

Requirements regarding procurements for recipients of financing from GIZ

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1. Basic principles

The Requirements Regarding Procurements for Recipients of Financing by GIZ (referred to below as ‘Requirements Regarding Procurements’) set out the principles and procedures 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.

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

The Requirements Regarding Procurements are contractually agreed minimum standards, but any further procurement specifications agreed in the contract between the Recipient and GIZ take precedence. In addition to these, the Recipient must also comply with all applicable statutory regulations under public (procurement) law.

Recipients must therefore familiarise themselves with the statutory contract award rules applicable under national law, in addition to the Requirements Regarding Procurements, before initiating a procurement process. The same applies to the statutory requirements for setting out the terms of reference, the requirements to be met by tenderers, the selection criteria and the documentation of the award process.

The Recipient is responsible for the implementation of the financed project and as such also for the award and processing of contracts under the project. The Recipient must ensure that all persons involved in the procurement process comply with the procurement requirements described here and that all steps in the procurement process are clearly documented.

In accordance with Section 6.2 of the contract between GIZ and the Recipient, failure to comply with the Requirements Regarding Procurements will result in expenditures for procured materials, equipment or services being deemed ineligible.

2. Overview of the procedures to be used for procurements

The following procurement procedures are to be used, depending on the contract value. Explanations of the individual procurement procedures are given in Section 4.

Estimated contract value ¹	Procedure for procurements
Up to EUR 5,000.00	Direct order
Over EUR 5,000.00 and up to EUR 100,000.00	Request for at least three providers to submit tenders
Over EUR 100,000.00 and up to EUR 200,000.00	<ul style="list-style-type: none"> a) Public invitation to tender or b) Public competition for participation in an invitation to tender (competitive tender) or c) Request for at least three providers to submit tenders (if there is a justified assumption, with documentation, that no or no cost-effective tenders or expressions of interest would be submitted under procedures a) or b)).
Over EUR 200,000.00	<ul style="list-style-type: none"> a) Public invitation to tender or b) Public competition for participation in an invitation to tender (competitive tender) <p>If no or no cost-effective tenders or expressions of interest are submitted in response to a public invitation to tender or a competitive tender, the selected procedure can be discontinued and a contract can be awarded following a request for at least three providers to submit tenders.</p>

¹ 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 of dividing the contract award up into multiple contracts, this must not be done with the intention to bypass individual rules of the Requirements Regarding Procurements (in particular with regard to the applicable procurement procedure).

Special cases (irrespective of contract value)	
Direct order in exceptional cases	A direct order is possible in justified exceptional cases without conducting an award procedure (see Section 4 for the conditions).
Direct order to the Recipient's integrated consultants	A direct order to 'integrated consultants' is possible without conducting an award procedure (see Section 4 for the conditions).
Call-offs under existing framework agreements between the Recipient and their suppliers	Call-off contracts under the Recipient's existing framework agreements do not require an award procedure to be conducted provided that the framework agreement was concluded after completion of an award procedure (i.e. all award procedures, not a direct order) (see Section 4).

3. General principles of procurement

All award procedures must be carried out in compliance with the following **principles**:

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

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

The **principle of competition** ensures effective competition by enabling eligible providers to compete for the order to provide goods, construction works, advisory services or standard general services.

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

The principle of equal treatment also obliges the Recipient to maintain neutrality. Therefore neither members of its executive bodies nor its employees are permitted to be involved in an award procedure if these individuals are subject to a conflict of interest. A conflict of interest exists for people who are involved in conducting the award procedure or are able to exert influence on the outcome of an award procedure and who have a direct or indirect financial, economic or personal interest that could detract from their impartiality and independence in the context of the award procedure.

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.

4. Rules for individual procurements

In addition to the general principles set out in Section 3, the following rules apply to the individual procedures for procurements (see Section 2):

a) Public invitation to tender

A public invitation to tender is announced via media or platforms considered customary for the country or industry, for example in newspapers or on websites, such that any provider interested in the contract has the opportunity to become aware of the invitation to tender and submit a tender.

If the contract value is over EUR 100,000.00, as a rule a public invitation to tender or alternatively a competitive tender (see b)) must be conducted (for exceptions see c)). A public invitation to tender is of course also possible for contracts of a lower value.

b) Public competition for participation in an invitation to tender (competitive tender)

In the case of a competitive tender, a public announcement is made via media or platforms considered customary for the country or industry that suitable candidates are invited to submit requests to participate in a subsequent tender procedure. Interested candidates may apply to participate in the tender procedure. A number of suitable candidates are selected on the basis of predefined criteria and invited to submit a tender. The predefined criteria must be recorded and documented in a transparent manner. However, it is recommended that at least five potential candidates be selected in order to ensure sufficient competition.

If the contract value is over EUR 100,000.00, as a rule a competitive tender or alternatively a public invitation to tender (see a)) must be conducted (for exceptions see c)). A competitive tender is of course also possible for contracts of a lower value.

c) Request for at least three providers to submit tenders

In the case of a request for at least three providers to submit tenders there is no publication; instead, individual providers are contacted directly by the Recipient. However, in order to be able to ensure sufficient competition and select the most cost-effective tender, the Recipient must always select suitable providers.

If the contract value is over EUR 100,000.00, dispensing with a public announcement in favour of a direct request to individual providers to submit a tender is only permissible if there is a justified assumption that a public invitation to tender or a public competitive tender will not produce a cost-effective outcome. The reasons for this must be documented.

If the contract value is over EUR 200,000.00, dispensing with a public announcement in favour of a direct request to individual providers to submit a tender is only permissible if a public invitation to tender or a public competitive tender has previously been conducted resulting in no outcomes or no cost-effective outcomes.

The Recipient should alternate between the providers who are invited to submit a tender.

d) Direct order

For **contracts with a value of up to EUR 5,000.00** and in certain exceptional cases, a direct order can be issued to a contractor. It is also necessary when a direct order is placed that due regard is paid to the principle of cost-effectiveness.

The Recipient should alternate between the contractors who are commissioned on the basis of a direct order.

The **exceptional cases** where a direct order may be issued are as follows:

(1) Unique selling point

A **specific unique selling point** must be established. A unique selling point can only be said to exist if the objectively determined procurement need can demonstrably be met only by a single specific contractor. However, terms of reference or product specifications must not be tailored to a particular company without a concrete reason.

Examples of a unique selling point:

- Due to unique qualifications or technical equipment, the service can be provided by only one specific contractor (e.g. a monopoly position). The uniqueness of the contractor's qualifications or technical equipment must be substantiated by a market survey in the justification for the direct award.
- Due to exclusive rights, the service can be provided by only one specific contractor, in particular due to industrial property rights that give the owner a monopoly-like position, such as registered trademarks, distribution licences, patents or copyrights. The contractor's relevant property rights must be stated in the justification for the award, with reasons why no other product can be considered.

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

- Convenience considerations (e.g. 'good experience with a contractor')
- 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 provider would have to familiarise himself/herself first, which would involve a great deal of time and money.')

(2) Urgency

The service is especially urgent due to circumstances which the Recipient was unable to predict, and the reasons for the particular urgency cannot be ascribed to the Recipient's approach.

Examples of particular urgency:

- Dealing with damage caused by disasters
- Averting dangerous situations

The following reasons are **not** valid as reasons for particular urgency:

- Delayed start of a project/imminent end of a project
- Implementation pressure
- Delayed availability of provision of funds

(3) Follow-on order

If additional services are to be procured from an original contractor and switching contractor is not possible or not without undue time and expense, a direct order may be placed with the previous contractor. This is especially applicable when procuring renewals, extensions or spare parts for services previously provided and in cases where it is necessary to procure services with uniform technical features.

(4) Integrated consultants

Integrated consultants can be commissioned on the basis of a direct order.

Integrated consultants are self-employed individuals or employees of third parties who are provided to the Recipient as experts. They do not therefore have an employment contract with the Recipient. Nevertheless, integrated consultants are subject to conditions similar to those of an employee and the Recipient has the right to issue instructions to them, especially with regard to how their work is organised and how they undertake their tasks (e.g. in a de facto subordinate position and as a team member, as well as with regard to remuneration), provided this is legally permissible under the law applicable to the integrated consultant's contract. The costs for these integrated consultants must be appropriate and must be in line with the Recipient's usual business practices, i.e. they must not significantly deviate from the costs for the Recipient's employees who undertake similar tasks.

(5) Framework agreement

Orders that are awarded as a call-off on the basis of the Recipient's existing framework agreements with one or more contractors do not require an award procedure to be conducted provided that the framework agreement was concluded after completion of an award procedure (not a direct order).

5. Negotiations with the tenderers

The following must be taken into account with regard to negotiations with tenderers:

The Recipient may negotiate with the tenderers. Negotiations may cover the entire content of the tender with the exception of the selection criteria and the minimum requirements set out by the Recipient in the terms of reference.

The Recipient ensures that all tenderers are treated equally in the negotiations. The Recipient must not pass confidential information from a negotiation with one tenderer to the other tenderers without the permission of the first tenderer.

The Recipient must inform all tenderers of any changes to or further specifications of the terms of reference or other constituent parts of the tender documents. Following any such changes the Recipient must grant the tenderers sufficient time to amend their tenders and, if necessary, submit revised tenders.

6. Documentation

Clear and comprehensive documentation of all the steps in the procurement process is essential for all procurements.

The Recipient must document **all** decisions in the procurement process and the names of all individuals involved in the process in writing and must keep all documents for ten years after submission of the last evidence of the use of funds. 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' document (see specimen in Annex 4b) or in a comparable document containing at least the same amount of information.

If a justification of a direct order is involved (e.g. a unique selling point), particularly detailed documentation must be compiled. The arguments on which the decision was based must be objective, plausible and verifiable.