

# Requirements on Procurement for Projects financed by GIZ

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## 0. Principle

The Requirements on Procurement for Projects Financed by GIZ (referred to below as ‘Requirements on Procurement’) set out the principles, procedures and minimum standards that recipients of GIZ Financing (referred to below as ‘Recipient’) must adhere to for procurements that are partially or fully financed with funds provided by GIZ.

The procedures described here are contractually agreed minimum standards. In addition to these, the Recipient must also comply with all statutory regulations under public (procurement) law applicable to it.

The Recipient is responsible for the implementation of the project and as such also for the award and management of contracts under the project.

As used in these guidelines, the term ‘procurement’ refers to the entire process involved in procuring supplies, construction work, advisory services and other services. This includes all steps from the identification of needs, the invitation to tender and selection of service providers or suppliers, through to the award of contracts.

## 1. Minimum standards

N.B.: The procedures described here are contractually agreed minimum standards. In addition to these, the Recipient must also comply with all applicable statutory regulations under public (procurement) law.

Estimated Contract value <sup>1</sup>	Procedure
Up to EUR 1,000.00	Procurement is permitted without a tender procedure for the award of a contract but observing the principles of economic efficiency and cost-effectiveness.
Over EUR 1,000.00 and up to EUR 20,000.00	Request for at least three candidates to submit tenders.
Over EUR 20,000.00 and up to EUR 200,000.00	<ul style="list-style-type: none"> <li>a) Public invitation to tender, or</li> <li>b) Limited invitation to tender after competitive tender for participation, or</li> <li>c) Limited invitation to tender without competitive tender for participation</li> </ul> <p>If a public invitation to tender or a limited invitation to tender with a competitive tender has not produced an economically advantageous result, then a limited invitation to tender without a competitive tender can also be run.</p>
Over EUR 200,000.00	<ul style="list-style-type: none"> <li>a) Public invitation to tender or</li> <li>b) Limited invitation to tender after competitive tender for participation</li> </ul>

<sup>1</sup> When estimating the contract value, the total anticipated value of the stipulated service/work excluding VAT should be taken as the basis for calculation. When selecting the method for calculating the estimated contract value and the possibility to divide up the contract award, this must not be done with the intention to bypass individual rules of the Requirements Regarding Procurement (e.g. with regard to selecting the type of procedure).

Exceptions	Procedure
<p><b>In justified exceptional cases:</b> Direct order above EUR 1,000.00</p>	<p><b>In justified exceptional cases, while observing the principles of economic efficiency and cost-effectiveness:</b> a direct order above EUR 1,000.00 from a specific contractor is possible without competitive tender. <u>For example</u>, a justified exception exists in the event of a unique selling point, i.e. if a single specific company is uniquely qualified to provide a particular service.</p>
	<p>A further exception are contracts with individuals who are self-employed or employed by a third party and seconded to the Recipient and therefore not working on the basis of an employment contract with the Recipient, but who still work under the instructions/supervision of the Recipient (see Annex 3a Requirements for Grant Recipients regarding Budget and Financial Processing; Section I, definition of 'integrated consultants').</p>
<p>Individual contracts using existing framework agreements between the Recipient and their suppliers of goods and services.</p>	<p>Existing framework agreements with the Recipient may be used, provided there is evidence of compliance with the minimum standards mentioned above (except direct order).</p>

## 2. General provisions

The Recipient is responsible for safeguarding the integrity of the process and ensuring that all tenderers/suppliers/service providers are treated fairly and equally. The Recipient must ensure that all persons involved in the procurement process comply with the requirements described here.

The Recipient is strongly advised to familiarise himself with the general rules of the procurement procedure, including the specific terms and conditions, the objective selection criteria and the need for transparent and adequate documentation, before initiating a procurement process. Failure to comply with these rules may result in ineligible expenditures for items or services procured.

Clear and comprehensive terms of reference must be drawn up in each case.

### General principles for the procurement process

All procurement processes must be carried out in compliance with five general principles:

The **principle of transparency** requires open, clearly comprehensible and verifiable procurement behaviour. Compliance with transparent procedures helps, for instance, to prevent corruption and other undesirable behaviour.

The **principle of cost-effectiveness** aims to ensure that the resources available to the Recipient and to tenderers are used economically, efficiently and effectively, thereby ensuring the most advantageous cost-benefit ratio.

The **principle of competition** ensures effective competition by enabling those who are eligible to tender for the provision of goods, construction works, advisory services or standard general services.

The **principle of non-discrimination** requires that all tenderers taking part in a tender procedure are always be treated equally and that equal competition must be ensured. Terms of reference and specifications must not be tailored to individual tenderers or products. If some tenderers know more about a particular tender procedure than other potential tenderers, the Recipient must ensure that the knowledge gaps on the part of the latter are closed.

The **principle of confidentiality** obliges all parties to protect confidential information. It applies in particular to confidential information contained in the tender and to other business and commercial secrets. Confidentiality makes it possible to organise a competitive procedure that is fair and transparent.

These principles are designed to ensure that funds provided by GIZ are used economically, efficiently and effectively.

### 3. Different selection procedures for procurement processes

In order to ensure cost-effective procurement, at least three candidates should be given the opportunity to submit their tenders, irrespective of the specific procurement procedure (exception: direct order). The recipient can decide, without negotiating beforehand, whether they award a contract or conduct negotiations with the candidates regarding the content of the tender.

The contract is awarded to the most economically advantageous tender, which is identified on the basis of the best price-quality ratio. Apart from the price or costs, the award decision may also take into account qualitative, environmental or social criteria.

#### a) Public invitation to tender

This procedure may be used in all cases.

A public invitation to tender is published, for example, in newspapers or on websites (notice). Any market participant interested in the contract may submit a tender.

#### b) Limited invitation to tender after/without a competitive tender for participation

##### Limited invitation to tender after a competitive tender for participation

Following the notice (see public invitation to tender), candidates may apply to participate. A number of suitable candidates are selected on the basis of pre-defined criteria and invited to submit a tender. The predefined criteria must be recorded and documented in a transparent manner. However, it is recommended to select at least five potential candidates in order to ensure sufficient competition.

##### Limited invitation to tender without a competitive tender for participation

At least three suitable candidates are selected on the basis of pre-defined criteria and invited to submit a tender. However, it is recommended that at least five potential candidates be selected in order to ensure sufficient competition. The predefined criteria must be recorded and documented in a transparent manner.

#### c) Direct order

**N.B.: This procedure may only be used in justified exceptional cases and with due regard for the principles of economic efficiency and cost-effectiveness.**

This is subject to the occurrence of a specific unique selling point, which can only be said to exist if the procurement needs can demonstrably be met only by a single specific supplier/service provider.

Examples:

- The service can due to unique qualifications or technical products be provided only by a specific supplier or service provider (i.e. a position of monopoly). The uniqueness of

a supplier's or service provider's technical products or qualifications must be substantiated by a market survey;

- The service can due to exclusive rights be provided only by a specific supplier or service provider, especially due to industrial property rights that give the owner a monopoly-like position, such as registered trademarks, distribution licences, patents, copyrights.

Terms of reference/specifications must not be tailored to a particular company without a factual reason.

The following reasons are not valid as evidence of a unique selling point (examples):

- Convenience considerations (e.g. 'good experience with a supplier/service provider')
- Mere assumption that a monopoly position exists (e.g. 'the only provider we know of')
- Insufficient capacity or time pressure (e.g. 'We know this provider and don't have time for a market survey.')
- Reasons of efficiency ('A new contractor would have to familiarise himself/herself first, which would involve a great amount of time and money').

## 4. Documentation

Clear and comprehensive documentation of all the steps in the process, of the final decision and of the persons involved is essential for all procurement and award procedures.

The Recipient must document all award decisions in writing and must keep all the documents related to the procurement process for 10 years after submitting the final financial report. The documentation on the procurement process, in particular the decision to place an order or award a contract, must be noted in the procurement documentation (see template) or with a comparable form containing at least the same amount of information.

If a unique selling point is involved, particularly detailed documentation must be compiled. The arguments on which the decision was based must be objective, plausible and verifiable.

- Where reference is made to a position of monopoly or similar skills/status: documentation of market research;
- Where reference is made to industrial property rights: justification showing why no other suitable product is available, as well as a reference to the industrial property right in question and why the specified supplier has the exclusive right to use it.