



European Environment Agency (EEA)

General guidance on EEA procurements

For potential tenderers when considering submission of a tender
in response to a procurement procedure launched by the EEA

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DISCLAIMER

This document and the guidance contained within is applicable to all calls for tenders launched by the European Environment Agency (hereinafter referred to as 'EEA' or the 'Agency') on or after 31st March 2022.

This document is designed to help tenderers with the preparation and submission of offers in response to procurement procedures issued by the EEA. Tenderers should note that any information contained in this document can in no way be regarded as a commitment on the part of the Agency to enter into any contract.

This guidance complements the procurement documents for each specific procedure. The tender specifications describe the service or supply that EEA intends to purchase, the timetable, how the offers will be evaluated, what the participating tenderers are required to provide as part of their offer and the resulting contractual terms. In case of any inconsistency between these guidelines and individual tender specifications, the individual tender specifications shall prevail.

Legal framework

EEA was established by Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European environment information and observation network (codified version) (*EEA Founding Regulation*).

The procurement procedures launched by EEA are governed by Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union, repealing Regulation (EU, Euratom) No 966/2012 (*Financial Regulation*).

Any processing of personal data in the context of a public procurement procedure is compliant with the provisions of Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

Basic information about calls for tenders launched by EEA

EEA publishes detailed information related to all its procurement procedures on its website [Contract opportunities at the EEA — European Environment Agency \(europa.eu\)](https://europea.europa.eu/contract-opportunities).

Types of procurement procedures

Depending on the estimated value, duration and type of the services or supplies to be procured, different procurement procedures may be used, comprising of different steps and timelines.

The two types of procedure most commonly used by the EEA are the **negotiated procedure** and the **open call for tenders**.

Negotiated procedure

In principle, a negotiated procedure can be used when the resulting contract is estimated to have a value below EUR 140 000¹. In this type of procedure, the EEA invites specific candidates it has selected by sending them the procurement documents.

In this type of procedure, EEA draws up a shortlist of potential tenderers, based on their field of activity and expertise and the needs of EEA. For procedures between 15,000 EUR and 140,000 EUR, EEA promotes these prior to launch on its website and requests expressions of interest to participate. The shortlisted candidates (those who express an interest or those which are identified by EEA) are invited to submit an offer and only offers received from these candidates are evaluated. The minimum number of candidates to be invited to participate in a negotiated procedure is dependent upon the value of the contract:

Value of contract	Minimum number of candidates to be invited
EUR 1 000 – 15 000	One candidate
EUR 15 000.01 – 60 000	Three candidates
EUR 60 000.01 - 140 000	Five candidates

¹ See [Commission Delegated Regulation \(EU\) 2019/1828](https://eur-lex.europa.eu/eli/reg/2019/1828) of 30.10.2019 amending Directive 2014/24/EU of the European Parliament and of the Council in respect of the thresholds for public supply, service and work contracts, and design contests (OJ L 279/25 of 31.10.2019, applicable as from 1.1.2020).

Open call

An open call can always be launched regardless of the value of the resulting contract. However, in accordance with the principle of proportionality, it is primarily used for contracts with a value above 140 000 EUR.

All EEA open calls are published in the Official Journal of the European Union, through a contract notice. Each procedure is posted on EEA's website where a link is provided to the e-Tendering portal through which tenderers can access the procurement documents (invitation letter, tender specifications, draft contract and other annexes). In an open call, EEA does not draw up a shortlist or send specific invitation letters to potential tenderers. Participation in this procedure is open on equal terms to all interested entities meeting the eligibility requirements specified in the tender specifications for a specific procedure.

Should I submit an offer?

It is important that you make an informed decision about whether or not to commit resources to the submission of an offer. EEA will not reimburse expenses incurred in the preparation and submission of offers. Points to consider:

Subject matter of the contract

You should read carefully the subject matter of the contract mentioned in the contract notice published in the Official Journal and described fully in the tender specifications. Pay particular attention to the minimum capacity requirements (selection criteria) and whether you are able to meet these alone or through reliance upon the capacities of other entities.

Value of the contract

In case of direct contracts, the value is fixed and expressed as a price in the contract signed as a result of the call for tenders.

In case of framework contracts, the tender specifications contain indications on the maximum volume of goods and/or services which may be purchased under the framework contract. Although EEA always tries to give its best estimate in good faith, tenderers should be aware that any information on maximum ceiling is purely indicative and shall not be binding on EEA and should not be considered as a warranty as to the probable value of the framework contract.

Lots

When a procurement procedure is divided into lots, this is explicitly mentioned in the contract notice and tender specifications. In this case, unless stated otherwise in the contract notice and tender specifications, tenderers may submit offers for one or more lots. Each individual lot is assessed by EEA independently of any other lot. Offers which cover only part of one lot or are declared as being conditional on the award of any other lots within the particular procurement procedure are not permitted. EEA reserves the right to reject such offers without further evaluation on the grounds that they do not comply with the tender specifications.

Variants

Unless specifically stated otherwise in the tender specifications, departures from any technical or financial requirements of the tender specifications, or from any contractual conditions, are not permitted. In drawing up their bid, tenderers should therefore bear in mind the provisions of the draft contract, particularly those on payments, performance of the contract, confidentiality, checks

and audits, and processing of personal data. Any limitation, amendment, or denial of the terms of the contract will lead to the automatic exclusion from the procurement procedure.

EEA will disregard any variants described in an offer, and further reserves the right to reject such offers without further evaluation on the grounds that they do not comply with the tender specifications.

Submitting tenders as a group of economic operators and/or using subcontracting

A joint tender is an offer submitted by a group of two or more economic operators.

Subcontracting is when the contractor enters into a legal commitment (subcontracts) with one or more economic operators in order to deliver part of the work, service or supplies described in the tender specifications. Unless stated otherwise in the contract notice and/or the procurement documents, joint tenders from a group of economic operators and subcontracting are allowed in response to a procurement procedure launched by EEA. Offers may even combine both approaches. The offer must clearly state whether each entity involved is acting as a partner in a joint tender or as a subcontractor. This also applies where the various companies involved belong to the same group, or even where one is the parent company of the others.

Joint tenders

A joint tender is a situation where a tender is submitted by a group of economic operators. The group as a whole is considered a tenderer.

For submission of an offer, EEA does not require a group of economic operators to take any specific legal form; it can be a permanent, legally established grouping or one which has been constituted for a specific procurement procedure. However, the selected group may be required to adopt a given legal form after it has been awarded the contract if this change is necessary for proper performance of the contract. Such a requirement would be announced in the procurement documents.

Group members must appoint a group leader and a single point of contact authorised to act on their behalf in connection with the submission of the tender and all relevant questions, clarification requests, notifications, etc. that may be received during the evaluation and award phases, and until signature of the contract. A model power of attorney is available on the EEA website.

The joint tender must clearly indicate the role and tasks of each member and of the group leader who will act as the EEA's contact point for the contract's administrative or financial aspects and operational management. The group leader will have full authority to bind the group and each of its members during contract execution.

Joint tenders will be evaluated as follows:

- The exclusion criteria and grounds for rejection from the procedure will be evaluated in relation to each legal entity of the group individually. Every member of the group shall provide a declaration of honour on exclusion criteria and will be requested to provide the supporting evidence in case of award for contracts above the EU Public Procurement directive thresholds;
- The selection criteria regarding the legal, economic, financial, technical and professional capacity will be evaluated on a consolidated basis unless specified differently in the procurement documents;
- The award criteria will be evaluated in relation to the offer as a whole.

If the joint tender is successful, the EEA will sign the contract with the group leader, authorised by the other members to sign the contract on their behalf.

All members of the group assume joint and several liability towards the EEA for the performance of the contract.

Changes in the composition of the group during the procurement procedure (after the submission deadline and before the contract signature) may lead to the rejection of the tender except in case of a merger or takeover of a member of the group, provided that the new entity has access to procurement and is not in an exclusion situation, as these requirements are set in the tender specifications for a specific procurement procedure. In any case, the selection criteria must still be fulfilled by the group and the terms of the originally submitted tender may not be altered substantially, i.e. all the tasks assigned to the former group member must be taken over by the new member of the group, the change must not make the tender non-compliant with the tender specifications, and the evaluation of award criteria of the originally submitted tender may not be modified.

Subcontracting

Subcontracting is the situation where the contractor enters legal commitments with other economic operators which will perform part of the contract on its behalf.

All contractual tasks may be subcontracted unless the technical specifications for a specific procurement procedure expressly reserve the execution of certain critical tasks to the sole tenderer itself, or in case of a joint tender, to a member of the group. Only one level of subcontracting is allowed.

The following shall not be considered subcontracting:

- a) Use of workers posted to the contractor by another company owned by the same group and established in a Member State (“intra-group posting” as defined by Article 1.3.(b) of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.
- b) Use of workers hired out to the contractor by a temporary employment undertaking or placement agency established in a Member State (“hiring out of workers” as defined by Article 1.3.(c) of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.
- c) Use of workers temporarily transferred to the contractor from an undertaking established outside the territory of a Member State and that belongs to the same group (“intra-corporate transfer” as defined by Article 3 (b) of Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer).
- d) Use of staff without employment contract (“self-employed persons working for the contractor”), without the tasks of the self-employed persons being well-defined parts of the contract.
- e) Use of suppliers and/or transporters by the contractor, in order to perform the contract at the place of performance, unless the economic activities of the suppliers and/or the transporting services are within the subject of a specific call for tenders.
- f) Performance of part of the contract by members of an EEIG (European Economic Interest Grouping), when the EEIG is itself a contractor or a group member.

The persons mentioned in points a), b), c), and d) above will be considered as “personnel” of the contractor as defined in the contract.

The contractor retains full liability towards the EEA for the performance of the contract.

In the tender submission form (see <https://www.eea.europa.eu/about-us/tenders/administrative-data-form>), tenderers are required to give an indication of the proportion of the contract they intend to subcontract, as well as to identify and describe briefly the envisaged contractual role/tasks of subcontractors meeting any of these conditions (hereinafter referred to as ‘identified subcontractors’):

- on whose capacities the tenderer relies upon to fulfil the selection criteria as described in the tender specifications of a specific procedure;
- whose individual share of the contract, as known at the time of submission of the tender, exceeds 20% of the estimated contract value specified in the tender specifications for a specific procurement procedure.

Changes concerning subcontractors identified in the tender (withdrawal, replacement or additional subcontractor) during the procurement procedure (after the submission deadline and before the signature of the contract) require the prior written approval of the EEA subject to the following verifications:

- any new subcontractor is not in an exclusion situation,
- the tenderer still fulfils the selection criteria and the new subcontractor fulfils the selection criteria applicable to it individually, if any,
- the terms of the originally submitted tender are not altered substantially, i.e. all the tasks assigned to the former subcontractor are taken over by another involved entity, the change does not make the tender non-compliant with the tender specifications, and the evaluation of award criteria of the originally submitted tender is not modified.

How are selection criteria applied for joint tenders?

In order to fulfil the selection criteria, a tenderer may also rely on the capacities of other entities, regardless of the legal nature of the links it has with them. If the contract is awarded to a tenderer intending to rely on another entity to meet the minimum levels of economic and financial capacity, EEA may require the entity to sign the contract or, alternatively, to provide a joint and several first-call financial guarantee for the performance of the contract.

With regard to technical and professional selection criteria, a tenderer may only rely on the capacities of other entities where the latter will perform the works or provides the services for which these capacities are required.

How are offers evaluated?

EEA is required to formally appoint an Evaluation Committee for all calls exceeding 140,000 EUR.

The offers will be assessed by an Evaluation Committee working under conditions of confidentiality and absence of conflict of interest and will sign a declaration confirming these conditions. Once the evaluation is completed, the Evaluation Committee will draw up a report for the responsible authorising officer, who will take the final decision on the award of the contract.

The evaluation of the tenders that comply with the submission conditions will consist of the following elements:

- Check whether the tenderer has access to procurement, in accordance with the terms specified in the tender specifications for a specific procurement procedure

- Verification of compliance with administrative requirements (is the tender drawn up in one of the official EU languages and signed by a duly authorised representative?)
- Verification of non-exclusion of tenderers based on the exclusion criteria
- Verification of compliance with the selection criteria
- Verification of compliance with the minimum requirements specified in the procurement documents
- Evaluation of tenders based on the award criteria

The EEA will evaluate the above-mentioned elements in the order that it considers to be the most appropriate. If the evaluation of one or more elements demonstrates that there are grounds for rejection, the tender will be rejected and will not be subjected to further full evaluation. The unsuccessful tenderer will be informed of the ground for rejection without being given feedback on the non-assessed content of their tender. Only tenderers for whom the verification of all elements did not reveal grounds for rejection can be awarded the contract.

The evaluation will be based on the information and evidence contained in the tender and, if applicable, on additional information and evidence provided at the request of the EEA during the procedure. If any of the declarations or information provided proves to be false, the EEA may impose administrative sanctions (exclusion or financial penalties) on the entity providing the false declarations/information.

For the purposes of the evaluation related to exclusion and selection criteria the EEA may also refer to publicly available information, in particular evidence that it can access on a national database free of charge.

Remedies

Tenderers may lodge an appeal against the contract award decision. This must be done within two months of the decision which is contested. The court responsible for hearing appeal procedures is the General Court of the European Union:

General Court of the European Union
Rue du Fort Niedergrünwald L-2925 Luxembourg
Tel.: (352) 4303-1 Fax: (352) 4303 2100
E-mail: GeneralCourt.Registry@curia.europa.eu
www.curia.europa.eu

The European Ombudsman investigates complaints about maladministration in the institutions and bodies of the European Union. A complaint must be made within two years of the date upon which the facts on which your complaint is based became known. Additionally, you must have already contacted EEA regarding this complaint before contacting the European Ombudsman.

The European Ombudsman
1 Avenue du President Robert Schuman
CS 30403 FR – 67001 Strasbourg Cedex
Tel.: +33 (0)3 88 17 23 13 Fax: +33 (0)3 88 17 90 62
www.ombudsman.europa.eu

Signature policy

All documents must be signed by the signatories (when they are individuals) or by their duly authorised representatives.

For the following documents, when signed by representatives, tenderers must provide evidence for the delegation of the authorisation to sign:

- The Declaration on honour of the tenderer (and in case of a joint tender, the Declarations on honour of all members of the group)
- In the case of a joint tender, the power(s) of attorney drawn up using the model available on the EEA website.

The delegation of authorisation to sign on behalf of the signatories (including in the case of proxy(ies), the chain of authorisations) must be evidenced by appropriate evidence (copy of the notice of appointment of the persons authorised to represent the legal entity in signing contracts (together or alone), or a copy of the publication of such an appointment if the legislation which applies to signatory requires such a publication or a power of attorney). A document that the EEA can access on a national database free of charge does not need to be submitted if the EEA is provided with the exact internet link and, if applicable, the necessary identification data to receive the document.

Electronic exchange system: can exchanges under the contract be automated?

For all exchanges with the contractor during the implementation of the framework contract as well as for future possible subsequent proceedings for the purposes of EDES (i.e. the European Union's Early Detection and Exclusion System), the Contracting Authority may use an electronic exchange system meeting the requirements of Article 148 of the Financial Regulation . At the request of the Contracting Authority, the use of such a system shall become mandatory for the contractor at no additional cost for the Contracting Authority. Details on specifications, access, terms and conditions of use will be provided in advance.