

# **General guidance on EFSA procurements**

Important information for potential tenderers when considering the submission of a tender in response to a procurement procedure of the European Food Safety Authority

**Updated July 2015**

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## DISCLAIMER

**This document and the guidance contained within is applicable to all calls for tender where the contract will be signed after 1<sup>st</sup> January 2013. This document and guidance does not apply to calls with a contract signature date prior to 1<sup>st</sup> January 2013.**

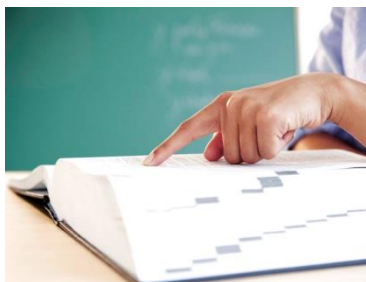


This document is designed to help tenderers with the preparation and submission of offers in response to procurement procedures issued by the Authority for the supply of goods, services and works. The information contained in this document is of a general nature only and is not intended to address the specific circumstances of any particular individual or entity.

Tenderers should note that any information, questions or observations, of whatever kind, contained in this document can in no way be regarded as a commitment on the part of the Authority to enter into any contract.

EFSA publishes detailed information related to all its tendering procedures on its website: [www.efsa.europa.eu/en/calls/procurement.htm](http://www.efsa.europa.eu/en/calls/procurement.htm). This guidance complements the tender specifications for each specific tendering procedure. The tender specifications describe the service or supply that EFSA 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.

Further information on the activities of the Authority which may be of interest to tenderers can be found on the Authority's website [www.efsa.europa.eu](http://www.efsa.europa.eu)



## LEGAL FRAMEWORK

The procurement procedures of EFSA are governed by the following EU Regulations:

- Part 1, Title 5 of Council Regulation (EU, EURATOM) No 966/2012 of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002;
- Part 1, Title 5 of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union.

In addition to the above-mentioned legislation, it should be noted that:

- principles arising from the **Court of Justice of the European Union's case law** in the field of procurement are binding on the Authority;
- The staff of the Authority are bound by the [European Code of Good Administrative Behaviour](#) in their relations with the public. This includes the management of procurement procedures, subject to the restrictions laid down in the above-mentioned legal provisions.

## 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](mailto:GeneralCourt.Registry@curia.europa.eu)  
[www.curia.europa.eu](http://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 the Authority 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](http://www.ombudsman.europa.eu)

## BASIC INFORMATION ABOUT CALLS FOR TENDER ISSUED BY EFSA



EFSA publishes information related to all its tendering procedures on its website: [www.efsa.europa.eu/en/calls/procurement.htm](http://www.efsa.europa.eu/en/calls/procurement.htm)

### Types of tendering procedure

The type of procedure used by EFSA is selected in accordance with the minimum and maximum expected contract value. The two types of procedure most commonly used by EFSA are the negotiated procedure and the open procedure. One of the differences between these procedures is the way in which potential tenderers are invited to participate.

#### Negotiated Procedure

The negotiated procedure can be used when the resulting contract is estimated to have a value equal to or below 60,000 EUR. In this type of procedure, EFSA draws up a shortlist of potential tenderers, based on their field of activity and expertise and the needs of EFSA. For procedures between 15,000 EUR and 60,000 EUR, EFSA promotes these prior to launch on its website. The shortlisted candidates are invited to submit an offer and only offers received from these candidates are evaluated. The number of candidates to be invited to participate in a negotiated procedure is dependent upon the value of the call. If EFSA considers that the offers received can be improved, negotiations can be carried out on equal terms for all tenderers.

- 60,000 EUR and below = Minimum three candidates must be invited
- 15,000 EUR and below = Minimum one candidate must be invited

#### Open Procedure

The open procedure is most frequently used when the resulting contract is estimated to have a value above 60,000 EUR, but it can also be used for contracts below that value.

All EFSA open procedures are published in the Official Journal of the European Union, through a contract notice. Each procedure is posted on EFSA's website with the invitation letter, tender specifications and draft contract. In an open procedure, EFSA 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 as described in the section on 'participation' below.

#### Participation

Participation in EFSA's public procurement procedures is open on equal terms to all natural and legal persons falling within the scope of the EU Treaties (this includes all economic operators registered in the EU and all EU citizens). Procurement procedures of EFSA are not covered by the WTO Multilateral Government Procurement Agreement (GPA). Tenderers established in third countries (non-EU countries) do not have the right to participate in tender procedures unless other bilateral or special international agreements in the field of public procurement grant them the right to do so. In case there is no such agreement, or the agreement does not apply to the kind of contracts put out to tender, tenderers of third countries are not entitled to participate.

When applying the rules of access to the market, it is the country where the tenderer is established which should be considered. As regards a natural person, it is the State in which he/she has his/her domicile.

Currently tenderers from the following third countries are considered eligible based on signed and ratified international/bilateral agreements in the field of public procurement:

FYROM, Albania, Montenegro, Serbia, Iceland, Norway and Liechtenstein.

In a similar vein, intergovernmental organisations (e.g. United Nation bodies, World Bank, International Monetary Fund etc.) are in principle not entitled to participate in tendering procedures of the Union institutions, agencies and bodies as they do not come within the scope of the treaties.

Please note the above list is not exhaustive and is subject to updates. In case of queries regarding eligibility to apply, please contact, via e-mail, the individual named in the Invitation Letter as the designated contact point for that specific call for tender. Additionally, each tender specification may define an exceptional ad hoc admission of tenderers from non-eligible countries to participate in a call for tender, without creating a precedent for future calls.

The rules of access to the market apply to single tenderers as well as partners in a consortium of tenderers. It is to be noted that the rules of access to the market do not apply to subcontractors, i.e. a consortium of eligible tenderers or a single tenderer could choose a subcontractor from a non-eligible country.

### **Nature of contractual relationship resulting from contract award**

When preparing an offer, tenderers should take full account of the Invitation Letter, tender specifications, including its annexes, for example the draft contract, as they will define and govern the contractual relationship (including contract type and duration) to be established between the Authority and the successful tenderer.

#### **Direct Contract**

In direct contracts the subject, remuneration and length of implementation of the contract are defined at the outset. Once signed, they can be implemented without any further formalities or contract procedures.

#### **Framework Contract**

Sometimes the contractual relationship between the Authority and the successful tenderer will be governed by a special type of contract known as a "framework contract". A framework contract establishes a mechanism for the future repetitive acquisition of supplies, services or works, when the contracting authority can define the subject matter of the procurement but does not know when and what quantity it will need during a certain period of time.

Only the implementation of the framework contract through specific contracts/order forms is binding for EFSA and the signature of a framework contract does not impose an obligation on EFSA to conclude specific contracts/order forms with a framework contractor.

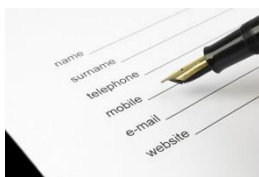
Actual orders will be placed only after the framework contract is signed, in the form of "**specific contracts**" or "**order forms**" concluded in pursuance of the framework contract.

A **single framework contract** is a contract concluded with only one economic operator, detailing the basic terms for a series of specific contracts/order forms to be concluded over a given period, particularly regarding the duration, subject, price and implementation modalities.

Sometimes, the Authority may indicate that it wishes to conclude **multiple framework contracts in cascade** with a number of contractors. A system of priority would be established whereby specific contracts or order forms would be placed with the first priority contractor. If the goods and/or services are unavailable from the first priority contractor, the specific contract or order forms would then be placed with the second priority contractor and so on.

The Authority may also conclude **multiple framework contracts with reopening competition**, with a number of contractors where not all the terms are laid down in the framework contract and without a system of priority being established among the contractors. The Authority shall reopen competition and ask all the contractors to compete on the basis of more precisely formulated terms. Any resulting specific contract will however be based on the multiple framework contract and will not deviate from it so much that it may be considered to be entirely different from the multiple framework contract.

In a multiple framework contract with reopening competition, EFSA will invite all multiple framework contractors to make a specific offer, in accordance with the time limit foreseen in the multiple framework contract, according to the specific terms which EFSA shall define for the individual assignment. Among the offers that fulfil the minimum requirements, the Authority would then award the specific contract to the contractor which has submitted the best offer on the basis of the award criteria set out in the tender specifications for the "reopening" competition.



## 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. EFSA will not reimburse expenses incurred in the preparation and submission of offers, including expenses related to site visits, attending clarification meetings or opening sessions and interviews. In order to make an informed decision about submitting an offer, you should carefully consider the following:

### 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 also described fully in the tender specifications. Pay particular attention to the minimum capacity requirements 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 foreseeable volume of goods and/or services which may be purchased under the framework contract. Although the Authority 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 the Authority and should not be considered as a warranty as to the probable value of the framework contract. Further, the total value of the framework contract will ultimately depend on the orders which the Authority may place through either order forms or specific contracts. In any case however, the maximum ceiling of the framework contract will not be exceeded.

### 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 EFSA 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. The Authority 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.

The Authority 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.

If you are interested in submitting an offer and would like to know how the offer will be assessed, please refer to page 15 of this guidance document.

## Submitting offers as a consortium of companies and/or using subcontracting

A **joint offer** 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 operator(s) 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 tender specifications, joint offers from a consortium and subcontracting are allowed in response to a procurement procedure issued by the Authority. Offers may even combine both approaches. The offer must clearly state whether each company involved is acting as a partner in the consortium 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 offers from a consortium

For submission of an offer, EFSA does not require consortia 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.

The joint offer must clearly indicate which service provider will be carrying out which tasks as well as who has been appointed by the consortium as the lead partner. Provided a contract is concluded, EFSA will treat all contractual matters (e.g. payments) exclusively with the lead partner of the consortium, whether or not the tasks are performed by another consortium member.

Consortium partners in a joint offer assume **joint and several liability** towards EFSA for the performance of the contract as a whole. Statements seeking to limit the liability of each member of the consortium or specifying that more than one contract should be signed if the joint offer is successful, are incompatible with the principle of joint and several liability. The Authority will disregard any such statement contained in a joint 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.

Joint offers will be evaluated as follows unless indicated otherwise in the contract notice and/or tender specifications:

- The exclusion criteria will be evaluated in relation to each entity in the consortium individually;
- The selection criteria regarding the economic, financial, technical and professional capacity will be evaluated in relation to the combined capacities of the consortium as a whole;
- The award criteria will be evaluated in relation to the offer as a whole.

In case of contract award to a consortium, EFSA will sign the contract with the consortium leader who will be duly authorised by the other consortium members to sign on their behalf via a power of attorney. The EFSA power of attorney is published as an annex to the draft contract. The signed power of attorney will form part of the contract. Any change in the composition of the consortium after the signature of the contract may lead to the termination of the contract.

## Offers proposing the use of subcontractors

Tasks detailed in the technical specifications may be subcontracted to other service providers unless stipulated otherwise in the contract notice or tender specifications, e.g. the Authority may specify that certain critical tasks cannot be subcontracted.

In case subcontractors are identified before submission of the offer, the declaration on honour (evidence for the exclusion criteria) from the subcontractor must be included with the offer only when explicitly requested in the tender specifications. In case the identity of subcontractors is not known at the time of submitting the offer, any subcontract must be awarded according to the provisions of the contract.

The contractor retains full liability towards EFSA for performance under the contract as a whole. Accordingly:

- EFSA will treat all contractual matters (e.g. payments) exclusively with the contractor, whether or not the tasks are performed by the subcontractor;
- Under no circumstances can the contractor of EFSA avoid liability towards EFSA on the grounds that the subcontractor is at fault.

If a subcontractor provides the whole or a very large part of the financial capacity OR executes the whole or a very large part of the tasks, EFSA may demand that that the subcontractor signs the contract as well. In this case the Authority will check that the subcontractor is not in a situation of exclusion and that it has access to the market. Additionally, tenderers may be requested to state the value of the contract that they propose to subcontract and/or the percentage of subcontracting foreseen.

Subcontractors in the offers will be evaluated as follows:

- The exclusion criteria will be evaluated in relation to the tenderer but only for each proposed subcontractor individually, if explicitly requested in the tender specifications;
- The selection criteria regarding the economic, financial, technical and professional capacity will be evaluated in relation to the combined capacities of the tenderer and subcontractor as a whole; however the evidence requested must be included in the offer for subcontractors only if the capacity of those subcontractors is necessary to satisfy the minimum capacity requirements;
- The award criteria will be evaluated in relation to the offer as a whole.

During the execution of the contract, the contractor needs the express permission of the Authority to replace a subcontractor.

## WHAT SHOULD AN OFFER CONSIST OF AND HOW SHOULD IT BE SUBMITTED?



Please refer to Annex 1 (Offer Completeness Checklist) of the tender specifications for a detailed checklist of the documents and information which should be included with your offer.

For precise details about how to submit an offer to EFSA, please refer to the invitation letter for the specific call.

## WHAT ARE THE IMPLICATIONS OF SUBMITTING AN OFFER?

### *Acceptance of Authority's contractual terms and waiver of own business terms*

Submitting an offer in response to a procurement procedure launched by EFSA shall be deemed to imply that tenderers:

- **accept** all the terms and conditions stipulated in the tender specifications and all other documents related to the procurement including the draft contract; and
- **waive** their own terms of business such that any resultant contractual relationship shall be governed exclusively by the terms of the contract.

The Authority will disregard any qualification, disclaimer or intention to the contrary and further reserves the right to reject such offers without further evaluation on the grounds that they do not comply with the tender specifications.

### **Period of validity**

Unless the tender specifications stipulate a different time period, tenderers will be bound by their offer for **9 months** from the closing date for offer submission.

### **Guarantees**

Only on a case by case basis and following risk analysis may EFSA require a pre-financing or performance guarantee. Pre-financing guarantees are however never requested in low value procedures (equal to and below 60,000 EUR). If and when such guarantees are requested, it will be announced in the tender specifications and the specific conditions related to its provision will be included in the draft contract. The costs of any such guarantee shall be borne by the contractor.

### **No obligation on the Authority to award**

When awarding a contract, the Authority undertakes to compare the offers in the light of the criteria laid down in the contract notice and/or the tender specifications. However, publishing a procurement procedure does not oblige the Authority to award the contract to a tenderer simply because their offer fulfils those criteria. The Authority also reserves the right to decide not to award the contract to any tenderer and to cancel the procedure at any time before award. The Authority is not liable for any compensation in such circumstances.

### **Tax exemption**

Pursuant to the provisions of Article 9 of the Italian Law n. 17 dated 10/01/2006 and under Article 151 of Council Directive 2006/112/EC, EFSA is exempt from all duties, taxes and other charges, including VAT.

## Applicable Law

Unless the tender specifications stipulate otherwise, contracts resulting from a procurement procedure issued by EFSA shall be governed by Union law, complemented, where necessary, by the national substantive law of Italy.

Any dispute between the parties in relation to the interpretation, application or validity of the contract which cannot be settled amicably shall be brought before the General Court of the European Union.

## Protection of personal data

As an EU Agency, EFSA is subject to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movement of such data<sup>1</sup>.

The applicability of Regulation (EC) No 45/2001 in the context of public procurement procedures and resulting contracts has the following implications:

- EFSA shall ensure that any personal data contained in your offer and/or processed in the context of the procurement procedure (e.g. names of individuals, CVs, contact details, financial details of individuals, declarations of interest) is processed lawfully in compliance with the Regulation. More detailed information on the processing of personal data in the context of procurement procedures of EFSA is available in the [Privacy Statement](#) on our website;
- In accordance with Article 2 of the Regulation, the Contractor chosen by EFSA acts as a processor of EFSA with regard to any personal data handled under the Contract. As a consequence, in the interaction with EFSA in execution of the Contract, Regulation (EC) No 45/2001 forms the primary legal basis for measuring the compliance of personal data handling, not the national data protection law the Contractor normally is subject to in the country where he is established;
- With reference to the Regulation, the procurement Contract contains specific provisions on data protection, a.o. conferring to the Contractor the obligation to ensure the confidential and secure processing of personal data as far as needed for the implementation of the Contract.

## Confidentiality & public access to documents

EFSA undertakes to protect commercial interests by treating all information contained in an offer as confidential. The Authority will not disclose any information where such disclosure would hinder application of the law, be contrary to public interest, harm tenderers legitimate business interests or distort fair competition.

In the general implementation of its activities and for the processing of tendering procedures in particular, EFSA observes Regulation (EC) No. 1049/2001 of the

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<sup>1</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001, p. 1-22

European Parliament and Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

***Agreement to deliver the goods/services in accordance with the contract***

Contracts concluded following a public procurement procedure cannot be subsequently modified. Changes are limited to administrative issues such as modification of bank account or to circumstances caused by external and unforeseen factors.

Deadlines for deliverables set in the contract are binding and could result in the successful tenderer having to pay liquidated damages for each day of delay if the deadlines set are not respected.



## IS CONTACT BETWEEN EFSA AND TENDERERS ALLOWED?

Contact between the Authority and tenderers outside the strict requirements of the procedure are prohibited save in exceptional circumstances and under the following conditions only:

### Before the closing date for offer submission:

At the request of the tenderer, the Authority may provide additional information solely for the purpose of clarifying specific issues arising from the tender specifications. Should a tenderer have a question the should proceed as follows;

- **Negotiated procedures** – the question should be submitted to the email address indicated in the invitation to tender
- **Open call** – the question should be submitted using the e-tendering tool in Tenders Electronic Daily (TED). Access to the e-tendering tool is via a call specific link published on the EFSA website under each specific open call for tenders.

EFSA is obliged to reply to requests for additional information as soon as possible and no later than six calendar days before the deadline for the receipt of tenders or, in the case of requests for additional information received less than eight calendar days before the deadline for receipt of offers, as soon as possible after receipt of the request. EFSA is not bound to reply to requests for additional information made less than five working days before the closing date for offer submission.

The Authority may also, of its own accord, inform tenderers of any error, inaccuracy, omission or other clerical error in the text of the contract notice, invitation to tender letter or technical specifications and their annexes.

In the interests of fairness and equal treatment, any additional information will be sent in an identical manner simultaneously to all tenderers;

- **Negotiated procedures** – via email sent simultaneously to all tenderers
- **Open procedures** – published on the e-tendering tool in TED. Accordingly, for open procedures tenderers should use the e-tendering tool to register for updates and receive published answers to clarifications and possible changes such as an extension of the deadline.

Any additional information provided by EFSA should be regarded as an integral part of the tender documentation.

### After the closing date for offer submission:

If clarification is required by the Authority or if obvious clerical errors in the offer need to be corrected, the Authority may contact the tenderer, provided the overall terms of the offer are not materially modified as a result.

If the reply clearly contradicts or modifies the original offer, EFSA may reject the offer.

In the event of a negotiated procedure, EFSA reserves the right to open further negotiations with the tenderer on the technical and/or financial offer made, in order to adapt them to the requirements set out in the tender specifications or any additional document and in order to find the offer offering best value for money. However negotiations may not concern the minimum (compulsory) technical or administrative requirements in the tender specifications. During negotiations equal treatment of all tenderers will be ensured.

## THE OPENING OF OFFERS

The Authority is required to formally appoint an opening committee for all calls above 60,000 EUR in value. In case of an open procedure, an opening committee meeting will be held to open all offers on the date and at the time and place indicated in the contract notice and invitation to tender.



The Opening Committee will work under conditions of confidentiality and absence of conflict of interest and will sign a declaration confirming these conditions.

In an open procedure, each tenderer may send one representative to the opening session. If the tenderer wishes to attend the opening, they should notify the Authority, via e-mail, of the name of the individual who will attend the opening, no later than two working days before the opening session. The tenderers representative will be required to sign an attendance sheet and the Authority reserves the right to require the representative to provide proof of identity. Further details for attending the opening session are provided in the invitation letter.

The public part of the opening session will be strictly limited to checking whether each offer received is compliant with the following requirements:

- The closing date for the offers reception specified in the tender specifications is respected
- The offers are electronically protected until the official opening



## HOW ARE OFFERS ASSESSED?

The Authority is required to formally appoint an Evaluation Committee for all calls exceeding 60,000 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.

Offers complying with the formal requirements checked during the opening session will be assessed in light of the criteria explicitly announced in the tender specifications. Only offers meeting the requirements of each phase of the evaluation will be admitted to the next i.e. step-by-step evaluation; the offer is firstly assessed against exclusion criteria; if the offer meets the requirements of the exclusion criteria it is then assessed against the selection criteria; if the offer meets the requirements of the selection criteria and complies with the substantial requirements laid down in the tender specifications, it is then assessed against the award criteria.

Your offer will also be assessed for compliance with tender specifications. Tenders are considered not to meet the tender specifications and therefore to be rejected if they:

- do not comply with substantial requirements laid down in the tender specifications (non-compliance);
- propose a solution different from the one that is imposed;
- propose a price above the fixed maximum set in the specifications or in the contract notice;
- are submitted as variants, when the contract notice or the specifications do not authorise them.

The tenderer will be informed of the ground for rejection without being given feedback on the content of the tender other than on the non-compliant elements.

### Exclusion Criteria

The sole purpose of the exclusion criteria is to determine whether an operator is eligible to participate in the procurement procedure. The only criteria which are applied are those set out in Article 106 of the Financial Regulations. Tenderers shall be excluded from procurement procedures in the following cases;

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they or persons having powers of representation, decision making or control over them have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of res judicata;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify including by decisions of the EIB and international organisations;

- (d) they are not in compliance with their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they or persons having powers of representation, decision making or control over them have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such illegal activity is detrimental to the Union's financial interests;
- (f) they are subject to an administrative penalty having been declared to be in serious breach of their obligations under contracts covered by the budget.

Additionally and in accordance with Article 107 of the Financial Regulations, contracts may not be awarded to tenderers who during the procurement procedure:

- (a) are subject to a conflict of interests;
- (b) are guilty of misrepresenting the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply that information;
- (c) find themselves in one of the situations of exclusion listed above.

**Exclusion criteria evidence to be submitted with the offer:**

**- Declaration on Honour**

For any call with a value above 15,000 EUR, tenderers must provide a signed and dated Declaration on Honour, certifying that they are not in any of the exclusion situations listed above. EFSA reserves the right however to request such a declaration for calls with a value equal to or below 15,000 EUR.

Declarations should be completed for the legal entity and for natural persons with power of representation, decision making or control over the legal entity.

A declaration is required from the tenderer and each member of the consortium, should a consortium apply. If a declaration is required from subcontractors, in the case of subcontracting, this will be specifically requested in the tender specifications.

**- Declaration of Interest (DoI)**

For science calls only, in order to demonstrate that tenderers are not subject to a conflict of interest for which they might potentially be excluded, they may be required to complete an Institutional Declaration of Interest and, Individual Declarations of Interest for each member of the proposed project team. Each tender specification will set out the documents required for that particular call. Templates of Institutional and Individual DoIs can be found on the [EFSA website](#). Further information on the DoI policy of EFSA can be found in the [Decision of the Executive Director on Declarations of Interests](#)

## **Exclusion criteria evidence to be submitted by winning tenderer at the stage of contract award:**

For offers with a value below the thresholds for application of the procedures under Directive 2004/18/EC only a signed and dated Declaration on Honour is required, without supporting evidence, unless EFSA has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, in which case, EFSA may require the tenderer to provide additional evidence. Any additional evidence to be submitted will be detailed in the award letter.

Where the contract to be awarded as a result of the procurement procedure is of a value higher than the thresholds for application of the procedures under Directive 2004/18/EC EFSA will ask the awarded tenderer to provide further evidence to prove they are not in one of the exclusion situations listed above. Supporting evidence is always required but is only requested once the winning tenderer has been identified and prior to contract award. Details of the supporting evidence to be provided will be communicated in the award letter to the winning tenderer.

Additional information on the different certificates frequently requested across EU Member States to evidence tenderers are not in a situation of exclusion is available at <http://ec.europa.eu/markt/ecertis/searchDocument.doc>

### **- Central Exclusion Database**

Before taking the decision to award a contract, EFSA will consult the Central Exclusion Database (Commission Regulation 2008/1302 of 17/12/2008) which contains information on candidates and tenderers for which serious grounds for exclusion are found or who have been declared in serious breach of their obligations under contracts covered by the EU budget. In case the proposed contractor is included in the database, EFSA may decide not to award the contract.

## **Selection Criteria**

Provided there are no grounds for exclusion of the tenderer, the tenderer's capacity to perform the contract is assessed based on their proven;

- Economic and financial capacity
- Technical and professional capacity

The documents required to prove these capacities are stated in the tender specifications. The documents provided by tenderers to prove that they meet the selection criteria will be used solely to assess their capacity to perform the contract and will not be considered when offers are evaluated against the award criteria.

In the selection criteria phase, evaluation focuses on the quality of the track record of the tenderer and not on the quality of the offer. Accordingly, information related to the technical proposal or the financial offer should not be introduced in this part of the offer.

For calls with a value equal to or below 60,000 EUR the Authority may dispense with the requirement for documentation in relation to selection criteria, according to its assessment of the risks involved. However, if evidence demonstrating the

economic and financial capacity is not requested, no pre-financing shall be made by the Authority.

### **Award Criteria**

Provided there are no grounds for exclusion and tenderers have satisfied the selection criteria and are compliant with the tender specifications, the evaluation committee will evaluate the offers against the award criteria stated in the tender specifications. No criteria other than those stated in the tender specifications will be used.

#### **Quality evaluation (quality award criteria)**

The quality evaluation of the offers will be based on the criteria listed in the tender specifications. To ensure the quality evaluation takes full account of the needs of EFSA, the Authority may assign a weighting to each criterion and stipulate a minimum threshold for each criterion and/or for the quality award criteria as a whole.

Additionally, and if so stipulated in the tender specifications, the Evaluation Committee may (on the rare occasions when deemed strictly necessary) interview the key experts proposed. The costs for attending the interview shall be borne by the tenderer.

At the end of the quality evaluation, each offer will be assigned an overall quality score and it will be determined whether or not the minimum quality threshold was met.

#### **Financial evaluation (price award criteria)**

The financial offer of those tenderers whose technical offer met the minimum quality threshold for the quality award criteria will be considered for the identification of the best value for money, provided the financial offer is made within the maximum budget specified in the tender specifications. Any financial offer exceeding this maximum budget will be eliminated from further evaluation.

In most EFSA tenders the best value for money offer will be identified by comparing the overall quality score of the offer with its price, in accordance with the formula set out in the tender specifications. The offer with the highest value obtained using this formula will be regarded as the best value for money offer.

Please note that the tender specifications further specify the exclusion, selection and award criteria and accordingly you are strongly recommended to refer to those tender specifications for more details on all evaluation steps.

## HOW ARE THE RESULTS COMMUNICATED?

During the evaluation period, EFSA will not provide any information on an ongoing procurement procedure. If a tenderer is not contacted, this should not be regarded as either a positive or negative sign. Tenderers will be informed of the outcome of the procurement procedure as outlined below.



### Notification of results

As soon as the authorising officer has made a decision about to whom the contract should be awarded, a notification letter will be sent simultaneously to all tenderers by e-mail. The letters to unsuccessful tenderers will state the grounds on which the decision was taken.

In case of a contract value exceeding the relevant thresholds of the Public Procurement Directive, EFSA undertakes not to sign the contract until a period of at least ten calendar days has elapsed following the electronic dispatch of the notification letters, so that unsuccessful tenderers have sufficient time to react if necessary. Any contract signed before this period has elapsed shall be null and void.

### Requests for additional information

If tenderers are notified that their offer has not been successful, they may request additional information by letter or e-mail. EFSA will reply within fifteen calendar days of receiving a written request. Only tenders which are not eliminated (found to be not compliant with the tender specifications) and passed the exclusion and selection criteria shall be informed about the merits of the successful offer and the name of the successful tenderer.

The additional information is given in a follow-up letter providing further details, namely a summary of the characteristics and relative advantages of the successful offer. EFSA is not however free to disclose any information affecting the commercial interests of other tenderers.

### Award Notice

Once the contract is signed, EFSA will publish an award notice in the Official Journal summarising the results of the procurement procedure, where the contract value exceeds the relevant threshold of the Public Procurement Directive.

For contracts with a value below the Directive, the Authority is obliged to publish on its external webpage ([www.efsa.europa.eu](http://www.efsa.europa.eu)), a list of contracts concluded during the previous year with values between 15,000 EUR and 60,000 EUR. The list must be published by 30<sup>th</sup> June each year.