

Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (repealed)

PART TWO

**SPECIAL PROVISIONS**

TITLE I

**RESEARCH**

*Article 255*

**Types of operations(Article 181 of the Financial Regulation)**

- 1 Direct action shall be carried out by the establishments of the Joint Research Centre (hereinafter 'JRC') and shall in principle be entirely financed from the budget. It shall consist of:
  - a research programmes;
  - b exploratory research activities;
  - c scientific and technical support activities of an institutional nature.
- 2 The JRC may participate in indirect actions under the conditions laid down in Article 183 of the Financial Regulation.
- 3 The estimate of amount receivable, as referred to in Article 181(2) of the Financial Regulation shall be sent to the accounting officer for registration.

*Article 256*

**Additional rules applicable to the JRC(Article 183 of the Financial Regulation)**

- 1 The activities of a competitive nature conducted by the JRC shall consist of:
  - a activities carried out following grant or procurement procedures;
  - b activities on behalf of third parties;
  - c activities undertaken under an administrative agreement with other institutions or other Commission departments for the provision of technical-scientific services.
- 2 Where the activities conducted by the JRC for third parties involve procurement, the procurement procedure shall comply with the principles of transparency and equal treatment.
- 3 The estimates of amounts receivable referred to in Article 183(2) of the Financial Regulation shall be sent to the accounting officer for registration.

## TITLE II

### EXTERNAL ACTIONS

#### CHAPTER I

##### **General provisions**

###### *Article 257*

##### **Actions which may be financed(Article 184 of the Financial Regulation)**

Appropriations for the actions referred to in Chapter 1 of Title IV of Part Two of the Financial Regulation may, in particular, finance procurement contracts, grants, including interest rate subsidies, special loans, loan guarantees and financial assistance, budgetary support and other specific forms of budgetary aid.

#### CHAPTER II

##### **Budget support and multi-donor trust funds**

###### *Article 258*

##### **Use of budget support(Article 186 of the Financial Regulation)**

1 Where provided for in the relevant basic acts, the Commission may use sectoral or general budget support within a third country if the following conditions are met:

- a the partner country's management of public finances is sufficiently transparent, reliable and effective;
- b the partner country has put in place sufficiently credible and relevant sectoral or national policies; and
- c where the partner country has put in place stability oriented macroeconomic policies.

2 Agreements concluded with the partner country shall contain an obligation for that country to provide the Commission with reliable and timely information which allows the Commission to evaluate the fulfilment of the conditions set out in paragraph 1.

###### *Article 259*

##### **Union trust funds for external actions(Article 187 of the Financial Regulation)**

The contributions of other donors shall be taken into account when cashed in the specific bank account of the trust fund and for the amount in euro resulting from the conversion at their reception on the specific bank account.

The Union contribution shall be transferred in due time to cover the legal commitments of the trust fund taking due account of available funds provided by the other donors.

Interests accumulated on the trust fund's specific bank account shall be invested in the trust fund except where otherwise provided for in the constitutive act of the trust fund.

All transactions made on the bank account referred to in the third paragraph during the year shall be properly accounted for in the accounts of the trust fund.

Financial reporting on the operations carried out by each trust fund shall be established twice every year by the authorising officer.

The trust funds shall be subject to an independent external audit every year.

The board of the trust fund shall approve the annual report of the trust fund drawn up by the authorising officer together with annual accounts drawn up by the accounting officer. Those reports shall be attached to the annual report of the authorising officer by delegation and presented to the European Parliament and Council within the discharge procedure of the Commission.

The rules for composition of the board and its internal rules shall be laid down in the constitutive act of the trust fund adopted by the Commission and adhered to by the donors. Those rules shall ensure a fair representation of the donors and include the requirement to have the positive vote of the Commission for the final decision on the use of the funds.

### *CHAPTER III*

#### *Procurement*

##### *Article 260*

#### **Renting of buildings(Article 190 of the Financial Regulation)**

The only buildings contracts which may be financed from operating appropriations for external action shall be those relating to the renting of buildings already constructed at the time the lease is signed. These contracts shall be published as laid down in Article 124.

##### *Article 261*

#### **Definitions(Article 190 of the Financial Regulation)**

1 Service contracts shall comprise study and technical assistance contracts.

A study contract is a service contract concluded between a supplier and the contracting authority which includes studies for the identification and preparation of projects, feasibility studies, economic and market studies, technical studies and audits.

A technical assistance contract is where the supplier is called on to play an advisory role, to manage or supervise a project or to provide the consultants specified in the contract.

2 Where a third country has qualified management staff in its departments or entities with public-sector participation, the contracts may be performed directly by these departments or entities by direct labour.

## Article 262

### **Special provisions relating to thresholds and the arrangements for awarding external contracts(Article 190 of the Financial Regulation)**

1 Articles 123 to 126, with the exception of the definitions, paragraphs 3 and 4 of Article 127, Articles 128, 134 to 137, paragraphs 3 to 6 of Article 139, Articles 148(4), 151(2), 152 to 158, 160 and 164 of this Regulation shall not apply to procurement contracts concluded by the contracting authorities referred to in Article 190(2) of the Financial Regulation or on their behalf.

Implementation of the procurement provisions under this Chapter shall be decided by the Commission, including the appropriate controls to be applied by the responsible authorising officer where the Commission is not the contracting authority.

2 In the event of failure to comply with the procedures referred to in paragraph 1, expenditure on the operations in question shall not be eligible for Union financing.

3 This Chapter shall not apply to the contracting authorities referred to in Article 190(2) (b) of the Financial Regulation where, following the checks referred to in Article 61 of the Financial Regulation, the Commission has authorised them to use their own procurement procedures.

## Article 263

### **Advertising and non-discrimination(Articles 190 and 191 of the Financial Regulation)**

1 The Commission shall take the necessary implementing measures to guarantee as wide a participation as possible, on equal terms, in competitive tendering for the award of contracts financed by the Union. To that end, care shall be taken in particular to:

- a ensure adequate publication, in reasonable time, of the prior information notices, contract notices and award notices;
- b eliminate any discriminatory practice or technical specifications liable to hamper wide participation on equal terms by all natural or legal persons referred to in Article 182 of the Financial Regulation.

2 Articles 265(5), 267(3) and 269(4) shall be without prejudice to the use of e-procurement.

## Article 264

### **Advertising(Article 190 of the Financial Regulation)**

1 The prior information notice for international calls for tender shall be sent to the Publications Office as early as possible for supply and service contracts and as quickly as possible after the decision authorising the programme for works contracts.

2 For the purposes of this Chapter, the contract notice shall be published:

- a at least in the *Official Journal of the European Union* and on the internet for international calls for tender;

- b at least in the official gazette of the recipient State or in any equivalent publication for local invitations to tender.

Where the contract notice is also published locally, it must be identical to the one published in the *Official Journal of the European Union* and on the internet and it must be published simultaneously. The Commission shall be responsible for publication in the *Official Journal of the European Union* and on the internet. If the notice is published locally, this may be done by the entities referred to in Article 190(2)(b) of the Financial Regulation.

3 The award notice shall be sent when the contract is signed except where, if still necessary, the contract was declared secret or where the performance of the contract must be accompanied by special security measures, or when the protection of the essential interests of the European Union, or the beneficiary country so requires, and where the publication of the award notice is deemed not to be appropriate.

#### *Article 265*

#### **Thresholds and procedures for awarding service contracts(Article 190 of the Financial Regulation)**

1 The thresholds and procedures referred to in Article 190 of the Financial Regulation shall be as follows for service contracts:

- a for contracts with a value of EUR 300 000 or more:
  - (i) an international restricted invitation to tender within the meaning of Article 127(2) and Article 264(2)(a);
  - (ii) an international open invitation to tender within the meaning of Article 127(2) and Article 264(2)(a);
- b for contracts with a value of less than EUR 300 000: competitive negotiated procedure within the meaning of paragraph 3 of this Article, or a framework contract.

Contracts with a value of less than or equal to EUR 20 000 may be awarded on the basis of a single tender.

Payments for amounts less than or equal to EUR 2 500 in respect of item of expenditure may consist simply in payment against invoices without prior acceptance of a tender.

2 In the international restricted procedure referred to in point (a) of paragraph 1, the contract notice shall state the number of candidates who will be invited to submit tenders. For service contracts at least four candidates shall be invited. The number of candidates allowed to submit tenders must be sufficient to ensure genuine competition.

The list of selected candidates shall be published on the Commission's internet site.

If the number of candidates satisfying the selection criteria or the minimum capacity levels is less than the minimum number, the contracting authority may invite to submit a tender only those candidates who satisfy the criteria to submit a tender.

3 Under the negotiated procedure referred to in point (b) of paragraph 1, the contracting authority shall draw up a list of at least three tenderers of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 129.

Tenderers for the competitive negotiated procedure may be chosen from an appropriately advertised list of vendors as referred to in Article 136(1)(b). That list shall be drawn up following a call for expression of interest and shall be valid for no more than five years from the date of advertisement. That list may include sub-lists. Any interested person may submit an application at any time during the period of validity of the list, except for the last three months of that period. Where a contract is to be awarded the contracting authority shall invite all vendors entered on the relevant list or sub-list to submit a tender.

Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

If following consultation of the tenderers, the contracting authority receives only one tender that is administrative and technically valid, the contract may be awarded provided that the award criteria are met.

4 For legal services according to the CPV nomenclature, the contracting authorities may use the competitive negotiated procedure, whatever is the estimated value of the contract.

5 The bids shall be sent in a package or outer envelope containing two separate sealed envelopes, one bearing the words 'Envelope A — Technical bid' and the other the words 'Envelope B — Financial bid'. The outer envelope shall bear:

- a the address indicated in the tender documents for the submission of tenders;
- b the reference to the call for tenders to which the tenderer is responding;
- c where appropriate, the numbers of the lots for which a tender is being submitted;
- d the phrase 'Not to be opened before the tender-opening session', in the language of the tender documents.

If interviews were envisaged in the tender documents, the evaluation committee may interview the principal members of the team of experts proposed in the technically acceptable bids, after establishing its written provisional conclusions and before definitively concluding the evaluation of the technical bids. In such cases the experts shall be interviewed by the evaluation committee, preferably collectively if they form a team, and at intervals close enough to allow comparisons to be made. Interviews shall be conducted in accordance with a standard model agreed in advance by the selection board and applied to all the experts or teams called for interview. The date and time of the interview must be communicated to the tenderers at least 10 calendar days in advance. In cases of *force majeure*, preventing the tenderer from attending the interview, a new date and time must be sent to the tenderer.

6 The contract award criteria shall serve to identify the tender offering best value for money.

The tender offering best value for money shall be selected using an 80/20 weighting distribution between technical quality and price. For that purpose:

- a the score awarded to the technical bids shall be multiplied by 0,80;
- b the score awarded to the price bids shall be multiplied by 0,20.

## Article 266

### **Use of the negotiated procedure for service contracts (Article 190 of the Financial Regulation)**

1 For service contracts, contracting authorities may use the negotiated procedure with a single tender in the following cases:

- a where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in points (a), (b) and (c) of Article 104(1) of the Financial Regulation cannot be kept;
- b where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field;
- c for services which are an extension of services already started, subject to the conditions laid down in paragraph 2;
- d where the tender procedure or the attempt to use a framework contract has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered;
- e where the contract concerned follows a contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates, in which case, all successful candidates shall be invited to participate in the negotiations;
- f where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider;
- g for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the Union or the beneficiary country so requires;
- h where a new contract has to be concluded after early termination of an existing contract.

For the purposes of point (a) of the first subparagraph of this paragraph, operations carried out in crisis situations as referred to in Article 190(2) shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

Activities of an institutional nature referred to in point (b) of the first subparagraph include services directly linked to the statutory mission of the public sector bodies.

2 Services which are an extension of services already started, as referred to in point (c) of paragraph 1, are as follows:

- a additional services not covered by the principal contract but which, as a result of unforeseen circumstances, have become necessary for the performance of the contract, provided that the additional service cannot be technically and economically separated from the principal contract without serious inconvenience for the contracting authority and the aggregate amount of additional services does not exceed 50 % of the value of the principal contract;

- b additional services consisting in the repetition of similar services entrusted to the contractor providing services under a first contract, provided that:
  - (i) a contract notice was published for the first service and the possibility of using the negotiated procedure for new services for the project and the estimated cost were clearly indicated in the contract notice published for the first service;
  - (ii) the extension of the contract is for a value and duration not exceeding the value and the duration of the initial contract.

### *Article 267*

#### **Thresholds and procedures for awarding supply contracts(Article 190 of the Financial Regulation)**

1 The thresholds and procedures referred to in Article 190 of the Financial Regulation shall be as follows for supply contracts:

- a for contracts with a value of EUR 300 000 or more: an international open invitation to tender within the meaning of Article 127(2) and Article 264(2)(a);
- b for contracts with a value of less than EUR 300 000: a framework contract or:
  - (i) for contracts of a value of EUR 100 000 or more but less than EUR 300 000: local open invitation to tender within the meaning of Article 127(2) and point (b) of Article 264(2);
  - (ii) for contracts with a value of less than EUR 100 000: competitive negotiated procedure within the meaning of paragraph 2.
- c payments for amounts less than or equal to EUR 2 500 in respect of item of expenditure may consist simply in payment against invoices without prior acceptance of a tender.

Contracts with a value of less than or equal to EUR 20 000 may be awarded on the basis of a single tender.

2 Under the negotiated procedure referred to in point (b)(ii) of paragraph 1 of this Article, the contracting authority shall draw up a list of at least three suppliers of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 129.

Tenders shall be opened and evaluated by an evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

If following the consultation of the suppliers, the contracting authority receives only one tender that is administrative and technically valid, the contract may be awarded provided that the award criteria are met.

3 Each technical and financial bid must be placed in a single sealed envelope, itself placed in a package or outer envelope. The inner envelope shall bear:

- a the address indicated in the tender documents for the submission of tenders;
- b the reference to the call for tenders to which the tenderer is responding;
- c where appropriate, the numbers of the lots for which a tender is being submitted;
- d the phrase 'Not to be opened before the tender-opening session', in the language of the tender documents.



At the place and time set in the tender documents, the tenders shall be opened in public by the evaluation committee. At the public tender-opening session, the names of the tenderers, the prices quoted, the provision of the necessary tender guarantee and any other formality which the contracting authority considers appropriate must be announced.

4 In the case of a supply contract not involving after-sales service, the sole award criterion shall be price.

Where proposals for after-sales service or for training are particularly significant, the tender offering either the lowest price or best value for money shall be chosen, with due account for the technical quality of the service offered and the price quoted.

#### *Article 268*

### **Use of the negotiated procedure for supply contracts(Article 190 of the Financial Regulation)**

1 Supply contracts may be awarded by negotiated procedure with a single tender in the following cases:

- a where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in points (a), (b) and (c) of Article 111(1) of the Financial Regulation cannot be kept;
- b where warranted by the nature or particular characteristics of the supplies, for example, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents;
- c for additional deliveries by the original supplier intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance;
- d where the tender procedure has been unsuccessful, that is where no qualitatively or financially worthwhile tender has been received;
- e for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the Union or the beneficiary country so requires;
- f for contracts in respect of supplies quoted and purchases on a commodity market;
- g for contracts in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law;
- h where a new contract has to be concluded after early termination of an existing contract.

In cases referred to in point (d) of the first subparagraph, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.

2 For the purposes of point (a) of paragraph 1 of this Article, operations carried out in crisis situations as referred to in Article 190(2) shall be considered to satisfy the test of extreme

urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

#### *Article 269*

### **Thresholds and procedures for awarding works contracts(Article 190 of the Financial Regulation)**

1 The thresholds and procedures referred to in Article 190 of the Financial Regulation shall be as follows for works contracts:

- a for contracts with a value of EUR 5 000 000 or more any of the following:
  - (i) an international open invitation to tender within the meaning of Article 127(2) and point (a) of Article 264(2);
  - (ii) in view of the characteristics of certain works, an international restricted invitation to tender within the meaning of Article 127(2) and point (a) of Article 264(2);
- b for contracts with a value of EUR 300 000 or more but less than EUR 5 000 000: a local open invitation to tender within the meaning of Article 127(2) and Article 264(2)(b);
- c for contracts with a value of less than EUR 300 000: a competitive negotiated procedure within the meaning of paragraph 2 of this Article;

Contracts with a value of less than or equal to EUR 20 000 may be awarded on the basis of a single tender.

2 Under the negotiated procedure referred to in point (c) of paragraph 1 of this Article, the contracting authority shall draw up a list of at least three contractors of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 129.

Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

If following the consultation of the contractors, the contracting authority receives only one tender that is administrative and technically valid, the contract may be awarded provided that the award criteria are met.

3 The selection criteria shall cover the capacity of the tenderer to carry out similar contracts, in particular by reference to works carried out in recent years. Once selection is made and since inadmissible tenders have already been eliminated, the only award criterion shall be the price.

4 Each technical and financial bid must be placed in a single sealed envelope, itself placed in a package or outer envelope. The inner envelope shall bear:

- a the address indicated in the tender documents for the submission of tenders;
- b the reference to the call for tenders to which the tenderer is responding;
- c where appropriate, the numbers of the lots for which a tender is being submitted;
- d the phrase 'Not to be opened before the tender-opening session', in the language of the tender documents.

At the place and time set in the tender documents, the tenders shall be opened in public by the evaluation committee. At the public tender-opening session, the names of the tenderers, the prices quoted, the provision of the necessary tender guarantee and any other formality which the contracting authority thinks appropriate must be announced.

#### *Article 270*

### **Use of the negotiated procedure for works contracts(Article 190 of the Financial Regulation)**

1 Works contracts may be awarded by negotiated procedure with a single tender in the following cases:

- a where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in points (a), (b) and (c) of Article 111(1) of the Financial Regulation cannot be kept;
- b for additional works not included in the initial contract concluded but which have, through unforeseen circumstances, become necessary for carrying out the work described therein, subject to the conditions laid down in paragraph 2;
- c where the tender procedure has been unsuccessful, that is where no qualitatively or financially worthwhile tender has been received;
- d for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the Union or the beneficiary country so requires;
- e where a new contract has to be concluded after early termination of an existing contract.

For the purposes of point (a) of the first subparagraph of this paragraph, operations carried out in crisis situations as referred to in Article 190(2) shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

In cases referred to in point (c) of the first subparagraph, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.

2 The additional works referred to in point (b) of paragraph 1 shall be awarded to the work contractor already carrying out the work:

- a where such works cannot be technically or economically separated from the main contract without serious inconvenience for the contracting authority;
- b where such works, although separable from the performance of the original contract, are strictly necessary for its completion;
- c where the aggregate value of contracts awarded for additional works does not exceed 50 % of the value of the principal contract.

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*Status: This is the original version (as it was originally adopted).*

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#### *Article 271*

### **Use of the negotiated procedure for buildings contracts(Article 190 of the Financial Regulation)**

Buildings contracts as referred to in Article 260 may be awarded by negotiated procedure after the local market has been prospected.

#### *Article 272*

### **Choice of procurement procedure for mixed contracts(Article 190 of the Financial Regulation)**

In the case of contracts involving both supplies of services and supplies of goods or execution of works, the contracting authority, after the Commission has given its agreement if it is not the contracting authority, shall determine the thresholds and procedures applicable by reference to the predominant aspect assessed on the basis of the relative value and the operational significance of the various components of the contract.

#### *Article 273*

### **Tender documents(Article 190 of the Financial Regulation)**

1 The tender documents referred to in Article 138 shall be drawn up on the basis of best international practices and in accordance with the provisions of this Chapter regarding advertising and contacts between the contracting authority and tenderers.

2 For service contracts, the tender file must contain the following documents:

- a instructions to tenderers, which must include:
  - (i) the type of contract;
  - (ii) the award criteria and their weightings;
  - (iii) the possibility of interviews and the timetable for them;
  - (iv) whether variants are permitted;
  - (v) the proportion of sub-contracting which may be authorised;
  - (vi) the maximum budget available for the contract;
  - (vii) the currency of tenders;
- b shortlist of candidates selected (mentioning the ban on association);
- c general conditions for service contracts;
- d specific conditions which amplify, supplement or derogate from the general conditions;
- e terms of reference indicating the planned timetable for the project and dates from which it is planned that the principal experts must be available;
- f price schedule (for completion by the tenderer);
- g tender form;
- h contract form;

- i if applicable, bank (or similar) guarantee forms for the payment of pre-financing.

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

- 3 For supply contracts, the tender file must contain the following documents:
  - a instructions to tenderers, which must include:
    - (i) the selection and award criteria;
    - (ii) whether variants are authorised;
    - (iii) the currency of tenders;
  - b general conditions for supply contracts;
  - c specific conditions which amplify, supplement or derogate from the general conditions;
  - d technical annex containing any plans, technical specifications and the planned timetable for performance of the contract;
  - e price schedule (for completion by the tenderer) and the breakdown of prices;
  - f tender form;
  - g contract form;
  - h if applicable, bank (or similar) guarantee forms for:
    - (i) the tender;
    - (ii) payment of pre-financing;
    - (iii) proper performance.

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

- 4 For works contracts, the tender file must contain the following documents:
  - a instructions to tenderers, which must include:
    - (i) the selection and award criteria;
    - (ii) whether variants are authorised;
    - (iii) the currency of tenders;
  - b general conditions for works contracts;
  - c specific conditions which amplify, supplement or derogate from the general conditions;
  - d technical annexes containing plans, technical specifications and the planned timetable for performance of the contract;
  - e price schedule (for completion by the tenderer) and the breakdown of prices;
  - f tender form;
  - g contract form;
  - h if applicable, bank (or similar) guarantee forms for:
    - (i) the tender;
    - (ii) payment of pre-financing;
    - (iii) proper performance.

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

5 In the event of contradiction between the specific conditions referred to in point (d) of paragraph 2, point (c) of paragraph 3 and point (c) of paragraph 4 and the general conditions, those specific conditions shall apply.

6 Where contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant European or, where appropriate, international standards certified by bodies conforming to the European or international standards on certification. They shall also accept other evidence of equivalent quality assurance measures from economic operators.

#### *Article 274*

### **Guarantees(Article 190 of the Financial Regulation)**

1 By way of derogation from Article 163, advance guarantees shall be denominated in euro or in the currency of the contract they cover.

2 The contracting authority may demand a tender guarantee, within the meaning of this Chapter, representing 1 % to 2 % of the overall value of the contract for supply and works contracts. It shall comply with Article 163. It shall be released when the contract is signed. It shall be retained if a tender submitted by the final date for submission is subsequently withdrawn.

3 A performance guarantee may be required by the contracting authority for an amount set in the tender file and corresponding to between 5 and 10 % of the total value of the contract for supply and works contracts. This guarantee shall be determined on the basis of objective criteria such as the type and value of the contract.

However, a performance guarantee shall be required where the following thresholds are exceeded:

- a EUR 345 000 for works contracts,
- b EUR 150 000 for supply contracts.

The guarantee shall remain valid at least until final acceptance of the supplies and works. If the contract is not properly performed the entire guarantee shall be retained.

#### *Article 275*

### **Time limits for procedures(Article 190 of the Financial Regulation)**

1 Tenders must reach the contracting authority at the address and by no later than the date and time shown in the invitation to tender. The time limit for receipt of tenders and requests to participate, laid down by the contracting authorities, shall be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders.

For service contracts, the minimum time between the date of dispatch of the letter of invitation to tender and the final date for receipt of tenders shall be 50 days. However, in urgent cases other time limits may be authorised.

2 Tenderers may put questions in writing before the closing date for receipt of tenders. The contracting authority shall provide the answers to the questions before the closing date for receipt of tenders.

3 In international restricted procedures, the time limit for receipt of requests to participate shall be no less than 30 days from the date on which the contract notice is published. The period between the date on which the letter of invitation is sent and the final date for the receipt of tenders shall be no less than 50 days. However, in certain exceptional cases other time limits may be authorised.

4 In international open procedures, the time limits for receipt of tenders, running from the date on which the contract notice is sent, shall be at least:

- a 90 days for works contracts;
- b 60 days for supply contracts.

However, in certain exceptional cases other time limits may be authorised.

5 In local open procedures, the time limits for receipt of tenders, running from the date when the contract notice is published, shall be at least:

- a 60 days for works contracts;
- b 30 days for supply contracts.

However, in certain exceptional cases other time limits may be authorised.

6 For the competitive negotiated procedures referred to in Articles 265(1)(b), 267(1)(c) and 269(1)(c), candidates shall be allowed at least 30 days from the date of dispatch of the letter of invitation to tender in which to submit their tenders.

7 The time limits specified in paragraphs 1 to 6 are expressed in calendar days.

#### *Article 276*

#### **Evaluation committee(Article 190 of the Financial Regulation)**

1 All requests to participate and tenders declared as satisfying the requirements shall be evaluated and ranked by an evaluation committee on the basis of the exclusion, selection and award criteria announced in advance. This committee shall have an odd number of members, at least three, with all the necessary technical and administrative expertise to assess the tenders.

2 If the Commission is not the contracting authority, it may request to receive a copy of tender documents, tenders, the evaluation of the tenders and the signed contracts. It may also participate as an observer to the opening and evaluation of tenders.

3 Tenders which do not contain all the essential items demanded in the tender documents or which do not correspond to the specific requirements laid down shall be eliminated.

However, the evaluation committee or the contracting authority may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion, selection and award criteria, within the time limit they specify and having respect to the principle of equal treatment.

4 In the case of abnormally low tenders as referred to in Article 151, the committee shall ask for the necessary clarifications concerning the composition of the tender.

5 The obligation to establish an evaluation committee may be waived for procedures with a value less than or equal to EUR 20 000.

## CHAPTER IV

### Grants

#### Article 277

#### **Financing in full(Article 192 of the Financial Regulation)**

In case of derogation from the co-financing requirement, grounds shall be provided in the award decision.

## TITLE III

### EUROPEAN OFFICES

#### Article 278

#### **The European offices and setting up of additional offices(Article 195 of the Financial Regulation)**

The offices referred to in Article 195 of the Financial Regulation are as follows:

- (a) the Publications Office;
- (b) the European Anti-Fraud Office;
- (c) The European Personnel Selection Office and the European Administrative School administratively attached to it;
- (d) the Office for the Administration and Payment of Individual Entitlements;
- (e) the Office for Infrastructure and Logistics in Brussels and the Office for Infrastructure and Logistics in Luxembourg.

One or more institutions may set up additional offices provided that this can be justified by a cost-benefit study and guarantees the visibility of the Union action.

#### Article 279

#### **Delegations by the institutions to interinstitutional European offices(Articles 195 and 199 of the Financial Regulation)**

Each institution shall be responsible for budgetary commitments. The institutions may delegate to the Director of the interinstitutional European office concerned all subsequent acts, in particular legal commitments, validation of expenditure, authorisation of payments and implementation of revenue, and shall set the limits and conditions for such delegation of powers.



*Article 280***Specific rules for the Publications Office (Articles 195 and 199 of the Financial Regulation)**

With regard to the Publications Office, each institution shall decide on its publication policy. The net proceeds from the sale of publications shall be reused as assigned revenue by the institution which is the author of those publications, in accordance with Article 21 of the Financial Regulation.

*Article 281***Delegation of certain tasks by the accounting officer (Article 196 of the Financial Regulation)**

The Commission accounting officer, acting on a proposal from the management committee of the Office in question, may delegate to a member of the staff of the Office some of his tasks relating to the collection of revenue and the payment of expenditure made directly by the Office in question.

*Article 282***Treasury — bank accounts (Article 196 of the Financial Regulation)**

To meet the cash requirements of an interinstitutional Office, bank accounts or post office giro accounts may be opened in its name by the Commission, acting on a proposal from the management committee. The final cash position for each year shall be reconciled and adjusted between the Office in question and the Commission at the end of the financial year.

## TITLE IV

**ADMINISTRATIVE APPROPRIATIONS***Article 283***General provisions (Article 201 of the Financial Regulation)**

The administrative appropriations covered by this Title shall be those set out in Article 41 of the Financial Regulation.

Budgetary commitments corresponding to administrative appropriations of a type common to several titles and which are managed globally may be recorded globally in the budgetary accounting following the summary classification by type as set out in Article 25.

The corresponding expenditure shall be booked to the budget lines of each title according to the same distribution as for appropriations.

*Article 284***Rent guarantees(Article 201 of the Financial Regulation)**

Rent guarantees provided by the institutions shall take the form of a bank guarantee or a deposit on a blocked bank account in the name of the institution and of the lessor, denominated in euro, save in duly substantiated cases.

However, where, for transactions in third countries, it is not possible to use any of those forms of rent guarantees, the authorising officer responsible may accept other forms provided that those forms ensure equivalent protection of the Union's financial interests.

*Article 285***Advances to staff and members of the institutions(Article 201 of the Financial Regulation)**

Advances may be paid, in accordance with the conditions laid down in the Staff Regulations, to staff and to the members of the institutions.

*Article 286***Buildings(Article 203 of the Financial Regulation)**

1 The expenditure referred to in Article 203(3)(a) of the Financial Regulation shall include the costs of the fitting out of buildings. It shall not include the charges.

2 The early information procedure set out in Article 203(4) of the Financial Regulation and the prior approval procedure set out in Article 203(5) of the Financial Regulation shall not apply to acquisition of land free of charge or for a symbolic amount.

3 The early information and prior approval procedure set out in points 3 to 7 of Article 203 of the Financial Regulation shall not apply to residential buildings. The European Parliament and the Council may request from the institution in charge any information related to residential buildings.

4 In exceptional or urgent political circumstances the early information referred to in Article 203(4) of the Financial Regulation concerning building projects relating to Union delegations or offices in third countries may be submitted jointly with the building project pursuant to Article 203(5) of the Financial Regulation. In such cases, the early information and prior approval procedures shall be conducted at the earliest possible opportunity.

5 The prior approval procedure set out in paragraphs 5 and 6 of Article 203 of the Financial Regulation shall not apply to preparatory contracts or studies necessary to evaluate the detailed cost and financing of the building project.

6 The thresholds of EUR 750 000 or EUR 3 000 000 referred to in points (ii), (iii) and (iv) of Article 203(7) of the Financial Regulation shall include the costs of fitting out of the building. For rents and usufruct contracts, those thresholds shall take into account the costs of the fitting out of the building but not the other charges.

7 One year after the date of entry into application of the Financial Regulation, the Commission shall report on the application of the procedures set out in paragraphs 3 to 8 of Article 203 of the Financial Regulation.

## TITLE V

### EXPERTS

#### *Article 287*

#### **Remunerated external experts(Article 204 of the Financial Regulation)**

1 For values below the thresholds laid down in Article 170(1), remunerated external experts may be selected on the basis of the procedure laid down in paragraph 2.

2 A call for expressions of interest shall be published in the *Official Journal of the European Union* or where it is necessary to provide publicity among potential candidates, on the internet site of the institution concerned.

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.

A list of experts shall be drawn up following the call for expressions of interest. It shall be valid for no more than five years from its publication or for the duration of a multiannual programme related to the tasks.

3 Any interested natural person may submit an application at any time during the period of its validity, with the exception of the last three months of that period. Remunerated external experts shall not be selected to perform the tasks referred to in Article 204 of the Financial Regulation if they are in one of the situations of exclusion referred to in Articles 106 and 107 of the Financial Regulation.

4 All exchanges with selected experts, including the conclusion of contracts and any amendments thereto, may be done through electronic exchange systems set up by the institution.

These systems shall meet the following requirements:

- a only authorised persons may have access to the system and to documents transmitted through it;
- b only authorised persons may electronically sign or transmit a document through the system;
- c authorised persons must be identified through the system by established means;
- d the time and date of the electronic transaction must be determined precisely;
- e the integrity of documents must be preserved;
- f the availability of documents must be preserved;
- g where appropriate, the confidentiality of documents must be preserved;
- h the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001 must be ensured.

Data sent or received through such a system shall enjoy legal presumption of the integrity of the data and the accuracy of the date and time of sending or receiving the data indicated by the system.

A document sent or notified through such a system shall be considered as equivalent to a paper document, shall be admissible as evidence in legal proceedings, shall be deemed to be the original of the document and shall enjoy legal presumption of its authenticity and integrity, provided it does not contain any dynamic features capable of automatically changing it.

The electronic signatures referred to in point (b) of the second subparagraph shall have the equivalent legal effect of handwritten signatures.

5 The list of experts and the subject of the tasks shall be published annually. The remuneration shall be published where it exceeds EUR 15 000 for the task performed.

6 Paragraph 5 shall not apply if such publication risks threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union or harm the commercial interests of experts.