on a strategy which applies unified standards of acceptable quality, safety and efficacy; comprehensively evaluates the quality, safety and efficacy of medicinal products, based on information submitted by the manufacturers, and inspection of the corresponding manufacturing and clinical sites; prequalifies quality control laboratories of pharmaceuticals; builds the capacity of staff from national regulatory authorities, quality control laboratories, and from manufacturers or other private companies, to ensure medicines quality.

³³ Full text available at http://whqlibdoc.who.int/trs/WHO_TRS_908.pdf

³⁴ See http://ec.europa.eu/enterprise/pharmaceuticals/eudralex/vol4_en.htm

GMP) enforces more compliance requirements than the WHO GMP, as does the FDA's version in the US. Similar GMPs are used in other countries, with Australia, Canada, Japan, Singapore and others having highly developed/sophisticated GMP requirements. In the United Kingdom, the Medicines Act (1968)³⁵ covers most aspects of GMP.

Since the 1999 publication of GMPs for Active Pharmaceutical Ingredients, by the International Conference on Harmonization³⁶ (ICH), GMPs now apply in those countries and trade groupings that are signatories to ICH (the EU, Japan and the U.S.), and applies in other countries (e.g., Australia, Canada, Singapore) which adopt ICH guidelines to the manufacture and testing of active raw materials.

All GMP guidelines follow a few basic principles.

- Manufacturing processes are clearly defined and controlled. All critical processes are validated to ensure consistency and compliance with specifications.
- Manufacturing processes are controlled, and any changes to the process are evaluated. Changes that have an impact on the quality of the drug are validated as necessary.
- Instructions and procedures are written in clear and unambiguous language.
- Operators are trained to carry out and document procedures.
- Records are made, manually or by instruments, during manufacture that demonstrate that all the steps required by the defined procedures and instructions were in fact taken and that the quantity and quality of the drug was as expected. Deviations are investigated and documented.
- Records of manufacture (including distribution) that enable the complete history of a batch to be traced are retained in a comprehensible and accessible form.
- The distribution of the drugs minimizes any risk to their quality.
- A system is available for recalling any batch of drug from sale or supply.
- Complaints about marketed drugs are examined, the causes of quality defects are investigated, and appropriate measures are taken with respect to the defective drugs and to prevent recurrence.

GMP guidelines are not prescriptive instructions on how to manufacture products. They are a series of general principles that must be observed during manufacturing. When a company is setting up its quality program and manufacturing process, there may be many ways it can fulfil GMP requirements. It is the company's responsibility to determine the most effective and efficient quality process.

- *availability of appropriate quality systems and Standard Operating Procedures;*
- *random sampling and testing of pharmaceutical products supplied;*
- *adequate purchasing mechanisms (see WHO's MQAS);*

³⁵ commonly referred to as "The Orange Guide", which is named so because of the colour of its cover; it is officially known as The Rules and Guidance for Pharmaceutical Manufacturers and Distributors.

³⁶ See <http://www.fda.gov/InternationalPrograms/HarmonizationInitiatives/ucm114571.htm>

The WHO's web-site gives detailed guidance on its standards and provides the text of WHO Model Quality Assurance System for procurement agencies ("MQAS"). The WHO's MQAS is intended to assist procurement organizations to establish quality assurance systems to enable them to procure safe, effective, quality pharmaceuticals. The document focuses on key activities associated with procurement, such as prequalification of products and manufacturers/suppliers, purchasing, storage and distribution of products. The long-term goal of the MQAS is the design and implementation of a uniform and harmonized system that will ensure procurement of pharmaceutical products of defined quality for supply to patients

(http://apps.who.int/prequal/info_applicants/procagencies/prequal_procagencies.htm)

The WHO's MQAS recommends that procurement agencies involved in any of these key activities develop their own internal quality assurance systems on the basis of the MQAS, including the elements described and the technical details specified. It is important to ensure that the system is adapted to reflect the activities of each specific procurement agency. The system should cover all aspects of the agency's activities and should be comprehensive enough to ensure that interrelated activities which may impact on the quality of pharmaceutical products are linked. The long-term goal of the MQAS is the design and implementation of a uniform and harmonized system that will ensure procurement of pharmaceutical products of defined quality for supply to patients. The guidelines are designed for procurement of pharmaceutical products but may also be applicable to the procurement of diagnostic kits or medical devices as appropriate.

– ***Good Storage Practices (GSP);***

The WHO has developed a document entitled **Guide to Good Storage Practices for Pharmaceuticals**³⁷, which has been elaborated in close co-operation with the International Pharmaceutical Federation (FIP) and which will thus probably replace the quite old FIP Guideline on Good Storage Practices of 1980.

The new WHO document on GMP-compliant storage represents a complement to existing GMP regulations issued by WHO. These new *Good Storage Practices* are valid not only for manufacturers of medicinal products, but also for pharmaceutical importers, contractors and wholesalers. The focus topics are Personnel; Premises and facilities; Storage requirements; Returned goods; Dispatch and transport and Product recall.

Some examples of GSP requirements:

- Precautions must be taken to prevent unauthorised persons from entering storage areas.
- Materials and pharmaceutical products must not be stored directly on the floor.
- There should be written programmes for many work routines (sanitation, pest control, measures in case of spillage, cleaning procedures for the sampling area, handling of returned goods, etc.).
- Computerised systems used for storage administration (incl. quarantine and storage of rejected materials) have to be validated.
- The traditional term "*First in – First out*" (FIFO) is now replaced by the more specific "*first expired/first out*" (FEFO) principle.
- In addition to the usual GMP requirements on the monitoring of storage conditions (temperature recording with calibrated equipment), temperature mapping should prove the uniformity of the temperature.

³⁷ http://whqlibdoc.who.int/trs/WHO_TRS_908.pdf#page=135

- Returned goods may only be returned to saleable stock after the quality has been re-evaluated. In case patients have returned pharmaceuticals, these must not under any circumstances be returned to the saleable stock.
- As for transport, especially the use of dry ice in cold chains is discussed (danger of damaging materials by freezing them accidentally) and the monitoring of transport conditions with the help of appropriate recording devices is recommended.

– ***Good Distribution Practices (GDP);***

Good Distribution Practice deals with the guidelines for the proper distribution of medicinal products for human use. GDP is a quality warranty system, which includes requirements for purchase, receiving, storage and export of drugs intended for human consumption. GDP regulates the division and movement of pharmaceutical products from the premises of the manufacturer of medicinal products, or another central point, to the end user thereof, or to an intermediate point by means of various transport methods, via various storage and/or health establishments.

In Asia, GDP consulting and auditing services are provided by companies like PSC and SGS. In Europe GDP is based on the Directive 92/25/EEC regarding the wholesale distribution of drugs for human consumption. EU Guidelines on GDP³⁸ exist and are widely consulted. In the US GDP is based on the Code of Federal Regulations 21 CFR 210/211, and USP 1079.

– *monitoring of customers' complaints and follow-up to remedy the shortcomings;*

– *adequate handling of complaints and recalls; and*

– *ongoing monitoring and re-qualification.*

(ii) Particular selection criteria for pharmaceuticals and medical devices

Annex IV sets particular Selection Criteria for pharmaceutical products and medical devices which when relevant should be provided or referred to for all pre-Qualified Candidates which are invited to negotiate in compliance with the principle of transparency and open competition.

- **Pharmaceutical products and medical devices** are specialised products for which certain standards must be kept throughout the supply chain. Contracting Authorities should be aware of the risk that **counterfeit products** may enter the legitimate supply chain. Vigilance is therefore required at every step of the supply and distribution chain to ensure that the risk of counterfeit products is minimized.

- Pharmaceutical products and medical devices procured by a Partner or HPC must respect **patents and national drug regulations** in the individual countries. This means that the Contracting authority is responsible for ensuring compliance with both the patents and the applicable drug regulations in the applicable countries, meaning the countries from which and to which the products are being transported or stored. If the products are being procured specifically for distribution to a known market, due diligence would dictate that the Contracting Authority, should where possible, ensure that the products are lawful in their country of destination. In certain turbulent situations it may be impossible to verify the regulatory norms in the country of destination, nevertheless,

³⁸ <http://ec.europa.eu/enterprise/pharmaceuticals/pharmacos/docs/doc2001/may/gdpguidelines1.pdf>

common sense and sensitivity to cultural and traditional values of the local population should be taken into consideration together with the overriding interests of the beneficiary patients.

- Pharmaceutical products and medical devices procured by a Partner or HPC must abide by **international norms and standards** for pharmaceutical products and medical devices. In this respect reference to EN or ISO Standards is always a good indication of adequate quality. The select criteria shall give priority to contractors that comply at least with one of the following certifications or equivalent EN46001/ EN46002; ISO13485/ ISO13488; ISO9001/ISO9002, ISO9001/2000; Japan QS Standard for medical devices 1128; United States QS (21 CFR part 820).

Furthermore, Medical Devices shall meet essential requirements as described by the Global Harmonization Task Force (GHTF); be produced in conformity with ISO standards and/or other equivalent standards as recognised by the GHTF; be marketed according to at least one of the following regulatory authorities: MPALS License (Australia), Device License (Canada), CE Mark (EU), Device License (Japan), and 510 k Device Letter (USA).

The references to international standards in Annex IV are neither exhaustive, nor definitive. Contracting Authorities shall take as a reference any internationally recognised standard that may be set and the updates and revisions of the standards mentioned herein.

- Pharmaceutical products and medical devices procured by a Partner or HPC must be purchased on the basis of an adequate **price comparison exercise**. Annex IV requires that the Contracting Authority consult the International Drug Prices Indicator³⁹ when procuring pharmaceutical products. When comparing the costs of pharmaceutical products, the cost of the whole treatment - not just the cost per unit- should be taken into consideration. Since the choice may also be influenced by other factors such as transportation charges, storage requirements and shelf-life, the total cost should be considered.

The International Drug Prices Indicator is regularly updated and provides a spectrum of prices from pharmaceutical suppliers and procurement agencies, based on their current catalogues or price lists and represents an essential tool to be used by Contracting Authorities to compare prices. The International Drug Price Indicator Guide aims to make price information more widely available in order to improve procurement of medicines of assured quality for the lowest possible price.

Despite the duty of Contracting Authorities to carry out sufficient price research it must always be recalled that the overriding aim of the procurement of pharmaceutical products and medical devices is to ensure high standard products which are authentic, effective and safe for patients. In order for pharmaceutical products and medical devices to be accessible to as many beneficiaries as possible they naturally cannot be prohibitively priced, however, Annex IV, makes it clear that a search for the lowest price should not be the main objective the procurement of these products.

(iii) The procurement procedures for pharmaceuticals and medical devices

Annex IV states that pharmaceutical products and medical devices procured by a Partner or HPC must be purchased following a Negotiated Procedure based on pre-qualification of potential Candidates. The practical result of this is that the purchase of medicine need not be submitted to open tender but that, in derogation to paragraph 3.6 of Annex IV, and irrespectively of the value of

³⁹ http://erc.msh.org/dmpguide/index.cfm?search_cat=yes&display=yes&module=dmp

the contract to be awarded, the Contracting Authority shall launch a negotiated procedure by inviting simultaneously and in writing only pre-qualified Candidates. (See Chapter 3.3)

Identification of Pre-Qualified Candidates

Before initiating this procurement procedure the Contracting Authority should already be in a position to ascertain that the products they wish to procure are pre-qualified under a WHO approved scheme or equivalent. Any potential Candidate must offer pre-qualified goods and must also meet WHO standards in matters of production, storage and distribution. Therefore even before launching a Negotiated Procedure based on Pre-Qualification the Contracting Authority must somehow have established a list of potential suppliers which comply with the set standards as detailed above.

In practical terms, the creation of a list of Pre-Qualified suppliers requires that the Contracting Authority study the market, in consultation with the web-site of the WHO and other international bodies and where appropriate in consultation and co-operation with other humanitarian actors which purchase similar products. After potential suppliers have been evaluated, those who satisfy the specified criteria are pre-selected and put on a list. The validity of the list should be reviewed periodically. Whenever a procurement contract is to be awarded, the Contracting Authority invites some or all of the Candidates on the list to present an offer for negotiation.

The creation of a list of pre-qualified candidates is therefore not in itself a procurement procedure; this takes place at a later stage, when a specific contract is about to be awarded. However, it should still be prepared and implemented in line with the Mandatory Principles that apply to procurement generally (transparency, proportionality, equal treatment and non-discrimination).

The Contracting Authority could, for example, refer on its Website and/or other appropriate channels that it maintains a list of Pre-Qualified Candidates generally describing the characteristics of the types of products and indicating the criteria which will be used for selecting Candidates, possibly through a reference to the Special Rules in Annex IV. Award criteria need not be specified at this moment.

Anyone who is interested in supplying the Contracting Authority should be given the opportunity to demonstrate that it fulfils the pre-qualification criteria set so as to enable it to be placed on the list. The requests submitted are assessed and only the Candidates selected will be included in the list of potential Candidates to receive an invitation to negotiate. At the same time, the other applicants should be notified that they have not been selected.

Invitation to Pre-Qualified Candidates to Negotiate

Whenever feasible, the number of candidates invited shall be sufficient to ensure genuine competition. In assessing to what extent competition can be opened the market situation of each product, the nature of the medicines and medical equipment, and the critical dates for delivery may determine the numbers of candidates approached. Choices are restricted by the characteristics of medicines and medical equipment as some are either single-source or limited-source products. Other pharmaceutical products may be multi-source but effectively restricted to limited sources in many settings.

Procedurally the steps to be covered are similar to those used in a standard Negotiated Procedure (Chapter 3 above) with the difference that another step is added in the form of pre-qualification. In

any case, the Mandatory Principles of procurement must be observed so transparency and equal treatments of equal candidates should be upheld.

Table 8 - Overview of the Negotiated Procedure based on Pre-Qualification

Step of the procedure	Short description, requirements, limitations or remarks	Time requirement and deadlines
Pre-qualification of Candidates	Contracting Authority must either have available or prepare a list of Pre-Qualified potential Candidates.	List to be kept updated & reviewed periodically.
Dispatch of Invitation/s to Negotiate.	Contracting Authority to invite simultaneously and in writing (including e-mail or fax) the selected pre-qualified Candidates. (at least 3 pre-qualified Candidates should be invited to negotiate provided that a sufficient number satisfies the pre-qualification criteria. If only one pre-qualified candidate supplies the goods required then only one need be invited to negotiate.)	10 working days would normally seem sufficient as a deadline to receive offers from invited Pre-Qualified Candidates.
Clarifications, answers to questions	Responses to questions should be made available as soon as possible to all Candidates while keeping the identity of the inquirer anonymous.	Information requests received less than 5 days before the deadline may be legitimately rejected.
Receipt of offers	A mechanism for registering the exact date and time of receipt should be established.	Generally not earlier than 10 working days after dispatch of the Invitation to Negotiate.
Assessment of Eligibility & Selection Criteria	The exclusion criteria is checked to ensure that the Candidate is isn't excluded on grounds of ineligibility or due to Conflict of interest etc.	Generally not earlier than 10 working days after dispatch of the Invitation to Negotiate.
Corrections to offers	Candidates may be asked for clarification or to correct clerical errors in their offers but offers may not be substantially altered.	
Negotiation stage	Contracting Authority negotiates the terms of the contract with the selected pre-Qualified Candidates to obtain the best terms and price possible.	
Award Decision	Once the negotiation process has been concluded the final decision on the winning Candidate is taken.	
Award Notice	An Award Notice should be sent to all Candidates to inform them of the outcome of the negotiations.	
Signature of the contract	The contracts shall be signed on the basis of the terms and conditions negotiated with the winning Candidate.	After Award Notice - some time should be given for complaints from unsuccessfully Candidates.
Proper filing of the documentation	All appropriate documents to be kept safely on file for possible audits, verifications or on-site examinations.	To be kept for 5 years.

4.4 Food aid procurement rules and procedures

Annex IV takes into account both the type of food to be procured and the overall value of the contract to be concluded in order to establish appropriate and proportional procedures for the procurement of food. This section of the guidelines follows the same principle and the applicability of the procedures established herein is determined by value of the contract and by its object.

Falling under these special rules are only those contracts whose object is the purchase of food for human consumption (fresh and dry food), including the purchase of specialised items such as

'fortified'; 'high-calorie' or 'supplementary foods' (such as ready-to use corn, wheat or soya blends, high-energy biscuits or food bars) for the prevention or avoidance of malnutrition.⁴⁰

On the other hand the purchase of "therapeutic food", designed for specific, usually nutritional, therapeutic purposes, should be considered as medicines and subject to the Special Rules for procurement in Section 4.3 above. Included in this category of products are milk formulas, such as F-100 and F-75 (also known as Formula 100 and Formula 75) - therapeutic milk products designed to treat severe malnutrition. Other examples of therapeutic foods include pastes such as Plumpy'nut (a high protein & energy peanut-based paste in a foil wrapper) categorized by the WHO as a Ready-to-Use Therapeutic Food (RUTF) and BP-100 (a nutrient-fortified wheat-and oat bar).

The purchase of commodities such as corn, wheat or soy products (sold separately – not blended) intended for **human consumption** shall be done in accordance with the Special Rules applicable to the procurement of Food and not those concerning Pharmaceutical products.

The purchase of commodities such as corn and wheat products etc intended for **agricultural purposes (seeds) or for animal consumption** shall be done in accordance with the applicable general rules and not the Special Rules concerning either Food or Pharmaceutical products.

The procedure to be followed by contracting authorities when awarding procurement contracts for an amount of €150,000 or higher shall be in conformity with these Guidelines and shall include in the tender documents the requirements identified in these Guidelines. For contracts of lower value, contracting authorities may still decide to follow those instructions of the guidelines pertinent for the procedure they intend to launch, having due regard to the proportionality of the administrative effort required and the potential risks of all sorts.

Paragraph 4.4 (c) of Annex IV provides added flexibility in the procurement of fresh food with regard to ascertaining the relevant threshold for procurement purposes to be used by Partners subject to an "A" Control mechanism. Exceptionally for fresh food this paragraph states that when the object of the contract is the supply of fresh food and the contract is divided into several lots taking into account the seasonal availability of products, each one of the lots will be considered individually, and not aggregated, in order to establish the applicable threshold. This is based on the understanding that fresh food is normally purchased locally through a number of low to medium value contracts with a variety of suppliers taking into account the seasonal availability of products.

The splitting of the fresh food purchases into a number of lots and different contracts with multiple local suppliers may widen the choice and variety of products, limit the risks of price inflation, reduce overall costs (reduced transport costs) and inject cash into the local economy favouring economic recovery. Other types of food, such as dry food prepared/pre-cooked food rations and canned food are more suitable for procurement procedures designed to award a medium to high value⁴¹ contract to a single supplier. These contracts may include also international transport, insurance and storage. Should the Contracting Authority split into lots the procurement of this type of food the usual rules for the calculation of the applicable threshold in Paragraph 3.4 apply meaning that the value of all lots together must be taken into account for the overall evaluation of the applicable threshold.

⁴⁰ For some examples of these food products visit <http://www.wfp.org/photos/gallery/nutritional-products-used-wfp>

⁴¹ €150,000 or higher

(i) Particular selection criteria for food products

Particular Selection Criteria for food may need to be set which when relevant should be provided in advance or referred to for all Tenderers or Candidates in compliance with the principle of transparency and open competition.

When drafting tender specifications, contracting authorities have to ensure that the quality standards laid down in the domestic legislation of the country where the Action is implemented are met. Where local legislation does not exist, internationally recognised standards such as *Codex Alimentarius* (see *Glossary*) could be taken as reference to the extent possible.

The food distributed in the framework of humanitarian Actions shall, as much as possible, also match the nutritional habits of the beneficiary population.

In order to provide a higher level of legal security to the Parties, (contracting authority and awarded supplier), procurement procedures for the award of contracts of a value of €150,000 or higher, shall include, other than the usual information and required technical specifications, the following specifications:

- the net weight of the lots;
- the proposed price per net metric tonne of product at the place of delivery as specified and in accordance with the conditions laid down in the tender documentation;
- where the invitation to tender is for a contract to supply a maximum quantity of a given product for a specific monetary amount, the net quantity of products offered;
- where relevant, the transport costs from the place of loading to the place of delivery for the specified delivery stage;
- the delivery deadline or delivery timeframe. Where appropriate, the tender documentation may specify a date before which any delivery will be considered premature;
- where relevant, the contractual Incoterms delivery conditions applicable to the supply contract, and include the applicable Incoterms edition; and
- where relevant, the procedures arising from the intervention of a Monitoring Agency.

Contracting authorities may wish to include reference to these requirements also for awards under €150,000 using negotiated procurement procedures. Suppliers shall perform their obligations in accordance with the contract and the tender or offer documentation, including those arising from the Incoterms, where relevant, and the ones arising from their tender or offer.

(ii) Monitoring Agencies

When the implementation of a non-urgent Action requires the award of a food supply contract for a value higher than €300,000 Annex IV, paragraph 4.4 (e) requires that the Contracting Authority contract a Monitoring Agency.

The Monitoring Agency shall be responsible for verifying and certifying the quality, quantity, packing and marking of the goods to be delivered in respect of each supply and issuing a certificate of conformity.

On the basis of a duly justified request of the Partner, the Commission may waive the obligation of contracting a monitoring agency for example for fresh food supply contracts or in urgent cases where the appointment of a Monitoring Agency would be operationally harmful. The Specific Conditions of the Agreement signed with the Commission shall include a derogation in this respect (Article 8.2 of the Agreement).

Contracting authorities shall select and award contracts to Monitoring Agencies in accordance with the rules applicable to the award of service contracts. The award of the service contract shall be prior to the award of the food supply contract. When the Contracting Authority regularly engages Monitoring Agencies, a suggestion would be to conclude a Framework Service Contract, rather than launching *ad hoc* tender procedures in each case. As soon as the food supply contract has been awarded, the Contracting Authority shall inform the supplier of the choice of the Monitoring Agency. Under no circumstances can a Monitoring Agency be involved, in one way or the other, in the selection of suppliers of the procurement procedure that it will monitor. When the Partner considers the use of HPCs for the procurement of food the HPC assumes the responsibility of ensuring the required quality and respecting the appropriate procedures.

The contract between the Contracting Authority and the Monitoring Agency shall ensure that the Monitoring Agency commits itself to:

- maintain a complete independence, not to accept any instructions from any other party than the Contracting Authority or its representatives, in particular not to accept instructions from the supplier, the consignees or any of their representatives, or other intermediaries involved in the operations under consideration;
- prevent any Conflict of interest between its activities under the contract with the Contracting Authority and any other activity it undertakes with a party involved in the operations under consideration;
- carry out its checks based on the terms of reference set. These should comply with the following international monitoring standards:
 - provisional check on quality conformity shall be carried out before loading and a check on quantity when the goods are loaded. When the provisional check is complete, the Monitoring Agency shall issue a **provisional certificate of conformity** to the supplier, subject to reservation if necessary. Transport from the place of loading can only start after the provisional certificate of conformity has been issued; and
 - final check after discharge at the place of delivery indicated in the supply contract. When the final check at the contractual place of delivery is complete, the Monitoring Agency shall issue a **final certificate of conformity** to the supplier specifying in particular the date of completion of the supply and the net quantity supplied; such certificate shall be subject to reservations if necessary.
 - The Monitoring Agency shall invite the representatives of the supplier to be present at the checking operations, in particular for the **taking of samples to be used for analyses**. The taking of samples shall be carried out in accordance with professional practice. When sampling is undertaken, the Monitoring Agency shall take two additional samples which shall be kept under seal at the Contracting Authority's disposal for the purpose of any further check or in the event of objections being raised by the supplier. The cost of the goods taken as samples shall be borne by the supplier. The supplier shall bear any financial consequences in the event of qualitative shortcomings or late presentation of the goods for checking.

The costs of the checks referred to above shall be invoiced to and paid by the Contracting Authority and are direct Eligible costs of the Action.

The consignee/recipient of the goods shall sign the transport way bill for reception of the goods at the contractual delivery place and enter its observations on the physical state of the goods and packaging as visually established. The Contracting Authority or its representative shall issue a taking-over certificate to the supplier without delay after the goods have been supplied at the contractual delivery place and the supplier has provided the original of the final certificate of conformity issued by the Monitoring Agency and with a pro forma invoice establishing both the value of the goods and their transfer to the Contracting Authority.

Where the Monitoring Agency after making the final check at the contractual place of delivery issues a reasoned 'notice of reservation', it shall notify the supplier and the Contracting Authority in writing as soon as possible. If the supplier wishes to dispute the findings he shall do so within five working days of dispatch of this notice.

If the supplier or the Contracting Authority object to the findings of a check, the Monitoring Agency shall arrange for a review inspection involving, according to the nature of the objection, a review sampling, review analysis, and/or a reweighing or rechecking of the packaging. The review inspection shall be carried out by an agency or laboratory designated by agreement between the supplier, the Contracting Authority and the Monitoring Agency. The contract should foresee that the costs of this review inspection shall be borne by the losing party.

If the final certificate of conformity is not issued after the checks or review inspection has been carried out, the supplier shall be obliged to replace the goods. The replacement and related checks costs shall be borne by the supplier.

Obligations related to the use of a Monitoring Agency

- Where the Contracting Authority engages the services of a Monitoring Agency the Contract Notice or Invitation to Negotiate should also specify the obligations (e.g. right of access) imposed upon the supplier resulting from the use of the Monitoring Agency to enable the Monitoring Agency to perform its duties.
- The contract with the supplier has to indicate the **accepted tolerances** for weight and / or quantity delivered at the contractual place of delivery.
- The contract terms with the supplier shall specify the **procedure for establishing reductions** for quality deviation as well as reductions for delivery beyond the contractual delivery period or date.

4.5 Pre-established stocks

Paragraph 4.5 of Annex IV provides that the Contracting Authority or its Implementing Partners may incur expenditure before the date of submission of the Action proposal to DG ECHO where such expenditure is related to the constitution of stocks of goods and equipment for use in connection with the Action for which DG ECHO's financial contribution is awarded. This expenditure is an eligible cost provided that the procurement rules of the Contracting Authority had been correctly applied and with due regard to the Mandatory Principles set out in Chapter 2 of Annex IV.

The wording of Annex IV means that only goods purchased *prior* to the submission of the Action proposal are qualified as eligible "pre-established stock". Once a proposal is submitted, the start

date for eligibility determines the eligibility. In case a later eligibility date than the date of submission of the first proposal has been agreed, this eligibility date must be respected. Stocks constituted before this eligibility date but after the submission of the proposal are therefore not eligible.

In practice and in order to ensure eligibility of stocks this means that the Partner should purchase the stock either:

- before the submission of the action proposal; or
- or during the eligibility period.

The application of the Partner's own procurement rules does not change these cost eligibility rules.

(i) Eligible Costs when using pre-established stock

Stocks without replenishment - In case the Partner uses its pre-established stock without replenishing that stock, DG ECHO will reimburse the costs on the basis of the historical costs of purchase (as any other relevant costs when applicable, e.g. maintenance, storage, insurance and packaging costs). The Partner may include the historical invoices of the costs in the Final Financial Report. This only applies to stocks that have been funded by the own funds of the partner or another organisation and does not cover stock whose stockpiling has been funded by DG ECHO or any other donor (see Stockpiling as an activity in the Action, below).

Stocks with replenishment - DG ECHO will reimburse the costs on the basis of the replenishment costs. The Partner will keep the invoices for the purchase of the stocks that must be replenished and the replenishment should be clearly indicated in the final reports.

(ii) Stockpiling as an activity in the Action

The use by a Partner or its own stock of goods or equipment should not be confused with the activity of "stockpiling" which, depending on the applicable Financing Decision may be considered in itself an Action eligible for funding.

Stockpiling as an Action in its own right is the constitution of *emergency goods* and equipment not intended for immediate use, and without a direct link to any well-identified humanitarian crisis, with the objective of reinforcing the emergency/disaster preparedness in third countries. This type of activity can only be eligible if ECHO's Financing Decision on which the Action is based includes the reinforcement of disaster preparedness or the saving and preservation of life during emergencies and their immediate aftermath amongst its specific objectives, in application of Article 2(a) and/or 2(f) of the Humanitarian Aid Regulation. The stockpiling activity needs to be clearly identified in the Single Form (section 4.3.2) at the moment of signature.⁴²

4.6 Framework contracts

⁴² Before signing the Agreement with DG ECHO, it should also be clearly defined how the stocks will be handled in case the disaster or emergency does not happen and in case the stocks have only a limited period of usability. In order to avoid double financing, the Partner must also commit itself to clearly identify these stocks when they are used in other actions not funded by ECHO (funded by the European Commission or by other donors) at the moment the disaster or emergency happens. Stocks managed by a Partner and constituted with DG ECHO's support shall be available to all DG ECHO Partners. The costs of replenishment of the stocks will not be covered by the stockpiling agreement, but will be financed by the agreements related to the emergency.

Paragraph 1.15 of Annex IV defines a Framework contract as "*a contract concluded between a Contracting Authority and one or several economic operators for the purpose of laying down the essential terms governing a series of specific contracts to be awarded during a given period, in particular as regards the duration, subject, prices, conditions of performance and the quantities envisaged*".

In contrast to direct contracts, Framework contracts merely set out a performance framework (in general, the characteristics and price of the goods or services that the economic operator is prepared to provide). The other basic elements of the contractual relationship are defined at a later stage in a specific contract, which is often an "order form" indicating the quantities and date of performance. Framework contracts therefore give rise to no obligation for the Contracting Authority to award specific contracts.

Framework supply contracts, like framework service contracts, must stipulate the parties, the duration, the subject and the method of making particular purchases.

In practice, Framework contracts are for a precisely defined subject, but where the exact quantities and delivery times cannot be indicated in advance. For example in the case of project evaluations, the characteristics of the required service (evaluators' profile, evaluation methodology, available teams, duties, reports, etc.) can be indicated in advance; however, the location and duration of each assignment and the number of evaluators needed cannot be determined in advance.

Other defining characteristics of Framework contracts are their multiannual duration (in fact, some Partners refer to them as long-term agreements) and the fact that they need not be linked to a specific project or action.

(i) Multiple framework contracts

Contracting authorities may also conclude multiple Framework contracts, which are separate but identical contracts, with a number of economic operators. If a Framework contract for a given subject is concluded with more than one economic operator, the minimum number of economic operators must be at least three; provided enough satisfy the selection criteria and/or enough eligible tenders or offers satisfy the set criteria.

Depending on the subject of the contract, the following conditions could be the reasons for choosing multiple Framework contracts:

- if the contract cannot be broken down into lots because the products or services required are of the same type;
- if the security of supply is endangered, either because of the scale of requirements in the light of what the market can provide or because the work is urgent and economic operators would otherwise have an extremely short time in which to respond.

After evaluating the tenders and offers received, Contracting Authorities may rank the economic operators who submitted Tenders or Offers in descending order with a view to establishing the list of contractors (in line with the maximum number announced beforehand) and the sequence in which they will be offered work when orders are placed (framework contract with cascade). The Contracting Authority contacts the economic operators at the top of the list and, if that contractor is unavailable for reasons which do not entail terminating the contract, it contacts the second economic operator, then, if necessary and under the same conditions, the third.

Contracting Authorities may also opt for multiple Framework contracts with reopening of competition. These are awarded on the basis of indicative offers and without any priority amongst contractors. Moreover, evaluation of award criteria when awarding the Framework contract is independent of evaluation of award criteria when awarding a specific contract. Consequently, the criteria may be different in both cases; nevertheless, both sets of criteria have to be listed in the tender specifications or in the invitation to negotiate when awarding the main contract.

(ii) Procurement procedure for Framework Contracts

The procurement procedure for the award of framework contract will be chosen according to the estimated value of the framework contract for its whole duration (maximum 5 years). There are no requirements regarding the minimum period for submitting specific offers. The time limit must, however, be long enough to allow contractors to prepare their offers in appropriate manner.

In order to ensure the full transparency of the procedure, there is an obligation of publicity. Partners shall provide ECHO, in the context of the annual assessment procedure, the list of all the Framework contracts in force in ECHO funded actions and the amounts of the specific contracts concluded for each of them. Furthermore, the information concerning the procurement procedures followed by the Partner in the final report must indicate where a framework contract has been used and the subject and amount of the specific contract.

(iii) Award of specific contracts based on Framework contracts

The exact arrangements for the award of specific contracts must be indicated in the specifications of the specific Contract Notice or Invitation to Negotiate. All specific contracts, including those based on multiple framework contracts, must comply with the Mandatory Principles of Transparency, Proportionality, Equal treatment and non-discrimination. Contracting authorities shall take all necessary measures to ensure genuine competition and procurement procedures free of any situation of Conflict of interest.

Specific contracts based on framework contracts are awarded in accordance with the terms of the framework contract and only between the contracting authorities and the economic operators originally party to the Framework contract.

- Where a Framework contract is concluded with a single economic operator, the specific contracts are awarded within the limits of the terms laid down in the Framework contract.

However, before awarding those specific contracts, contracting authorities may consult in writing the economic operator party to the Framework contract, requesting it to supplement its tender if necessary (provided no substantial changes are made to the terms laid down in the Framework contract).

- Where specific contracts are based on Framework contracts concluded with a number of economic operators they may be awarded:
 - Without reopening competition, by applying the terms laid down in the Framework contract. This is usually done by the “cascade” method, i.e. by first contacting the economic operator whose tender was considered the best and then going to the second only if the first is not capable of or interested in supplying the goods, services or works in question.
 - Where not all the terms are laid down in the Framework contract, after the parties have again competed on the basis of the same and, if necessary, more precisely formulated terms and,

where appropriate, on the basis of other terms referred to in the specifications for the framework contract.

Reopening of competition on the basis of a multiple framework contract

The principal aim of reopening competition is to benefit from any favourable development (change in the needs of the Contracting Authority, technological progress, fall in prices, etc.) on the specific market (e.g. IT hardware or services) and to reduce possible dependence on contractors. Reopening competition allows a swift response to such developments. The pressure of competition between contractors under the same framework contract helps to maintain the quality and speed of response of the contractors and to avoid the possibility of a single contractor abusing its position as sole contractor or first contractor in the cascade.

Renewed competition should guarantee the necessary flexibility and compliance with the mandatory principles of transparency, proportionality, Equal treatment and non-discrimination and ensure genuine competition.

Advantages and limitations of Framework contracts

Framework contracts can greatly improve the efficiency of the supply chain management of Partners. The perennial aspect of framework contracts helps building robust relations with reliable suppliers ensuring quality, timely deliveries and costs reductions.

Contracting authorities should envisage concluding *Framework service contract* or *Framework supply contract* whenever it is envisaged to procure the same type of service or supply regularly but the precise volume and timing of delivery cannot be defined at the outset.

On the other hand, if the subject and timing can be defined at the outset and it is not foreseen to repeat the tender procedure in the short term, contracting authorities should envisage to award direct contracts through the applicable tender procedure. Moreover, direct contracts should be envisaged when the operational circumstances make it impracticable to resort to a framework contract.

Moreover, having in mind the nature of the subject of the contract the Commission requires the use of direct contracts for works and property.

Table 9 – Use of Framework Contracts

Frequency Subject	One off procedure or seldom	Recurrent
Services	Service contract. For the procurement of services and the precise volume and timing of delivery can be defined at the outset	Framework service contract. For the procurement of a series of services but the precise timing of delivery cannot be defined at the outset, the specific conditions will be laid down in “order forms”
Supplies	Supply contract. For the procurement of supplies and the precise volume and timing of delivery can be defined at the outset	Framework supply contract. For the procurement of a series of supplies but the precise volume and timing of delivery cannot be defined at the outset, the volume and other specific conditions will be laid down in “order forms”

Works	Work contract. For the execution of works to reconstruct a building, a road, a water facility, etc, rehabilitation of housing or the construction of temporary shelter	Not possible to have a framework contract
Property	Property contract. Renting of all or part of a building	Not possible to have a framework contract

In order not to limit competition, the duration of framework contracts has been limited by Annex IV to a maximum of five years. Renewed competition should guarantee compliance with the general principles of transparency, proportionality, Equal treatment, non-discrimination.

In sectors subject to rapid price movements and technological change, framework contracts without reopening of competition must contain a clause either on a mid-term review or on a benchmarking system.

Contracting authorities may not misuse framework contracts in order to hinder, limit or distort competition. This situation would arise:

- Where the subject of the contract, the quantities involved and the work schedule can be precisely indicated when the specifications are drawn up.
- Where the prices of products or services can fluctuate unpredictably (IT hardware, paper, raw materials, etc.), and a review clause is not envisaged a (framework contract with reopening of competition) nor the reopening of competition between contractors. After the mid-term review, if the conditions initially laid down are no longer geared to the new prices or technology, the Contracting Authority may no longer use the framework contract concerned and must take the appropriate measures to terminate it.
- Where the framework contract would not satisfy the obligation to provide a comprehensive, clear and accurate definition of the subject of the contract.
- Where the conditions for a multiple framework contract were not met.

Contracting authorities are strongly advised to use framework contracts only in the specific situations in which this approach is justified and does not infringe the procurement rules.

4.7 Humanitarian Procurement Centres

The concept of HPCs is introduced and explained in general terms by Annex IV which provides that the procedure for the assessment and control of HPCs shall be detailed in these Guidelines.

These Guidelines therefore provide more information on the required legal personality of HPCs and the distinction between HPCs and other specialised procurement entities or departments as well as on the requirements and obligations required for obtaining and maintaining HPC recognition by DG ECHO. This section also provides practical advice and a schematic overview to assist Partners in dealing with HPCs and lays out important rules of a financial and contractual nature which govern their relationship.

DG ECHO aims, as part of its wider policy objective of guaranteeing safer and more efficient procurement, to develop further the concept of HPCs and to facilitate humanitarian organisations' recourse to their services. DG ECHO intends to make HPCs and their sectors of specialisation better known to its Partner organisations and other donors. Through this pro-active approach, DG ECHO intends not only to facilitate efficient and safe procurement procedures for its Partners, but also to contribute to the reduction of overall costs related to procurement in humanitarian aid.

(i) Characteristics of Humanitarian Procurement Centres

HPCs are entities specialised in buying emergency and health supplies and related services for use by others in humanitarian aid operations. Before an HPC is recognised by DG ECHO it is screened to ensure that it fulfils the requisite criteria set by DG ECHO to ensure high quality in operational efficiency and open procurement procedures.

Definition & Legal Personality

HPCs are “*not for profit organisations specialised in the technical and commercial management of supplies and services necessary for the implementation of humanitarian Actions. They can provide Technical Assistance in procurement to Contracting Authorities or supply pre-established stocks, purchasing or logistics capacity*”⁴³.

As regards its legal personality, an HPC may be either: - A specialised humanitarian procurement organisation set up according to the national legislation of its country of establishment (which may be located outside the European Union); or

-A specialised supplies, logistics or procurement department or service of an International Organisation⁴⁴, including international public sector organisations set up by intergovernmental agreements, specialised agencies set up by such organisations (e.g. the UN and its agencies), the International Committee of the Red Cross and the International Federation off the Red Cross and Red Crescent societies.

In any case, to be eligible as an HPC, an entity **must**:

- Be a not-for-profit organisation;
- Be willing and able to procure products and services for any other humanitarian organisation in an open way and on an equal treatment basis regarding, for example, price, performance and quality;
- Have as a core function the management of the supply chain either for specific areas of trade (medicines, shelter supplies, food etc.) or for the general supply of relief items and humanitarian aid services; and
- Have the administrative and financial capacity to perform its procurement-related activities and services in accordance with the best practices in the sector.

⁴³ Annex IV of the FPA 2008, paragraph 1.15

⁴⁴ Specialised procurement departments of International Organisations must submit to strict rules of autonomy in handling overheads and similar costs when procuring on behalf of their own organisation or when providing services to other departments of the same organisation.

What HPCs supply

The online HPC Register on DG ECHO's web-site provides a list of the organisations which currently benefit from the recognition by DG ECHO as HPCs as well as an indication of their main areas of activity and the countries to which they supply goods or services. This Register does not entail any contractual relationship between DG ECHO and the HPC.

Depending on their areas of specialisation, the HPCs recognised by DG ECHO supply goods or services in one or more of the following areas: Pharmaceutical products & medical supplies; Medical devices & equipment; Prosthetic Technology; Veterinary; Food; Livelihood support; Water & Sanitation; Shelter & Non-Food items; Engineering, Radio and Telecommunications; Transport; Administration and Services.

With regard to the type of products or services that they usually provide, HPCs can be:

- *Stockholding*: - holding stocks of supplies which they can make directly available to Partners; or
- *Non-stockholding*: - not holding their own stocks but purchasing the supplies on behalf of their client, often on the basis of framework contracts with suppliers; and/or
- *Service providing*: - offering consultancy services regarding procurement like offering advice on tender procedures, custom clearances, quality assurance, or organising procurement procedures for Partners without actually purchasing on their behalf..

An HPC can provide a combination of these services so while some HPCs are specialised in a given type of product (for instance, medicines and medical equipment) others may offer a wider choice of products and services.

- Procurement entities which cannot be recognised as HPCs.

Different forms of entities providing procurement services exist, however, not all of these are eligible for DG ECHO recognition as HPCs. Partners and international humanitarian organisations may still use these services of these entities however they should be aware that the simplified procedures applicable when dealing with an HPC do not extend to dealings with these entities. In other words, unless a procurement entity is a recognised HPC, listed on ECHO's web-site, the usual procurement procedures apply.

The following entities are not HPCs:

- Specialised supply chain management departments ("**procurement departments**") of humanitarian organisations procuring only or mainly on behalf of their own organisation and they don't have independent legal personality. Procurement departments may organise joint procurement procedures or establish other forms of contingent collaboration with other organisations; this activity, however, does not qualify them as HPCs.

If Partners choose to deal with a procurement department of an unrelated organisation, they must ensure that the normal procurement procedures outlined in Chapter 3 of these Guidelines are followed. Furthermore should there be any invoicing between departments of the same organisation, DG ECHO will not consider financial profit or surpluses generated in these transactions or overhead costs as eligible costs of the action it funds (only real costs can be charged).

- Related Procurement Centres. A Related Procurement Centre ("**RPC**") is a professional organisation with independent legal personality offering supply chain management related services, including pre-constituted stocks, to several humanitarian organisations on the basis of exclusivity agreements, membership or other selective criteria. Organisations benefiting from the services of a RPC are called associated organisations and, are normally bound to the RPC by a *structural relation*⁴⁵. Therefore, RPCs may not be open to all humanitarian organisations nor apply equal treatment to all their clients. In most cases the management of an RPC is controlled by its associated organisations which decide its operational strategy, internal organisation, financing, etc and it therefore lacks the required independence and openness to be an HPC.

When a RPC provides supplies or services to its associated humanitarian organisations on not-for-profit basis DG ECHO considers it equivalent to a procurement department and not an HPC.

If Partners choose to deal with a RPC, they must ensure that the proper procurement procedures are followed. The applicable procedure will depend on considerations such as whether the Partner is associated to the RPC or not. In any case, if a RPC generates a financial surplus this surplus cannot be used for funding, running or operational costs of the associated organisations.

- The invoices paid to a RPC by its **associated organisations** are equivalent to internal transactions within departments of the same organisation. No financial profit or surpluses should be generated in these transactions and overhead costs can not be charged (only real costs can be charged). Administrative fees are eligible if they correspond to real costs. Associated organisations do not have to launch a competitive tender procedure for awarding a contract to a RPC when the subject of contract is either the supply of pre-established stocks or supplies or services provided on the basis of framework contracts concluded by the RPC with third parties. On the other hand, should the RPC need to launch an ad hoc tender procedure for serving the procurement order of an associated organisation in the framework of an ECHO funded action, the relevant procurement rules and procedures applicable to the associated organisation are to be followed. It will be the responsibility of the DG ECHO Partner organisation to inform the RPC and to ensure that the correct procedures have been applied.

When **non-associated organisations** wish to engage the services of a RPC the normal procurement procedures have to be followed and these humanitarian organisations shall award contracts to RPC in accordance with the applicable tender procedure.

- Buying Agent (Annex IV, paragraph 1.16) is a commercial, profit-making entity providing technical assistance in the field of supply chain management (in particular procurement) to humanitarian organisations on the basis of a service contract. The award of contracts for the performance of this service must be done in accordance with the applicable rules established in Annex IV. Use of Buying Agents to advise on, arrange or manage a procurement process does not remove from Contracting Authorities the requirement to comply with its obligations under Annex IV. Partners wishing to recourse to this type of service provider would be advise to establish a long-term relationship on the basis of a Framework contract awarded following a competitive procedure.

⁴⁵ Structural relations are those linking different autonomous organisations sharing core values and mission, such organisations members of the same "family" or members of the same "movement". Relations between RPC and its associated organisations have a long-term perspective rather than ad hoc basis.

Table 10 - Overview of supply chain management options

The different supply chain management options at a glance:

	HPC	Procurement Department	RPC	Buying Agent
Legal personality	Yes	No	Yes	Yes
Equal treatment, open to all	Yes	No	No	Yes
Autonomy	Yes	No	No/Partial	Yes
Profit Making	No	No	No/Yes	Yes
Competitive Open Tender	Single Bid Negotiated Procedure	No	Single tender /Yes	Yes

(ii) The relationship between DG ECHO and HPCs

As the Service of the European Commission responsible for the funding of humanitarian aid actions, it is the responsibility of DG ECHO to set the procedure for the assessment of organisations wishing to offer their services as HPCs. In this respect, DG ECHO will assess the procedures on procurement and internal control as well as the financial viability of the candidate HPC and hold a register of recognised HPCs.

Once an HPC is recognised it will be subject to periodic checks and on-site examinations aimed at providing assurance to ECHO that the procurement procedures adopted by the HPC are in accordance with the requirements/principles of Annex IV of the FPA 2008.

Nevertheless there is no contractual relation between DG ECHO and the HPCs it recognises. DG ECHO will not accept any liability for failures to respect contractual obligations by HPCs or its Partners. Furthermore, the recognition by DG ECHO of a given organisation as HPC does not entail any certification of quality nor can it be presented as a system of preferred vendors. Any misrepresentation to third parties of the scope or the status of HPCs will result in DG ECHO's withdrawal of its recognition (see Point 5 below).

On what basis does DG ECHO recognise an HPC?

Organisations interested in becoming an HPC will have to fill in a questionnaire in FR or EN and submit it together with a set of supporting documents. The questionnaire to be filled in by applicants is available online together with information on how to complete it correctly and the list of mandatory supporting documents. Applicant organisations must certify that the documents and information submitted for the assessment by DG ECHO are complete and truthful and do not include any misrepresentation.

DG ECHO verifies the completeness and compliance of the replies to the questionnaire and of the requested documents with the mandatory procurement principles, (Chapter 2 of Annex IV & these Guidelines) and the special rules (Chapter 4 of Annex IV & these Guidelines). In addition, DG ECHO assesses the technical capacity (internal control system, pricing system, organisational procedures and financial solidity) and the non-profit character of the candidate organisation. The

assessment of candidates is based on a desk- review of the replies to the questionnaire and other information gathered. When necessary, complementary explanations may be required from applicant organisations, which will reply in 30 calendar days.

If the organisation does not meet the minimum criteria or does not provide sufficient information, its application will be rejected and it will be informed of the reasons in writing and advised of the applicable appeal mechanisms. Applicants will be offered the possibility of requesting the review of this decision by a reasoned letter and/or by providing the missing information within a delay of 30 calendar days. If an organisation' application is rejected it will be authorised to reapply one year after the date of rejection.

If the outcome of the assessment is positive, the recognition becomes effective upon signature of the Charter of Humanitarian Procurement Centres by the representative of the candidate organisation (see below).

Desk-Reviews and On-site Examinations

A periodic assessment of every HPC will take place at least every two years in order to reassess its status, scrutinise its performance and evaluate its fulfilment of the HPC Charter's requirements. This assessment will be done taking into account the experience of the implemented operations, as well as the changes to the HPC's procedural environment. This periodic assessment can be done as desk review.

DG ECHO shall also carry out on-site examinations to assess the functioning in practice of an HPC's organisation, procedures and procurement rules. This exercise will be done in accordance with pre-established assessment methodology and its findings will be presented in a final report. The report will formulate an opinion on the operations, internal control and procurement procedures of the HPC and may include a number of suggested actions for improvement.

The feedback of Partners and HPCs as well as the findings of DG ECHO's periodic assessments and on-site examinations will be taken into account in order to maintain or withdraw the recognition of HPCs. Moreover, HPCs will submit to DG ECHO on an annual basis their signed annual accounts certified by an external auditor, their annual activity report and the declaration of non-inclusion in causes of ineligibility annexed to the HPC Charter.

Fair pricing system & non-profit principle

HPCs must be able to demonstrate the methodology used to establish their prices. This methodology shall be presented as part of the assessment process prior to granting HPC recognition by DG ECHO. Furthermore, it may be tested in the framework of on-site examinations where HPCs shall present their sales price calculation for close scrutiny in light of the real costs and the set principles, including that of non-profit.

HPCs have to establish their prices with due regard to the following principles

- The principle of non-profit;

The principle of non-profit does not imply that the HPC should make a loss, sell below its cost prices or subsidise its HPC operations using funds from other sources. Under no circumstances may surpluses generated from an HPC forming part of a larger organisation or network be used for funding running or operational costs of other services of that organisation but if generated should be used to invest in the core business of the HPC.

- The principle of verifiable and consistent pricing behaviour; and

When establishing sales prices, these must be calculated using a verifiable method that is applied consistently. This means that the HPC's pricing system should be explained in writing and be detailed and flexible enough to provide pricing guidelines to staff on how to deal with specific situations such as very urgent, complex or large bulk orders.

- The principle of equal treatment.

The prices set by HPCs must be established in compliance with the principle of equal treatment of humanitarian organisations. This does not mean that no discounts or price reductions may be given - but that these be given equally to any organisation in the same defined situation and not just on the basis of some relationship with a particular organisation.

Whilst taking into consideration that HPCs may have their own established invoicing and pricing procedures the **sales prices for products** should generally be established on the basis of invoices from third parties (e.g. product suppliers) or unit or production costs (where the HPC manufactured the product itself) to which the HPC adds a handling fee or overhead cost in order to cover its costs.

Annex IV mentions that handling fees or overhead costs charged by a HPC may be considered eligible providing the HPC is able to demonstrate the methodology used. Furthermore, in order to avoid double charging handling fees or overhead charges are **only** permitted provided that the costs covered have not already been included in other cost categories.

Overhead costs or handling fees are defined as recurring costs of running an organisation; necessary for the legal and regular functioning of the HPC. They cannot be directly linked to or caused by a specific contract. Overheads include all the structural and support costs of an administrative, technical and logistical nature which are cross-cutting for the operation of the HPCs various activities and cannot therefore be booked in full to the action for which a specific contract is concluded because such contract is only one part of those activities.

Although not specifically mentioned in Annex IV, it is clear that the HPC may also add handling fees or overheads such as **Transport** and/or **Insurance costs** to the purchase/service/unit price of the good or service. Some HPCs do not include these costs as a handling fees or overhead costs but add them as a separate direct or service cost – either way what is important is that the total price and cost breakdown is clear and fair (i.e. no double charging). Likewise the handling fees or overhead costs could take into account procurement costs such as pre-qualification of suppliers of medicines; quality control; warehouse costs unless these are included as separate services for a given contract.

Observance of the HPC Charter

In order to guarantee common standards of behaviour by the different HPCs a Charter of Humanitarian Procurement Centres⁴⁶ has been drafted. The HPC Charter sets out a number of enforceable commitments subscribed by HPCs. The Charter commits HPCs to a minimum set of common principles and good practices and includes a number of obligations towards DG ECHO and its Partners. These include a commitment to uphold the mandatory principles of procurement

⁴⁶ Text available at: http://ec.europa.eu/echo/files/about/actors/HPC_Charter_26-10-09_%20EN.pdf

(transparency, proportionality & equal treatment) and to observe the guiding principles set for the internal procedures of HPCs (e.g. accountability, consistency, efficiency, fair pricing & equal treatment etc) as well as to act in accordance with the highest ethical standards.

By signing the Charter, HPCs also commit themselves to ensure that the quality of the products and services which they procure meet international standards. HPCs must respect particular international standards of production; storage and distribution apply to the procurement of pharmaceutical products.

DG ECHO monitors the correct application by HPCs of the Charter. Failure to respect the commitments entered into by signing the Charter may be sufficient ground for the suspension or termination of an HPC's recognition (See point below).

When can DG ECHO terminate HPC Recognition?

Serious or repetitive breaches by HPCs of contractual obligations should be reported by Partners to DG ECHO as they contradict the commitment to safe and efficient procurement made by HPCs in the HPC Charter and may be sufficient ground for losing the recognition as HPC.

The Commission may terminate the recognition of an HPC with immediate effect as a precautionary measure if information comes to its notice concerning grave infringements by the HPC of its contractual obligations, substantive irregularities or fraud, or information that puts into question elements used for the recognition of the HPC.

To withdraw the HPC's recognition DG ECHO will serve a 30 days' written notice providing the grounds on which the decision is based. The HPC may request of DG ECHO to re-examine this decision, submitting whatever arguments and supporting documents DG ECHO judges pertinent.

If the HPC fails to adequately rebut the allegations of infringement, or DG ECHO does not accept the HPC's arguments in its defence to be sufficient, the grounds for withdrawal of recognition shall be confirmed in writing and the withdrawal will take full effect and the name of the HPC shall be struck off the HPC Register. This is without prejudice to the adoption of administrative or financial sanctions by the Commission.

(iii) The relationship between Partners and HPCs.

What are the advantages for a Partner in dealing with an HPC?

Once DG ECHO recognises an organisation it as an HPC, DG ECHO's Partners may pass orders to it without recourse to competitive tendering or publication (irrespective of the amount of the contract) and can apply a Single Bid Negotiated Procedure to award the contract (See Chapter 3 for more details).

The list of organisations recognised by DG ECHO as HPCs is available on DG ECHO's website⁴⁷ in the form of a registry indicating the goods and services which they supply

DG ECHO's Partners have a number of advantages when procuring supplies through HPCs. The applicable procurement procedures are simplified, as Partners can decide to use the Single Bid Negotiated Procedure to award the contract to an HPC. They may pass orders without recourse to

⁴⁷ http://ec.europa.eu/echo/files/about/actors/listHPC_en.pdf

competitive tendering or publication irrespective of the amount of the contract. When a Partner uses a HPC for the procurement of food the HPC assumes the responsibility of ensuring the required quality and respecting the appropriate procedures (See Chapter 4.4 of these Guidelines).

When a DG ECHO Partner organisation wishes to award a contract to an HPC, the Partner does not have to conduct an in-depth analysis of the functioning and financial viability of the HPC. Such analysis has been conducted by DG ECHO and has entailed the validation as an HPC. To make the process quicker and more efficient Partners should also avoid additional costs such as bank guarantees, payment interests, etc. which will not be eligible for EU-funding.

Eligible costs of the Action

Expenses committed by the Partners for purchases of goods and services from HPCs are **direct costs** of the Action. The eligibility of costs committed with an HPC enjoys a presumption of regularity and good faith in favour of DG ECHO Partners.

As long as the quality and timeliness of the delivery of goods and/or services has been respected, DG ECHO will reimburse the costs of contracts signed by humanitarian organisations even if ECHO's recognition of a given HPC has been withdrawn after the contract was signed.

Invoices from HPCs should contain the following details, where relevant:

- invoice number and date;
- date and place of delivery;
- DG ECHO Action for which procurement was made;
- type of item procured, quantities, sales price per quantity, total sales price and contractual conditions applied (reference to the applicable Incoterm);
- if applicable: insurance costs related to the items concerned, related customs costs committed by the HPC, related transport costs, related packaging costs;
- if applicable: administrative fees and other internal unit costs charged;
- if applicable overhead costs;
- total invoice value;
- VAT statement in accordance with the applicable VAT rules;

What are the obligations of a Partner when dealing with an HPC?

Contractual relations between HPC and humanitarian organisations will be governed by the contracts signed by them. Any possible failures to comply with the contractual obligations should be addressed on the basis of the relevant provisions of those contracts.

HPCs are responsible for complying with their contractual obligations with third parties and will assume all liabilities derived from the performance of the contracts. There is no contractual relation between DG ECHO and HPCs. DG ECHO will not accept any liability for failures to respect contractual obligations by HPCs. It is the responsibility of both the humanitarian organisation and the HPC to guarantee that the delivered supplies or the rendered services are of **satisfactory quality** and in accordance with the technical description provided in the contract.

Contracts signed between the HPC and the humanitarian organisations have to lay down, at least, the following:

- The subject, the costs, the **conditions applicable** to the contract between the Partner and the HPC the arrangements and time limits for delivery, acceptance and payment, provisions

concerning the friendly settlement of conflicts, if possible by arbitration or similar procedures. Timely deliveries of the supplies and the performance of the service have also to be addressed in the contract between the humanitarian organisation and the HPC.

- **Technical specifications** have to be annexed to the contract and are part of it. It will also include the list of documents relating to the procurement that the Partner should receive from the HPC, such as invoice, proof of delivery, certificate of donation, quality certificate (for food and medicines).⁴⁸
- The necessary provisions in order to ensure that the **obligations imposed on their contractors by the Agreement signed with DG ECHO** are correctly and fully reflected in the contracts signed with HPCs.

When dealing with HPCs, Partners should recall at all times that, although DG ECHO has screened the HPC as an organisation, it is the Partner that remains responsible for ensuring that the individual contracts it concludes with HPCs observe certain basic principles, such as the following:

- Contracts awarded to HPCs must comply with the **principle of economy**. This requires that the HPC provide the goods or services requested in due time, in appropriate quantity and quality and at the best price.
- Respect of the **principle of due diligence**. DG ECHO Partners are responsible in any case for the execution and coordination of all contracted activities. To this end they must exercise the necessary degree of care and diligence when procuring supplies and services from an HPC.
- Like with any other procurement procedure, the award of contracts has to be free from any interference due to **conflict of interest, fraud, corruption, collusion and coercive practices**. In this respect, humanitarian organisations and HPCs have the duty to immediately inform DG ECHO of any irregularities they become aware of in the procurement process and take the necessary actions to redress the situation.
- The compliance with the provisions foreseen in the HPC Charter such as **international standards and quality assurance** of products and services provided by HPCs and respect of international working standards has to be assured. In particular, the **procurement of medicines** and medical equipment and **food** shall be in accordance with international standards or best practice as referred to in Annex IV and detailed in Chapter 4 of these Guidelines (above). Although these aspects have already been checked by DG ECHO, to the extent possible, any failures to meet these standards by HPCs should be noted by Partners and reported to DG ECHO immediately.
- In order to ensure the compliance with the **principle of transparency**, and where appropriate, the Partner shall mention the EU-funding to the HPC when awarding a contract and, for "A" Control mechanism agreements, mention the award of a contract to an HPC in Annex A to the Single Form. The final reports shall also identify every time those contracts awarded to an HPC.

⁴⁸ N.B – Partners only need to be in possession of procurement documentation pertaining to the relationship between them and the HPC, it is therefore not necessary for Partners to request supplementary documentation relating to the relationship between the HPC and its suppliers (invoices from transporters, insurance policies, packing lists, tally lists, road consignment notes, framework agreements, tender documents of the HPC) unless this is considered of particular use to the Partner.

5. FINAL PROVISIONS

5.1. Derogations to the General Rules and Procedures

Any departure from the General Rules and Procedures established in Chapter 3 of Annex IV by a Partner subject to an "A" Control mechanism is subject to written approval from DG ECHO.

Derogations from the General Rules may be founded on any of the following grounds:

- security, operational, technical or quality reasons;
- shortfall or unavailability on the markets of the supplies;
- costs or delays due to transport;
- on the grounds of legislation in the country of operation; or
- if the fulfilment of the contractual obligation would harm the Partner's mandate or the safety of its staff.

The Partner must present its request accompanied with proper justification to DG ECHO which shall deal expeditiously with it and if the derogation is granted this will be included in the Special Conditions of the Agreement between DG ECHO and the Partner.

The procurement procedures and thresholds laid down in Chapter 3 are only obligatory to Actions covered by an "A" Control Mechanism which means that the Derogation procedure provided here may only be granted to Partners under "A" Control Mechanisms.

In the case of Partners under a "P" Control mechanism or HPCs they should ensure that their own procurement procedures provide clear rules on when an exemption to their normal rules may be justified.

For Urgent actions an exemption from the general rules is automatically granted (See Annex IV, special rules). No formal request for derogation need be submitted to ECHO.

5.2. Interpretation

The terms used in Annex IV and in these Guidelines shall have the same meaning as attributed to them in Glossaries, Fact sheets or any other supporting documents which may be drafted by DH ECHO. In case of any discrepancy or inconsistency between the definitions used the wording used in Annex IV shall take precedence.

All mentions made to Council or Commission Regulations in these Guidelines should be understood as referring to the most recent applicable version of the legislative text as published in the Official Journal of the European Union. DG ECHO will inform its Partners on the application of any relevant modification of the mentioned Regulations. If required by the substance of the modification, references to European legislation will be updated by means of amendments.

5.3. Contractual and regulatory sanctions

The European Commission may suspend the payment period established in the Agreement following presumed infringements of the procurement rules and procedures in order to verify whether a substantial irregularity or fraud have actually occurred.

In the event of breach of the Mandatory Principles, and when applicable, of the rules or procedures established in Annex IV, the European Commission reserves its right to terminate with immediate effect the Agreement signed with the Contracting Authority and to consider any expenditure incurred by the Contracting Authority related to the contracts in question not eligible for EU financing.

This is without prejudice to the adoption of financial and administrative sanctions in accordance with the relevant provisions of the Financial Regulation and its Implementing Rules⁴⁹ in particular in cases where the Contracting Authority has been found in serious breach of its obligations, is found guilty of involvement in corrupt, fraudulent, coercive or collusive practices or when the Contracting Authority deliberately destroys, falsifies, alters or conceals evidence referred to Contracts in order to hamper investigations into allegations of procurement mismanagement.

⁴⁹ Articles 96, 114 (4) of the Financial Regulation and Articles 134 (b) and 175 of the Implementing Rules



Annexes to the Humanitarian Aid Guidelines for Procurement

ANNEX 1 – PROCUREMENT GLOSSARY

TERM	CLARIFICATION / DEFINITION	Annex IV & Guidelines
Access to documents	See Right of access and control	Ch 2
Action	A humanitarian aid operation implemented by a Partner and funded by the European Commission.	
Ad hoc tender procedure	An ad hoc tender procedure is one which is for a particular purpose only.	
Administrative fees	Refer to a cost established on the basis of a percentage of the contract or as a fix amount charged by the HPC to its clients to cover the handling costs of services for which it is difficult to establish an individual calculation of actual costs.	Ch 4
Agreement	Generic term covering both Grant Agreements with NGOs and Contribution Agreements with the UN or International Organisations. Encompasses the General Conditions, Special Conditions, Annexes I and II (description of the Action; financial overview), and Action proposal.	
Annex IV	Annex added to the FPA on 27/11/2007. It covers <i>"Rules and procedures applicable to property, supply, works and service contracts awarded within the framework of humanitarian actions financed by the European Communities"</i> .	
Award Notice	This is the publication of the outcome of the award procedure and shall specify the type of product, service or works purchased, the amount of the contract and the successful Tenderer.	
Best value for money	Any award procedure must observe this criterion. Contracts shall be awarded to the tender offering the best value for money that is to say, the best price-quality ratio, while taking care to avoid any conflict of interests. Basing the award of contracts on this helps maintain transparency and non-discrimination. It involves selecting the offer which presents the optimum combination of factors such as appropriate quality, life-cycle costs and other parameters to best meet defined needs and objectives of the Action.	Ch 2
Bid	Used as a general term to denote both a Tender offered by a Tenderer in an Open Tender Procedure and the Offer (Negotiated Terms and Conditions offered) by a Candidate in a Negotiated Procedure.	
Buying Agent	A commercial structure specialised in the Technical Assistance to Humanitarian Organisations for the organisation of procurement procedures. The award of contracts for the performance of this service must be done in accordance with the applicable rules established in Annex IV. Use of Buying Agents to advise on, arrange or manage a procurement process does not remove from Contracting Authorities the requirement to comply with its obligations under Annex IV.	Ch 4
Candidate	An economic operator who has been invited to take part in a Negotiated Procedure.	

Codex Alimentarius	The <i>Codex Alimentarius</i> (Latin for "food code") is a collection of internationally adopted food standards, guidelines and codes of practice. The Codex is the result of the work of the Commission and Technical Committees set up by the FAO and WHO to develop food standards, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Programme. Partners and HPCs should consider the standards and guidelines of the <i>Codex Alimentarius</i> when procuring food aid. www.codexalimentarius.net The Codex standards and guidelines provide quality assurance for the production and distribution of particular food products but also provide some general recommendations, for example, <i>General Standard for the Labelling of Pre-packaged Foods (1985)</i> ; <i>Standard for infant formula and formulas for special medical purposes intended for infants (1981)</i> ; <i>Standard for Natural Mineral Waters (1981)</i> ; <i>General Standard for Food Additives (1995)</i> ; <i>General Standard for Contaminants and Toxins in Food and Feed (1995)</i> <i>Guideline for the Validation of Food Safety Control Measures (2008)</i> .	Ch 4
Coercion Coercive practice	This involves impairing or harming, or threatening to impair or harm, directly or indirectly, any participant in the tender process to influence improperly its activities. Proposals and contracts must be free from this form of irregular behaviour and Contracting Authorities shall inform immediately the European Commission in writing in the event of being confronted by any such practice, and provide all the relevant information.	Ch 2
Collusion/ Collusive practice	This is an undisclosed arrangement between two or more tenderers or candidates designed to artificially alter the results of the tender procedure to obtain a financial or other benefit. Proposals and contracts must be free from this form of irregular behaviour and Contracting Authorities shall inform immediately the European Commission in writing in the event of being confronted by any such practice, and provide all the relevant information.	Ch 2
Committed Cost	Costs for which a legal obligation exists (e.g. on the basis of a contract) and is entered into the Partner's accounts. (See also Eligible Costs)	
Conflict of interest	Contracting Authorities shall inform immediately the European Commission in writing in the event of being confronted by any situation likely to constitute a conflict of interest and provide all the relevant information.	Annex IV, point 2.6.
contract	An agreement for pecuniary interest concluded in writing by a Contracting Authority in the context of an Action financed, in whole or in part, from a contribution from the EU budget (and where applicable, from the European Development Fund), in order to obtain, against a payment of a price the supply of products, the execution of works or the provision of services. On the basis of their object, the following types of Contracts can be established: Property Contracts, Supply Contracts, Works Contracts and Services Contracts.	
Contract Notice	This is the publication by which a procurement procedure is launched. The Contract notice shall specify the rules governing the submission and presentation of bids (e.g. deadline, obligatory forms to use), the exclusion, selection and award criteria and set out the Technical Specifications or Terms of Reference. In order to keep publication costs reasonable it is sufficient that the Contract Notice contain a brief reference to the above-mentioned specifications and provides details on where or how to obtain more information.	Ch 2 & 3

Contracting Authority	Contracting Authority refers in Annex IV to those entities eligible for EU financing for the implementation of humanitarian Actions under the Humanitarian Aid Regulation and to which the rules and procedures of Annex IV and these Guidelines apply. In these Guidelines the term is generally synonymous to the word Partner but may also refer to an HPC while procuring supplies and services. Implementing Partners for a Contribution or Grant Agreement holder are also considered Contracting Authorities when the implementation of the tasks that they assume in the Action requires the award of Contracts. The term Contracting Authority, defined in paragraph 1.5 of Annex IV, is to be understood, therefore, as the service or person empowered in each organisation to manage procurement processes.	
contractor	This is a general term used in this text to refer to all types of economic operators concluding contracts with Partners. A contractor should be distinguished from an Implementing Partner who has a special relationship with the Partner defined in the Action proposal.	
Contribution Agreement	An Agreement signed by DG ECHO and an International Organisation or a Member State specialised agency, covering an Action	
Control mechanism	<p>The supervisory and monitoring procedure applied to each individual Agreement for identifying, assessing, and managing risks, carried out by the European Commission to provide reasonable assurance as regards the achievement of the objectives. Agreements may be subject to an "A" or a "P" control mechanism:</p> <p>The "P" Control mechanisms (whereby "P" stands for Prior assessment and own Procedures) where DG ECHO assesses the technical capacity and the procurement rules and procedures of the Partner signatory of the Agreement beforehand. In these cases the Partner uses its own rules for procurement and Annex A of the Single Form is not mandatory. Also the reporting on procurement will be less detailed in the final financial report.</p> <p>The "A" Control mechanisms (whereby "A" stands for Action-related monitoring) where DG ECHO assesses merely the sound management of the Action (including also the respect of internal control and risk management), the sound financial management and the sound management of the procurement procedures. The Partner will have to follow more detailed procurement rules in Annex IV and in the Humanitarian Aid Guidelines for Procurement. Also the related reporting will be more detailed as Annex A of the Single Form is mandatory at each stage and more explicit reporting requirements are fixed for the final financial report. Actions under this mechanism will be more closely looked at during liquidation and will be subject to more regular audits. In some cases, the Action will be subject to a maximum funding ceiling. If request is made to exceed the funding threshold, additional controls will be necessary. These controls will be established on a case by case basis.</p> <p>The Special Conditions of the individual Agreements signed with the Contracting Authority expressly identify the control mechanism to be applied.</p>	
Corruption / Corrupt practices	This includes the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the activities of the Contracting Authority. Proposals and contracts must be free from this form of irregular behaviour and Contracting Authorities shall inform immediately the European Commission in writing in the event of being confronted by any such practice, and provide all the relevant information.	Ch 2

Derogations	Annex IV provides for a procedure by which ECHO may approve Derogations to the General Rules and Procedures. Any request for a departure from these rules must be accompanied with proper justification and if granted will be included in the Special Conditions of the Agreement. Derogations may be justified for/on security, operational, technical or quality reasons; shortfall or unavailability on the markets of the supplies; costs or delays due to transport; on the grounds of legislation in the country of operation or if the fulfilment of the contractual obligation would harm the Humanitarian Organisation's mandate or the safety of its staff.	Ch 5
Direct Costs	Any expenditure directly linked to the implementation of the Action. They can be defined as actual costs pertaining to the implementation of the Action and cover both the costs of goods and services delivered to beneficiaries and the costs related to the support activities required for the correct implementation of the Action.	Ch 4
Double Financing/ charging	Double Charging is a situation whereby the same cost is claimed more than once while Double Financing is a situation whereby the same cost is actually reimbursed more than once. Both must be avoided.	Ch 4
Earmarked contributions	Sometimes donors to humanitarian actions " earmark " their contribution to an action, meaning that they reserve the use of their donation by indicating precisely to which aspect of the action (e.g. specific items or categories of expenditure) it should be devoted, or to which aspect it should not be devoted.	
Eligible Costs	Costs that are (i) necessary and reasonable for the implementation of the Action, (ii) actually committed, complying with the principles of sound financial management, (iii) committed during the Eligibility Period of the Action, (iv) identifiable, recorded in the accounting records of the Humanitarian Organisation or its implementing Partners, (v) determined according to the applicable accounting standards of the country where the Humanitarian Organisation is established and according to the usual cost-accounting practices of the Humanitarian Organisation, (vi) backed by original supporting evidence, verifiable, and (vii) complying with the requirements of applicable tax and social legislation.. (See Article 18 of the General Conditions.)	Ch 3
Equal treatment	Equal treatment and non-discrimination of potential contractors and donors. A Mandatory Principle in Annex IV which any award procedure must observe in the procurement processes.	Ch 2
Estimated amount /value of a contract	The estimated value of a contract may not be determined with a view to evading the publication and tender requirements laid down in Chapter 3, Annex IV, nor may a procurement procedure be split up for that purpose. Where the subject of a contract is subdivided into several lots, even if each one will be subject of an individual contract, the value of all lots together must be taken into account for the overall evaluation of the applicable threshold. For the purposes of calculating the estimated amount of a Framework Contract, the value to be taken into account shall be the maximum value of all the contracts envisaged during the total lifetime of the Framework Contract.	Ch 3 & 4
Ethical procurement	A Mandatory Principle in Annex IV. Contracting Authorities, Tenderers and Candidates must observe the highest ethical standards during the procurement and execution of contracts and ensure basic social rights and working including protection against exploitative child labour.	Ch 2
European Commission	In humanitarian aid Actions and most related matters the European Commission is represented by Directorate General for Humanitarian Aid (ECHO). Where appropriate ECHO is used to refer to the European Commission so as to avoid confusion between Humanitarian aid and other forms of aid for which other Commission DGs are responsible.	
European Development Fund ("EDF").	All references to the funding of humanitarian Actions by ECHO in the Guidelines include the resources allocated from the EDF to the financing of humanitarian aid.	

Exclusion Criteria	Tenderers and candidates must be excluded from participation in procurement procedures if they incur in one of the grounds set out in Article 93 of the Financial Regulation. These situations include bankruptcy, conviction of an offence, professional misconduct, tax or social security evasion, fraud, corruption or criminal activities, misrepresentation or failure to supply essential information or serious breach of obligations. Furthermore contracts shall not be awarded to tenderers or candidates who, during the procurement procedure for the contract in question find themselves in one of the situations referred to in Article 94 of the Financial Regulation. These include being subject to a conflict of interest, being guilty of misrepresentation or failure to supply information required for participation in a procurement procedure or being subject to any of the situations of Exclusion listed in Article 93 of the Financial Regulation.	Ch 2
Financial and Administrative Framework Agreement ("FAFA")	Agreement between the UN and the European Commission, laying down the mutual rights and obligations of Partnership between both institutions for the funding of Actions in areas such as development and humanitarian aid.	
Financing Decision	Act by which the Commission allocates funds from the General Budget to finance humanitarian Actions. It identifies i.e. the objectives of humanitarian interventions, the region, and type of activities, funds to be committed, eligibility period and potential Partners. There are 4 categories of Financing Decisions: Primary Emergency Decisions, Emergency Decisions, Global Plans and Ad Hoc Decisions.	
Financial Regulation	Council Regulation No 1605/2002 of 25/06/2002 on the Financial Regulation applicable to the general budget of the European Communities.	
Food aid	Procurement of Food Aid is subject to Special Rules in Annex IV, Chapter 4 relating to the particular features of the relevant local beneficiary markets, nutritional habits of the beneficiary population, quality standards. In derogation to Annex IV, para 3.4, when the object of the contract is the supply of fresh food and the contract is divided into several lots taking into account the seasonal availability of products, each one of the lots will be considered individually, and not aggregated, in order to establish the applicable threshold	Ch 4
Force Majeure	Any unforeseeable exceptional situation or event beyond the Partner's or DG ECHO's control which prevents either of them from fulfilling any of their contractual obligations, which is not attributable to error or negligence on their part (or the part of their implementing Partners, contractors or employees), and which proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available or financial difficulties are not force majeure.	Ch 3
Framework Contract	This is sometimes also called a long term agreement (LTA) and is a contract concluded between a Contracting Authority and one or several economic operators for the purpose of laying down the essential terms governing a series of specific contracts to be awarded during a given period, in particular as regards the duration, subject, prices, conditions of performance and the quantities envisaged. Specific contracts based on Framework Contracts shall be awarded in accordance with the terms of the Framework Contract, after having consulted in writing all Contractors originally part of the Framework Contract. The award of Framework Contracts must comply with the Mandatory Principles and must not prevent, restrict or distort competition. The term of a Framework Contract may not exceed five years.	Ch 4
Framework Partnership Agreement ("FPA/NGO")	Agreement between DG ECHO and the NGOs which establishes the principles of Partnership between DG ECHO and the NGOs defines their respective roles, rights and obligations and establishes the rules applicable to the Actions implemented by the NGOs and financed by DG ECHO.	

Framework Partnership Agreement for International Organisations ("FPA/IO")	Agreement between DG ECHO and the International Organisations, other than the UN organisations (who are subject to the provisions of the FAFA), which establishes the principles of Partnership between DG ECHO and the International Organisations, defines their respective roles, rights and obligations and establishes the rules applicable to the Actions implemented by the International Organisations and financed by DG ECHO.	
Fraud / Fraudulent practice	This includes any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, the Contracting Authority to obtain a financial or other benefit or to avoid an obligation. Proposals and contracts must be free from this form of irregular behaviour and Contracting Authorities shall inform immediately the European Commission in writing in the event of being confronted by any such practice, and provide all the relevant information.	Ch 2
General Conditions	A pre-established set of contractual clauses, annexed to the different FPAs and FAFA, which are part of each Agreement and establish the general rules and procedures applicable to the implementation of the Action.	
General Rules and Procedures	Chapter 3 of Annex IV establishes basic rules which should govern procurement. The provisions of these General Rules and Procedures are mandatory to contracts above €60,000 for Actions subject to the A-Control mechanism and are further developed in detail in the Humanitarian Aid Guidelines for Procurement.	Ch 3
Global Harmonization Task Force (GHTF)	Medical devices shall meet essential requirements as described by the GHTF. GHTF, SG1- N041R6 – essential principles of safety and performance medical devices (including In Vitro diagnostic devices) 2004 and GHTF SG1(PD) - N043R6 – labelling for medical devices (including In Vitro diagnostic devices) 2004.	Ch 4
Good Distribution Practices ("GDP")	Pre-qualification of medicines should be based, amongst other things, on an assessment of compliance with GDP. The WHO publishes standards and quality assurance guidelines in this field http://whqlibdoc.who.int/trs/WHO_TRS_937_eng.pdf#page=191	Ch 4
GMP Good Manufacturing Practice	Good manufacturing practice (GMP) is that part of quality assurance which ensures that products are consistently produced and controlled to the quality standards appropriate to their intended use and as required by the marketing authorization. (http://whqlibdoc.who.int/trs/WHO_TRS_908.pdf#page=46) Pre-qualification of Pharmaceuticals and Medical Devices should be based on a general understanding of the production and quality control activities of the manufacturers and suppliers and of their commitment to the principles of GMP. GMP is aimed primarily at diminishing the risks inherent in any pharmaceutical production, which may broadly be categorized in two groups: cross contamination/mix-ups and false labelling. Above all, manufacturers must not place patients at risk due to inadequate safety, quality or efficacy. The WHO publishes standards and quality assurance guidelines in this field: http://www.who.int/medicines/areas/quality_safety/quality_assurance/production/en/ .	Ch 4
Good Storage Practices ("GSP")	Pre-qualification of Medicines should be based, amongst other things, on an assessment of compliance with GSP. The WHO publishes standards and quality assurance guidelines in this field: http://whqlibdoc.who.int/trs/WHO_TRS_908.pdf#page=135	Ch 4
Grant Agreement	An Agreement signed by DG ECHO and an NGO, covering an Action.	
Humanitarian Aid Regulation	Council Regulation (EC, Euratom) No 1257/96 of 20 June 1996 concerning humanitarian aid, OJ L 163, of 2 July 1996.	

Humanitarian Organisation	Refers to non-profit making autonomous organisations eligible for EU financing for the implementation of Actions under the Humanitarian Aid Regulation. It refers to National Societies of the Red Cross and Non-Governmental Organisations signatories of the Framework Partnership Agreement, hereafter FPA.	
Humanitarian Procurement Centre ("HPC")	Not for profit organisation specialised in the technical and commercial management of supplies and services related to humanitarian aid. It can provide Technical Assistance in procurement or supply pre-established stocks, purchasing or logistics capacity. The use of HPCs to provide assistance, procurement services or supplies pre-established stocks, purchasing or logistics capacity permits the Partner to apply the negotiated procedure with a single tender under Annex IV. HPCs must guarantee equal treatment of suppliers and among Contracting Authorities, high standards for integrity, transparency, price, performance and quality. The procurement procedures of HPCs shall comply with the Mandatory Principles of procurement.	Ch 4
Hybrid contracts	These are contracts having as object a combination of different types of contracts (e.g. Works, Services etc) and where the contract shall be deemed to relate to whichever type has the higher value. For example, a contract covering both works and services shall be considered a service contract whenever the value of the services in question exceeds that of the works included in the contract.	Ch 3
Implementing Partner	Implementing Partner refers to Humanitarian Organisations (both national and international), Specialised Agencies of the Member States, International Organisations and local authorities which are identified in the Action proposal as implementing partners. They assist the Contracting Authority in the implementation of the Action in the field. The relation between the Contracting Authority and its Implementing partners shall be based on the principle of not-for-profit and neither party may obtain financial benefits out of it. Implementing Partners for a Contribution or Grant Agreement holder are considered for the purposes of Annex IV as Contracting Authorities when the implementation of the tasks that they assume in the Action requires the award of Contracts. They are bound to observe all the obligations of Partners when acting as Contracting Authority. Local Contractors are not Implementing Partners. The Implementing Partner – usually active in the country or region of the Action - is identified in the Single Form. It is not necessarily a local Partner. The Agreement holder retains full responsibility for the implementation of the Action.	Ch 1
Implementing Rules	Commission Regulation No 2342/2002 of 23/12/2002 laying down detailed rules for the implementation of the Financial Regulation	
Incoterms	Incoterms (International Commercial Terms) are standard trade definitions devised and published by the International Chamber of Commerce used in international sales contracts. See http://www.iccwbo.org/incoterms/id3042/index.html . Some commonly used Incoterms include: FOB (Free on Board); CFR (Cost & Freight); CIF (Cost, Insurance & Freight); DDU (Delivered Duty Unpaid); DDP (Delivered Duty Paid). The Contract Notice must specify, when required, the contractual Incoterms delivery conditions applied to the supply contract and identify the applicable Incoterm edition. When the Incoterms specified in the Contract Notice obliges the supplier to take out a transport insurance policy, this insurance shall be for at least the awarded tender amount and shall cover all risk associated with carriage.	Ch 3 & 4

International Drug Prices Indicator	This is regularly updated and provides a spectrum of prices from pharmaceutical suppliers and procurement agencies, based on their current catalogues or price lists. It also contains prices obtained from international development organisations and government agencies, and represents an essential tool to be used by Contracting Authorities to compare prices. During the Process of Prequalification of Medicines or Medical Devices the Contracting Authority must consult the International Drug Prices Indicator. When comparing the costs of pharmaceutical products, the cost of the whole treatment -not just the cost per unit- should be taken into consideration. Since the choice may also be influenced by other factors such as transportation charges, storage requirements and shelf-life, the total cost should be considered.	Ch 4
International Organisations	International Organisations, in accordance with Article 43, paragraph 2, of the Implementing Rules, are international public sector organisations set up by intergovernmental agreements, specialised agencies set up by such organisations, the International Committee of the Red Cross and the International Federation of National Red Cross and Red Crescent Societies.	
International publication	Involves advertising the Contract Notice in a specialised site on the internet (and possibly also on the Contracting Authority's website) and simultaneously in a periodical published at least in the country of operation, or if this is not possible by any other relevant means available. The time limit for receipt of tenders shall be no less than 30 calendar days from the date on which the contract notice is published.	Ch 3
Interpretation	The terms used in Annex IV and in the Humanitarian Aid Guidelines for Procurement shall have the same meaning as attributed to them in glossaries, fact sheets or any other supporting documents which may be drafted by ECHO. In case of any discrepancy or inconsistency, Annex IV shall take precedence.	Ch 5
ISO Standards	The International Standards Organisation publishes standards on quality of products and processes relevant in the procurement of food and medicines. Some relevant standards include: - ISO 45004 – ISO/IEC 17020 in the food production sector, contracted to verify and certify quantity, quality, packing and marking of food supplies; - ISO13485/ ISO13488, ISO9001/ISO9002, ISO9001/2000 or equivalent – relevant for the Pre-qualification of Medicines (equivalents are EN46001/ EN46002, Japan QS Standard for medical devices 1128, United States QS (21 CFR part 820).	Ch 4
Local Partner	An organisation (NGO or local authority) which assists a Partner with the implementation of the Action at local level. A Local Partner is always an Implementing Partner.	
Local publication	Involves advertising the Contract Notice in a periodical published in the country of operation or, if this is not possible, by any other relevant means available. The time limit for receipt of tenders shall be not less than 21 calendar days from the date on which the contract notice is published.	Ch 3
Mandatory Principles	Chapter 2 of Annex IV sets out the Mandatory Principles on procurement which are obligatory and must be observed by any Partners in the implementation of any Action.	Ch 2
Mark-up	These are price increases applied by the HPC to the different supplies in order to cover its costs. Mark ups should be defined by categories or families of products taking into account the specific costs associated with the purchase and storage of the products by the HPC. Mark ups should be established with due regard to the principle of non-profit making that rules the overall functioning of an HPC.	Ch 4

Medical Device	This term refers to an instrument, apparatus, implement, machine contrivance, implant, in vitro reagent, or a component that provides a diagnosis, cure, mitigation, treatment, or prevention of a disease or condition, which does not achieve its intended use by being metabolized or through a chemical reaction. Examples of medical devices can include: walking stick, surgical instruments, contact lens lubricants, condoms, stethoscopes, insulin syringes and needles, wheelchairs, hearing aids, implantable devices, Magnetic Resonance Imaging (MRI), and Computed Tomography Imaging (CT). Therefore, Medical Devices include an enormous variety of existing healthcare items, and many new forms are being constantly invented. The Global Medical Device Nomenclature (GMDN) system designates 12 categories of medical devices consisting of more than 10,000 generic groups.	Ch 4
Medicines	see Pharmaceutical product	Ch 4
Monitoring Agency	This is an internationally recognised inspection company or grouping of internationally recognised companies; preferably accredited to the standard norm ISO 45004 – ISO/IEC 17020 in the food production sector, contracted to verify and certify quantity, quality, packing and marking of food supplies. When awarding contracts of a value of more than EUR 300,000, the Humanitarian Organisation shall contract, except in case of urgent Actions, a Monitoring Agency responsible for verifying and certifying the quantity, quality, packing and marking of supplies. The Humanitarian Organisation shall include in the tender and contractual documents the necessary provisions as to assure the right of access and monitoring of the Monitoring Agency.	Ch 4
Multi-donor Action	Financing modality whereby DG ECHO and other donors contribute to an Action or programme of an International Organisation. DG ECHO's contribution is a fixed amount (and not a percentage).	
Negotiated Procedure	A negotiated tender procedure is not an Open Tender, but requires the Contracting Authorities to invite simultaneously and in writing the Candidates of their choice to negotiate the terms of the contract. The written communication shall be the means by which the Contracting Authorities make known their intention to launch procurement procedures and shall contain the same information as a Contract Notice. The number of Candidates invited to negotiate shall not be less than 3, provided that a sufficient number of Candidates satisfy the selection criteria. In any event, the number of Candidates invited shall be sufficient to ensure genuine competition.	Ch 3
Negotiated procedure with a single tender	See Single Bid Negotiated Procedure.	Ch 3 & 4
Norms	see Standards.	Ch 4
Offer	Used specifically as a term to denote both a bid, including (Negotiated Terms and Conditions offered by a Candidate in a Negotiated Procedure.	Ch 3 & 4
Open Tender	Tender procedures are open whenever all interested economic operators may submit a Tender after Publication of a Contract Notice. Contracting Authorities shall inform Tenderers of the outcome of the procedure by means of an Award Notice.	Ch 3
Operational Leasing	Rental Agreement. To be distinguished from a Financial Lease which is a purchase financed by a debt and is synonym for hire purchase.	Ch 3
Overhead costs	These are defined as recurring costs of running an organisation; necessary for the legal and regular functioning of the HPC. They cannot be directly linked to or caused by a specific contract.	Ch 4
Partial Funding	It refers to both co-financing or multi-donor	

Partner	A Humanitarian Organisation which has signed one of the following Partnership agreements: the Framework Partnership Agreement with Non-Governmental Organisations, the Framework Partnership Agreement with International Organisations and the Financial and Administrative Framework Agreement between the United Nations and the European EU.	
Pharmaceutical product	The procurement of medicinal drugs for human use (veterinary products are excluded from these provisions) is subject to Special rules provided in Annex IV, Chapter 4 to ensure quality of the products. These include rules on the Pre-Certification of Candidates, Pre-qualification, and the observance of certain quality standards such as ISO and EN standards and GMP, GDP GSP.	Ch 4
Pre-Certification or Pre-Qualification of Candidates	This the process undertaken in defining a product or service needed, obtaining offers or quotes from enterprises to supply the product or service, and examining the product or service offered against the specification and the facility where the product or service is prepared against common quality assurance standards. Any procurement of pharmaceutical products and medical devices must be based on this. Meaning that, in derogation to the General Rules & Procurement procedures and irrespectively of the value of the contract to be awarded, the Contracting Authority shall launch a Negotiated Procedure by inviting simultaneously and in writing only pre-qualified potential Candidates of their choice. Whenever feasible, however, the number of Candidates invited shall be sufficient to ensure genuine competition. The purchase of Pharmaceutical products and medical devices shall be based on a pre-qualification scheme implemented by either the WHO itself, or by a Stringent Regulatory Authority; a UN organisation; a Non-Governmental Organisation, a Humanitarian Procurement Centre or a specialized commercial operator which meets WHO recommended norms and standards for carrying out pre-qualification. Pre-qualification is required for all Pharmaceutical products regardless of their composition and place of manufacture/registration. The principles upon which any Pre-qualification procedures should be based are laid out in Annex IV, 4.3 (c).	Ch 4
Pre-positioning of Stocks	See "Stockpiling".	Ch 4
Profit	A Surplus of receipts over the costs incurred.	
Property contracts	These cover the rental of land, existing buildings or other real estate. Purchase of immovable assets can never be financed by the EU contribution to an Action.	Ch 3
Proportionality	A Mandatory Principle in Annex IV which any aware procedure must observe in the procurement processes. The procedures followed for awarding a contract must be proportionate to the value of the contracts; the higher the value the higher the more demanding the procedures.	Ch 2
Publication	Publication of the Contract Notice is essential to an Open Tender. Depending on the circumstances, Publication may be either International or Local.	Ch 3
<i>res judicata</i>	A matter already adjudicated upon that cannot be raised again by the same or another court.	Ch 2
Right of access and control	Contracting Authorities are required to grant the European Commission, the European Anti-Fraud Office (OLAF), and the Court of Auditors complete information on the procurement procedures, documents, bid evaluations, award recommendations and contracts as well as on the spot access to their documents as well as those of any other contractors who have received Union funds.	Ch 2

Sanctions	In the event of irregularity or fraud in the procurement rules and procedures contractual and regulatory sanctions may be applied by ECHO, including the suspension of payment, the termination of the Agreement and the refusal to cover any expenditure incurred by the Contracting Authority related to the contracts in question with EU financing. This is without prejudice to the adoption of financial and administrative sanctions in accordance with the Financial Regulation and the Implementing Regulation (in particular, Articles 96, 114 (4) of the FR and Articles 134 (b) and 175 IRFR).	Ch 5
Service Contracts	These cover all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and property contracts. Service contracts equally comprise study and technical assistance contracts.	Ch 3
Single Negotiated Bid Procedure	Contracting Authorities may, in certain exceptional cases resort to a negotiated procurement procedure with only one Candidate. The Mandatory Principles still apply and the Contracting Authority is still obliged to negotiate the best terms and conditions possible in the circumstances.	Ch 3 & 4
Single Form	The form to be completed by the Partners for the submission of their Action proposals and reports. The single form evolves along with the Action it refers to.	
Single Largest Donor	Contributor to an Action providing the highest individual contribution.	
Special Conditions of an Agreement	Contractual clauses either pre-established or variable establishing particular conditions ruling in the Agreement. It includes also the Specific Conditions.	
Special Rules	Chapter 4 of Annex IV sets out particular requirements or exceptions for procurement which are mandatory to all Partners when they deal with Urgent Actions; pharmaceutical products & Medical Devices; the procurement of Food Aid; Pre-established Stocks; Framework Contracts; or Humanitarian Procurement Centres.	Ch 4
Specific Conditions of an Agreement	Provisions in the Special Conditions of the Agreement which are not covered by other parts of the Agreement but which are necessary for the proper implementation of the Action. Specific Conditions are used either to supplement (i.e. add something to) or to derogate from (i.e. remove something) the Agreement and the rules applicable to it. They may also establish the nature of the implementing modalities of a Action. The Specific Conditions are included in Article 8 of the Special Conditions of the Agreement.	
Specialised Agencies of the Member States	National public-sector bodies or bodies governed by private law of a Member State of the EU but subject to special public supervision and governance rules with a humanitarian aid mission. They may be Implementing Partners. Their constitution and rules depend on the national legislation, however, their mandate should explicitly relate to humanitarian activities, they should have a legal entity and the authority to sign contracts. Not all Member States have such organisms.	
Stockpiling	The constitution of emergency stocks and materials not intended for immediate use, and without a direct link to an individual humanitarian crisis, with the objective of reinforcing the emergency/disaster preparedness in third countries. Synonym for "Pre-positioning of Stocks".	Ch 4
Stringent Regulatory Authority	This refers to a National Drug Regulatory Authority of a country participating either in the PIC/S (Pharmaceutical Inspection Convention and Pharmaceutical Inspection Cooperation Scheme) and/or the ICH (International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use) initiatives.	Ch 4
Standards	The references in Annex IV to International or European standards for quality assurance of products are neither exhaustive, nor definitive. Contracting Authorities shall take as a reference any internationally recognised standard that may be set and the updates and revisions of the standards mentioned herein. See ISO	Ch 4

Standard Operating Procedures ("SOPs")	Pre-qualification of Medicines should be based, amongst other things, on availability of appropriate quality systems and SOPs.	CH 4
Stocks	The Contracting Authority or its Implementing Partners may incur expenditure before the date of submission of the Action proposal and related to the constitution of stocks of goods and equipment for use in connection with the Action for which the contribution is awarded. This expenditure is eligible for EU financing provided that the procurement rules of the Contracting Authority had been correctly applied and with due regard to the Mandatory Principles.	Ch 4
Study Contract	This is a contract concluded which includes studies for the identification and preparation of projects, feasibility studies, technical studies and audits.	Ch 3
Supply contracts	These cover the purchase, operational leasing, rental or hire purchase, with or without option to buy, of products. The delivery of products may in addition include sitting, installation and maintenance. A complete definition of operational leasing is available at www.ifac.org .	Ch 3
Technical Assistance Contract	This is a contract where the contractor is called on to play an advisory role, to manage or supervise a project or to provide the consultancy specified in the contract.	Ch 3
Technical Specifications	These are the technical requirements for the characteristics to be met by supplies in Supply and Works Contracts that must be referred to in the Contract Notice and explained in more detail in the tender documents.	Ch 3
Tender	Used specifically as a term to denote both a bid (terms and conditions) offered by a Tenderer in an Open Tender Procedure.	
Tender Documents	These provide detailed information on what the procurement procedure hopes to obtain and the procedures to be followed. It should include all the elements contained in the Contract Notice but in more detail. They may be provided to all potential tenderers upon request or else posted in their entirety online. They include the terms of the future contract.	Ch 3
Tenderer	An economic operator who has submitted a Tender in an Open Tender procurement procedure. (see also Candidate)	Ch 3
Terms of Reference	These are requirements for a Service Contract which accurately define the characteristics of the service required with regard to the purpose for which it is intended and sets out conformity assessment procedures prescribed by a Contracting Authority. Reference to these should be included in the Contract Notice.	Ch 3
Thresholds	Annex IV, point 3.6 sets thresholds and procedures for procurement which are mandatory for Partners subject to the "A" Control mechanism. Depending on the value and type (whether Supply & Service or Works Contract) of the contract to be awarded, these rules set which level of publication and procedure the procurement should follow.	Ch 3
Tied Aid	This is when aid is given to a beneficiary subject to some condition for example on the origin of the supplies or nationality of the tenderers and candidates. Annex IV clearly states that Tied Aid is not consistent with the principles of impartiality and independence of EU Humanitarian Aid and that procurement procedure must be free of any interference or conditionality due to tied aid.	Ch 2
Transparency	A Mandatory Principle in Annex IV which any award procedure must observe in the procurement process. This is upheld by publication and advertising of contract notices, genuine competition and impartiality in the procurement procedure.	Ch 2
Unilateral Modification	An Amendment method whereby the Partner informs DG ECHO of changes the Partner introduced.	

Unit Costs	These are costs incurred by a company to produce, store and sell one unit of a particular product. Unit costs include all fixed costs (i.e. plant and equipment) and all variable costs (labour, materials, etc.) involved in production. Unit costs may be a single sample or represent averages per unit per output.	Ch 4
Urgent Actions	Actions which meet immediate and unforeseeable humanitarian requirements generated by sudden natural or man-made disasters. Also Actions which have to start immediately and where delays in awarding procurement contracts would put the respect of the principle of humanitarian aid at risk. These Actions must be identified in Article 8.3 of the Agreement. Actions financed by European Commission's primary emergency and emergency decisions are always Urgent Actions. The concept of urgency also includes any situation financed under other types of financing decisions, duly justified, in which the implementation of the humanitarian Action has to start immediately and the delay incurred by putting out to tender procurement contracts would put lives at risk. The concept of urgency cannot be based on circumstances that can be attributed to the Contracting Authority. Contracting Authorities may place their orders, whatever the estimated value of the Contract, on the basis of a negotiated procedure with single tender. Annex IV, point 4.2.	Ch 4
Work Contracts	These cover either the execution, or both the execution and design, of works or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient by itself to fulfil an economic or technical function.	Ch 3



Annexes to the Humanitarian Aid Guidelines for Procurement

ANNEX 2 - SAMPLE DECLARATION FOR CANDIDATES & TENDERERS

Before awarding any contract to a Candidate or Tenderer the Contracting Authority is obliged by Annex IV to ensure that they are eligible to receive EU funds; ensure respect of certain social and environmental principles; and have in place procedures to ensure regular and ethical procurement procedures and the avoidance of conflicts of interest. When procuring from an HPC, the HPC has already committed itself to observe the principles below and so an additional declaration on the lines suggested below need not be requested by the Contracting Authority.

It is strongly recommended that the Contracting Authority request that Candidates or Tenderers submit a formal declaration accompanying their Tender or Bid.

Requiring this information before any contract is entered into will also help the Contract Authority eliminate ineligible applicants in terms of the applicable Exclusion criteria. Once the procurement contract has been awarded this signed Declaration, submitted with the Tender/Bid, will form an integral part of the Contract between the Contracting Authority and the Candidate or Tenderer and any violation or misrepresentation could result in the termination of the contract or the annulment of the procurement procedure.

A sample declaration is provided below, its format is not obligatory and may be adapted to suit the particular needs and rules of countries within which the contractor operates.

Reference details of particular procurement procedure:

I/we hereby declare that [full name of the Candidate, Tenderer etc], established in [city and country of establishment] agrees to participate in the preparation of the above-mentioned [open tender/procurement procedure] in observance of the principles and declarations made hereunder and is fully aware that any failure to comply thereto could lead to its exclusion from the [tender/procurement procedure] and to the rejection of its [bid/tender].

I/we hereby declare that [full name of the Candidate, Tenderer etc] shall carry out its duties to the highest professional standards in the best interests of the Contracting Authority with no consideration linked to possibilities for future contracts and that it observes the following principles and minimum standards throughout its commercial and procurement activities and has procedures in place to ensure that respect for these principles and standards is upheld by its staff and contractors:

LABOUR STANDARDS

Employment is freely chosen.

- a. There is no forced, bonded or involuntary prison labour.
- b. Workers are not required to lodge 'deposits' or their identity papers with the employer and are free to leave their employer after reasonable notice.

Freedom of association and the right to collective bargaining are respected.

- a. Workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively.
- b. Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder, the development of parallel means for independent and free association and bargaining.

Working conditions are safe and hygienic.

- a. A safe and hygienic working environment shall be provided. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work.
- b. Access to clean toilet facilities and potable water, and, if appropriate, sanitary facilities for food storage shall be provided.
- c. Accommodation, where provided, shall be clean, safe, and meet the basic needs of the workers.

Child Labour shall not be used.

a. The International Labour Organisation ("ILO") defines “child labour” as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that:

- is mentally, physically, socially or morally dangerous and harmful to children; and
- interferes with their schooling by depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.

b. There shall be no recruitment of children and children under 18 years of age shall not be employed at night or in hazardous conditions, including any work which is likely to jeopardize children’s physical, mental or moral health, safety or morals. This shall be ensured in terms of the *ILO Convention No. 182 on the Worst Forms of Child Labour, 1999*⁵⁰ and the *ILO Convention No. 138 on the Minimum Age for Admission to Employment and Work, 1973*⁵¹ which lists the following minimum ages for employment:

	The minimum age at which children can start work.	Possible exceptions for developing countries
Hazardous work Any work which is likely to jeopardize children’s physical, mental or moral health, safety or morals should not be done by anyone under the age of 18.	18 (16 under strict conditions)	18 (16 under strict conditions)
Basic Minimum Age The minimum age for work should not be below the age for finishing compulsory schooling, which is generally 15.	15	14
Light work Children between the ages of 13 and 15 years old may do light work, as long as it does not threaten their health and safety, or hinder their education or vocational orientation and training.	13-15	12-14

Living wages are paid

- a. Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmarks, whichever is higher.
- b. In any event wages should always be high enough to meet basic needs and to provide some discretionary income.

Working hours are not excessive

- a. Working hours comply with national laws and benchmark industry standards.

⁵⁰ Text available at: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182>

⁵¹ Text available at: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>

- b. In any event, workers shall not on a regular basis be required to work in excess of 48 hours per week and shall be provided with at least one day off for every 7 day period on average.
- c. Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate.

No discrimination is practised.

There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation.

Regular employment is provided.

To every extent possible work performed must be on the basis of a recognised employment relationship established through national law and practice.

No harsh or inhumane treatment is allowed.

Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.

ENVIRONMENTAL STANDARDS

Suppliers should as a minimum comply with all statutory and other legal requirements relating to the environmental impacts of their business and should aim to address at least the following:

Waste Management.

Waste is minimised and items recycled whenever this is practicable. Effective controls of waste in respect of ground, air, and water pollution are adopted. In the case of hazardous materials, emergency response plans are in place.

Packaging and Paper.

Undue and unnecessary use of materials is avoided, and recycled materials used whenever appropriate.

Conservation.

Processes and activities are monitored and modified as necessary to ensure that conservation of scarce resources, including water, flora and fauna and productive land in certain situations.

Energy Use

All production and delivery processes, including the use of heating, ventilation, lighting, IT systems and transportation, are based on the need to maximise efficient energy use and to minimise harmful emissions.

TRANSPORT & CARGO STANDARDS

Any transport services shall be provided by a company which adheres to the highest possible safety and employment standards and which commits to respect human rights and observe international humanitarian law. It is preferred that the company can demonstrate it has an effective ethical policy in place, particularly if the company is a broker or freight-forwarder, in order to ensure that standards are met. If the supplier of the goods is arranging transport then the supplier should ensure that transport services also meet these standards⁵².

⁵² More resources are publically available at: <http://www.ethicalcargo.org/>

Where air transport is required, preference shall be given to providers who are not on the EU Safety Ban List⁵³ and whose aircraft are registered in countries which meet the International Civil Aviation Organization's⁵⁴ standards.

The supplier shall not engage the services of a transport provider known to also transport illicit or illegal goods such as narcotics or to transport arms, ammunition or other conflict-sensitive materials to or from territories subject to a UN or EU embargo.

The supplier shall not engage in the sale or transport of arms or conflict-sensitive supplies to governments which systematically violate the human rights of their citizens; or where there is internal armed conflict or major tensions; or where the sale of arms may jeopardise regional peace and security.

CONFIDENTIALITY

The Candidate/Tenderer agrees to hold in trust and confidence any information or documents disclosed to it, discovered by it or prepared by it in the course of or as a result of its participation in the above-mentioned procurement procedure, and agrees that it shall be used only for the purposes of this procedure.

- ELIGIBILITY UNDER EU FINANCIAL RULES⁵⁵

I/we furthermore hereby declare that *[full name of the Candidate, Tenderer etc]*

(a) is not subject to any conflict of interest in the ongoing procurement procedure for this contract *[insert details of the relevant contract and procurement procedure]* with other commitments or contracts recently concluded or to be concluded either individually or through any consortium to which it might belong or through any subsidiary or related company;

(b) is not bankrupt or being wound up or having its affairs administered by the courts. It has not entered into an arrangement with creditors or suspended business activities and is not the subject of proceedings concerning those matters. Neither is it in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(c) has never been convicted of any offence concerning its professional conduct by a judgment which has the force of res judicata;

(d) has never been proven guilty of any grave professional misconduct;

(e) has never failed to fulfil its obligations relating to the payment of social security contributions or the payment of taxes in accordance with the applicable legal provisions;

⁵³ http://ec.europa.eu/transport/air-ban/list_en.htm

⁵⁴ <http://www.icao.int/>

⁵⁵ This list is based on the exclusion situations listed in Articles 93 and 94 of the Council Regulation (EC, Euratom) N° 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Union).

(f) has never been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity, including coercive or collusive activities, detrimental to the EU's financial interests;

(g) is not currently subject to any administrative penalty imposed by an EU funded donor for (i) being found guilty of misrepresentation in supplying the information required as a condition of participation in a procurement procedure or failing to supply this information; or (ii) being declared in serious breach of its obligations under any contract covered by the EU budget.⁵⁶

Signed on, at

Name:Signature:

⁵⁶ As referred to in [Article 96](#)(1) of the Financial Regulation adopted by the European Commission.



Annexes to the Humanitarian Aid Guidelines for Procurement

ANNEX 3 - DUE DILIGENCE AND RISK MANAGEMENT IN PROCUREMENT.

The importance of good procurement planning

Procurement planning means that specific procurement procedures can be identified early in a project and then implemented without impeding the implementation of emergency, or other projects. Good procurement planning allows effective, timely project implementation without compromising principles of accountability and transparency.

Through identifying key procurement activities that will be required during the project, some of which can be relatively time-consuming, the appropriate procedures can be implemented effectively, in a timely way. The basic principle is to use the project timeline or activity plan alongside the project budget to identify what will be needed, and when.

When designing a Procurement Plan list all the goods, supplies, services and works that will be required for the implementation and achievement of the Action including the following:

- (1) All the required services, works, and goods that are needed for the implementation of the Action.
- (2) Include the quantities needed for each item on the list and an estimated total cost.
- (3) Naturally grouped items should be put together in the plan to ensure that contracts are not split for the procedures.
- (4) Identify which procedure is needed for each item identified on the list.
- (5) Identify the cost for the implementation of particular procedures – e.g. local or international publication for tenders, tender opening meetings, photocopying and documentation, should be budgeted for
- (6) Identify any waivers that may be required and clearly establish the reasons for the waivers and who needs to approve them (internally or by asking for a derogation to DG ECHO). Approval for waivers or derogations is needed before procurement starts.
- (7) If goods are to be used from existing stocks (i.e. items that were purchased before the project proposal was transmitted to DG ECHO), make sure that the stock items are listed and accurately documented on the procurement plan.

Ideally, a procurement plan should be drawn up alongside the project proposal, budget and timeline. This then allows the procurement staff and budget holder to conduct initial documentation and preparation (i.e. specifications, researching of suppliers) whilst the project is being reviewed. Such preparation does not incur any costs but does ensure that the process is already underway when a project is approved.

Some procurement procedures require considerable time to implement from start to completion. Therefore, good planning is crucial to ensure that the procedures do not unduly delay implementation activities.

Once the required items, procedures and timescales are identified a timeline or action-plan is necessary. This should include dates when items are needed by project staff for specific project activities (for example for distributions, workshops, and training sessions) or for general project activities (for example office equipment and vehicles). When designing the procurement plan, it is important to consider the timescales required for the implementation of procurement procedures.

Table - Tips Before launching a procurement procedure

Do you know what, when and how goods, services and works will be required for the implementation of the Action?	
Yes Go to the next question	No You should have completed your Action planning before submitting a funding request to DG ECHO
Maybe you already have what you need? (stocks) Is your organisation using stocks set before the submission of the funding request to DG ECHO?	
No Go to the next question	Yes Inform DG ECHO in the Single Form
Has DG ECHO signed the Agreement? Only the signature of the agreement secures DG ECHO funding for the Action. Partners should have economic capacity to finance the award and signature of contracts before the signature of the agreement with DG ECHO.	
Do you have the money available for awarding the procurement?	
Yes Go to the next question	No The procurement procedure can be launched but the planning should also identify when the money should be available so that the contract can be awarded without impact on the Action. Such conditions have to be mentioned explicitly in the Single Form
A number of questions have been taken into account, such as: the Control mechanism applied to the Action, the Estimated value of the contracts, the relevance of Special Rules (e.g. quality assurance for the procurement of medicines or food) when drafting your procurement plan.	
Do you know the procedures to be followed for the award of contracts?	
Yes Go to the next question	No A procurement plan is compulsory for operations under an "A" Control mechanism and is strongly recommended in any case.
Is there a Framework Contract that you can use?	
No Go to the next question	Yes Specific contracts based on previously concluded Framework Contracts speed up and simplify the procurement process in a significant way.
Do you envisage placing orders with a Humanitarian Procurement Centre?	
No You should start launching your procurement procedures	Yes Resorting to HPC is an option that should not be overlooked as it enjoys a simplified procurement procedure.

Risk management

Risk is exposure to loss as a consequence of uncertainty. Risk represents the uncertainty manifested by the existence of threats and sometimes of opportunities which impacts on the achievement of the goals of an organisation, whether you define risk as being: the perceived dimension of a damage or

possible loss; the possible and uncontrolled occurrence of an event having specific impacts; a possible and more or less predictable danger; the possibility of an event that may harm the integrity of someone or something (or benefit this someone or something)

Understanding the main categories of risk faced in the procurement process assists in risk assessment and planning practical management and operational measures that should be taken to mitigate those risks.

The impact of risk can be measured by the likelihood of an unwanted event occurring and the consequences if it does occur. Risk analysis is a continuous concern in the planning of procurement and seeks to identify the origin, probability and magnitude of the risks. It helps direct attention to which risks warrant close attention and have the greatest potential for reducing exposure. There are distinct risks at each stage of the procurement process. Risk analysis should form part of each stage of procurement planning and be regularly updated.

Risk analysis should look at the following issues:

- How critical the goods, services or works are to the organisation and the objectives to be reached by the Action
- The difficulty and risk associated with maintaining the quality of and securing the goods, services and works.
- The risk associated with the concerned procurement based on the risk specific to the delivery of goods, services or works, the risks related to the organisation, the supplier related risk and the market related risk.

Risk management seeks to mitigate the impact of the risk by reducing the likelihood of its occurrence and/or reducing avoidable consequences through planning, monitoring and other appropriate actions. Whether in general or in the specific case, contracting authorities should identify and analyse all risk factors that are likely to occur on a project, and then decide on the most appropriate management response for each risk/combination of risks.

Key among the measures to mitigate these risks are: a transparent process, competition, segregation of functions, clear rules and procedures, standard documents, effective control systems, accountability and training of staff.

Organisations' procurement profile and capability

The procurement function may determine the outcome of an organisation's relief operation playing therefore a central role in achieving the results identified in agreement with donors.

The adequacy of the procurement function and capability of the Partner is a precondition for efficient and safe procurement. In order to allocate the necessary resources to the procurement functions, Partners should, in the first place, analyse their procurement portfolio and develop a procurement profile.

The analysis of supply management provides post-event learning of paramount importance to improve the organisation's performance and capacity to respond. Logistics data reflects all aspects of execution, from the effectiveness of suppliers and transportation providers, to the cost and timeliness of response, to the appropriateness of donated goods and the management of information. Thus, the compilation and analysis of this data is critical to the performance of both current and future Actions and programs.

In case the organisation doesn't have these resources and appropriate technical skills available, the organisation's procurement policy should clearly reflect how to address these weaknesses. This can be covered through framework contracting, the use of HPCs or other specific measures.

An important step in this context will be to assess the organisation' procurement function and capability. This will require the introduction of a system for measuring the results and establishing the effectiveness of the procurement function. Three phases have been identified: the analysis of the procurement profile, the analysis of the organisation's procurement facility and capability, and measuring of the results.

Analyzing the Procurement Portfolio and Developing a Procurement Profile

The purpose of analysing the procurement portfolio is to develop a full and comprehensive picture (*procurement profile*) of the procurement needs of the organisation. The first step is to analyse past and projected procurement expenditure for goods, services and works (*spend analysis*). The next step is to analyse the difficulty and risk associated with securing these goods, services and works (*risk analysis*). The third step is to develop a procurement profile that identifies past and projected procurement expenditure and associated levels of risk in form of a matrix. Finally, appropriate strategies can be developed for each of the categories of this procurement profile.

The resulting procurement profile should provide as comprehensive a picture as possible of the actual procurement spend including:

- ✓ what goods, services and works are purchased and how much is spent on them;
- ✓ comparison of historic spend on each item with the projected spend;
- ✓ how the goods, services and works are purchased;
- ✓ who the goods, services and works are purchased from;
- ✓ the geographical location of suppliers e.g. local, regional, international.

As a good practice, Partners should compile and publish all this information in a publicly available document.

Analyzing the Organisation's Procurement Function and Capability

To complete the analysis it is also necessary to look at the procurement function and capability in parallel to the analysis of the procurement portfolio. This analysis includes:

- ✓ roles, responsibilities, structure and reporting;
- ✓ procurement systems and processes;
- ✓ procurement skills and capacities.

In all three cases it is important that they are appropriate in terms of matching the procurement portfolio.

Measuring Results

A framework needs to be put in place to measure whether the procurement strategy objectives have been met. Performance measurement is important in order to aid probity and accountability and also to identify strengths and weaknesses in the procurement function and, therefore, areas for development. It also helps to inform the organisation on the evolution of prices, quality standards, availability, timely delivery and to increase the reality of the procurement process.

Table – Measuring Results and Possible Indicators

Measuring results	Possible indicators
Efficiency of the	Number of suppliers involved in the competition.

competitive process	Number of compliant bids. Suppliers' feedback on process.
Cost monitoring	Evolution of prices. Level/amount of savings/cost reductions achieved. Reduction of stockholdings.
Supplier management	Number of "new" suppliers involved in competition. Number of late/damaged/inadequate deliveries. Level of quality achieved.
Efficiency of internal systems and processes	Volume of low value transactions. Reduction in transaction cost. Usage of Framework contracts or long term agreements. Usage of Humanitarian Procurement Centres. Internal customer satisfaction.
Internal capability	% of procurement officers certified. Specific procurement functions with qualify staff, (e.g. pharmacists) Number of staff days for training.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HUMANITARIAN AID AND CIVIL PROTECTION - ECHO

Annexes to the Humanitarian Aid Guidelines for Procurement

ANNEX 4 - SAMPLE DECLARATION FOR MEMBERS OF EVALUATION COMMITTEES⁵⁷

REF: _____

I, the undersigned, hereby declare that I agree to participate in the evaluation of the above-mentioned [*procurement procedure*].

By making this declaration, I confirm that I shall execute my responsibilities impartially and objectively.

I hereby also declare that I am independent⁵⁸ of all parties which stand to gain from the outcome of the evaluation process⁵⁹. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, which might place me in a situation of conflict of interests or otherwise call into question my independence in the eyes of any party; and, if I discover or should it become apparent during the course of the evaluation process that such a relationship exists or has been established, I will declare it immediately and cease to participate in the evaluation process. I declare that I have not been employed by any of the [*Candidates/Tenderers*] within the past 3 years.⁶⁰

I agree to hold in trust and confidence any information or documents disclosed to me, discovered by me or prepared by me in the course of or as a result of the above-mentioned evaluation exercise and agree that it shall be used only for the purposes of this evaluation and shall not be disclosed to any third party. I also agree not to retain copies of any written information or prototypes supplied.

Name	
Signed	

**

⁵⁷ To be completed by all persons involved in an evaluation process (including members of the Evaluation Committee, whether voting or not-voting and any observers)

⁵⁸ Taking into consideration whether there exists any past or present relationship, direct or indirect, whether financial, professional or of another kind.

⁵⁹ i.e., all [candidates/tenderers] who are participating in the [procurement procedure], whether individuals or members of a consortium, or any of the partners or subcontractors proposed by them.

⁶⁰ If you cannot declare this, please indicate the name of the employer, the duration and your position