



ANNEX 9.2 PROCUREMENT GUIDELINES



SECRETARIAT OF THE UNION FOR THE
MEDITERRANEAN (UfM)

PROJECTS FOR PROGRESS



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1. INTRODUCTION

The UfM is pleased to present its Guidebook to Public Procurement in order to provide general information to simplify the understanding of the procurement process.

In this regard, it is oriented to set out the various procedures to be followed by the UfM when procuring services, supplies and works for its own account, it does not address specific terms and conditions of any particular contract that the UfM may conclude.

This Guidebook merely **clarifies and complements procedures** in force. It **does not substitute** the provisions of the applicable legal framework mentioned below.

1.1. Applicable legal framework

UfM Public Procurement is governed by the following regulations:

- (i) Statutes of the UfM
- (ii) EuropeAid rules and regulations including the Practical Guide to Contract Procedures for EU External Actions (PRAG)¹ and the Financial Management Toolkit for Recipients of EU Funds for External Actions, the Project Cycle Management Guidelines and the Financial Regulation and its Implementing Rules

1.2. Glossary

The following terms have the meaning attributed to them in the Annex I: “contractor”, “supplier”, “service provider”, “economic operator”, “tenderer”, “candidate”, “Open procedure”, “Restricted procedures”, “Competitive dialogue”, “negotiated procedure”, “design contests”, “written” or “in writing”, “electronic means” and “PRAG”.

1.3. Language

The offers, all correspondence and documents related to the tender exchanged by the tenderer and the UfM shall be written in English.

Notwithstanding the foregoing, in the case of local procurement, the UfM may decide to issue the tender dossier and/or allow the submission of the tender in the local language - Spanish.

1.4. Procurement website section

The UfM makes available a specific section in its website dedicated to procurement. This section is intended to provide useful information concerning procurement activities of the UfM.

¹ PRAG 2021.1 available at <https://wikis.ec.europa.eu/display/ExactExternalWiki/ePRAG>



Where applicable, UfM's request for tenders and other solicitation documents will be advertised and available for electronic download from the UfM procurement website section at:

<https://ufmsecretariat.org/work-with-us/procurement/>

2. BASIC RULES

In order to properly accomplish the procurement activity, best international practices are underscored so as to develop a professional procurement framework, better serve the different customers/requesters and safeguard UfM interests and image.

2.1. Competitive tendering

Procurement should be carried out by competition, unless there are justified reasons to the contrary; this obligation also means that the estimated value of a contract may not be established in such a way as to avoid the competitive tendering procedure or to circumvent the rules which apply to certain procurement procedures or above a certain threshold, nor may a contract be split for that purpose (a practice known as 'salami-slicing').

2.2. Eligibility rule

Participation in tender procedures administered by the UfM is open on equal terms to all natural and legal persons effectively established in a Member State of the Union for the Mediterranean. Tenderers must state, in the tender, the country of which they are nationals by presenting the usual proof of nationality under their national legislation. This rule does not apply to the experts proposed by service providers taking part in tender procedures for service contracts.

2.3. Rule of origin

Goods can originate in any country whatever their value.

3. PROCUREMENT PROCEDURES

The applicable standard procedures explained later in this guide are summarized in the table below. They are divided between those for services, supplies and works.

A. SERVICE CONTRACTS	≥ EUR 300 000 - International restricted or open tender procedure	< EUR 300 000 - Simplified procedure		≤ EUR 20 000 - Single tender
	B. SUPPLY CONTRACTS	≥ EUR 300 000 but < EUR 100 000 - International restricted or open tender procedure	< EUR 100 000 but > EUR 20 000 - Simplified procedure	



C. WORKS CONTRACTS	≥ EUR 5 000 000 - International open tender procedure or - International restricted tender procedure	< EUR 5 000 000 but ≥ EUR 300 000 - Local open tender procedure	< EUR 300 000 but > EUR 20 000 - Simplified procedure	
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The applicable procurement procedure shall be based on the estimated value for the contract in question, which is the total amount payable, net of VAT. This calculation shall take into account the maximum budget, including any form of option and any renewals of the contract.

3.1. Types of contracts

The UfM has three main types of contracts, i.e., service contracts, supply contracts and works contracts.

3.1.1. Service contracts

Service contracts are meant for studies, technical assistance and are also used for audits or communication services.

A service contract may be concluded in two different ways:

- (i) Global price – where specified output(s) is/are set out, in the form of clearly defined deliverables like a report or drawings. The service will be paid on the basis of the delivery of the specified output(s).
- (ii) Fee-based – where the output is unpredictable, or where the workload to achieve the specified output is impossible to quantify in advance, fee-based contracts are more appropriate, as it is economically more advantageous to pay the services on the basis of time actually worked.

3.1.2. Supply contracts

Supply contracts cover the purchase, leasing, rental or hire purchase (with or without option to buy) of products.

A contract having as its object the supply of products and which also covers, as an incidental matter, sitting and installation of operations shall be considered to be a supply contract

3.1.3. Work contracts

Work contracts are contracts having as their object either the execution, or both the execution and design, of works or the realization, by whatever means, of a work corresponding to the requirements specified by the UfM. (i.e., infrastructure and other engineering works)

A work means the outcome of building or civil engineering works taken as a whole, which is sufficient of itself to fulfil an economic or technical function.



3.2. Types of procedures

There are several different procurement procedures, each one allowing for a different degree of competition.

3.1.4. Open procedures

In this procedure all economic operators may submit a tender, no negotiation is allowed. The contract is given maximum publicity by publishing a contract notice at least in the UfM procurement website section.

INTERNATIONAL OPEN PROCEDURE

International open calls for tender are published after a contract prior information notice. The minimum deadline for submitting tenders is **50 days** from the date of publication of the contract notice, provided that it has elapsed a minimum of 30 days since the publication of the individual contract prior information notice

LOCAL OPEN PROCEDURE

Local open calls for tender are published with a minimum deadline for submitting tenders of **30 days** from the date of publication of the contract notice.

The contract notice may include all the relevant information for the tenderers and will ensure genuine competition. Any interested tenderer may ask to receive the Tender Dossier.

3.1.5. Restricted procedures

In restricted calls for tender, all economic operators may ask to submit a tender but only those who satisfy the selection criteria may be invited to do so. This procedure also excludes all other terms of the contract negotiation with the applicants or candidates

The contract is given maximum publicity by publishing a contract notice at least in the UfM procurement website section. An individual contract prior information notice will be published, at least 30 days before the publication of the contract notice.

The contract notice will state the **number of candidates** which will be **invited** to submit tenders within a range of four to eight candidates, in order to ensure genuine competition. The minimum deadline for submitting applications is **30 days** from the date of publication of the contract notice. The actual deadline will be determined by the contract's size and complexity.



All would-be service providers fulfilling the conditions may ask to participate but only candidates satisfying the published selection criteria and invited in writing by the UfM may submit a tender.

The minimum period between the **dispatch of the letter of invitation** to tender and the deadline for receipt of tenders is **50 days**. However, in exceptional cases, this period may be shorter.

3.1.6. Competitive negotiated procedures

In these procedures the UfM invites candidates of its choice to submit tenders; at least 3 tenderers are invited. The short-listed candidates are invited by sending them a letter of invitation to tender accompanied by a Tender Dossier.

The shortlist of potential tenderers is **based on their capacity** in the field of the contract as per the **UfM internal assessment**. The minimum period between the **dispatch of the letter of invitation** to tender and the deadline for receipt of tenders is **30 days**.

3.1.7. Single tenders

In single tender procedures a contract may be awarded directly.

Any interested tender may request to be part of the UfM database to take part in future procurement opportunities, by sending their interest at procurement@ufmsecretariat.org

4. TENDER DOSSIER

The tender dossier is the file which contains all the documents needed to prepare and submit a tender.

The tender dossier provides **all the provisions and information** that tenderers need **to submit a tender**: the procedures to follow, the documents to provide, cases of non-compliance, award criteria and their weightings, the deadline for submission and other procurement conditions.

The following documents are included in the Tender Dossier:

- A. Instructions to tenderers & Contract Notice
- B. Draft Contract Agreement and Special Conditions with annexes
 - Annex I. General Conditions
 - Annex II. Terms of reference / Technical Specifications
 - Annex III. Technical Offer
 - Annex IV. Financial Offer
 - Annex V. Other documents



- C. Other information (shortlist, administrative compliance grid, evaluation grid)
- D. Tender submission form

The tender dossier also includes a check list to be used to ensure that the tenderer has provided all the documentation for the tender and in the correct way. The check list should be completed and attached to the other documents as part of tenderer's application. It also includes the deadline to submit the application with all the documents.

4.1. Additional information

All the questions and answers in relation with public procurement will be published on the website; no phone calls or oral exchanges will be accepted.

The UfM publishes information related to all its tendering procedures on its website: <https://ufmsecretariat.org/work-with-us/procurement/>

All procurement actions shall be governed by written documentation

5. SUBMISSION OF TENDERS

Tenderers are advised to make sure to read very carefully the instructions on how (envelopes, number of copies, etc.) and until when to submit offers, as any failure to meet the requirements might lead to the exclusion from the tendering procedure. Offers can be submitted either by post or by hand.

Any infringement of the previous rules will lead to rejection of the tender.

The tender must be submitted in accordance with the Tender Dossier. UfM is not liable for any compensation with respect to tenderers whose offers have not been accepted.

IMPORTANT INFO FOR TENDERERS

- Read the PRAG before submitting your bids.
- All questions and answers (Q&A) in relation with any procedure will be published on the UfM' website exclusively – <https://ufmsecretariat.org/work-with-us/procurement/>
- If you are downloading Call related documents from UfM's website, kindly send us an e-mail at procurement@ufmsecretariat.org to declare your interest in order to be notified directly in case of clarifications. Please put the 'reference code' in the subject field of the email.

The expenses incurred in the preparation and submission of tenders will not be reimbursed.



5.1. Deadline for submission of tenders

Tenders must reach the UfM at the address and by no later than the date and time shown in the Tender Dossier.

Tenders submitted **after the deadline** will be **excluded** from evaluation

3.1.8. Receipt and registration of tenders

On receiving tenders, the UfM will register them, stating the date and time of submission, and provide a receipt for those delivered by hand or submitted electronically. In case of paper submission, the envelopes containing the tenders will remain sealed and be kept in a safe place until they are opened. The outer envelopes of tenders will be numbered in order of receipt (whether or not they are received before the deadline for submission of tenders).

The **offer received** from the successful tenderer will become an **integral part** of the awarded contract.

5.2. Period of validity

Tenderers are bound by their tenders for the period specified in the letter of invitation to tender or in the tender dossier. The period of validity of tender is fixed at 90 days from the deadline for the submission of tenders.

In exceptional cases, before this period of validity expires, the contracting authority may ask the tenderers for a one-off, specific extension, which may not exceed 40 days.

The successful tenderer is bound by the tender for a further 60 days, irrespective of the date of notification (i.e., 90 (+ 40) + 60 days) of the award of the contract.

6. EVALUATION PROCESS

Tenders are opened and evaluated by an Evaluation Committee formally and promptly appointed by the UfM as per the defined **selection and award criteria**.

6.1. Selection criteria

The UfM shall draw up clear and non-discriminatory selection criteria for the purpose of assessing that the candidate/tenderer has sufficient financial, economic, technical and professional capacity to implement the tasks of the contract.

The selection criteria should be clear and non-discriminatory and may not go beyond the scope of the contract and will be specified in the Tender Dossier.



An **economic operator** may, for a particular contract, **rely on the capacities of other entities**, regardless of the legal nature of the links which it has with them.

3.1.9. Grounds for exclusion from participation

An economic operator will be excluded from participation in procurement and grant procedures if:

- a) it is bankrupt, subject to insolvency or winding-up procedures, where its assets are being administered by a liquidator or by a court, where it is in an arrangement with creditors, where its business activities are suspended, or where it is in any analogous situation arising from a similar procedure provided for under national laws or regulations;
- b) it has been established by a final judgment or a final administrative decision that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;
- c) it has been established by a final judgment or a final administrative decision that the economic operator is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the economic operator belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes a wrongful intent or gross negligence;
- d) it has been established by a final judgment that the economic operator is guilty of any of the situations referred in section 2.6.10.1 d) of the PRAG;
- e) the economic operator has shown significant deficiencies in complying with main obligations in the performance of a contract financed by the EU, which has led to the early termination of a legal commitment or to the application of liquidated damages or other contractual penalties or which has been discovered following checks and audits or investigations by an authorising officer, OLAF or the Court of Auditors;
- f) it has been established by a final judgment or final administrative decision that the economic operator has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests;
- g) it has been established by a final judgment or final administrative decision that the person or entity has created an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations of mandatory application in the jurisdiction of its registered office, central administration or principal place of business;
- h) it has been established by a final judgment or final administrative decision that an entity has been created with the intent provided for in point (g).

Tenderers must **certify** that they are not in one of the situations listed above.

6.2. Award criteria

Contracts are awarded on the basis of the most economically advantageous tender established for the call for tender in one of the following two ways:



- under the best price-quality ratio
- under the lowest price

The criteria will be precise, non-discriminatory and not prejudicial to fair competition.

6.2.1 The best price-quality ratio

The contracting authority takes into account the price and other quality criteria linked to the subject matter of the contract and apply a weighting formula. The two main components of this criterion are:

Technical Evaluation as per “Evaluation Grid”

The “Evaluation Grid” is intended to help the evaluation of the quality of the proposals in relation to the objectives and priorities set for the contract and in order to award procurement to bids which fulfil UfM’ objectives as efficiently as possible. The Evaluation Grid will set out the technical criteria, sub-criteria and weightings to be used for technical evaluation.

75-point threshold

Any tender falling short of the 75-point threshold is automatically rejected. If no tender achieves 75 points or more, the tender procedure will be cancelled.²

Out of the tenders reaching the 75-point threshold, the weighted technical score of the best technical offer must always be 100 points. The others receive points calculated using the following formula:

$$\text{Weighted technical score} = (\text{average technical score of the offer in question} / \text{average technical score of the best technical offer}) \times 100$$

Financial Evaluation as per “Quotation Matrix/ Price Schedule”

The “Quotation Matrix/Price Schedule” consists in a calculation process to ensure that the best possible outcome has been achieved by taking into account all relevant costs and benefits over the entirety of the work, product or service life-cycle.

Abnormally low

If, for a given contract, tenders appear to be abnormally low, the UfM shall, before rejecting such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements, taking account of the explanations received.

² Except otherwise provided in the Tender Dossier



The tender with the lowest financial offer receives 100 points. The others are awarded points by means of the following formula:

$$\text{Financial score} = (\text{lowest total price} / \text{total price of the tender being considered}) \times 100.$$

The **best value for money** is established by weighing technical quality against price on an **80/20 basis**.³ This is done by multiplying:

- the scores awarded to the technical offers by 0.80
- the scores awarded to the financial offers by 0.20.

6.2.2 Lowest price

When using lowest price criteria, the award of a contract shall be made to the provider whose offer has been evaluated and determined as both:

- Technical Evaluation as per “Responsive/compliant/acceptable” bid; and
- Financial Evaluation as per bidder offering the “lowest price/cost”.

“Responsive/compliance/acceptable” can be defined as fully meeting the Specifications and/or Terms of Reference required or reaching a pre-defined threshold of a maximum attainable score based on the requirements stated in the specifications document. Among the remaining responsive/compliant/acceptable offers the lowest one is selected.

This criterion may be used for procurement where:

- Technical Specifications/Terms of Reference are clear
- Responsiveness/compliance/acceptability is easy to determine
- Price/cost is overriding evaluation criterion compared to other aspects of Value for Money

6.3. Exclusion from award of contracts

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

- are subject to a conflict of interests;
- are guilty of misrepresentation in supplying the information required by the UfM as a condition of participation in the contract procedure or fail to supply this information;
- find themselves in one of the situations of exclusion for the relevant procurement procedure.

7. OTHER RELEVANT CONSIDERATIONS

7.1. Lots

When a procurement procedure is divided into lots, this is explicitly mentioned in the contract notice and the Tender Dossier. In the case of lots, unless otherwise stated in the tendering specifications, tenderers may submit tenders for one lot only, a combination, or all of them.

³ Except otherwise provided in the Tender Dossier



Each individual lot is evaluated independently of the other lots.

7.2. Subcontracting

Subcontracting is when the contractor enters into a legal commitment (subcontracts) with one or more economic operator(s) in order to deliver part of the work, service or supply described in the Tender Dossier.

The possibility to **subcontract** shall be stated in the contract notice and
Tender Dossier

Subcontractors shall satisfy the eligibility criteria applicable for the award of the contract and shall not fall under the exclusion criteria described in the Tender Dossier. UfM will have no direct legal commitment towards such subcontractor (s) and only the main contractor is liable to the UfM for the performance of the contract as a whole.

7.3. Framework options

A framework option is an agreement with one or more economic operators, the purpose of which is to establish the terms governing specific contracts which may be awarded during a given period, particularly as regards duration, subject, price, maximum value, implementation rules and the quantities envisaged.

7.3.1 Framework contracts

Framework agreements that establish all the terms (framework contracts) are legal instruments under which the terms applicable to any orders under this type of framework agreement are set out in a binding manner for the parties to the framework agreement.

7.3.2 Framework agreements

Framework agreements that do not establish all the terms (framework agreements *stricto sensu*) are legal instruments under which the terms applicable to any orders are left to be established later, upon reopening competition under multiple framework agreements or in subsequent consultation with the sole economic operator.

Multiple frameworks are framework options with **several economic operators**

7.4. Settlement of disputes

Any disputes arising out of or relating to contract awarded by UfM procurement procedures which cannot be settled otherwise shall be referred for arbitration to the *Tribunal Arbitral de Barcelona* (TAB) [Barcelona Arbitration Court], of the *Associació Catalana per a l'Arbitratge* [Catalan Arbitration Association], which is entrusted with the appointment of the arbitrator or arbitrators and the



administration of the arbitration in accordance with its Regulations in force at the start of the arbitration.

8. FUTURE INFORMATION

For any further information regarding tenders or procurement activities, you can contact us at:

UfM Procurement Service

Palau de Pedralbes

Pere Duran Farell 11

08034 Barcelona, Spain

Phone: 00 34 93 521 41 84

Email: procurement@ufmsecretariat.org



ANNEX 1- GLOSSARY

“contractor”, “supplier”, “service provider”, “economic operator”, “tenderer”, “candidate”, “Open procedures”, “Restricted procedures”, “Competitive dialogue”, “negotiated procedures”, “design contests”, “written” or “in writing”, “electronic means” and “PRAG”

- The terms **contractor**, **supplier** and **service provider** mean any natural or legal person or public entity or group of such persons and/or bodies which offers on the market, respectively, the execution of works and/or a work, products or services.
- The term **economic operator** shall cover equally the concepts of contractor, supplier and service provider. It is used merely in the interest of simplification.
- An economic operator who has submitted a tender shall be designated as a **tenderer**. One which has sought an invitation to take part in a restricted or negotiated procedure or a competitive dialogue shall be designated a **candidate**.
- **Open procedures** means those procedures whereby any interested economic operator may submit a tender.
- **Restricted procedures** means those procedures in which any economic operator may request to participate and whereby only those economic operators invited by the Bank may submit a tender.
- **Competitive dialogue** is a procedure in which any economic operator may request to participate and whereby the Bank conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender.
- **Negotiated procedures** means those procedures whereby the Bank consults the economic operators of their choice and negotiate the terms of contract with one or more of these.
- **Design contests** means those procedures which enable the Bank to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes.
- **Written or in writing** means any expression consisting of words or figures which can be read, reproduced and subsequently communicated. It may include information which is transmitted and stored by electronic means.
- **Electronic means** means using electronic equipment for the processing and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.
- **PRAG** means the Practical Guide to Contract Procedures for EU External Actions (PRAG) that explains the contracting procedures applying to all EU external aid contracts financed from the EU general budget.