



## **PRESIDENT'S DECISION N° 36/2016**

**of 4 August 2016**

**IMPLEMENTING TITLE V CONCERNING PROCUREMENT OF THE EUI'S FINANCIAL RULES**

**AND REPEALING PRESIDENT'S DECISION N° 44/2014 OF 5 DECEMBER 2014**

**(PUBLIC PROCUREMENT REGULATION)**

The President of the European University Institute (EUI),

Having regard to the Convention setting up the European University Institute, and in particular Article 7, paragraph 1 thereof;

Having regard to High Council Decision n° 5/2014 of 5 December 2014 amending the EUI's Financial Rules as last revised by High Council Decision n° 2/2013 of 7 June 2013,

Having regard in particular to Title V (articles 62 – 66) referring to Public Procurement as well as to article 95 of the said EUI's Financial Rules;

Having regard to President's Decision n° 8/2010 of 1 March 2010 setting out the Regulation of procedures to be followed for the award of contracts and the functioning of the CCPC (Consultative Committee for Procurements and Contracts);

Having regard to Principal's Decision n° 20/2012 of 18 May 2012 implementing article 21 of the Regulation of the Procedures to be followed for the award of contracts and the functioning of the CCPC,

Considering the necessity to reform the EUI's Public Procurement Regulation, the above-mentioned Decision n° 8/2010 should be repealed and replaced by a new set of or rules taking into account the experience acquired;

Considering the necessity to streamline and consolidate the existing rules concerning public procurement and align it as much as possible with the EU legislation and practises of national and EU public authorities;

Having regard to the opinion of the EUI's Consultative Committee on Procurement and Contracts (CCPC) on the draft rules proposed by the EUI's Working Group on Public Procurement Reform.

Whereas:

1. The EU Public Procurement Directives (e.g. Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement which repealed Directive 2004/18/EC) provide that being addressed to Member States, they don't apply to procurement carried out by international organisations on their own behalf and for their own account.
2. In that respect, Article 9 of Directive 2014/24/EU of 26 February 2014 provides that this Directive shall not apply to public contracts which the contracting authority awards in accordance with procurement rules provided by an international organisation, where the public contracts concerned are fully financed by that organisation.
3. The EUI being an international organisation is thus exempted from the scope of application of the EU Public Procurement Directives.
4. Despite this exemption, the EUI having close ties to the European Union and being accountable to its Contracting States for its financial management deems it appropriate to reform its Public Procurement Framework following the principles of the Treaty on the Functioning of the European Union (TFEU) and inspiring itself as far as possible by the main elements of the procedures for the award of public contracts as outlined in the respective EU legislation and as carried out also by the EU institutions and bodies.
5. There was a broader need to further improve the quality and coordination of the public procurement procedures, guarantee high level transparency, legal certainty and clarity as well as to harmonise the operational framework by safeguarding at the same time administrative efficiency.

HAS DECIDED AS FOLLOWS:

## ***Article 1***

### ***Scope***

The annexed “Public Procurement Regulation” setting out the procedures to be followed for the award of public contracts is hereby adopted.

It shall be forwarded to the High Council for information and notified to all the Directors of EUI’s Services without delay.

## ***Article 2***

### ***Repeals***

President’s Decision n<sup>o</sup> 8/2010 of 1 March 2010 together with its accompanying President’s Decision n<sup>o</sup> 13/2012 of 16 February 2012, President’s Decision n<sup>o</sup> 19/2010 of 1 July 2010 and Principal’s Decision n<sup>o</sup> 20/2012 of 18 May 2012 are hereby repealed.

## ***Article 3***

### ***Entry in Force***

The present decision shall enter into force on the date of its adoption.

Done at Florence, on 4 August 2016.

The President

(original signed)

J.H.H. WEILER

**ANNEX TO**

**EUI PRESIDENT'S DECISION N° 36/2016**

**of 4 August 2016**

**IMPLEMENTING TITLE V CONCERNING PUBLIC PROCUREMENT AND CONCESSIONS (ARTICLES 62-66) OF  
THE EUI'S FINANCIAL RULES AND REPEALING PRESIDENT'S DECISION N° 44/2014 OF 5  
DECEMBER 2014.**

**(PUBLIC PROCUREMENT AND CONCESSIONS REGULATION)**

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## SECTION 1

### GENERAL PRINCIPLES

#### *Article 1 Subject matter and scope*

1. This Regulation establishes rules on the procedures for procurement by the European University Institute (hereunder the Institute) in its capacity as contracting authority with respect to public and concession contracts whose value is estimated to be above the threshold laid down in Article 4(2).
2. Procurement within the meaning of this Regulation is the acquisition by means of a contract of works, supplies or services by the Institute from economic operators chosen by it.
3. The application of this Regulation is subject to Title V of the EUI's Financial Rules concerning Public Procurement and Concessions.

#### *Article 2 Definitions*

For the purposes of this Regulation, the following definitions shall apply:

1. 'contracting authority' means the European University Institute having the status of an international organisation;
2. 'contract' means a public contract or a concession contract;
3. 'public contracts' means contracts for pecuniary interest concluded in writing between one or more economic operators and the Institute as contracting authority and having as their object to obtain against payment of a price, the execution of works, the supply of products, or the provision of services within the meaning of this Regulation;
  - a. 'public supply contracts' means public contracts having as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products (for example, computers, printers, furniture, office supplies and fuels). A public supply contract may include, as an incidental matter, siting, installation and maintenance operations;
  - b. 'public service contracts' means public contracts having as their object the provision of intellectual and non-intellectual services other than those covered by supply and work contracts. These can refer for example to maintenance and repair work, transport,

telecommunications, financial services, computer services, consultation of experts, publication, and security.

- c. 'public works contracts' means public contracts having as their object one of the following:
  - i. the execution, or both the design and execution, of a work;
  - ii. the realisation, by whatever means, of a work corresponding to the requirements specified by the Institute exercising a decisive influence on the type or design of the work;
4. 'a work' means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;
5. 'framework contract' means a public contract between the Institute and one or more economic operators, the purpose of which is to establish the basic terms governing a series of specific contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged;
6. 'concession contracts' means contracts for pecuniary interest concluded in writing between one or more economic operators and the Institute as contracting authority and having as their object to entrust the execution of works or the provision and management of services to an economic operator. The remuneration shall consist either solely in the right to exploit the works or services or in that right together with payment. The award of a works or services concession contract shall involve the transfer to the concessionaire of an operating risk in exploiting those works or services encompassing demand risk or supply risk or both. The concessionaire shall be deemed to assume a risk where, under normal operating conditions, there is no guarantee of recouping the investment made or the costs incurred in operating the works or the services at stake;
7. The term 'economic operator' can refer to a 'work contractor', 'supplier', or 'service provider' and means any natural or legal person or public entity or group of such persons and/or entities which offers the execution of works, the supply of products or the provision of services on the market;
8. 'tenderer' means an economic operator that has submitted a tender;



9. 'candidate' means an economic operator that has sought an invitation or has been invited to take part in a restricted procedure and/or a negotiated procedure, or to a call for expression of interest;
10. 'vendor' means an economic operator registered in a list of vendors to be invited to submit requests to participate or submit tenders;
11. 'subcontractor' means an economic operator that is proposed by a candidate or tenderer or contractor to perform part of the contract. The sub-contractor has no direct legal commitment to the Institute as contracting authority;
12. 'contract notice' refers to the advertisement means the Institute uses for calling for competition (tender) in respect of a procurement procedure and describes the characteristics of the contract and gives practical information on the tender procedure;
13. 'authorising officer' means the President or upon his delegation the Secretary General and any other officer by subdelegation;
14. 'responsible officer': means the competent Director of Service in charge of the procurement procedure;
15. 'management team': refers to the Team/Board composed by the Service Directors and chaired by the Secretary General in order to coordinate the work of the administration;
16. 'unit' means the Service, Department, Centre or Programme of the EUI;
17. 'procurement documents'/'tender documents' means any document produced or referred to by the Institute to describe or determine elements of the procurement procedure, including *i.a.*
  - i. the contract notice and/or other publicity measures set out in this Regulation and in the Institute's Financial Rules,
  - ii. the invitation to tender,
  - iii. the tender specifications which shall include the technical specifications and the relevant criteria or the descriptive documents,
  - iv. the proposed conditions of contract (e.g. draft contract),
  - v. the formats for the presentation of documents by candidates and tenderers,
  - vi. information on generally applicable obligations and
  - vii. any additional documents.

18. 'tender specifications' means any documents describing the needs and requirements of the Institute for the purposes of the relevant tender;
19. 'written' or 'in writing' means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means;
20. 'electronic means' means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by optical means or by other electromagnetic means;
21. 'life cycle' means all consecutive and/or interlinked stages, including production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and finalisation.

***Article 3 Principles applicable to procurement procedures and public and concession contracts***

1. All procurement procedures and subsequent public and concession contracts shall respect the principles of transparency, proportionality, equal treatment and non-discrimination and shall be put out to competition on the broadest possible basis, except in case of negotiated procedure, as defined in this Regulation.
2. The design of the procurement shall not be made with the objective of excluding it from the requirements of this Regulation or of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators.
3. The Institute shall not use contracts (including framework contracts) improperly or in such a way that their purpose or effect is to prevent, restrict or distort competition.

Before launching a procurement procedure, the Institute may conduct preliminary market consultations with a view to preparing the procurement.

For this purpose, the Institute may for example seek or accept advice from independent experts or authorities or from economic operators. That advice may be used in the planning and conduct of the procurement procedure provided that such advice does not have the effect

of distorting competition and does not result in violation of the principles of non-discrimination and transparency.

Where an economic operator has advised the contracting authority or has otherwise been involved in the preparation of the procurement procedure, the Institute shall take appropriate measures to ensure that competition is not distorted by the participation of that economic operator.

4. Participation in the Institute's tender procedures is open on equal terms to all natural and legal persons coming within the scope of the EU Treaties (this includes all economic operators registered in the EU and all EU citizens) and to all natural and legal persons established in a third country which has a special agreement with the European Union in the field of public procurement under the conditions laid down in that agreement. It shall also be open to international organisations.

The Institute can therefore accept offers from and sign contracts with tenderers from the EU Member States, EEA countries and any other country which has an international agreement with the Union in the field of public procurement as well as from countries which have ratified the Multilateral Agreement on Government Procurement ("GPA").

Under exceptional circumstances duly justified by the responsible officer, the President may decide to allow third-country nationals and legal persons other than those referred in the previous subparagraphs to tender for contracts.

5. In areas of common interests, the Institute along with the European Union Institutions and Bodies as well as European Union Agencies, in their respective capacities as contracting authorities, may agree to perform certain specific procurements jointly. In this case, the Institute may join the procurement procedure conducted in its entirety by a European Union Institution, Body and/or Agency.

The Institute and the European Union contracting authorities concerned by the joint procurement shall agree in particular upon the practical modalities for the award of the contract or any possibility for the Institute to use contracts already awarded by the European Union's contracting authorities

6. In case of a procurement procedure implying or resulting into a concession contract award, the Institute shall perform a preliminary impact assessment, communicated to the authorising officer, regarding the consequences from the transfer of operating risks to a concessionaire. In particular, since concessions, by definition, outsource specific Institute's functions and controls

to economic operators running business with private sector criteria (profitability, return on investment etc.), the afore-mentioned impact assessment may examine how Institute's interests are respectively affected and/or safeguarded in terms of security, safety, information confidentiality, social responsibility, environmental and other policies.

## **SECTION 2**

### **PREPARATORY PHASE**

#### ***Article 4      Threshold amounts (for public and concession contracts)***

1. Before launching the call for tender, the responsible officer shall estimate the value of the contract to be awarded since the type of procedure will depend on this estimated value (further details are provided in Annex I).

The following procedures are foreseen in case the estimated value of the contract is:

- a. between 60.000,01€ and 200.000€ as well as greater than 200.000€: open call for tender; instead of an **open** call for tender, the responsible officer may use the **restricted** procedure as described in Article 16.
  - b. Within the thresholds specified under (a), the use of **negotiated** procedure is allowed for the exceptional cases listed under Article 18.
  - c. Between 5.000,01€ – 60.000€: negotiated procedure:
    - i. Between 20.000,01€ – 60.000,00€: with at least three “requests for offer”;
    - ii. Between 5.000,01€ – 20.000,00€: with at least two “requests for offer”;
2. When the estimated value of a contract is up to 5.000,00€, this regulation shall not apply and the responsible officer is allowed to purchase the goods, works or services upon issue of a simple bill or invoice.

The Institute may also use the competitive procedure with negotiation regardless of the estimated value of the contract in the case of concession contracts.

#### ***Article 5      Methods for calculating the estimated value of procurement***

1. The choice of the method used to calculate the estimated value of a contract shall not be determined with the intention of avoiding the competitive tendering procedure or to

circumvent the rules which apply to certain procurement procedures or above certain thresholds as those down in Article 4. A contract may not be split up for that purpose either. The Institute shall divide a contract into lots, whenever appropriate, with due regard to broad competition.

2. The value of a contract must be determined taking into account the operational needs of all units of the EUI. The responsible officer must therefore check if other Units have subscribed to, or are launching, calls for tenders in the same field. In particular, the responsible officer shall not split the market in question into several ones of lesser value.

Moreover, the estimate has to take account of the future needs of the Institute, in order to avoid unexpected expenses that would have an impact on the choice of the procedure should they had been considered on time.

3. The calculation of the estimated value of procurement shall be based on the total amount payable, net of VAT, as estimated by the responsible officer. Where a contract provides for options, phases or possible renewal(s), the basis for calculation shall be the maximum estimated amount, including any form of optional clauses, phases and possible renewals (e.g. if the contract is concluded for one year renewable for four years the estimated value of the contract will be the annual estimated value multiplied by five).
4. In the case of contracts which are regular in nature or are intended to be renewed within a given period of time, the estimated value of a contract shall be established keeping into account the estimated aggregate value for the whole period and if available past values or forecasts for similar services or products.
5. Whenever appropriate, technically feasible and cost-efficient, contracts shall be awarded in the form of separate lots within the same procedure.

When the subject matter of a contract is subdivided into several lots, each one being the subject of an individual contract, the total value of all lots shall be taken into account for the overall evaluation of the applicable threshold.

Where a contract is to be awarded in the form of separate lots, tenders shall be evaluated separately for each lot. If several lots are awarded to the same tenderer, a single contract covering those lots may be signed.

6. With regard to framework contracts, the value to be taken into consideration shall be the maximum estimated value net of VAT of all the contracts envisaged for the total maximum duration of the framework contract.

7. For contracts on financial services, the value to be used as the basis for the calculation of the estimated value of the contract shall be as follows:
  - a. insurance services: the premium payable and the other types of remuneration
  - b. banking and other financial services: fees, commission and other forms of remuneration.
8. In the case of concession contracts, the value shall be the estimated total turnover of the concessionaire generated over the duration of the contract. The value shall be calculated using an objective method specified in the procurement documents, taking into account in particular:
  - (a) the revenue from the payment of fees and fines by the users of the works or services other than those collected on behalf of the contracting authority;
  - (b) the value of grants or any other financial advantages from third parties for the performance of the concession;
  - (c) the revenue from sales of any assets which are part of the concession;
  - (d) the value of all the supplies and services that are made available to the concessionaire by the Institute provided that they are necessary for executing the works or services;
  - (e) the payments to candidates or tenderers.

**Article 6**      ***(e) the payments to candidates or tenderers. Framework contracts***

1. The Institute may conclude framework contracts, provided that it applies the existing procurement procedures and in compliance with the following rules.
2. A framework contract means a contract between the Institute and one or more economic operators, the purpose of which is to establish the basic terms governing a series of specific contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
3. Specific Contracts based on framework contracts shall be awarded in accordance with the terms of the framework contract only between the Institute and the contractors originally party to the framework contract.
4. Specific contracts based on a framework contract may under no circumstances make substantial modifications to the terms laid down in that framework contract.
5. Where a framework contract is concluded with a single economic operator, the specific contracts shall be awarded within the limits of the terms laid down in the framework contract.

6. For the award of those contracts and in duly justified circumstances, the Institute may consult in writing the contractor, party to the framework contract, requesting it to supplement its tender if necessary.
7. Where a framework contract is to be concluded with several economic operators (“multiple framework contract”), it shall be concluded with at least three operators, provided that there is a sufficient number of economic operators who satisfy the selection criteria or a sufficient number of admissible tenders which meet the award criteria.

A framework contract with several economic operators may take the form of separate contracts signed in identical terms with each contractor. It must be clear, however, that in case of multiple economic operators the rules of precedence among them are predefined and fully communicated, except if they have been exclusively awarded distinctly different lots of goods and/or services.

Specific contracts based on framework contracts concluded with several economic operators shall be implemented in one of the following ways:

- a. in case of framework contracts **without reopening of competition** by application of the terms laid down in the framework contract, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for determining which of the economic operators, party to the framework contract, shall perform them; the latter conditions shall be indicated in the procurement documents;
  - b. in case of framework contracts where not all the terms governing the provision of works, services and supplies are laid down in the framework contract, **through reopening of competition** among the contractors, on the basis of any of the following:
    - i. the same and where necessary, more precisely formulated terms,
    - ii. where appropriate, on the basis of other terms referred to in the procurement documents relating to the framework contract
8. For every specific contract to be awarded through re-opening of competition among the contractors, the Institute shall consult in writing the contractors of the framework contract, fixing a time limit which is sufficiently long to allow specific tenders to be submitted. Specific tenders shall be submitted in writing and documents shall not be opened until the stipulated time limit for reply has expired.

9. The Institute shall award each specific contract to the tenderer who has submitted the most economically advantageous specific tender on the basis of the award criteria set out in the procurement documents relating to the framework contract.
10. In sectors subject to a rapid price and technological evolution, framework contracts without reopening of competition shall contain a clause either on a mid-term review or on a benchmarking system. After the mid-term review, if the conditions initially laid down are no longer adapted to the price or technological evolution, the Institute may not use the framework contract concerned and shall take appropriate measures to terminate it.
11. Specific contracts based on framework contracts shall be preceded by a budgetary commitment.

### ***Article 7      Mixed procurement***

A mixed contract covering two or more types of procurement (works, services or supplies) or concessions (works or services) or both, shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject matter of the contract in question.

In the case of mixed public contracts consisting of supplies and services, the main subject matter shall be determined by a comparison of the values of the respective supplies or services.

A mixed contract covering one type of public procurement (works, supplies or services) and concessions (works or services) shall be awarded in accordance with the provisions applicable to the public contract.

### ***Article 8      Duration of contracts***

Contracts awarded to an economic operator may be concluded for a maximum duration of five years.

Contracts may be concluded for the duration of one year, with a renewal clause, for a maximum of seven years in total.

Contracts may include a revision or termination clause due to some unforeseen technological change that may alter the conditions under which the contract was stipulated.



## ***Article 9 Additions to contracts***

Additions to contracts are allowed provided that the aggregate value eventually foreseen on the additional contracts does not exceed 50% of the amount of the initial contract. The total value of the contract shall remain within the thresholds of the initially chosen procedure, unless decided differently by the authorising officer.

## ***Article 10 Contract award criteria (most economically advantageous tender)***

Under the procedures provided for in Article 4, the authorising officer shall base the award of contracts on the most economically advantageous tender.

Under this criterion, the tenders are evaluated according to the best quality / price ratio, taking into account criteria justified by the subject of the contract such as the price quoted, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, profitability, completion or delivery times, after-sales service and technical assistance.

The responsible officer may lay down minimum levels of quality. Tenders below those levels of quality shall be rejected.

For contracts of an estimated value greater than 60.000€, the responsible officer shall specify in the contract notice or in the specification or descriptive document the weighting it shall apply to each of the criteria for determining the most economically advantageous tender (further details are provided in Annex III).

## ***Article 11 Confidentiality***

1. Unless otherwise provided in this Regulation, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out therein, the responsible officer shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.
2. The Institute may impose on economic operators requirements aimed at protecting the confidential nature of information which it makes available throughout the procurement procedure.

## ***Article 12 Conflicts of interests***

1. The Institute shall effectively prevent, identify and immediately remedy conflicts of interests arising in the conduct of procurement procedures, throughout the whole procedure, so as to avoid any distortion of competition and to ensure equal treatment of all tenderers.

The concept of conflict of interests shall at least cover any situation where the staff members of the Institute and other persons involved in the procurement procedure have, directly or indirectly, a financial, economic or other private interest in the outcome of the procurement procedure, which may be perceived to compromise their impartiality, objectivity and independence in the performance of their duties in the context of the procurement procedure.

For the purposes of this Article, 'private interests' means any family, emotional life, political or other shared interests with the candidates or the tenderers, including conflicting professional interests.

2. The rules referred to in paragraph 1 shall apply to conflicts of interests involving at least the following categories of persons:
  - a. responsible officer and/or staff members of the Institute, who are involved in the conduct of the procurement procedure;
  - b. the President of the Institute and members of decision-making bodies of the Institute who, without necessarily being involved in the conduct of the procurement procedure, may nevertheless influence the outcome of that procedure.
3. The Institute shall ensure in particular:
  - a. that staff members referred to in paragraph 2(a) are required to disclose to the responsible or to the authorising officer any conflict of interests (or situations perceived as such) in relation to any of the candidates or tenderers, as soon as they become aware of such conflict, in order to enable the Institute to take remedial action;
  - b. that candidates and tenderers are required to submit at the beginning of the procurement procedure a declaration on the existence of any privileged links with the persons referred to in paragraph 2 a) and b), which are likely to place those persons in a situation of conflict of interests; the Institute shall indicate in the individual report whether any candidate or tenderer has submitted a declaration.
4. In the event of a conflict of interests, the Institute shall take appropriate measures, which may include the recusal of the staff member in question from involvement in the affected

procurement procedure or the re-assignment of the staff member's duties and responsibilities. Where a conflict of interests cannot be effectively remedied by other means and as a last resort, the candidate or tenderer concerned shall be excluded from the procedure.

5. Where privileged links are identified, the Institute shall immediately take appropriate measures to avoid any undue influence on the award process and ensure equal treatment of candidates and tenderers. Where the conflict of interests cannot be effectively remedied by other means, the candidate or tenderer concerned shall be excluded from the procedure.
6. All measures taken pursuant to this Article shall be documented in the individual report.

### ***Article 13 Illicit conduct***

1. Candidates shall be required at the beginning of the procedure to provide a declaration on honour that they have not undertaken and will not undertake to:
  - a. unduly influence the decision-making process of the Institute or obtain confidential information that may confer upon them undue advantages in the procurement procedure;
  - b. enter into agreements with other candidates and tenderers aimed at distorting competition;
  - c. deliberately provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.
2. In compliance with the EUI's Staff Regulations, in particular Art. 11, EUI's staff members shall not, without the permission of the Appointing Authority accept any inappropriate gift, directly or indirectly connected with their own work activities. By participating to the procurement procedure, the tenderer as well as the subsequent contractors shall confirm acknowledgement of this rule and the consequent termination of the contract in case of non-conformity.

## **SECTION 3**

### **RULES ON PUBLIC & CONCESSION CONTRACTS**

#### **PROCUREMENT PROCEDURES**

### ***Article 14 Outline of types of procurement procedures***

Procurement procedures for awarding concession contracts or public contracts, including framework contracts shall take one of the following forms:

- a. the open procedure (call);
- b. the restricted procedure;
- c. the negotiated procedure;
- d. procedures involving a call for expression of interest.

A competitive procedure with negotiation regardless of the estimated value of the contract may be used in the case of concession contracts.

### ***Article 15 Open procedure***

1. Where the estimated value of a contract exceeds the threshold of 60.000€ as stated under Article 4 of the present Regulation, an open call for tender is held. In open procedures, any interested economic operator may submit a tender in response to a call for tender.
2. Advice on the procedure shall be requested by the responsible officer to the Internal Auditor concerning the compliance of the call for tender with the requirements set out in this Regulation (further details are provided in Annex II).
3. The procedure starts with the publication of a contract notice describing the characteristics of the contract, on the Institute's website. The call for tender should be communicated to at least five relevant economic operators.

In case the estimated value of the contract is greater than 200.000€, the call for tender shall also be published in a daily newspaper (of a wide scale coverage) and notified to the High Council representatives.

The minimum time limit for the receipt of tenders shall be at least 30 days from the date on which the contract notice was published.

The tender shall be accompanied by the information for qualitative selection that is requested by the Institute.

4. Where a state of urgency, duly substantiated by the President of the Institute (in his absence by the Secretary General), renders impracticable the time limit laid down under the previous paragraph, the Institute may fix a time limit which shall be not less than 21 days from the date on which the contract notice was published.

## ***Article 16 Restricted procedure***

1. This procedure may be used as an alternative to the open procedure as indicated in Article 4. In restricted procedures, any economic operator may submit a request to participate in response to a call for tender. Only those economic operators invited to do so by the Institute following its assessment of the information provided may submit a tender.

A restricted procedure is particularly recommended:

- a. if the number of tenders expected is so large that the practical management of the procurement procedure could be adversely affected;
- b. if the Institute wishes to limit circulation of the tender documents (e.g. for security or confidentiality reasons);
- c. if a site visit is necessary for economic operators to submit a tender.

Advice on the procedure is requested by the authorising/responsible officer to the Internal Auditor concerning the compliance of the call for tender with the requirements set out in this Regulation (further details are provided in Annex II).

2. The publication requirements as set out under article 15(3) shall apply.
3. The restricted procedure is organised in two steps:
  - a. The first step analyses the capacity of economic operators who have submitted a request to participate against the exclusion and selection criteria: any interested economic operator can take part in this step.
  - b. In the second step those who passed the first step are invited simultaneously and in writing to submit tenders. The Institute may limit the maximum number of suitable candidates to be invited to participate provided the minimum number of qualified candidates is available.
4. The minimum time limit for receipt of **requests to participate** shall be 21 days from the date on which the contract notice was published.
5. The minimum time limit for the **receipt of tenders** shall be 30 days from the date on which the invitation to tender is sent.
6. Where a state of urgency duly substantiated by the responsible officer renders impracticable the time limits laid down in this Article, the President or in his absence the Secretary General may fix:

- a. a time limit for the receipt of **requests to participate** which shall not be less than 15 days from the date on which the contract notice was sent;
  - b. a time limit for the **receipt of tenders** which shall be not less than 21 days from the date on which the invitation to tender is sent.
7. The number of candidates invited to submit a tender may not be less than five, provided that a sufficient number of candidates satisfy the selection criteria. In any event, the number of candidates invited to tender must be sufficient to ensure genuine competition.
  8. When the number of candidates meeting the selection criteria and the minimum levels is below the minimum number specified above, the Institute may continue the procedure by inviting the candidate or candidates with the required capacities. However, the Institute may not include other economic operators that did not request to participate or candidates that do not have the required capacities.

#### ***Article 16bis-Use of competitive procedure with negotiation***

When the Institute uses the competitive procedure with negotiation in the case of concession contracts regardless of the estimated value of the contract, it shall follow the arrangements on negotiation set out in Article 62 (3) and (4) of the EUI's Financial Rules.

During a negotiation, the Institute shall ensure equal treatment for all tenderers.

A negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the procurement documents. The Institute shall indicate whether it will use that option in the procurement documents.

#### ***Article 17 Negotiated Procedure***

1. This procedure shall be used when:
  - a. the estimated value of the contract is within the thresholds indicated in Article 4 of the present Regulation, or
  - b. when the estimated value of the contract is above the threshold indicated in Article 4 of the present Regulation but the cases described under Article 18 apply.

Consultation of the Internal Auditor within the negotiated procedure is not required unless the responsible officer deems it appropriate.

2. In a negotiated procedure, the responsible officer shall consult tenderers of its choice who satisfy the selection criteria laid down in Article 28 and are deemed to be best qualified to meet the requirements of the Institute, and negotiate the terms of their tenders with one or more of them.
3. In negotiated procedures the responsible officer shall simultaneously invite the selected candidates to submit offers.
4. The minimum number of candidates invited must be:
  - a. three if the value of the contract is between 20.000,01€ to 60.000€;
  - b. two if the value of the contract is between 5.000,01€ and 20.000€.
5. In any case, the consultation of candidates is valid if the minimum number required produces a concrete proposal, unless authorised differently by the President.
6. During the negotiation, the Institute shall ensure transparency, proportionality and equal treatment for all tenderers. The procedure must be carried out in writing and be fully documented.
7. For contracts of a value below 60.000€ regarding intellectual expertise/collaborations related to research activities, and for which there exists an obvious monopoly or a prominent position of an economic operator in a highly specialised market, the responsible officer will be allowed to choose the operator without applying the negotiated procedure after receiving the favourable opinion of the Executive Committee on a justified proposal.

#### ***Article 18 Use of the negotiated procedure for exceptional cases***

1. Without prejudice to Articles 15 and 16, the Institute may award public and concession contracts by a negotiated procedure in the following exceptional cases, with the approval of the President/Secretary General in their capacity as authorising officer:
  - a. where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract as specified in the tender documents are not substantially altered and that a report is sent to the Internal Auditor for information, and to the Institute's President (or the Secretary General upon delegation) who will confirm the procedure to be followed.

A tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the Institute's needs and requirements as specified in the procurement documents.

A request for participation shall be considered not to be suitable where the economic operator concerned is to be or may be excluded pursuant to article 26 or does not meet the selection criteria set out by the Institute pursuant article 28.

- b. where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:
  - i. the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
  - ii. competition is absent for technical reasons;
  - iii. the protection of exclusive rights, including intellectual property rights;

The exceptions set out in points (ii) and (iii) shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.

Regarding the above legal, technical or artistic reasons, or reasons connected with the protection of exclusive rights (e.g. patents, copyrights or other intellectual property rights), due to which the works, supplies or services can be supplied only by a particular economic operator (legal or de facto monopoly), a distinction should be drawn between the following cases:

- i. In the case of the obvious existence of a monopoly (in particular a legal monopoly), the responsible officer shall apply the negotiated procedure directly and contact the economic operator holding the monopoly.
  - ii. When an economic operator enjoys a prominent position in a highly specialised market, the choice of this operator is made by the President / Secretary General who can consult the Internal Auditor or the Management Team.
- c. For the negotiation of license agreements, the authorising/responsible officer can delegate negotiation rights to consortia or European Institutions on the following conditions:
  - i. the consortium is bound by national law implementing the EU Public Procurement Directive.



- ii. the providers have the exclusive right on the content supplied and therefore the consortium can use the negotiated procedure.
- d. insofar as is strictly necessary where, for reasons of extreme urgency brought about by force majeure, the time limits for the open or restricted procedure cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the Institute. The existence of urgency must be recognised by the President (or the Secretary General upon delegation) who will also decide the number of operators to be contacted.
- e. for contracts for the maintenance of the EUI buildings, that for technical reasons and for the sake of coordination can be awarded to economic operators already selected by the “Provveditorato alle Opere Pubbliche per la Toscana e l’Umbria” after an open tender.
- f. for contracts for gas, electricity or telephone services, as long as the respective markets are not entirely liberalised. In this case, it is necessary to invite the existent operators to present an offer, eventually with the help of a consultant.
- g. for additional services and works not included in the project initially envisaged or in the initial contract but which, through unforeseen circumstances, have become necessary for the performance of services or works on condition that the award is made to the contractor performing the contract in any of the following cases:
  - i. where such additional contracts cannot be technically or economically separated from the main contract without serious inconvenience for the Institute.
  - ii. where such services or works, although separable from the performance of the original contract, are strictly necessary for its completion.

The aggregate value of additional contracts may not exceed 50% of the amount of the initial contract.

- h. for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to which the Institute awarded an original contract or who has already provided a large technical infrastructure, provided that such works or services are in conformity with a basic project for which the original contract was awarded. The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.

As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the Institute. This procedure may be used only during the execution of the original contract and at the latest during the three years following its signature.

According to the EUI internal Control Standard related to the authorisation and communication of exceptions, the use of negotiated procedure for exceptional cases shall be authorised by the President/Secretary General and communicated to the Internal Auditor.

As defined under article 65 of the EUI's Financial Rules, the use of negotiated procedure for exceptional cases shall be notified to the Budget and Finance Committee as quickly as possible.

### ***Article 19 Procedure involving a call for expressions of interest***

1. A call for expressions of interest (CEI) serves to invite economic operators to put themselves forward to be included either on a list of pre-selected candidates or on a list of vendors.

Consultation of the Internal Auditor within this procedure is not required unless the responsible officer deems it appropriate.

A call for expressions of interest shall be published where it is necessary to provide publicity among potential candidates, on the website of the Institute.

The call for expressions of interest shall include a description of the tasks, their duration and the fixed conditions of remuneration. Those conditions may be based on unit prices.

In the procedures after a call for expressions of interest the time limit to submit tenders shall be no less than 30 days from the date on which the invitation to tender is sent.

For contracts to be awarded through a restricted procedure, and without prejudice to Article 16, the Institute may use a call for expressions of interest to do either of the following:

- a. to pre-select candidates to be invited to submit tenders in response to future restricted invitations to tender;
  - b. to collect a list of vendors to be invited to submit requests to participate or tenders.
2. The list drawn up following a call for expressions of interest shall be valid for no more than five years from its publication or for the duration of a multiannual programme related to the tasks. The list referred to in the first subparagraph may include sub- lists.

Any interested economic operator may express an interest at any time during the period of validity of the list, with the exception of the last three months of that period.

3. Where a contract is to be awarded, the Institute shall invite all candidates or vendors entered on the relevant list or sub-list to do either of the following:
  - a. to submit a tender in the case referred to in point (a) of paragraph 1;
  - b. to submit, in case of the list referred to in point (b) of paragraph 1, either of the following:
    - i. tenders including documents relating to exclusion and selection criteria;
    - ii. documents relating to exclusion and selection criteria and, in a second step, tenders, for those fulfilling these criteria.

### ***Article 20 Content of procurement/tender documents***

1. Procurement/Tender documents shall give a full, clear and precise description of the subject of the contract and specify the exclusion, selection and award criteria applicable to the contract.
2. *The language of publication shall be English. If the responsible officer deems it appropriate the English documentation can be accompanied by a translation in any of the EU languages. However only the English version of the documents is to be considered valid.*
3. The tender documents shall include at least:
  - a. the invitation to tender or to negotiate which shall at least:
    - i. specify the rules governing the lodging and presentation of tenders, including in particular the closing date and time for submission, any requirement as to the use of a standard application form, the documents to be attached, including those in evidence of financial, economic, technical and professional capacity and the address to which they must be sent;
    - ii. specify the period during which a tender will remain valid and may not be varied in any respect;
    - iii. state that submission of tender implies acceptance of the tender documents and binds the contractor to whom the contract is awarded during performance of the contract.
  - b. the tender specifications (including the technical specifications) or in more simplified procedures a document describing the needs and requirements of the Institute, or the

reference for the internet address at which such specification or document can be consulted.

- c. the draft contract based on the model contract.

Point c) of the second subparagraph shall not apply to cases where, due to exceptional and duly justified circumstances, the model contract cannot be used.

The tender documents shall contain a reference to the advertising measures taken.

More detailed information on the content of the above documents can be found under Annex III.

### ***Article 21 Submission of tenders***

1. The arrangements for submitting tenders shall be such as to ensure that there is genuine competition and that the contents of tenders remain confidential until they are all opened simultaneously.
2. The Institute shall ensure as much as possible by appropriate means that tenderers may enter the contents of the tenders and any supporting evidence in an electronic format ("e-procurement").

### ***Article 22 Methods of communication for submission of tenders***

1. The arrangements for the submission of tenders and requests to participate (in case of restricted procedure) shall be determined by the the responsible officer who may choose an exclusive method of submission.

The means of communication chosen shall be generally available and shall not restrict the access of economic operators to the procurement procedure.

Tenders and requests to participate shall be submitted by letter and/or in certain cases by electronic means according to the following specifications.

2. The means of communication chosen shall be such as to ensure that the following conditions are satisfied:
  - a. each submission contains all the information required for its evaluation;
  - b. the integrity of data is preserved;

- c. the confidentiality of tenders and requests to participate is preserved and the Institute examines the content of tenders and requests to participate only after the time limit set for submitting them has expired;
- d. the protection of personal data in accordance with the requirements of the EU's Data Protection Policy.

Where necessary for the purposes of legal proof, the Institute may decide that requests to participate submitted by fax must be confirmed by letter or electronically as soon as possible and at all events before the final time limits for receipt of tenders and requests to participate.

- 3. Where the Institute authorises submission of tenders and requests to participate by electronic means, the tools used and their technical characteristics shall be non-discriminatory in nature, generally available and interoperable with the information and communication technology products in general use and shall not restrict economic operators' access to the procurement procedure.
- 4. Where the Institute authorises submission of tenders and requests to participate by electronic means, the electronic documents submitted by means of such systems shall be deemed to be the originals and to be signed by an authorised representative of the economic operator. In these cases the Institute shall guarantee through technical means and appropriate procedures that:
  - a. the economic operator can be authenticated with certainty;
  - b. the exact time and date of the receipt of tenders and requests to participate can be determined precisely;
  - c. it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;
  - d. where that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;
  - e. only authorised persons may set or change the dates for opening data received;
  - f. during the different stages of the procurement procedure access to all data submitted, or to part thereof, must be possible only through action by authorised persons at the same time;
  - g. simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;

- h. data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith.
5. Where submission is by letter, tenderers or candidates may choose to submit tenders or requests to participate:
- a. either by post or by courier service, in which case the call for tenders shall specify that the evidence shall be constituted by the date of dispatch, the postmark or the date of the deposit slip;
  - b. by hand-delivery to the premises of the Institute by the tenderer or candidate in person or by an agent; for which purposes the call for tenders shall also specify the service to which tenders are to be delivered against a signed and dated receipt.
6. In order to maintain secrecy and to avoid any difficulties where tenders are sent by letter, the invitation to tender must include the following provision:
- a. For open and restricted procedures, tenders must be submitted in a sealed envelope itself enclosed within a second sealed envelope. The inner envelope must bear, in addition to the name of the department to which it is addressed, as indicated in the invitation to tender, the words 'Invitation to tender — Not to be opened by the mail service'. If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across that tape. If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across that tape.
  - b. Tenders for amounts equal or below 60.000€ and all the requests to participate (first step of the restricted procedure) can be submitted by e-mail.

Personal data included in the tenders will be treated in accordance with the requirements of the EUI's Data Protection Policy.

### ***Article 23 Time allowed for access to tender documents***

1. In case an economic operator submits, in good time before the deadline for submission of tenders, **a request for access to tender documents** such as the specification or descriptive documents or a request **for additional information** relating to the specification or the descriptive documents or additional documents, the requested document or information shall be sent to all interested economic operators, as set out in the following paragraphs. In case of open or first-step of the restricted procedures it shall be published on the Institute's

website whereas in negotiated procedures and in the second step of the restricted ones it shall be communicated to all invited/selected economic operators. The Institute is not bound to reply to requests for documents or for additional information made less than five working days before the deadline for submission of tenders.

2. **A requested document** shall be sent within five working days of the receipt of the request. **Additional information** shall be supplied as soon as possible and no later than six calendar days before the deadline for the receipt of tenders or, in the case of requests for information received less than eight calendar days before the deadline for receipt of tenders, as soon as possible after receipt of the request.
3. If, for whatever reason, the specifications and the additional documents or information cannot be supplied within the time limits set in paragraphs 1 and 2 of this Article, or where tenders can be made only after a visit to the site or after on-the-spot consultation of the documents annexed to the specifications, the time limits for receipt of tenders shall be extended to enable all economic operators to acquaint themselves with all the requisite information for preparing tenders. That extension shall be advertised in appropriate manner.
4. In cases of duly substantiated urgencies, within restricted and negotiated procedures, additional information on the specifications shall, provided it has been requested in good time, be communicated to all candidates or tenderers no later than four calendar days before the deadline for receipt of tenders.

#### ***Article 24    Opening of tenders and requests to participate***

1. All tenders and requests to participate that comply with the time-limit for receipt and satisfy the requirements of methods of communications for transmission of tenders set out under Article 22 shall be opened.
  - a. For open and restricted procedures, the responsible officer shall appoint a committee to open the tenders. The opening committee shall be made up of at least two persons representing at least two different services of the Institute. They shall not have a hierarchical link between them.
  - b. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 12 referring to conflicts of interest.

- c. Any tender or request declared by this committee not to satisfy the conditions laid down for the methods of communication for submission of tenders shall be rejected.
2. Where tenders are submitted by post, one or more members of the opening committee shall initial the documents proving the date and time of dispatch of each tender.

They shall also initial either of the following:

- a. each page of each tender;
- b. the cover page and the pages containing the financial details of each tender, the integrity of the initial tender being guaranteed by appropriate institutional techniques.

The members of the committee shall sign the written record of the opening of the tenders received, which shall identify those tenders which comply with the requirements of Article 22 and those which do not, and which shall give the grounds on which tenders were rejected for non-compliance, by reference to the methods of submitting tenders referred to in Article 22. That record may be signed in an electronic system providing sufficient identification of the signatory.

#### ***Article 25 Committee for the evaluation of tenders and requests to participate***

1. For open and restricted procedures, all requests to participate and tenders declared as complying with the requirements of methods of communications for transmission of tenders set out under Article 22 shall be evaluated and ranked by an evaluation committee set up for the two stages on the basis of the pre-announced exclusion and selection criteria and the award criteria respectively.

That committee shall be appointed by the responsible officer for the procurement procedure.

2. Where the value of the contract exceeds the threshold of 60.000€, the evaluation committee shall be made up of at least four persons representing at least two services of the Institute with no hierarchical link between them.

The responsible officer shall ensure that these persons satisfy the obligations laid down in Article 12 regarding conflict of interests.

The members of the opening committee may participate also in the composition of the evaluation committee.



Outside experts may assist the committee by decision of the responsible officer. The responsible officer shall ensure that these experts satisfy the obligations laid down in Article 12.

3. Tenders which do not satisfy all the essential requirements set out in the tender documents shall be eliminated.

However, the evaluation committee or the responsible officer may ask tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within the time limit it specifies.

Requests to participate and tenders which are not excluded and which meet the selection criteria shall be considered admissible.

In the case of abnormally low tenders as referred to in Article 33, the evaluation committee shall request the necessary clarifications concerning the composition of the tender.

4. The envelope containing the economic offer shall be kept closed until the completion of the evaluation of the technical offer. Only if a bid gets the minimum score set for the technical offer, will the correspondent economic offer be opened and evaluated.
5. The evaluation committee shall produce a final report containing a written record of the evaluation and ranking of request to participate and tenders. This report with the conclusions of the evaluation committee shall be addressed to the responsible officer and signed in acceptance by all members. When applicable, it will include any minority opinions expressed within the committee. The responsible officer will submit this report to:
  - a. the Internal Auditor if an advice is sought before the final award of the contract;
  - b. the authorising officer along with his preliminary decision on the award.

## **SECTION 4**

### **CHOICE OF PARTICIPANTS AND AWARD OF CONTRACTS**

***Article 26 Exclusion criteria applicable for participation in procurement procedures  
(More detailed rules on the modalities of application of the exclusion criteria can be  
found in Annex IV)***

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;
- b. they have been convicted of an offence concerning their grave professional conduct by a final judgment of a competent judicial authority or administrative decision or decisions of international organisations.
- c. they are not in compliance with the 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 Italy being the country of establishment of the Institute or those of the country where the contract is to be performed. This breach needs to have been established by a judgement or administrative decision having final and binding effect in accordance with the legal provisions of the country in which the economic operator is established or of those of Italy being the country of establishment of the Institute;
- d. they have been the subject of a final judgment for fraud, corruption, involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or other forms of trafficking in human beings or any other illegal activity, where such illegal activity is detrimental to the Institute's financial interests;
- e. they have been in serious breach of a contract financed by the Institute or have been the subject of an offense of serious irregularity established by a final judgment of a competent judicial authority or administrative decision.
- f. they are subject to an administrative penalty as provided under Article 41.

The economic operator shall be excluded from participation where a person who is a member of the administrative, management or supervisory body of the economic operator or has the powers of representation, decision or control is in a situation listed above.

2. Except for cases provided for in point (d) above, the Institute may decide not to exclude the economic operator where it can provide evidence that it has taken remedial measures to demonstrate its reliability.

The Institute may also provide for a derogation from the mandatory exclusion provided in point (c) where an exclusion would be clearly disproportionate, in particular where only minor amounts of taxes or social security contributions are unpaid or where the economic operator was informed of the exact amount due following its breach of its obligations relating to the

payment of taxes or social security contributions at such time that it did not have the possibility of taking measures as provided for in the first subparagraph of paragraph 2 before expiration of the deadline for requesting participation or, in open procedures, the deadline for submitting its tender.

3. Candidates or tenderers shall declare that they are not in one of the situations listed in paragraph 1. However, the Institute may refrain from requiring such declaration for very low value contracts (when the amount does not exceed 20.000€).
4. For the purpose of the correct application of paragraph 1, the candidate or tenderer, whenever requested by the Institute, shall:
  - a. where the candidate or tenderer is a legal person, provide information on the ownership or on the management, control and power of representation of the legal person and certify that they are not in one of the situations referred to in paragraph 1;
  - b. where subcontracting is envisaged, certify that the subcontractor is not in one of the situations referred to in paragraph 1.

#### ***Article 27 Exclusion criteria***

***(More detailed rules on the modalities of application of the exclusion criteria can be found in Annex IV)***

1. A contract shall not be awarded to candidates or tenderers who, during the procurement procedure for that contract:
  - a. are subject to a conflict of interests which cannot be effectively remedied by other less intrusive measures;
  - b. are guilty of misrepresenting the information required by the Institute as a condition of participation in the procurement procedure or fail to supply that information;
  - c. find themselves in one of the situations of exclusion, referred to in Article 26, for the procurement procedure.

#### ***Article 28 Selection criteria***

1. The Institute shall draw up selection criteria which are clear, non- discriminatory and proportionate to the subject matter of the contract.

The selection criteria shall be applied in every procurement procedure for the purposes of assessing the financial, economic, technical and professional capacity of the tenderer.

The Institute may lay down minimum capacity levels below which candidates may not be selected.

2. Any tenderer or candidate may be asked to prove that he is authorised to perform the contract under national law, as evidenced indicatively by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, or entry in the value added tax (hereinafter 'VAT') register.
3. The Institute shall specify in the contract notice or in the call for expressions of interest or the invitation to submit a tender, the references chosen to test the status and the legal capacity of tenderers or candidates.
4. The information requested by the Institute as proof of the legal, financial, economic, technical and professional capacity of the tenderer and the minimum capacity levels required shall be proportionate to the subject-matter 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. It shall also take account of the need to ensure genuine competition.
5. The Institute may, depending on its assessment of risks, decide not to require proof of the financial, economic, technical and professional capacity of tenderers for low-value contracts not exceeding 60.000€.

### ***Article 29 Economic and financial capacity***

1. The Institute may require economic operators to have adequate financial and economic capacity to perform the contract. For that purpose, it may require that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract and adequate professional risk indemnity insurance.

The minimum yearly turnover shall not exceed two times the estimated contract value, except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The Institute shall indicate such exceptional circumstances in the procurement documents.

Where a contract is divided into lots, this Article shall apply in relation to each individual lot. However, the Institute may set the minimum yearly turnover by reference to groups of lots for the event that the successful tenderer is awarded several lots to be executed at the same time.

Where contracts based on a framework contract are to be awarded following a reopening of competition, the maximum yearly turnover requirement referred to in the second subparagraph of this paragraph shall be calculated on the basis of the expected maximum size of specific contracts that will be performed at the same time, or, where it is not known, on the basis of the estimated value of the framework contract.

2. Proof of economic and financial capacity may in particular be furnished by one or more of the following documents:
  - a. appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
  - b. financial statements for at most the last three years for which accounts have been closed;
  - c. a statement of overall turnover and turnover concerning the works, supplies or services covered by the contract during a period which may be no more than the last three financial years available.
3. The Institute may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in paragraph 1 if such evidence has already been submitted to it for the purposes of another procurement procedure and still complies with paragraph 1.

If, for some exceptional reason which the Institute considers justified, the tenderer or candidate is unable to provide the references requested by it, he/she may prove his economic and financial capacity by any other means which the Institute considers appropriate.

4. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Institute that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

The Institute may require that the economic operator and the abovementioned entities are jointly liable for the execution of the contract.

Under the same conditions, a consortium of economic operators may rely on the capacities of members of the consortium or of other entities.

### ***Article 30 Professional and Technical capacity***

1. Professional and Technical capacity of economic operators shall be evaluated and verified in accordance with the following paragraphs.

With regard to **suitability to pursue the professional activity**, the Institute may require economic operators to be enrolled on one of the professional or trade registers kept in their country of establishment.

In procedures for the award of public service contracts, insofar as candidates or tenderers have to possess a particular authorisation or to be members of a particular organisation in order to be able to perform in their country of origin the service concerned, the Institute may require them to prove that they hold such authorisation or membership.

2. With regard to **technical and professional ability**, the Institute may require that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard. The Institute may assume that an economic operator does not possess the required professional abilities where the Institute has established that the economic operator has conflicting interests which may negatively affect the performance of the contract.

In procedures for awarding public contracts having as their object supplies requiring siting or installation work, the provision of services or the execution of works, the ability of economic operators to provide the service or to execute the installation or the work may be evaluated with regard to their skills ("know-how"), efficiency, experience and reliability.

3. The Institute shall indicate the required conditions of participation, which may be expressed as minimum levels of ability, together with the appropriate means of proof, in the contract notice or in the invitation to confirm interest.

### ***Article 31 Evidence of the technical and professional capacity***

1. Evidence of the technical and professional capacity of economic operators may, depending on the nature, quantity or scale and purpose of the supplies, services or works to be provided, be furnished on the basis of one or more of the following documents:
  - a. the educational and professional qualifications of the service provider or work contractor and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services or carrying out the works;

- b. a list:
    - i. of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private (in the form of certificates issued or countersigned by the competent authority);
    - ii. of the works carried out in the last five years, with the sums, dates and place, accompanied by certificates of satisfactory execution, specifying whether the works have been carried out in a professional manner and have been fully completed;
  - c. a description of the technical equipment, tools and plant to be employed by the firm for performing a service or works contract;
  - d. a description of the technical equipment and the measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;
  - e. an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;
  - f. in respect of supplies: samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products with the specifications or standards in force;
  - g. a statement of the average annual manpower and the number of managerial staff of the service provider or work contractor in the last three years;
  - h. an indication of the proportion of the contract which the service provider may intend to subcontract;
  - i. for public works contracts and public service contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.
2. Where the Institute requires the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards and/or certain environmental management schemes or standards, they shall refer to quality and/or environmental assurance systems based on the relevant European standards series certified by accredited bodies. However, the Institute shall also accept other evidence of equivalent nature (such as the one described in Annex III).

Recognised bodies shall be test and calibration laboratories and any certification and inspection bodies accredited in accordance with the relevant European or national laws.

3. In the case of works contracts, service contracts and siting and installation operations in the context of a supply contract, the Institute may require that certain critical tasks be performed directly by the tenderer itself or, where a tender is submitted by a consortium of economic operators, a participant in the consortium.
4. The Institute may conclude that economic operators will not perform the contract to an appropriate quality standard where the Institute establishes that they have conflicting interests which may negatively affect the performance of the contract.

### ***Article 32    General Principles for Contract Award***

1. Contracts shall be awarded on the basis of the award criteria provided that the following cumulative conditions are fulfilled:
  - a. The tender complies with the minimum requirements, conditions and criteria set out in the contract notice and in the procurement documents;
  - b. The tender comes from a tenderer that is not excluded in accordance with Article 26 and 27;
  - c. The tender meets the selection criteria set out by the Institute.
2. The Institute may decide not to award a contract to a tenderer submitting the best tender where it has established that the tender does not comply, at least in an equivalent manner, with obligations established by the EU, national or international legislation in the field of social and labour law or environmental law.
3. In open procedures, the Institute may decide to examine tenders before verifying the fulfilment of the selection criteria, provided that the relevant provisions of this section are observed, including the rule that the contract shall not be awarded to a tender that should have been excluded pursuant to Article 26 or that does not meet the selection criteria set out by the Institute.

### ***Article 33    Abnormally low tenders***

1. If, for a given contract, the price or cost proposed in a tender appears to be abnormally low, the Institute shall request in writing details of the constituent elements of the price or cost which it considers relevant and shall give the tenderer the opportunity to present its observations.



These details may relate in particular to compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed.

The Institute may, in particular, take into consideration observations relating to:

- a. the economics of the manufacturing process, of the provision of services or of the construction method;
- b. the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;
- c. the originality of the tender;
- d. the possibility of the tenderer obtaining State aid.

The evaluation committee and/or the responsible officer shall assess the information provided and may only reject the tender where the evidence supplied does not satisfactory account for the low level or price or costs proposed, taking into account the elements referred to in paragraph 1.

2. Where the Institute establishes that a tender is abnormally low because the tenderer has obtained State aid, it may reject the tender on that ground alone only if the tenderer is unable to prove, within a reasonable time determined by the Institute, that the aid in question was compatible with the EU internal market and with procedures and decisions specified in the EU or national rules on State aid.

### ***Article 34 Results of the evaluation***

1. A written record of the evaluation and ranking of requests to participate and tenders declared to satisfy the requirements shall be drawn up and dated (evaluation report).

The written record shall be signed by all the members of the evaluation committee.

The written record shall be kept for future reference.

2. The written record shall contain at least the following:
  - a. the name and address of the Institute (appearing in headed paper) and its service concerned, and the subject and value of the contract or framework contract;
  - b. the names of the candidates or tenderers rejected and the reasons for their rejection;

- c. the names of the candidates or tenderers to be examined and the reasons for their selection;
  - d. the reasons for the rejection of tenders found to be abnormally low;
  - e. the names of the candidates or contractor proposed and the reasons for that choice and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties.
3. The Institute (in particular the authorising officer) shall then take its decision giving at least the following:
- a. the information provided under a-d of the previous paragraph as contained in the written record;
  - b. the names of the candidates or contractor selected and the reasons for that choice by reference to the selection and award criteria announced in advance and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties;
  - c. in the case of negotiated procedures the circumstances which justify their use;
  - d. where appropriate, the reasons why the Institute has decided not to award a contract.

### ***Article 35    Contacts between contracting authorities and tenderers***

1. While the procurement procedure is under way, all contacts between the Institute and candidates or tenderers shall satisfy conditions ensuring transparency and equal treatment. They shall not lead to amendment of the conditions of the contract or the terms of the original tender.
2. Contact between the Institute and tenderers during the contract award procedure may take place, **by way of exception**, under the conditions set out in paragraphs 3 and 4 and they shall be made only in writing.
3. **Before the closing date for the submission of tenders**, in respect of the additional documents and information referred to in Article 23, the Institute may:
  - a. at the initiative/request of tenderers, communicate additional information solely for the purpose of clarifying the nature of the contract. Such information shall be communicated on the same date to all interested tenderers;

- b. at its own initiative, if it discovers an error, a lack of precision, an omission or any other type of clerical defect in the text of the procurement documents, inform all the persons concerned on the same date and in a manner identical with that applicable in respect of the original invitation to tender.
4. If, after the tenders have been opened, some clarification is required in connection with a tender or a confirmation is needed of a specific or technical element, or if obvious clerical errors in the tender must be corrected, the responsible officer may contact the tenderer, although such contact may not lead to changes in the procurement documents or to substantial alteration to the terms of the submitted tender except for cases of negotiated and competitive procedures for negotiation where the procurement procedure itself specifically allows for those possibilities. In every case where contact has been made, and in the duly justified cases where contact has not been made, a record shall be kept in the procurement file.

### ***Article 36 The award decision***

The authorising officer shall decide to whom the contract is to be awarded, in compliance with the selection criteria laid down in advance in the procurement documents and the award criteria as defined in article 10.

### ***Article 37 Consultation of the Internal Auditor ahead of the award decision by the authorising officer***

Before the final award of the contract, the Internal Auditor may be requested by the authorising and/or responsible officer to advise on the application of the procurement procedure, without entering into the technical and financial merits of the tender (more detailed information is provided in Annex II).

### ***Article 38 Information to Candidates and Tenderers***

1. The Institute shall as soon as possible inform candidates and tenderers of decisions reached concerning the award of the contract or framework contract, including the grounds for any decision not to award a contract or framework contract.
2. The name of the successful tenderer (natural or legal person) will be published on the Institute's website. In this case, tenderers have to be previously informed of this procedure and

the results of the tender can be considered as properly communicated after 15 calendar days from the posting of this information on the Institute's website.

3. The Institute shall inform all unsuccessful tenderers or candidates, simultaneously and individually, by electronic means, that their application or tender has not been accepted at either of the following stages:
  - a. shortly after decisions have been taken on the basis of exclusion and selection criteria and before the award decision, in procurement procedures organised in two separate stages;
  - b. as regards the award decisions and decisions to reject offers, as soon as possible after the award decision and within the following week at the latest.

In each case, the Institute shall indicate the reasons why the tender or application has not been accepted and the available legal remedies. It shall also indicate the standstill period.

Any unsuccessful tenderers or candidates may request additional information about the reasons for their rejection in writing by mail, fax or email. All selected tenderers whose tenders are not eliminated (i.e. who meet the exclusion and selection criteria), and who make a request in writing, may obtain information about the characteristics and relative merits of the tender accepted and the name of the successful tenderer.

The responsible officer shall reply within no more than 15 calendar days from receipt of the request.

However, certain details need not be disclosed in all cases when doing so would impede law enforcement, would be contrary to the public interest or would prejudice the legitimate commercial interests of economic operators or might distort fair competition between them.

### ***Article 39 Cancellation of the procurement procedure***

The Institute may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation.

The decision shall be justified and be brought to the attention of the candidates or tenderers.

#### ***Article 40 Guarantees***

1. Other than in the case of low-value contracts (less than 60.000€), the Institute may, if it deems it appropriate and proportionate on a case-by-case basis and subject to a risk-analysis, require contractors to lodge a guarantee in order to ensure full performance of the contract.
2. The guarantee must be for an amount and a period that are sufficient for it to be activated. It may refer to an amount withheld from the final payment in order to constitute a guarantee until final acceptance of the services, supplies or works. It shall be denominated in euro.
3. The guarantee shall be supplied by a bank or an authorised financial institution that will be an irrevocable collateral security, or first-call guarantor of the contractor's obligations.

Conditions for such a guarantee shall be announced in the tender documents. This guarantee shall be retained until final acceptance of delivery by the Institute.

#### ***Article 41 Administrative and financial penalties***

1. Without prejudice to the application of penalties laid down in the contract, the Institute may impose administrative and/or financial penalties on the following:
  - a. contractors, candidates or tenderers in the cases referred to in point (b) of Article 27;
  - b. contractors who have made substantial errors or committed irregularities or fraud, or have been declared to be in serious breach of their obligations under contracts covered by the Institute's budget.

In all cases, however, the Institute shall first give the contractor concerned an opportunity to present his or her observations.

The Institute shall determine the administrative or financial penalties taking into account the importance of the contract and the seriousness of the misconduct and in particular the elements referred to in Annex IV.

2. Tenderers or candidates who have made false declarations, have committed substantial errors, irregularities or fraud, may also be subject to financial penalties representing 2% to 10% of the total estimated value of the contract being awarded.

Contractors who have been found in serious breach of their contractual obligations may be subject to financial penalties representing 2% to 10% of the total value of the contract in question.

That rate may be increased to 4% to 20% in the event of a repeat infringement within five years from the date on which the infringement is established as confirmed following a contradictory procedure with the candidate, tenderer or contractor.

#### ***Article 42 Errors, irregularities and fraud in the procedure***

1. Where the award procedure proves to have been subject to substantial errors, conflict of interests, irregularities or fraud, the Institute shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure.

A substantial error or irregularity shall be any infringement of a provision of a contract or regulation resulting from an act or an omission which causes or might cause a loss to the Institute's budget.

2. Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the authorising officer may, depending on the stage reached in the procedure, refrain from concluding the contract, suspend its performance or, where appropriate, terminate it.

Where those errors, irregularities or fraud are attributable to the contractor, the authorising officer may, in addition, refuse to make payments, recover amounts already paid or terminate all the contracts concluded with that contractor, in proportion to the seriousness of the errors, irregularities or fraud.

#### ***Article 43 Signature of the Contract and Standstill Period***

1. Performance of the contract may not start before the contract is signed.
2. The Institute shall not sign the contract or framework contract with the successful tenderer until 14 calendar days have elapsed. This period shall not apply in the case of specific contracts based on a framework contract or negotiated procedures.

It shall not apply either in all types of procurement procedure when only one tender has been submitted.

The period shall start to run from the day after the simultaneous dispatch of the notifications to successful and unsuccessful tenderers by electronic means.

If necessary, the Institute may suspend the signature of the contract for additional examination if this is justified by the requests or comments made by unsuccessful or aggrieved tenderers or candidates or by any other relevant information received.

The requests, comments or information must be received during the period set in the second paragraph. In the case of suspension all the candidates or tenderers shall be informed within three working days following the suspension decision.

3. Any contract signed before the expiry of the period set in the second paragraph shall be null and void.

Where the contract or framework contract cannot be awarded to the successful envisaged tenderer, the Institute may award it to the following best tenderer.

## **SECTION 5**

### **DISPUTE-SETTLEMENT PROCEDURES**

#### ***Article 44    Dispute settlement and governing law***

Any dispute relating to a procurement procedure under the present rules shall be submitted in good faith by either party to mediation under the [International Mediation Rules of the Milan Chamber of Arbitration](#). The request for mediation shall be submitted in writing to the Secretariat of the Milan Chamber of Arbitration at the latest within 13 days from the notification of the results of the adjudication pursuant to Article 38 above.

If for any reason the dispute remains unsettled 60 days after the request for mediation, it shall be subject to arbitration under the [Rules of the Milan Chamber of Arbitration](#) to be commenced within the following 30 days. The seat of the arbitration shall be Milan and the language of the arbitration shall be English. The award shall be final and binding.

The arbitral tribunal shall apply the EUI's relevant regulatory acts, including the EUI's regulation on Public Procurement and the EUI's Financial Rules, complemented, where necessary, by the law of Italy.

## ANNEX I

### SUMMARY TABLE ON THE CHOICE AND CHARACTERISTICS OF PROCUREMENT PROCEDURES

AMOUNT	DEFINITION	PROCEDURE	PUBLICITY	EVALUATION
Over 200,000€	OPEN	Assessment of exclusion and selection criteria, evaluation of award criteria (best value for money) done at the same phase.	Over 200,000€: Publication on EUI Website; notification to at least five relevant economic operators; daily newspaper of wide-scale range; notification to High Council representatives.	Evaluation Committee + Internal Auditor
From over 60,000.01€ to 200,000€			From over 60,000.01€ to 200,000€: Publication on EUI Website; notification to at least five relevant economic operators.	
Over 200,000€	RESTRICTED Recommended in case: a) Large number of tenderers expected; b) security or confidentiality reasons; c) a visit to EUI premises necessary.	Two phases: 1) Contract notice with exclusion and selection criteria published, potential tenderers selected on the basis of these criteria; 2) Invitation to tender sent to the selected potential tenderers (at least five), evaluation according to award criteria.	Over 200,000€: Publication on EUI Website; notification to at least five relevant economic operators; daily newspaper of wide-scale range; notification to High Council representatives.	Evaluation Committee + Internal Auditor
From over 60,000.01€ to 200,000€			From over 60,000.01€ to 200,000€: Publication EUI Website; notification to at least five relevant economic operators.	
Regardless the estimated value of the contract	COMPETITIVE PROCEDURE WITH NEGOTIATION (exclusively for concession contracts)	Three phases: 1) Contract notice with exclusion and selection criteria published, potential tenderers selected on the basis of these criteria; 2) Invitation to tender sent to the selected potential tenderers (at least five), evaluation of the initial tenders according to award criteria. 3) Negotiation with tenderers and follow up of the evaluation of the final tenders according to award criteria	Over 200,000€: Publication on EUI Website; notification to at least five relevant economic operators; daily newspaper of wide-scale range; notification to High Council representatives.	Evaluation Committee + Internal Auditor (with estimated value over 60.000,01€)
			Up to 200,000€: Publication EUI Website; notification to at least five relevant economic operators.	



From over 20,000.01€ to 60,000€	NEGOTIATED	Negotiation	From over 20,000.01€ to 60,000€: At least 3 economic operators invited.	n/a via an Evaluation Cmtee
From over 5,000.01€ to 20,000€			From over 5,000.01€ to 20,000€; At least 2 economic operators invited.	
From over 0€ to 5,000€	PAYMENT UPON INVOICE	Payment against simple bill or invoice.	n/a	n/a

## ANNEX II

### CONSULTATIVE ROLE OF THE INTERNAL AUDITOR

#### *Article 1 Competence and tasks*

As part of the consulting and advisory services provided on specific request by the Internal Audit Service, the Internal Auditor shall have a general advisory role concerning the application of the present Regulation.

When performing consulting services, the Internal Audit Service maintains its objectivity and does not assume management responsibility. It has no executive role and is not responsible for the development and implementation of controls within the internal control system.

The advice expressed by the Internal Auditor on procurement procedures shall not prejudice the auditor's opinion during subsequent audits performed by Internal Audit Service.

Furthermore, the advice expressed shall not affect the full responsibility of the responsible officer for the procurement procedure since the advice is not binding.

In respect of the present Regulation:

- a. The Internal Auditor shall be consulted by the responsible officer before the launching of the call for tender (open, restricted and competitive procedure with negotiation with estimated value over 60.000,01€). A written advice is issued (Article 2, paragraph 2, point a of this Annex) concerning the correct application of the requirements set out in this Regulation in the context of the tender being examined, without entering into its technical merits (Article 15 and 16 of the present Regulation).
- b. The Internal Auditor may be requested by the responsible officer to express his/her advice on the application of the procurement procedure before the final award of the contract (open, restricted and competitive procedure with negotiation with estimated value over 60.000,01€). A written opinion is issued (Article 2, paragraph 2, point a of this Annex) on the compliance of the procedure followed for selecting the successful tenderer with the present Regulation without entering into the technical and financial merits of the tender (Article 37 of the present Regulation).
- c. The responsible officer can also consult the Internal Auditor during the contract implementation for obtaining an advice on the application of the present Regulation (e.g.

cancellation of orders, request for a remission of a penalty for delay, waivers to the specifications and general conditions).

## ***Article 2 Operating Rules of the Internal Auditor's control for public procurement***

1. In case an advice is required before the launching of the call for tender (open, restricted and competitive procedure with negotiation with estimated value over 60.000,01€, point a of Article 1 of this Annex):

Draft tender documentation is submitted to the Internal Auditor by the responsible officer before it is officially published. The tender can be launched once the Internal Auditor has delivered his/her advice on compliance of the tender documents with the requirements of the present Regulation.

2. In case an advice is required before the final award of the contract (open, restricted and competitive procedure with negotiation with estimated value over 60.000,01€, point b of Article 1 of this Annex):

The role of the Internal Auditor will be focused on verifying that the procurement procedure has been followed according to the present Regulation without entering into the technical and financial merits of the tenders.

When an opinion is requested before the final award decision, the responsible officer shall submit to the Internal Auditor the written record of the evaluation and ranking of tenders drafted by the evaluation committee along with the supporting tender documentation.

The following considerations apply to the above specified cases:

- a. The advisory services provided by the Internal Audit service will give rise to a written advice/opinion signed by the Internal Auditor and forwarded to the President, Secretary General and the responsible officer.
- b. In case of negotiated procedure and of procedure involving a call for expression of interest (Article 17 and 19 of the present Regulation) consultation with the Internal Auditor is not required unless the responsible officer deems it appropriate.
- c. Whenever an advice is requested, the responsible officer shall allow the Internal Auditor at least 7 working days for reviewing the documentation related to the tender and prepare his/her written advice.

- d. Last-minute requests will be processed only in exceptional cases of real emergency and after informing the Secretary General. They will be given a priority; however the deadline might not be respected. If submitted requests overlap with the current priorities, the Internal Auditor will seek the advice of the President and the Secretary General for any adjustment of priorities and deadlines.
- e. At the beginning of the year, the responsible officer shall transmit to the Internal Auditor, the scheduled tenders for the year in order to allow him/her to plan the work of the Internal Audit Service, specifying when they are supposed to be launched and if the opinion prior to the award of the contract (point 2 of Article 2 of this Annex) would be likely requested.

Furthermore:

- f. The use of negotiated procedure for exceptional cases (Article 18 of the present Regulation) shall be communicated to the Internal Auditor after being approved by the President/Secretary General.
- g. The Internal Auditor shall receive for his/her information the copy of the complete documentation related to any call for tenders launched.

## ANNEX III

### ADDITIONAL CONTENT OF TENDER DOCUMENTS

#### *Article 1 Tender documents and their content*

Apart from the content indicated in Article 20, the tender documents shall also include the following content:

1. The **Invitation** to tender or to negotiate shall at least:
  - a. specify the procedures for the deposit and presentation of tenders, and in particular, where applicable, the requirement to fill in a standard application form;
  - b. state that submission of a tender implies acceptance of the specification referred to in paragraph 1 to which the tender relates and of all the tender documents and that this submission binds the contractor to whom the contract is awarded during performance of the contract;
  - c. the period of validity of tenders during which the contractor is bound by all the conditions of his/her offer;
  - d. forbid any contact between the Institute and the tenderer during the procedure, save exceptionally, under the conditions laid down in Article 35 and, where provision is made for an on-the-spot visit, specify the arrangements for such a visit;
  - e. state that the Protocol on the Privileges and Immunities of the European University Institute applies.
2. The **Specifications** shall at least:
  - a. specify the subject of the contract, the type and the duration of contract (e.g. provision of supplies, services or works) and the procedure for the award of the contract;
  - b. specify the Service of the Institute in charge of the tender;
  - c. specify the evidence of access to procurement and namely the State where they are established;
  - d. specify the exclusion and selection criteria applying to the contract; for restricted procedure and negotiated procedure those criteria may appear solely in the contract notice or the call for expressions of interest;

- e. specify the award criteria and their relative weighting or, where appropriate, the decreasing order of importance, if this is not specified in the contract notice; the weighting applied to price in relation to the other criteria must not result in the neutralisation of price in the choice of contractor;
- f. set out the technical specifications: minimum requirements, quality level, environmental performance etc.(more information in the following article);
- g. state that the Protocol on the Privileges and Immunities of the European University Institute applies (including VAT exemption);
- h. specify payment arrangements.

The above list is not intended to be exhaustive.

3. The **draft contract** shall in particular:

- a. specify the liquidated damages and any applicable penalties for failure to comply with its clauses;
- b. specify the details which must be contained in invoices or in the relevant supporting documents;
- c. state that the EUI's regulation on Public Procurement along with its Financial Regulation is the law which applies to the contract, complemented, where necessary, by EU and/or national law as specified in the contract;
- d. contain a reference to the privacy policy of the Institute;
- e. contain a reference to the security policy of the Institute, if relevant;
- f. specify the relevant dispute-settlement mechanisms.

The Institute may demand information from the tenderer on any part of the contract that the tenderer may intend to subcontract to third parties and on the identity of any subcontractors. In addition the Institute may also require the candidate or tenderer to submit information on the financial, economic, technical and professional capacities, of the envisaged subcontractor, in particular when subcontracting represents a significant part of the contract.

## ***Article 2 Technical specifications***

- 1. Technical specifications must afford equal access for tenderers and not have the effect of creating unjustified obstacles to competitive tendering.

Where appropriate, they shall define the characteristics required of a product, service, material or work with regard to the purpose for which they are intended by the authorising officer.

2. The characteristics referred to in paragraph 1 shall include:
  - a. the quality levels;
  - b. environmental performance, if applicable;
  - c. the levels and procedures of conformity assessment;
  - d. safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production procedures and methods;
  - e. for works contracts, the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the Institute may impose under general or specific regulations in relation to the finished works and to the materials or parts which they involve.
3. The technical specifications shall be formulated in any of the following ways:
  - a. by reference to European standards, or to European technical approvals or common technical specifications, where such exist, to international standards, to other technical reference systems established by European standardisation bodies or, failing this, their national equivalents; every reference shall be followed by the expression 'or equivalent';
  - b. in terms of performance or of functional requirements, which may include environmental characteristics and shall be sufficiently detailed to enable tenderers to determine the purpose of the contract and the contracting authorities to award the contract;
  - c. by a mixture of those two formulation methods.

In any case, the Institute may not reject a tender on the grounds that it does not comply with the chosen way to formulate the specifications if the tenderer proves, to the satisfaction of the Institute, by any appropriate means, that the tender meets in equivalent manner the requirements set.

4. Where the Institute lays down environmental characteristics in terms of performance or of functional requirements, they may use the detailed specifications, or, if necessary, parts

thereof, as defined by European, multinational or national eco-labels, or by any other eco-label provided that the following conditions are satisfied:

- a. the specifications used are appropriate to define the characteristics of the supplies or services that are the object of the contract;
- b. the requirements for the label are drawn up on the basis of scientific information;
- c. the eco-labels are adopted using a procedure in which all the parties concerned, such as government bodies, consumers, manufacturers, distributors and environmental organisations, can participate;
- d. the eco-labels are accessible to all interested parties.

The Institute may indicate that the products or services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents.

5. For the purposes of paragraphs 3 and 4, the Institute shall accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body. A recognised body is a test and calibration laboratory or a certification and inspection body in compliance with applicable European standards.
6. Save in exceptional cases, duly warranted by the subject of the contract, those specifications may not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production which would have the effect of favouring or eliminating certain products or economic operators.

Where it is not possible to provide a sufficiently detailed and intelligible description of the subject of the contract, the reference shall be followed by the expression 'or equivalent'.



## **ANNEX IV**

### **APPLICATION OF EXCLUSION CRITERIA**

#### ***Article 1 Duration of exclusion***

In order to determine duration of exclusion and to ensure compliance with the principle of proportionality, the Institute shall take into account in particular the seriousness of the facts, including their impacts on the EUI's financial interests and image and the time which has elapsed, the duration and recurrence of the offence, the intention or degree of negligence of the entity concerned and the measures taken by the entity concerned to remedy the situation.

When determining the period of exclusion, the candidate or tenderer must have the opportunity to express its views.

Where the duration of the period of exclusion is determined, the Institute shall apply this duration up to the maximum duration which shall generally be set at a maximum of five years calculated from the date of the judgment having the force of res judicata or the date of the administrative decision confirming the committed infringement in the cases referred in Article 26(1).

That period of exclusion may be extended to 10 years in the event of a repeated offence within five years of the date of the final judgement or administrative decision.

#### ***Article 2 Evidence***

1. Candidates and tenderers shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations referred to in Articles 26 and 27.

However, in case of negotiated procedure, all the candidates shall provide the declarations referred to in paragraph 2. In other cases whenever the Institute limits the number of candidates to be invited submit a tender or to negotiate, it can require all the limited number of candidates to provide the previously mentioned declarations.

Whenever the Institute has doubts as to whether specific tenderers are in one of the situations of exclusion, it may require them to provide the evidence indicated under paragraph 2 below.

The tenderer to whom the contract is to be awarded shall provide, within a time limit defined

by the Institute and preceding the signature of the contract, the evidence referred to in paragraph 2 of this Article confirming the declaration referred to in paragraph 1 of this Article.

2. The Institute shall accept as satisfactory evidence that the candidate or tenderer to whom the contract is to be awarded is not in one of the situations described in points (a), (b) (d) or (e) of Article 26 (1), a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The Institute shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (a) or (c) of Article 26(1), a recent certificate issued by the competent authority of the State concerned.

Where this document or certificate is not issued in the country concerned and for the other cases of exclusion referred to in Article 26, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

3. Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraphs 1 and 2 shall relate to legal persons and/or natural persons including, where considered necessary by the Institute, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.
4. Where they have doubts as to whether candidates or tenderers are in one of the situation of exclusion, the Institute may itself apply to the competent authorities referred to in paragraph 2 to obtain any information they consider necessary about that situation.
5. The Institute may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in paragraph 2 if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the issuing date of the documents does not exceed one year and that they are still valid.

In such a case, the candidate or tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes in his situation have occurred.

6. When requested by the Institute, the candidate or tenderer shall submit a declaration on honour from the intended subcontractor that he is not in one of the situations referred to in Articles 26 and 27.

In case of doubt on this declaration on the honour, the Institute shall request the evidence referred to in paragraphs 2 and 3. Paragraph 4 shall apply, where appropriate.