
**STANDARD CONDITIONS OF THE EUROPEAN
REGIONAL DEVELOPMENT FUND (ERDF)
GRANT**

SCHEDULE 5

PUBLIC PROCUREMENT PROCEDURE

Basic Procurement Levels

1. Under the ERDF 2007 – 2013 programme national rules, projects partially funded via ERDF must follow the procurement policy of the ERDF implementing team unless an alternative has been approved by the team. These rules apply to the grant recipient and named partners within the full application for funding. These rules do not apply to private contractors for goods, works or services obtained via open procurement or minor ad hoc purchases or purchases by the businesses assisted by the project. However, these rules will apply to non procured private sector organisations which are acting as delivery agents on behalf of the project. As of date of receipt of this schedule in July 2011 these rules are as follows:
2. All contracts which will not be externally advertised on a widely accessible website will need to have evaluated and recorded the rationale as to why the contract could not be of interest to companies in other member states.
 - a. Under £1,000 there is no requirement for evidence of competition, but value for money needs to have been considered and the justification must be formally stated in writing and retained.
 - b. Between £1,000 and £10,000, 3 written quotations on the basis of a written specification must be obtained and kept on file as evidence that the requirement has been completed.
 - c. Between £10,000 and £100,000 formal tenders must be obtained on the basis of a formal invitation to tender. The tender; the tender advertisement; where appropriate the pre-qualification questionnaire, the PQQ responses and scoring, all tender responses; the tender scoring sheets; all documentation and correspondence regarding the tenders must be retained, together with the published notice of the award of tender and the final contract. The tender should be sought using a widely accessible e-portal website. In addition, advertising in appropriate specialist publications should be considered. All documentation related to this must be retained and the award notice must be published on the website and a screen prints showing both the original advertisement of the tender and the award notice on the website should be retained on file as a demonstration of this.

- d. ¹ Above £100,000 for service contracts and above £3.4 million for a works contract, an Official Journal of the European Union (OJEU) process must be followed². If a service contract has been divided into small lots the limit is £54,000 for service and £679,000 for works contracts. Please note that when seeking to use the works contract limit, care must be taken to ensure that service contract elements have not been incorporated as they may need to follow the service contract limit (i.e. a works contract which incorporates service contracts for architects and project managers). The notice should be published on the [simap](http://simap.europa.eu/index_en.htm) Commission website (http://simap.europa.eu/index_en.htm). In the absence of the necessary knowledge to perform an OJEU process, the project should look at advice provided by the Office of Government Commerce, www.ogc.gov.uk, and ultimately may need to obtain professional advice.
- e. Single Tender Actions are the subject of the most frequently successful legal challenges to procurement and consequently will be approved only in exceptional circumstances. These circumstances will normally relate to truly unique technological or creative solutions. Projects should be aware that neither being the only supplier of this good or service in the Europe nor the need for urgent contracting due to imminent loss of grant are acceptable justifications in law. Single Tender Actions will only be permitted where the organisation seeking the single tender action has a formal single tender action policy and show that they are following it. In addition, the formal justification for a Single Tender must be forwarded to the Local ERDF Delivery Unit, prior to tender for comment. Please note that this comment does not constitute a defence in law should there be a subsequent legal challenge.
- f. Existing preferred suppliers lists will only normally be permitted where they have been refreshed within the last 5 years; they were created via a formal OJEU process; the activity is within the scope of the original tender and the work proposed would be within the cumulative contract as per the original tender. Where there is more than one supplier listed for a particular service or good, there must be a mini competition between the preferred suppliers to demonstrate best fit.

General Comments

3. Projects must take care to ensure that the level of tender is appropriate for the expected scale of the project as extensions to contracts awarded can only be made exceptionally, due to circumstances which could not have been foreseen at time of tender and to an absolute limit of 50% of the original contract.
4. Projects must also ensure that suppliers are only used for the activity outlined in the tender as any work undertaken outside of the scope of the tender may be considered to be illegal.

¹ The level cited is below the current official OJEU mandatory limit for non central governmental bodies. However, the level allows for potential contract slippage and under estimations of market costs which would require a halt to the process and re-tender using OJEU.

² Should an invitation to tender be below £3.4 million and not incorporate any service elements, the process as per c should be followed.

5. Projects must allow sufficient time for tenders to fulfil the formal procedural requirements. It is estimated that an open or restricted tender at OJEU level will be expected to take 3 months. A competitive dialogue may take longer than this. Any breach of the minimum timescales will invalidate the tender, see OGC guidance on OJEU tender process for minimum mandatory timescales.
6. Projects must be aware that only the original organisation which issued the invitation to tender and named organisations within the invitation may use any supplier selected as a result of the tender, partners who were not named in the original invitation to tender must carry out a separate tender.
7. Projects must ensure that tender selection criteria:
 - a. does not favour domestic over foreign suppliers;
 - b. does not include criteria not relevant to the activity;
 - c. are not artificially divided to avoid exceeding the limit at which OJEU procedures apply; and
 - d. are not written so as to ensure only one supplier could fulfil the contract.
8. All tender selection criteria must be published in the invitation to tender including weighting being given to the different elements of the criteria. The initial selection must be on the basis of all of the selection criteria. The ultimate award must be based on an assessment of which, of those who meet the minimum acceptable level of the selection criteria, provides best economic value. If any of the criteria are mandatory and would prevent contracting if not present this must be specified in the invitation to tender.
9. If within a calendar year, contracts to the same supplier may cumulatively reach OJEU limits, than an OJEU procurement may be required. If in a collaborative project, authority to decide who to contract with is not devolved to each partner independently, than the collective contracts of all the participating organisations have to be taken into account when considering whether OJEU procedures must be followed.
10. Overall, organisations seeking to contract with external suppliers should be aware that European Courts have upheld the ruling that the Treaty provisions requiring openness, non discrimination and equality of treatment, apply to all public procurement contracts, even those at levels as low as 10% of the OJEU threshold. The 2006 Commission interpretative communication on procurement below the OJEU limits has made it clear that all public contracts are expected to be advertised on external websites, unless a full evaluation has determined there could be no interest from companies from other member states.
11. When advertising the tender at all levels, the information that it will be part financed by ERDF must be included in the advertisement. In the case of preferred suppliers lists this must be incorporated into the mini competition



invitation or the call off contract order where only one supplier has been selected as the preferred supplier.